

ORDINANCE NO. 2006

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTERS 5.40 "MASSAGE SERVICES AND MASSAGE ESTABLISHMENTS" OF TITLE 5 ("BUSINESS LICENSES AND REGULATIONS"), AND 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 ("PLANNED 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 RELATING 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 regulations to permit massage establishments within the City on October 13, 2015;

WHEREAS, the Planning Commission recommended approval of the amendments to Title 18 ("Zoning") on May 22, 2019, with the addition of allowing massage establishments in

hotels with over one hundred (100) guest rooms; and,

WHEREAS, the City Council desires to amend those regulations for massage establishments within the City to protect the public health, peace and welfare of its residents.

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

SECTION 1: That Chapter 5.40 (entitled "Massage Services and Massage Establishments") of Title 5 (entitled "Business Licenses and Regulations") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

"Chapter 5.40

MESSAGE SERVICES AND MESSAGE ESTABLISHMENTS

Sections:

- 5.40.010 Purpose and intent.
- 5.40.020 Definitions.
- 5.40.030 Massage certification required.
- 5.40.040 Massage establishment permit required.
- 5.40.050 Business tax requirement.
- 5.40.060 When a permit is not required.
- 5.40.070 Massage establishment permit application and fee.
- 5.40.080 Amendments to massage establishment permit.
- 5.40.090 Annual renewal of massage establishment permits.
- 5.40.100 Massage establishment operating requirements.
- 5.40.110 Massage establishment facilities regulations.
- 5.40.120 Inspection by officials.
- 5.40.130 Permits nonassignable.
- 5.40.140 Application of regulations to existing massage establishments and massage therapists.
- 5.40.150 Prohibited conduct.
- 5.40.160 Enforcement – Suspension or revocation of massage establishment permit.
- 5.40.170 Procedure for revocation or suspension of massage establishment permit.

5.40.010 Purpose and intent.

(a) Purpose.

(1) The City of Santa Clara is authorized to regulate massage establishments pursuant to Government Code Section 51030 et seq., Business and Professions Code Sections 460 and 4600 et seq. and Section 7 of Article XI of the California Constitution.

(2) In enacting these regulations, the City of Santa Clara City Council ("City Council") recognizes that massage is a viable professional field offering the public valuable health and therapeutic services.

(3) It is the purpose and intent of the City Council that the operation of massage establishments and persons offering massage be regulated in the interests of public health, safety, and welfare by providing minimum building, sanitation, and health standards and to ensure that persons offering massage shall possess the minimum qualifications necessary to operate such businesses and to perform such services offered.

(4) It is the intent of this chapter to enact regulations to ensure those offering massage services are qualified and trained and can be expected to conduct their work in a lawful and professional manner. The City Council finds that existing controls have not satisfactorily addressed or regulated serious criminal and public health problems, nor have the existing controls regulated the profession so as to sufficiently encourage compliance with State and local laws.

(b) Conflicts with other Provisions of this Code. In the event of any conflicts or inconsistencies between the provisions of this chapter and the provisions of any other chapter(s) of this Code, the provisions of this chapter shall control, unless to do so would

be inconsistent with the stated purpose of this chapter.

(c) Responsibility for Enforcement. The primary responsibility for enforcement of the provisions of this chapter shall be vested in the Chief of Police.

5.40.020 Definitions.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter:

(a) Reserved for future use.

(b) Reserved for future use.

(c) "C" definitions:

(1) "California Massage Therapy Council (CAMTC)" shall mean the State organized nonprofit organization created to regulate the massage industry set forth in Chapter 10.5 of Division 2 of the California Business and Professions Code (commencing with Section 4600).

(2) "CAMTC certificate" shall mean a current and valid certificate issued by the California Massage Therapy Council to a massage therapist.

(3) "Chief of Police" means the elected Chief of the Santa Clara Police Department, or his/her duly authorized agents and representatives.

(4) "City Attorney" means the City of Santa Clara's City Attorney, or his/her duly authorized agents and representatives.

(5) "City Manager" means the City of Santa Clara's City Manager, or his/her duly authorized agents and representatives.

(d) "D" definitions:

(1) "Days" means calendar days, unless specified differently.

(e) Reserved for future use.

(f) Reserved for future use.

(g) Reserved for future use.

(h) Reserved for future use.

(i) Reserved for future use.

(j) Reserved for future use.

(k) Reserved for future use.

