



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: October 22, 2008

APPLICATION: **Zoning Amendment No. ZA08-0007, Massage Use**

APPLICATION
SUMMARY:

A request to amend the City of Milpitas Zoning Ordinance to allow Massage Establishments by Conditional Use Permit in the Mixed Use (MXD), General Commercial (C2) and Town Center (TC) Zones and to allow the massage of hands and feet as an Accessory Use to Commercial Service uses.

LOCATION: City Wide

APPLICANT: Milpitas Square, LLC – Philip Su

RECOMMENDATION: **Staff recommends that the Planning Commission:**
1. Close the public hearing following public testimony; and
2. Adopt Resolution No. 08-057 recommending adoption of the Zoning Text Amendments to the City Council.

CEQA Determination: Pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, the project is exempt from environmental review because there is no possibility that the activity in question may have a significant effect on the environment. The proposed Zoning Text Amendment will change the text of the Zoning Ordinance only, allowing massage establishments as a conditionally permitted use in certain zones, and allowing massage as an accessory use in certain situations. Additional environmental determination may be necessary for future Conditional Use Permit applications.

PLANNER: Julie Moloney, Associate Planner

PJ: 2539

ATTACHMENTS: A. Resolution No. 08-057
Exhibit A: Draft Ordinance

BACKGROUND

The City of Milpitas Zoning Ordinance defines Massage Establishments as “an 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.” These establishments are currently conditionally permitted in the Highway Services (HS) Zoning District subject to Planning Commission determination. A Conditional Use Permit for a Massage Establishment was recently granted in the Town Center district through Section 22 of the Zoning Ordinance. Massage practices are also allowed as an accessory use in medical offices, i.e. doctor’s offices, chiropractic offices and acupuncture clinics and as a part of a commercial service uses such beauty salons, limited to the head, neck and shoulders.

The proposed Zoning Text Amendment to list Massage Establishments as a conditional use (e.g. requiring a use permit) in the Mixed Use (MXD), General Commercial (C2) and Town Center (TC) zoning districts is intended to allow flexibility for business and property owners in leasing to new businesses. Recently, many business owners have approached the City to open day spas, including massage services, foot spas, and other commercial services utilizing the practice of massage in zones other than Highway Services (HS). These uses are frequently approved in neighboring cities, and in order for Milpitas to stay competitive in attracting new businesses, the Zoning Ordinance should be amended to allow such uses, subject to a Conditional Use Permit.

PROJECT DESCRIPTION

The project applicant is a business owner and manager of Milpitas Square located at 448 Barber Lane. Although he has initiated this Zoning Text Amendment, it is proposed to apply to the MXD, C2 and TC Zones throughout the City, not only to his subject property. Staff determined it was also appropriate to expand the accessory massage uses to include the massage of hands and feet, as ancillary uses to commercial services.

The proposed amendment will modify Zoning Ordinance Section 10-6.02 Mixed Use Regulations, to expand the Accessory uses to allow massage of the hands and feet in conjunction with commercial services and medical uses, to delete Massage Establishments from Prohibited Uses and to add Massage Establishments as a use permitted subject to the issuance of a Conditional Use Permit. The proposed amendment will also modify Section 10-13.03 Accessory Uses, to allow massage of hands and feet in conjunction with commercial services.

The proposed amendment will modify the General Commercial (C2) Zone and Town Center (TC) Zone, Sections 10-19 and 10-22 of the Zoning Ordinance, respectively, to allow Massage Establishments as Conditionally Permitted Uses. Massage Establishments will be specifically listed as Conditional Uses in these sections.

Allowing Massage Establishments by Conditional Use Permit means that all proposed Massage Establishments uses will be required to apply for a Conditional Use Permit pursuant to Section 10.57.04 of the Zoning Ordinance. The Conditional Use Permit process is the current process by which the Planning Commission reviews land uses which would not otherwise be permitted as a matter of right in a zoning district because of the nature, potential impact on the surrounding environment and for

the determination of whether or not the proposed use is appropriate for its proposed location. The required findings in order to grant approval for a Conditional Use Permit are as follows:

1. *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare;*
2. *The proposed use is consistent with the Milpitas General Plan; and*
3. *The proposed use is consistent with the Milpitas Zoning Ordinance.*

With this Zoning Amendment, all applications for Massage Establishments in Mixed Use, General Commercial and Town Center Zones would be required to go through the Conditional Use Permit process and obtain approval prior to opening the business.

