

**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 November 18, 2008, upon motion by Councilmember Polanski 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

\_\_\_\_\_  
Robert Livengood, 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; and

**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.

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

**SECTION 1.** 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 ~~striketrough~~ font and additions in underlined 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 2.** 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 ~~striketrough~~ font and additions in underlined 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 3.** 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 ~~striketrough~~ font, additions in underlined font, and all footnotes preserved:

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

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
<b>1. Commercial Uses</b>				
Blueprinting	C	NP	NP	NP
Catering establishments	C	C	C	C
Commercial Laboratories (Including medical and dental)	C	C	C	P
Commercial Services <sup>1</sup>	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
Massage Establishment	C	C	C	C
Pawn Shops <sup>2</sup>	C	C	C	C
Pet shops	C	NP	NP	NP
Retail <sup>3</sup>	P/C	P/C	P/C	P/C
Tanning salons	C	C	C	C
Thrift shops (used merchandise)	C	C	C	C
<b>2. Lodging</b>				
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
<b>3. Professional Offices, Financial Institutions and Related Uses</b>				
Medical or dental offices and clinics	P	NP	P	P
Offices <sup>4</sup>	P/C	NP	P/C	P
<b>4. Public/Quasi Public and Institutional Uses</b>				
Child Care centers <sup>5</sup>	C	P	C	P
Dance and Music instruction	C	NP	NP	NP
Hospitals or sanitariums <sup>6</sup>	C	C	C	C
Large family child care home <sup>7</sup>	P	P	C	P
Park, playground or community center <sup>8</sup>	NP	NP	P	P
Pet hospitals and Veterinarians	C	C	C	C
Places of assembly <sup>9</sup>	C	C	C	C

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
Schools, Private (Elementary, Middle and High) <sup>10</sup>	C	C	C	C
Small family child care home	P	P	P	P
Theaters (Indoor)	C	C	C	C
Transportation facilities <sup>11</sup>	C	C	C	C
Vocational Schools <sup>12</sup>	C	C	C	C
<b>5. Residential Uses</b>				
Multi-family housing <sup>13</sup>	P	NP	P	P
<b>6. Restaurants</b>				
Restaurants <sup>14</sup>	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	
<b>7. Unclassified Uses</b>				
Arcades	C	C	C	C
Billiard centers	C	C	C	C
Bowling alleys	C	C	C	NP
Cabinet or carpenter shop <sup>15</sup>	C	NP	NP	NP
Indoor recreation (Health/Fitness/Sports Clubs Facilities)	C	C	C	C
Janitorial and window cleaning services <sup>16</sup>	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 <sup>17</sup>	P	P	P	P
Planned Unit Development <sup>18</sup>	P	NP	NP	NP
Plumbing or sheet metal shops <sup>19</sup>	C	NP	NP	NP
Sign Shops <sup>20</sup>	C	NP	NP	NP
Temporary tract signs <sup>21</sup>	C	NP	NP	NP
<b>8. Vehicle-Related Repair, Sales and Services</b>				
Vehicle Dealership (Sales, Leasing, New and Used) <sup>22</sup>	C	C	C	C

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
Vehicle service uses <sup>23</sup>	C	NP	NP	C

**SECTION 4.** 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 with the addition of the following new subsection, the new text of which is shown in underlined font:

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 5.** Chapter 10, Section 22.04 of Title XI of the Milpitas Municipal Code “Conditional Uses” is hereby amended with the addition of the following new subsection, the next of which is shown in underlined font:

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 6.** 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 ~~strike through~~ font and additions in underlined 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 7. 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 8: 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).