

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTERS 18.34 ("REGULATIONS FOR CN-NEIGHBORHOOD COMMERCIAL ZONING DISTRICTS"), 18.36 ("REGULATIONS FOR CC-COMMUNITY COMMERCIAL ZONING DISTRICTS"), 18.42 ("REGULATIONS FOR CP-COMMERCIAL PARK ZONING DISTRICTS"), 18.56 ("PLANNING DEVELOPMENT-MASTER COMMUNITY ZONING DISTRICTS"), 18.70 ("USE REGULATIONS APPLICABLE TO SPECIFIED REGULATED BUSINESSES") AND 18.104 ("MASSAGE ESTABLISHMENTS") OF TITLE 18 ("ZONING") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" TO AMEND REGULATIONS APPLICABLE TO MASSAGE ESTABLISHMENTS

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, prior to 2009, the jurisdiction of massage-related businesses fell under the purview of local municipalities, but was later preempted by passage of Senate Bill 731 creating the California Massage Therapy Council (CAMTC) and from 2009-2015, CAMTC conducted the permitting process for massage therapists;

WHEREAS, due to the passage of Assembly Bill 1147, also known as the "Massage Therapy Act," which went into effect on January 1, 2015, the authority of local jurisdictions to impose land use, business licensing, and health and safety regulations on massage establishments including local permit requirements was re-established;

WHEREAS, due to changes in the State laws the City of Santa Clara adopted new local land use regulations to permit massage establishments within the City on October 13, 2015;

WHEREAS, City Council desires to amend its local land use regulations, and hereby determines that such amendments are necessary and in the best interests of the City.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA, AS

FOLLOWS:

SECTION 1: That Section 18.34.030 (entitled “Permitted Uses”) of Chapter 18.34 (entitled “Regulations for CN—Neighborhood Commercial Zoning Districts”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“18.34.030 Permitted uses.

All uses shall be conducted wholly within a completely enclosed building, except as provided in this section or in SCCC 18.34.040. Only the following uses, or uses that, in the opinion of the Planning Commission, are of a similar nature, will be permitted:

(a) Retail sales or rentals of new merchandise or service:

(1) Clothing stores.

(2) Pharmacies.

(3) Grocery stores or delicatessens.

(4) Hardware stores.

(5) Stores which sell alcoholic beverages (packaged goods off-sale).

(6) Restaurants, excluding those which sell or serve alcoholic beverages. Outdoor use of designated seating areas for twelve (12) or fewer customers of such restaurants, within an area of two hundred fifty (250) square feet or less, is allowed if architectural committee approval is obtained and such outdoor use is operated in conformance with any conditions of approval.

(7) Bookstores and video stores, provided more than fifty percent (50%) of the displayed inventory or stock on hand, at any one time, is not adult oriented as defined and regulated in Chapter 18.70 SCCC.

(b) Sales of personal or financial services:

(1) Barber shops and beauty parlors.

(2) Banks and savings and loans.

(3) Clothes cleaning, laundry pickup stations, laundrettes, and pressing shops.

(4) Professional offices, such as accountants, architects, or doctors.

(5) Nurseries and preschools.

(6) Studios and instructional facilities, such as dance studios, music studios, or similar establishments, in which a specific subject is taught, as distinguished from a public or private general educational school. This category does not include facilities in which industrial training is provided, such as welding or automotive repair, involving the use of tools and materials appropriate to an industrial use area.

(7) Massage Establishments, as defined in SCCC 5.40.020(m), subject to SCCC 18.104.020.

(c) Incidental and accessory buildings and uses on the same lot with, and necessary for, the operation of any permitted use. Such uses may include a parking lot, if constructed at, or within thirty-six (36) inches of, the elevation of the top of the nearest street curb.”

SECTION 2: That Section 18.36.030 (entitled “Permitted Uses”) of Chapter 18.36 (entitled “Regulations for CC—Community Commercial Zoning Districts”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“18.36.030 Permitted uses.