If approved by the Planning Commission, any prospective applicants would have to apply for a permit with the Police Department in accordance with Chapter 6, Massage Establishments and Practitioners, of the Municipal Code. This process involves a background check to ensure legitimacy of the business.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

Table 1
General Plan Consistency

Policy	Consistency Finding
<p><i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance</i></p>	<p>Consistent. Allowing Massage Establishments by Conditional Use Permit will encourage new businesses to occupy new and existing development spaces and allow flexibility in leasing tenant spaces.</p>
<p><i>2.a-I-5: Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas Residents within existing environmental, social fiscal and land use constraints.</i></p>	<p>Consistent. Allowing Massage Establishments by Conditional Use Permit will encourage diverse business opportunities and allow flexibility in leasing tenant spaces.</p>

Specific Plans

The proposed amendment could affect business proposals within the Midtown and Transit Area Specific Plans. The following tables outline the project’s consistency with the applicable specific plan principles, goals and policies:

Table 2
Midtown Specific Plan Consistency

Principles/Policies	Consistency Finding
<i>Goal 1: Encourage a compatible mixture of residential, retail, office, service-oriented commercial and industrial uses within the Midtown.</i>	Consistent. Allowing Massage Establishments by Conditional Use Permit will encourage diverse business opportunities and allow flexibility in leasing tenant spaces.
<i>Policy 3.16: Provide for the continuation of retail development along the Calaveras Boulevard corridor.</i>	Consistent. Allowing Massage Establishments by Conditional Use Permit will encourage new businesses to occupy new and existing development spaces and allow flexibility in leasing tenant spaces.

Table 3
Transit Area Specific Plan Consistency

Principles/Policies	Consistency Finding
<i>Land Use Goal: Provide a mix of land uses that responds to market demand over the next twenty years, and provides opportunities for complementary uses...</i>	Consistent. Allowing Massage Establishments by Conditional Use Permit responds to market demand and allows flexibility in new businesses.
<i>Land Use Goal: Site neighborhood-serving retail uses in each subdistrict of the Transit Area so residents and workers can easily walk to shops, restaurants and services.</i>	Consistent. Allowing Massage Establishments by Conditional Use Permit will provide and additional service to residents and workers.
<i>Land Use Guiding Principle: Maintain commercial uses at and around the Great Mall.</i>	Consistent: The Great Mall site and surrounding areas are zoned for General Commercial Uses. Allowing Massage Establishments by Conditional Use Permit will help maintain a variety of commercial uses.

Zoning Ordinance

Allowing Massage Establishments in Mixed Use (MXD), General Commercial (C2) Zones is currently not permitted by the Zoning Ordinance. Massage Establishments in the Town Center (TC) Zone have been approved in the past pursuant to Section 22.01.11, as determined appropriate by the Planning Commission. Also, the massage of hands and feet is currently not allowed as an ancillary use to commercial services. By amending the Zoning Ordinance, the code will then list Massage Establishments in MXD, C2 and TC zones as Conditionally Permitted, only after securing a Conditional Use Permit pursuant to Section 10.57.04 of the Zoning Ordinance. Also, massage of the head, neck, shoulders, hands and feet will be allowed as an accessory use to commercial services such as beauty and nail salons, and foot spas.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is not subject to CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines. The project is exempt from environmental review because there is no possibility that the activity in question may have a significant effect on the environment. The proposed Zoning Text Amendment will change the text of the Zoning Ordinance only, allowing massage establishments as a conditionally permitted use in certain zones, and allowing massage as an accessory use in certain situations. Additional environmental determination may be necessary for future Conditional Use Permit applications.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. A legal ad was printed in the Milpitas Post and posted in public places. As of the time of writing this report, there have been no inquiries from the public.

CONCLUSION

Allowing Massage Establishments by Conditional Use Permit in the MXD, C2 and TC Zones, and expanding massage as an accessory use to include hands and feet will allow flexibility in proposed businesses throughout the City. In addition, it would allow the Planning Commission through its discretion to allow massage establishments when they are compatible with surrounding uses. The Planning Division has received multiple requests to open new businesses that include some form of massage, and have been forced to turn the applications away due to inconsistency with the Zoning Ordinance. There have also been Code Enforcement cases where massage practices were being performed without a permit. Approving the Zoning Ordinance Text Amendments would allow scrutiny of new Massage Establishment proposals through the Conditional Use Permit process as well as new business opportunities for commercial services within the City.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 08-057 recommending approval of Zoning Ordinance Amendment ZA08-0007 to the City Council.

