

**RESOLUTION NO. 16-006**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. UA15-0009 TO ALLOW FOR THE EXPANSION OF AN EXISTING PRESCHOOL FACILITY FOR A MAXIMUM OF 94 STUDENTS IN AN EXISTING COMMERCIAL BUILDING LOCATED AT 630 SOUTH MAIN STREET, MILPITAS, CA 95035**

**WHEREAS**, on, August 31, 2015, an application was submitted by Colleen Noll with Main Street Montessori, Inc. to allow for a 2,946 square feet expansion of the existing child care facility located at 630 South Main Street. The property is located in the Mixed Use Zone; and

**WHEREAS**, on, December 14, 2011, an application was submitted by Colleen Noll with Main Street Montessori, Inc. to allow for the operations of a 6,413 square foot child care facility in an existing commercial tenant space and to permit various site improvements including a 2,730 square foot outdoor play area consisting of a rubberized play surface, play equipment, seating areas, and new fencing at 630 South Main Street (APN 86-25-027). The property is located within the Mixed Use Zoning District; and

**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 from further environmental review pursuant to Categorically Exempt from further environmental review pursuant to Section 15301 (Existing Facilities) and Section 15332 (I-Fill Development Projects) of the California Environmental Quality Act (CEQA); and

**WHEREAS**, on February 24, 2016, 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: Recitals**. The recitals set forth above are true and correct and incorporated herein by reference.

**SECTION 2: Record**. The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission.

**SECTION 3: CEQA**. The project is Categorically Exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) as the project consists of the minor alteration of existing private structures and features and involves negligible expansion of use, and Section 15332 (In-Fill Development Projects) as the project is consistent with the general plan designation, and all applicable general

plan policies, as well as with applicable zoning designation and regulations; it is situated within City limits on a project site of no more than five acres substantially surrounded by urban uses; the site has no value as a habitat for endangered, rare, or threatened species; approval of the project will not result in any significant effects related to traffic, noise, air quality, or water quality; and the site is adequately served by all required utilities and public services.

**SECTION 4: Conditional Use Permit (Section XI-10-57.04(F)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP15-0012:**

- a. *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The proposed expansion of an existing child care facility will serve the community, and, as designed, have no detrimental or injurious impacts on the property or improvements in the vicinity of the property. The operation of the facility will be in compliance with all local, state, and federal regulations.

- b. *The proposed use must be consistent with the Milpitas General Plan*

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

**Table 1: General Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
<p>2.a-I-6  <i>Publicize the position of Milpitas as a place to carry on compatible Industrial and Commercial activities with special emphasis directed the advantages of the City’s location to both industrial and commercial use.</i></p>	<p><b>Consistent.</b> The project would serve local residents as well as support employment centers in the nearby commercial and industrial areas by providing quality child care.</p>
<p>2.aI-7  <i>Provide opportunities to expand employment opportunities in partnerships with local businesses to facilitate communication, and promote business retention</i></p>	<p><b>Consistent.</b> The project would provide employment opportunities and revitalization of the commercial center by replacing a vacancy with a use that would be complementary to existing restaurant, office, and recreational uses within the center.</p>

- c. *The proposed use must be consistent with the Milpitas Zoning Ordinance.*

The proposed expansion of the child care center conforms to the Milpitas Zoning Ordinance in that the use is a conditionally permitted use in the Mixed Use Development Zoning district and complies with the development standards and parking requirements. The project does not propose any exterior building modifications and the construction is limited to the interior of the building. The tenant improvements include adding more tenant space, reconfiguring the walls to add a classroom, staff room, restrooms, office spaces, and remodeling of the lobby.

**Parking**

Table 2 demonstrates the project's compliance with the Zoning Code parking standard per Section XI-10-53 Off-Street Parking.

**Table 2: Parking Summary**

<b>Uses</b>	<b>Parking ratio</b>	<b>Square footage/ persons</b>	<b>Required parking</b>
<i>Child Care Center</i>			
<i>Classroom</i>	1/500 GFA	3,251 sq. ft.	6
<i>Office</i>	1/240 GFA	1606.4 sq. ft.	6
<i>Storage</i>	1/1500 GFA	1,396 sq. ft.	1
<i>Loading and Unloading</i>	1 per 6 children; up to 5 spaces and thereafter 1 per 10 children	94 students	9
Total Number of Spaces Required for school			<b>22</b>
Total number of Space Required for 11,382.7 sq. ft. of Great Jump Sports at the rate of 1 space per 200 sq. ft.			<b>57</b>
Total number of Spaces Required for Other Offices (1465.3 sq. ft.) in the building at the rate of 1 space per 240 sq. ft.			<b>6</b>
Total Number of Spaces Required on site			<b>85</b>
Total Number of Parking Spaces Available*			<b>84</b>
Total Number of Parking Spaces to be accommodated			<b>1</b>
*The four motorcycle parking spaces are considered as two spaces in the total calculation.			
*The area of refuge to be converted into two parking spaces.			
*The two parking spaces behind the exit are considered in the parking calculation on a condition that the exit will remain closed and will be relocated to the existing playground at a later stage.			