None but the following uses or uses that, in the opinion of the Planning Commission, are of a similar nature will be permitted.

All uses shall be conducted wholly within a completely enclosed building, except as provided in SCCC 18.36.040.

(a) Any use permitted in the CN or OG district subject to the regulations set forth in this chapter.

(b) The following retail business establishments, shops, and offices supplying commodities or performing services for residents of the surrounding community:

- (1) Animal hospital – clinic or veterinarian (no kennel).
- (2) Antique shop.
- (3) Appliance sales and service.
- (4) Art goods.
- (5) Auto accessory sales facility not involving installation on the premises.
- (6) Bakery.
- (7) Beauty college.
- (8) Bicycle sales and repair.
- (9) Book store including rental.
- (10) Candle shop.
- (11) Carpets, rugs, draperies.
- (12) Confectionery.
- (13) Department store.
- (14) Florist.
- (15) Furniture store.
- (16) Hobby shop.
- (17) Import store.

- (18) Jewelry sales and repair.
- (19) Pet shop.
- (20) Pipe and tobacco shop.
- (21) Radio and television sales and service.
- (22) Repair shop for domestic appliances, radios, shoes.
- (23) Second hand sales.
- (24) Shoe store.
- (25) Sporting goods.
- (26) Stationery store.
- (27) Tailoring and custom dressmaking.
- (28) Massage Establishments, as defined in SCCC 5.40.020(m), subject to SCCC 18.104.020.

(c) Incidental storage and accessory uses including repair operations and services, provided such uses shall be clearly incidental to the sale of products at retail on the premises and shall be so located, constructed and operated as not to be offensive or objectionable because of dust, gas, smoke, noise, fumes, odors, vibrations, or other public nuisances.”

SECTION 3: That Section 18.42.030 (entitled “Permitted Uses”) of Chapter 18.42 (entitled “Regulations for CP—Commercial Park Zoning Districts”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“18.42.030 Permitted uses.

None but the following uses or uses that, in the opinion of the Planning Commission, are of a similar nature will be permitted:

(a) The following uses shall be conducted wholly within a completely enclosed building, except as provided in SCCC 18.42.040, and shall be so located, constructed, and operated as not to be offensive or objectionable because of dust, gas, smoke, noise, fumes, odors, vibrations, or other public nuisances:

- (1) Hotels and motels.
- (2) Professional, financial, and general business offices.
- (3) Restaurants serving food and nonalcoholic beverages.
- (4) Recreational and cultural facilities, exhibition halls, museums, auditoriums, and theaters.
- (5) Accessory retail and service establishments, which are physically located within a building in which any of the above-referenced permitted uses are located.
- (6) Massage Establishments, as defined in SCCC 5.40.020(m), subject to SCCC 18.104.020.

(b) The following outdoor uses are allowed, except as provided in SCCC 18.42.040; provided, that such uses are so located, constructed, and operated as not to be offensive or objectionable because of dust, gas, smoke, noise, fumes, odors, vibrations, or other public nuisances:

- (1) Restaurants serving food and nonalcoholic beverages.
- (2) Walk-up service facilities.”

SECTION 4: That Section 18.56.040 (entitled “Permitted Uses”) of Chapter 18.56 (entitled “Planned Development - Master Community Zoning Districts”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

18.56.040 Permitted uses.

Certain uses may be specifically permitted or permitted by use permit or may be disallowed from any PD-MC plan in accordance with provisions hereinbelow. The PD-MC approval by the City may also require that specific types of uses be incorporated into the overall plan.

(a) Any residential, commercial, office, research and development or public uses may be authorized if they are in harmony with other authorized uses and serve to fulfill the function of the planned development while complying with the City's general plan.

(b) Massage Establishments, as defined in SCCC 5.40.020(m), subject to SCCC 18.104.020.

