



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: MARCH 15, 2018
90-DAY DEADLINE: APRIL 19, 2018

Project Name: **Massage Establishments in the Union Street NCD**
Case Number: **2018-001205PCA** [Board File No. 180053]
Initiated by: Supervisor Stefani / Introduced January 9, 2018
Staff Contact: Diego R Sanchez, Legislative Affairs
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Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to conditionally permit Massage Establishments, as defined in Planning Section 102, in the Union Street Neighborhood Commercial District.

The Way It Is Now:

Massage Establishments are prohibited in the Union Street Neighborhood Commercial District (NCD).

The Way It Would Be:

Massage Establishments would be allowed, with Conditional Use authorization, at the First and Second Stories within the Union Street NCD. Additionally, existing Massage Establishments that can demonstrate to the Zoning Administrator (ZA) that they have been in operation prior to December 31, 2017 would only need neighborhood notification pursuant to Planning Code Section 312 to legalize operations.

ISSUES AND CONSIDERATIONS

Recent Massage Establishment Regulations Balance Access and Safety

During the last 15 years, regulatory jurisdiction over massage uses has markedly changed. Before 2004 the San Francisco Police Department was the lead regulatory agency. Then in 2004, the San Francisco Department of Public Health (SFDPH) took jurisdiction over massage uses.¹ Where massage uses were allowed in the City, Conditional Use (CU) authorization was typically required. In 2008 the California State Legislature created a parallel and independent permitting process that circumvented local controls,

¹ Ordinance No. 269-03 : <https://sfgov.legistar.com/View.ashx?M=F&ID=2600565&GUID=4DC26B04-364E-4A7B-AEB5-190B271594F3>

allowing individuals to secure licenses only from the State.² Six years later, the State ended that parallel permitting process.³ Following suit, Supervisor Tang's 2015 Massage Establishments Ordinances returned all permitting authority to SFPDPH and reinforced the CU requirement.⁴

Supervisor Tang's Ordinances attempted to strike a balance between ensuring safe and legitimate operation and increased access to massage therapy. Positioning SFPDPH as the sole licensing agency and requiring CU for most massage uses provides regulatory tools that help ensure safe operation. To facilitate access to small businesses, Supervisor Tang's Ordinance exempted Sole Practitioner Massage Establishments from the CU requirement. Supervisor Tang's Ordinances also included a legalization program. This program provided Massage Establishments that had yet to secure local authorization an 18 month timeframe to do so.

Subsequent controls should also strike this balance between safety and access. This includes scaling back prohibitions in NCDs to expand the areas where Massage Establishments may locate with CU. It should also include a legitimization process for those establishments that are not operating with benefit of permit. However, any legalization process should include a timeframe to file for local authorization and be limited in scope to existing establishments operating in San Francisco. This ensures effective and clear implementation of a legalization process while minimizing loopholes in and confusion with the legalization program.

E-Commerce and Retail Trends

The growth of e-commerce is impacting the viability of specific retail uses. Nationally, the number of brick and mortar establishments selling retail goods readily purchased over the internet is contracting.⁵ And while San Francisco's retail sector is somewhat particular, owing, for example, to the various neighborhood commercial districts that offer unique shopping experiences, it is still susceptible to national trends. E-commerce competes for San Francisco's consumer dollars as it does in other cities.

This competition is reflected in changing demand for neighborhood commercial storefront space. Strategic Economics reports an increased interest in street level commercial spaces from personal service, medical service and restaurant uses.⁶ This reflects changing consumer demand for experience based retail. Massage therapy can capitalize on this change in consumer preferences because it is an experience

² SB-731

³ AB-1147

⁴ Ordinance No. 72-15 <https://sfgov.legistar.com/View.ashx?M=F&ID=3770125&GUID=A159CA67-2961-4529-9587-D4DF8A43356C>

Ordinance No. 73-15 <https://sfgov.legistar.com/View.ashx?M=F&ID=3770126&GUID=E2B7CDFC-A9B7-41CA-AAD6-8B1349DD9BB9>

⁵ State of the Retail Sector: Challenges and Opportunities for San Francisco's Neighborhood Commercial Districts. Executive Summary Prepared for the San Francisco Office of Economic and Workforce Development. Strategic Economics. January 2018. <https://sfgov.legistar.com/View.ashx?M=F&ID=5782348&GUID=BB47CD23-E434-4007-A8BD-EEE094D5DC7F>

⁶ *Ibid.*

based service. In this context, it makes sense to loosen land use controls on Massage Establishments to allow their entry into the City's neighborhood commercial districts, including the Union Street NCD. It is also reasonable to create pathways to legalize and adequately regulate Massage Establishments currently operating without benefit of permit. This would further expand legal access to an experience based service.

Massage Uses in Operation without Land Use Authorization within the Union St NCD

Through conversations with the SFPDH, the Planning Department understands that there are three massage uses operating within the Union Street NCD that do not have proper land use authorization. These massage uses did not complete the legalization process available through the 2015 Massage Establishments Ordinances. These establishments would be prime candidates for the proposed legalization program.

General Plan Compliance

Commerce and Industry Element

Objective 2: Maintain and Enhance a Sounds 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

By allowing Massage Establishments to locate within the Union Street NCD, the Ordinance helps attract new commercial activity to the City. This helps diversify the retail offerings within the Union Street NCD and enhances its attraction to patrons.

Objective 6: Maintain and Strengthen Viable Neighborhood Commercial Areas Easily Accessible to City Residents

Policy 6.2: Promote Economically Vital Neighborhood Commercial Districts which Foster Small Business Enterprises and Entrepreneurship and Which Are Responsive to Economic and Technological Innovation in the Marketplace and Society.

Relaxing the prohibition on Massage Establishments in the Union Street NCD will help foster the growth of smaller, independently owned businesses. This also helps the Union Street NCD respond to the current changes in the retail sector posed by the growth of e-commerce. Because massage therapy is not easily obtained over the internet, conditionally allowing Massage Establishments is a viable strategy to help fill vacancies and respond to demand for experience oriented retail.

Implementation

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

RECOMMENDATION

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Include an 18 month timeline for filing a building permit application to legalize Massage Establishment uses.

2. Include language to specify that only Massage Establishments operating within the Union Street NCD may avail themselves of the exemption from the CU requirement.

BASIS FOR RECOMMENDATION

The Department supports Ordinance's intention to conditionally allow Massage Establishments in the Union Street NCD and offer a path to legalization for existing, unauthorized operators. Given current retail trends it is reasonable to amend land use controls to incentivize experience based retail uses. Owing to their nature, massage uses are experience based retail that helps counter the impacts of e-commerce on our neighborhood commercial districts. However, the Department does believe that two minor modifications would improve the proposed legalization process. Those two modifications are as follows:

Recommendation 1: Amend proposed Note 1 in the Zoning Control Table for Section 725 to specify an 18 month timeline for legalization. Staff recommends amending proposed Note 1 in the Zoning Control Table for Section 725 to include language specifying an 18 month timeline for unauthorized Massage Establishments to file for a building permit application to legalize their use. The language proposed in the Ordinance does not have any reference to a deadline for unauthorized Massage Establishments to begin the legalization process. As a matter of practice, it is better that uses operating without the benefits of a permit seek authorization sooner than later. This also ensures that the City inspects the Massage Establishment to assure safe operation. Staff believes an 18 month period is sufficient for unauthorized Massage Establishments to file a building permit application to legalize the use.

Recommendation 2: Amend proposed Note 1 in the Zoning Control Table for Section 725 to specify that only massage uses currently within the Union Street NCD may avail themselves of the legalization process. Staff recommends amending proposed Note 1 in the Zoning Control Table for Section 725 to specify that only those Massage Establishments operating without benefit of permit within the Union Street NCD may avail themselves of the legalization process. As proposed, the Ordinance does not specify which existing Massage Establishments may be exempted from the CU requirement to legally establish. While the intention is that the exemption apply only to existing Massage Establishments operating prior to December 31, 2017 within the Union Street NCD, Staff believes that explicitly stating this reduces ambiguity and clarifies the Ordinance's intention.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

ENVIRONMENTAL REVIEW

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.

