



## MILPITAS PLANNING COMMISSION AGENDA REPORT

### NEW BUSINESS

Meeting Date: May 25, 2011

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**PRESENTATION:** Conditional Use Permits

**SUMMARY:** A report to the Planning Commission on permitted and conditional uses and the conditional use permit process.

**RECOMMENDATION:** Staff recommends that the Planning Commission: Note, Receipt, and File

**PROJECT DATA:**

Zoning Designation: N/A

Related Permits: N/A

**PLANNER:** James Lindsay, Planning & Neighborhood Services Director

**ATTACHMENTS:** Use Tables and zoning maps for the Commercial, Industrial, and Mixed-Use zoning districts.

### BACKGROUND

At the request of the Economic Development Commission (EDC), staff provided an overview of the Conditional Use Permit (CUP) process in the City at their May 9<sup>th</sup> meeting. The overview included a review of the City's zoning districts, the difference between permitted and conditional uses, and the processing requirements for CUPs. The discussion during the meeting focused on how the permit process could be further streamlined to reduce regulatory hurdles for small businesses. Chair Tiernan attended the EDC meeting and answered several questions regarding the role of the Planning Commission in the process and the amount of time spent reviewing CUPs. At the May 11<sup>th</sup> Planning Commission meeting the Chair requested staff provide the Commission the same process overview that was provided to the EDC.

## OVERVIEW

The City of Milpitas has eleven (11) business related zoning districts categorized as follows:

### Commercial

- Commercial Office – CO
- Neighborhood Commercial – C1
- General Commercial - C2
- Highway Services – HS
- Town Center - TC

### Industrial

- Light Industrial – M1
- Heavy Industrial - M2
- Industrial Park – MP

### Mixed Use

- Mixed Use – MXD
- Mixed Use High Density – MXD2
- Mixed Use Very High Density – MXD3

Within each zoning district there is a list of business types that are allowed by right and are referred to as permitted uses. To conduct business in Milpitas these businesses only need to obtain a business license and any necessary building or occupancy permits. Permitted uses are still required to comply with relevant requirements such as parking and standards and restaurant operational requirements contained in the zoning ordinance. Planning staff ensures the proposed business is in compliance through a review of the business license and building/occupancy permits.

Each zoning district also contains a list of business types that could be allowed in the district under certain conditions and are referred to as conditional uses. These businesses need to obtain approval of a CUP prior to any other City license or permit being issued. A CUP can provide flexibility within a zoning ordinance but also enables the City to control certain uses which could have detrimental effects on the community. Conditional uses tend to need individual consideration as to their location and compatibility with other uses. Special conditions are applied to conditional use permits to ensure compatibility and to aid in eliminating negative affects caused by the use.

A city's authority to exercise control over certain uses comes from the "police power" which provides the right to adopt and enforce zoning regulations, as long as they do not conflict with state laws. State law has specific requirements that local governments must follow when exercising this control through the issuance of a CUP.

- The consideration of a CUP must be conducted in a public hearing. This requires a notice to be published in a local newspaper and to be provided to all property owners within a certain distance of the project at least 10 days before the hearing. Milpitas has elected to increase the owner notification radius from the minimum 300 feet required by state law to 1,000 feet.
- The consideration of a conditional use permit is an administrative quasi-judicial act therefore the authority to consider CUPs must include standards of guidance. These

standards ensure insure that the discretion exercised by the reviewing body is not unbridled. The follow standards have been accepted by the courts and serve as the framework of findings to document actions on a CUP:

- General welfare
- Nuisance
- General Plan consistency
- Zoning consistency

While these considerations are import and provide a transparent process they do add considerable time in processing CUPs. As an example, a legal advertisement for the local paper needs to be submitted three (3) weeks prior to the meeting to ensure 10 day notice is provided. A legal advertisement is typically submitted after all City departments have had an opportunity to review the proposal which can take up to three (3) weeks. Therefore, Planning staff informs applicants of CUPs that it could take between 4 and 6 weeks to have their proposal reviewed by the Planning Commission.

### **ALTERNATIVES**

There are other means of protecting the community from negative effects from certain uses. As an example restaurant operational standards were included in zoning ordinance when restaurants were changed from a conditional to a permitted use. This allows the City to regulate negative effects outside the Conditional Use Permit process. The Planning Commission has also used resolutions to guide expectations of business performance in the past.