Zoning Ordinance Section XI-10-53.09-1 (*Number of Parking Spaces Required Table, note 3*), provides that the required number of loading/unloading spaces maybe reduced by one space per each employee permanently assigned to load and unload children from vehicles. The applicant has committed to requiring the child care facility to appoint a permanent staff member to load and unload children. This commitment, which will be enforced as a condition of approval, thus reduces the project’s total parking requirement to 84 spaces, and the project therefore complies with the City’s parking requirements.

*d. The proposed use must be consistent with the Milpitas Midtown Specific Plan.*

The table below outlines the project’s consistency with the goals and implementation policies of the Milpitas Midtown Specific Plan. Since the project will not require 50% more additional parking for the proposed child care use or propose modifications that increase the floor area or new building construction, the application is not subject to site and architectural upgrades as required by the Midtown Specific Plan.

**Table 3: Milpitas Midtown Specific Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
<i>Childcare Policy No. 3.22: Encourage the provision of childcare services to support demand generated by Employees and residents in the Midtown Area.</i>	<b>Consistent.</b> The proposed enlarged child care center would accommodate 94 children and would serves surrounding high density residential development in the Midtown Area and employment centers along I-880.

e. *The proposed use must be consistent with the Milpitas Child Care Master Plan.*

The table below outlines the project’s consistency with the goals and implementation policies of the Milpitas Child Care Master Plan dated April 2, 2002.

**Table 4: Milpitas Child Care Master Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
<i>Long Range Goal: Every child and family has access to affordable, safe, quality child care</i>	<b>Consistent.</b> The project proposal is a 2,946 square foot expansion to an existing child care facility. The facility will accommodate 94 children and serves surrounding high density residential development in the Midtown Area.
<i>Accessibility Policy 2.2-G-I: The City of Milpitas promotes the retention of existing facilities and the development of new child care facilities within the city limits.</i>	<b>Consistent.</b> The project proposes to increase the number of students in an existing care facility within the city limits.

**SECTION 5:** The Planning Commission of the City of Milpitas hereby adopts resolution No. 16-006 approving Conditional Use Permit Amendment No. UA15-0009 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on February 24, 2016.

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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 February 24, 2016, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Sudhir Mandal				
Lawrence Ciardella				
Hon Lien				
Rajeev Madnawat				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

**CONDITIONS OF APPROVAL FOR  
MAIN STREET MONTESSORI CUP AMENDMENT  
CONDITIONAL USE PERMIT AMENDMENT NO. UA15-0009**

**General Conditions**

1. General Compliance. The applicant, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit amendment No. UA15-0009 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Division.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  - a. Acceptance of this Permit by Permittee; and
  - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
  - a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
6. Project Job Account. If Permittee’s project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee’s private job account is paid in full and the required deposit has been made.

Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.

7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

- 13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
- 14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
- 15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on February 24, 2016 in accordance with these Conditions of Approval.  
Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**
- 16. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**

**Project Specific Conditions**

- 17. Operations.
  - a. Approval is granted by the Planning Commission to allow for the expansion of the child care facility. The hours of operation are from 7:00AM to 6:00PM, Monday through Friday, and the maximum number of children permitted to be enrolled at all times shall be 94 children. Permittee shall also meet all State and local (Building and Fire) occupancy limitations or requirements. **(P)**
  - b. Any change in the hours of operation will require a written request addressed to the Planning Director or Designee. The Planning Director or Designee, in his or her discretion, may approve or deny the request in writing. **(P)**
- 18. Parking. Permittee must ensure that the child care facility appoint a permanent staff member for loading and unloading of children in order to receive a parking reduction of one space. Failure to fulfill this or any other condition may result in amendment or revocation of this permit. **(P)**

(P) = Planning  
 (B) = Building  
 (E) = Engineering  
 (F) = Fire Prevention  
 (CA) = City Attorney