

Planning Commission Date: May 23, 2007

Item No. **48**

## MILPITAS PLANNING COMMISSION AGENDA REPORT

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Category: New Business

Report prepared by: Cindy Maxwell

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**TITLE: ZONING ORDINANCE INTERPRETATION NO. UD2007-2,  
MASSAGE AT GREAT MALL**

Proposal: Determine if partial body massage, in a visible public environment, is a permitted use in the C2 zoning district.

Location: 1000 S. Main St.

RECOMMENDATION: Determine that massage of shoulders and extremities, in a visible public environment, is a permitted use in the C2 zoning district.

Applicant: City of Milpitas

Environmental Info: Not applicable

Agenda Sent To: Alex Saucedo

Attachments: C2 Zoning Ordinance text

PJ No. None

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### BACKGROUND

The Zoning Ordinance only allows massage establishments in the Highway Service zoning district with a conditional use permit. Massage services are allowed as an accessory use with barbershops, beauty salons or medical offices in the C2 district, per previous Zoning Ordinance interpretations.

Existing massage services operate at several locations in the Great Mall, a General Commercial "C2" zoning district. Some of these services are permitted as accessory uses to existing beauty or health care shops. However, there are some existing massage services in the Great Mall that operate independently and only provide massage for the shoulders and body extremities in open

public environments. Similar massage businesses are commonly available at major shopping malls in the Bay Area.

Currently, two freestanding massage services operate near entrance nos. 1 and 4 (Quick Fix) and also in two store spaces, adjacent to each other, in the Mall (The Art of Reflexology). All massage services are visible to the general public and no private or semi-private massage is available. Massages are limited to body extremities and the shoulders. The businesses also sell massage-related items. Permits from the Police Department have been approved and are pending and dependent on Planning Commission action on this item.

### **INTERPRETATION QUESTION**

May massage services, that involve only body extremities (i.e., neck, shoulders, feet) and are performed in an unenclosed publicly visible environment, be allowed as a permitted use in the C2 district under XI-10-54.02 "Other Uses Permitted by Commission"?

Where the term "other uses similar to the above" is mentioned, it shall be deemed to mean other uses which, in the judgment of the Commission as evidenced by a written decision, are similar to the uses listed in the same section and are not objectionable to the general welfare. "Other Uses" so determined by the Commission shall be regarded as listed uses. In no instance, however, shall these regulations be so interpreted to permit a use in a district when such use is specifically listed and permitted in a less restricted district: e.g., a use specifically set forth in the "C2" District shall not be permitted in the "C1" District.

### **DISCUSSION:**

The massage businesses in question differ from a massage establishment because (1) they are limited to body extremities (i.e., neck, shoulders, feet) and (2) the services are provided in an unenclosed publicly visible environment.

One alternative action, in lieu of making the recommended interpretation, would be to amend the Zoning Ordinance to allow massage services in the C2 zoning district.

### **RECOMMENDATION:**

Determine that massage services, involving only body extremities (i.e., neck, shoulders, feet) and performed in an unenclosed publicly visible environment, be allowed as a permitted use in the C2 district under XI-10-54.02 "Other Uses Permitted by Commission".



- 19.02-35 Thrift store.
- 19.02-35.1 Tutoring centers.
- 19.02-36 Upholstering shop, if conducted wholly within a completely enclosed building.
- 19.02-37 Deleted by Ord. 38.697.
- 19.02-38 Wholesale or discount merchandise broker, excluding exterior storage.
- 19.02-39 Other uses similar to the above as provided for in Subsection XI-10-54.02. (Ord. 38.761 (part), 5/20/03; Ord. 38.711 (part), 8/20/96; Ord. 38.710 (part), 8/6/96; Ord. 38.702 (3) (part), 8/15/95; Ord. 38.697 (2), 12/20/90; Ord. 38.694 (2) (part), 10/4/94; Ord. 38.637 (part), 8/16/88; Ord. 38.551, 9/7/82; Ord. 38 (part), 3/15/55)

### **XI-10-19.03 Uses Permitted Subject to Securing a Conditional Use Permit**

The following uses may also be permitted in their location if first approved by the Commission, as provided for in Section XI-10-57:

