

REGULAR

NUMBER: 38.784

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, AMENDING TITLE XI CHAPTER 10 FOR THE PURPOSE OF APPROVING ZONING AMENDMENT NO. ZA08-0007 TO ALLOW MASSAGE ESTABLISHMENTS BY CONDITIONAL USE PERMIT IN THE MIXED USE (MXD), GENERAL COMMERCIAL (C2) AND TOWN CENTER (TC) ZONES AND TO ALLOW THE MASSAGE OF HANDS AND FEET AS AN ACCESSORY USE TO COMMERCIAL SERVICE USES

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

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

ORDAINING CLAUSE:

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

RECITALS

WHEREAS, on July 8, 2008, Philip Su, representing Milpitas Square, LLC, made an application to amend the Zoning Ordinance to allow Massage Establishments in the Mixed Use (MXD) and General Commercial (C2) Zones.

WHEREAS, after reviewing the application, Planning Division staff determined that it was also appropriate to apply the amendments to the Town Center (TC) Zone and the Accessory Use Section of the Zoning Ordinance; and

WHEREAS, Zoning Ordinance Section 10-6.02 Mixed Use Regulations, will be amended to expand the Accessory uses to allow massage of the hands and feet in conjunction with commercial services and medical uses, to delete Massage Establishments from Prohibited Uses and to add Massage Establishments as a use permitted subject to the issuance of a Conditional Use Permit; and

WHEREAS, the proposed Zoning Ordinance Text Amendment will also modify Section 10-13.03 Accessory Uses, to allow massage of hands and feet in conjunction with commercial services; and

WHEREAS, the proposed Zoning Ordinance Text Amendment will modify the General Commercial (C2) Zone and Town Center (TC) Zone, Sections 10-19 and 10-22 of the Zoning Ordinance, respectively, to allow Massage Establishments as Conditionally Permitted Uses; and

WHEREAS, pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, the proposal is exempt from environmental review because there is no possibility that the activity in question may have a significant effect on the environment. The proposed Zoning Text Amendment will change the text of the Zoning Ordinance only, allowing massage establishments as a conditionally permitted use in certain zones, and allowing massage as an accessory use in certain situations. Additional environmental determination may be necessary for future Conditional Use Permit applications; and

WHEREAS, the Milpitas Planning Commission held a duly noticed public hearing on October 22, 2008 on the amendments proposed by City Staff, received reports and evidence prepared by staff and heard comments from the public, and recommended approval of the aforementioned amendments by the City Council; and

WHEREAS, the City Council finds that the proposed amendments to the Milpitas Zoning Ordinance and the maps referenced therein are exempt from CEQA pursuant to: (a) CEQA Guideline 15061(b)(3), because there is no possibility that the activity in question may have a significant effect on the environment. The proposed Zoning Text Amendment will change the text of the Zoning Ordinance only, allowing massage establishments as a conditionally permitted use in certain zones, and allowing massage as an accessory use in certain situations. Additional environmental determination may be necessary for future Conditional Use Permit applications.; and

WHEREAS, the City Council finds that with the inclusion of the proposed amendments, the Zoning Ordinance would remain internally consistent.

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

SECTION 1. Chapter 10, Section 6.02(A)(2) of Title XI of the Milpitas Municipal Code “Accessory Uses” is hereby amended in its entirety to read as follows, with deletions in ~~striketrough~~ font and additions in underlined font:

2. Accessory Uses—Massage Services. Massage services may be allowed as an accessory use to any permitted or conditionally permitted medical office, medical clinic, chiropractor practice, acupuncture practice, physical therapist, fitness and athletic facility, health care facilities (such as hospitals, nursing homes and sanitariums), and accredited school, college, and university. Massage services, limited to massage of the head, neck, ~~and shoulders,~~ hands and feet may be allowed as an accessory use to any permitted or conditionally permitted beauty salon, barbershop, and healing art practices. This section shall not exempt any person or business from complying with all the provisions of Title III, Chapter 6.

SECTION 2. Chapter 10, Section 6.02(B)(2) of Title XI of the Milpitas Municipal Code “Prohibited Uses” is hereby amended in its entirety to read as follows, with deletions in ~~striketrough~~ font and additions in underlined font:

B. Prohibited Uses. The following uses are prohibited:

1. Uses where the symbol “NP” appears within Table XI-10-6.02-1.
2. The following uses are not permitted in any mixed use zone:
 - a. Adult Businesses as defined in Section XI-10-13.04, Adult Businesses, of this chapter.
 - b. Disinfecting and extermination business.
 - c. Ground level residential in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.
 - ~~d. Massage establishments, except as an Accessory Use, as provided for in Section XI-10-6.02(A)(2), Accessory Uses, of this Section.~~
 - e.d. Outdoor storage of vehicles.
 - f.e. Private self-storage facilities.
 - g.f. Single-family detached dwellings.
 - h.g. Two-family dwelling units.
 - i.h. Vehicle oriented window service facilities.