## Commercial Zone Uses

CO - Commercial Office  
 C1 - Neighborhood Commercial  
 C2 - General Commercial  
 HS - Highway Services  
 TC - Town Center

P - Permitted      C - Conditional Use Permit Required      NP - Not Permitted  
 P/C - May be permitted if certain criteria is met otherwise a CUP is required  
 O - The use is subject to an alternative review process described in a subsequent footnote.

Use	CO	C1	C2	HS	TC
<b>1. Commercial Uses</b>					
Alcoholic beverage sales	C <sup>6</sup>	C	C	NP	C
Art/photography studio or gallery	NP	P	P	P	P
Bookstore	NP	P	P	P	P
Commercial services <sup>1</sup>	P	P	P	NP	P
Funeral home or mortician	NP	NP	C	C	NP
Furniture sales	NP	P	P	P	P
Grocery store (supermarkets)					
Within 1,000 ft. of residential zone	NP	C	C	C	C
Not within 1,000 ft. of residential zone	NP	P	P	P	P
Home improvement (hardware, blinds, interior decorating, etc.)	NP	P	P	C	P
Not fully enclosed operation	NP	C	C	C	C
Household appliance store	NP	NP	P	P	NP
Small appliance repair	NP	NP	C	P	NP
Large appliance repair	NP	NP	NP	P	NP
Janitorial services	NP	NP	P	P	NP
Newsstand					
Indoor	P	P	P	NP	P
Outdoor	C	C	C	NP	C
Nursery (flower or plant)					
Indoor	NP	NP	P <sup>2</sup>	P	P
Outdoor	NP	NP	C	P	NP
Office supply sales (stationary, equipment)	P	P	P	P	P
Paint and wallpaper stores	NP	NP	P	P	P
Pawnshops	NP	NP	C	NP	NP
Pet stores	NP	NP	P	P	P
Printing (newspaper, publishing)	NP	NP	P	P	P
Rentals (medical supplies, costumes, party equipment, office equipment)	NP	NP	P	P	P

Use	CO	C1	C2	HS	TC
Retail stores, general merchandise	NP	P	P	NP	P
Tanning salon	NP	NP	P	NP	P
Thrift store	NP	NP	P	P	P
Tobacco shop	NP	C	C	NP	C
<b>2. Entertainment and Recreation</b>					
Adult business <sup>3</sup>	NP	NP	NP	P	NP
Billiards	NP	C	C	C	C
Bowling alley	NP	NP	P	P	P
Commercial athletic facilities					
Indoor	NP	C	P	P	P
Outdoor	NP	NP	NP	C	NP
Internet access studio	C	C	C	C	C
Motion picture theater (See 7 below)					
Recreation or entertainment facility	NP	C	C	C	C
Shooting range, indoor	NP	NP	NP	C	NP
<b>3. Health and Veterinarian Uses</b>					
Animal grooming (no boarding)	NP	P	P	P	P
Hospital	C	NP	C	C	C
Kennel	NP	NP	C	NP	NP
Massage establishment	NP	NP	C	C	C
Medical and dental office	P	P	P	NP	P
Medical and dental clinic	P	C	C	NP	P
Medical support laboratories	P	C	P	P	P
Optician and optometrist shop	P	P	P	NP	P
Pharmacy or drug store	NP	P	P	P	P
Sauna and steam bath	NP	NP	NP	P	NP
Veterinary clinic	NP	NP	P	P	P
<b>4. Industrial Uses<sup>4</sup></b>					
Assembly from pre-processed materials	NP	NP	C	NP	NP
Commercial fueling facility	NP	NP	NP	C	NP
Commercial laboratory	NP	NP	C	P	NP
Contractor's yards and offices	NP	NP	C	C	NP
Disinfection and extermination business	NP	NP	C	P	NP
Dry cleaning plant	NP	NP	NP	P	NP
Food storage locker	NP	NP	NP	P	NP
Landscape contractor	NP	NP	C	P	NP
Lumberyards	NP	NP	C	C	NP
Mini-storage complex	NP	NP	C	C	NP
Plumbing, sheet metal or woodworking	NP	NP	C	C	NP
Research & development	NP	NP	C	NP	NP
Sign sales and fabrication (Electric and neon sign, sign painting)	NP	NP	C	P	NP

