

REGULAR

NUMBER: 172.6

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 6 OF TITLE III OF THE MILPITAS MUNICIPAL CODE RELATING TO MASSAGE ESTABLISHMENTS AND PRACTITIONERS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of June 18, 2019, upon motion by Councilmember Nuñez and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the California State Legislature, through AB 1147 (2014) and AB 2194 (2016), has amended the Massage Therapy Act (California Business and Professions Code, § 4600 *et seq.*) and returned certain regulatory authority over the business of massage to the local level and clarified its intent; and

WHEREAS, the Massage Therapy Act enables consumers and local governments to more easily identify certified massage professionals, provides for consistent statewide certification and oversight of massage professionals, ensures that approved schools of massage provide a high level of training, and assists local governments and law enforcement in meeting their duty to maintain the highest standards of conduct in massage establishments by vetting and disciplining certificate holders, among other things; and

WHEREAS, the Massage Therapy Act requires local governments to impose and enforce only reasonable and necessary fees and regulations on massage businesses and massage establishments, in keeping with the requirements of existing law and being mindful of the need to protect legitimate business owners and massage professionals, particularly sole providers; and

WHEREAS, the City of Milpitas (hereafter, “City”) has identified changes needed in its current massage regulations to meet revised State law, to eliminate obsolete language and to improve clarity, efficiency, and efficacy to the City’s regulations; and

WHEREAS, the regulations and restrictions contained in this Ordinance are designed to protect the public health, safety, and welfare by providing for the orderly regulation of businesses that provide massage therapy services, discouraging prostitution and related illegal activities carried on under the guise of massage therapy, and establishing certain sanitation, health, and operational standards for massage businesses; and

WHEREAS, the permit requirements and restrictions imposed by this Ordinance are reasonably necessary to protect the health, safety and welfare of the citizens of the City.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE III, CHAPTER 6

Title III, Chapter 6 of the Milpitas Municipal Code is hereby repealed and replaced with the text below to read as follows:

Chapter 6 - MASSAGE ESTABLISHMENTS AND PRACTITIONERS

Sections:

III-6-1 - Purpose and Intent

The purpose and intent of this Chapter is to provide for the orderly regulation of massage businesses in the interest of the public health, safety and welfare of the residents of the City of Milpitas. The City wishes both to recognize the practice of massage as a valid professional field and to discourage prostitution, human trafficking and other unlawful activity which otherwise may become associated with some massage establishments. The intent of these regulations is that no person shall perform or administer a massage for compensation in the City of Milpitas, unless such person has in effect a valid certificate issued by the California Massage Therapy Council (CAMTC) and such person complies with State law and the requirements of this Chapter.

This Chapter relies upon the State certification process of the California Massage Therapy Council under California Business and Professions Code section 4600 et seq. In addition, this Chapter provides certain minimum standards for the operation of massage businesses.

This Chapter is adopted under the authority of Government Code sections 51030 through 51034, Government Code section 37101, Business and Professions Code section 16000, and California Constitution Article XI, Section 7.