SECTION 3. Chapter 10, Section 6.02, Table 6.02-1 of Title XI of the Milpitas Municipal Code “Mixed Use Zone Uses” is hereby amended in its entirety to read as follows, with deletions in ~~striketrough~~ font, additions in underlined font, and all footnotes preserved:

**Table XI-10-6.02-1
Mixed Use Zone Uses**

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
1. Commercial Uses				
Blueprinting	C	NP	NP	NP
Catering establishments	C	C	C	C
Commercial Laboratories (Including medical and dental)	C	C	C	P
Commercial Services ¹	P/C	P/C	P/C	P/C
Grocery Stores (Supermarkets)	C	C	C	C
Laundries and Dry cleaners	C	NP	NP	NP
Liquor Stores	C	C	C	C
Massage Establishment	C	C	C	C
Pawn Shops ²	C	C	C	C
Pet shops	C	NP	NP	NP
Retail ³	P/C	P/C	P/C	P/C
Tanning salons	C	C	C	C
Thrift shops (used merchandise)	C	C	C	C
2. Lodging				
Bed and Breakfast	NP	P	NP	NP
Boarding houses (3 or more persons)	C	C	C	C
Group dwellings	C	C	C	C
Hotels	C	P	P	P
Motels	C	C	C	C
3. Professional Offices, Financial Institutions and Related Uses				
Medical or dental offices and clinics	P	NP	P	P
Offices ⁴	P/C	NP	P/C	P
4. Public/Quasi Public and Institutional Uses				
Child Care centers ⁵	C	P	C	P
Dance and Music instruction	C	NP	NP	NP
Hospitals or sanitariums ⁶	C	C	C	C
Large family child care home ⁷	P	P	C	P
Park, playground or community center ⁸	NP	NP	P	P
Pet hospitals and Veterinarians	C	C	C	C
Places of assembly ⁹	C	C	C	C

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
Schools, Private (Elementary, Middle and High) ¹⁰	C	C	C	C
Small family child care home	P	P	P	P
Theaters (Indoor)	C	C	C	C
Transportation facilities ¹¹	C	C	C	C
Vocational Schools ¹²	C	C	C	C
5. Residential Uses				
Multi-family housing ¹³	P	NP	P	P
6. Restaurants				
Restaurants ¹⁴	P/C	P/C	NP	P/C
With Dancing and Entertainment	C	C	C	
With Internet Usage	P	P	P	
With ancillary on-premise beer and wine with no separate bar	P	P	P	
Bars, Cocktail lounges	C	C	C	
7. Unclassified Uses				
Arcades	C	C	C	C
Billiard centers	C	C	C	C
Bowling alleys	C	C	C	NP
Cabinet or carpenter shop ¹⁵	C	NP	NP	NP
Indoor recreation (Health/Fitness/Sports Clubs Facilities)	C	C	C	C
Janitorial and window cleaning services ¹⁶	C	NP	NP	NP
Live-work units	P	P	P	P
Lobbies and entries for upper floor uses	NP	P	NP	NP
Mixed use developments ¹⁷	P	P	P	P
Planned Unit Development ¹⁸	P	NP	NP	NP
Plumbing or sheet metal shops ¹⁹	C	NP	NP	NP
Sign Shops ²⁰	C	NP	NP	NP
Temporary tract signs ²¹	C	NP	NP	NP
8. Vehicle-Related Repair, Sales and Services				
Vehicle Dealership (Sales, Leasing, New and Used) ²²	C	C	C	C

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
Vehicle service uses ²³	C	NP	NP	C

SECTION 4. Chapter 10, Section 19.03 of Title XI of the Milpitas Municipal Code “Uses Permitted Subject to Securing a Conditional Use Permit” is hereby amended with the addition of the following new subsection, the new text of which is shown in underlined font:

19.03-22.1 Massage Establishments, other than those specified as an Accessory Use, as provided for in Section XI-10-13.03 Accessory Uses, of this Chapter.

SECTION 5. Chapter 10, Section 22.04 of Title XI of the Milpitas Municipal Code “Conditional Uses” is hereby amended with the addition of the following new subsection, the next of which is shown in underlined font:

22.04.1 Massage Establishments, other than those specified as an Accessory Use, as provided for in Section XI-10-13.03 Accessory Uses, of this Chapter.