Use	CO	C1	C2	HS	TC
Warehousing and wholesale	NP	NP	C	NP	NP
<b>5. Lodging</b>					
Hotel and motel	NP	NP	C	C	C
<b>6. Professional Offices, Financial Institutions and Related Uses</b>					
Automatic Teller Machines (freestanding) <sup>5</sup>	NP	P	P	P	P
Financial institutions (banks, savings and loans, etc.)	P	P	P	P	P
General offices (administrative and business services, real estate, travel agencies, etc.)	P	P	P	P	P
<b>7. Public, Quasi-Public and Assembly Uses</b>					
Auction hall	NP	NP	C	C	C
Child care					
Child care center	C	C	C	C	C
Day care school	C	C	C	C	C
Large family child care home	NP	NP	NP	C	
Small family child care home	NP	NP	NP	NP	C
Club or social organization, religious assembly	C	C	C	C	C
Cultural center	NP	NP	C	C	C
Educational institutions					
School-elementary (K-8 Public or Private)	NP	NP	C	NP	C
School-secondary (9-12 Public or Private)	NP	NP	C	NP	C
Trade and vocational school	C	NP	P	P	C
Farmer's market (not including flea market)	NP	C	C	C	C
Instruction					
Group	C	C	C	C	C
Private	P	P	P	P	P
Library	NP	C	NP	NP	C
Motion picture theater					
Indoor	NP	C	C	C	C
Outdoor	NP	NP	NP	C	NP
Parking facility, storage garage	NP	P	P	C	C
Public utilities	C	C	C	C	C
Transportation facility (taxi, limousine, etc.)	NP	NP	C	C	C
<b>8. Restaurants or Food Service</b>					
Banquet hall	NP	NP	C	C	C
Bar or nightclub	NP	NP	C	C	C
Catering establishment	NP	NP	P	P	P
Restaurants	C <sup>6</sup>	P	P	P	P
With live entertainment/dancing	NP	NP	C	C	C
With drive-in or drive-through	NP	C	C	C	C
<b>9. Residential Uses</b>					
Caretaker (in conjunction with contractor's yard)	NP	NP	C	C	NP

Use	CO	C1	C2	HS	TC
Residential dwellings (between 1 and 40 d.u. per gross acre)	NP	NP	NP	NP	C
<b>10. Vehicle Related Uses</b>					
Auto repair (tire, oil change, smog check, etc.)	NP	NP	C	C	NP
Auto sales and rental, outdoor (new and used cars, RV and truck)	NP	NP	C	C	NP
Auto broker (wholesale, no vehicles on site)	C	C	C	C	C
Car wash	NP	NP	C	C	NP
Service stations (with or without repair or retail) <sup>7</sup>	C	C	C	C	C
Vehicle-oriented window service facility	NP	C	C	C	C
<b>11. Unclassified Uses</b>					
Accessory structures <sup>8</sup>	P	P	P	P	P
Agriculture <sup>9</sup>	P	NP	NP	NP	NP
Model home complex <sup>10</sup>	NP	NP	NP	NP	P
Mortuary or crematory	NP	NP	NP	C	NP
Radio or television station	NP	NP	C	P	NP
Temporary seasonal sales <sup>11</sup>	NP	P	P	P	P

<sup>1</sup> Refer to the definition for "Commercial Services" in Section 2, Definitions, of this Chapter.

<sup>2</sup> Provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.

<sup>3</sup> In accordance with Title III, Chapter 4, Adult Business Ordinance and Subsection 13.04, Adult Businesses, of this Chapter.

<sup>4</sup> For conditionally permitted uses, refer to Subsection 57.04(C) (9), Certain Industrial Uses within Commercial Districts, of this Chapter.

<sup>5</sup> Refer to Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.

<sup>6</sup> When intended to serve the occupants and patrons of the permitted use (office, etc.) and conducted and entered from within the building and provided there is no exterior display of advertising.

<sup>7</sup> Entrances to the service bays shall not be open to the street, but shall be so designed to face the rear or interior side property line.

