



# MILPITAS PLANNING COMMISSION AGENDA REPORT

June 10, 2015

**APPLICATION:**                    **ZONING TEXT AMENDMENT – ZA15-0004** – A request for a Zoning Text Amendment to adopt new provisions in the Zoning Ordinance to establish review requirements and general regulations for special events and activities.

**RECOMMENDATION:**        **Staff recommends that the Planning Commission: Conduct the public hearing and adopt Resolution No. 15-017 recommending the City Council adopt Zoning Amendment No. ZA15-0004 to amend the Zoning Code to add new provisions relating to special events and activities.**

**LOCATION:**  
Address/APN:                    Citywide

**PEOPLE:**  
Project Applicant:              City of Milpitas  
Consultant:                      NA  
Property/Business Owners:  
Project Planner:                Cindy Hom, Assistant Planner

**LAND USE:**  
General Plan Designation:    All  
Zoning District:                All  
Overlay District:                NA

**ENVIRONMENTAL:**        This project is categorically exempt from further CEQA review pursuant to Section 15061(b)(3) (Review for Exemptions), Section 15060(c)(2) (Preliminary Review), Section 15183 (Projects Consistent with a General Plan, Community Plan or Zoning) of the CEQA Guidelines.

## **BACKGROUND**

### *History*

On February 23, 1994, the Planning Commission adopted Resolution No. 453 regarding guidelines for tent sales and similar outdoor events. This resolution was amended on March 10, 1999. The guidelines were established to ensure that outdoor sales and special events do not adversely impact existing businesses or access routes. The Resolution required Planning

Commission Subcommittee approval for all outdoor events. A flat fee of \$250 for site and architectural review was also required.

In January 1979, the City Council adopted Ordinance No. 161.4 establishing code provisions for Entertainment Events which included community-based events such as circus, festivals, and carnivals. Historically, entertainment events were submitted to the City Clerk’s office for permitting and approved by City Council. As part of the permit streamlining effort, the City Council adopted Ordinance 38.795 in April 2010, which repealed Title III, Chapter 5 “Entertainment Events” and reassigned the review and permitting responsibility to the Planning Division as well as codified the review requirements and standards for special activities, special events and other similar outdoor events.

***Current Zoning Regulations for Special Events and Activities***

The current zoning regulations for special events and activities require the approval of a Minor Site Development Permit. Special events and activities are limited to four occurrences a year and up to 28 cumulative days during a calendar year with a minimum 30-day gap between each occurrences. A single annual review for multiple requests of up to four occurrences may be approved by the Planning Commission Subcommittee, so long as the dates for the events are provided and adhered to by the applicant.

The Special Event permit application provides two types of classifications for special events and activities. “Minor Events” are considered events in which all of the activities, including parking associated with the event, are confined to private property. “Major Events” are events that are held on private property but have off-site parking, and/or partially or wholly take place on the public right-of-way, except for activities customarily confined to sidewalks, such as walking or jogging/running. The review requirements are dependent upon the duration of the event and if amplified sound is used. The review requirements are summarized in Table 1 Below:

Table 1: Existing Review Requirements

Threshold for review—Number of days the activity will occur during a calendar year	Planning Staff	Planning Commission Subcommittee
One to three days	X	
One to three days with amplified or acoustical sound or live entertainment		X
Four to seven days with or without amplified or acoustical sound or live entertainment		X

Events that last less than 3 days and do not include amplified sound can be approved by Planning Staff with no fee. Special events that last 4 to 7 days and/or include amplified sound are approved by the Planning Commission Subcommittee with an initial deposit of \$250. Exceptions may be granted through a conditional use permit by the Planning Commission for waiver of the minimum lapse period or waiver of limit on number of occurrences.

## PROJECT DESCRIPTION

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### *Overview*

Staff is proposing text changes to clarify and streamline the provisions for special events. The proposed text amendment that removes Special Events and Activities (Subsection 13.01) from Special Uses (Section 13) of the Zoning Ordinance and creates a new separate section for Special Events (Section 15) and incorporates the following recommendations for improvement:

1. **The current definition for Special Events and Activities is too broad.** Special event and activity is defined as any temporary event or activity sponsored by a business, shopping center or organization which is held outside the confines of a permanent building.