SECTION 6. Chapter 10, Section 13.03(A) of Title XI of the Milpitas Municipal Code “Accessory Uses” is hereby amended in its entirety to read as follows, with deletions in ~~strike through~~ font and additions in underlined font:

A. Massage Services. Massage services may be allowed as an accessory use to any permitted or conditionally permitted medical office, medical clinic, chiropractor practice, acupuncture practice, physical therapist, fitness and athletic facility, health care facilities (such as hospitals, nursing homes and sanitariums), and accredited school, college, and university. Massage services, limited to massage of the head, neck, ~~and shoulders,~~ hands and feet may be allowed as an accessory use to any permitted or conditionally permitted beauty salon, barbershop, and healing art practices. This section shall not exempt any person or business from complying with all the provisions of Title III, Chapter 6. (Ord. 38.780 (20) (part), 8/19/08)

SECTION 7. SEVERABILITY

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

SECTION 8: PUBLICATION AND EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after adoption, and thereafter the same shall be in full force and effect. Prior to the expiration of 15 days from the passage thereof, this Ordinance shall be published at least once in a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara. At the election of the City, this Ordinance may be published in summary form if prior to adoption the complete text is posted in the City Clerk's Office pursuant to Government Code Section 36933(c).

UNAPPROVED

PLANNING COMMISSION SUBCOMMITTEE MINUTES

October 22, 2008

I. ROLL CALL

Present: Larry Ciardella and Gurdev Sandhu
Absent: Sudhir Mandal
Staff: Ah Sing, Bejines and Hom

1. MINOR SITE DEVELOPMENT PERMIT NO. MA08-0011

Cindy Hom, Assistant Planner, presented a request to modify the building elevations for the Paragon residential project located at 1696 S. Main Street. Ms. Hom recommended approving Minor Site Development No. MA08-0011 subject to the Conditions of Approval.

Commissioner Ciardella suggested the following condition of approval:

1. The applicant shall maintain stone veneer on all street side elevations. (PC Sub)

Motion to approve Minor Site Development Permit No. MA08-0011 with the added condition stated above.

M/S: Ciardella/Sandhu

AYES: 2

NOES: 0

II. ADJOURNMENT

This meeting was adjourned at 6:45 p.m.

UNAPPROVED

PLANNING COMMISSION MINUTES

October 22, 2008

**I.
PLEDGE OF
ALLEGIANCE**

Acting Chair Sandhu called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL/SEATING
OF ALTERNATE**

Present: Aslam Ali, Larry Ciardella, Alex Galang, Gurdev Sandhu
Absent: Gunawan Ali-Santosa, Sudhir Mandal, Noella Tabladillo and Cliff Williams
Staff: Ah Sing, Bejines, Lindsay, Moloney, Oliva, Otake, Rodriguez and Whitecar

Alternate Commissioner Aslam Ali was seated as a member of the voting body.

**III.
PUBLIC FORUM**

Acting Chair Sandhu invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

Frank De Smidt, Milpitas Rotary Club, invited the community to visit their pumpkin patch located at the Sports Center parking lot. Also, on Saturday, October 25th, they will host a "Pies in the Face" challenge to candidates running for Milpitas mayor, city council and school board and the Santa Clara County Board of Supervisors.

**IV.
APPROVAL OF
MINUTES
October 8, 2008**

Acting Chair Sandhu called for approval of the minutes of the Planning Commission meeting of October 8, 2008.

There were no changes to the minutes.

Motion to approve the minutes of October 8, 2008 as submitted.

M/S: Galang/Ciardella

AYES: 4

NOES: 0

ABSENT: 4 (Ali-Santosa, Mandal, Tabladillo and Williams)

ABSTAIN: 0

**V.
ANNOUNCEMENTS**

James Lindsay, Planning and Neighborhood Services Director, announced public meetings for the Housing Element Update to the General Plan on Thursday, Nov. 6th at 2 p.m. and Thursday, November 13th at 7 p.m. at the Milpitas Community Center.

UNAPPROVED

Planning Commission Minutes

October 22, 2008

**VI.
CONFLICT
OF INTEREST**

Assistant City Attorney Bryan Otake asked if any member of the Commission has any personal or financial conflict of interest related to any of the items on tonight's agenda. There were no Commissioners who identified a conflict of interest.

**VII.
APPROVAL OF
AGENDA**

Acting Chair Sandhu asked whether staff or the Commission have any changes to the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Galang/Ciardella

AYES: 4

NOES: 0

ABSENT: 4 (Ali-Santosa, Mandal, Tabladillo and Williams)

ABSTAIN: 0

**VIII.
CONSENT CALENDAR**

Acting Chair Sandhu asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Lindsay noted that there are no changes to the consent calendar however regarding Item No. 5 (Conditional Use Permit No. UP08-0013 and Site Development Permit Amendment No. SA08-0013) staff is providing a change to condition no. 6 which is stated below. Also staff included an e-mail from a concerned resident that wanted to make sure that the monument sign does not set precedence for other larger signs in the area.

