[Interim Zoning Controls - New Massage Establishments]

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

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

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

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

WHEREAS, Another factor to be considered is the development and conservation of the commerce and industry of the City, to maintain the economic vitality of the City, provide its citizens with adequate jobs and business opportunities, and maintain adequate services for its residents, visitors, businesses, and institutions; and
WHEREAS, In recent years, state law has had a preemptive effect on the ability of cities and counties to use their zoning power to regulate massage establishments; and

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

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

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

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

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

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

WHEREAS, In light of A.B. 1147, the City is studying how to best amend its local laws to regulate massage establishments under the new state law provisions, both to prevent illicit establishments from opening up and operating, and to better ensure that lawful massage
establishments develop in harmony with the City's neighborhoods, character, and commercial base; and

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

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

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

WHEREAS, The Planning Department has determined that the actions contemplated in this Resolution are in compliance with the California Environmental Quality Act (California Public Resources Code Section 21000 et. seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 141231 and is incorporated herein by reference; now, therefore, be it

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

FURTHER RESOLVED, That for the purpose of these interim controls, “massage” shall mean, as defined in Section 29.1 of the Health Code, “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 with the hands or with the aid of any mechanical electrical
apparatus or appliances, with or without such supplementary aids as rubbing alcohol,
liniments, antiseptics, oils, powder, lotions, ointments, or other similar preparations;" and be it

FURTHER RESOLVED, That for the purpose of these interim controls, "massage
establishment" shall mean, as defined in Section 29.1 of the Health Code, "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;" whether it is categorized as a "massage
establishment" (under Sections 218.1, 790.60 and 890.60 of the Planning Code) or as a
"medical service" (under Sections 790.14 and 890.14 of such Code); and be it

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

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

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

FURTHER RESOLVED, That these interim controls shall not apply to accessory
massage uses, provided that the massage use is accessory to a principal use, the massage
use is accessed by the principal use, and the principal use is either (a) a tourist hotel, as
defined in Section 790.46 of the Planning Code, that contains 100 or more rooms; (b) a large
institutions as defined in Section 790.50 of the Planning Code; or (c) a hospital or medical
center, as defined in Section 790.44 of the Planning Code; and, be it

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

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

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

By:
ANDREA RUIZ-ESQUIDE
Deputy City Attorney
Resolution imposing interim zoning controls requiring conditional use authorization for any new massage establishments, for eighteen months; and making findings, including environmental findings, and findings of consistency with the eight priority policies of Planning Code, Section 101.1.

January 12, 2015 Land Use and Economic Development Committee - RECOMMENDED AS COMMITTEE REPORT

January 13, 2015 Board of Supervisors - ADOPTED

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

File No. 141231

I hereby certify that the foregoing Resolution was ADOPTED on 1/13/2015 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved