



## MILPITAS PLANNING COMMISSION AGENDA REPORT

June 24, 2015

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**APPLICATION:** **ZONING TEXT AMENDMENT and CONDITIONAL USE PERMIT – ZA15-0003 and UP15-0008 – A request for a Zoning Text Amendment to conditionally permit “places of assembly” uses in the Industrial Park (MP), Light Industrial (M1) and Heavy Industrial Zone (M2) and a Use Permit for a mosque in the Heavy Industrial Zone (M2) at 372-374 Turquoise Street.**

**RECOMMENDATION:** **Staff recommends that the Planning Commission: Conduct the public hearing and adopt Resolution No. 15-021 recommending the City Council deny Zoning Amendment No. ZA15-0003 and Use Permit UP15-0008 to amend the Zoning Code to add new provisions conditionally permitting “places of assembly” uses in the Industrial Park (MP), Light Industrial (M1) and Heavy Industrial Zone (M2) and a Use Permit for a mosque in the Heavy Industrial Zone (M2) at 372-374 Turquoise Street.**

**LOCATION:**  
Address/APN: Citywide and 372-374 Turquoise Street (APN: 086-39-025)

**PEOPLE:**  
Project Applicant: Al Hilaal Mosque and Community Center  
Consultant: Mark Tiernan  
Property/Business Owners: Munawwar Ali Daimee  
Project Planner: Adam Petersen, Senior Planner

**LAND USE:**  
General Plan Designation: Manufacturing and Warehousing (MFG)  
Zoning District: Heavy Industrial (M2) and Light Industrial (M1)  
Overlay District: NA

**ENVIRONMENTAL:** The California Environmental Quality Act (CEQA) does not require environmental assessments for projects that a public agency disapproves (Section 15270 of the CEQA Guidelines).

## **EXECUTIVE SUMMARY**

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The applicant is requesting two entitlements:

1. A Zoning Text Amendment to permit “places of assembly” uses in the Industrial Park (MP), Light Industrial (M1) and Heavy Industrial Zone (M2) zones; and
2. A Use Permit for a mosque to locate in the Heavy Industrial Zone (M2) at 372 – 374 Turquoise Street.

The requested zoning text amendment and use permit are inconsistent with the City’s General Plan and Zoning Code. The requested zoning text amendment would allow any type of assembly use to locate in any industrial zone with approval of a use permit by the Planning Commission. This provision conflicts with numerous General Plan Guiding Principles and Implementing Policies. Further, the site does not provide adequate parking to accommodate the proposed use. Accordingly, staff is recommending denial of the requested entitlements.

## **BACKGROUND**

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### ***History***

The City implemented numerous revisions to the Zoning Ordinance in 2009. As part of the revisions to the Zoning Ordinance, City Council directed staff to study non-industrial uses locating in the industrial zoning districts. The City retained Conley Consulting Group to study the impacts of industrial land conversion to non-industrial uses as part of the implementation of the City’s Economic Strategic Action Plan. In order to preserve, ensure, and improve the compatibility of uses in the industrial areas of the City, the City adopted revisions to the Zoning Ordinance that prohibited “places of assembly” in the industrial districts.

## **PROJECT DESCRIPTION**

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The project is comprised of two requests:

1. A Zoning Text Amendment to conditionally permit “places of assembly” uses in the industrial zones; and
2. A Use Permit to operate a Mosque at a site zoned Heavy Industrial (M2)

The Zoning Text Amendment is requested because “places of assembly” uses are not currently permitted in the industrial zone. The Commission should consider this requested amendment independent of the affiliation and requested use permit for the subject assembly facility. Further, the Commission should understand that a potential effect of the requested zone change enables any type of assembly use to locate in property intended for industrial purposes.

### ***Overview***

#### **Zone Text Amendment**

The applicant is requesting an amendment to the City’s Zoning Code to conditionally permit assembly uses in the Industrial Park (MP), Light Industrial (M1) and Heavy Industrial (M2) Zoning Districts. This language would expand Table XI-10-7.02-1 by adding the “Places of Assembly” land use classification. The table would be amended as follows (changes highlighted in red and underline text):

**Table 1**  
**Requested Zoning Text Amendment**

USE	M1	M2	MP
<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
<u>Places of Assembly</u>	<u>C</u>	<u>C</u>	<u>C</u>

<sup>4</sup> 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.

<sup>5</sup> Shall be ancillary to the primary use or associated with business or industrial uses.

<sup>6</sup> Refer to Subsection XI-10-13.10, Farmers Markets, of this Chapter.

