



MILPITAS PLANNING COMMISSION AGENDA REPORT

NEW BUSINESS

Meeting Date: December 9, 2009

APPLICATION: REPORT ON STREAMLINING AMENDMENTS PROJECT

APPLICATION
SUMMARY:

A report on the progress of the draft zoning amendment to streamline certain land use processes.

LOCATION: Not Applicable

APPLICANT: City of Milpitas

OWNER: Not Applicable

RECOMMENDATION: Staff recommends that the Planning Commission:
1. Receive staff's report and provide direction and comments regarding the project.

PROJECT DATA:

General Plan/
Zoning Designation: Not Applicable

CEQA Determination: Not Applicable

PLANNER: Sheldon S. Ah Sing, Senior Planner

ATTACHMENTS: None

BACKGROUND

The City Council adopted several ordinances affecting the City's Zoning Ordinance, including parking, reformatting the code and streamlining the development review process over the last two years. These amendments have shortened and clarified the review process for development projects and business proposals.

Initiation and direction from Planning Commission

On August 26, 2009, the Planning Commission initiated the zoning amendment regarding streamlining certain land use permitting processes and incorporating temporary uses and structures that are presently regulated through stand alone adopted resolutions. The commission asked for staff to subsequently report on 1) what impact the proposed changes would have in terms of cost savings or cost avoidance to the city; 2) how those changes would impact customers (businesses and residents); and 3) what have other city's done with similar efforts. This report provides feedback on those items and provides the framework for the draft amendments.

ANALYSIS

The main focus of this effort is shortening the process by changing certain uses, such as restaurants, from conditional uses requiring a Conditional Use Permit to permitted uses allowing review at a staff level if certain performance or development standards are met. By surveying the last two years of Planning Commission meeting minutes, staff found that discussion regarding restaurants occurred when the restaurant was proposing serving alcohol or providing live entertainment. This suggests that restaurants, not serving alcohol or providing live entertainment would be good candidates to have streamlined review, since other aspects of the review, such as parking are regulated objectively by the zoning ordinance. Subjective review with conditions of approval based on "compatibility and health and safety" findings is unnecessary.

Cost savings

The majority of the projects suggested by staff for streamlining are processed using private job accounts where the applicant pays for staff time to process their application. For these application types, an applicant will save on average between \$2,000 and \$3,000 if their project does not require review by the Planning Commission as a public hearing item. The savings directly equates to the amount of time staff spends on the project. Instead of being processed as a planning application, the project is reviewed either as a business license and or a building permit. More staff time consequently can be allocated to more complex projects reducing the need for consultants or contract staff.

Time savings

A typical Conditional Use Permit takes an average of two to three months to process from the time the application is submitted to the Planning Commission hearing. If the Planning Commission approves the project and the 12 day appeal period has passed, then a business license or building permit can be issued. In all, from submittal of an application to business license or building permit issuance, the project could take an average of four months to process.

In contrast, if a Conditional Use Permit is not required, then the review of the application starts with the business license or building permit. Depending on the scope of the project, the review may take only an hour or a few weeks before a permit is issued. In all, the process could take a few weeks to process.

Clarity and consistency

The City’s zoning ordinance was extensively updated over the last two years. Tables were introduced to better convey what would otherwise be dense information provided in poorly organized lists. Staff is recommending minor changes that would increase consistency amongst these tables and provide clarity to terminology that is undefined or easily misinterpreted. This will help expedite review of proposals and increase customer quality assurance.

The following tables illustrate staff’s recommended changes to the permitted and conditional uses for each zoning district (the entire table is not published here). These changes represent both the streamlining effort and changes to increase consistency and clarity among the tables.

