



ATTACHMENT A

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**MILPITAS PLANNING COMMISSION
AGENDA REPORT**

PUBLIC HEARING

Meeting Date: February 24, 2010

APPLICATION: ZONING AMENDMENT NO. ZA09-0003, PLANNING DEVELOPMENT REVIEW STREAMLINING

APPLICATION SUMMARY:

An amendment to the City's Municipal Code regarding streamlining the Planning development review process. The project includes repealing Title III, Chapter 5 "Entertainment Events" and creating a new section for "Temporary Uses and Structures" within Title XI, Chapter 10 "Zoning" for the purposes of consolidating provisions and review procedures for temporary uses and structures, including special events. A new "Recreation & Entertainment Overlay District" is proposed to be added to Section 12, Overlay Districts. In addition, the project brings certain types of conditionally permitted uses (restaurants, video sales/rentals, veterinarian clinics, pet grooming, medical support laboratories, tanning salons and private instruction) to be permitted uses. Additional supporting changes include reformatting and new definitional entries.

LOCATION: Not Applicable

APPLICANT: City of Milpitas

RECOMMENDATION: Staff recommends that the Planning Commission: Adopt Resolution No. 10-001 recommending approval to the City Council.

PROJECT DATA:

General Plan/

Zoning Designation: Not Applicable

CEQA Determination: Not Applicable

PLANNER: Sheldon S. Ah Sing, Senior Planner

ATTACHMENTS:

A. Resolution No. 10-001

B. Strikeout (deletion) and underline (addition) exhibit

C. August 26, Planning Commission meeting minutes

D. December 9, 2009, Planning Commission meeting minutes

BACKGROUND

The City Council adopted several ordinances affecting the City's Zoning Ordinance, including parking, reformatting the code and streamlining the development review process over the last two years. These amendments have shortened and clarified the review process for development projects and business proposals.

Initiation and direction from Planning Commission

On August 26, 2009, the Planning Commission initiated the zoning amendment regarding streamlining certain land use permitting processes and incorporating temporary uses and structures that are presently regulated through various Planning Commission and City Council resolutions. On December 9, 2009, staff presented a progress report and a framework of potential text amendments. The Planning Commission provided feedback and concurred with the direction of the project.

Attachment B of this report includes the strikeout (deletion) and underline (addition) changes to the Zoning Ordinance as proposed by staff.

ANALYSIS

The main focus of this effort is shortening the process by changing certain uses, such as restaurants, from conditionally permitted uses requiring a Conditional Use Permit to permitted uses allowing review at a staff level if certain performance or development standards are met. By surveying the last two years of Planning Commission meeting minutes, staff found that discussion regarding restaurants occurred when the restaurant was proposing serving alcohol or providing live entertainment. This suggests that restaurants, not serving alcohol or providing live entertainment would be good candidates to have streamlined review, since other aspects of the review, such as parking are regulated objectively by the zoning ordinance. Subjective review with conditions of approval based on "compatibility and health and safety" findings is unnecessary.

Cost savings

The majority of the projects suggested by staff for streamlining are processed using private job accounts where the applicant pays for staff time to process their application. For these application types, an applicant will save on average between \$2,000 and \$3,000 if their project does not require review by the Planning Commission as a public hearing item. The savings directly equates to the amount of time staff spends on the project. Instead of being processed as a planning application, the project is reviewed either as a business license and or a building permit. More staff time consequently can be allocated to more complex projects reducing the need for consultants or contract staff.

Time savings

A typical Conditional Use Permit takes an average of two to three months to process from the time the application is submitted to the Planning Commission hearing. If the Planning Commission approves the project and the 12 day appeal period has passed, then a business license or building permit can be issued. In all, from submittal of an application to business license or building permit issuance, the project could take an average of four months to process.

In contrast, if a Conditional Use Permit is not required, then the review of the application starts with the business license or building permit. Depending on the scope of the project, the review may take only an hour or a few weeks before a permit is issued. In all, the process could take a few weeks to process.

Clarity and consistency

The City’s zoning ordinance was extensively updated over the last two years. Tables were introduced to better convey what would otherwise be dense information provided in poorly organized lists. Staff recommends minor changes that would increase consistency amongst these tables and provide clarity to terminology that is undefined or easily misinterpreted. This will help expedite review of proposals and increase customer quality assurance.

The following tables illustrate staff’s recommended changes to the permitted and conditional uses for each zoning district (the entire table is not published here). These changes represent both the streamlining effort and changes to increase consistency and clarity among the tables.

