



SAN FRANCISCO PLANNING DEPARTMENT

Planning Code Change Summary: New Massage Controls

1. Amendments to Planning Code Sections 790.60, 890.60, 218.1; to restrict permitted accessory massage uses and to make most massage establishments subject to a Conditional Use authorization; and
2. Amendments to Zoning Control Tables in 218.1, 714.1, 715.1, 810.1, 811.1; and 812.1, to change principal use massage establishments from a permitted use to a CU; and
3. Amendments to Planning Code Sections 790.114 and 890.114, to add massage establishments that employ only state-certified massage practitioners to the definitions of Medical Services in the Neighborhood Commercial Districts and Mixed Use Districts, respectively.

Case Number: Board File No. 09-0402 (0139-09 adopted Ordinance)

Initiated By: Supervisor Carmen Chu, March 31, 2009

Effective Date: August 3, 2009

The Way It Was:

Previously, Planning Code, Sections 218.1, 790.60, and 890.60 defined a massage establishment as an establishment that had obtained a massage permit from the Department of Public Health pursuant to Sections 1900 and 1908 of the San Francisco Health Code. These sections also listed exceptions to this massage definition including:

1. massage services that are incidental to large institutional uses or medical centers ;
or
2. services for the exclusive use of members of a health club, gym or other similar membership facility; or
3. visible chair massage.

Planning Code Section 218.1 (which applies only to Commercial, Industrial, and RC districts and not to Neighborhood Commercial or Mixed Use Districts) required that massage establishments meet the following standards and conditions:

1. the hours of operation of the massage activity shall be limited to from 7:00 a.m. to 12:00 a.m.;
2. signs announcing the massage activity shall be no more than a single sign affixed to the wall of the building and shall not exceed nine square feet in area and shall not be directly illuminated;
3. there shall be no outdoor activity associated with the massage activity;

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

4. [litter shall be] disposed of on a daily basis during the days the establishment is in operation; and
5. any change of there shall be no alcoholic beverages served on the premises;
6. there shall be a litter patrol financed by the establishment such that any litter within 100 feet of the premises is cleaned and ownership or change in operation of the massage establishment which requires a new Health Permit shall be required to meet these standards and conditions.

Given these definitions and restricts, while in most districts in the City massage could only be permitted as a principal use through Conditional Use authorization, Planning Code Section 204 allowed massage as an accessory use to be widely permitted where it would not otherwise be allowed.

In addition, previous Zoning Administrator Interpretations created the following operational controls:

1. Massage establishments may be permitted as an accessory use to a medical or personal service if accessed only through space controlled by such medical or personal service business and where the massage area does not exceed 300 square feet nor employ more than two massage therapists. The 300 square feet is the maximum permitted accessory massage use area.
2. In Neighborhood Commercial, South of Market, Chinatown Mixed Use, and Mission Bay Zoning Districts, the total area of accessory massage rooms shall not exceed 1/3 of the total area of treatment rooms used for medical or personal service or 300 square feet maximum, whichever is less.
3. In all other Zoning Districts, the total area of accessory massage rooms shall not exceed 1/4 of the total area of treatment rooms used for medical or personal service or 300 square feet maximum, whichever is less.
4. Further, the number of accessory massage rooms shall always be no more than 1/3 or 1/4 (as permitted in a Zoning District) of total treatment rooms.
5. Accessory massage use cannot be operated independently without an established principal medical or personal service use.
6. A medical service establishment, which provides massage as an accessory use, must have permanent offices for medical professional(s) practicing on the premises. At least one State-licensed medical professional must be present at all times during the operating hours of the medical service establishment.
7. The application for accessory massage use must include floor plans showing the medical or personal service rooms and massage rooms and copies of any State and/or local licenses held by the medical professionals and other employees.

8. State-licensed professionals or establishment owner (if no employees possess a State license) must submit an affidavit describing the type of services provided by each employee on the premises, the total number of employees, and working hours of State-licensed professional(s) and other employees.
9. A Zoning Administrator Interpretation prohibited any new massage use within 1,000 feet from the premises of any other massage establishment throughout all zoning districts in the City.