Commercial Zone Uses

Use	CO	C1	C2	HS	TC-W	TC-E
Office supply sales (stationary, equipment)	<u>€ P</u>	P	P	P	P	P
Animal boarding	<u>NP</u>	<u>NP</u>	<u>C</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>
Animal grooming (no boarding)	<u>NP</u>	P	P	P	P	<u>NP</u>
Veterinary clinic and animal grooming	<u>NP</u>	<u>NP</u>	<u>€ P</u>	<u>€ P</u>	<u>€ P</u>	<u>NP</u>
Print and copy shop	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>NP</u>
Arcade and amusement Indoor recreation or entertainment facilities	NP	C	C	C	C	NP
Research & development	<u>NP</u>	<u>NP</u>	<u>C</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>
Auditorium	<u>NP</u>	<u>NP</u>	<u>P</u>	<u>NP</u>	<u>€</u>	<u>€</u>
Club or social organization	NP	C	<u>P C</u>	<u>P C</u>	C	C
Cultural center	<u>NP</u>	<u>NP</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
Video rental and sales	<u>NP</u>	<u>€ P</u>	<u>€ P</u>	<u>NP</u>	<u>€ P</u>	<u>€ P</u>
<u>Instruction</u>						
<u>Group</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>NP</u>
<u>Private</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>NP</u>
Instructional studio (dance, yoga)	<u>€</u>	<u>€</u>	<u>€</u>	<u>P</u>	<u>€</u>	<u>NP</u>
Private instruction, personal enrichment (tutoring)	<u>€</u>	<u>€</u>	<u>P</u>	<u>€</u>	<u>P</u>	<u>NP</u>
Restaurants (includes drive in or drive thru)						
With on-site service of alcohol	C	C	C	C	C	C
Without on-site service of alcohol	C	<u>€ P</u>	<u>€ P</u>	P	<u>€ P</u>	<u>€ P</u>
With live entertainment/dancing	<u>NP</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
Drive in or Drive thru	<u>NP</u>	C	C	C	C	C
Auto sales, outdoor (new and used cars in operable condition)	NP	NP	C	P	NP	NP
Auto broker (wholesale, no vehicles on site)	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>NP</u>
Drive through use	<u>NP</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>

Mixed Use Zones

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
<u>Blueprinting</u>	<u>C</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>
<u>Internet access studio</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Animal grooming (no boarding)</u>	<u>P</u>	<u>P</u>	<u>NP</u>	<u>P</u>
<u>Pharmacy/Drug store</u>	<u>P</u>	<u>P</u>	<u>NP</u>	<u>P</u>
<u>Pet hospitals and Veterinarians</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Veterinarian clinic</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Dance and Music instruction</u>	<u>C</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>
<u>Instruction</u>				
<u>Group</u>	<u>C</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>
<u>Private</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>P</u>
<u>Indoor recreation or entertainment facilities (Health/Fitness/Sports Clubs Facilities)</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Commercial athletic facilities</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Optician and optometrist shop</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Public utilities</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Temporary seasonal sales</u>	<u>P</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>
<u>Vehicle Dealership (Sales, Leasing, New and Used)</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Auto broker (wholesale with no vehicles on site)</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

Institutional Zones

Use	Institutional Zone
<u>Temporary seasonal sales</u>	<u>P</u>

Industrial Zones

Use	M1	M2	MP
Plant or facility (research & development, assembly, manufacturing, packaging, processing, repairing, etc. or materials, merchandise or products)	<u>P</u>	<u>P</u>	<u>NP P</u>

To support some of the changes, new definitional entries are necessary. The following are suggested:

- **“Grocery store”** means any premises wherein any of the following are exposed, offered for sale, or sold by retail: fresh fruits; fresh vegetables; bakery; meat; poultry, or fish products; frozen foods; along with processed and pre-packaged food.
- **“Instruction, group and private”** means the provision of instructional services, including but not limited to photography, fine arts, crafts, dance or music studios, driving school, diet centers, yoga, martial arts studios, or similar uses. This definition does not include instruction received through Trade or Vocational Schools nor a Post-Secondary

School. Private instruction includes fewer than four (4) students or clients at any one time and group instruction includes four (4) or more students or clients at any one time.

- **“School, trade and vocational”** shall mean an establishment where training is received to learn a particular trade or craft that involves skilled labor. Trades and crafts include but are not limited to the various construction trades, auto mechanics, machining, HVAC installation/repair/maintenance and similar trades and crafts.
- **“Medical support laboratory”** means a facility for analysis of medical and dental resources. The analysis is generally performed for medical and dental professionals.
- **“Commercial laboratory”** means a facility for scientific research in technology-intensive fields. Examples include biotechnology, pharmaceuticals, genetics, plastics, polymers, films and fibers.

OTHER JURISDICTION EFFORTS

In other cities, the decision to lessen or streamline the review takes on a similar test and depends on the community’s sensitivity to the use’s operations as it relates to surrounding properties. Staff’s survey of other cities found that “video sales and rentals”, “small instructional studios”, “tanning salons”, “veterinarian clinics” and “restaurants” are permitted without benefit of a Conditional Use Permit in San Jose, Santa Clara and Fremont. It would also appear based on the minutes of past Planning Commission meetings that these requests have not resulted in controversy or discussion, thus are also good candidates for streamlined review.

