MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: December 8, 2010

APPLICATION:	**Zoning Amendment No. ZA10-0004, Zoning Text Amendment to Section 56 (Nonconforming Uses and Structures) of the Milpitas Zoning Ordinance.**
APPLICATION SUMMARY:	An amendment to Section 56 to incorporate additional provisions and special findings to allow for transitioning of parcels with legal, non-conforming uses or structures.
LOCATION:	Citywide
APPLICANT:	City of Milpitas
OWNER:	Not Applicable
RECOMMENDATION:	**Staff recommends that the Planning Commission:** **Adopt Resolution No. 10-047 recommending approval of the amendments to the City Council.**
PROJECT DATA: General Plan/ Zoning Designation:	Citywide
CEQA Determination:	Staff determined the project to be exempt pursuant to Section 15061 of the CEQA Guidelines. The activity is covered by the general rule that CEQA applies only to projects, which have the potential causing a significant effect on environment.
PLANNER:	Cindy Hom, Assistant Planner
PJ:	None
ATTACHMENTS:	A. Underline and strikeout of amendments B. Resolution No. 10-047 C. Ordinance No. 38.793 (Exhibit 1 to Resolution)

BACKGROUND

At its October 27, 2010, the Planning Commission considered an appeal to Staff's decision to deny the establishment of an auto repair facility in a location where city's nonconformance and mixed use district ordinances do not allow such establishments to locate. The Planning Commission upheld the Staff decision and directed staff to initiate a zoning text amendment that would provide provisions for nonconforming uses

Section 56 of the Zoning ordinance is intended to establish regulations for nonconforming buildings, structures, and uses. The purpose and intent of the regulations are to ensure the conversion of nonconforming uses to conforming standards and to the ultimate vision of the city's General Plan, but also to grant the ability of sites with legal, nonconforming buildings, structures, and uses to continue until such time they are converted and to allow for improvements that promote neighborhood compatibility or enhance the quality of the development without increasing the nonconformity.

With adoption of the Midtown Specific Plan and Transit Area Specific Plan, many parcels improved with buildings and existing uses were rendered nonconforming. Transition in these areas will not occur in the near future due to current economic conditions and this has lead to long term vacancies as well as unique site constraints.

Site constraints that affect the Midtown area include small parcel sizes. Parcels will need to be assembled in order for ideal development to occur. Also, there are instances where commercial buildings along Main Street were developed with single uses in mind such as auto repair centers. The Midtown Specific Plan also implemented a distance requirement in effort to prevent and discontinue over concentration of certain uses. However, given the age of the building and type of uses the buildings were intended for, it has created a constraint for these buildings and sites to convert to a conforming use that would be consistent with the underlying zoning.

Unlike the small parcels in Midtown, the Transit Area consist of large parcels and include multiple industrial buildings. While these parcels would require minimal assemblage, they still experience a difficult time turning over due to market conditions for housing and commercial development. Since these buildings are designed and intended for industrial uses, they can only attract certain tenants and types of uses.

Due to these issues, there are an increasing number of requests to re-establish nonconforming uses or continue nonconforming uses mainly in the specific plan areas.

PROJECT DESCRIPTION

The project consists of a zoning text amendment to Section 56 (Nonconforming Buildings and Uses) of the Milpitas Zoning Ordinance that establishes criteria that would to allow continuation of nonconforming uses or change of use throughout the city and criteria and process for reestablishment of nonconforming uses in the Midtown and Transit Specific Plan areas under certain circumstances. In addition, the consideration of a change of use to a different nonconforming use classification or reestablishment of a discontinued nonconforming use can be approved administratively by planning staff if the proposed use is not within 500 feet of any residential use or if the proposed use does not require a conditional use permit under current zoning requirements taking into consideration the previous zoning map designation applicable when the use became nonconforming.

The overall objective of the text amendment is to provide controlled flexibility to allow change of use or reestablishment of a nonconforming use in certain circumstances. A copy of the strikethrough and underline exhibit showing proposed text changes is provided in Attachment A. The proposed text amendments are briefly summarized in the section below:

Change of Use Within the Same Use Classification
As with the existing language within the nonconforming section, an existing, on-going nonconforming use may be changed to a use of the same classification (i.e. an automotive repair establishment may be changed to another automotive repair establishment if the use has not become discontinued for more than a year.