PUBLIC COMMENT

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

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 180053



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution

HEARING DATE MARCH 15, 2018

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RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO CONDITIONALLY PERMIT MESSAGE ESTABLISHMENTS, AS DEFINED, IN THE UNION STREET NEIGHBORHOOD COMMERCIAL 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 January 9, 2018 Supervisor Stefani introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 180053, which would amend the Planning Code to conditionally permit Massage Establishments, as defined, in the Union Street Neighborhood Commercial 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 15, 2018; 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 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

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. Those modifications include:

1. Amend Note 1 in in the Zoning Control Table for Section 725 to include an 18 month timeline for filing a building permit application to legalize Massage Establishment uses; and
2. Amend proposed Note 1 in the Zoning Control Table for Section 725 to specify that only massage uses currently within the Union Street NCD may avail themselves of the legalization process, including the exemption from the Conditional Use Authorization requirement.

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. Massage Establishment regulations should seek to assure safety and increase access to massage uses. Scaling back prohibitions on Massage Establishments and requiring Conditional Use authorization accomplishes both goals.
2. Regulatory paths for legalizing existing Massage Establishments operating without benefit of permit should sunset and be geographically limited. This helps assure that those unauthorized operators in defined areas eventually seek permits.
3. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are is consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

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.

By allowing Massage Establishments to locate within the Union Street NCD, the Ordinance helps attract new commercial activity to the City. This helps diversify the retail offerings within the Union Street NCD and enhances its attraction to patrons.

OBJECTIVE 6

MAINTAIN AND STRENGTHEN VIABLE COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.2

Promote Economically Vital Neighborhood Commercial Districts which Foster Small Business Enterprises and Entrepreneurship and Which Are Responsive to Economic and Technological Innovation in the Marketplace and Society.

Relaxing the prohibition on Massage Establishments in the Union Street NCD will help foster the growth of smaller, independently owned businesses. This also helps the Union Street NCD respond to the current changes in the retail sector posed by the growth of e-commerce. Because massage therapy is not easily obtained over the internet, conditionally allowing Massage Establishments is a viable strategy to help fill vacancies and respond to demand for experience oriented retail.

4. **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 help preserve existing neighborhood-serving massage uses 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 not have a negative effect on housing or neighborhood character within the Union Street Neighborhood Commercial District and will augment the economic diversity of that neighborhood commercial district.

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 because the Ordinance conditionally allows or authorizes a retail use within the Union Street Neighborhood Commercial District.

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.

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 because the Ordinance conditionally allows or authorizes a retail use within the Union

Street Neighborhood Commercial District. The Ordinance does not impair future opportunities for resident employment or ownership in those sectors.

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

Because the Ordinance conditionally allows or authorizes a retail use within the Union Street Neighborhood Commercial District it will not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

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 retail uses within the Union Street Neighborhood Commercial District.

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 adverse effect on the City's parks and open space and their access to sunlight and vistas.

5. **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 APPROVES WITH MODIFICATIONS 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 15, 2018.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: March 15, 2018

1 [Planning Code - Massage Establishments - Union Street Neighborhood Commercial District]

2

3 **Ordinance amending the Planning Code to conditionally permit Massage**
 4 **Establishments, as defined, in the Union Street Neighborhood Commercial District;**
 5 **affirming the Planning Department's determination under the California Environmental**
 6 **Quality Act; making findings of consistency with the General Plan, and the eight**
 7 **priority policies of Planning Code, Section 101.1, and findings of public convenience,**
 8 **necessity, and welfare under Planning Code, Section 302.**

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

13

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

15

16 Section 1. Findings.

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

22 (b) On _____, the Planning Commission, in Resolution No. _____,
 23 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
 24 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
 25 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of

1 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

2 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
3 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
4 in Planning Commission Resolution No. _____, and the Board incorporates such
5 reasons herein by reference.

6
7 Section 2. The Planning Code is hereby amended by revising Section 725, to read as
8 follows:

9 SEC. 725. UNION STREET NEIGHBORHOOD COMMERCIAL DISTRICT.

10 * * * *

11	12	13	14	15	16
	Message Establishment	§ 102	<i>NPC(1)</i>	<i>NPC(1)</i>	NP

17 * * * *

18 * Not listed below

19 (1) ~~[Note deleted.]~~ Existing massage establishments that can demonstrate to the Zoning
20 Administrator that they have been in operation prior to 12/31/17 need only do a change of use under
21 Section 312.

22 * * * *

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

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
3 additions, and Board amendment deletions in accordance with the “Note” that appears under
4 the official title of the ordinance.

5

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

8 By: _____
9 ANDREA RUIZ-ESQUIDE
Deputy City Attorney

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