- Revised Condition No. 6 – To encourage additional texturing and architectural enhancement to the proposed pylon sign, tenant signage on the pylon sign shall be consistent with the Dixon Landing Plaza Copy sign type that provides for dimension letters and/or logos that have a raised surface.

Acting Chair Sandhu opened the public hearing on Item No. 1 (Conditional Use Permit No. UP08-0013 and Site Development Permit Amendment No. SA08-0013 (Continued from September 24, 2008)).

There were no speakers from the audience.

Motion to close the public hearing on Item No. 1.

M/S: Galang/Ciardella

AYES: 4

NOES: 0

ABSENT: 4 (Ali-Santosa, Mandal, Tabladillo and Williams)

ABSTAIN: 0

Motion to approve the consent calendar.

M/S: Galang/Ciardella

AYES: 4

NOES: 0

ABSENT: 4 (Ali-Santosa, Mandal, Tabladillo and Williams)

ABSTAIN: 0

***1 CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0004:** A request to amend Special Condition of Approval No. 11 to allow the installation of shades for storefront windows for a previously approved karaoke establishment located at 788 Barber Lane. (*Recommendation: Adopt Resolution No. 08-056 approving the project subject to conditions of approval.*)

***5 CONDITIONAL USE PERMIT NO. UP08-0013 AND SITE DEVELOPMENT PERMIT AMENDMENT NO. SA08-0013 (CONTINUED FROM SEPTEMBER 24, 2008):** A request to install a 45-foot tall double-sided, multi-paneled internally illuminated freestanding sign and approve a master sign program for Dixon Landing Plaza located at 1545-1551 California Circle. (*Recommendation: Adopt Resolution No. 08-052 approving the project subject to conditions of approval.*)

IX. PUBLIC HEARING

2. GENERAL PLAN AMENDMENT NO. GP2007-6, ZONE CHANGE NO. ZC2007-3, ENVIRONMENTAL ASSESSMENT NO. EA2007-1, MAJOR TENTATIVE MAP NO. MT08-0003, SITE DEVELOPMENT PERMIT NO. SZ2007-2 AND CONDITIONAL USE PERMIT UP08-0041

Judie Gilli, Associate Planner, presented a request to change the land use and zoning designations of the approximately three-acre project site located at 600 Barber Lane (formerly Billings Chevrolet). The proposed project also involves the redevelopment of the site with an 18-story mixed-use building with an attached 8-level parking garage. The mixed-use building and parking garage is proposed to be approximately 277 and 115 feet in height, respectively. The mixed-use building includes 148,805 gross square feet of retail (floors 1-3), 48,960 gross square feet of office (floor 4) and 375 residential condominium units (floors 5-18). The proposed project includes amendments to the City of Milpitas General Plan and Zoning Map. A conditional use permit is requested for exceptions to the side/rear setbacks and parking standards. An Environmental Impact Report has been prepared for this project and includes over-riding considerations to adopt. Ms. Gilli recommended to Adopt Resolution No. 08-043 approving the project subject to conditions of approval to City Council.

Commissioner Galang asked if the people who attended the August 14th community meeting are in attendance tonight. Ms. Gilli said the same people that were noticed for the community meeting were noticed for the public hearing.

Acting Chair Sandhu asked how many parking spaces will be allocated for one condominium unit and Ms. Gilli said one parking space.

Acting Chair Sandhu introduced the applicant.

Chris Real with TP Pham Investments, LLC, and Albert Liu with LPMD Architects, introduced the Landmark Towers project which is a high end luxury high rise with 18 stories mixed-use located at 600 Barber Lane on the old Billing Chevrolet site and provided a PowerPoint presentation and video presentation.

Alternate Commissioner Ali asked if the elevator from the parking lot will go to the residential units. Mr. Liu said residents will have access to their unit from the parking garage.

Alternate Commissioner Ali asked what is the estimated time to finish the project and Mr. Real said 2 ½ years upon receipt of a building permit.

Alternate Commissioner Ali asked if the developer will plan more units on the 18th floor in the future and Mr. Real said no.

Commissioner Ciardella asked about residential security. Mr. Liu said they will have a 24 hour security system and residents will only be able to access the floors with a card key.

Commissioner Ciardella asked if the roof garden will be available for the public and Mr. Real said yes.

Commissioner Ciardella asked how will the public access the roof garden. Mr. Real said it is only in concept form and the logistics will have to be worked out.

Commissioner Ciardella asked how tall will the glass walls be outside the roof garden and Mr. Liu said approximately 8 feet.