III-6-2 – Definitions

Unless a particular provision or its 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) “Act” means the Massage Therapy Act (Business and Professions (B&P) Code Section 4600, et seq.), as amended.
- (b) “Applicant” means the permit applicant and each owner.
- (c) “California Massage Therapy Council” or “CAMTC” means the California Massage Therapy Council established under Business and Professions Code section 4602.
- (d) “Certified massage practitioner” or “massage practitioner” means a person who is currently certified as a massage practitioner by the CAMTC pursuant to Business and Professions Code sections 4604.1 and/or 4604.2.
- (e) “Certified massage therapist” or “massage therapist” means a person who is currently certified as a massage therapist by the CAMTC pursuant to Business and Professions Code section 4604.
- (f) “Chief of Police” means the Chief of Police of the City of Milpitas Police Department, or his or her designee.
- (g) “Compensation” means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value. In addition to accepting other forms of compensation, a person may be deemed to have received compensation for performing a massage when the massage is offered as part of a membership, as part of a package of services or as incidental to the purchase of a product.
- (h) “Employee” means any person hired by a massage establishment who renders any service for the business/owner in exchange for any form of compensation from the business, including independent contractors.
- (i) “Managing officer/employee” means a person that can or does have or share ultimate control over the day-to-day operations of a business.
- (j) “Massage” means any method of treating the external parts of the body, usually with the hands, so as to stimulate circulation and make muscles or joints supple, or relieve tension, for remedial, or health purposes offered in return for any form of compensation. Methods of massage include, but are not limited to, stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the body with or without the aid of any mechanical or electrical apparatus or appliances. Massage may occur with or without supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice; or by baths, including but not limited to, Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, fomentation, or any other type of bath. Massage includes the application of various manipulation or touch techniques to the muscular structure and soft tissues of the human body as defined in the Act, Business and Professions Code section 4601(e), and recognized as legitimate by CAMTC.
- (k) “Massage establishment” means any establishment having a fixed place of business where any person, firm, association, partnership, corporation or other entity engages in, conducts, or carries on, or permits to be engaged in, conducted or carried on, any massage for compensation. For the purpose of this Chapter, the term “massage establishment” shall also include, but not be limited to, any business providing off-premises massage services.
- (l) “Massage technician” means and includes both a “massage practitioner” and a “massage therapist” as defined by this Chapter.
- (m) “Off-premises massage service” means any business where a function of such business is to engage in or carry on massage, not at a fixed location but at a location designated by the customer, massage technician, or other person, and sometimes known as an out-call massage service.
- (n) “Owner” means any individual who has any direct or indirect ownership interest in a massage establishment.

- (o) “Permit” means a Massage Establishment Permit issued pursuant to this Chapter. For purposes of this Chapter, the term “permit” shall not be used to refer to a business license issued by the Finance Department or to any permit or approval issued pursuant to Milpitas Municipal Code Title XI, Chapter 10, unless the specific context provides otherwise.
- (p) “Permittee” means the applicant and each owner(s) who has been issued a massage establishment permit or off-premises massage service permit.
- (q) “Rent-space massage therapist” means a person who provides massage at a massage establishment but is not an employee of the business.
- (r) “Sole provider” means a massage business where the owner owns 100 percent of the business, is the only person who provides massage for compensation at or for that business, and has no other employees, independent contractors or rent-space massage therapists.

III-6-3 – CAMTC Certification and Permit Required

- (a) Individuals. On and after January 1, 2020, it shall be unlawful for any individual to practice massage therapy for compensation whether as a sole provider, as an employee or rent-space therapist of a massage establishment, or in any other capacity within the City of Milpitas unless that individual obtains and maintains a valid certificate from CAMTC as a certified massage practitioner or certified massage therapist.
- (b) Massage Establishments. On and after January 1, 2020, it shall be unlawful for any person, association, partnership, corporation or any other entity to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises within the City of Milpitas, the operation of a massage establishment unless all massage technicians providing massage, whether as employees or rent-space therapists, maintain a valid certificate from CAMTC as a certified massage practitioner or certified massage therapist, and said massage establishment has obtained a permit issued by the City of Milpitas pursuant to the provisions set forth in this Chapter.

III-6-4 - Business License Requirement

At the time of application for a permit to operate a massage establishment, the applicant shall also apply for and furnish the information necessary to obtain a business license as required by Title III, Chapter 1 of this Code. No business license shall be issued until the investigation is completed and the Massage Establishment Permit is approved. The business license shall be issued upon approval of the Massage Establishment Permit and upon payment of the business license fee as provided in Title III, Chapter 1.

III-6-5 – Exemptions

The provisions of this Chapter shall not apply to the following establishments or classes of individuals who perform massage while employed in their professional capacities:

- (a) Physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists, who are duly licensed to practice their respective professions in the State of California and persons working directly under the supervision of such licensed persons. "Working directly under the supervision" means that the person is an employee of the licensed person, is working at the same location as the licensed person, has his or her work supervised by the licensed person, and that the licensed person is present when the employee is performing massage. This exemption shall not apply if the business performs massage on persons for whom the licensed person does not provide professional services.
- (b) Barbers, beauticians, cosmetologists, and other persons licensed to practice any healing art under the provisions of Division 2 (commencing with Section 500) of the California Business and Professions Code while engaging in practices within the scope of their licenses, and who perform massage only on the neck, face and/or scalp of the customers.
- (c) Personal fitness training centers, gymnasiums, athletic facilities or health clubs, when the giving of massage for compensation is not a principal function of such businesses. The determination of whether massage constitutes a principal or incidental function of personal fitness training centers, gymnasiums, athletic facilities or health clubs shall be made by the Chief of Police, based upon consideration of the percent of income that the business derives from massages, the amount of floor space devoted to and the number of employees assigned to massage services, as well as the manner in which the business advertises and holds

itself out to the public. The decision of the Chief of Police regarding whether a particular business is entitled to this exemption shall be final.

