



# SAN FRANCISCO PLANNING DEPARTMENT

*Subject to: (Select only if applicable)*

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| <input type="checkbox"/> Affordable Housing (Sec. 415)           | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412)            | <input type="checkbox"/> Other                             |

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## Planning Commission Motion No. 18575

HEARING DATE: APRIL 12, 2012

*Date:* April 5, 2012  
*Case No.:* **2011.1239C**  
*Project Address:* **901 CORTLAND AVENUE**  
*Zoning:* NC-2 (Small Scale Neighborhood Commercial) District  
40-X Height and Bulk District  
*Block/Lot:* 5660/038  
*Project Sponsor:* Tony Fong  
2618 26<sup>th</sup> Avenue  
San Francisco, CA 94116  
*Staff Contact:* Diego R Sánchez – (415) 575-9082  
[diego.sanchez@sfgov.org](mailto:diego.sanchez@sfgov.org)

**ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 711.54 OF THE PLANNING CODE TO ALLOW A MASSAGE ESTABLISHMENT (D.B.A. TRADITIONAL CHINESE MASSAGE) WITHIN THE NC-2 (SMALL SCALE NEIGHBORHOOD COMMERCIAL) DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.**

### PREAMBLE

On November 3, 2011 Tony Fong (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Sections 711.54 and 303 to allow a massage establishment (d.b.a. Traditional Chinese Massage) within the NC-2 (Small Scale Neighborhood Commercial) District and a 40-X Height and Bulk District.

On April 12 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2011.1239C.

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

The 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 the applicant, Department staff, and other interested parties.

**MOVED**, that the Commission hereby authorizes the Conditional Use requested in Application No. 2011.1239C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

## **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. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project is located at the northeast corner of Gates Street and Cortland Avenue, and provides 26 linear feet of frontage on Cortland Avenue and 56 linear feet of frontage on Gates Street. The site is improved with a three story mixed use development, featuring a ground floor commercial space and residential units on the second and third stories. The ground floor commercial space is currently vacant and the last legal use of the space was a laundromat and dry cleaning service.
3. **Surrounding Properties and Neighborhood.** The project is located in Bernal Heights, along the principal commercial corridor within that neighborhood. Cortland Avenue is characterized by ground floor retail and commercial uses with one and two stories of residential uses above. Uses in the immediate vicinity on Cortland Avenue include eating and drinking establishments, trade shops, a religious institution and retail grocery stores. Gates Street is wholly residential in nature. The surrounding properties are located within the RH-1 (Residential House, One-Family) and NC-2 (Small Scale Neighborhood Commercial) Districts.
4. **Project Description.** The applicant proposes to convert the existing retail sales and service laundromat and dry cleaning use into a 600 square foot massage establishment, as defined in Planning Code Section 790.60. As part of the conversion the project sponsor proposes minor interior alterations including the addition of two private massage therapy rooms, each of approximately 75 square feet. The proposed use is an independently owned neighborhood-serving use and is not identified as a Formula Retail use.
5. **Public Comment.** The Department received one telephone call expressing concern about the nature of the massage establishment and its potential to become a magnet for prostitution.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Hours of Operation.** Planning Code Section 711.27 principally permits operating hours from 6 a.m. to 2 a.m. within the NC-2 Zoning District.

*The project sponsor has committed to operate the proposed massage establishment during the hours of 10 a.m. to 10 p.m., which is well within the principally permit hours of operation for the NC-2 District.*

- B. **Massage Establishment.** Planning Code Section 790.60 states that when a massage use is neither an accessory use to a principal use nor is solely a chair massage service visible to the public and customers and requires customers to be fully clothed at all times, Conditional Use Authorization is required and the additional criteria shall be considered:

*The project is a principal use and is not a chair massage service. Conditional Use authorization is being sought.*

1. Whether the applicant has obtained, and maintains in good standing, a permit for a Massage Establishment from the Department of Public Health pursuant to Section 1908 of the San Francisco Health Code.

*The Project Sponsor provided the Planning Department with the applicant's permit from the Department of Public Health.*

2. Whether the use's facade is transparent and open to the public. Permanent transparency and openness are preferable. Elements that lend openness and transparency to a facade include: i) active street frontage of at least 25' in length where 75% of that length is devoted to entrances to commercially used space or windows at the pedestrian eye-level; ii) windows that use clear, untinted glass, except for decorative or architectural accent; iii) any decorative railings or decorative grille work, other than wire mesh, which is placed in front of or behind such windows, should be at least 75 percent open to perpendicular view and no more than six feet in height above grade.

*Of the primary façade on Cortland Avenue, approximately 75% is fenestrated. The secondary façade on Gates Street also features multiple windows and the entrance to the proposed establishment. At both facades, windows are clear, untinted and free of any decorative railings or grille work.*

3. Whether the use includes pedestrian-oriented lighting. Well lit establishments where lighting is installed and maintained along all public rights-of-way adjacent to the building with the massage use during the post-sunset hours of the massage use are encouraged.

*The Planning Department will work with the Project Sponsor on including additional pedestrian-oriented lighting along Cortland Avenue and at the entrance on Gates Street.*

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.