(l) "L" definitions:

(1) "License" means a business tax certificate obtained from the municipal services/business tax division of the Finance Department to operate a massage establishment and/or provide massage service as required by this chapter.

(m) "M" definitions:

(1) "Massage" means any method of friction against, pressure on, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations.

(2) "Massage establishment" means any establishment having a fixed place of business where any individual, firm, association, partnership, corporation, joint venture or combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted or carried on, for consideration, massages or health treatments involving massages as regular functions.

(3) “Massage therapist” means any person who administers massages, or nonmedical health treatments involving massage, or any nonmedical health care therapy using massage as the principal therapeutic approach in caring for clients, to another person for any consideration whatsoever.

(n) Reserved for future use.

(o) “O” definitions:

(1) “Owner” shall mean any of the following individuals: (A) the sole proprietor of a sole proprietorship operating a massage establishment; (B) any general partner of a general or limited partnership that owns a massage establishment; (C) any person who has ten percent (10%) or greater ownership interest in a corporation that owns a massage establishment; (D) any person who is a member of a limited liability company that owns a massage establishment; (E) all owners of any other type of business entity that owns a massage establishment; and, (F) any person identified as an owner on the massage establishment permit.

(p) “P” definitions:

(1) “Permit” means the Santa Clara Police Department-issued permit to engage in the business activity of operating a massage establishment, which shall be obtained through the process required by this chapter. Unless specifically provided otherwise, permits are not transferable.

(2) “Permittee” means a person, as defined hereinbelow, who has obtained a massage establishment permit. Permittee shall include the owner, operator, manager, and/or responsible, managing officer/employee. The term “responsible, managing officer/employee” includes partner(s).

(3) "Person" means any individual, firm, association, partnership, corporation, joint venture or combination of individuals.

(q) Reserved for future use.

(r) Reserved for future use.

(s) "S" definitions:

(1) "Sole proprietorship" means a massage establishment where the owner owns one hundred percent (100%) of the business and has no employees or independent contractors.

(t) Reserved for future use.

(u) Reserved for future use.

(v) Reserved for future use.

(w) Reserved for future use.

(x) Reserved for future use.

(y) Reserved for future use.

(z) Reserved for future use.

5.40.030 Massage certification required.

It shall be unlawful for any person to engage in, conduct or carry on, in or upon any premises within the city the business of providing massage, for any compensation, without being in possession of a valid CAMTC certificate.

5.40.040 Massage establishment permit required.

It is unlawful for any owner, as defined herein, to own, manage, or operate in or upon any premises within the city a massage establishment without first having obtained a massage establishment permit issued by the Chief of Police pursuant to the provisions hereinafter set forth. A permit shall be valid for twelve (12) months from the date of

issuance, unless revoked or suspended. A separate massage establishment permit is required for each location if an owner owns, manages, or operates multiple massage establishments. The City may immediately order a business that fails to have a valid massage establishment permit to cease operation.

5.40.050 Business tax requirement.

A massage establishment owner, as defined herein, and massage therapists that are independent contractors and/or sole proprietorships shall pay the required business license tax for such business and occupation based on location. It is unlawful for massage therapists who are required to pay the business license tax under this section to give, provide, or administer to another person for any form of compensation whatsoever a massage as defined in this chapter at a massage establishment or any location from a massage establishment within the city in the absence of a valid business license pursuant to this chapter and Chapter 3.40 SCCC. A separate business license is required for each location if a massage therapist works at multiple massage establishments.

5.40.060 When a permit is not required.

The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

(a) Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who are duly State-licensed to practice their respective professions in the State of California.

(b) Barbers, beauticians, and cosmetologists who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, and businesses operating with this class of individuals, like nail salons; except that this

exemption from a City permit shall apply solely to the massaging of the neck, face, scalp, foot, ankle and/or calf of the customers.

(c) Hospitals, nursing homes, sanatoriums, or any other health facilities duly licensed by the State of California.

(d) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

(e) Trainers of amateur, semi-professional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event such as road races, track meets, triathlons, biathlons or similar single-occurrence athletic or recreational events.

(f) Other single-event massage practice occurring within the workplace or similar business location where the massage shall be restricted to the shoulders, neck, face and/or scalp of the customer.

(g) A duly licensed acupuncturist providing massage therapy services to his or her clients. However, if an individual(s) other than the acupuncturist provides massage therapy services to his or her clients, said individual(s) must have a valid CAMTC certificate and the office of the acupuncturist shall be subject to all the provisions of this chapter, as well as any other applicable provisions of the SCCC.

