

PLEASE NOTE:

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REGULAR

NUMBER: 38.839

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING MILPITAS MUNICIPAL CODE TITLE XI (ZONING, PLANNING AND ANNEXATION), CHAPTER 10 (ZONING) RELATING TO MASSAGE ESTABLISHMENTS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ 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”) 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 Amendment (“Amendment”) to 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”; and

WHEREAS, on October 23, 2019, the Planning Commission of the City of Milpitas held a lawfully noticed public hearing to solicit public comment and consider the proposed Amendment, take public testimony, and make a recommendation to the City Council on the proposed Amendment, and following such hearing recommended by a vote of 6-0 (with one member absent) that the City Council adopt the proposed Amendment.

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. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that this Ordinance 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 Ordinance 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

Ordinance in question may have a significant effect on the environment; accordingly, the Ordinance is categorically exempt from CEQA.

SECTION 3. GENERAL PLAN CONSISTENCY

The proposed Zoning 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 Amendment is consistent with the General Plan, specifically, Land Use Guiding Principle 2.a-I-5.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 2

The following entry in Title XI, Chapter 10, Section 2 “Definitions,” Subsection XI-10-2.02 “General Definitions,” of the Milpitas Municipal Code is hereby amended to read as follows:

"Massage Establishment" means any establishment having a fixed place of business, ~~including but not limited to any establishment in which massage, acupressure or similar services are made available (except those which are exempt by Government Code Section 51033 as amended from time to time), in which the teaching, practice, or the giving of massage, acupressure or similar procedure is conducted~~ 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.

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 2

Title XI, Chapter 10, Section 2 “Definitions,” Subsection XI-10-2.03 “Definitions” of the Milpitas Municipal Code is hereby amended to add the following definition to read as follows:

"Massage establishment, accessory" means an establishment that provides massage which is incidental to the primary business, where the owner of the primary business is responsible for the massage services and conduct of the massage technician(s) employed at the location.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE IX, CHAPTER 10, SECTION 5, TABLE XI-10-5.02-1

Title XI, Chapter 10, Section 5 “Commercial Zones and Standards,” Table XI-10-5 “Commercial Zones Uses” of the Milpitas Municipal Code is hereby amended, at Subsection 3. Health and Veterinarian Uses, to read as follows:

**Table XI-10-5.02-1
Commercial Zone Uses**

Use	CO	C1	C2	HS	TC
3. Health and Veterinarian Uses					
Animal grooming (no boarding)	NP	P	P	P	P
Hospital	C	NP	C	C	C
Kennel	NP	NP	C	NP	NP

Massage establishment ¹⁵	NP	NP	<u>MCC</u>	<u>MCC</u>	<u>MCC</u>
<u>Massage establishment, accessory¹⁵</u>	<u>NP</u>	<u>NP</u>	<u>MCS</u>	<u>MCS</u>	<u>MCS</u>
Medical and dental office	P	P	P	NP	P
Medical and dental clinic	P	C	C	NP	P
Medical support laboratories	P	C	C	C	C
Optician and optometrist shop	P	P	P	NP	P
Pharmacy or drug store	NP	P	P	P	P
Sauna and steam bath	NP	NP	NP	P	NP
Veterinary clinic	NP	NP	P	P	P

¹ Refer to the definition for "Commercial Services" in Section 2, Definitions, of this Chapter.
² Provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.
³ Refer to XI-10-5.04, Commercial Zone Special Development Standards, of this Chapter.
⁴ In accordance with the Title III, Chapter 4, Adult Business Ordinance, and Subsection 13.04, Adult Businesses, of this Chapter.
⁵ For conditionally permitted uses, refer to Subsection 57.04(C) (9), Certain Industrial Uses within Commercial Districts, of this Chapter.
⁶ Refer to Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.
⁷ When intended to serve the occupants and patrons of the permitted use (office, etc.) and conducted and entered from within the building and provided there is no exterior display of advertising.
⁸ Refer to Subsection 5.02-1, Commercial Zone Special Uses, of this Section.
⁹ Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter.
¹⁰ Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.
¹¹ Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.
¹² Not including warehouses on the same site as the permitted use.
¹³ No tract sign shall be permitted within 600 feet of a Santa Clara County Expressway.
¹⁴ Refer to Section 13.11, Temporary Uses and Structures, of this Chapter.
¹⁵ Massage establishments are subject to Title III, Chapter 6 of the Milpitas Municipal Code and Subsection XI-10-13.16 of this title. Refer to Subsection XI-10-13.16, of this Title, for special provisions for massage establishments.

SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 6, SUBSECTION .02(A)(2)

The following entry in Title XI, Chapter 10, Section 6 “Mixed Use Zones and Standards,” Subsection XI-10-6.02(A)(2) “Accessory Uses” of the Milpitas Municipal Code is hereby deleted as follows:

- ~~2. Accessory Uses.~~
 - ~~a. Massage Services. Massage services may be allowed as an accessory use to any permitted or conditionally permitted medical office, medical clinic, chiropractor practice, acupuncture practice, physical therapist, fitness and athletic facility, health care facility (such as hospitals, nursing homes and sanitariums), and accredited school, college, and university. Massage services, limited to massage of the head, neck, shoulders, hands and feet may be allowed as an accessory use to any permitted or conditionally permitted beauty salon, barbershop, and healing art practices. This section shall not exempt any person or business from complying with all the provisions of Title III, Chapter 6.~~

SECTION 8. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 6, TABLE XI-10-6.02-1

Title XI, Chapter 10, Section 6 “Mixed Use Zones and Standards,” Table XI-10-6.02-1 “Mixed Use Zone Uses” of the Milpitas Municipal Code, at Subsection 3. Health and Veterinarian Uses, is hereby amended to read as follows:

**Table XI-10-6.02-1
Mixed Use Zone Uses**

Use	MXD	MXD2	MXD3
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		Ground Level (Facing Retail street)	Upper Floor	
3. Health and Veterinarian Uses				
Animal grooming (no boarding)	P	P	NP	P
Hospitals or sanitariums ⁴	C	C	C	C
Massage establishment ¹⁷	<u>MCE</u>	<u>MCE</u>	<u>MCE</u>	<u>MCE</u>
<u>Massage establishment, accessory¹⁷</u>	<u>MCS</u>	<u>MCS</u>	<u>MCS</u>	<u>MCS</u>
Medical or dental offices and clinics	P	NP	P	P
Medical support laboratories	P	P	P	P
Optician and optometrist shop	P	P	P	P
Pharmacy or drug store	P	P	P	P
Veterinarian clinic	P	P	P	P

¹ Refer to Subsection XI-10-6.02-1(B), Performance standards for certain uses, of this Chapter, for standards.

² Refer to Subsection XI-10-6.02-1, Special Uses, of this Chapter, for standards.

³ Refer to Subsection XI-10-6.02-1(B) Performance standards for certain uses, of this Chapter.

⁴ Refer to Subsection XI-10-6.02-2, Quasi-Public Uses, of this Chapter, for standards.

⁵ For parks, playgrounds or community center owned and operated by a government agency or a nonprofit community organization.

⁶ Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter

⁷ Ground level residential is prohibited in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.

⁸ Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter

⁹ Uses serving upper-floor residential uses, such as common gathering space, lobby, and resident services, may be allowed as ground floor uses where residential uses would otherwise not be permitted.

¹⁰ Reserved

¹¹ Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

¹² Which include only permitted uses.

¹³ Refer to Section XI-10-54.07, Planned Unit Developments, of this Chapter, for standards.

¹⁴ Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

¹⁵ New and used auto, recreational vehicle and boat sales, excluding commercial vehicles, trucks, buses, vans, and farm equipment, with accessory repairs and services, only allowed if fully enclosed within a building. Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals, only if fully enclosed within a building.

¹⁶ Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

¹⁷ Massage establishments are subject to Title III, Chapter 6 of the Milpitas Municipal Code and Subsection XI-10-13.16 of this title. Refer to Subsection XI-10-13.16, of this Title, for special provisions for massage establishments.

SECTION 9. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 12, TABLE XI-10-12.07-1

Title XI, Chapter 10, Section 12 "Overlay Districts and Standards," Table XI-10-12.07-1 "Recreation and Entertainment Overlay District Uses" of the Milpitas Municipal Code, at Subsection 3. Health and Veterinarian Uses, is hereby amended to read as follows:

**Table XI-12.07-1
Recreation & Entertainment Overlay District Uses**

Use	C2	HS	MP	M1
3. Health and Veterinarian Uses				
Animal grooming (no boarding)	P	P	NP	NP
Commercial athletic facilities	P	P	P	P
Hospitals	C	C	C	NP
Kennel	C	NP	NP	P

Massage establishment ¹¹	<u>MCC</u>	<u>MCC</u>	NP	NP
<u>Massage establishment, accessory¹¹</u>	<u>MCS</u>	<u>MCS</u>	<u>NP</u>	<u>NP</u>
Medical and dental clinic	C	NP	NP	P
Medical and dental office	P	NP	NP	P
Medical support laboratories	P	P	P	P
Optician and optometrist shop	P	NP	NP	NP
Pharmacy or drug store	P	P	NP	NP
Sauna and steam bath	C	P	NP	NP
Tanning salon	P	P	NP	NP
Veterinary clinic	C	C	P	P

¹ Not including stand alone off-sale alcoholic beverage outlets (such as liquor stores).