Commissioner Ciardella asked if the buildings will be sprinkled and Mr. Liu said yes.

Commissioner Galang asked why the developer chose Milpitas.

Acting Chair Sandhu introduced the developer.

Cong Nguyen, Developer, said he chose Milpitas because it is a fantastic and unique location surrounded by companies and retail markets. They wanted a pedestrian friendly concept where residents can shop in their own building and not have to drive anywhere and also to commute closer to home.

Commissioner Galang asked what type of retail will be on the 1st floor and Mr. Nguyen said it will be mixed.

Commissioner Galang asked where the clubhouse is located. Mr. Liu said it will be located on top of the garage on the east side facing I-880 and is exclusive for residents.

Commissioner Galang asked what will be on the fourth floor. Mr. Nguyen said it will be first class office space and will be private so the public cannot access the area.

Commissioner Galang asked how many elevators does the project have and Mr. Liu said four elevators.

Acting Chair Sandhu opened the public hearing.

Dr. Fule, Resident, said this type of project fits the needs of his family and is in favor of the project.

Joseph Weinstein, 626 Hamilton Avenue, said he is here to support the project and felt Landmark will do the City good because it is a luxury living space and pedestrian friendly.

Elizabeth, student, felt the project would benefit Milpitas and be good for business.

Dr. Will Pham said he is in favor of luxury condos and asked the Commission to approve the project.

Hue, 1771 Quimby Road, said the project would be very convenient for Cisco employees and encouraged the Commission to approve the project.

Motion to close the public hearing.

M/S: Galang/Ciardella

AYES: 4

NOES: 0

ABSENT: 4 (Ali-Santosa, Mandal, Tabladillo and Williams)

ABSTAIN: 0

Motion to recommend approval to the City Council of GP2007-6, ZC2007-3, MT08-0003, EA2007-1, SZ2007-2, and UP08-0041 subject to Resolution No. 08-043 its exhibits and Conditions of Approval.

M/S: Galang/Ali

AYES: 4

NOES: 0

ABSENT: 4 (Ali-Santosa, Mandal, Tabladillo and Williams)

ABSTAIN: 0

**3. ZONING AMENDMENT
ZA08-0010, PARKING
ORDINANCE
AMENDMENTS**

Sheldon Ah Sing, Senior Planner, presented a request to amend the City of Milpitas Parking regulations regarding the amount of parking required, parking design standards and formatting changes to the section. The section affects parking for all zoning districts and uses within the City. The proposed changes would affect new or remodel projects. Mr. Ah Sing recommended adopting Resolution No. 08-058 recommending approval of the amendments to the City Council.

Commissioner Ciardella said he is concerned about tandem parking because it would give the developers more power and asked if there any alternatives. Mr. Ah Sing said the parking for a project would come before the Planning Commission who would have the authority to approve, deny or modify the project and that tandem parking would be reviewed on a case by case basis.

Commissioner Ciardella said that parking for condominium projects is horrendous and asked if the amendments will change the process. Mr. Ah Sing said staff is hoping that it would affect the newer projects and would require an extra space for dwelling units with 4 or more bedrooms and require 5% more guest parking in R4.

Commissioner Ciardella said he is concerned and wants to make sure the process will be improving the parking situation.

Mr. Ah Sing said it would increase the parking over time in incremental changes and the parking amendment will not drastically change the city over a year.

Commissioner Galang asked if compact parking is required in a commercial zone when the business has ten or more spaces on site. Mr. Ah Sing said it is not a requirement but an option that a developer could have 40% of compact parking.

Commissioner Galang asked where compact parking is located. Mr. Ah Sing said that through design standards it is required that compact spaces be dispersed across the parking lot so they are not all in one row and that they be located near landscaped areas.

Commissioner Galang said he is concerned that sport utility vehicles park in compact stalls and asked if this is legal. Mr. Ah Sing said that he is not aware of any ordinance restricting this however the property owner could have "compact" stenciled in the parking space or signs could be installed indicating the parking space.

Commissioner Galang asked if the driveway is counted as a parking space for R1 and R2 single-family residential and Mr. Ah Sing said the driveway could be counted as two spaces. Mr. Ah Sing also said that if a resident wants to add new bedrooms to their home they have to consider new parking if they do not already have it on site.

Commissioner Galang asked if there are any on-street parking restrictions. Mr. Lindsay said the City has a history of not counting on-street parking as required parking.

Alternate Commissioner Ali asked what the difference between R3 and R5 zoning district is. Mr. Ah Sing said there is more density per acre in R5.

Alternate Commissioner Ali asked if tandem parking works. Mr. Lindsay said there are projects that currently have tandem parking in an individual unit and are effective in structured parking. Mr. Oliva said an example of tandem parking would be Parc Place on Curtis Drive and another project on Abel Street.