5.40.070 Massage establishment permit application and fee.

The following provisions shall apply to the permit application process:

(a) Any person, as defined herein, desiring to obtain a permit to operate a massage establishment shall make application to the Chief of Police.

(b) Each application for a massage establishment permit shall be accompanied by a nonrefundable fee. The fee paid shall be to defray in part the cost of the investigation and report required by this chapter. This massage establishment permit registration fee shall be determined from time to time by the City Council by resolution to properly reflect cost recovery adjustments it deems appropriate. A copy of the receipt for the nonrefundable fee shall accompany the application.

(c) The massage establishment permit application and fee required under this section shall be in addition to any license, permit, or fee required under any other section of this Code or other City law or regulation.

(d) The application and fee for a massage establishment permit does not authorize a massage establishment to operate until such permit has been granted and the business tax has been paid to the municipal services/business tax division of the Finance Department.

(e) Each applicant for a permit shall submit the following information under penalty of perjury:

- (1) The full, true name under which the business will be conducted.
- (2) The present or proposed address where the business is to be conducted.
- (3) The applicant's full, true name, and other names used, date of birth, valid California driver's license number (or California identification number), Social Security number (unless prohibited by law), present residence address and telephone number. Additionally, applicant shall provide original documentation to verify both the applicant's identity and employment authorization (if applicable). Documentation to satisfy this

requirement may include, but is not limited to, a California driver's license, California identification card, Social Security card, resident alien ("green") card, United States passport, unexpired foreign passport that contains a temporary I-551 stamp, or an unexpired employment authorization document issued by the United States government.

(4) The previous two residences of the applicant and the inclusive dates at each address.

(5) The applicant's business, occupation, and employment history for seven years preceding the date of application and the inclusive dates of same. Applicant shall provide proof that within the seven years preceding submission of the application, the applicant has not:

(A) Had a massage establishment, massage therapist, or other similar permit or license denied, suspended, or revoked by the City, or any other State or local agency;

(B) Engaged in conduct or operated a massage or similar establishment in a manner that would be grounds for denial, suspension, or revocation of a permit under this chapter; or

(C) Owned or managed a massage or similar establishment where persons required to be licensed were allowed to work without the required license or permit.

(6) A statement of the permit history of the applicant by identifying whether or not such person has ever held a professional or vocational license or permit issued by any agency, board, city, county, territory, or state; the date of issuance of such a permit or license; whether or not the permit or license is still in effect; if the permit or

license is no longer in effect, was it revoked or suspended, and, if so, the reason(s) therefor.

(7) A statement that within the seven years preceding submission of the application, no injunction has been issued under the Red Light Abatement Law (Penal Code Section 11225 et seq.) against the applicant or against a business establishment where the applicant was a permittee or employee, and that the applicant has not been convicted in a court of competent jurisdiction of an offense involving:

(A) Conduct which requires registration under California Penal Code Section 290;

(B) Conduct which is a violation of the provisions of California Penal Code Section 314, 315, 316, 318, or 647;

(C) Crimes that are designated in Government Code Section 51032; or,

(D) Any other crime involving dishonesty, fraud, deceit, violence or moral turpitude.

Convictions under the laws of other states or countries which proscribe the same or similar conduct as the afore-designated California crimes shall be considered. Convictions that have been expunged must be reported, and all injunctions for nuisances under Penal Code Section 11225 or similar laws must also be reported.

For purposes of this criminal conviction portion of the statement, if the applicant is a corporation, the statement shall apply to the stockholders holding more than five percent of the stock of that corporation, the officers, and/or directors. If the applicant is a partnership, the statement shall apply to all partners, both general and limited.

(8) A complete list of all services to be provided with definitions and/or descriptions attached.

(9) The name and address of each massage therapist or employee who will be employed at the massage establishment.

(10) A copy of a valid certificate issued by CAMTC, a copy of a valid CAMTC issued identification card, and a copy of a valid California's Driver License or valid California Identification card for each massage therapist who will work in the massage establishment.

(11) The name and address of any massage business or other like establishment owned or operated by any person whose name is required to be given pursuant to this section.

(12) Upon request of the Chief of Police, the applicant shall be required to furnish fingerprints for the purpose of establishing identification. The fingerprints will be taken at a place designated by the Chief of Police. Any required fingerprinting fee shall be the responsibility of the applicant.