Commercial Zone Uses

Use	CO	C1	C2	HS	TC-W	TC-E
Office supply sales (stationary, equipment)	€ P	P	P	P	P	P
Animal boarding	NP	NP	C	NP	NP	NP
Animal grooming (no boarding)	NP	P	P	P	P	NP
Veterinary clinic and animal grooming	NP	NP	€ P	€ P	€ P	NP
Print and copy shop	P	P	P	P	P	NP
Arcade and amusement	NP	C	C	C	C	NP
Research & development	NP	NP	C	NP	NP	NP
Auditorium	NP	NP	P	NP	€	€
Club or social organization	NP	C	P C	P C	C	C
Cultural center	NP	NP	C	C	C	C
Video rental and sales	NP	€ P	€ P	NP	€ P	€ P
Instruction						
Group	C	C	C	C	C	NP
Private	P	P	P	P	P	NP
Instructional studio (dance, yoga)	€	€	€	P	€	NP
Private instruction, personal enrichment (tutoring)	€	€	P	€	P	NP
Restaurants						
With on-site service of alcohol	C	C	C	C	C	C
Without on-site service of alcohol	C	€ P	€ P	P	€ P	€ P
With live entertainment/dancing	NP	C	C	C	C	C
Drive in or Drive thru	NP	C	C	C	C	C
Auto sales, outdoor (new and used cars in operable condition)	NP	NP	C	P	NP	NP
Auto broker (wholesale, no vehicles on site)	C	C	C	C	C	NP
Vehicle oriented window service facility	NP	C	C	C	C	C

Mixed Use Zones

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
<u>Blueprinting</u>	<u>C</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>
<u>Internet access studio</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Animal grooming (no boarding)</u>	<u>P</u>	<u>P</u>	<u>NP</u>	<u>P</u>
<u>Pharmacy or drug store</u>	<u>P</u>	<u>P</u>	<u>NP</u>	<u>P</u>
<u>Pet hospitals and Veterinarians</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Veterinarian clinic</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Dance and Music instruction</u>	<u>C</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>
<u>Instruction</u>				
<u>Group</u>	<u>C</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>
<u>Private</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>P</u>
<u>Indoor recreation or entertainment facilities (Health/Fitness/Sports Clubs Facilities)</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Commercial athletic facilities</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Optician and optometrist shop</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Public utilities</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Temporary seasonal sales</u>	<u>P</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>
<u>Vehicle Dealership (Sales, Leasing, New and Used)</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Auto broker (wholesale with no vehicles on site)</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

Institutional Zones

Use	Institutional Zone
<u>Temporary seasonal sales</u>	<u>P</u>

Industrial Zones

Use	M1	M2	MP
Plant or facility (research & development, assembly, manufacturing, packaging, processing, repairing, etc. or materials, merchandise or products)	P	P	<u>NP</u> <u>P</u>

To support some of the changes, new definitional entries are necessary. The following are recommended:

- **“Bar or nightclub”** means a commercial establishment serving alcoholic beverages for consumption on the premises where the service of food is only incidental to the consumption of such beverages. Dancing and live entertainment may also be conducted within the establishment.
- **“Commercial laboratory”** means a facility for scientific research in technology-intensive fields. Examples include biotechnology, pharmaceuticals, genetics, plastics, polymers, films and fibers.

- **“Grocery store”** means any premises wherein any of the following are exposed, offered for sale, or sold by retail: fresh fruits; fresh vegetables; bakery; meat; poultry, or fish products; frozen foods; along with processed and pre-packaged food.
- **“Recreation or Entertainment Facility”** means a commercial establishment (indoors or outdoors) where patrons can actively participate in entertainment or recreation activities either independently or in conjunction with other uses.
- **“Instruction, group and private”** means the provision of instructional services, including but not limited to photography, fine arts, crafts, dance or music studios, driving school, diet centers, yoga, martial arts studios, or similar uses. This definition does not include instruction received through Trade or Vocational Schools nor a Post-Secondary School. Private instruction includes fewer than four (4) students or clients at any one time and group instruction includes four (4) or more students or clients at any one time.
- **“Medical support laboratory”** means a facility for scientific laboratory analysis of medical resources. The analysis is generally performed for an outside customer, to support the work of that customer.
- **“School, trade and vocational”** means an establishment where training is received to learn a particular trade or craft that involves skilled labor. Trades and crafts include but are not limited to the various construction trades, auto mechanics, machining, HVAC installation/repair/maintenance and similar trades and crafts.