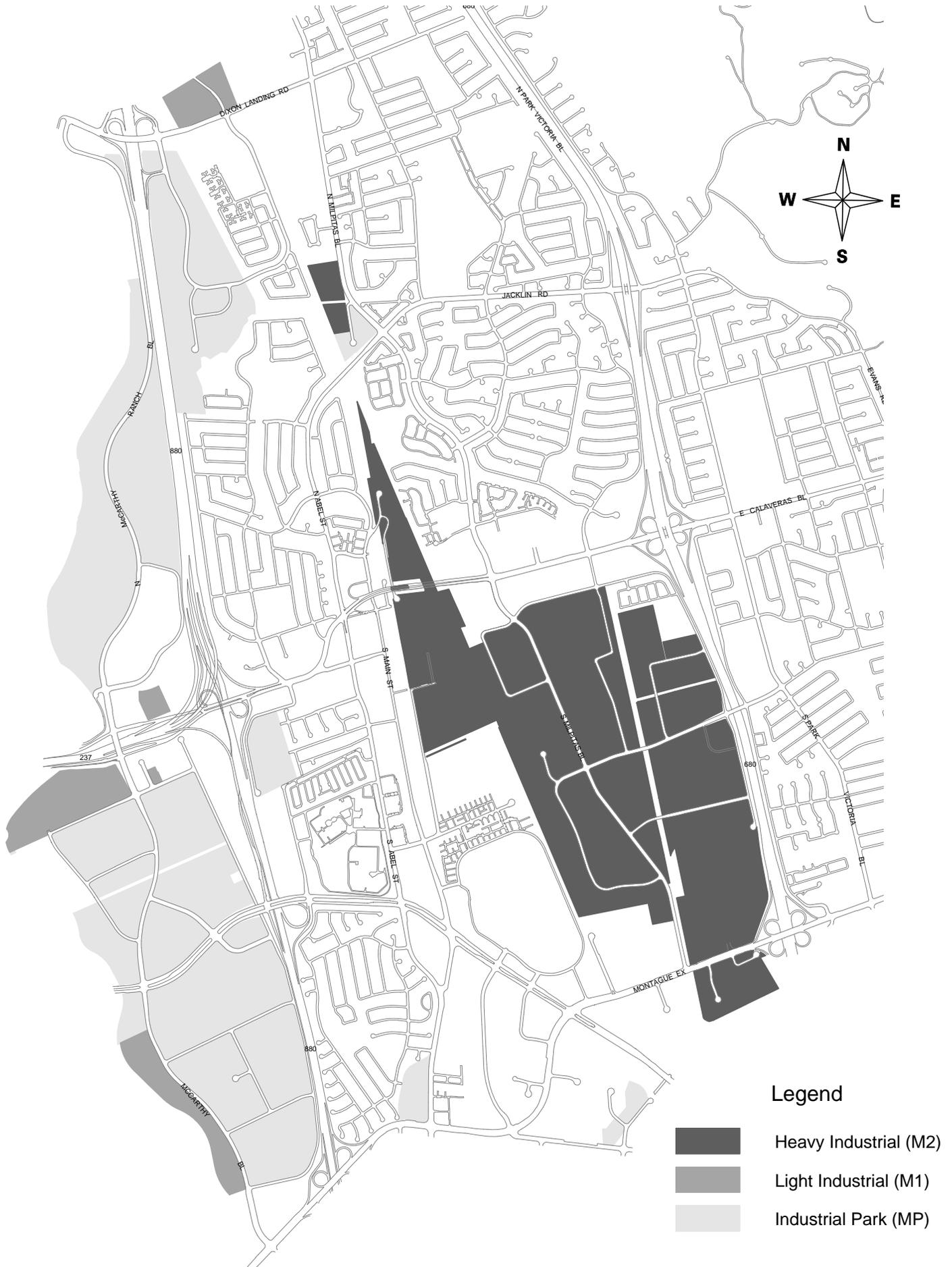
<sup>8</sup> Not including warehouses on the same site as the permitted use.

<sup>9</sup> Except for the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.

<sup>10</sup> Reserved.

<sup>11</sup> No tract sign shall be permitted within 600 feet of a Santa Clara County Expressway.