(13) A description of any other business to be operated on the same premises, or on adjoining premises, owned or controlled by the applicant.

(14) The name, address, and phone number of the owner and lessor of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease between the applicant and the property owner that includes specific authorization of the use of the premises for a massage establishment or a notarized acknowledgment from

the owner of the property that a massage establishment will be located on his/her property operated by the applicant.

(15) Written authorization for the City, its agents and employees, to seek information and to conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant and the responsible, managing officer/employee.

(16) Proof of massage malpractice insurance in the sum of not less than one million dollars (\$1,000,000) per massage therapist licensed, or to be licensed, at the massage establishment; this requirement can be satisfied by malpractice insurance being provided in the name of the individual massage therapist.

(17) The applicant shall advise the City in writing of any change of address or change in fact(s) represented to City which may occur during the City's processing of the application for a massage establishment permit.

(18) A copy of a floor plan, drawn to scale showing: entrances; exits; windows; interior doors; restrooms; all other separately enclosed rooms with dimensions, including, but not limited to, closets, storerooms, break rooms, and changing rooms; and location of massage tables and chairs.

(19) Proof of bona fide employment must be shown by written payroll documentation evidencing the employer's compliance with California Employment Development Department (EDD) requirements for the withholding of income tax, unemployment insurance contributions and disability contributions from the employee and written payroll documentation of the employers.

(20) A statement that within the last five years the applicant has not failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local minimum wage ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is no pending appeal and the time for filing an appeal has passed.

(f) The Chief of Police has up to sixty (60) days after submission of all required information to investigate the application and the background of the applicant. Upon the completion of the investigation, the Chief of Police may grant the permit, with or without conditions, if, upon review of the requirements listed in subsections (e)(1) through (19) of this section, inclusive, all of the following are found:

(1) The required fee has been paid;

(2) The applicant has not made a material misrepresentation in the application;

(3) The permit as requested by the applicant would comply with all applicable laws, including, but not limited to, health, zoning, fire and safety requirements and standards; and,

(4) The applicant complies with the requirements of this chapter.

(g) If, following investigation of the applicant, the Chief of Police cannot make the findings required in subsection (f) of this section, the application shall be denied by dated, written notice which sets forth the reasons for denial.

5.40.080 Amendments to massage establishment permit.

(a) Whenever the information provided in the application for a massage establishment on file with the Chief of Police changes, the owner or designated person shall file an application to amend the permit to reflect such change. An application to amend a massage establishment permit shall be made by submitting an application provided by the Chief of Police.

(b) Each application for a massage establishment permit amendment shall be accompanied by a nonrefundable fee, the amount of which is determined from time to time by the City Council by resolution to properly reflect cost recovery adjustments it deems appropriate. A copy of the receipt for the nonrefundable fee shall accompany the application.

(c) The application shall not be approved unless the Chief of Police determines compliance with all requirements of this chapter and all other local, state, and federal laws, and the massage establishment has no outstanding violations or unpaid administrative citations or fees. Inspection of the massage establishment may be required prior to approval of the amended massage establishment permit.

(d) An amendment shall not be used to change the location or owners of a massage establishment. Any such change will require a new massage establishment permit under this chapter.

(e) No permittee shall operate or conduct any massage establishment under any name or designation not specified in the approved permit. Any such change in name will require an amendment to the massage establishment permit, as set forth in SCCC 5.40.080.

(f) Amendments shall be processed and investigated. The amendment shall not be approved unless the Chief of Police determines that the massage establishment complies with all requirements of this chapter and all other local, state, and federal laws, and that it has no outstanding violations or unpaid citations or fees. Inspection of the massage establishment may be required prior to approval of the amendment.

(g) A denial of an application to amend a massage establishment permit may be appealed as set forth in Chapter 2.115 SCCC.

5.40.090 Annual renewal of massage establishment permits.

Renewal of permits for massage establishments issued under SCCC 5.40.070 shall be as follows:

(a) Massage establishment permits shall expire on the one-year anniversary date of issuance, unless sooner suspended or revoked.

(b) At least thirty (30) days prior to expiration of the one-year permit period, holders of the respective permit(s) shall apply for renewal. If the renewal request is not timely submitted, upon expiration of the one-year period for the permit, the permit shall be deemed expired and no privilege to provide massage shall exist until a new application has been approved.

(c) The applicant is required to submit, under penalty of perjury, any information that has changed from the last application or renewal.