OTHER JURISDICTION EFFORTS

In other cities, the decision to lessen or streamline the review takes on a similar test and depends on the community’s sensitivity to the use’s operations as it relates to surrounding properties. Staff’s survey of other cities found that “video sales and rentals”, “small instructional studios”, “tanning salons”, “veterinarian clinics” and “restaurants” are permitted without benefit of a Conditional Use Permit in San Jose, Santa Clara and Fremont. It would also appear based on the minutes of past Planning Commission meetings that these requests have not resulted in controversy or discussion, thus are also good candidates for streamlined review.

ADDITIONAL ZONING TEXT CHANGES

Temporary Uses and Structures

The Zoning Ordinance includes limited provisions for temporary uses and structures (model homes and sales offices, and general temporary uses and structures). The Planning Commission has in the past adopted resolutions that included provisions for certain temporary uses and structures (for example, special events, parking lot sales and temporary seasonal sales). These stand alone resolutions lead to some confusion by applicants. Staff recommends that the Planning Commission consider rescinding these resolutions and include standards for “special events” and “parking lot and sidewalk sales” into the zoning ordinance.

Entertainment events and temporary activities

Presently, Planning Commission Resolution No. 453 provides regulations regarding temporary outdoor events and tent sales. In addition, the Milpitas Municipal Code provides regulations for

Entertainment Events, which are similar to “outdoor events”, but include carnivals and circuses. Staff recommends combining these two into a new category called “special events and activities”. This would streamline the process because two departments issue two separate permits, whereas, the proposed process would be overseen by one department. In addition the review process would be shortened from consideration at the City Council level to review by the Planning Commission Subcommittee and staff.

Staff recommends defining special events and activities as:

- **“Special Events and Activities”** Means any temporary event or activity sponsored by a business, shopping center or organization which is held outside the confines of a permanent building.

Events that are between one and three days would be reviewed at a staff level, while events that are between four and seven days be reviewed by the Planning Commission Subcommittee. Any event that proposes sound amplification will be reviewed by the Planning Commission Subcommittee regardless of the duration. These events shall be limited to four occurrences in a calendar year and a minimum of 30 days shall lapse in between events.

Exceptions for the minimum lapse period and number of occurrences may be granted with the approval of a Conditional Use Permit by the Planning Commission. In the past the Great Mall has wanted to hold numerous events during the summer, where this exception would allow such a request.

Parking lot and sidewalk sale

Parking lot and sidewalk sales are similar in nature to entertainment events; however, the sale is prohibited from locating on public property or in required parking or loading areas. Staff may approve requests if certain criteria are met, such as location and that the number of occurrences does not exceed four and a minimum 30 days lapse between sales.

Time extensions

Approvals of planning applications currently expire 18 months after the approval date unless either the applicant requests and the Planning Commission approves an 18 month time extension or the approval is exercised by a business opening, a foundation being completed, or a required easement or piece of land is dedicated to the City. A project therefore has up to three years to exercise its approvals. Staff recommends extending the initial time limitation from 18 months to 24 months and to allow approvals with tentative maps to be consistent with the expiration time frame of the tentative map, which could be five years. This allows the applicants sufficient time to prepare for building permitting and construction and would still allow the 18 month time extension giving a project a total of three and a half years before it expires.

Entitlement lapses

Land use entitlements run with the land. This means that if a business operator, which required a Conditional Use Permit proposes to relocate within the city to a site that does not have an approved CUP for the business operator’s use classification, then the operator will need to file another CUP application. The vacated site would continue to have a valid CUP in perpetuity for

that particular use classification. These leaves the City with no flexibility to accommodate changing mixes of land uses. Staff recommends that once a business vacates or ceases to operate for a year, the land use entitlement for the vacated location would no longer be valid and any business proposing to operate there, requiring a CUP would need to file a new CUP.

Other conditional use permit modifications

In considering Conditional Use Permits, staff recommends allowing the Planning Commission to impose time limits to the life of the permit. This would enable the granting of a “temporary” Conditional Use Permit which could be used for some non-conforming use situations for a limited time.

In addition, staff recommends changes that would allow the Planning Commission to initiate modifications to approved Conditional Use Permits. This would allow the Commission to call up projects that are not in compliance to review conditions of approval and include new conditions after a public hearing. Currently the Municipal Code only gives that authority to the City Council.