Attachments:

- A. Resolution 08-057
Exhibit A: Draft Ordinance

RESOLUTION NO. 08-057

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL, APPROVAL OF ZONING AMENDMENT NO. ZA08-0007 TO ALLOW MASSAGE ESTABLISHMENTS BY CONDITIONAL USE PERMIT IN THE MIXED USE (MXD), GENERAL COMMERCIAL (C2) AND TOWN CENTER (TC) ZONES AND TO ALLOW THE MASSAGE OF HANDS AND FEET AS AN ACCESSORY USE TO COMMERCIAL SERVICE USES.

WHEREAS, on July 8, 2008, Philip Su, representing Milpitas Square, LLC, made an application to amend the Zoning Ordinance to allow Massage Establishments in the Mixed Use (MXD) and General Commercial (C2) zoning districts.

WHEREAS, after reviewing the application, Planning Division staff determined that it was also appropriate to apply the amendments to the Town Center (TC) Zone and the Accessory Use Section of the Zoning Ordinance; and

WHEREAS, Zoning Ordinance Section 10-6.02 Mixed Use Regulations, will be amended to expand the Accessory uses to allow massage of the hands and feet in conjunction with commercial services and medical uses, to delete Massage Establishments from Prohibited Uses and to add Massage Establishments as a use permitted subject to the issuance of a Conditional Use Permit; and

WHEREAS, he proposed Zoning Ordinance Text Amendment will also modify Section 10-13.03 Accessory Uses, to allow massage of hands and feet in conjunction with commercial services; and

WHEREAS, The proposed Zoning Ordinance Text Amendment will modify the General Commercial (C2) Zone and Town Center (TC) Zone, Sections 10-19 and 10-22 of the Zoning Ordinance, respectively, to allow Massage Establishments as Conditionally Permitted Uses; and

WHEREAS, pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, the proposal is exempt from environmental review because there is no possibility that the activity in question may have a significant effect on the environment. The proposed Zoning Text Amendment will change the text of the Zoning Ordinance only, allowing massage establishments as a conditionally permitted use in certain zones, and allowing massage as an accessory use in certain situations. Additional environmental determination may be necessary for future Conditional Use Permit applications.

WHEREAS, on October 22, 2008, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff and other interested parties.

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

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: Pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, the proposal is exempt from environmental review because there is no possibility that the activity in question may have a significant effect on the environment. The proposed Zoning Amendment will change the text of the Zoning Ordinance only, allowing massage establishments as a conditionally permitted use in certain zones, and allowing massage as an accessory use in certain situations. Additional environmental determination may be necessary for future Conditional Use Permit applications.

Section 3: The amendments are consistent with the City of Milpitas General Plan because no new land uses or policies have been introduced.

Section 4: The amendments are consistent with the City of Milpitas Zoning Ordinance because all new applications for Massage Establishments will be required to apply for a Conditional Use Permit pursuant to Section 10.57.04 of the Zoning Ordinance.

Section 5: The amendments are consistent with the Midtown Specific Plan and Transit Area Specific Plan because no new land uses or policies have been introduced.

Section 6: The Planning Commission of the City of Milpitas hereby recommends that the City Council adopt these amendments subject to the above Findings, and the Draft Ordinance attached hereto as Exhibits 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on October 22, 2008.

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 22, 2008, and carried by the following roll call vote:

COMMISSIONER

Cliff Williams

Gunawan Ali-Santosa

Lawrence Ciardella

Alexander Galang

AYES	NOES	ABSTAIN	OTHER

COMMISSIONER

Sudhir Mandal

Gurdev Sandhu

Noella Tabladillo

Aslam Ali

AYES	NOES	ABSTAIN	OTHER

EXHIBIT 1

Draft Ordinance No. XX.XXX
ZONING ORDINANCE AMENDMENT NO. ZA08-0007 TO ALLOW MASSAGE ESTABLISHMENTS BY CONDITIONAL USE PERMIT IN THE MIXED USE (MXD), GENERAL COMMERCIAL (C2) AND TOWN CENTER (TC) ZONES AND TO ALLOW THE MASSAGE OF HANDS AND FEET AS AN ACCESSORY USE TO COMMERCIAL SERVICE USES.