Commissioner Ciardella asked how does staff regulate patrons parking in another owner's parking lot. Mr. Ah Sing said there is no ordinance or regulation to deter that.

Mr. Lindsay felt it would work because parking recommendations from restaurants that are contained in the ordinance are reflective of the actual dining area that a restaurant would have. Currently the parking is judged by the number of seats in the floor plan that is not related to the actual occupant load of the dining area. Very often, the number of seats is dictated by the available parking and the actual occupant load enforced by the fire department is actually greater which leaves extra room in the dining area for extra seating. So with this modification, the size of the dining area would be a reflection of the available parking. In the long term, it would improve the situation where there are successful restaurants creating parking impacts.

Acting Chair Sandhu opened the public hearing.

Frank De Smidt, Parking Task Force, said he is concerned about the Landmark tower project having only one parking space per unit because it will spill into the guest parking. He is also concerned that guest parking used to be 40% and then it went down to 15% and now staff wants to require 20% guest parking spaces which he felt was still not enough. He felt that tandem parking should be reduced or eliminated and asked staff to look into the restaurant parking changes carefully

Bill Cilker Jr., Owner of Milpitas shopping center, experienced the commercial end of the parking issues and felt that the changes the parking task force came out are pretty good comprises. He is concerned about tandem parking and felt 75% of tandem parking requirements is too much for a project.

Motion to close the public hearing.

M/S: Galang/Ciardella

AYES: 4

NOES: 0

ABSENT: 4 (Ali-Santosa, Mandal, Tabladillo and Williams)

ABSTAIN: 0

Commissioner Ciardella said he is against 75% tandem parking and would like to change it to 25% tandem parking in parking garages/structures and Alternate Commissioner Ali agreed.

Commissioner Ciardella said he is also concerned about 20% guest parking requirements and would like to change it to 25% guest parking requirements.

Mr. Lindsay suggested that for guest parking, the parking characteristics are different for a town home development with individual garages than with projects that have a parking garage. He has seen issues with overflow of guest parking with townhomes rather than projects that have parking garages and suggested that the 25% guest parking requirement be applied to town home projects rather than projects with a parking garage.

Alternate Commissioner Ali asked if the 25% guest parking requirement would make it or break it for developer and Mr. Lindsay said any residential developer looking into a project after January 2009 would have to adhere to the new policy requirement and the requirement would mean less living space and more parking.

Alternate Commissioner Ali asked what is Fremont and San Jose's guest parking requirement and Mr. Oliva said neighboring cities requirement averaged around 20% to 25%.

Motion to recommend approval to the City Council of Zoning Amendment ZA08-0010, Parking Ordinance Amendments and to require 25% guest parking for townhomes and condominium projects and require 25% tandem parking in structured parking garages only.

M/S: Ciardella/Galang

AYES: 4

NOES: 0

ABSENT: 4 (Ali-Santosa, Mandal, Tabladillo and Williams)

ABSTAIN: 0

**4. ZONING AMENDMENT
ZA08-0007**

Julie Moloney, Associate Planner, presented a request to amend the City of Milpitas Zoning Ordinance Sections 10-6 and 10-19 to allow Massage Services as a Conditionally Permitted Use requiring a Conditional Use Permit in the Mixed Use (MXD, MXD2 and MXD3) and General Commercial (C2) Districts, to remove Massage establishments as a prohibited use and to amend Section 10-13.03 Accessory Uses, to include massage of hands and feet as an accessory use to commercial services. Ms. Moloney recommended adopting Resolution No. 08-057 recommending adoption of the Zoning Text Amendments to the City Council.

Commissioner Ciardella asked if massage kiosks at the Great Mall are conditionally permitted and Mr. Lindsay said they do not require a use permit but are considered an ancillary use of the head and neck for commercial service and are allowed.

Acting Chair Sandhu opened the public hearing.

Philip Su, Applicant, asked the Commission to allow body massage use in C2 zoning and MXD zoning because it is a very popular use and he would like to see it allowed in the shopping center to allow more flexibility.

Motion to close the public hearing.

M/S: Galang/Ciardella

AYES: 4

NOES: 0

ABSENT: 4 (Ali-Santosa, Mandal, Tabladillo and Williams)

ABSTAIN: 0

Motion to adopt Resolution No.08-057 recommending approval to the City Council of Zoning Amendment ZA08-0007

M/S: Galang/Ciardella

AYES: 4

NOES: 0

ABSENT: 4 (Ali-Santosa, Mandal, Tabladillo and Williams)

ABSTAIN: 0

The meeting was adjourned at 9:17 p.m. to the next regular meeting of November 12, 2008.