Recommendation: Revise the Zoning Ordinance to create clear definitions, regulations and processes to hold special events on private property, public right-of-way, or public property within the city. Also include provisions for First Amendment events the code does not currently address.

2. **The current permitting process for recurring events is non-existent.** The Planning Commission Subcommittee expressed a desire to grant extended approvals for annual events that are held consecutively in the same location and similar dates by streamlining the process further.

Recommendation: Revise the ordinance to include provisions to allow 3-year permits for events that have been held for three consecutive years in the same location and similar dates, with annual reviews at a staff level.

3. **The current Permitting process is the same regardless of the event type, size, location, and/or impacts to services or surrounding neighborhood.** Depending on the nature of the event, it may require more time and coordination with other City departments or other outside agencies to review and process the permit.

Recommendation: Establish timelines for major and minor event processing, and create a special event policy and guidelines that would help applicants understand the City's process. The policy or guideline would include timelines for reviews such as a 45-day review period for minor events, 60-days for major events, and 180-days for any major event that includes street closures that require City Council approval, or Caltrans approval for certain road facilities.

4. **Current Fees and cost are too low and should be 100% cost recovery.** Special events require an initial deposit of \$250 to process the application. The \$250 only covers 1.5 hours of planning staff time and does not account for other departments' review time. With larger events, there is a greater tendency for the Private Job account balance to fall below the 25% threshold, thereby requiring the applicant to be invoiced. In the past, staff experienced problems collecting because the event passed and the applicant was no longer in the area.

Recommendation: Create a fee range for minor and major special events that reflects actual staff and City costs.

5. **Provide criteria and provisions for denials or revocations.** Periodically, event organizations have understated the number of attendees, included additional activities after the permit has been approved, or have not satisfied a requirement such as obtaining a food permit from the Department of Environmental Health.

Recommendation: Add ordinance provisions that establish criteria for permit denial and/or revocation. Examples could include misleading statements, creation of conditions detrimental to public safety and general welfare, or non-compliance with conditions.

In light of the recommended changes, staff also surveyed other cities to compare review requirements, timing for filing permits, and fees to be certain that Milpitas rules and practices conformed to the general norm of the area. Staff selected neighboring cities of Fremont, San Jose, Sunnyvale, and Mountain View. The survey results are summarized in the Table 1 below:

Table 1:  
Survey Summary

<b>City/Permit Type</b>	<b>Approval body</b>	<b>Timing</b>	<b>Permit Fee</b>	<b>Estimated Deposit for Cost of City Services</b>	<b>Insurance</b>
San Jose/Special Event Permit	Office of Cultural Affairs for events on private property, plazas, or paseos.  Park, Recreation and Neighborhood Services for events on public parks and trails.	45 days	Permit Application: <ul style="list-style-type: none"> <li>Plaza/Paseo \$60-\$420</li> <li>Private Property \$100-\$850</li> <li>Special Use Park \$40</li> </ul> Permit Fee: <ul style="list-style-type: none"> <li>Small Scale \$500 for non-profit and \$1000 for profit.</li> <li>Medium Scale \$1000 for non-profit and \$2000 for profit.</li> <li>Large Scale \$1,400 for non-profit and \$2,800 for profit.</li> </ul>	Cost recovery schedule set by council	Commercial General Liability \$1,000,000  Automobile Liability \$1,000,000  Liquor Liability \$1,000,000  Workers' Compensation and Employers' Liability \$100,000 per accident

City/Permit Type	Approval body	Timing	Permit Fee	Estimated Deposit for Cost of City Services	Insurance
			Trail Use Fee: <ul style="list-style-type: none"> <li>• Small Scale \$200 for non-profit and \$400 for profit.</li> <li>• Medium Scale \$500 for non-profit and \$1000 for profit.</li> <li>• Large Scale \$1,000 for non-profit and \$2,000 for profit.</li> </ul> Setup/Take Down <ul style="list-style-type: none"> <li>• Small Scale \$150 for non-profit and \$300 for profit.</li> <li>• Medium &amp; Large Scale \$300 for non-profit and \$600 for profit.</li> </ul> Cleaning Deposit \$250 (min)		
Sunnyvale/Special event Permit	Special Events Coordinator	60 days 4-6 months for events that require significant amount of planning, outreach and promotion.	\$115	Cost recovery schedule set by council	Only on City property in the amount of \$1 million
Mountain View/Temporary Use Permit	Zoning Administrator	14 days	\$368	Cost recovery schedule set by council	None
Fremont/Special Event Permit	Special Event Manager	90 days for street closure. 30 day for events without street closure.	Block Party - \$20 Class I - \$50 Class II - \$75 Class II - \$150 Class IV - \$200 Class V - \$200 Late fee \$5-\$10/business day	\$5,000-\$9,999 – 30% \$10,000-\$14,999 – 40% \$15,000-\$19,999 – 50% \$20,000+ - 60%	Class I & II - \$1-2 million Class III to V - \$1-7 Million