# INDUSTRIAL ZONES



## Industrial Zone Uses

M1 - Light Industrial  
M2 - Heavy Industrial  
MP - Industrial Park

P - Permitted      C - Conditional Use Permit Required      NP - Not Permitted  
P/C - May be permitted if certain criteria is met otherwise a CUP is required

Use	M1	M2	MP
<b>1. Commercial Uses</b>			
Adult Businesses <sup>1</sup>	P	P	NP
Business support services	P	P	P
Commercial services	P	P	P
Janitorial services	P	P	P
Office supplies	C	C	C
Printing (newspaper, blueprint, publishing)	P	P	C
Retail stores, general merchandise <sup>2</sup>	C	C	C
<b>2. Entertainment and Recreation Uses</b>			
Billiards	C	C	C
Commercial athletic facilities	C	C	C
<b>3. Health and Veterinarian Uses</b>			
Hospitals	NP	NP	C
Kennel	P	P	NP
Medical support laboratories	P	P	P
Medical and dental offices and clinics <sup>2</sup>	P	P	P
Veterinarian hospital	P	P	P
<b>4. Industrial Uses</b>			
Assembly from pre-processed materials <sup>3</sup>	P	P	P
Auto assembly facility	NP	P	NP
Bottling facility	P	P	NP
Building material sales (equipment rental) <sup>4</sup>	NP	C	NP
Commercial fueling facility	C	C	NP
Commercial laboratory	P	P	P
Contractor's yard and offices <sup>4</sup>	NP	C	NP
Distribution facility	P	P	P
Freight and trucking yard <sup>4</sup>	NP	P	NP
Mini-storage complex	C	C	NP
Plumbing, sheet metal or woodworking	P	P	NP

Use	M1	M2	MP
Plant or facility (research & development, assembly, manufacturing, packaging, processing, repairing, etc. or materials, merchandise or products)	P	P	P
Pottery or tile manufacturing	P	P	NP
Recycling processing facility	C	C	NP
Warehousing and wholesale	P	P	P
<b>5. Lodging Uses</b>			
Hotels/motels	C	C	C
<b>6. Professional Office Uses</b>			
Administrative, professional or research <sup>2</sup>	P	P	P
Financial institutions (banks, savings and loans, etc.)	C	C	P
<b>7. Public, Quasi-Public and Assembly Uses</b>			
Auditorium <sup>5</sup>	NP	NP	C
Conference center <sup>5</sup>	NP	NP	C
Vocational school	C	C	C
Farmer's market (not including flea market) <sup>6</sup>	NP	NP	C
Public utilities <sup>7</sup>	P	P	P
Transportation facility (taxi, parcel service, armored car, etc.) <sup>4</sup>	NP	P	NP
<b>8. Residential Uses</b>			
Caretaker's residence	C	C	NP
<b>9. Restaurants or Food Service Uses</b>			
Catering	P	NP	P
Restaurants			
With on-site service of alcohol	C	C	C
Without on-site service of alcohol	C	C	C
With live entertainment/dancing	NP	NP	NP
Drive-in or drive-thru	C	C	C
<b>10. Vehicle Related Uses</b>			
Auto junk yard <sup>4</sup>	NP	C	NP
Auto repair (tire, oil change, smog check, etc.) <sup>8</sup>	C	P	C <sup>9</sup>
Service stations (with or without repair or retail) <sup>8</sup>	C	C	C
With car wash	NP	NP	C
Vehicle sales and rental (auto, RV and truck-new and used in operable condition) <sup>10</sup>	C	C	C
Auto broker (wholesale, no vehicles on site)	C	C	C

Editor's note— 1 In accordance with the Title III, Chapter 4, Adult Business Ordinance and Subsection XI-10-13.04, Adult Businesses, of this Chapter.

Editor's note— 2 When found necessary to serve and appropriate to the industrial area.

Editor's note— 3 Assembling, packaging, or distribution from previously prepared materials, such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, electric or electronic instruments and devices such as television, radios, and pharmaceutical products.

Editor's note— 4 When conducted wholly within a completely enclosed building or within an area enclosed on all sides with a solid wall or fence (e.g. chain link with slats) not less than eight (8) feet in height.

Editor's note— 5 Shall be ancillary to the primary use or associated with business or industrial uses.