- (d) Hospitals, nursing homes, sanitariums, or any other healthcare facilities duly licensed by the State of California.
- (e) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.
- (f) 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 an outdoor road or bike race.
- (g) Sole providers, including sole providers operating an off-premise massage service, who have a valid certificate issued by the CAMTC pursuant to the Act, either as a certified massage practitioner or a certified massage therapist, and who are practicing consistent with the qualifications established by such certificate. To qualify for this exemption, a sole provider shall file a copy of his or her current, valid massage practitioner or massage therapist certification and identification card issued by the CAMTC with the Chief of Police and comply with each of the following:
 - (1) The requirement to obtain a business license from the City of Milpitas pursuant to Title III, Chapter 1 of this Code;
 - (2) Section III-6-8 (to the extent applicable and excluding subsection 6-8(k)), III-6-9, and III-6-20 of this Chapter; and
 - (3) All applicable local health and safety, building, zoning and other requirements.

III-6-6 - Massage Establishment Permit

- (a) Any person desiring to obtain a Massage Establishment Permit shall file a written application with the Chief of Police on a form provided by the City. At the time of filing an application for a Massage Establishment Permit, applicants shall pay a non-refundable fee in an amount established by resolution of the City Council.
- (b) The application and fee required under this Section shall be in addition to any license, permit or fee required under any other chapter of this Code or any other regulation of the City of Milpitas.
- (c) The application for a Massage Establishment Permit does not authorize a massage establishment to operate until such permit has been issued. The massage establishment shall also obtain any approvals or permits required by Title XI, Chapter 10 (Zoning Ordinance) of this Code.
- (d) The applicant for a permit, each owner of the massage establishment and the managing officer/employee 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 full, true name, other names used, date of birth, California driver's license number or California identification number, social security number (unless prohibited by law), present home address and home telephone number.
 - (4) The sex, height, weight, color of hair, and color of eyes.
 - (5) Proof that the applicant is at least eighteen (18) years of age.
 - (6) The previous two (2) residences and the inclusive dates at each address.
 - (7) The business, occupation, and employment history for ten (10) years preceding the date of application, and the inclusive dates of same.
 - (8) The massage permit history, including: whether such person has ever had any such permit or license issued by any agency, board, city, county, territory, or state; the date of issuance of such a permit or license; whether the permit or license was revoked or suspended or other disciplinary action taken and the reason therefor.
 - (9) All convictions for any crime involving conduct which requires registration under California Penal Code Section 290, convictions under California Penal Code Sections 266i, 314, 315, 316, 318, 647(a), 647(b), or 415 as a result of an arrest for 647(b) (as now written or as amended), or convictions of crimes designated in Government Code Section 51032 (as now written or as amended), including any felony involving the sale of a controlled substance specified in Sections 11054-11058 of the California Health and Safety Code (as now written or as amended), or convictions of any crime involving