- 19.03-1 Arcades, with mechanical or electronic games or games of skill or science, excluding Adult Arcades as defined in Subsection 54.18.
- 19.03-2 Auction halls.
- 19.03-3 Auto repair shops of all kinds, radiators, paint, body, glass, brakes, upholstery and other types, if all operations are conducted wholly within a completely enclosed building.
- 19.03-4 Auto, mobile home, recreational vehicle and truck rental agency.
- 19.03-5 Auto, mobile home, recreational vehicle, truck and boat sales with accessory repairs and services. Said accessory repairs and services shall be conducted wholly within a completely enclosed building.
- 19.03-6 Auto sales, outdoor (new and used cars in operable condition only).
- 19.03-7 Automobile service stations with or without service bays. Entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line.
- 19.03-7.1 Billiard center.
- 19.03-8 Cabinet or carpenter shop if conducted wholly within a completely enclosed building.
- 19.03-9 Car wash.
- 19.03-9.1 Small and large family child care home, and child care center.
- 19.03-10 Cocktail lounges with or without live entertainment, excluding Adult Businesses as defined in Subsection 54.18.
- 19.03-11 Commercial laboratories, analytical chemists.
- 19.03-12 Commercial recreation, not conducted wholly within a building, such as but not limited to miniature golf, go-cart tracks, batting range, skateboard park, water slide, swimming pools, etc.
- 19.03-13 Contractors' yards and offices.
- 19.03-14 Churches.
- 19.03-15 Disinfection and extermination business.
- 19.03-16 Electric and neon sign shops if conducted wholly within a completely enclosed building.
- 19.03-16.1 Farmers' Market, excluding flea market.
- 19.03-17 Food stores, such as supermarkets, convenience stores, etc.
- 19.03-18 Funeral homes, morticians.
- 19.03-19 Halls for banquets, etc.
- 19.03-19.1 Hospital or sanitarium (except pet hospital).
- 19.03-20 Liquor stores.
- 19.03-21 Local transportation service facilities (taxi, parcel service, ambulance, armored car and van storage).
- 19.03-22 Lumberyards.
- 19.03-23 Tanning salons.
- 19.03-24 Mini-storage complex with or without caretaker residence.
- 19.03-25 Motels and Hotels, excluding Adult Hotels/Motels, as defined in Subsection 54.18.
- 19.03-26 Nursery, flower or plant, provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.
- 19.03-27 Pawnshops.
- 19.03-28 Pet hospitals and veterinarians.
- 19.03-29 Plumbing or sheet metal shop, if conducted wholly within a completely enclosed building.
- 19.03-29.1 Private elementary, middle, or high school.
- 19.03-30 Deleted by Ord. 38.688.

- 19.03-31 Public services, including electric distributing substation, fire or police station and the like.
- 19.03-32 Public utility service yards, garages, and substations.
- 19.03-33 Radio or television stations.
- 19.03-34 Rentals: tools, trucks, trailers, etc., which include outdoor storage areas.
- 19.03-35 Residential buildings, caretakers.
- 19.03-36 Restaurants, restaurants which include on-premise consumption of alcoholic beverages when found clearly incidental to the primary food service or including dancing or live entertainment, or restaurants which include internet usage for customers, excluding Adult Businesses, as defined in Subsection 54.18.
- 19.03-37 Self-service storage facilities such as mini-storage complex, etc.
- 19.03-38 Sign painting shop, if conducted wholly within a completely enclosed building.
- 19.03-39 Temporary tract advertising signs with the exception that no tract sign shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.
- 19.03-39.1 Theaters, indoor only, excluding Adult Theaters or Adult Motion Picture Theaters as defined in Subsection 54.18.
- 19.03-40 Tire shops.
- 19.03-41 Vehicle oriented window service facility.
- 19.03-42 Video sales and rental store.
- (Ord. 38-770 (4) (part), 1/2/07; Ord. 38.761 (part), 5/20/03; Ord. 38.760 (3), 9/17/02; Ord. 38.711 (part), 8/20/96; Ord. 38.710 (part), 8/6/96; Ord. 38.705 (2), 8/15/95; Ord. 38.702 (1) (part), 8/15/95; Ord. 38.697 (1) (part), 12/20/94; Ord. 38.694 (2) (part), 10/4/94; Ord. 38.688 (part), 3/15/94; Ord. 38.662 (A) (part), 1/8/91; Ord. 38.637 (part), 8/16/88; Ord. 38.551, 9/7/82; Ord. 38.591, 11/5/85; Ord. 38.511, 5/6/80; Ord. 38 (part), 3/15/55)