ADDITIONAL ZONING TEXT CHANGES

Temporary Uses and Structures

The Zoning Ordinance includes limited provisions for temporary uses and structures. The Planning Commission has in the past adopted resolutions that included provisions for certain temporary uses and structures. These stand alone resolutions lead to some confusion by applicants. Staff recommends that the Planning Commission consider rescinding these resolutions and include standards for “special events” and “parking lot and sidewalk sales” into the zoning ordinance.

Entertainment events and temporary activities

Presently, Planning Commission Resolution No. 453 provides regulations regarding temporary outdoor events and tent sales. In addition, the Milpitas Municipal Code provides regulations for Entertainment Events, which are similar to “outdoor events”, but include carnivals and circuses. Staff is recommending combining these two into a new category called “special events and activities”. This would streamline the process because two departments issue two separate permits, whereas, the proposed process would be overseen by one department. In addition the review process would be shortened from consideration at the City Council level to review by the Planning Commission Subcommittee and staff.

Staff proposes to define special events and activities as:

- **“Special Events and Activities”** Means any temporary event or activity sponsored by a business, shopping center or organization which is held outside the confines of a permanent building.

Events that are between one and three days would be reviewed at a staff level, while events that are between four and seven days be reviewed by the Planning Commission Subcommittee. Any event that proposes sound amplification will be reviewed by the Planning Commission Subcommittee regardless of the duration. These events shall be limited to four occurrences in a calendar year and a minimum of 30 days shall lapse in between events.

Exceptions for the minimum lapse period and number of occurrences may be granted with the approval of a Conditional Use Permit by the Planning Commission. In the past the Great Mall has wanted to hold numerous events during the summer, where this exception would allow such a request.

Parking lot and sidewalk sale

Parking lot and sidewalk sales are similar in nature to entertainment events; however, the sale is prohibited from locating on public property or in required parking or loading areas. Staff may approve requests if certain criteria are met, such as location and that the number of occurrences does not exceed four and a minimum 30 days lapse between sales.

Time extensions

Approvals of planning applications currently expire 18 months after the approval date unless either the applicant requests and the Planning Commission approves an 18 month time extension or the approval is exercised by a business opening, a foundation being completed, or a required easement or piece of land is dedicated to the City. A project therefore has up to three years to exercise its approvals. Staff proposes extending the initial time limitation from 18 months to 24 months and to allow approvals with tentative maps to be consistent with the expiration time frame of the tentative map, which could be five years. This allows the applicants sufficient time to prepare for building permit and construction and would still allow the 18 month time extension giving a project a total of 3.5 years before it expires.

Other conditional use permit modifications

In considering Conditional Use Permits, staff suggests allowing the Planning Commission to impose time limits to the life of the permit. This would enable the granting of a “temporary” Conditional Use Permit which could be used for some non-conforming use situations for a limited time.

In addition, staff proposes changes that would allow the Planning Commission to initiate modifications to approved Conditional Use Permits. This would allow the Commission to call up projects that are not in compliance to review conditions of approval and include new conditions after a public hearing. Currently the Municipal Code only gives that authority to the City Council.

Possible future changes

Additional stand alone resolutions include provisions for outdoor types of activities such as “outdoor cooking facilities in commercial areas”, and “mobile vending on commercial property”. There has been interest by the public to include temporary outdoor display of merchandise. Although, grocery stores and hardware stores already provide temporary outdoor display, there is no formal process to allow or regulate the display of merchandise.

In addition there are resolutions for automobile dealership operations, which have been used to create conditions of approval for recent projects. Other resolutions include provisions for “outdoor seating” at restaurants and provisions regarding fast food establishments in industrial zones. While not all of the contents of these resolutions would be considered for inclusion in the Zoning Ordinance, additional research is needed.

It is also expected that minor clean up will occur where necessary to ensure consistency and clarity within the zoning ordinance.

CONCLUSION

It is anticipated that the zoning text amendment project will create certain efficiencies for development review, which would benefit applicants and city staff alike with reduced time and resources needed to process a development or business proposal. Staff seeks concurrence and direction regarding the scope of the project. The next step will be requesting the Planning Commission to consider and recommend amendments to the City Council.

RECOMMENDATION

STAFF RECOMMENDS THAT the Commission receive staff’s report and provide direction and comments regarding the project