- dishonesty, fraud, deceit, violence or moral turpitude, and any outstanding warrants for arrest and any pending criminal case. Convictions that have been expunged must be reported.
- (10) All convictions for crimes under the laws of any other state or country which proscribe the same conduct or similar conduct as the California crimes designated in Section 6(d)(9). Convictions that have been expunged must be reported.
 - (11) All injunctions that have been issued against the applicant for nuisances under California Penal Code Section 11225 or for nuisances issued under similar laws of other states.
 - (12) A complete description of all services to be provided.
 - (13) A register that lists all massage technicians providing massage at or through the business, whether as employees, independent contractors and rent-space therapists, and each such person's state certificate number, home address, date of hiring, and whether the massage technician will be performing outcall massage. For each proposed massage technician, a copy of that person's current certification from the CAMTC as a certified massage practitioner, certified massage therapist, or conditionally certified massage practitioner and a copy of that person's CAMTC-issued identification card.
 - (14) The name, address, date of birth, California driver's license number or California identification number, social security number (unless prohibited by law), of each other employee who is or will be employed in the massage establishment.
 - (15) The name and address of any other massage business or other like establishment owned or operated by any person whose name is required to be given pursuant to this section.
 - (16) If the applicant is a corporation, limited liability company or other entity type, the name of the corporation or company shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and the names and home addresses of each of its current officers and directors, and of each stockholder or member.
 - (17) If the applicant is a partnership, the application shall set forth the name and home address(es) of each of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the Secretary of State. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporate applicants shall apply to the corporate partner as well.
 - (18) The name of the owner or employee designated by the applicant who shall act as the managing officer/employee. Such person shall complete and sign all application forms required of an individual applicant under this Chapter. The managing officer/employee must, at all times, meet all of the requirements set for permittees by this Chapter or the permit shall be suspended until a managing officer/employee who meets such requirements is designated. If no such person is designated within ninety (90) days, the permit is deemed canceled and a new application for permit must be filed.
 - (19) For each applicant or owner who is not CAMTC certified, fingerprints must be furnished at a place designated by the Chief of Police. Any fee required for fingerprinting fee will be the responsibility of the applicant.
 - (20) Two (2) photographs of the applicant, each owner and managing officer/employee to be taken by the Police Department.
 - (21) A description of any other business to be operated on the same premises, or on adjoining premises, owned or controlled by the applicant or owners.
 - (22) The name and address 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 and a notarized acknowledgment from the owner of the property that a massage establishment will be located on his or her property.
 - (23) Authorization for the City of Milpitas, its agents and employees, to seek information and conduct an investigation into the truth of the statements set forth in the application.
 - (24) Proof of massage malpractice insurance in the sum of not less than one hundred thousand dollars (\$100,000.00) per licensed massage technician employed at the massage establishment up to a maximum of five hundred thousand dollars (\$500,000.00). This requirement may be satisfied by malpractice insurance being provided in the name of individual massage technicians.
 - (25) The applicant shall notify the Chief of Police of any change of address or fact that may occur during the process of applying for a permit.

(e) Processing of Application and Investigations.

- (1) The Chief of Police shall have up to sixty (60) days after submission of all required information, including the required certificate of occupancy, to investigate the application and the background of the applicant, provided said sixty (60) days may be extended for such period as may be necessary to obtain fingerprint records from the appropriate state agency.
 - (2) Upon receipt of an application for a new massage establishment, the Chief of Police shall refer the application to the City's applicable departments, which shall review the application and if necessary, inspect the premises to ensure that the operation of the business at the designated site will comply with the provisions of this Chapter and the City's zoning, building, fire and safety standards, and any other applicable codes. If any permit or approval is required for the massage establishment pursuant to Title XI, Chapter 10 (Zoning Ordinance) of this Code, the applicant shall comply with such requirements.
- (f) Grounds for Denial. Upon the completion of the investigation, the Chief of Police shall grant the permit, with or without conditions, if the Chief of Police finds in the exercise of his or her discretion all of the following:
- (1) The required fee has been paid.
 - (2) The application conforms in all respects to the provisions of this Chapter and to all other laws.
 - (3) The applicant has not made a material misrepresentation in the application.
 - (4) The applicant, each owner and the managing officer/employee has not, within ten (10) years preceding the submission of the application, been convicted of, or pleaded guilty or no contest to, conduct which is a violation of the provisions of California Penal Code Sections 266i, 314, 315, 316, 318, 647(a), 647(b) or 415 as a result of an arrest for 647(b) (as now written or as amended), or of any crime designated in California Government Code Section 51032 (as now written or as amended), including any felony involving the sale of a controlled substance specified in Sections 11054—11058 of the California Health and Safety Code (as now written or as amended), or of any other crime involving dishonesty, fraud, deceit, violence or moral turpitude, or has not been enjoined under California Penal Code Section 11225 through 11235 (as now written or as amended). Convictions under the laws of other states or countries which proscribe the same or similar conduct as the California crimes stated above shall also be considered.
 - (5) The applicant, each owner and the managing officer/employee is not required to register under the provisions of California Penal Code Section 290.
 - (6) Within five (5) years preceding application, the applicant, owner(s) or managing officer/employee has not had a massage establishment permit, massage practitioner permit, or other similar permit or license revoked or suspended by the City of Milpitas, or any other state or local agency, and has not been subject to discipline by any state or local agency for conduct that would be grounds for revocation of a permit under this Chapter.
 - (7) The applicant, each owner and the managing officer/employee is at least eighteen (18) years of age.
 - (8) 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 operating standards.
- (g) Notice to applicant of Grant or Denial of Application. The Chief of Police, or authorized representative, shall give written notice to the applicant of the grant or denial of the application for a permit. If the application is denied, the notice shall advise the applicant of the reasons for the denial and his/her right to appeal through the procedures set forth in Section III-6-18. The Chief of Police may delay issuance of the permit if the applicant is being prosecuted for a violation of any of the Penal Code sections specified in Section III-6-6(f)(4) until final adjudication. If the applicant pleads guilty, pleads no contest, or is found guilty, the Chief of Police shall deny the application.

