

## RESOLUTION NO. 15-032

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. UA15-0004 TO ALLOW FOR A 782 SQUARE FOOT EXPANSION OF AN EXISTING MASSAGE ESTABLISHMENT AT 200 SERRA WAY SUITE 4 (APN: 86-07-023)

**WHEREAS**, on September 14, 2011, the Planning Commission approved Conditional Use Permit (UP11-0027) for Paradise Spa that allowed for a 1,856 square massage establishment within the Serra Shopping Center located at 200 Serra Way, Suite 4 (APN: 86-07-023). The massage establishment included a reception area, two body massage rooms, and a 1,254 square foot area that would be dedicated to foot massage and reflexology; and

**WHEREAS**, on May 13, 2015, Zhen Quan Zhang with Paradise Spa submitted a Conditional Use Permit Amendment to allow a 782 square foot expansion to allow three new massage treatment rooms, a new tanning room, and ancillary space for employee breakroom and storage area. The project is located within the General Commercial Zoning district; and

**WHEREAS**, all previous planning entitlements for the operation of the massage establishment shall be amended and superseded by the adoption of this Resolution; and

**WHEREAS**, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project categorically exempt under CEQA; and

**WHEREAS**, on October 14, 2015, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

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

**Section 1:** 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:** The project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act in that the project entails an expansion of an existing massage establishment and consists solely of interior floor plan modifications.

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**Section 3: Conditional Use Permit [Section XI-10-57.04(F)] – The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit Amendment No. UA15-0004:**

- a. The project will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

As conditioned, the project will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare. The project is located in an existing retail center, and is substantially surrounded by other commercial uses that are similar in nature. Other commercial users in the center would be provided the opportunity to provide commerce to the massage establishment. Further, the hours of operation (10AM to 10PM) will not be disruptive to adjacent commercial businesses because they maintain similar hours, and the hours of operation are consistent with the Massage Ordinance per section III-6-7 (c). According to the Police Department's review, the project does not appear to create any adverse effects to the peace, health, safety, or welfare of persons residing or working in and around the surrounding area. There is no record of any prior police calls relating to this establishment since it began operating in 2013.

- b. The project is consistent with the Milpitas General Plan Policies;*

This project conforms to the intent of the General Commercial designation in that it provides a commercial service for personal and business services accessed primarily by the automobile in a shopping center. The project is also consistent with the implementing policies of the General Plan Land Use Element to promote infill development and provide a wide range of retail sales.

2.a-I-6: Endeavor to maintain a balanced economic base that can resist downturns in any one economic sector.

**Consistent:** The project adds to the retail mix of the Serra Shopping Center by adding further health and wellness services in conjunction with retail and various restaurant establishments.

2.a-I-7: Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.

**Consistent:** The project expands employment opportunities and would help promote business retention by adding additional services to the massage establishment and adds to the economic vitality of the shopping center.

- c. The project is consistent with the Milpitas Zoning Ordinance;*

The project is consistent with the purpose of the General Commercial (C2) Zone and development standards. The project is consistent with the purpose and intent of the General Commercial zone in that it provides a type of health and wellness service that caters to regional and local customers. Further, the massage establishment provides for a compatible land use with the other retail, entertainment, and restaurant uses within the center. The massage establishment

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is a commercial use that enhances the shopping center because it provides patrons with the opportunity to walk to several stores providing a variety of services. Additionally, the massage establishment consists of a single-purpose use that is served from an immediately parked automobile. The project complies with the City of Milpitas’s parking requirement. Per Table 53.09-1 of the Milpitas Zoning Code, a massage establishment requires one parking space per 200 square feet. The project meets this requirement by providing thirteen (13) parking spaces on site.

*d. The project is consistent with the Milpitas Midtown Specific Plan;*

The project implements the Midtown Specific Plan by adding health and wellness services in conjunction with other retail, entertainment and various restaurant establishments found in the Serra Shopping Center.

**Section 4:** The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 15-032 approving Conditional Use Permit Amendment No. UA15-0004, based on the above Findings and Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on October 14, 2015

\_\_\_\_\_  
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 14, 2015 and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Sudhir Mandal				
Rajeev Madnawat				
Hon Lien				
Larry Ciardella				
Ray Maglalang				
Zeya Mohsin (Alternate)				

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Demetress Morris				
Gurdev Sandhu				

**EXHIBIT 1**

**CONDITIONS OF APPROVAL FOR  
PARADISE SPA EXPANSION  
CONDITIONAL USE PERMIT AMENDMENT NO. UA15-0004  
AT 200 SERRA WAY (APN: 86-07-023)**

**General Conditions**

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit Amendment No. UA15-0004 (“Permit”) shall have no force or effect unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Division.
  
