

RESOLUTION NO. 19-033

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
RECOMMENDING THAT THE CITY COUNCIL ADOPT A CITY-INITIATED
ZONING TEXT AMENDMENT ORDINANCE TO AMEND SECTIONS OF CHAPTER
10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO MASSAGE
ESTABLISHMENTS AND MAKING CEQA FINDINGS OF EXEMPTION FROM
ENVIRONMENTAL REVIEW**

WHEREAS, the City of Milpitas, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code Section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, the California State 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") identified changes needed in Title III, Chapter 6 of the Milpitas Municipal Code (Massage Establishments and Practitioners") to meet revised State law, to eliminate obsolete language, and to improve clarity, efficiency, and efficacy to the City's regulations; and

WHEREAS, those changes to Title III, Chapter 6 ("Massage Establishments and Practitioners") were introduced as Ordinance No. 172.6 to the City Council on June 18, 2019, adopted by the City Council on August 20, 2019, and effective September 19, 2019; and

WHEREAS, the City has prepared a Zoning Text Amendment Ordinance ("Amendment"), amending the City's Municipal Code, including refinements to Section XI-10-2 ("Definitions"), Section 5 ("Commercial Zones and Standards"), Section 6 ("Mixed Use Zones and Standards"), Section 10 ("Overlay Districts and Standards"), Section 13 ("Special Uses"),

and Section 53 (“Off-Street Parking Regulations”) to ensure consistency with the amended Title III, Chapter 6 “Massage Establishments and Practitioners,” a copy of which is attached hereto as Exhibit A; and

WHEREAS, the Planning Commission makes and accepts as its own the findings set forth in this Resolution; and

WHEREAS, the Planning Commission is an advisory body to the City Council; and

WHEREAS, the Planning Commission hereby finds and determines that the Amendment is exempt from further California Environmental Quality Act (“CEQA”) review pursuant to CEQA Guidelines section 15061(b)(3) (common sense exemption); and

WHEREAS, on October 23, 2019, the Planning Commission held a duly-noticed public hearing on the Amendment, at which all those in attendance were given the opportunity to speak on the Amendment; and

WHEREAS, the Planning Commission has considered all the written and oral testimony presented at the public hearing in making its decision; and

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

SECTION 1. Recitals

The Planning Commission 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 Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CEQA Finding

The Planning Commission recommends that the City Council find and determine that the attached Amendment has been assessed in accordance with the California Environmental Quality Act (Cal. Pub. Res. Code, § 21000 et seq.) (“CEQA”) and the State CEQA Guidelines (14 Cal. Code Regs. § 15000 et seq.) and is categorically exempt from CEQA under CEQA Guidelines, § 15061(b)(3), which exempts from CEQA any project where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Adoption of the proposed Amendment would not be an activity with potential to cause significant effect on the environment because it amends existing massage business regulations and does not alter where such businesses are allowed or conditionally allowed to be located, and therefore is exempt from CEQA. Therefore, it can be seen with certainty that there is no possibility that the Amendment in question may have a significant effect on the environment; accordingly, the Amendment is categorically exempt from CEQA.

Accordingly, the attached Amendment is exempt from CEQA review pursuant to Sections 15061(b)(3) of the CEQA Guidelines.

SECTION 3. Findings for Zoning Amendment (Milpitas Municipal Code, Subsection XI-10-57-02(G)(3))

The Planning Commission makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA19-0006:

1. The proposed amendment is consistent with the General Plan.

The proposed Zoning Text Amendment to amend regulations related to massage establishments is an implementation action that will continue to promote a strong economy and provide economic opportunities because the amendment continues to allow massage establishments as conditionally permitted uses in the City and does not change the zoning districts where massage establishments are conditionally permitted. Further, the proposed Ordinance ensures that massage establishments are compatible with the intent of the zoning districts in which they are located by introducing operating standards and review requirements to maintain neighborhood character and to protect the public health, safety, and welfare. This is consistent with Land Use Implementing Policy 2.a-I-5, which aims to promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social, fiscal, and land use constraints. Amending regulations related to massage establishments will not conflict with or impede achievement of any of the goals, policies, or land use designations established in the General Plan. Therefore, this Zoning Text Amendment is consistent with the General Plan, specifically, Land Use Guiding Principle 2.a-I-5.

2. The proposed amendment will not adversely affect the public health, safety and welfare.

The proposed Zoning Text Amendment to amend regulations related to massage establishments will not adversely affect the public health, safety, and welfare because the amendment will retain the ability of a review authority to analyze land use, parking, noise, and other criteria to ensure that massage establishments are compatible with surrounding uses.

SECTION 4: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 19-033 recommending that the City Council adopt the Zoning Text Amendment ZA19-0006 Ordinance based on the above Findings.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on October 23, 2019.



Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on October 23, 2019 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Ricky Ablaza	✓			
Tim Alcorn	✓		✓	
Sudhir Mandal	.		✓	
Demetress Morris	✓			
Bill Chuan	✓			
Steve Tao	✓			
Evelyn Chua	✓			