III-6-7 - Massage Establishment Operating Standards

Each massage establishment that is permitted under this Chapter shall comply with each and all of the following requirements:

- (a) At all times during business hours the permit issued pursuant to Section III-6-6 shall be displayed. The permit shall be displayed in a conspicuous place so that it may be readily seen by all persons entering the premises of the massage establishment.

- (b) Each massage technician shall be CAMTC certified and in good standing. It shall be unlawful for a permittee to employ or permit a person to provide massage as a rent-space therapist who is not listed on the massage technician register provided pursuant to Section III-6-6(d)(13). If a massage technician's CAMTC certification is suspended or revoked or if an individual is not CAMTC certified, the permittee shall not allow such person to provide massage at or through the massage establishment.
- (c) A massage technician shall operate only under the name specified in his or her CAMTC certificate. A massage establishment shall only operate under the name designated in its permit.
- (d) The permittee shall display the CAMTC certificate of each and every massage technician in an open and conspicuous place on the premises. The permittee shall also ensure that all massage technicians comply with the provisions of the Massage Therapy Act (B&P Code § 4608) requiring that a certificate holder have his or her identification card in his or her possession while providing massage services for compensation.
- (e) Massage services shall be provided or given only between the hours of 7:00 a.m. and 10:00 p.m. No massage establishment shall be open and no customer shall be in such massage establishment between the hours of 10:30 p.m. and 7:00 a.m.
- (f) A list of services available, and the cost of such services, shall be posted in an open public place within the premises and shall be described in readily understandable language. No permittee shall allow, and no massage technician shall offer or perform, any service other than those posted.
- (g) A written daily register recording each client, the assigned room (or location of outcall massage service), the massage technician who treated the client, a description of service(s) performed, the price of the services, including any gratuity or tip, and the time of the appointment shall be maintained. This daily register shall be completed by the close of business each day. Such records shall be open to inspection only by members of the Police Department, City Code Enforcement Officers, and the City Attorney, who are charged with enforcement of this Chapter. These records may not be used for any other purpose than as records of services provided and may not be provided to other parties by the massage establishment unless otherwise required by law. Such records shall be retained on the premises of the massage establishment for a period of two (2) years.
- (h) The permittee shall be responsible for ensuring that each and every massage technician complies with the provisions of the Massage Therapy Act (B&P Code § 4609) related to dressing requirements, including dressing while engaged in the practice of massage for compensation, or while visible to clients in a massage establishment, in attire that is not: transparent, see-through, or substantially exposes the certificate holder's undergarments; swim attire, if not providing a water-based massage modality approved by CAMTC; a manner that exposes the certificate holder's breasts, buttocks, or genitals; a manner that constitutes a violation of section 314 of the Penal Code; or a manner that has been deemed by CAMTC to constitute unprofessional attire.
- (i) No person shall enter, be, or remain in any part of the premises 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, managing officer/employee, manager, or permittee shall not permit any such person to enter or remain upon such premises.
- (j) No massage establishment shall operate as a school of massage, or use the same facilities as that of a school of massage.
- (k) The permittee shall comply with the Massage Therapy Act (B&P Code §§ 4608, 4609, 4611) provisions relating to advertising, including requiring certificate holders: to include the name under which he or she is certified and his or her certificate number in any and all advertising of massage for compensation; to not engage in sexually suggestive advertising related to massage services; to not hold himself or herself out as a certified massage therapist or practitioner, or use terms such as "licensed" or "certified," that imply that an uncertified person is certified as a massage therapist or practitioner; to not falsely state or advertise or put out any sign or card, or to falsely represent to the public, that any individual is licensed, certified, or registered as a massage therapist or practitioner if that individual is not so certified.
- (l) A massage shall not be given unless the patron's genitals are fully covered.
- (m) The permittee shall be responsible for ensuring that each and every massage technician complies with the Massage Therapy Act (B&P Code § 4609(a)) provisions relating to sexual acts, including the prohibitions on: engaging in any form of sexual activity on the premises of a massage establishment where massage is provided for compensation, excluding a residence; engaging in sexual activity while providing massage services for compensation; providing massage of the genitals or anal region; or providing massage of female breasts without the written consent of the person receiving the massage and a referral from a licensed California health care provider.