Change of use to a Different Nonconforming Use Classification
An existing on-going nonconforming use may change to a nonconforming use of a different use classification if the proposed use is equivalent to or more appropriate than the existing nonconforming use. The proposed use would have to demonstrate that it would not cause a nuisance to the surrounding area, is compatible with the general character of the neighborhood or district, and allows for the economic use of the structure and improvements until they are permanently converted to a conforming use. This provision applies to sites with uses that have not been discontinued.

Reestablishment of Discontinued Nonconforming Uses in Midtown and Transit Area.
A nonconforming use that was discontinued for a year or more in the Midtown and Transit Area may reestablish provided the proposed reestablishment of a nonconforming use would not create a nuisance to the surrounding properties, would be compatible with the general character of the surrounding neighborhood or district, contribute the economic vitality of the district until the site can be permanently converted to conforming uses.

Definitions
In addition to the above text changes, staff proposes to add definitions for the following terms:

“Intensification of use” – to alter the character of a use to the extent that the use generates new or different impacts on the health, safety, or welfare of the surrounding neighborhood, including but not limited to the level or amount of traffic, noise, light, smoke, odor, vibration, outdoor storage, or other similar conditions associated with the use.

“Intensity” – the degree to which land is used, measured by a combination of the type of land used and the amount of land or floor area devoted to that use.

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
2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance.	Consistent. The amendments to the Nonconforming Use and Structures Section of the Zoning Ordinance encourages economic pursuits and promotes a stable development in that it would allow uses that will fulfill vacancies and prevent blight. The proposed text amendment will allow spaces can be tenanted with uses that would add to the economic vitality and enhances the overall development.

Zoning Ordinance

The proposed text changes to the Zoning Ordinance provides for an internally consistent document. In addition, Section 2, Definitions, of the Zoning Ordinance was consulted to ensure that there were no conflicts.

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 exempt pursuant to Section 15061 of the CEQA Guidelines. The activity is covered by the general rule that CEQA applies only to projects, which have the potential causing a significant effect on environment since the project consists of text amendment to the zoning ordinance.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

CONCLUSION

The proposed text amendments provides a further refinement of the zoning ordinance that helps streamline the process for nonconforming uses in areas that have not or have partially transitioned. It also would help prevent blight in areas that would otherwise remain vacant. The proposed text amendment will allow spaces can be tenanted with uses that would add to the economic vitality and enhances the overall development.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 10-047 recommending approval to the City Council of approving ZA10-0004.

Attachments:

A. Strike-through and underline exhibit for Parking regulation changes
B. Resolution No. 10-047
C. Ordinance 38.793

1. Section 56 - Nonconforming Buildings and Uses*

Editor's note— * Prior * ordinance history: Ords. 38, 38.681 and 38.760.

XI-10-56.01 - Purpose and Intent
XI-10-56.02 - Repair, Maintenance and Improvements to Nonconforming Buildings and Structures
XI-10-56.03 - Nonconforming Use of Buildings and Structures
XI-10-56.04 - Nonconforming Use of Land

XI-10-56.01 - Purpose and Intent

The purpose of this chapter is to establish regulations for nonconforming buildings, structures and uses. It is the intent of these regulations to result in the conversion of nonconforming buildings, structures, and uses to conforming buildings, structures and uses. However, the City recognizes that until nonconforming buildings, structures, and uses are converted, improvements to them which promote their compatibility with their neighborhoods, enhance the quality of development, and do not increase nonconformity should be encouraged and allowed.

(Ord. 38.777 (14) (part), 6/17/08)

XI-10-56.02 - Repair, Maintenance and Improvements to Nonconforming Buildings and Structures

A nonconforming building or structure may be maintained, except as otherwise provided in this section.

A.

Repair, Maintenance, Aesthetic Improvements. Repairs and alterations may be made to a nonconforming building or structure, provided that no structural alterations shall be made except those required by law or ordinance.