<sup>7</sup> Includes service facilities, electric transmission and distribution substations and public utility service centers.

Requested Conditional Use Permit

Accompanying the Zone Amendment application is a request for a conditional use permit to allow an assembly use at 372 – 374 Turquoise Street. The applicant is proposing to operate a 13,125 square foot mosque in a vacant tenant space inside an existing industrial building.

Places of Assembly Use Description

There are numerous activities proposed in association with the mosque. The applicant proposes five daily prayer services, and estimates an attendance of approximately 35 to 50 people per session. The times of these services vary depending on the winter or summer season and are highlighted below in Table 2.

**Table 2**  
**Prayer Service Schedule**

Summer Prayer Hours – June 21 through December 20				
5:30 AM	1:30 PM	6:30 PM	8:30 PM	10:10 PM
Winter Prayer Hours – December 21 through June 20				
6:45 AM	12:30 PM	4:00 PM	5:15 PM	8:00 PM

In addition to the daily prayer services, two weekly congregational prayer services occur in the afternoons on Fridays. The applicant estimates that approximately 100 to 150 people will attend each service, and the services last for 45 minutes each.

Additional proposed uses of the mosque include the following:

- Classes on Islamic subject for Muslims; estimated attendance is 20 to 30 people (no schedule proposed with application).
- Seminars and workshops for Muslims and non-Muslims estimated attendance is 70 to 100 people (no schedule proposed with application).
- Outreach to local Muslim community and non-Muslim community with Islamic literature and books.
- Family and marriage counseling on an as needed basis.
- Youth activities – no schedule or estimated attendance proposed
- Night prayers during the month of Ramadan, and other activities on Muslim Holidays
- Seminars and monthly family nights: 70 – 125 people; no schedule proposed
- Health and fitness classes
- Programs and activities specifically for Muslim women
- Multimedia center
- Bookstore and gift shop
- Special events such as wedding ceremonies
- Community social activities; no schedule proposed

***Location and Context***

The proposed rezone would affect all industrial land in the City of Milpitas, and would open parcels zoned M1 and M2 for use by assembly facilities. These land uses are located primarily in

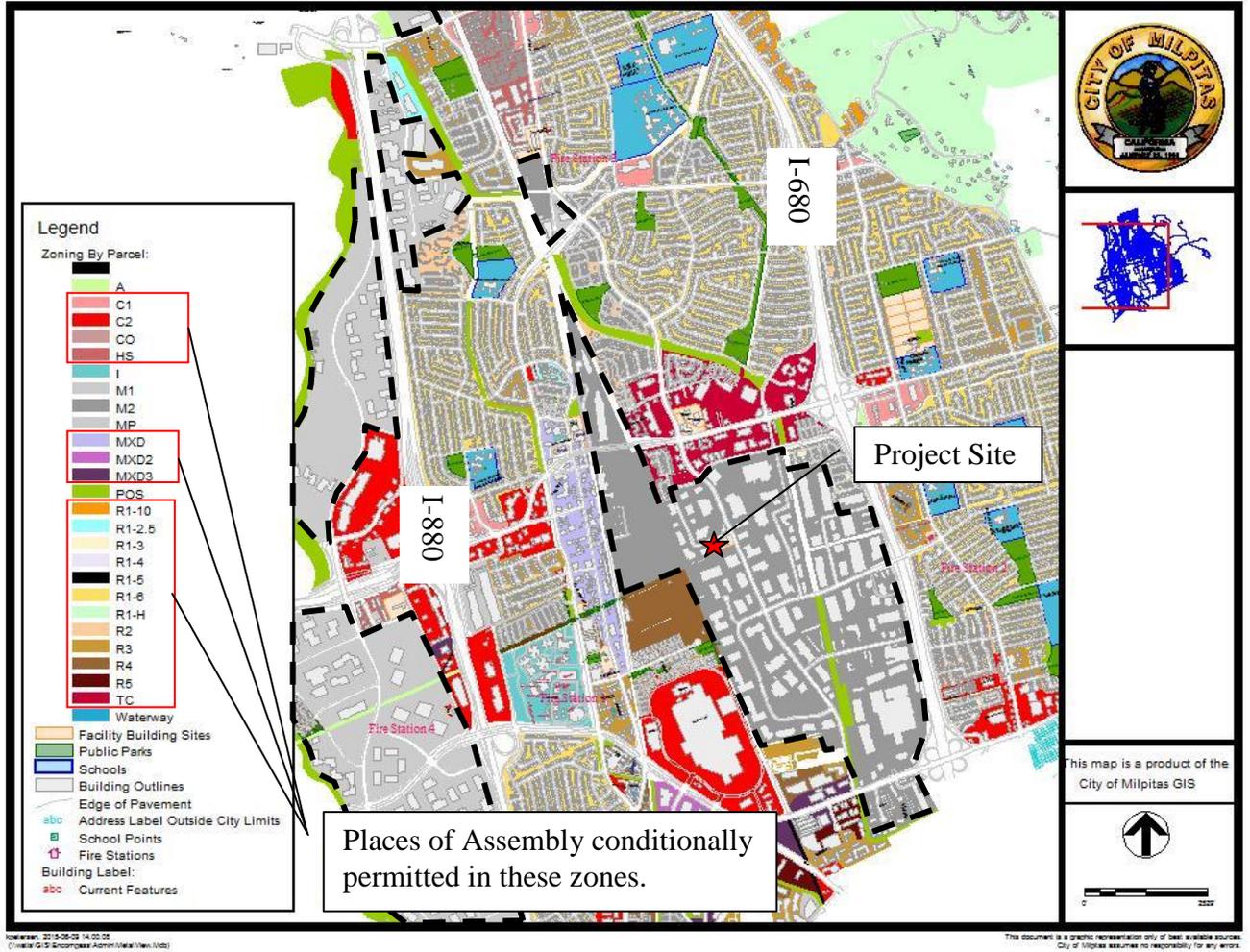
the central portion of the City. Figure 1 illustrates the M1 and M2 zone properties in the City of Milpitas.