- (n) The permittee must comply with all state and federal laws, including but not limited to those pertaining to disabled clients.
- (o) Any change with respect to the information contained in the permittee's application shall be reported to the Chief of Police within ten (10) days of such change.

III-6-8 - Massage Establishment Facilities Regulations

In addition to the operating conditions under section III-6-7, every massage establishment shall maintain facilities that meet the following requirements:

- (a) Comply with all applicable building, fire, safety, health, electrical, plumbing, mechanical, heating and ventilating, sanitation, and other laws and regulations of the City of Milpitas applicable to the premises.
- (b) Provide minimum lighting in accordance with Article 220 of the Uniform Electrical Code and, in addition, at least one artificial light of not less than forty (40) watts shall be provided in each room or enclosure where massage services are performed on patrons.
- (c) Maintain an adequate supply of clean sanitary towels, table coverings and linens. Clean towels, coverings and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one (1) patron, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one (1) patron. Soiled linens and paper towels shall be deposited in separate, approved receptacles.
- (d) Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools, shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with an approved disinfectant. Bathtubs shall be thoroughly cleaned with an approved 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.
- (e) Instruments utilized in performing massage shall not be used on more than one (1) patron unless they have been sterilized using approved sterilization methods.
- (f) Adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be available.
- (g) Provide either a separate room or dressing and locker facilities for each client. However, dressing and undressing may occur in the same room as massage therapy if the client is alone in the room with the door(s) closed and opaque coverings are present on any windows while undressing or dressing.
- (h) Treatment room doors shall remain unlocked at all times.
- (i) A minimum of one wash basin for massage technicians shall be provided at all times. Such basin shall be located within, or as near as practicable to, the treatment area devoted to the performing of massage. Sanitary towels shall also be provided at each basin. Hot and cold running water shall be available at all times.
- (j) Pads used on massage tables shall be covered with a durable, washable plastic or other waterproof material.
- (k) At least one entrance door, allowing access to the massage establishment and any building it may be located in, shall remain unlocked during business hours. This section shall not prohibit a massage establishment from locking its external doors if the massage establishment is a sole proprietorship (owned by one individual with one or no employees or rent-space therapists).

III-6-9 - Inspection by Officials

The investigating and enforcing officials of the City of Milpitas, or their designees, shall have the right to enter the premises of any permitted massage establishment during regular business hours to make reasonable inspections and to observe and enforce compliance with the applicable regulations, laws, and provisions of this Chapter. The City shall conduct inspections shall be conducted at a time and in a manner that will minimize business interruption.

III-6-10 - Permits Non-Assignable

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, however, stock or ownership interests of the owners may be sold, transferred, issued, or assigned to those owners who have been named on the permit application. If any stock or

ownership is sold, transferred, issued, or assigned to a person not listed on the application as an owner, the permit shall be deemed terminated and void unless the identities of the new owners are reported to the Chief of Police at least ten (10) days prior to such transfer. The new owners shall meet all requirements under this Chapter for applicants. If the Chief of Police, in his or her discretion, determines that the person satisfies the requirements relating to applicants, the existing permit shall be endorsed to include the person. A fee as set by resolution of the City Council shall be paid to the City for the investigation by the Chief of Police (or his or her authorized representative) necessitated by each sale or transfer.