² Refer to the definition for "Commercial services" in Section XI-10-2, Definitions, of this Chapter.

³ Refer to Subsection XI-10-47.04(C)(9), Certain Industrial Uses within Commercial Districts, of this Chapter.

⁴ Assembling, packaging, or distribution from previously prepared materials, such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, electric or electronic instruments and devices such as televisions, radios, and pharmaceutical products.

⁵ Refer to Subsection XI-10-57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.

⁶ 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.

⁷ Within MP zones, rental and repair may be considered only when ancillary to new auto dealerships.

⁸ 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. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

⁹ Within MP zones, boat and camper sales are prohibited. Dealerships shall be on property at least three (3) acres or greater in area.

¹⁰ Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

¹¹ Massage establishments are subject to Title III, Chapter 6 of the Milpitas Municipal Code and Subsection XI-10-13.16 of this title. Refer to Subsection XI-10-13.16, of this Title, for special provisions for massage establishments.

SECTION 10. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13, SUBSECTION .03

The following entry in Title XI, Chapter 10, Section 13 "Special Uses," Subsection XI-10-13.03 "Accessory Uses" of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-13.03 — Reserved Accessory Uses

~~In addition to those accessory uses specifically listed in the zoning district sections of this chapter, the following accessory uses shall be allowed:~~

- ~~A. **Massage Services.** Massage services may be allowed as an accessory use to any permitted or conditionally permitted medical office, medical clinic, chiropractor practice, acupuncture practice, physical therapist, fitness and athletic facility, health care facilities (such as hospitals, nursing homes and sanitariums), and accredited school, college, and university. Massage services, limited to massage of the head, neck, shoulders, hands and feet may be allowed as an accessory use to any permitted or conditionally permitted beauty salon, barbershop, and healing art practices. This section shall not exempt any person or business from complying with all the provisions of Title III, Chapter 6.~~

SECTION 11. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13, SUBSECTION .05(B)(9)

The following entry in Title XI, Chapter 10, Section 13 "Special Uses," Subsection XI-10-13.05(B)(9) "Home Occupations" of the Milpitas Municipal Code is hereby amended to read as follows:

9. The occupations listed below shall not be considered incidental and secondary to the residence because they will change the residential character of the dwelling and because they change the character of the neighborhood:

- a. Barber and beauty shops or similar cosmetology establishments;
- b. Kennels and other boarding for pets;
- c. Massage establishments;
- d. Mechanical and auto repair;
- ed. Medical and dental offices;
- f. ~~e~~ Retail sales (excluding retail sales in which all products are sold over the phone or internet and shipped to the customer);
- gf. Commercial cannabis uses. See Subsection XI-10-13.15.

SECTION 12. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13, SUBSECTION .12(E)(1)(d)

The following entry in Title XI, Chapter 10, Section 13 “Special Uses,” Subsection XI-10-13.12(E)(1)(d) “Live-Work Units” of the Milpitas Municipal Code is hereby amended to read as follows:

- E. Prohibited Uses.
 - 1. Any use not permitted within the underlying zoning district is prohibited along with the following:
 - a. Adult-oriented businesses;
 - b. Astrology;
 - c. Palmistry;
 - d. Massage establishments;

SECTION 13. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13

Title XI, Chapter 10, Section 13 “Massage Establishments,” is hereby amended to add Subsection XI-10-16 “Massage Establishments” to the Milpitas Municipal Code to read as follows:

XI-10-13.16 – Massage Establishments

- A. Purpose. The purpose of this Subsection, in conjunction with Title III, Chapter 6 “Massage Establishments and Practitioners” of the City of Milpitas Municipal Code, is to regulate the establishment, location, and operation of massage establishments and accessory massage establishments in compliance with State law.
- B. Definitions. For purposes of this Subsection, the following definitions shall apply:
 - 1. “Act” means the Massage Therapy Act (Business and Professions (B&P) Code Section 4600, et seq.), as amended.
 - 2. “California Massage Therapy Council” or “CAMTC” means the California Massage Therapy Council established under Business and Professions Code section 4602.
 - 3. “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.
 - 4. “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.
 - 5. “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.