(c) The following uses may be permitted in this zoning district if they are approved specifically through the zoning entitlement process or approved through a use permit process as specified in Chapter 18.110 SCCC, Use Permits.

- (1) Auto service or repair;
- (2) Drive-through restaurants and services;
- (3) Beer and wine or alcoholic beverage service;
- (4) Live entertainment and dancing.

(d) The following uses are prohibited:

- (1) Auto sales;
- (2) Appliances and bulk item sales;
- (3) Industrial uses and uses involving quantities of hazardous materials that may have potentially significant health consequences;
- (4) Wholesaling, warehousing and storage (indoor and outdoor) operations;
- (5) Contractor's yards and other similar uses;
- (6) Other uses that, in the opinion of the City Council, are incompatible with the character and nature of the uses provided and approved in the master community plan.

SECTION 6: That Section 18.70.010 (entitled “Policy”) of Chapter 18.70 (entitled “Use Regulations Applicable to Specified Regulated Businesses”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“The purpose of this chapter is to provide reasonable regulations to prevent the adverse effect of the concentration or clustering of certain uses of real property, specifically adult book stores, adult cabarets, adult motion picture theaters, nude encounter studios, nude photography studios, and other uses, as specified in SCCC 18.70.090 (hereinafter referred to collectively as "regulated businesses"). Such uses have serious objectionable characteristics especially when several of them are located in close proximity to each other. Such concentration tends to create a "skid-row" atmosphere and has a deleterious effect upon the adjacent area. Regulation of the locations of these uses is necessary to insure that such adverse effects will not cause or contribute to the blight or the downgrading of neighborhoods and businesses situated in proximity to said "regulated businesses."

The regulations hereinafter set forth in this chapter are necessary and will tend to prevent the clustering of such "regulated businesses." The regulations hereinafter set forth will serve to help prevent the deleterious effects of blight and the resultant downgrading of real property values. The regulations will also serve to promote the orderly planning, development and utilization of neighborhood and business premises.”

SECTION 7: That Section 18.70.030 (entitled “Definitions”) of Chapter 18.70 (entitled “Use Regulations Applicable to Specified Regulated Businesses”) of Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) is amended to read as follows:

“(1) "Adult book store" means a building or portion thereof used by a business which has as a substantial or significant portion of its stock in trade for sale to the public, or certain members thereof, books, magazines or other publications which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" (as hereinafter defined).

(2) "Adult cabaret" means a building or portion thereof or area used for the presentation or exhibition or featuring of topless and/or bottomless dancers, persons engaging in "specified sexual activities" (as hereinafter defined), strippers, male or female impersonators or similar entertainers for observation by patrons or customers.

(3) "Adult motion picture theater" means a building or portion thereof or area, open or enclosed, used for the presentation of motion pictures distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" (as hereinafter defined) for observation by patrons or customers.

(4) "Adult novelty store" means a building or portion thereof used by a business which has a substantial or significant portion (over twenty-five percent (25%) of the business' stock in trade for sale or rental to the public or over twenty-five percent (25%) of its gross dollar of business or, if applicable, over twenty-five percent (25%) of the actual display area of the store) of its stock in trade for sale or rental to the public, or certain members thereof, adult-oriented novelty items which are distinguished or characterized by their emphasis or use for "specified sexual activities" (as hereinafter defined).

(5) "Nude encounter studio" means a building or portion thereof or area used, upon payment of any compensation (as hereinafter defined), for permitting the patron or

customer to meet, be present privately, or otherwise "encounter" a person or persons who are topless and/or bottomless and are employed for such purpose (as hereinafter defined) by the operator of such establishment.

(6) "Nude photography studio" means a building or portion thereof or area used upon payment of any compensation (as hereinafter defined), for permitting the patron or customer to photograph a person or persons who are topless and/or bottomless and who are employed for such purpose (as hereinafter defined) by the operator of such establishment."