#### **XI-10-19.04 Development Standards**

- 19.04-1 Height of Structures. No limitation subject to compliance with all applicable City Codes and ordinances.
- 19.04-2 Lot Area. Ten thousand (10,000) square feet minimum, except those lots in existence at the time of the adoption of this amendment to the Zoning Ordinance.
- 19.04-3 Minimum Lot Width. One hundred (100) feet measured at front property line abutting a major street, except those lots in existence at the time of the adoption of this amendment to the Zoning Ordinance.
- 19.04-4 Front Yard. None.
- 19.04-5 Rear Yards and Side Yards. Where the rear or side of a Commercial lot abuts a Residential District there shall be a rear yard or a side yard of not less than fifteen (15) feet in depth or width, or both.
- 19.04-6 Floor Area Ratio. Subject to XI-10-2.38.2, the Floor Area Ratio is .50 (50%). (Ord. 38.713 (1) (part), 12/3/96; Ord. 38.637 (part), 8/16/88; Ord. 38.473, 3/6/79; Ord. 38 (part), 3/15/55)

#### **XI-10-19.05 Traffic Hazards**

In every case where a parcel is located in a C2 District that is combined with the special S Zoning Area, the Planning Commission shall review and approve, among other factors, the specific location and amount of accessways with regard toward the elimination or reduction of any potential traffic hazards. In addition, the Commission may require the construction of temporary median barriers where deemed necessary based on ultimate street construction. (Ord. 38.637 (part), 8/16/88)

#### **XI-10-19.06 Off-Street Parking Requirements**

There shall be provided off-street parking for automobiles in terms of design layout and sufficient quantity in accordance with the requirements of Section 53. All such parking shall be improved as provided for in Subsection 54.03. (Ord. 38.760 (3), 9/17/02; Ord. 38.637 (part), 8/16/88; Ord. 38 (part), 3/15/55)

**XI-10-19.07 Standard Conditions**

19.07-1 All uses and operations, except off-street parking and loading, reverse vending machines or mobile recycling units and other uses and activities customarily conducted out-of-doors, shall be conducted within a completely enclosed building.

19.07-2 All outdoor storage areas of such things as trash and materials shall be within a completely enclosed building or behind a visually obscure solid wall or tight board fence a minimum six (6) feet in height.

19.07-3 Such uses, operations or products shall not be objectionable due to odor, dust, smoke, noise, vibration or other similar causes. (Ord. 38.760 (3), 9/17/02; Ord. 38.637 (part), 8/16/88; Ord. 38.629 (A) (part), 10/27/87; Ord. 38 (part), 3/15/55)

**XI-10-19.08 Areas for Collecting and Loading Recyclable Materials**

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of Subsection 54.15 of this Chapter. (Ord. 38.687 (1) (part), 4/19/94)

**XI-10-19.09 Conformance with Midtown Specific Plan**

The Midtown Specific Plan policies, as well as the Design Guidelines and Standards set forth in Chapter 8 of the Plan, shall apply to all properties within the Midtown area if any one or more of the following occurs:

- a) Whenever a new building is constructed, regardless of size; or
- b) Whenever the use an existing building is expanded or changed to a use requiring 50% or more off-street parking spaces, as determined by the City's adopted parking standards; or
- c) Whenever an existing building is increased in gross floor area by 10% of the existing gross floor area or is enlarged by 500 or more square feet, whichever is less (all additions or enlargements completed since May 2, 2002 shall be totaled).

If exterior building or site improvements (including signage) are proposed that do not fall under a) through c) above, such improvements shall be designed to conform to the Midtown policies, guidelines and standards applicable to the improvements, without requiring additional Midtown-related improvements to be imposed. (Ord. 38.760 (2), 9/17/02)