

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS INCREASING THE MASSAGE PERMIT FEE AND AMENDING THE FY 2019-20 MASTER FEE SCHEDULE**

**WHEREAS**, the City of Milpitas (the “City”) allows operation of massage establishment subject to compliance with applicable law, including City codes and ordinances; and

**WHEREAS**, the City adopted Ordinance No. 172.6 on August 20, 2019 amending the Milpitas Municipal Code, Title III, Chapter 6 relating to massage establishments and practitioners (the “Ordinance”); and

**WHEREAS**, Section III-6-6 of the Ordinance provides that any person desiring to obtain a massage establishment permit must file a written application with the Chief of Police of the City on forms provided by the City, and, at the time of said filing, shall pay a non-refundable fee in an amount established by resolution of the City Council, which shall be in addition to any license, permit or fee required under any chapter of the Municipal Code or under any other regulation; and

**WHEREAS**, in order to recover the regulatory costs associated with issuing massage establishment permits, the City Council now wishes to increase the massage establishment permit fee (“Fee”) accordingly, which shall be in addition to business license fees set forth in Title III, Chapter 1 of the Municipal Code, all as described more fully in **Exhibit “A”** hereto; and

**WHEREAS**, to determine the appropriate rate for the Fee, the City analyzed the total amount of staff time necessary for the issuance of such permits, and the fully burdened rate for such members of staff, and determined the total cost of issuing such permits, including all investigatory work required therewith, to be \$1,926.92; and

**WHEREAS**, based on this analysis, the City now wishes to increase the Fee to \$1,000, in order to partially recover the minimum cost of providing such permits; and

**WHEREAS**, the Fee is reasonable and necessary to regulate massage businesses and massage establishments, and is imposed to recover a portion of the reasonable regulatory costs to the City for issuing such permits, and for performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof; and

**WHEREAS**, the Fee is imposed at a rate lower than the full cost of providing the regulatory activity for which it is imposed, and as such, the Fee does not exceed the amount necessary to recover the reasonable costs of the governmental activity, and are allocated in a manner that bears a fair and reasonable relationship to the applicant’s burdens on and benefits received from the City; and

**WHEREAS**, in accordance with Government Code section 66016, the City has made available to the public, at least ten (10) days prior to the date of this meeting, data supporting the Fee, and notice of this meeting has been mailed to all interested persons that have requested such notice; and

**WHEREAS**, on May 15, the City Council approved the FY 2019-20 Master Fee Schedule which included the Fee; and

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The above Recitals are true and correct and by this reference incorporated herein.
2. The City Council hereby amends the FY 2019-20 Master Fee Schedule and increases the Fee from \$200 to \$1,000.00. The Fee will be imposed as provided in the Ordinance, and will be effective immediately for applications for permits for businesses that will be operational on or after January 1, 2020. The Fee shall be in addition to any other business license fee or any other fee or charge applicable to massage businesses and establishments. To the extent any other resolution of the City conflicts with the provisions herein, such resolution is superseded to the extent of such conflict.

3. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Based upon such consideration, the City Council finds and determines that:
  - (a) The Fee established by this Resolution:
    - (1) is imposed for the reasonable regulatory costs to the City for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.
    - (2) is no more than necessary to cover the reasonable costs of the governmental activity for which the Fee is imposed; and
    - (3) the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity for which the Fee is imposed.
  - (b) The Fee is not a tax within the meaning of California Constitution article XIII C, section 1(e).
4. This Resolution shall take effect immediately, and the Fee shall take effect as provided in Section 2 hereof.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019 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