SECTION 8: That Chapter 18.104 (entitled "Massage Establishments") of Title 18 (entitled "Zoning") of "The Code of the City of Santa Clara, California," ("SCCC") is amended to read as follows:

"18.104.010 Definitions.

18.104.020 Location restrictions on massage establishments.

18.104.030 Violations.

18.104.040 Regulations nonexclusive.

18.104.060 Application to existing businesses.

18.104.010 Definitions.

(a) "Massage establishment" shall have the same definition set forth in SCCC 5.40.020.

The exemptions under SCCC 5.40.060 apply to this chapter.

(b) "Massage Establishment Zoning Verification" shall mean a written form completed by the Planning Division of the Department of Community Development verifying that the proposed massage establishment complies with SCCC 18.104.020.

18.104.020 Location restrictions on massage establishments.

No lot or parcel of property or any building or structure thereon, or any portion thereof,

within the city, shall be used to operate as a massage establishment unless said lot, parcel, building or structure is located in a commercial zoning district or Planned Development (PD) zoning district that allows for commercial use, and the location must also meet one of the following criteria:

- (a) The massage establishment is located in a minimum ten (10) acres size contiguously functioning mixed use or commercial site with shared parking and circulation and a minimum of 20,000 square foot of retail space; or
- (b) The massage establishment is located in a wellness center of an employment center with five hundred (500) employees or more.

The location must be confirmed by obtaining a Massage Establishment Zoning Verification from the Planning Division of the Department of Community Development.

18.104.030 Violations.

(a) Any person operating or causing the operation of a massage establishment on any parcel in which no application for a massage establishment permit under Chapter 5.40 SCCC has been granted, or any person violating or causing the violation of any of the terms and conditions of the existing use permit (if applicable), shall be subject to the revocation/suspension of the massage establishment permit issued pursuant to Chapter 5.40 and may be subject to penalties pursuant to SCCC 1.05.070. All remedies provided herein shall be cumulative and not exclusive. Any violation of these provisions shall constitute a separate violation for each and every day during which such violation is committed or continued.

(b) In addition to the remedies set forth in subsection (a) of this section, any violation of this chapter is hereby declared to constitute a public nuisance and may be abated or enjoined

pursuant to Chapter 18.114 SCCC and any other applicable state or local laws relating to nuisance abatement.

(c) If a massage establishment permit is revoked, or not renewed as a result of violations of Chapter 5.40 SCCC or of this chapter, no massage establishment shall operate at that location for a period of five (5) years from the date of revocation or nonrenewal.

18.104.040 Regulations nonexclusive.

The provisions of this chapter regulating massage establishments are not intended to be exclusive, and compliance therewith shall not excuse noncompliance with any other provisions of the City Code and/or any other applicable regulations.

18.104.050 Application to existing businesses.

(a) Any massage establishment lawfully existing on the effective date of this chapter which becomes a nonconforming use by reason of the adoption of this chapter shall be considered as a legal nonconforming use pursuant to Chapter 18.94 SCCC at its existing location as long as the massage establishment complies with all of the following:

- (1) Meeting all requirements of Chapter 5.40 SCCC, and in possession of a current massage establishment permit issued by the Chief of Police;
- (2) Compliance with all applicable building code regulations; and,
- (3) Free of repeated violations and criminal conduct, as confirmed by the Santa Clara Police Department.

(b) If the massage establishment does not comply with SCCC 18.104.050(a)(1)-(3), it shall become a nonconforming use and shall cease operation, or otherwise be brought into full compliance with the provisions of this chapter, not later than December 31, 2020 (the “amortization period”).

SECTION 9: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 10: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”
PASSED FOR THE PURPOSE OF PUBLICATION this 16th day of July, 2019, by the following vote:

AYES:	COUNCILORS:
NOES:	COUNCILORS:
ABSENT:	COUNCILORS:
ABSTAINED:	COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. None.