The site is surrounded by industrial uses. It is located in the central portion of the City, south of Calaveras Boulevard and north of Yosemite Drive. Table 3 highlights the site’s General Plan designation, Zoning and surrounding land uses, and Figure 2 provides an aerial view of the site.

**Table 3**  
**Zoning and Land Use Summary**

	<b>General Plan</b>	<b>Zone</b>	<b>Uses</b>
Subject Site	Manufacturing Warehousing	Heavy Industrial (M2)	Research offices
North	Manufacturing Warehousing	Heavy Industrial (M2)	Lenthor Engineering
South	Manufacturing Warehousing	Heavy Industrial (M2)	Industrial offices
East	Manufacturing Warehousing	Heavy Industrial (M2)	Aircom Mechanical
West	Manufacturing Warehousing	Heavy Industrial (M2)	Industrial offices

**Figure 1**  
**MP, M1, and M2 Properties in Milpitas**



**Figure 2**  
**Site Aerial Map**



## PROJECT ANALYSIS

### *Conditional Use Permit Analysis*

#### General Plan

This requested use permit is not consistent with the intent of the Manufacturing and Warehousing designation of the General Plan. The Manufacturing and Warehousing land use designation encompasses a variety of light and heavy industrial activities, such as “manufacturing, packaging, processing, warehousing, and distribution, and ancillary support uses.” The project proposes a use that is not similar to those described above and does not provide support services for those types of uses. Examples of support services include facilities that provide equipment repair, product and materials storage locations, and other businesses that support industrial uses. Further, the project is inconsistent with numerous Guiding Principles and Implementing Policies that prohibit assembly uses in the industrial zones. For these reasons, the project is inconsistent with the Milpitas General Plan and cannot be supported.

#### Zoning Ordinance

The project does not comply with the development standards in the Milpitas Zoning Ordinance. Specifically, the project would generate a demand for parking that exceeds the number of spaces supplied onsite. Table 4 below provides an analysis of the parking requirements for the site, pursuant to Table 53.09-1 of the Milpitas Municipal Code.

**Table 4**  
**Parking Summary**

Use	Area	Standard	Parking Spaces Required
Existing Industrial Uses	13,981 sq. ft.	1 space per 300 sq. ft.	47 spaces
Proposed Assembly Use:			
Prayer Halls	4,282 sq. ft.	No Fixed Seats: 1 seat per 7 sq. ft. then 1 space per 5 seats	122 spaces
Multi-Purpose Room	2,735 sq. ft.;	1 per 6 lineal ft. of	27 spaces
Office	160 lineal ft.	seating	
Bookstore	258 sq. ft.	1 space per 240 sq. ft.	1 space
Reading, Conference, Quiet Rooms	180 sq. ft.	1 space per 200 sq. ft.	1 space
	1,423 sq. ft.	1 space per 240 sq. ft.	6 spaces
<b>TOTAL REQUIRED</b>			204 spaces required
<b>SPACE PROVIDED ONSITE</b>			126 spaces provided
<b>DEFICIT</b>			<b>78 space deficit</b>

As Table 4 demonstrates, the site is under parked by approximately 78 spaces, and it cannot accommodate the proposed assembly use. The project plans propose on-street parking as a means of providing 20 additional spaces for parking. However, the Zoning Code does not permit on street parking to count towards meeting the parking requirement. Therefore, the project is

inconsistent with the Zoning Ordinance requirements based on the number of parking spaces required and the location of parking spaces provided.