Respectfully Submitted,

James Lindsay
Planning & Neighborhood
Services Director

Veronica Bejines
Recording Secretary

**X.
ADJOURNMENT**



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: October 22, 2008

APPLICATION: **Zoning Amendment No. ZA08-0007, Massage Use**

APPLICATION
SUMMARY:

A request to amend the City of Milpitas Zoning Ordinance to allow Massage Establishments by Conditional Use Permit in the Mixed Use (MXD), General Commercial (C2) and Town Center (TC) Zones and to allow the massage of hands and feet as an Accessory Use to Commercial Service uses.

LOCATION: City Wide

APPLICANT: Milpitas Square, LLC – Philip Su

RECOMMENDATION: **Staff recommends that the Planning Commission:**
1. Close the public hearing following public testimony; and
2. Adopt Resolution No. 08-057 recommending adoption of the Zoning Text Amendments to the City Council.

CEQA Determination: Pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, the project is exempt from environmental review because there is no possibility that the activity in question may have a significant effect on the environment. The proposed Zoning Text Amendment will change the text of the Zoning Ordinance only, allowing massage establishments as a conditionally permitted use in certain zones, and allowing massage as an accessory use in certain situations. Additional environmental determination may be necessary for future Conditional Use Permit applications.

PLANNER: Julie Moloney, Associate Planner

PJ: 2539

ATTACHMENTS: A. Resolution No. 08-057
Exhibit A: Draft Ordinance

BACKGROUND

The City of Milpitas Zoning Ordinance defines Massage Establishments as “an establishment having a fixed place of business, including but not limited to any establishment in which massage, acupressure or similar services are made available (except those which are exempt by Government Code Section 51033 as amended from time to time), in which the teaching, practice, or the giving of massage, acupressure or similar procedure is conducted.” These establishments are currently conditionally permitted in the Highway Services (HS) Zoning District subject to Planning Commission determination. A Conditional Use Permit for a Massage Establishment was recently granted in the Town Center district through Section 22 of the Zoning Ordinance. Massage practices are also allowed as an accessory use in medical offices, i.e. doctor’s offices, chiropractic offices and acupuncture clinics and as a part of a commercial service uses such beauty salons, limited to the head, neck and shoulders.

The proposed Zoning Text Amendment to list Massage Establishments as a conditional use (e.g. requiring a use permit) in the Mixed Use (MXD), General Commercial (C2) and Town Center (TC) zoning districts is intended to allow flexibility for business and property owners in leasing to new businesses. Recently, many business owners have approached the City to open day spas, including massage services, foot spas, and other commercial services utilizing the practice of massage in zones other than Highway Services (HS). These uses are frequently approved in neighboring cities, and in order for Milpitas to stay competitive in attracting new businesses, the Zoning Ordinance should be amended to allow such uses, subject to a Conditional Use Permit.

PROJECT DESCRIPTION

The project applicant is a business owner and manager of Milpitas Square located at 448 Barber Lane. Although he has initiated this Zoning Text Amendment, it is proposed to apply to the MXD, C2 and TC Zones throughout the City, not only to his subject property. Staff determined it was also appropriate to expand the accessory massage uses to include the massage of hands and feet, as ancillary uses to commercial services.

The proposed amendment will modify Zoning Ordinance Section 10-6.02 Mixed Use Regulations, to expand the Accessory uses to allow massage of the hands and feet in conjunction with commercial services and medical uses, to delete Massage Establishments from Prohibited Uses and to add Massage Establishments as a use permitted subject to the issuance of a Conditional Use Permit. The proposed amendment will also modify Section 10-13.03 Accessory Uses, to allow massage of hands and feet in conjunction with commercial services.

The proposed amendment will modify the General Commercial (C2) Zone and Town Center (TC) Zone, Sections 10-19 and 10-22 of the Zoning Ordinance, respectively, to allow Massage Establishments as Conditionally Permitted Uses. Massage Establishments will be specifically listed as Conditional Uses in these sections.

Allowing Massage Establishments by Conditional Use Permit means that all proposed Massage Establishments uses will be required to apply for a Conditional Use Permit pursuant to Section 10.57.04 of the Zoning Ordinance. The Conditional Use Permit process is the current process by which the Planning Commission reviews land uses which would not otherwise be permitted as a matter of right in a zoning district because of the nature, potential impact on the surrounding environment and for

the determination of whether or not the proposed use is appropriate for its proposed location. The required findings in order to grant approval for a Conditional Use Permit are as follows:

1. *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;*
2. *The proposed use is consistent with the Milpitas General Plan; and*
3. *The proposed use is consistent with the Milpitas Zoning Ordinance.*

With this Zoning Amendment, all applications for Massage Establishments in Mixed Use, General Commercial and Town Center Zones would be required to go through the Conditional Use Permit process and obtain approval prior to opening the business.