Editor's note— 6 Refer to Subsection XI-10-13.10, Farmers Markets, of this Chapter.

Editor's note— 7 Includes service facilities, electric transmission and distribution substations and public utility service centers.

Editor's note— 8 Entrances to the service bays shall not be open to the street, but shall be so designed to face the rear or interior side property line.

Editor's note— 9 Within MP zones, rental and repair may be considered only when ancillary to new auto dealerships.

Editor's note— 10 Within MP zones, boat and camper sales are prohibited. Dealerships shall be on property at least three (3) acres or greater in area

# MIXED USE ZONES



## Mixed Use Zone Uses

MXD - Mixed Use

MXD2 - Mixed Use High Density

MXD3 - Mixed Use Very High Density

P - Permitted      C - Conditional Use Permit Required      NP - Not Permitted

P/C - May be permitted if certain criteria is met otherwise a CUP is required

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
<b>1. Commercial Uses</b>				
Alcohol beverage sales	C	C	C	C
Commercial services <sup>1</sup>	P/C	P/C	P/C	P/C
Grocery stores (supermarkets)	C	C	C	C
Pawnshops <sup>2</sup>	C	C	C	C
Pet shops	C	NP	NP	NP
Retail stores, general merchandise <sup>3</sup>	P/C	P/C	P/C	P/C
Tanning salons	P	P	P	P
Thrift shops (used merchandise)	C	C	C	C
<b>2. Entertainment and Recreation</b>				
Billiards	C	C	C	C
Bowling alley	C	C	C	NP
Commercial athletic facilities	P	P	P	P
Internet access studio	C	C	C	C
Motion picture theater (see 6 below)				
Recreation or entertainment facility	C	C	C	C
<b>3. Health and Veterinarian Uses</b>				
Animal grooming (no boarding)	P	P	NP	P
Hospitals or sanitariums <sup>4</sup>	C	C	C	C
Massage establishment	C	C	C	C
Medical or dental offices and clinics	P	NP	P	P
Medical support laboratories	P	P	P	P
Optician and optometrist shop	P	P	P	P
Pharmacy or drug store	P	P	P	P
Veterinarian clinic	P	P	P	P
<b>4. Lodging</b>				
Bed and breakfast	NP	P	NP	NP

Use	MXD	MXD2	MXD3
Boarding houses (3 or more persons)	C	C	C
Group dwellings	C	C	C
Hotels	C	P	P
Motels	C	C	C
<b>5. Professional Offices, Financial Institutions and Related Uses<sup>4</sup></b>			
Financial institutions (banks, savings and loans, etc.)	P/C	NP	P/C
Offices <sup>3</sup>	P/C	NP	P/C
<b>6. Public/Quasi Public and Assembly Uses</b>			
Child care			
Child care center	C	P	C
Day care school	C	C	C
Large family child care home	P	P	C
Small family child care home	P	P	P
Instruction			
Group	C	NP	NP
Private	P	C	P
Park, playground or community center <sup>5</sup>	NP	NP	P
Places of assembly <sup>4</sup>	C	C	C
Public utilities	C	C	C
Schools, private (elementary, middle and high) <sup>4</sup>	C	C	C
Theaters (Indoor)	C	C	C
Trade and vocational schools <sup>4</sup>	C	C	C
Transportation facilities <sup>2</sup>	C	C	C
<b>7. Residential Uses</b>			
Multi-family housing <sup>6</sup>	P	NP	P
<b>8. Restaurants or Food Service</b>			
Bar or nightclub	C	C	C
Catering establishments	C	C	C
Restaurants <sup>7</sup>	P/C	P/C	NP
With dancing and entertainment	C	C	C
With internet access usage	P	P	P
With ancillary on-premise beer & wine with no separate bar	P	P	P
<b>9. Unclassified Uses</b>			
Cabinet or carpenter shop <sup>2</sup>	C	NP	NP
Janitorial and window cleaning services <sup>2</sup>	C	NP	NP
Live-work units	P	P	P
Lobbies and entries for upper floor uses	P	P	NP
Model home complex <sup>8</sup>	P	P	P
Mixed use developments <sup>9</sup>	P	P	P

