

REGULAR

***5**

NUMBER: 172.5

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 6 OF TITLE III OF THE MILPITAS MUNICIPAL CODE RELATING TO MASSAGE ESTABLISHMENTS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of October 20, 2009, upon motion by Vice Mayor Pete McHugh and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas enacted an Ordinance regulating activities by massage establishments and practitioners in 1995; and

WHEREAS, the State Legislature enacted a state law, Business and Professions Code Section 4600, *et seq.*, to take effect in September 2009 and which authorizes a state-approved non-profit organization, the California Massage Therapy Council, to certify massage practitioners; and

WHEREAS, the new state law prohibits a local government from issuing permits and/or licenses to massage establishments and practitioners that have been certified by the state, but still allows some regulation by local governments, including business licenses and reasonable health and safety requirements; and

WHEREAS, the City Council wishes to amend the current City of Milpitas Ordinance regulating massage establishments and practitioners to comply with state law.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council 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 City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION III-6-5

Section III-6-5(g) is hereby added to Section 5 of Chapter 6 of Title III as follows:

III-6-5 Exemptions

- (g) Massage practitioners that have a valid certificate issued by the Massage Therapy Organization (also known as the California Massage Therapy Council), pursuant to Business and Professions Code Chapter 10.5 of Division 2, commencing with Section 4600, and who are practicing consistent with the qualifications established by such certificate. Notwithstanding the foregoing, this provision shall not exempt such certified massage practitioners from the requirements of Sections III-6-4, III-6-8, except for subsections 6-8(d), 6-8(h) and 6-8(i), III-6-9, III-6-11, and III-6-20 of this Chapter and local building, health and safety, zoning and other requirements, as permitted by state law.

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.