*The use is reasonably oriented to facilitate public access as there exist no barriers to entry, no foyers and no double doors or security cameras.*

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

*The size and intensity of the massage use is desirable and is compatible with the scale of the neighborhood commercial district. In converting a vacant storefront last used as a laundromat and dry cleaning service to a massage establishment, the project sponsor will add two internal massage rooms. There will be no other major alterations to the existing tenant space or any physical expansion of the envelope.*

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

*The size of the proposed use at 600 square feet is in keeping with many other uses along Cortland Avenue. The proposed massage establishment is not expected to impact existing traffic or parking in the Small Scale Neighborhood Commercial District as the proposed use is not large in size and is within short walking distances to public transit and the existing residential districts.*

*The proposed massage use will compliment the mix of goods and services currently available in the Small Scale Neighborhood Commercial District and contributes to the economic vitality of the neighborhood. The Project is desirable because it will provide a personal service use*

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

*The Planning Code does not require parking or loading for a 600 square-foot massage establishment. It is not anticipated that the proposed project will generate any adverse traffic patterns.*

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*The proposed use, by its nature, will not produce any noxious or offensive emissions such as noise, glare, dust and odor.*

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

*The Planning Department will work with the project sponsor to include pedestrian-oriented lighting at the Cortland Avenue and Gates Street facades.*

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

*The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.*

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

*The proposed project is consistent with the stated purpose of NC-2 Districts in that the intended use will provide services to the surrounding neighborhoods and the use is a neighborhood-serving business.*

- 8. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

## **COMMERCE AND INDUSTRY**

### **Objectives and Policies**

#### **OBJECTIVE 1:**

**MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.**

#### **Policy 1.1:**

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

**Policy 1.2:**

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

**Policy 1.3:**

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

*The proposed project will provide net benefits to the area by occupying a vacant storefront and providing a service that is therapeutic in nature. The proposed project is subject to the standard Conditions of Approval under Exhibit A and is located on the ground floor within a neighborhood commercial district.*

**OBJECTIVE 6:**

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

**Policy 6.1:**

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

*The proposed project will occupy a vacant storefront and will be a neighborhood serving use.*

**Policy 6.2:**

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to the economic and technological innovation in the marketplace and society.

*An independent entrepreneur is sponsoring the proposal and has not identified as a Formula Retail use. The proposed use is a neighborhood serving use. No commercial tenant will be displaced as a result of the proposed project.*

**Policy 6.3**

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of existing affordable housing and needed expansion of commercial activity.

*The proposed project will maintain the mixed commercial-residential character of the Small Scale Neighborhood Commercial District on Cortland Avenue by occupying an existing commercial tenant space. The stories above the proposed project will remain residential uses.*

9. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

*The proposed project will be independently owned and may create employment opportunities for members of the adjacent community. The proposed alterations are within the existing building footprint.*

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The proposed project will occupy a vacant commercial storefront and in doing so will keep with the existing mixed use character of Cortland Avenue.*

- C. That the City's supply of affordable housing be preserved and enhanced,

*No housing is removed for this Project.*

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*It is not anticipated that patrons will overburden the streets or neighborhood parking as the use is intended to be primarily neighborhood serving.*

- E. 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 Project will not displace any service or industry establishment. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.*

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

*This proposal will not impact the property's ability to withstand an earthquake.*

- G. That landmarks and historic buildings be preserved.

*A landmark or historic building does not occupy the Project site.*

H. That our parks and open space and their access to sunlight and vistas be protected from development.

*The project will have no negative impact on existing parks and open spaces. The Project does not have an impact on open spaces.*

10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
11. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.



**DECISION**

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2011.1239C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated August 2011, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18575. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on April 12, 2012.

Linda D. Avery  
Commission Secretary

AYES: Commissioners Sugaya, Antonini, Borden, Moore, Miguel, and Wu

NAYES: None

ABSENT: Commissioner Fong

ADOPTED: April 12, 2012

## **EXHIBIT A**

### **AUTHORIZATION**

This authorization is for a conditional use to allow a Massage Establishment (d.b.a. Traditional Chinese Massage) located at 901 Cortland Avenue, Lot 38 in Assessor's Block 5660, pursuant to Planning Code Section 711.54 within the NC-2 District and a 40-X Height and Bulk District; in general conformance with plans, dated August 2011, and stamped "EXHIBIT B" included in the docket for Case No.2011.1239C and subject to conditions of approval reviewed and approved by the Commission on April 12, 2012 under Motion No. 18575. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### **RECORDATION OF CONDITIONS OF APPROVAL**

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on April 12, 2012 under Motion No. 18575.

### **PRINTING OF CONDITIONS OF APPROVAL ON PLANS**

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18575 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

### **SEVERABILITY**

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

### **CHANGES AND MODIFICATIONS**

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

## Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## DESIGN

3. **Lighting Plan.** The Project Sponsor shall submit an exterior lighting plan to the Planning Department prior to Planning Department approval of the building / site permit application.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

## MONITORING

4. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

5. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## **OPERATION**

6. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>*

7. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

8. **Lighting.** All Project lighting shall be directed onto the Project site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

9. **Massage Establishments.** All massage establishments shall comply with the following standard massage use operation standards.
  - a. The entry to the massage treatment room shall remain directly visible from the public right-of-way. If any additional doors are required under the Building Code for emergency egress purposes, such door shall be labeled "for emergency use only" and shall have an audible alarm that will go off when the door is opened.

- b. All interior alterations shall be reviewed by the Planning Department to verify compliance with these conditions.
- c. No locks shall be allowed on any interior door of the business except that a lock for privacy may be permitted on the bathroom door.
- d. Any blinds or curtains located behind the storefront windows must be kept open during business hours to allow for visibility into the tenant space from the street. No obstructions shall be located in front of any of the storefront windows that would prevent such visibility.
- e. The front door to the business must be open during business hours. The use of buzzers or a security camera is not permitted.
- f. The massage establishment shall comply with the hours of operation outlined in Ordinance 140-09, approved on July 2, 2009. This Ordinance amended the Health Code to limit the hours of permitted operation for massage establishments from 7:00 am to 10:00 pm.
- g. All persons engaged in performing massage shall be licensed for that purpose by the State of California and the licenses shall be prominently displayed on walls of the business.
- h. The Planning Commission may revoke this Conditional Use authorization if the Department of Public Health revokes the health permit for massage.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*