B.

Restoration of Damaged Buildings. A nonconforming building or structure which is damaged or partially destroyed by fire, flood, wind, earthquake, or other calamity or act of God or the public enemy, to the extent of not more than seventy-five (75%) percent of its true value at that time, may be restored and the occupancy or use of such building, structure or part thereof, which existed at the time of such partial destruction, may be continued or resumed, provided the total cost of such restoration does not exceed seventy-five (75%) percent of the true value of the building or structure at the time of such damage and that such restoration is started within a period of one (1) year and is diligently prosecuted to completion.

In the event such damage or destruction exceeds seventy-five (75%) percent of the true value of such nonconforming building or structure, no repairs or reconstruction shall be made unless every portion of such building or structure is made to conform to all regulations for new buildings in the district in which it is located.

Provided, however, that any multistory single-family residence, which is subject to the provisions of the hillside section of this Title (Section XI-10-45), may be rebuilt to its approved height and setbacks and is not subject to the single-story height restrictions or other restrictions in the Zoning Title currently in effect, but shall conform to those regulations in effect at the time the structure was built.

C.

Additions to, Enlargements and Moving of Nonconforming Buildings and Structures.

1.

In the R1, R2 and R1-H Districts, a legal nonconforming building or structure shall not be added to or enlarged in any manner unless the addition or enlargement conforms to all development standards and regulations of the district in which it resides, including, but not limited to height, yard setbacks, maximum lot coverage, impervious surface coverage, and maximum size of residence regulations of said district. In addition, a legal nonconforming building or structure shall not be added to or enlarged unless existing front yard paving is brought into conformance.

2.

In all districts other than the R1, R2, and R1-H, a legal nonconforming building or structure may be added to or enlarged in a manner consistent with the criteria established in ~~Section~~Table XI-10-57-.04~~(C)(4)~~-1 and a Conditional Use Permit is obtained.

3.

A building or structure lacking adequate automobile parking space in connection therewith may be altered or enlarged provided the required additional automobile parking space is supplied as per Section XI-10-53 for the entire building or use, including the addition or enlargement.

4.

A nonconforming building or structure shall not be moved in whole or in part to any other location on the lot unless every portion of such building or structure is made to conform to all regulations of the district in which it is located.

(Ord. 38.777 (14) (part), 6/17/08)

XI-10-56.03 - Nonconforming Use of Buildings and Structures

A.

~~Continuation, Expansion and Change of Use. Except as otherwise provided in this section:~~

~~1.~~

The **~~nonconforming use~~**continuation or change of a **~~building or structure, existing at the time the Ordinance codified in this section became effective, may be continued; and~~**

2.

The nonconforming use of a building or structure **may be changed to a use of the same classification. The Planning Commission may allow a more restricted classification with the approval of a Conditional Use Permit; and**

3.

A nonconforming use of a building, structure or portion thereof, which is or hereafter becomes vacant and remains unoccupied for a continuous period of one (1) year shall **not thereafter be occupied except by the use which conforms to the use regulation of the district in which it is located**meet the requirements provided below.

4.

1. Continuation of Existing Nonconforming Use. A legally established use that is no longer permitted in a particular zoning district because of a modification of this chapter shall be allowed to continue indefinitely, absent discontinuation of the use for a year or more and failure to comply with the reestablishment provisions of Section 56.03.A.5. below.

2. Discontinuation of Nonconforming Use. The nonconforming use of a building, structure or portion thereof, which is discontinued for a continuous period of one (1) year or **structure (i.e., commercial use in a dwelling, etc.) shall not be expanded or extended into any other portion of such building or structure nor changed except to** more, may be replaced only with a conforming use**.**, absent an approved nonconforming use reestablishment set forth in Section 56.03.A.5. below. Nonconforming uses which have been discontinued for a period of less than one (1) year may be replaced (i) with a nonconforming use of the same use classification as a matter of right or (ii) a nonconforming use of a different use classification, subject to compliance with the findings and procedures set forth Section 56.03.A.4.

B.