If approved by the Planning Commission, any prospective applicants would have to apply for a permit with the Police Department in accordance with Chapter 6, Massage Establishments and Practitioners, of the Municipal Code. This process involves a background check to ensure legitimacy of the business.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan

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

Table 1
General Plan Consistency

Policy	Consistency Finding
<i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance</i>	Consistent. Allowing Massage Establishments by Conditional Use Permit will encourage new businesses to occupy new and existing development spaces and allow flexibility in leasing tenant spaces.
<i>2.a-I-5: Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas Residents within existing environmental, social fiscal and land use constraints.</i>	Consistent. Allowing Massage Establishments by Conditional Use Permit will encourage diverse business opportunities and allow flexibility in leasing tenant spaces.

Specific Plans

The proposed amendment could affect business proposals within the Midtown and Transit Area Specific Plans. The following tables outline the project’s consistency with the applicable specific plan principles, goals and policies:

Table 2
Midtown Specific Plan Consistency

Principles/Policies	Consistency Finding
<i>Goal 1: Encourage a compatible mixture of residential, retail, office, service-oriented commercial and industrial uses within the Midtown.</i>	Consistent. Allowing Massage Establishments by Conditional Use Permit will encourage diverse business opportunities and allow flexibility in leasing tenant spaces.
<i>Policy 3.16: Provide for the continuation of retail development along the Calaveras Boulevard corridor.</i>	Consistent. Allowing Massage Establishments by Conditional Use Permit will encourage new businesses to occupy new and existing development spaces and allow flexibility in leasing tenant spaces.

Table 3
Transit Area Specific Plan Consistency

Principles/Policies	Consistency Finding
<i>Land Use Goal: Provide a mix of land uses that responds to market demand over the next twenty years, and provides opportunities for complementary uses...</i>	Consistent. Allowing Massage Establishments by Conditional Use Permit responds to market demand and allows flexibility in new businesses.
<i>Land Use Goal: Site neighborhood-serving retail uses in each subdistrict of the Transit Area so residents and workers can easily walk to shops, restaurants and services.</i>	Consistent. Allowing Massage Establishments by Conditional Use Permit will provide and additional service to residents and workers.
<i>Land Use Guiding Principle: Maintain commercial uses at and around the Great Mall.</i>	Consistent: The Great Mall site and surrounding areas are zoned for General Commercial Uses. Allowing Massage Establishments by Conditional Use Permit will help maintain a variety of commercial uses.

Zoning Ordinance

Allowing Massage Establishments in Mixed Use (MXD), General Commercial (C2) Zones is currently not permitted by the Zoning Ordinance. Massage Establishments in the Town Center (TC) Zone have been approved in the past pursuant to Section 22.01.11, as determined appropriate by the Planning Commission. Also, the massage of hands and feet is currently not allowed as an ancillary use to commercial services. By amending the Zoning Ordinance, the code will then list Massage Establishments in MXD, C2 and TC zones as Conditionally Permitted, only after securing a Conditional Use Permit pursuant to Section 10.57.04 of the Zoning Ordinance. Also, massage of the head, neck, shoulders, hands and feet will be allowed as an accessory use to commercial services such as beauty and nail salons, and foot spas.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is not subject to CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines. The project is exempt from environmental review because there is no possibility that the activity in question may have a significant effect on the environment. The proposed Zoning Text Amendment will change the text of the Zoning Ordinance only, allowing massage establishments as a conditionally permitted use in certain zones, and allowing massage as an accessory use in certain situations. Additional environmental determination may be necessary for future Conditional Use Permit applications.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. A legal ad was printed in the Milpitas Post and posted in public places. As of the time of writing this report, there have been no inquiries from the public.

CONCLUSION

Allowing Massage Establishments by Conditional Use Permit in the MXD, C2 and TC Zones, and expanding massage as an accessory use to include hands and feet will allow flexibility in proposed businesses throughout the City. In addition, it would allow the Planning Commission through its discretion to allow massage establishments when they are compatible with surrounding uses. The Planning Division has received multiple requests to open new businesses that include some form of massage, and have been forced to turn the applications away due to inconsistency with the Zoning Ordinance. There have also been Code Enforcement cases where massage practices were being performed without a permit. Approving the Zoning Ordinance Text Amendments would allow scrutiny of new Massage Establishment proposals through the Conditional Use Permit process as well as new business opportunities for commercial services within the City.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 08-057 recommending approval of Zoning Ordinance Amendment ZA08-0007 to the City Council.

Attachments:

- A. Resolution 08-057
Exhibit A: Draft Ordinance