### ***Zone Text Change Analysis***

#### **General Plan Inconsistency**

The City of Milpitas' General Plan is the City's constitution. The General Plan guides and directs City actions, and State Law requires that any project must be consistent with the General Plan. The requested zone change to allow "places of assembly" uses to occupy any industrially zoned land in the City of Milpitas is inconsistent with the City of Milpitas' General Plan.

The General Plan contains two industrial land use categories that provide a broad range of uses for the industrial areas of the City. These categories and uses are as follows:

- **Manufacturing.** This classification encompasses a variety of light and heavy industrial activities, such as manufacturing, packaging, processing, warehousing and distribution, and ancillary support uses.
- **Industrial Park.** This classification accommodates research, professional, packaging and distribution facilities in a park-like setting, free from noise, odor and other such nuisances.

The Manufacturing and Industrial Park categories target manufacturing, processing, distribution, and research type land uses. These uses are opposite in nature from assembly type uses. "Places of assembly" uses involving the gathering of people for a common purpose while manufacturing and industrial park land uses involve utilizing raw materials to produce, store, and distribute finished goods and products. The heavy intensity of these industrial uses conflicts with the quiet gathering of people because it exposes people to potentially hazardous byproducts from industrial uses. Therefore, "places of assembly" uses are incompatible with industrial uses.

Furthermore, the proposed zoning text amendment conflicts with numerous Guiding Principles and Implementing Policies of the General Plan, including the following:

#### **Guiding Principles:**

- 2.a-G-1** Maintain a land use program that balances Milpitas' regional and local roles by providing for a highly amenable community environment and a thriving regional industrial center.

*Inconsistent: The proposed zoning text amendment would undermine this Guiding Principle. The zoning text amendment would expand the range of non-industrial related land uses in industrial zones. Infiltration of non-industrial land uses would eliminate the opportunity for industrial uses to occupy an area that the City has designated, planned for and encouraged to thrive with industrial uses. Assembly uses would erode the economic base and the vitality of the industrial zone because it enables a transition of the area away from the industrial districts' purpose as a key manufacturing, research, warehousing, distribution, and employment center. Therefore, the requested text*

*amendment is inconsistent Guiding Principle 2.a-G-1 because it erodes the economic base and the vitality of the City's industrial center.*

**2.a-G-8** The City should consider a long-term approach to managing its income/job generating lands and the impacts of development on public services.

*Inconsistent: The proposed zone change would have detrimental effects to the long-term management of the City's income/job generating lands. Assembly uses established with a use permit would be able to occupy industrially zone properties in perpetuity. This would effectively remove these properties from any type of income/job generating purposes from the City in the short-term and long-term time horizons. Therefore, the requested zone text amendment is inconsistent with Guiding Principle 2.a-G-8.*

**2.a-G-11** Promote land use policy and implementation actions that improve the City's fiscal sustainability. Maintain and enhance the City's projected total net revenue through amendments made to the General Plan. Discourage proposed re-zonings or other discretionary land use actions that could significantly diminish revenue to the City or significantly increase the City's service costs to the City without offsetting increases in revenue.

*Inconsistent: The proposed re-zoning would diminish revenue to the City by eliminating potential for commercial uses to support industrial land uses. The industrial districts are intended to be areas that potentially lead to business retention, employment opportunities, and economic development. Allowing uses not compatible with the purpose and intent of these districts would be detrimental to investments in property and improvements in the vicinity by starting a transition of the area away from its purpose as a key manufacturing and employment center. Therefore, the project is inconsistent with Guiding Principle 2.a-G-11.*

### **Implementing Policies:**

**2.a-I-4** Publicize the position of Milpitas as a place to carry on compatible industrial and commercial activities with special emphasis directed toward the advantages of the City's location to both industrial and commercial use.