Exemptions for Certain Nonconforming Uses.

1.

The provisions amending Sections XI-10-30, XI-10-31 and XI-10-35 (M1, M2, MP Districts) of this Chapter, related to development standards, shall not apply to any existing improvements (buildings, landscaping, fencing or parking) lawful at the time of installation or improvements which have been approved by the Planning Commission and for which a building permit issued prior to June 17, 1982, and installed in conformance with said approval and permit.

~~2.~~

~~**The provisions amending Sections XI-10-53.14 and XI-10-53.22 of this Chapter, related to parking stall dimensions and compact stall ratios and location, shall not apply to any existing improvements (buildings or parking facilities) lawful at the time of installation or improvements which have been approved by the Planning Commission and for which a building permit issued prior to November 19, 1992, and installed in conformance with said approval and permit.**~~

3. Changes of Use Within the Same Use Classification. An existing, ongoing nonconforming use may be changed to a different use within the same use classification. For example, a nonconforming auto repair shop use may be changed to a tire shop use, since both uses fall within the same use classification (auto service uses).

4. Change of Use to a Different Nonconforming Use Classification. An existing, ongoing nonconforming use may be changed to a nonconforming use of a different use classification only if it can be found that the proposed use is equivalent to or more appropriate than the existing nonconforming use at the project location. The proposed use shall be allowed only if all of the following findings can be made:

a. The proposed nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.).
b. The proposed nonconforming use would be compatible with the general character of the surrounding neighborhood or district.
c. The proposed nonconforming use is necessary to allow gainful economic use of structures or improvements until such structures or improvements can be permanently converted to conforming uses.

The approval of a nonconforming use of a different use classification shall be done by the Planning Commission by way of a conditional use permit, with the above additional findings, if (i) the proposed use lies within 500 feet of any residential use or (ii) the proposed use requires conditional use permit review under current zoning requirements and the zoning map designation applicable when the use became nonconforming. The approval may be issued administratively by Planning Division staff in all other circumstances.

5. Reestablishment of Discontinued Nonconforming Uses within the Midtown and Transit Area Specific Plan Areas. Once discontinued for a year or more, nonconforming uses only within the Midtown and the Transit Area Specific Plan Areas may be reestablished if all of the following findings can be made:

a. The proposed reestablishment of a nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.).
b. The proposed reestablishment of a nonconforming use would be compatible with the existing general character of the surrounding neighborhood or district.
c. The proposed reestablishment of a nonconforming use is necessary to allow gainful economic use of structures or improvements until such

structures or improvements can be permanently converted to conforming uses.

The reestablishment of a discontinued nonconforming use shall be approved by the Planning Commission by way of a conditional use permit, with the above additional findings, if (i) the proposed use lies within 500 feet of any residential use or (ii) the proposed use would require conditional use permit review under current zoning requirements and the zoning map designation applicable when the use became nonconforming. The approval may be issued administratively by Planning Division staff in all other circumstances.

(Ord. 38.777 (14) (part), 6/17/08)

XI-10-56.04 - Nonconforming Use of Land

1.

Continuation of Use. The nonconforming use of land (where no main building is involved), existing at the time the Ordinance codified in this section became effective, may be continued for a period of not more than five (5) years therefrom, provided:

a.

That no such nonconforming use of land shall, in any way, be expanded or extended either on the same or adjoining property.

b.

That, if such nonconforming use of land, or any portion thereof, is discontinued or changed, any future use of land shall be in conformity with the provisions of this Chapter.

c.

That any sign, billboard, commercial advertising structure or statuary, which is lawfully existing and maintained prior to January 26, 1954, may be continued, although such use does not conform with the provisions hereof; provided, however, that no structural alterations are made thereto and provided, further, that all such nonconforming signs, billboards, commercial advertising structures and statuary, and their supporting members, shall be completely removed from the premises not later than five (5) years from the effective date of the Ordinance codified in this section.

2.

Nonconforming Due to Reclassification. The foregoing provisions of this section shall also apply to buildings, structures, land, or uses which hereafter become nonconforming due to any reclassification of districts under this Chapter or any subsequent change in the regulations of this Chapter; provided, however, that where a period of years is specified in this section for the removal of nonconforming buildings, structures, or uses, said period shall be computed from the date of such reclassification or change.