Use	MXD	MXD2		MXD3
Planned Unit Development <sup>10</sup>	P	P	P	P
Plumbing or sheet metal shops <sup>2</sup>	C	NP	NP	NP
Sign shops <sup>2</sup>	C	NP	NP	NP
Temporary seasonal sales <sup>11</sup>	P	P	P	P
<b>10. Vehicle-Related Repair , Sales and Services</b>				
Auto sales and rental <sup>12</sup>	C	C	C	C
Auto broker (wholesale, no vehicles on site)	C	C	C	C
Vehicle service uses <sup>13</sup>	C	NP	NP	C

## Footnotes - Mixed Use Zone Uses

### Note 1

Commercial Services Within Mixed Use Zones. Commercial services as defined in Section XI-10-2.03, Definitions, of this chapter, may be permitted provided:

1. When located within the MXD zone they are less than or equal to ten thousand (10,000) square feet in gross floor area;
2. When located within the MXD2 and MXD3 zones they are less than or equal to fifty thousand (50,000) square feet in gross floor area;
3. They are not open past 10:00 p.m.;
4. They are not specifically noted in Table XI-10-6.02-1, Mixed Use Zone Uses, of this chapter, requiring Conditional Use Permit approval or listed as a prohibited use;
5. They are not listed as a prohibited use in Section XI-10-6.02(B), Prohibited Uses, of this chapter.

If items 1 through 3 above are not met, then approval of a Conditional Use Permit is required in accordance with Section XI-10-57.04, Conditional Use Permits, of this chapter.

### Note 2 Mixed Use Zone Special Uses

Special Uses Within MXD Zones. Certain uses noted in Table XI-10-6.02-1, Mixed Use Zone Uses may be allowed through the approval of a Conditional Use Permit, in accordance with Section XI-10-57.04, Conditional Use Permits, of this chapter, if they are not located within one thousand (1,000) feet of another commercial service use listed below. This distance shall be measured from the property line of the parcel where such use is located.

1. Auto service uses, including but not limited to: gasoline service stations, car washes, tire shops, towing without vehicle storage and auto repair shops of all kinds, radiators, paint, body, glass, brakes, upholstery, and other types if all operations are conducted wholly within a completely enclosed building. Entrances to the service bays shall not be open to the street but shall be designed to face the rear or interior side property line.
2. Cabinet or carpenter shops if conducted in a completely enclosed building.
3. Janitorial services and window cleaning services.
4. Local transportation service facilities (e.g., taxi, parcel service, ambulance, armored car, and van storage) without outdoor storage of vehicles.
5. Pawnshops.
6. Plumbing or sheet metal shops.
7. Sign shops, if conducted wholly within completely enclosed buildings.

Special Uses Within MXD2 Zones. Certain uses noted in Table XI-10-6.02-1, Mixed Use Zone Uses may be allowed through the approval of a Conditional Use Permit, in accordance with Section XI-10-57.04, Conditional Use Permits, of this chapter, if they are not located within one thousand (1,000) feet of another commercial service use listed below. This distance shall be measured from the property line of the parcel where such use is located.

1. Local transportation service facilities (e.g., taxi, parcel service, ambulance, armored car, and van storage) without outdoor storage of vehicles.
2. Pawnshops.

Special Uses Within MXD3 Zones. Certain uses noted in Table XI-10-6.02-1, Mixed Use Zone Uses may be allowed through the approval of a Conditional Use Permit, in accordance with Section XI-10-57.04, Conditional Use Permits, of this chapter, if they are not located within one thousand (1,000) feet of another commercial service use listed below. This distance shall be measured from the property line of the parcel where such use is located.

1. Local transportation service facilities (e.g., taxi, parcel service, ambulance, armored car, and van storage) without outdoor storage of vehicles.
2. Pawnshops.
3. Auto service uses, limited to gasoline service stations and car washes.

### **Note 3**

**Retail and Offices Within Mixed Use Zones.** Retail and offices may be permitted provided:

1. When located within the MXD zone they are less than or equal to ten thousand (10,000) square feet in gross floor area;
2. When located within the MXD2 and MXD3 zones they are less than or equal to fifty thousand (50,000) square feet in gross floor area;
3. They are not open past 10:00 p.m.;
4. They are not specifically noted in Table XI-10-6.02-1, Mixed Use Zone Uses, of this chapter, requiring Conditional Use Permit approval or listed as a prohibited use; and
5. They are not listed as a prohibited use in Section XI-10-6.02(B), Prohibited Uses, of this chapter.

