



# SAN FRANCISCO PLANNING DEPARTMENT

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*Subject to: (Select only if applicable)*

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| <input type="checkbox"/> Inclusionary Housing (Sec. 315)         | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 313) | <input type="checkbox"/> Child Care Requirement (Sec. 314) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 139)            | <input type="checkbox"/> Other                             |

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## Planning Commission Motion No. 18091

*Date:* May 20, 2010  
*Case No.:* **2010.0161C**  
*Project Address:* **1722-1724 DIVISADERO STREET**  
*Zoning:* NC-3 (Moderate-Scale Neighborhood Commercial) District  
65-A Height and Bulk District  
*Block/Lot:* 1051/019  
*Project Sponsor:* Dan Liu  
Utoepia Spa, Inc.  
1722 Divisadero Street  
San Francisco, CA 94115  
*Staff Contact:* Glenn Cabreros – (415) 558-6169  
[glenn.cabreros@sfgov.org](mailto:glenn.cabreros@sfgov.org)

**ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 712.54, AND 790.60 OF THE PLANNING CODE TO ALLOW A MASSAGE ESTABLISHMENT AS PART OF AN EXISTING PERSONAL SERVICE USE (A NAIL SALON DBA "UTOEPIA SPA") IN THE NC-3 (MODERATE-SCALE NEIGHBORHOOD COMMERCIAL) DISTRICT AND A 65-A HEIGHT AND BULK DISTRICT.**

### PREAMBLE

On March 9, 2010, Dan Liu (hereinafter "Project Sponsor") filed an application (hereinafter "Application") with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Sections 303, 712.54, and 790.60, to allow a massage establishment to operate within the existing personal service use (dba "Utoepia Spa"), located in a NC-3 (Moderate-Scale Neighborhood Commercial) District and a 65-A Height and Bulk District.

On May 20, 2010, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Application No. 2010.0161C.

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 (Existing Facilities) categorical exemption. The Commission has reviewed and concurs with said determination.

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 Project Sponsor, Department staff, and other interested parties.

**MOVED**, that the Commission hereby approves the Conditional Use requested in Application No. 2010.0161C, 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 on the east side of Divisadero Street, between Bush and Sutter Streets; Lot 019 in Assessor's Block 1051, within the NC-3 (Moderate-Scale Neighborhood Commercial) District and a 65-A Height and Bulk District.

The Property is developed with a two-story mixed-use building, built circa 1900, with ground floor commercial space and one dwelling-unit on the second floor. The subject ground floor tenant space is occupied by the Applicant's business, a nail salon dba "Utoepia Spa", which is currently a personal service establishment. The previous tenant was a personal service establishment (dba "Mani + Nanny"), which was also a nail salon with an accessory child play space. The subject commercial space contains approximately 20 feet of frontage on Divisadero Street and approximately 1,350 square feet of gross floor area.

3. **Surrounding Properties and Neighborhood.** To the west and across Divisadero Street from the subject property is a large, five-story medical office building. On either side of the subject property and along the subject block face are smaller mixed-use buildings of similar scale – two to three stories tall – which contain ground floor commercial uses and residential units on the upper floors. The ground floor uses on the subject block include a full-service restaurant with bar (dba Tortilla Heights), Starbucks Coffee, a financial services office, a hair salon, a small restaurant and a medical uniform store. Directly behind the subject block-face and on the adjacent block to the south are large medical, institutional buildings that make up UCSF Mount Zion Hospital and its associated buildings. On both sides of Divisadero Street, the adjacent blocks north of the project contain mixed-use buildings (with neighborhood serving uses at the ground floor and residential uses at the floor above) that are more in keeping with the character and scale of the subject block-face.
4. **Project Description.** The Applicant proposes to add massage use to the existing personal service establishment. The massage use will include three chairs for foot massage in addition to the existing nail salon. The former commercial occupant (dba "Mani + Nanny") was a nail salon with an accessory child play area within an enclosed room. The proposed foot massage includes three chairs within the enclosed room with a mirrored window that looks onto the main area of the nail salon. The proposal does not include any interior or exterior alterations.

5. **Public Comment.** The Department has received no comment from the public.

The Department has contacted the Police Department's Vice Crimes Division regarding this proposal. The property records are clear of service, citations, or violations in association with the existing business or the Applicant.

6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the following relevant provisions of the Planning Code:

- A. **Use Size.** Planning Code Section 712.21 establishes size limits on non-residential uses sizes in the NC-3 (Moderate-Scale Neighborhood Commercial) District. Within the District, Conditional Use Authorization is required for any non-residential use that meets or exceeds 6,000 square feet in area.