Recreation & Entertainment Overlay District

The City stands to benefit economically from a number of new ventures being considered locally and in the region. Locally, the City is currently researching the feasibility of creating a new conference center within two of the vacant buildings along the south side of Alder Drive. This center would fill a longstanding need for banquets, corporate training, and conferences for between 300 and 500 people. The City of Santa Clara is planning a new stadium for San Francisco 49ers football team less than three miles from Milpitas which would attract many people from the region going to and from the stadium for special events and football games. There is also continued discussion of the Oakland A’s baseball team moving to either Fremont or San Jose

Interstate 880, Highway 237, Tasman Drive, Montague Expressway all will be major transportation corridors used by patrons of these future entertainment venues. The properties located in Milpitas along these corridors are strategically located to benefit from these patrons going through Milpitas. Therefore staff is recommending the creation of a new Recreation & Entertainment (-RE) Overlay District for the properties located between Coyote Creek and I-880 (review to draft Sectional District Map No. 578 included in the agenda packet). The purposes of the proposed district are to:

1. Create a district that will be an attractive destination that draws visitors to Milpitas.
2. Encourage the interaction of a commercial and entertainment uses to enhance retail spending opportunities
3. Diversify the City’s economic base to protect the local economy from downturns in any one economic sector.

The RE Overlay District would not change the underlying zoning of the properties so the uses currently allowed in each zoning district would not change. The overlay would expand the type of recreation and entertainment uses that could be allowed with a conditional use permit in the non-residential (C2, HS, M1, MP) zoning districts covered by the district. Such uses include but conference centers, movie theaters, nightclubs, indoor recreation facilities, etc. Staff has

contacted some of the key property owners in the area and all are supportive of the flexibility that these additional uses could bring to the leasing / selling of their properties.

CONCLUSION

It is anticipated that the zoning text amendment project will create certain efficiencies for development review, which would benefit applicants and city staff alike with reduced time and resources needed to process a development or business proposal. The project will enhance effectiveness and efficient rollout of services to the customer.

RECOMMENDATION

STAFF RECOMMENDS THAT the Commission adopt Resolution No. 10-001, recommending approval of the zoning text amendments to the City Council

- Attachments:
- A. Resolution No. 10-001
 - B. Strikeout (deletion) and underline (addition) exhibit
 - C. August 26, Planning Commission meeting minutes
 - D. December 9, 2009, Planning Commission meeting minutes

ATTACHMENT B

February 24, 2010 Planning Commission draft meeting minutes

Sheldon Ah Sing, Senior Planner, presented an amendment to the City's Municipal Code regarding streamlining the Planning Development review process. The project includes repealing Title III, Chapter 5 "Entertainment Events" and creating a new section for "Temporary Uses and Structures" within Title XI, Chapter 10 "Zoning" for the purposes of consolidating provisions and review procedures for temporary uses and structures, including special events. A new "Recreation & Entertainment Overlay District" is proposed to be added to Section 12, Overlay Districts. In addition, the project brings certain types of conditionally permitted uses (restaurants, video sales/rentals, veterinarian clinics, pet grooming, medical support laboratories, tanning salons and private instruction) to be permitted uses. Additional supporting changes include reformatting and new definitional entries. Mr. Ah Sing recommended adopting Resolution No. 10-001 recommending approval to the City Council.

During the presentation, Mr. Ah Sing recommended that the Commission consider changing the proposed definition for Group and Private Instruction to the threshold of six or more being consider "group".

Commissioner Tao asked about the expedited process. Mr. Ah Sing stated that under the proposal, the planner has the authority to approve a project if the project meets the standards within the zoning code.

James Lindsay, Planning Director, stated that the amendment include an auto broker who operates as a wholesale operation with no vehicles on site is being listed as a permitted use, Mr. Lindsay is requesting that the Commission change this to a use that requires Conditional Use Permit to ensure that the point of sale can be verified as being in Milpitas.

Vice-Chair Mandal asked what the benefits of people doing business in Milpitas are. Mr. Ah Sing stated the time from an applicant opens an application to the time they open for business would be reduced.

Vice-Chair Mandal opened the public hearing.

There were no speakers from the audience.

Motion to close the public hearing.

M/S: Sandhu, Ciardella

AYES: 4

NOES: 0

ABSENT: 4 (Erik Larsen, Noella Tabladillo, Mark Tiernan, and Cliff Williams)

ABSTAIN: 0

Motion to adopt Resolution No. 10-001 recommending approval to the City Council with the amended changes from staff:

1. Change Auto broker to Conditionally Permitted Use

2. Change Group & Private Instruction definition

M/S: Sandhu, Ciardella

AYES: 4

NOES: 0

ABSENT: 4 (Erik Larsen, Noella Tabladillo, Mark Tiernan, and Cliff Williams)