## PROJECT ANALYSIS

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### *Proposed Amendments*

The proposed Zoning Ordinance amendment would create Section 15 in the Zoning Ordinance. The proposed changes are underlined and attached to the draft resolution as part of the Planning Commission packet.

## FINDINGS

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Pursuant to Section 57 of the Zoning Code, the Planning Commission is required to make specific Findings before recommending approval of a Zoning Amendment. Findings shall identify the rationale behind the decision to take a certain action. Each code-required Finding is analyzed below.

### ***Zoning Text Amendment (Section XI-10-57.02.G.3)***

- 1. The proposed amendment is consistent with the General Plan.*

The proposed Ordinance is consistent with and implements the City of Milpitas' General Plan. The Ordinance promotes and encourages events for the greater good and cultural diversity of the City and establishes a structured process for permitting special events and activities that insures the City, residents and visitors have adequate notice of proposed events and activities and that the events and activities are properly planned and coordinated.

The project is also consistent with the following General Plan Guiding Principles and Policies:

- Implementing Policy No. 2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.
- Implementing Policy No. 2.d-G-2 - Develop adequate civic, recreational, and cultural centers in locations for the best service to the community and in ways which will protect and promote community beauty and growth.

- 2. The proposed amendment will not adversely affect the public health, safety and welfare of the residents of Milpitas.*

The proposed zoning amendment will include provisions to ensure public health, safety, and the general welfare standards are met for special events and activities. The zoning provisions will provide requirements, establish permit application filing procedures, and provisions for permit approvals and denials.

### **ENVIRONMENTAL REVIEW**

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The California Environmental Quality Act (Section 21000, et. seq. of the California Public Resources Code, hereafter CEQA) requires analysis of agency approvals of discretionary "projects." A "project," under CEQA, is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."

Prior to adopting this Ordinance, the Planning Commission independently finds and determines that this action is exempt from CEQA (California Environmental Quality Act) pursuant to CEQA Guidelines sections 15060(c)(2), 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15262 (feasibility and planning studies), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

## **PUBLIC COMMENT/OUTREACH**

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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. The table below provides a summary of the City's public noticing efforts for this project.

### **Public Noticing Summary**

<b>Notice of Public Hearing</b>	<b>Agenda</b>
<ul style="list-style-type: none"><li>▪ Public hearing notice posted in the Milpitas Post (<i>14 days prior to the hearing</i>)</li><li>▪ Posted on the City's official notice bulletin board (<i>10 days prior to the hearing</i>)</li></ul>	<ul style="list-style-type: none"><li>▪ Posted on the City's official notice bulletin board (<i>5 days prior to the hearing</i>)</li><li>▪ Posted on the City of Milpitas's Web site (<i>one week prior to the hearing</i>)</li></ul>

## **CITY COUNCIL REVIEW**

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This item is scheduled as a public hearing by the City Council on August 4, 2015.

## **CONCLUSION**

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The proposed changes are intended to create clear and concise zoning code provisions for special events and activities that ensures all special events are conducted in a safe and orderly fashion to benefit all those who live in and visit the City of Milpitas.

## **RECOMMENDATION**

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STAFF RECOMMENDS THAT the Planning Commission:

1. Open the public hearing to receive comments;
2. Close public hearing;
3. Adopt Resolution No. 15-017 recommending the City Council adopt **Zoning Amendment No. ZA15-0004 to adopt a new Special Event Ordinance, based on the above findings.**

## **ATTACHMENTS**

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- A. Resolution No.15-017
  - a. Exhibit A: Draft Ordinance