REGULAR

NUMBER: 38.784

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, AMENDING TITLE XI CHAPTER 10 FOR THE PURPOSE OF APPROVING ZONING AMENDMENT NO. ZA08-0007 TO ALLOW MASSAGE ESTABLISHMENTS BY CONDITIONAL USE PERMIT IN THE MIXED USE (MXD), GENERAL COMMERCIAL (C2) AND TOWN CENTER (TC) ZONES AND TO ALLOW THE MASSAGE OF HANDS AND FEET AS AN ACCESSORY USE TO COMMERCIAL SERVICE USES.

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

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

WHEREAS, on July 8, 2008, Philip Su, representing Milpitas Square, LLC, made an application to amend the Zoning Ordinance to allow Massage Establishments in the Mixed Use (MXD) and General Commercial (C2) Zones.

WHEREAS, after reviewing the application, Planning Division staff determined that it was also appropriate to apply the amendments to the Town Center (TC) Zone and the Accessory Use Section of the Zoning Ordinance; and

WHEREAS, Zoning Ordinance Section 10-6.02 Mixed Use Regulations, will be amended to expand the Accessory uses to allow massage of the hands and feet in conjunction with commercial services and medical uses, to delete Massage Establishments from Prohibited Uses and to add Massage Establishments as a use permitted subject to the issuance of a Conditional Use Permit; and

WHEREAS, the proposed Zoning Ordinance Text Amendment will also modify Section 10-13.03 Accessory Uses, to allow massage of hands and feet in conjunction with commercial services; and

WHEREAS, The proposed Zoning Ordinance Text Amendment will modify the General Commercial (C2) Zone and Town Center (TC) Zone, Sections 10-19 and 10-22 of the Zoning Ordinance, respectively, to allow Massage Establishments as Conditionally Permitted Uses; and

WHEREAS, pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, the proposal is exempt from environmental review because there is no possibility that the activity in question may have a significant effect on the environment. The proposed Zoning Text Amendment will change the text of the Zoning Ordinance only, allowing massage establishments as a conditionally permitted use in certain zones, and allowing massage as an accessory use in certain situations. Additional environmental determination may be necessary for future Conditional Use Permit applications.

WHEREAS, the Milpitas Planning Commission held a duly noticed public hearing on October 22, 2008 on the amendments proposed by City Staff, received reports and evidence prepared by staff and heard comments from the public, and recommended approval of the aforementioned amendments by the City Council; and

WHEREAS, the City Council finds that the proposed amendments to the Milpitas Zoning Ordinance and the maps referenced therein are exempt from CEQA pursuant to: (a) CEQA Guideline 15061(b)(3), because there is no possibility that the activity in question may have a significant effect on the environment. The proposed Zoning Text Amendment will change the text of the Zoning Ordinance only, allowing massage establishments as a conditionally permitted use in certain zones, and allowing massage as an accessory use in certain situations. Additional environmental determination may be necessary for future Conditional Use Permit applications.; and

WHEREAS, the City Council finds that with the inclusion of the proposed amendments, the Zoning Ordinance would remain internally consistent.

ORDAINING CLAUSE:

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

SECTION 2. Chapter 10, Section 6.02(A)(2) of Title XI of the Milpitas Municipal Code “Accessory Uses” is hereby amended in its entirety to read as follows, with deletions in ~~strike~~through font:

2. Accessory Uses—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, ~~and 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 3. Chapter 10, Section 6.02(B)(2) of Title XI of the Milpitas Municipal Code “Prohibited Uses” is hereby amended in its entirety to read as follows, with deletions in ~~strike~~through font:

B. Prohibited Uses. The following uses are prohibited:

1. Uses where the symbol “NP” appears within Table XI-10-6.02-1.
2. The following uses are not permitted in any mixed use zone:
 - a. Adult Businesses as defined in Section XI-10-13.04, Adult Businesses, of this chapter.
 - b. Disinfecting and extermination business.
 - c. Ground level residential in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.
 - ~~d. Massage establishments, except as an Accessory Use, as provided for in Section XI-10-6.02(A)(2), Accessory Uses, of this Section.~~
 - e.d. Outdoor storage of vehicles.
 - f.e. Private self-storage facilities.
 - g.f. Single-family detached dwellings.
 - h.g. Two-family dwelling units.
 - i.h. Vehicle oriented window service facilities.