(Ord. 38.777 (14) (part), 6/17/08)

ATTACHMENT A

RESOLUTION NO. 10-047

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, RECOMMENDING APPROVAL TO THE CITY COUNCIN ZONING AMENDMENT NO. ZA10-0004, ZONING TEXT AMENDMENTS TO SECTION 56 (NONCONFORMING BUILDINGS AND USES), TO INCOROPORATE ADDITIONAL PROVISIONS TO ALLOW FOR TRANSITIONING OF NONCONFORMING USES

WHEREAS, the adoption of the Midtown Specific Plan and Transit Area Specific Plan, many parcels improved with buildings and existing uses were rendered nonconforming. Due to current economic conditions and unique site constraints, transition in these areas will not occur in the near future which has lead to long term vacancies; and

WHEREAS, on October 27, 2010, the Planning Commission considered an appeal to Staff's decision to deny the establishment of an auto repair facility in a location where city's nonconformance and mixed use district ordinances do not allow such establishments to locate. The Planning Commission upheld the Staff decision and directed staff to initiate a zoning text amendment that would provide provisions for nonconforming uses

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 is categorically exempt pursuant to Section 15061 of the CEQA Guidelines.

WHEREAS, on December 8, 2010 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 recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The project is categorically exempt per Section 15061(b)(3) of the CEQA Guidelines in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment because the project involves zoning text amendments that provide provisions that establishes a criteria, findings, and conditional use permit to allow nonconforming uses to change or reestablish in certain circumstances.

Section 3: The proposed amendments are consistent with the General Plan in that it encourages economic pursuits and promotes a stable development in that it would allow uses that will fulfill vacancies and prevent blight. The proposed text amendment will allow spaces can be tenanted with uses that would add to the economic vitality and enhance the overall development.

Section 4: The proposed amendments will not adversely affect the public health, safety and welfare in that the project incorporates additional findings to promote general compatibility as well as preserve and protect public health, safe, and general welfare.

Section 5: The proposed amendments are internally consistent with the remainder of the Zoning Ordinance.

Section 6: The Planning Commission of the City of Milpitas hereby recommends approval of Zoning Amendment No. ZA10-0004, subject to the above Findings amendments referenced as Exhibits 1 in Attachment C of staff's report.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on December 8, 2010.

_____
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 December 8, 2010, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Cliff Williams				
Lawrence Ciardella				
Sudhir Mandal				
Gurdev Sandhu				
Steve Tao				
Noella Tabladillo				
Mark Tiernan				
John Luk				

Exhibit 1

REGULAR

NUMBER: **38.793**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, AMENDING TITLE XI CHAPTER 10, SECTION 2 AND 56 OF THE MILPITAS ZONING ORDINANCE TO INCORPORATE ADDITIONAL DEFINITIONS AND PROVISIONS RELATED TO NONCONFORMING USES**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of_____, 2011, upon motion by Councilmember _____ and was adopted (second reading) by the City Council at its meeting of _____, 2011 upon motion by Councilmember _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael Ogaz, City Attorney

ORDAINING CLAUSE:

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

SECTION 1. RECITALS AND FINDINGS

WHEREAS, on October 27, 2010, the Planning Commission directed staff to initiate a zoning text amendment to incorporate additional provisions for nonconforming uses; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission recommended to the City Council to determine that the proposed zoning text amendment to be categorically exempt pursuant to Section 15061 of the CEQA Guidelines. The activity is covered by the general rule that CEQA applies only to projects, which have the potential causing a significant effect on environment. The proposed zoning amendment includes a text change to Section 2 (Definitions) and 56 (Nonconforming Buildings and Uses) to; and

WHEREAS, on December 8, 2010, 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 and recommends approval of the zoning text amendment; and

WHEREAS, the City Council finds that the proposed zoning amendment is consistent with General Plan goals and objectives in that proposed text amendments encourage economic pursuits and promotes a stable development. The proposed text amendment will prevent blight by fulfilling potential long term vacancies with uses that add to economic vitality and enhances the overall development; and