III-6-11 - Change of Location

A change in the location of a massage establishment must be submitted for approval by the Chief of Police, the Planning Director, and the Fire Chief, or their designated representatives. A change in the location of a massage establishment may require approval in accordance with the provisions of Milpitas Municipal Code, Title XI, Chapter 10 (Zoning Ordinance). If the Chief of Police, in his or her discretion, determines that the new location satisfies the requirements of this Chapter, the existing Massage Establishment Permit shall be amended for the new location. A fee, as set by resolution of the City Council, shall be paid to the City to cover the cost of the investigation by the Chief of Police (or his or her authorized representative) necessitated by each change of location.

III-6-12 – Reserved

III-6-13 – Notifications

- (a) A permittee shall notify the Chief of Police, or his or her designee, in writing, of the name and address of each new massage technician employed or retained as a rent-space massage therapist at least five (5) days prior to the person's employment or other contract and update the massage technician register with the information specified in section III-6-6(d)(13). The requirements of this section are in addition to the other provisions of this Chapter and nothing contained herein shall relieve the permittee of the responsibility of ascertaining, prior to employment or other contract, that such new massage technician has a valid CAMTC certification.
- (b) A permittee shall immediately report to the Chief of Police, or his or her designee, any of the following:
 - (1) Arrests of any massage technicians, employees or owners for an offense other than a misdemeanor traffic offense;
 - (2) Resignations, terminations or transfers of massage technicians employed or retained as a rent-space massage therapist by the permittee's business;
 - (3) Any disciplinary action taken by the CAMTC regarding a massage technician, employee or owner and submit a copy of any notice or order;
 - (4) The occurrence of any event that constitutes a violation of this Chapter or state or federal law related to the conduct of the massage business.

III-6-14 - Renewal of permits

Each Massage Establishment Permit shall expire on the anniversary date of the issuance of the permit unless suspended or revoked. Permittees shall have thirty (30) days from the date of expiration to renew their permits and may apply for such renewal thirty (30) days prior to expiration. If, upon the thirty-first (31st) day after its expiration an application of renewal has not been received, the permit shall be deemed suspended until such time as the renewal application has been received. No privilege to provide massage shall exist until an application for renewal has been submitted for review. If a renewal application and all required information for the renewal is not received within sixty (60) days after expiration, the permit shall be deemed expired and no privilege to provide massage shall exist.

Permittees shall submit an application for renewal each year in the same manner as required for an original application.

III-6-15 - Application of Regulations to Existing Massage Establishments

The provisions of this Chapter shall be applicable to all massage establishments, whether the business was established before or after the effective date of this Chapter. Massage establishments legally in business prior to the effective date of this Chapter shall have until January 1, 2020 to obtain a Massage Establishment Permit and to comply with the provisions of this Chapter.