*At approximately 1,350 gross square-feet of floor area, the proposed use size is within the principally permitted use size limitations.*

- B. **Parking.** Sections 712.22 and 151 of the Planning Code do not require off-street parking where the occupied floor area is less than 5,000 square-feet.

*The subject tenant space contains approximately 1,350 square-feet of gross floor and thus does not require any off-street parking.*

- C. **Signage.** Future changes of copy to existing signs or any new signs will be reviewed by the Planning Department for conformity with Article 6 of the Planning Code. The Planning Code does not regulate content of signs, only the size, type, and location of signs.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the Project complies 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 and desirable, and compatible with the neighborhood and the community.

*The Project is necessary and desirable because it will provide a massage use for local residents and visitors to the neighborhood. The combination of nail salon and foot massage uses would be a neighborhood serving use. The proposed use is an independent use, which has been encouraged throughout San Francisco. The proposed use is not a Formula Retail use. The massage establishment will be in addition to the existing nail salon and spa, and will not result in the displacement of any other neighborhood serving use. This will compliment the mix of goods and services currently available in the District and contribute to the economic vitality of the neighborhood.*

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;

*There are no proposed alterations to the interior or exterior of the existing building.*

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 massage establishment having approximately 1,350 square-foot floor area in the NC-3 (Moderate-Scale Neighborhood Commercial) District. The proposed use is designed to meet the needs of residents and visitors of the surrounding neighborhood and should not generate significant amounts of vehicular trips.*

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

*The proposal will not create any offensive emissions due to the nature of the use.*

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

*The Project is not expected to create a constant demand for on-street loading as there are minimal supplies delivered in association with a massage establishment. The Department shall review all lighting and signs proposed for the business in accordance with Article 2 of the Planning Code.*

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 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 Project is consistent with the stated purpose of the NC-3 (Moderate-scale Neighborhood Commercial) District in that the intended uses is an active small-scale ground floor business that will provide a convenience service for residents and visitors of the neighborhood.*

8. **Planning Code Section 712.54** allows massage establishments at the first and second floors with a Conditional Use Authorization in the NC-3 District. Section 790.60 of the Planning Code

defines a massage establishment and requires that the Planning Commission shall make findings in addition to those required under Planning Code Section 303 (c), based on the following criteria:

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.

***Criteria Met***

*The Applicant has filed for a massage permit with the Department of Public Health. Condition of Approval No. 4 ensures that the Applicant maintains – in good standing – the Massage Establishment Permit with the Department of Public Health. Failure to do so may result in this Conditional Use Authorization being revoked by the Planning Commission.*

2. Whether the use's façade is transparent and open to the public. Permanent transparency and openness are preferable. Elements that lend openness and transparency to a façade include:
  - i. An active street frontage of at least 25 feet in length where 75% of that length is devoted to entrances to commercially used space or windows at the pedestrian eye-level.

***Criteria Met:***

*The street frontage for this massage use measures approximately 20 feet, with nearly the entire frontage devoted to the tenant space entrance or windows at the pedestrian eye-level. The large storefront windows creating full visibility into the commercial tenant space.*

- ii. Windows that use clear, un-tinted glass, except for decorative or architectural accent.

***Criteria Met:***

*The subject tenant space has clear, un-tinted glass along the entire frontage.*

- 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.

***Criteria Met.***

*The commercial frontage is predominantly dedicated to large picture windows. There are no bars or grills, existing or proposed, in front of or behind such windows.*

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.

**Criteria Met**

*The subject tenant space provides adequate pedestrian-oriented lighting, in that there is one light fixture installed at the business' entrance in addition to ambient light from the interior provided through the large expanse of clear storefront windows. The one existing light and storefront windows provide ample pedestrian-oriented lighting.*

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.

**Criteria Met**

*Based on Planning Department staff's site visit and photos submitted by the applicant, the interior layout of the business is oriented such that there is direct access and visibility from the street. The one massage room is located toward the rear of the tenant space and is accessed by walking through the open reception and manicure/pedicure area. The massage room is designed to provide pedicure and foot massage services to three clients at a time, a mirrored window allows for views in both directions through the glazing while also providing some privacy for massage clients. The commercial storefront is almost entirely dedicated to glazing, with direct visibility into the open tenant space. There are no security cameras or buzzers installed in association with this business.*

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

**COMMERCE & 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 addition of a massage establishment within the existing personal service establishment will provide desirable services and employment opportunities to individuals who live in, work in, or visit the neighborhood. The Project will provide net benefits to the community by providing an independently owner and operated neighborhood serving business.*

**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.

**Policy 2.3:**

Maintain a favorable social and cultural climate in the City in order to enhance its attractiveness as a firm location.