(d) Renewals shall be processed and investigated. The renewal shall not be approved unless the Chief of Police determines that the massage establishment complies with all requirements of this chapter and all other local, state, and federal laws, and that it has no outstanding violations or unpaid citations or fees. Inspection of the massage

establishment may be required prior to approval of the renewal.

(e) A renewal fee shall be paid in a sum that shall be determined from time to time by the City Council by resolution to properly reflect cost recovery adjustments it deems appropriate.

(f) Nonrenewal of a massage establishment permit may be appealed as set forth in Chapter 2.115 SCCC.

5.40.100 Massage establishment operating requirements.

No person shall engage in, conduct, carry on, or permit to be engaged in, conducted, or carried on any massage establishment activity or conduct unless each and all of the following requirements are met:

(a) Each person employed or acting as a massage therapist shall display on his/her person a valid CAMTC-issued identification card at all times while on the premises of the massage establishment. It shall be unlawful for any owner, operator, manager, and/or responsible, managing officer/employee to employ or permit a person to act as a massage therapist who is not in possession of a valid CAMTC certificate or to permit him/her to provide services without carrying on his/her person a valid CAMTC-issued identification card.

(b) The possession of a valid massage establishment permit does not authorize the permit holder or any other person to perform work for which a valid CAMTC certificate is required.

(c) It is unlawful for a person to own or operate a massage establishment that does not meet one of the following conditions: (1) the massage establishment is a sole proprietorship and the sole proprietor possesses a valid CAMTC certificate; or (2) the

massage establishment is permitted pursuant to this chapter and only employs or uses massage therapists who possess a valid CAMTC certificate.

(d) Massage shall be provided or given only between the hours of 8:00 A.M. and 10:00 P.M. No massage establishment shall be open and no customer shall be in the establishment between 10:00 P.M. and 8:00 A.M. Patrons and visitors shall only be permitted in the reception area of the massage establishment during the hours of operation, and patrons shall only be permitted in massage treatment areas if at least one massage therapist is on the premises.

(e) A list of services available and the cost of such services shall be posted in an open and conspicuous public place within the premises. The list of services shall be in English, and in any other languages as may be convenient. No owner, operator, manager, and/or responsible managing officer/employee shall permit, and no massage therapist shall offer or perform, any service other than those posted.

(f) The massage establishment permit, an original valid CAMTC certificate, and a copy of the CAMTC-issued identification card of each and every massage therapist providing services in the establishment shall be displayed in an open and conspicuous place on the premises.

(g) Every massage establishment shall keep a written record in English of:

- (1) The date and hour of each service provided;
- (2) The name of each patron and the service received; and,
- (3) The name of the massage therapist administering the service.

Said records shall be open to inspection by City officials, including, but not limited to, the Police Department and the City Attorney's Office, which are charged with enforcement

of this chapter. These records may not be used by the permittee for any other purpose than as records of service provided, and they shall not be provided to other parties by the massage establishment or service. Said records shall be retained on the premises of the massage establishment business office for a period of not less than two years.

(h) Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. Towels and linens shall not be used on more than one patron, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one patron. Soiled linens and paper towels shall be deposited in separate, approved receptacles.

(i) Instruments utilized in performing massage shall not be used on more than one patron unless they have been sterilized using approved sterilization methods.

(j) All employees, including massage therapists, shall wear clean, nontransparent outer garments. All employees shall not be dressed in attire that has been deemed by CAMTC and/or the California Business & Professions Code to constitute unprofessional attire based on the custom and practice of the profession in California.

(k) No person shall enter, be or remain in any part of a massage establishment while in possession of an open container of alcohol, or while consuming or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, manager, and/or responsible managing officer/employee shall not permit any such person to enter or remain upon such premises.

(l) No alcoholic beverages shall be stored, sold, served, or furnished on the premises of any massage establishment.

(m) No massage establishment granted a permit under the provisions of this

chapter shall place, publish or distribute or cause to be placed, published or distributed, including, but not limited to, on the Internet, any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that any service is available other than those services described in SCCC 5.40.020(m)(1), nor shall any massage establishment employ language in the text of such advertising that would reasonably suggest to a prospective patron that any service is available other than those services as described in SCCC 5.40.020(m)(1).

(n) No massage may be carried on within any cubicle, room, booth or any area within a massage establishment with a door capable of being locked. All doors to dressing rooms and treatment rooms shall open inward. Draw drapes, curtain enclosures, or accordion-pleated closures are acceptable on all inner dressing and treatment rooms in lieu of doors.

