



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Adopt a Resolution Increasing Massage Permit Fee and Amending Master Fee Schedule</b>
<b>Category:</b>	Consent Calendar-Public Safety
<b>Meeting Date:</b>	12/3/2019
<b>Staff Contact:</b>	Christopher Diaz, City Attorney, 408-586-3040
<b>Recommendation:</b>	Adopt a Resolution increasing the Massage Permit Fee and amending the FY 2019-20 Master Fee Schedule.

### **Background:**

On May 15, the City Council approved the FY 2019-20 Master Fee Schedule which included a Massage Permit Fee of \$200. On August 20, 2019, the City Council adopted Ordinance No. 172.6 to amend and update the City's regulations relating to massage establishments and practitioners. Ordinance No. 172.6 regulates individuals and businesses practicing massage therapy, as well as massage establishments, effective on and after January 1, 2020. Section III-6-4 of Ordinance No. 172.6 requires that massage establishments further obtain permits from the City of Milpitas. The purpose of this Resolution is to increase the fee for issuing such permits. If adopted, the increased massage permit fee will be applicable to any massage establishment wishing to operate on or after January 1, 2020, in accordance with Ordinance No. 172.6.

### **Analysis:**

Fees and charges imposed by local governments in California are subject to article XIII C, section 1(e) of the California Constitution ("Proposition 26"). Proposition 26 provides that any fee or charge imposed by a local government is a tax requiring voter approval, unless it is explicitly exempt. The proposed massage permit fee is exempt from the definition of a tax under article XIII C, section 1(e)(3):

A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

The proposed massage permit fee is \$1,000 resulting in a cost recovery level of about 52%. Staff has determined that the actual cost of service is closer to about \$2,000 to process each permit. This is based on the cost for a detective, at \$248.11 per hour with an estimated 6.5 hours necessary to process the permit application, plus a sergeant for one hour at \$314.20. This totals \$1,926.92. The full methodology is attached as Exhibit "A" to the proposed Resolution.

Typically, regulatory fees such as the massage permit fee are set at 100% cost recovery. Staff is recommending a lower cost recovery level at this time due to the significant increase from the current fee of \$200 to \$1,000. Further, staff is also evaluating to assign the process of reviewing an application for a massage permit to a Community Service Officer (CSO) once a vacant CSO position is filled. Therefore, as part of future budget cycles, staff intends to bring forth increases to the fee to achieve a 100% cost recovery level while reducing the cost for processing a permit.

### **Policy Alternative:**

**Alternative:** Do not adopt the increased massage permit fees. This would mean that the fee would remain at \$200 with a cost recovery level of 10%.

**Pros:** The existing fee would remain in place.

**Cons:** Failure to adopt the increased massage permit fee would prevent increased cost recovery.

**Reason not recommended:** The proposed fee helps the City to recover its costs for issuing massage permits. Failure to adopt the increased fee would mean that the City must cover more of the cost for issuing permits as opposed to recovering such costs from the applicant.

**Fiscal Impact:**

If the massage permit fee is adopted, the City will generate additional revenue, equaling approximately half of the cost of considering massage permit applications.

**California Environmental Quality Act:**

This action is exempt from CEQA as there will be no physical change to the environment.

**Recommendation:**

Adopt a resolution increasing the massage permit fee and amending the FY 2019-20 Master Fee Schedule.

**Attachment:**

Resolution approving Massage Permit Fee and Exhibit A