*The Project will be located within an existing commercial tenant space and will enhance the diverse economic base of the City. It also adds a desirable amenity of massage for clients of the nail salon. The massage use would also diversify the services provided, and thus provide for a potentially more stable business.*

**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 the economic and technological innovation in the marketplace and society.

*An independent entrepreneur is sponsoring the Project. The proposed massage establishment will be a neighborhood serving use. This is not a Formula Retail use.*

10. **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 complies 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 Project will not displace any neighborhood-serving retail use as the existing commercial space is operated by the Applicant as a personal service establishment. The massage use will be offered in addition to the existing personal services.*

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

*The existing dwelling-unit provided on the upper floor of the existing mixed-use building will be conserved and protected. The existing tenant space will not be expanded. This authorization will allow massage to occur within two existing rooms, which are currently being used for facials.*

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

*The Project will not affect the supply of affordable housing in the City. No housing will be removed as part of this project.*

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

*The site is on Divisadero Street, which is well-served by public transit. It is presumable that the employees could commute by transit, bicycle, or foot, thereby reducing demand for on-street parking. The addition of a massage establishment within an existing personal service establishment does not require any off-street parking. The Subject Property is within a few blocks of five MUNI lines: 1, 2, 24, 31 and 38.*

- 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 or adversely affect any service-sector or industrial establishment, or any related employment opportunities.*

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

*The Project does not include any structural work to the building, and thus will not impact the structure's ability to withstand an earthquake.*

- G. That landmarks and historic buildings be preserved.

*Neither a landmark nor historic building occupies the Property. Furthermore, there are no exterior alterations proposed.*

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

*The Project will have no negative impacts on existing parks or open spaces, as it does not involve any expansion of the existing tenant space.*

11. 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.
12. 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. 2010.0161C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans filed with the Application as received on March 9, 2010, 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. 18005. 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 May 20, 2010.

Linda D. Avery  
Commission Secretary

AYES: Commissioners Miguel, Olague, Antonini, Borden, Lee, Moore

NAYS: Commissioner Sugaya

ABSENT: (none)

ADOPTED: May 20, 2010

## Exhibit A

# Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Planning Code Sections 303, 712.54 and 790.60 to allow a massage establishment to operate within an existing personal service (dba "Utoepia Spa") at 1722-1724 Divisadero Street within the NC-3 (Moderate-Scale Neighborhood Commercial) District and 65-A Height and Bulk District, in general conformance with plans filed with the Application as received on October 29, 2009, and stamped "EXHIBIT B" included in the docket for **Case No. 2010.0161C**, reviewed and approved by the Commission on May 20, 2010.
2. Prior to the issuance of the Building Permit 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 premises (Assessor's 3583, Lot 062), which notice shall state that a change of use has been authorized by and is subject to the conditions of this Motion.
3. Violation of the conditions contained in this Motion or of any other provisions of the Planning Code may be subject to abatement procedures and fines up to \$250 a day in accordance with Planning Code Section 176.
4. The Planning Commission may revoke this Conditional Use Authorization if the San Francisco Department of Public Health revokes the health permit for massage.
5. Should monitoring of the Conditions of Approval contained in Exhibit A of this Motion be required, the Project Sponsor or successors shall pay fees as established in Planning Code Section 351(e)(1).
6. The authorization and right vested by virtue of this action shall be deemed void and canceled if, within 3 years of the date of this Motion, a site permit or building permit for the Project has not been secured by Project Sponsor. This Authorization may be extended at the discretion of the Zoning Administrator only if the failure to issue a permit by the Department of Building Inspection is delayed by a city, state, or federal agency or by appeal of the issuance of such permit.
7. All signage and exterior lighting for the business shall be reviewed and approved by the Planning Department before any new installations or modifications are made to the existing signage or lighting. The existing entrance lighting must remain on from dusk until the business is closed.
8. The entry to the massage establishment shall remain directly visible from the public right-of-way and not through a private or shared corridor. 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.

9. All interior alterations shall be routed to Planning to verify compliance with these conditions.
10. 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.
11. The Project Sponsor shall maintain an attractive storefront, providing visibility of the massage use interior through the storefront windows. No tinting or reflective coating is permitted on any glazing visible from the public right-of-way.
12. 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.
13. The front door to the business must be open during business hours. The use of buzzers or a security camera system is not permitted.
14. 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 a.m. to 10:00 p.m.
15. All persons engaged in performing massage shall be licensed for that purpose by the San Francisco Department of Health and the licenses shall be prominently displayed on walls of the business.

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