6. "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.

7. "Managing officer/employee" means a person that can or does have or share ultimate control over the day-to-day operations of a business.

8. "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.

9. "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.

10. "Massage Establishment, Accessory" means an establishment that provides massage which is incidental to the primary business, where the owner of the primary business is responsible for the massage services and conduct of the massage technician(s) employed at the location.

11. "Massage technician" means and includes both a "massage practitioner" and a "massage therapist" as defined by this Chapter.

12. "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.

13. "Owner" means any individual who has any direct or indirect ownership interest in a massage establishment.

14. "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.

C. Applicability.

1. This section applies to Massage Establishments as defined in Title III, Chapter 6 "Massage Establishments and Practitioners" and Subsection XI-10-2.03 "Definitions" and Subsection XI-10-13.16 "Massage Establishments of this Chapter (Zoning) and to Accessory Massage Establishments" as defined in Subsection XI-10-2.03 "Definitions" and Subsection XI-10-13.16 "Massage Establishments" of this Chapter (Zoning).

2. Preexisting Massage Establishments. Any legally established massage establishments must comply with the provisions of this Subsection and the provisions of Title III, Chapter 6 "Massage Establishments and Practitioners".

3. Exemptions. The requirements of this Subsection do 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, manicurists, 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, scalp, hands, arms, or lower limbs up to the knee of their 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.
- 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.

D. General Requirements.

1. Required Permits. Prior to the operation of a massage establishment, the owner or managing officer/employee must obtain a Massage Establishment Permit pursuant to Title III, Chapter 6 "Massage Establishments and Practitioners", a Minor Conditional Use Permit issued by the Zoning Administrator pursuant to Section XI-10-57.04 "Conditional Use Permits and Minor Conditional Use Permits", and a business license pursuant to Title III, Chapter 1 "Business Licenses" of the Milpitas Municipal Code. Prior to the operation of an accessory massage establishment, the owner must obtain a obtain a Massage Establishment Permit pursuant to Title III, Chapter 6 "Massage Establishments and Practitioners", a Minor Conditional Use Permit pursuant to Section XI-10-57.04 "Conditional Use Permits and Minor Conditional Use Permits", and a business license pursuant to Title III, Chapter 1 "Business Licenses" of the Milpitas Municipal Code. A Massage Establishment Permit, and any renewal thereof, shall be filed with the Chief of Police, pursuant to Title III, Chapter 6 "Massage Establishments and Practitioners" of the Municipal Code. The Minor Conditional Use Permit issued by the Zoning Administrator, or, in the case of an Accessory Massage Establishment, a Minor Conditional Use Permit, shall not be granted until a Massage Establishment Permit is issued by the Chief of Police.
2. Compliance with Codes. Prior to the operation of a massage establishment or accessory massage establishment, the massage establishment must comply with all applicable codes regarding fire, building and safety, health and safety, and other relevant laws.
3. Permitted Zoning Districts. Massage establishments and accessory massage establishments are allowed in the C2, HS, TC, MXD, MXD2, MXD3 zoning districts, subject to a Minor Conditional Use Permit issued by the Zoning Administrator or Minor Conditional Use Permit issued by staff, respectively.
4. Operational Standards. In addition to the restrictions specifically required in the Massage Establishment Permit issued by the Chief of Police and pursuant to Title III, Chapter 6 "Massage Establishments and Practitioners", all massage establishments must comply with the regulations applicable to the zoning district in which it is located and with the following operating requirement:
 - a. Hours of Operation. Massage Establishments shall operate and massage services shall be provided between the hours of 7:00 a.m. and 10:00 p.m. Massage services begun before 10:00 p.m. must terminate at 10:00 p.m. No customer shall be in such massage establishment between the hours of 10:00 p.m. and 7:00 a.m. No massage establishment shall be open between the hours of 10:30 p.m. and 7:00 a.m.
5. Off-Street Parking Requirement. Two (2) off-street parking spaces per treatment room must be provided. If there are no treatment rooms, then one (1) space for every two (2) massage chairs or two (2) massage

tables must be provided. The parking space must comply with all development standards set forth in Section 53 "Off-Street Parking Regulations".