(o) A massage shall not be given unless the patron's genitals are fully covered.

(p) No massage establishment shall be open for business without at least one massage therapist on the premises at all times who is in possession of a valid unrevoked CAMTC certificate.

(q) A massage table or chair shall be used for massage. No mattresses shall be placed on the floor. All massage tables shall be at least two feet away from all walls at all times.

(r) No condoms shall be kept in the establishment unless they are the personal property of persons on site, and they are for the individual's personal use.

(s) Unlicensed massage therapists and those persons other than scheduled customers shall not loiter, congregate or remain on the premises during the massage

establishment's business hours.

(t) No massage establishment shall be used for residential purposes.

(u) The massage establishment shall comply with the requirements in California Civil Code section 52.6, as amended from time to time, related to the posting of notices for victims of human trafficking.

5.40.110 Massage establishment facilities regulations.

Every massage establishment shall maintain facilities meeting the following requirements:

(a) Any signs shall be in conformance with the current ordinances of the City.

(b) Minimum lighting shall be provided in accordance with the California Electrical Code, and, in addition, at least one artificial light of not less than four hundred fifty (450) lumens shall be provided in each room or enclosure where massage services are performed on patrons.

(c) Minimum ventilation shall be provided in accordance with the California Building Code.

(d) Adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided and utilized.

(e) Hot and cold running water shall be provided at all times.

(f) Closed cabinets shall be provided for storage of clean linens.

(g) Adequate dressing, locker and toilet facilities shall be provided for patrons.

(h) A minimum of one wash basin for employees shall be provided at all times.

The basin shall be located within or as close as practicable to the area devoted to performing massage services. Sanitary towels shall also be provided at each basin.

(i) Pads used on any massage tables shall be covered with a durable, washable plastic or other acceptable waterproof material capable of being thoroughly cleaned and disinfected.

(j) All exterior doors (except those used only for employee entrance to and exit from the massage establishment) shall remain unlocked during business hours. There shall be no buzzer, alarm, or intercom system for purposes of entering the exterior doors during business hours.

(k) Proof of compliance with all applicable provisions of the City Code shall be provided prior to the issuance of any permit.

(l) Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, whirlpool baths and pools shall be thoroughly cleaned and disinfected with a commercial disinfectant, as needed, but at least once each day the premises are open. Bathtubs shall be thoroughly cleaned with a disinfectant after each use. All walls, ceilings, floors, and other physical facilities for the establishment must be in good repair, and maintained in a clean and sanitary condition.

(m) No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the massage establishment.

5.40.120 Inspection by officials.

(a) The City officials charged with investigating and enforcing compliance with this chapter, including, but not limited to, the City's Police Department, Fire Department,

and the City's Building Official, or their designees, shall have the right to enter the premises from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with building, fire, electrical, and plumbing regulations, and to enforce compliance with applicable regulations, laws, and the provisions of this chapter.

(b) The Permittee shall take immediate action to correct each violation noted by the City official. The City may perform subsequent inspections to ensure that each violation noted by the City official has been corrected.

5.40.130 Permits nonassignable.

No massage establishment permit may be sold, transferred or assigned by the permittee, or by operation of law, to any other person or persons; any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be deemed terminated and void, except for the following:

(a) If the permittee is a partnership and one or more of the partners should die or cease to be a partner, one or more of the surviving/remaining partners may acquire, by purchase or otherwise, the interest of the deceased/departed partner or partners without effecting a surrender or termination of such permit. An original partner must remain a partner for this exception. In each case the permittee shall thereafter be deemed to be the surviving/remaining partner(s); or,

(b) If the permit is issued to a corporation, stock may be sold, transferred, issued, or assigned to stockholders who have been named on the application. If any stock is sold, transferred, issued, or assigned to a person not listed on the application as a stockholder,

the permit shall be deemed terminated and void unless the new stockholders are identified within ten days of transfer and they meet all requirements under this chapter for stockholders.

5.40.140 Application of regulations to existing massage establishments and massage therapists.

All persons currently holding a valid massage establishment permit shall have six (6) months following the effective date of this chapter in which to comply with the requirements of this chapter. If a permittee does not attain compliance with this chapter within the prescribed time limits, the Chief of Police shall immediately suspend or revoke the permittee's permit.