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
  
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  1. Acceptance of this Permit by Permittee; and
  2. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
  
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
  - a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or

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- c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. (P)
6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.
7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to the City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to the City. There is no vesting of any fees or charges with the adoption of this Resolution.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. (CA/P)
11. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act,

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and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on October 14, 2015, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, project description, or other approved submittal shall require that, prior to the issuance of planning approval, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. (P)

### **Project Specific Conditions**

16. Treatment room doors shall remain unlocked at all times. (P)
17. Ensure that the storefront windows remain clear and unobstructed for the safety of employees and customers.
18. Hours of operation for massage services shall be consistent with the hours stipulated in the Milpitas Massage Ordinance.
19. Prior to Building Permit issuance, the applicant shall submit a revised floor plan with construction details for the construction of the massage rooms and shall demonstrate a clearstory opening on the wall facing the common walk area. The clearstory shall provide a minimum 2-foot opening to allow sound in all massage rooms to be heard throughout the

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- establishment. The opening may only be covered by some type of lattice screen, shade or curtain. (P)
20. The massage establishment shall comply with Title III, Chapter 6 "Massage Establishments and Practitioners" of the City of Milpitas Municipal Code. (P) (PD)
  21. The massage establishment permit and a copy of the permit of each and every massage practitioner employed by a massage establishment shall be displayed in an open and conspicuous place on the premises. (P) (PD)
  22. Prior to issuance of a certificate of occupancy and business license, the operator shall submit an application to the Chief of Police or his or her authorized representative. Please refer to III-6-6 Massage Establishment, and Off-Premises Massage Service Permit Application. (P) (PD)
  23. Each person employed or acting as a massage practitioner shall have a valid massage practitioner permit issued by the Chief of Police which shall be clearly visible on the massage practitioner's person during working hours. It shall be unlawful for any owner, manager, operator, managing officer/employee, or permittee to employ or permit a person to act as a massage practitioner who is not listed on the massage establishment permit application or in possession of a valid massage practitioner permit issued pursuant to Chapter 6 of the Milpitas Municipal Code. (P) (PD)
  24. In addition to the possession of a valid massage establishment permit, all persons providing massage services at an establishment must also possess a massage practitioner permit in order to provide massage services. (P) (PD)
  25. A list of services available, and the cost of such services, shall be posted in an open public place within the premises and shall be described in readily understandable language. No owner, manager, operator, managing officer/employee, or permittee shall permit, and no massage practitioner shall offer or perform, any service other than those posted. (P)
  26. The massage establishment shall keep a written record of the date and hour of each service provided, the name and address of each patron and the service received, and the name of the massage practitioner administering the service. Such records shall be open to inspection only by City officials, including the Police Department and the City Attorney. These records may not be used for any purpose other than as records of services provided and may not be provided to other parties by the massage establishment unless otherwise required by law. Such records shall be retained on the premises of the massage establishment for a period of two (2) years. (P) (PD)
  27. The massage establishment shall at all times be equipped with an adequate supply of clean sanitary towels, table coverings and linens. Clean towels, coverings and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one (1) patron, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be

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used on more than one (1) patron. Soiled linens and paper towels shall be deposited in separate, approved receptacles. (P)

28. All employees, and massage practitioners, shall perform their work fully clothed, be clean and wear clean outer garments which are used and worn only at the establishment (i.e., a smock). (P)
29. The massage establishment shall not place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that any service is available other than those services described in MMC III-6-2 (c). No massage establishment or off-premises massage service shall employ language in the text of such advertising that would reasonably suggest to a prospective patron that any service is available other than those services as described in MMC III-6-2 (c) (Massage Establishment and Practitioners – Definitions – Massage). (P) (PD)
30. At least one entrance door, allowing access to the massage establishment and any building it may be located in, shall remain unlocked during business hours. (P) (PD)
31. The massage establishment may not be open for business without at least one massage practitioner on the premises at all times who is in possession of a valid permit. (P) (PD)
32. Any change with respect to the information contained in the operator's application shall be reported to the Chief of Police within ten (10) days of such change. (P) (PD)
33. This approval does not permit the operation of a school of massage, or use the same facilities as that of a school of massage. (P)

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(PD) = Police