

[Planning Code - Massage Establishments]

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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.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font. **Additions to Codes** are in *single-underline italics Times New Roman font*. **Deletions to Codes** are in ~~*italics Times New Roman font*~~. **Board amendment additions** are in double-underlined Arial font. **Board amendment deletions** are in ~~Arial font~~. **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 141303 and is incorporated herein by reference. The Board affirms this determination.

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

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

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

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

11 **SEC. 102. DEFINITIONS.**

12 * * * *

13 **Massage Establishment.** A Retail Sales and Service Use defined by Section~~s~~ 29.5~~1~~
14 ~~through 29.32~~ of the *San Francisco* Health Code. For purposes of the Planning Code only,
15 "Massage Establishment" shall include both a "Massage Establishment" and a "Sole
16 Practitioner Massage Establishment," as these terms are defined in Section 29.5 of the Health
17 Code., except a use that is a sole proprietorship, as defined in California Business and Professions
18 Code Section 4612(b)(1), and where the sole proprietor is certified pursuant to the California Business
19 and Professions Code Section 4600, et seq., or one that employs or uses only persons certified by the
20 State's Massage Therapy Organization, pursuant to the California Business and Professions Code
21 Section 4600, et seq., provided that the The mMassage eEstablishment has shall first obtained a
22 permit from the Department of Public Health pursuant to Section 29.25~~2~~ of the *San Francisco*
23 Health Code, or a letter from the Director of the Department of Public Health certifying that the
24 establishment is exempt from such a permit under Section 29.25~~(b)~~ of the Health Code. and provided
25 that:

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

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

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

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

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

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

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

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

23 * * * *

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

1 psychiatrists, acupuncturists, chiropractors, or any other health-care professionals when
2 licensed by a State-sanctioned Board overseeing the provision of medically oriented services.
3 It includes a clinic, primarily providing outpatient care in medical, psychiatric, or other health
4 services, and not part of a Hospital or medical center, as defined by this Section of the Code.
5 ~~It also includes a massage establishment, as defined by Sections 29.1 through 29.32 of the Health~~
6 ~~Code, that is a sole proprietorship, as defined in California Business and Professions Code Section~~
7 ~~4612(b)(1), and where the sole proprietor is certified pursuant to the California Business and~~
8 ~~Professions Code Section 4600, et seq., and one that employs or uses only persons certified by the~~
9 ~~State's Massage Therapy Organization, pursuant to the California Business and Professions Code~~
10 ~~Section 4600, et seq.~~

11 * * * *

12 **SEC. 202.2. LOCATION AND OPERATING CONDITIONS.**

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

15 * * * *

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

22 * * * *

23 **SEC. 790.60. MESSAGE ESTABLISHMENT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **SEC. 890.60. MESSAGE ESTABLISHMENT.**

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

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

5 (b) Controls. Massage eEstablishments shall *generally* be subject to Conditional Use
6 authorization. Certain exceptions to the Conditional Use for accessory use massage are
7 described in subsection (c) below. When considering an application for a conditional use
8 permit pursuant to this subsection, the Planning Commission shall consider, in addition to the
9 criteria listed in Section 303(c), the additional criteria described in Section 303(~~no~~).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8
9 Section 4. The Planning Code is hereby amended to revise the following Sections by
10 revising Subsection .54 or .34A of the accompanying Zoning Control Tables to substitute a
11 cross-reference to Article 29 of the Health Code for the existing cross-reference to Section
12 1900 of the Health Code.

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

14 Section 810.1. Chinatown Community Business District.

15 Section 811.1. Chinatown Visitor Retail District.

16 Section 812.1. Chinatown Residential Neighborhood Commercial District.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 By: 
19 ANDREA RUIZ-ESQUIDE
Deputy City Attorney

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



City and County of San Francisco

Tails Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 141303

Date Passed: May 19, 2015

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

April 20, 2015 Land Use and Transportation Committee - CONTINUED

May 04, 2015 Land Use and Transportation Committee - DUPLICATED

May 04, 2015 Land Use and Transportation Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

May 04, 2015 Land Use and Transportation Committee - RECOMMENDED AS AMENDED

May 12, 2015 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee


May 19, 2015 Board of Supervisors - FINALLY PASSED

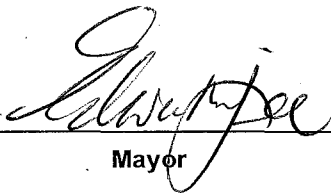
Ayes: 10 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Mar, Tang, Wiener and Yee

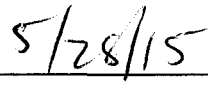
Excused: 1 - Kim

File No. 141303

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 5/19/2015 by the Board of Supervisors of the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor


Date Approved