5.40.150 Prohibited conduct.

Prohibited conduct shall include, but not be limited to:

(a) It shall be unlawful for (1) any massage therapist, or other person present on the business premises, to massage the genital area of any patron or (2) for any operator of a massage establishment to allow or permit such massage.

(b) It shall be unlawful for (1) any massage therapist to be other than fully clothed at all times in nontransparent clothing that does not expose their genitals, pubic area, buttocks or chest or (2) for any operator of a massage establishment to allow or permit clothing that does not conform to this requirement.

(c) It shall be unlawful for any holder (permittee) of a massage establishment permit and/or holder of a CAMTC certificate to engage in prohibited conduct as defined in Business and Professions Code Section 4609 or any other State or local law and in violation of any of the requirements of this chapter.

5.40.160 Enforcement – Suspension or revocation of massage establishment permit.

(a) Violations of any provisions of this chapter shall be treated as a strict liability offense, regardless of intent. Any person violating any of the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in an amount not to exceed one thousand dollars (\$1,000), or imprisonment in the county jail not to exceed six months, or both. Any violation may also be subject to civil penalties and any other legal remedy provided in this Code or State law. Each violation described in this chapter may be charged as a separate count for each day the violation occurs.

(b) In addition to the legal remedies provided for in this Code, the violation of any provision of this chapter shall be and the same is hereby declared to be unlawful and a public nuisance. The City Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for abatement, removal or enjoinder thereof, in the manner provided by law. The City Attorney shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as shall abate or remove such massage establishment and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter.

(c) Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

(d) The Chief of Police may revoke or suspend a massage establishment permit if any of the following are found:

(1) The holder of the permit does not possess the qualifications for the permit as required by this chapter;

(2) The holder of the permit has been convicted of any violation of the provisions of this chapter or any lesser included offense;

(3) The holder of the permit has made a material misrepresentation on the permit application or renewal; or,

(4) The holder of the permit has operated the massage establishment in a manner which violates any of the provisions of this chapter, any conditions of the permit, or any of the laws which would have been grounds for denial of the permit.

The Chief of Police may consider previous and/or repeat violations of this chapter, any conditions of the permit, or any other applicable laws as evidence of a pattern of noncompliance by the holder of the permit.

For purposes of this section, the holder of the permit (permittee) in the massage establishment permit context shall include the managing, responsible officer/employee. Furthermore, the holder of the permit shall be responsible for those acts of employees and massage therapists which are done in the course and scope of their employment. The course and scope of employment is evidenced by a course of conduct occurring on the premises of the massage establishment.

5.40.170 Procedure for revocation or suspension of massage establishment permit.

Revocations and suspensions shall be administered as set forth in Chapter 2.115 SCCC.”

SECTION 2: 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 3: 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 4: 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 5: 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:

“18.70.010 Policy.

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 ensure 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:

“18.70.030 Definitions.

(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

MESSAGE ESTABLISHMENTS

Sections:

- 18.104.010 Definitions.
- 18.104.020 Location restrictions on massage establishments.
- 18.104.030 Violations.
- 18.104.040 Regulations nonexclusive.
- 18.104.050 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 one of the following:

(a) In a hotel with at least one hundred (100) guest rooms.

(b) 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, which must be confirmed by obtaining a Massage Establishment Zoning Verification from the Planning Division of the Department of Community Development:

(1) 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,

(2) The massage establishment is located in a wellness center of an employment center with five hundred (500) employees or more.

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.

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18.104.050 Application to existing businesses.

Any massage establishment in possession of a valid massage establishment permit issued by the Santa Clara Police Department 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:

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

SECTION 9: Ordinances repealed. Ordinance No. 1945 and all ordinances amendatory thereto, and, with exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

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SECTION 10: 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.

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SECTION 11: 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 24TH day of September, 2019, by the following vote:

AYES: COUNCILORS: Chahal, Davis, Hardy, Mahan, O'Neill, and Watanabe and Mayor Gillmor

NOES: COUNCILORS: None

ABSENT: COUNCILORS: None

ABSTAINED: COUNCILORS: None

ATTEST:


NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

FINALLY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA this 8TH day of OCTOBER, 2019, by the following vote:


AYES: COUNCILORS: Chahal, Hardy, Mahan, O'Neill, and Watanabe and Mayor Gillmor

NOES: COUNCILORS: None

ABSENT: COUNCILORS: Davis

ABSTAINED: COUNCILORS: None

ATTEST:


NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None