*Inconsistent: Approval of the proposed zoning text amendment would create incompatible land uses in industrial zones, and would disadvantage the City of Milpitas as a place for industrial activities. Industrial land uses are associated with the heavy intensity use of raw materials for the purpose of developing, manufacturing, storing and shipping products. "Places of assembly" uses are associated with the gathering of people for a common purpose. The fundamental purpose of the industrial and "places of assembly" land use demonstrates their incompatibility, and mixing these two disparate uses creates difficulties for each. Industrial businesses would not want to be located adjacent to an assembly use because their operations may be restricted to preserve the general welfare of people. This incompatibility would discourage industrial uses in the City of Milpitas. Further, there is also the simple impact of perception. Industrial businesses could perceive that the City does not care enough about the tax generating businesses because*

*they are allowing non-tax generating uses within the restricted districts. Therefore, the requested zoning text amendment would create incompatible uses that would disadvantage the City as a place to conduct industrial activities.*

**2.a-I-9** Prohibit encroachment of incompatible uses into industrial lands, and prohibit nonindustrial uses which would result in the imposition of additional operational restrictions and/or mitigation requirements on industrial users due to land use incompatibility issues.

*Inconsistent: The requested zone text amendment results in the encroachment of incompatible land uses and nonindustrial uses in industrial zones, which this policy expressly prohibits. As previously discussed, industrial land uses involve high intensity use raw materials for the manufacturing, storage, and shipment of products. These industrial uses frequently result in loud noise, diminished air quality, long operating hours, and large vehicle deliveries and shipments. Assembly type uses stand in sharp contrast to industrial uses. Assembly uses involve gathering people in a location for a common purpose. Assembly uses in an industrial zone would expose people to the byproducts of industrial operations, which creates a potentially hazardous situation. This hazardous situation defines and exemplifies the essence of incompatible land use uses. The City would need to impose operational restrictions to resolve conflicts and incompatibilities between assembly and industrial land uses. These operational restrictions conflict with Implementing Policy 2.a-I-9, and because of this inconsistency the requested zone amendment cannot be supported.*

**2.a-I-14** When new uses are proposed in proximity to existing industrial uses, incorporate conditions upon the new use to minimize its negative impacts on existing nearby land uses and to promote the health and safety of individuals at the new development site.

Prohibit social organization uses within industrial areas. Consider these uses in other areas in the City.

*Inconsistent: The proposed zone amendment would facilitate a type of social organization in the industrial districts. This is inconsistent with Implementing Policy 2.a-I-14.*

### Zoning Ordinance Inconsistency

The Zoning Ordinance provides clear direction on the purpose and intent of the industrial zoning districts. The stated intent of these districts is as follows:

- Light Industrial (M1) Zone. The M1 Light Industrial District is reserved for the construction, use and occupancy of buildings and facilities for office, research, limited and light manufacturing, and other uses compatible with the district.
- Heavy Industrial (M2) Zone. The M2 Heavy Industrial District is reserved for the construction, use, and occupancy of buildings and facilities for office, research, general manufacturing, warehousing and distribution and other uses compatible with the district.

- Industrial Park (MP) Zone. The MP District is intended to accommodate, in a park-like setting, a limited group of research, professional, packaging and distribution facilities and uses, which may have unusual requirements for space, light, and air, and the operation of which are clean and quiet.

The purpose and intent of the industrial zones demonstrates that the proposed zoning text amendment is inconsistent with the Zoning Code. The proposed text amendment would introduce assembly uses in the industrial zones. These uses are incompatible with the industrial zone because these districts are designed to accommodate research, manufacturing, warehousing, distribution, office, and other types of industrial uses.

The Zoning Code only conditionally permits ancillary and support assembly uses in the Industrial Park (MP) Zone. Examples of these uses would include an auditorium or conference center in an office or research building. The Zoning Code does not permit these types of ancillary support uses in the Light Industrial (M1) and Heavy Industrial (M2) Zones because of compatibility issues. Therefore, continuing to exclude assembly uses as a principle use will maintain the purpose and intent of the industrial zones.

Following direction from the Planning Commission in March 2008, staff analyzed various ways to stabilize the city's industrial districts. With the rezoning of the Transit Area Specific Plan and the Fairfield residential site, the City's industrial districts represented 20-percent of the City's entire land area. To put that into perspective, industrial-type uses (research and development, manufacturing, warehousing, and other similar uses) are limited to locating within the industrial districts. Industrial uses are not permitted in commercial or residential districts because the nature of their operations is incompatible with commercial and residential uses. Contrasting this condition, the City conditionally permits "places of assembly" uses throughout the City. "Places of assembly" uses and schools are conditionally allowed in all zones except the Parks and Open Space, Agricultural, and Institutional district.