WHEREAS, the City Council finds that with the inclusion of the amendments to the Zoning Ordinance, the document remains internally consistent; and

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

SECTION 2. Chapter 10, Section 2 “Definitions,” is hereby amended in its entirety to read as follow:

Before “Internet access studio” or “internet café” after “Individual Violation”

Intensification of Use – to alter the character of a use to the extent that the use generates new or different impacts on the health, safety, or welfare of the surrounding neighborhood, including but not limited to the level or amount of traffic, noise, light, smoke, odor, vibration, outdoor storage, or other similar conditions associated with the use.

Before “Individual Violation” after ‘Intensification of Use”

Intensity – the degree to which land is used, measured by a combination of the type of land used and the amount of land or floor area devoted to that use.

SECTION 3. Chapter 10, Section 56.03 "Nonconforming Use of Buildings and Structures", is hereby amended in its entirety to read as follow:

A. The continuation or change of a nonconforming use of a building or structure shall meet the requirements provided below.

1. Continuation of Existing Nonconforming Use. A legally established use that is no longer permitted in a particular zoning district because of a modification of this chapter shall be allowed to continue indefinitely, absent discontinuation of the use for a year or more and failure to comply with the reestablishment provisions of Section 56.03.A.5. below.

2. Discontinuation of Nonconforming Use. The nonconforming use of a building, structure or portion thereof, which is discontinued for a continuous period of one (1) year or more, may be replaced only with a conforming use, absent an approved nonconforming use reestablishment set forth in Section 56.03.A.5. below. Nonconforming uses which have been discontinued for a period of less than one (1) year may be replaced (i) with a nonconforming use of the same use classification as a matter of right or (ii) a nonconforming use of a different use classification, subject to compliance with the findings and procedures set forth Section 56.03.A.4.

3. Changes of Use Within the Same Use Classification. An existing, ongoing nonconforming use may be changed to a different use within the same use classification. For example, a nonconforming auto repair shop use may be changed to a tire shop use, since both uses fall within the same use classification (auto service uses).

4. Change of Use to a Different Nonconforming Use Classification. An existing, ongoing nonconforming use may be changed to a nonconforming use of a different use classification only if it can be found that the proposed use is equivalent to or more appropriate than the existing nonconforming use at the project location. The proposed use shall be allowed only if all of the following findings can be made:

i. The proposed nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.).

ii. The proposed nonconforming use would be compatible with the general character of the surrounding neighborhood or district.

iii. The proposed nonconforming use is necessary to allow gainful economic use of structures or improvements until such structures or improvements can be permanently converted to conforming uses.

The approval of a nonconforming use of a different use classification shall be done by the Planning Commission by way of a conditional use permit, with the above additional findings, if (i) the proposed use lies within 500 feet of any residential use or (ii) the proposed use requires conditional use permit review under current zoning requirements and the zoning map designation applicable when the use became nonconforming. The approval may be issued administratively by Planning Division staff in all other circumstances.

5. Reestablishment of Discontinued Nonconforming Uses within the Midtown and Transit Area Specific Plan Areas. Once discontinued for a year or more, nonconforming uses only within the Midtown and the Transit Area Specific Plan Areas may be reestablished if all of the following findings can be made:

a. The proposed reestablishment of a nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.).

b. The proposed reestablishment of a nonconforming use would be compatible with the existing general character of the surrounding neighborhood or district.

c. The proposed reestablishment of a nonconforming use is necessary to allow gainful economic use of structures or improvements until such structures or improvements can be permanently converted to conforming uses.

The reestablishment of a discontinued nonconforming use shall be approved by the Planning Commission by way of a conditional use permit, with the above additional findings, if (i) the proposed use lies within 500 feet of any residential use or (ii) the proposed use would require conditional use permit review under current zoning requirements and the zoning map designation applicable when the use became nonconforming. The approval may be issued administratively by Planning Division staff in all other circumstances.

SECTION 4. 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 5. 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 fifteen (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).