6. Commercial Purposes Only. A massage establishment must be used for commercial purposes only. Use of the massage establishments for residential or lodging purposes is prohibited.
7. Off-Premises Massage Businesses. No off-premises massage business shall conduct massage in a hotel or motel room, vehicle, or in the residence of the massage technician. No off-premises massage service may be provided in a private residence or business between the hours of 10:00 p.m. and 7:00 a.m. However, a massage technician is permitted to provide off-premises massage services at a private residence so long as it is not the private residence of the massage technician and is not provided between the hours of 10:00 p.m. and 7:00 a.m.
8. Recreational or Special Events. Persons administering massages to other persons who are participating in a recreational or special event that has been approved pursuant to Section XI-10-15 "Special Events and Activities" and the Chief of Police shall be CAMTC certified but will not be required to hold a Massage Establishment Permit provided the following conditions are met:
 - a. The massage technician shall be registered with the City of Milpitas Police Department;
 - b. Massage services are equally available to all participants in the event;
 - c. The massage services are provided during the event in an open area at the site of the event;
 - d. The sponsors of the event have approved the provision of massage services at the event;
 - e. Massage services were included in the project description in the application for a Special Event Permit pursuant to Subsection XI-10-15.12 "Permit Application."
9. Signs. A recognizable and legible sign complying with the requirements of Section XI-10-24 "Signs" must be posted at the main entrance of the massage establishment identifying the location as a licensed massage establishment.

E. Application Procedure.

1. Minor Conditional Use Permit issued by the Zoning Administrator Required for Massage Establishments. The owner of a massage establishment must apply for and obtain a Minor Conditional Use Permit issued by the Zoning Administrator before operating massage establishment. The Minor Conditional Use Permit issued by the Zoning Administrator is subject to the provisions of and issued pursuant to the Minor Conditional Use Permit process in Section XI-10-57.04 "Conditional Use Permits and Minor Conditional Use Permits".
2. Minor Conditional Use Permit Required for Accessory Massage Establishments. The owner of an accessory massage establishment must apply for and obtain a Minor Conditional Use Permit reviewed by Planning Department staff before operating an accessory massage establishment. The Minor Conditional Use Permit is subject to the provisions of and issued pursuant to the Minor Conditional Use Permit process in Section XI-10-57.04 "Conditional Use Permits and Minor Conditional Use Permits".
3. Compliance Review. The Planning Director or his or her designee will review the Minor Conditional Use Permits issued by the Zoning Administrator for massage establishments and Minor Conditional Use Permits for accessory massage establishments within one (1) year after issuance for compliance with this Subsection and Conditions of Approval. The Planning Director or his or her designee will conduct a similar compliance review of Conditional Use Permits issued by the Zoning Administrator for massage establishments and Minor Conditional Use Permits issued by Planning staff on an annual basis concurrent with review of the Massage Establishment Permit and renewal of the Business License for each use. Any failure to conduct a review does not waive any noncompliance or the City's right to conduct a review in the future.
4. Change in Ownership. If there is a change of property ownership, change of Owner's agent or representative, or any other change in material facts pertaining to the information contained in the Conditional Use Permit issued by the Zoning Administrator application for a massage establishment or the Minor Conditional Use Permit application for an accessory massage establishment, the new owner or new owner's authorized agent or representative shall notify the City prior to continuing to operate the massage establishment. The Planning Director or his or her designee will conduct a compliance review of the Conditional Use Permit issued by the Zoning Administrator for the massage establishment or the Minor Conditional Use Permit for the accessory massage establishment for the subject property in conjunction with the application for a Business License by the new property owner.

F. Violation of Regulations. Violation of any provision of this Chapter may result in the revocation of the after notice and an opportunity for a hearing has been given to the permittee, in accordance with Subsection XI-10-63.06 “Revocation, Suspension, Modification.”

SECTION 14. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 53, TABLE 53.09-1

The following entries in Title XI, Chapter 10, Section 53 “Off-Street Parking Regulations,” Table 53.09-1 “Number of Parking Spaces Required” of the Milpitas Municipal Code at Subsection C. Health and Veterinarian Uses, are hereby amended to read as follows:

**Table 53.09-1
Number of Parking Spaces Required**

Use	Minimum Parking Spaces Required
C. Health and Veterinarian Uses	
Convalescent Homes	1 per 2 beds or 1 per 1,000 sq. ft, whichever is greater
Hospital	1 per bed or 1 per 220 sq. ft., whichever is greater
Kennel, indoor	1 per 1,000
<u>Massage Establishments</u>	<u>Two per treatment room or if no treatment room, one per 2 chairs or 2 tables</u>
Medical and dental Clinic and Office	1 per 225 sq. ft.

SECTION 15. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision, or part has no effect on the validity of the remainder.

SECTION 16. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The City Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.