Preserving the industrial zones for industrial related land uses is critically important to the long-term economic health of the City. Only 20-percent of the City is zoned industrial. Industrial uses are not allowed in other districts except for the industrial zones. Therefore, there are no opportunities for manufacturing, processing, warehousing and distribution, and packaging enterprises to occur outside of the industrial zones. The "places of assembly" use category is a stark contrast to the industrial uses because "places of assembly" are conditionally allowed in nearly every other zoning district in the City, excluding the industrial zone. Given the various locations for assembly uses and the limited locations for industrial uses, the industrial zones are areas of the City that are critical important to preserve for manufacturing, processing, warehousing and distribution, and packaging associated land uses and development opportunities.

The City of Milpitas intends the industrial districts to be areas that lead to expansion of business, employment opportunities, and economic development. Allowing uses not compatible with the purpose and intent of these districts would be detrimental to investments in property and improvements in the vicinity by enabling a transition of the area away from the industrial districts' purpose as a key manufacturing and employment center. For instance, "sensitive

receptors” or the very young or elderly are typically associated with places of assembly. The presence of sensitive receptors may influence the decision of prospective industrial uses from locating near a “places of assembly” use when their operation consists of processes that could be detrimental to that population. Further, there is also the simple impact of perception. Industrial businesses could perceive that the City does not care enough about the tax generating businesses because they are allowing non-tax generating uses within the restricted districts.

## **FINDINGS**

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A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action. Staff recommends the Planning Commission find the proposed project inconsistent with the General Plan and Zoning Ordinance and all required Findings. The findings for denial are discussed in detail in Attachment A (Resolution 15-021).

## **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.” The California Environmental Quality Act (CEQA) does not require environmental assessments for projects that a public agency disapproves (Section 15270 of the CEQA Guidelines). The primary purpose of this exemption is to allow an initial screening of a project by the public agency without going through the time and expense of preparing the necessary CEQA documents. An environmental assessment was not prepared for this project to for that reason.

If the Planning Commission chooses to recommend approval the project, then staff will need to prepare the necessary CEQA document for a future Planning Commission public hearing.

## **PUBLIC COMMENT/OUTREACH**

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Public notice was provided in accordance with City and State public noticing requirements. A notice was published in the Milpitas Post on June 10, 2015. Additionally, 123 notices were sent to owners and occupants within 1,000 of the project site. A public notice was also provided on the project site, on the City’s Website, [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov), and posted at City Hall. Staff has not received public comment at the time of writing this report.

## **CITY COUNCIL REVIEW**

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This item is scheduled as a public hearing by the City Council following the Planning Commission’s recommendation.

## **CONCLUSION**

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Based on the analysis described above, the requested zone amendment and use permit is inconsistent with the City’s General Plan and Zoning Ordinance and cannot be supported. The General Plan, functioning as the City’s constitution, designates the site as Manufacturing. This classification encompasses a variety of light and heavy industrial uses such as manufacturing, packaging, processing, warehousing and distribution, and ancillary support uses. The requested zone amendment would conditionally allow uses that are inconsistent with the intent of the

General Plan classification. Further, the General Plan has numerous Guiding Goals and Implementing policies that prohibit and discourage the encroachment of uses that are not compatible with industrial uses. The requested use permit is inconsistent with the City's Zoning Ordinance as well. The site does not provide adequate parking to accommodate the proposed use, nor is the M2 Zone intended for assembly uses. The industrial zones are the only area in the City that support such uses, while assembly uses are conditionally permitted in nearly every other zone. The requested zoning text amendment would conditionally allow uses that are not compatible with the purpose and intent of the industrial districts. This would be detrimental to investments in property and improvements in the vicinity because it would initiate a transition of the industrial areas away from its purpose as a key manufacturing and employment center. Accordingly, it is paramount to retain these areas for manufacturing, packaging, processing, warehousing and distribution by denying the requested zone amendment and use permit.

## **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. 15-021 recommending the City Council deny **Zoning Amendment No. ZA15-0003 and Use Permit UP15-0008 to amend the Zoning Code to add new provisions conditionally permitting places of assembly uses in the Industrial Park (MP), Light Industrial (M1) and Heavy Industrial (M2) Zones and a Use Permit for a mosque in the Heavy Industrial Zone (M2) at 372-374 Turquoise Street.**

## **ATTACHMENTS**

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- A. Resolution No.15-021
- B. Project Plans