The Way It Is Now:

The adopted Ordinance now simplifies the Planning Code controls for massage. In the districts where massage as a principal use was prohibited (SoMa Districts¹, NC-1, Outer Clement, Pacific Avenue, Sacramento Street, Union Street, and West Portal districts) massage continues to be prohibited. However, all of the remaining districts have been amended so massage is only permitted as a principal or accessory use via a Conditional Use authorization.

The new legislation frees the Department from enforcing “operational” type controls that had been put in place by the previous Zoning Administrator Interpretations and by the standards and conditions previously listed in Planning Code Section 218.1. Both the Interpretations and the 218.1 controls described above no longer apply.

Instead of the operational controls described above, the Planning Commission would consider the standard CU criteria of “necessary or desirable AND compatible with” plus the additional physical criteria below:

1. Whether the applicant has obtained and maintains a permit for a massage establishment from the Department of Public Health;
2. Whether the façade is transparent and open to the public, with a preference for transparency; and
3. Whether the use includes pedestrian-oriented lighting, encouraging lighting during the post-sunset hours of operation.
4. Whether the use is reasonably oriented to facilitate public access. Barriers that make entrance to the use more difficult than to an average service provider in the area are to be strongly discouraged. These include (but are not limited to) foyers equipped with double doors that can be opened only from the inside and security cameras.

These are physical criteria that can be checked on plans and don’t require constant monitoring. By requiring a public hearing for the CU and all of the notice requirements that are entailed, a strong disincentive has been established for illegitimate businesses.

¹ Massage is prohibited in SoMa districts, with the notable recent revision that allows massage in the Residential/Service Mixed Use District when provided in conjunction with a full-service spa. [Board File Numbers 08-1504 and 09-0321].

Exempted from the CU Process: Large Uses, In-Home, Chair and & State-Certified Massage

Only the very small and the very large establishments would be exempted from the CU requirement. Neither massage that is accessory to a dwelling unit nor that is accessory to a large tourist hotel, a large institution, or a hospital or medical center would require Conditional Use authorization. Chair massage where the service is visible to the public and where customers are fully-clothed would continue to be allowed without Conditional Use authorization.

In addition, a new state law, S.B. No. 731 (2008), which will become effective on September 1, 2009, creates a state-wide certification process for massage practitioners. This new state law prohibits local jurisdictions from "adopting land use and zoning requirements applicable to massage establishments or businesses" that are "different than the requirements that are uniformly applied to other professional or personal services businesses," where the massage establishments are sole proprietorships that are certified pursuant to the state certification process, and to massage establishments or businesses that employ or use only persons certified pursuant to the state certification process. Therefore, this legislation also adds the massage establishments that are the subject of that exception² to the definition of Medical Service in Sections 790.114 and 890.114. Adding these massage establishments to the definitions of medical services in the Code enables the City to regulate these massage establishments in the same way as it regulates other medical services, thus fully complying with S.B. 731.

Please Note:

This legislation allows the Planning Commission to revoke the land use entitlements of a property owner when DHR revokes the health permit for massage. One of the requirements for granting the CU under this Ordinance is that the operator maintains a valid health permit. Therefore, if the health permit is revoked by DPH, the CU can be revoked by the Commission.

Board File No. 090402	Ord. No. 0139-09	Amendment to Planning Code - Section 790.60, 890.60 and 218.1, New zoning controls for Massage Establishments Full text available at: http://www.sfgov.org/site/uploadedfiles/bdsupvrs/ordinances09/o0139-09.pdf
--------------------------	-------------------------------------	---

² Sole proprietorships certified pursuant to the California Business and Professions Code Section 4600 et seq., or one that employs or uses only persons certified by the state's Massage Therapy Organization, pursuant to the California Business and Professions Code Section 4600 et seq. would be qualified for this exception to the Conditional Use authorization.