If items 1 through 3 above are not met, then approval of a Conditional Use Permit is required in accordance with Section XI-10-57.04, of this chapter.

### **Note 4**

**Quasi-Public Uses Within MXD Zone** The following quasi-public uses may be permitted within the MXD zones provided their location is first approved by the Planning Commission, in accordance with Section XI-10-57.04, Conditional Use Permits, of this chapter, and they are not located within one thousand (1,000) feet of the parcel boundary of another quasi-public use listed below. This distance shall be measured from the property line of the parcel where such use is located.

1. Places of meeting or assembly, such as auditoriums, banquet halls, fraternal or union hall, churches and other religious institutions.
2. Hospitals or sanitariums.
3. Private elementary, middle or high school.
4. Vocational schools, if not found objectionable due to noise, odor, vibration or other similar health, safety and welfare basis.

**Note 5** - For parks, playgrounds or community center owned and operated by a government agency or a nonprofit community organization.

**Note 6** - Ground level residential is prohibited in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.

## **Note 7**

Restaurant Uses Within Mixed Use Zones. Restaurant or restaurants which include internet usage for customers may be permitted provided:

1. They provide no dancing or live entertainment;
2. They have only ancillary on-premise consumption of beer and wine associated with food sales;
3. They have no separate bar area;
4. When located within the MXD2 and MXD3 zones they are located on the ground floor facing a public street designated as a retail mixed use street; and
5. They conform to the performance standards listed in subsection XI-10-6.02-5(B) below.

If items 1 through 4 above are not met, then approval of a Conditional Use Permit is required in accordance with Section XI-10-57.04, of this chapter.

Restaurant Performance Standards. Restaurants shall comply with the following performance standards:

1. Seating shall not exceed that which the amount of parking allocated for the restaurant space would allow. A sign measuring at least one (1) foot by one (1) foot, with a lettering height of at least three (3) inches, shall be placed in a conspicuous location near the restaurant front entrance stating the maximum total seating allowed. Outdoor seating is allowed if it has been approved as part of the facility's Minor Site Development Permit or Site Development Permit and is operated in conformance with any conditions of that approval.
2. The restaurant shall comply with the City Council's Guidelines for Recycling Enclosures (Resolution No. 6296).
3. The restaurant shall incorporate measures to reduce odors to acceptable levels, including, but not limited to, installation of a scrubber, carbon filter or similar equipment, on the roof vent to control odors.
4. All the facility's floor drains, trash compactors and indoor mat and equipment washing areas shall be drained to the sanitary sewer.
5. Where applicable, the restaurant shall maintain an active account with a tallow hauling company.
6. The restaurant shall prepare and implement a program assigning restaurant staff responsibility for complying with the following guidelines which shall be adhered to while the restaurant is in operation:
  - a. Wash all containers and equipment in the kitchen areas so that wash water may drain into the sanitary sewer.
  - b. Keep garbage dumpsters clean inside and out; replace very dirty dumpsters with new, clean ones.
  - c. Double bag waste to prevent leaking.
  - d. Place, do not drop or throw, waste-filled bags, to prevent leaking.
  - e. Keep the ground under and around the garbage dumpsters swept.
  - f. Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.
  - g. Hold training sessions to instruct employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all State and local health and sanitation standards. A record of such training must be kept to prove compliance with this requirement.
  - h. Post signs (in English and multi-lingual) inside the premises for all employees identifying procedures for food delivery and garbage disposal.
  - i. All garbage bins shall be stored in the garbage enclosure except for the twelve (12) hours immediately before and after garbage collection.

**Note 8** - Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

**Note 9** - Which include only permitted uses.

**Note 10** - Refer to Section XI-10-54.07, Planned Unit Developments, of this Chapter, for standards.

**Note 11** - Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

**Note 12** - New and used auto, recreational vehicle and boat sales, excluding commercial vehicles, trucks, buses, vans, and farm equipment, with accessory repairs and services, only allowed if fully enclosed within a building. Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals, only if fully enclosed within a building.

**Note 13** - Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.