SECTION 4. Chapter 10, Section 6.02, Table 6.02-1 of Title XI of the Milpitas Municipal Code “Mixed

Use Zone Uses” is hereby amended in its entirety to read as follows, with deletions in ~~strike through~~ font (all footnotes will remain):

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

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
1. Commercial Uses				
Blueprinting	C	NP	NP	NP
Catering establishments	C	C	C	C
Commercial Laboratories (Including medical and dental)	C	C	C	P
Commercial Services ¹	P/C	P/C	P/C	P/C
Grocery Stores (Supermarkets)	C	C	C	C
Laundries and Dry cleaners	C	NP	NP	NP
Liquor Stores	C	C	C	C
<u>Massage Establishment</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
Pawn Shops ²	C	C	C	C
Pet shops	C	NP	NP	NP
Retail ³	P/C	P/C	P/C	P/C
Tanning salons	C	C	C	C
Thrift shops (used merchandise)	C	C	C	C
2. Lodging				
Bed and Breakfast	NP	P	NP	NP
Boarding houses (3 or more persons)	C	C	C	C
Group dwellings	C	C	C	C
Hotels	C	P	P	P
Motels	C	C	C	C
3. Professional Offices, Financial Institutions and Related Uses				
Medical or dental offices and clinics	P	NP	P	P
Offices ⁴	P/C	NP	P/C	P
4. Public/Quasi Public and Institutional Uses				
Child Care centers ⁵	C	P	C	P
Dance and Music instruction	C	NP	NP	NP
Hospitals or sanitariums ⁶	C	C	C	C
Large family child care home ⁷	P	P	C	P
Park, playground or community center ⁸	NP	NP	P	P

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
Pet hospitals and Veterinarians	C	C	C	C
Places of assembly ⁹	C	C	C	C
Schools, Private (Elementary, Middle and High) ¹⁰	C	C	C	C
Small family child care home	P	P	P	P
Theaters (Indoor)	C	C	C	C
Transportation facilities ¹¹	C	C	C	C
Vocational Schools ¹²	C	C	C	C
5. Residential Uses				
Multi-family housing ¹³	P	NP	P	P
6. Restaurants				
Restaurants ¹⁴	P/C	P/C	NP	P/C
With Dancing and Entertainment	C	C	C	
With Internet Usage	P	P	P	
With ancillary on-premise beer and wine with no separate bar	P	P	P	
Bars, Cocktail lounges	C	C	C	
7. Unclassified Uses				
Arcades	C	C	C	C
Billiard centers	C	C	C	C
Bowling alleys	C	C	C	NP
Cabinet or carpenter shop ¹⁵	C	NP	NP	NP
Indoor recreation (Health/Fitness/Sports Clubs Facilities)	C	C	C	C
Janitorial and window cleaning services ¹⁶	C	NP	NP	NP
Live-work units	P	P	P	P
Lobbies and entries for upper floor uses	NP	P	NP	NP
Mixed use developments ¹⁷	P	P	P	P
Planned Unit Development ¹⁸	P	NP	NP	NP
Plumbing or sheet metal shops ¹⁹	C	NP	NP	NP
Sign Shops ²⁰	C	NP	NP	NP
Temporary tract signs ²¹	C	NP	NP	NP
8. Vehicle-Related Repair, Sales and Services				

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
Vehicle Dealership (Sales, Leasing, New and Used) ²²	C	C	C	C
Vehicle service uses ²³	C	NP	NP	C

SECTION 5. Chapter 10, Section 19.03 of Title XI of the Milpitas Municipal Code “Uses Permitted Subject to Securing a Conditional Use Permit” is hereby amended to add the following:

19.03-22.1 Massage Establishments, other than those specified as an Accessory Use, as provided for in Section XI-10-13.03 Accessory Uses, of this Chapter.

SECTION 6. Chapter 10, Section 22.04 of Title XI of the Milpitas Municipal Code “Conditional Uses” is hereby amended to add the following:

22.04.1 Massage Establishments, other than those specified as an Accessory Use, as provided for in Section XI-10-13.03 Accessory Uses, of this Chapter.

SECTION 7. Chapter 10, Section 13.03(A) of Title XI of the Milpitas Municipal Code “Accessory Uses” is hereby amended in its entirety to read as follows, with deletions in ~~strikethrough~~ font:

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, ~~and 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. (Ord. 38.780 (20) (part), 8/19/08)

SECTION 8. SEVERABILITY

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

SECTION 9: PUBLICATION AND EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after adoption, and thereafter the same shall be in full force and effect. Prior to the expiration of 15 days from the passage thereof, this Ordinance shall be published at least once in a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara. At the election of the City, this Ordinance may be published in summary form if prior to adoption the complete text is posted in the City Clerk's Office pursuant to Government Code Section 36933(c).