III-6-16 – Reserved

III-6-17 - Permit Suspension or Revocation

- (a) The Chief of Police, or authorized representative, may revoke or suspend a massage establishment permit if:
- (1) The permittee, or a managing officer/employee, an employee, or rent-space massage therapist has made any false, misleading or fraudulent statement of material fact in any application, report or record required to be filed with the City.
 - (2) The permittee, or a managing officer/employee, an employee, or rent-space massage therapist, has failed to comply with any of the requirements, regulations, standards or conditions of this Chapter.
 - (3) An individual who is not a certified massage therapist or a certified massage practitioner, or whose CAMTC certification is suspended or revoked, has provided massage at or through the massage establishment.
 - (4) The permittee, or a managing officer/employee, an employee, or rent-space massage therapist, has allowed or permitted, with or without knowledge, the occurrence of criminal activity on the premises of the massage establishment business or in the conduct of the off-premises massage services.
 - (5) There have been one or more acts prohibited under California Penal Code Sections 266i, 314, 315, 316, 318, 647(a), 647(b), or 415 as a result of an arrest for 647(b) (as now written or as amended), or under Government Code Section 51032 (as now written or as amended), including any felony involving the sale of a controlled substance specified in Sections 11054-11058 of the California Health and Safety Code (as now written or as amended), or any acts requiring registration under California Penal Code Section 290, or of any other criminal acts involving dishonesty, fraud, deceit, violence, or moral turpitude, taking place on the premises of the massage establishment or in the conduct of the off-premises massage services, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the permittee.
 - (6) The permittee, or a managing officer/employee, an employee, or rent-space massage therapist has committed a misdemeanor, felony or violation of this Chapter in the conduct of the massage establishment.
 - (7) The permittee has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this code, or sections 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the state of California.
 - (8) The permittee, or a managing officer/employee, an employee, or rent-space massage therapist has failed to abide by any disciplinary action previously imposed by an authorized City official.
- (b) Any act or omission of any massage technician providing massage at or through the permittee’s business, including rent-space therapists, which constitutes a violation of this Chapter shall be deemed a violation of the permittee.
- (c) On determining that grounds for permit suspension or revocation exist, the Police Chief, or designee, shall serve the permittee with written notice of the proposed suspension or revocation. The notice shall state the ground or grounds upon which the decision is based, the effective date of the decision, the right of the permittee to appeal the decision, and that the Police Chief’s decision will be final if no written appeal is timely submitted in accordance with Section III-6-18 of this Chapter. The notice is effective within fifteen (15) calendar days from the date of service of the notice. If an appeal is timely and properly filed, then the effective date of the notice is stayed.
- (d) No reapplication will be accepted within one (1) year after a permit is revoked.

III-6-18 - Appeal Procedures

(a) Appeal to City Manager.

- (1) The permittee or applicant, not later than fifteen (15) calendar days after service of notice of revocation, suspension, denial of application or renewal or approval with conditions, may file an appeal by filing a written statement of such appeal, including the grounds for the appeal and the asserted errors in the decision, with the City Clerk.
- (2) Upon receipt of a timely request for an appeal hearing, the City Manager, or designee, shall notify the applicant in writing of the date, time and place of the hearing before the City Manager, or designee, which shall not be less than ten (10) calendar days after service on the applicant.
- (3) At the hearing, both the applicant/permittee and the Chief of Police (or his or her designee) shall have the chance to present evidence, be represented by counsel, and make oral argument not to exceed fifteen (15) minutes per side, relevant to the grounds on which the appeal is filed.
- (4) After the hearing, the City Manager or designee shall render a written decision within fifteen (15) calendar days from the date of the hearing. The decision shall set forth the Manager's reason(s) for his or her decision. The decision shall be considered final upon service.

(b) Appeal of City Manager's Decision to City Council. The permittee or applicant may appeal the decision of the City Manager or designee to the City Council in accordance with the provisions of the Milpitas Municipal Code Title I, Chapter 20. The Council's decision shall set forth the reason(s) for its decision. Notice of such decision shall be made pursuant to the notice by mail provisions contained in Title I, Chapter 20 of the Milpitas Municipal Code. The decision shall be considered final upon service made pursuant to the service by mail provisions set forth in Title I, Chapter 20 of the Milpitas Municipal Code.

(c) The burden of proof is on the permittee/applicant in any hearing or other matter under this Chapter.

III-6-19 – Service of Any City Notice and Date of Service

Except as otherwise expressly required by a provision of this Chapter, any notice required by this Chapter may be served by personal delivery to any applicant or permittee, or by first class mail. The date of service shall be the date it is personally delivered or placed in a U.S. Postal Service receptacle. Any notice issued to any applicant or permittee may be sent to the mailing address as listed on the application submitted by to the City. Failure of any applicant or permittee to receive a properly addressed notice by mail shall not invalidate any action, decision, determination or proceeding under this Chapter.

III-6-20 - Public Nuisance and Additional Remedies

Any massage establishment operated, conducted, or maintained contrary to the provisions of this Chapter shall be unlawful and a public nuisance, and the City Attorney may pursue any and all remedies available under the law.

The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity. In addition to any remedies provided by this Code, or by other law, any violation of this Chapter may be remedied by, without limitation, administrative citation and penalties, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief. In the discretion of the City Attorney, violations of this Chapter may be prosecuted as infractions or misdemeanors when the interests of justice so require.

III-6-21 – Severability

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such provision shall not affect the validity of the remaining portion thereof.

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.