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REGULAR

NUMBER: **38.795**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS REPEALING TITLE III CHAPTER 5 "ENTERTAINMENT EVENT" AND AMENDING TITLE XI, CHAPTER 10 FOR THE PURPOSE OF PLANNING DEVELOPMENT REVIEW STREAMLINING AND PROVISIONS FOR TEMPORARY USES AND STRUCTURES**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of March 16, 2010 upon motion by Vice Mayor McHugh and was adopted (second reading) by the City Council at its meeting of _____ upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Robert Livengood, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, on August 26, 2009, the Planning Commission initiated a request to amend the Municipal Code to create a certain streamlined review and develop a process for certain temporary uses and structures. This amendment would affect Title III, Chapter 5 (Entertainment Events) and Title XI, Chapter 10 (Zoning); and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission held a duly-noticed public hearing on January 13, 2010, and heard evidence prepared by staff and comments by the public; and

WHEREAS, the City Council determines that this project is exempt pursuant to Section 15061(b)(3) in that the General Rule states that "the activity is covered by the General Rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The project restates and provides consistency of existing provisions and uses that were already subject to previous environmental review; and

WHEREAS, the City Council finds that the proposed amendments are consistent with the General Plan in that the changes ensure consistent and clear implementation of the stated goals and policies of the General Plan; and

WHEREAS, the City Council finds that the proposed amendments will not adversely affect the public health, safety and welfare in that appropriate review and conditions will ensure implementation of the project; and

WHEREAS, the City Council finds that with the inclusion of the amendments to the Zoning Ordinance, the document remains internally consistent.

NOW THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council 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 City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. REPEALING OF MILPITAS MUNICIPAL CODE TITLE III, CHAPTER 5

Title III, Chapter 5 ("Entertainment Event") of the Milpitas Municipal Code is hereby repealed and renamed "Reserved."

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended with the deletion of the existing definitional entry, "Arcade."

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended with the addition of a new definitional entry, to be placed before the term "Basement," to read as follows:

"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.

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended with the addition of a new definitional entry, to be placed between the terms "Commercial Fueling Facility" and "Commercial Service," to read as follows:

"Commercial laboratory" means a facility for scientific research in technology-intensive fields. Examples include biotechnology, pharmaceuticals, genetics, plastics, polymers, films and fibers.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended with the addition of a new definitional entry, to be placed between the terms "Cemetery" and "Class A Office Space," to read as follows:

"Child care center" means any child care facility other than a family child care home, in which less than twenty-four (24) hour per day non-medical care and supervision are provided to children in a group setting. It includes infant centers, preschools, and extended child day care facilities, but does not include after school programs.

SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended with the addition of a new definitional entry, to be placed between the terms "Grade, Finished" and "Gross Acreage," to read as follows:

"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; and processed and pre-packaged food.

SECTION 8. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended with the addition of a new definitional entry, to be placed between the terms "Individual Violation" and "Internet Access Studio" or "Internet Café," to read as follows:

"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.

SECTION 9. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended with the addition of a new definitional entry, to be placed between the terms "Individual Violation" and "Internet Access Studio" or "Internet Café," to read as follows:

"Instruction, group and private" means the provision of instructional services, including but not limited to photography, fine arts, crafts, dance or music studios, driving schools, diet centers, yoga, martial arts studios, after school programs or similar uses. This definition does not include instruction received through trade or vocational schools nor a post-secondary school or child care centers. Private instruction includes fewer than

six (6) students or clients at any one time and group instruction includes six (6) or more students or clients at any one time.

SECTION 10. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended with the addition of a new definitional entry, to be placed between the terms "Medical and Dental Clinics" and "Mixed Use Development," to read as follows:

"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.

SECTION 11. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended with the deletion of the existing definitional entry, "Medical Laboratory."

SECTION 12. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended with the amending of the definitional term "Restaurant," to read as follows:

"Restaurant" means an establishment in which the principal use is the preparation and sale of food and non-alcoholic beverages. If approved, the service of alcoholic beverages is incidental to the principal use.

1. **"Drive-in"** means a restaurant that delivers prepared food and/or beverages to customers in motor vehicles, regardless of whether or not it also serves prepared food and/or beverages to customers who are not in motor vehicles, for consumption either on or off the premises.

2. **"Drive-thru"** means a restaurant which includes one (1) or more drive-through lanes for the ordering and receipt of foods and/or beverages by patrons remaining in their vehicles.

3. **"Fast-food"** means a restaurant that offers quick food service, which is accomplished through a limited menu of items already prepared and held for service, or prepared. Orders are generally not taken at the customer's table, and food is generally served for consumption either on or off the premises. For the purposes of parking requirements, the ordering or take-out area is defined as the counter and the area between the counter and the main entry to the establishment.

4. **"Take-out"** means a restaurant where foods and/or beverages are sold directly to the customer in a ready-to-consume state for consumption off site with no seats onsite. For the purposes of parking requirements, the ordering or take-out area is defined as the counter and the area between the counter and the main entry to the establishment.

SECTION 13. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended with the amending of the definitional term "Retail Stores, general merchandise," to read as follows:

"Retail stores, General merchandise" means retail trade establishments selling lines of merchandise. These stores and lines of merchandise include:

1. Art supply;

2. Antiques;
3. Bakeries (retail only);
4. Bicycles;
5. Candy stores;
6. Clothing and accessories;
7. Collectables;
7. Fabrics and sewing supplies;
8. Gifts (novelties and souvenirs);
9. Hobby materials;
10. Jewelry;
11. Luggage and leather goods;
12. Music stores;
13. Sporting goods and equipment;
14. Toys and games;
15. Variety stores;
16. Video rentals and sales.

SECTION 14. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended with the addition of a new definitional entry, to be placed between the terms "School: Elementary, Middle, or High" and "Setback," to read as follows:

> **"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.

SECTION 15. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended with the addition of a new definitional entry, to be placed between the terms "Slope" and "Specific Plan," to read as follows:

> **"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.

SECTION 16. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 3.02 ("Combining Regulations"), of the Milpitas Municipal Code is hereby amended with the text below to read as follows:

In addition to the foregoing district certain combining regulations are established as set forth in this Chapter, said combining regulations being as follows:

Full Name	**Short Name**
"HR" High Rise Overlay District	"HR" District
"H" Hillside Combining District	"H" District
"MHP" Mobile Home Park Combining District	"MHP" District
"OO" Gateway Office Overlay Combining District	"OO" District
"RE" Recreation & Entertainment Overlay District	"RE" District
"S" Site and Architectural Overlay District	"S" District
"TOD" Transit Oriented Development District	"TOD" District

SECTION 17. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Table 4.02-1 ("Residential Zone Uses") and its associated footnotes, of the Milpitas Municipal Code are hereby amended with the text below to read as follows:

Table XI-10-4.02-1
Residential Zone Uses

Use	R1	R2	R3	R4	R5
1. Commercial					
Commercial services[1,2]	NP	NP	C	C	C
2. Professional Offices and related uses					
Offices[1,2]	NP	NP	C	C	C
3. Public/Quasi-Public and Institutional Uses					
Child care center	C	C	C	C	P
Nursing home[3]	NP	C	C	C	C
Park, playground or community center (non-profit)	C	C	C	C	C
Parking lots	C	C	C	C	C
Public service structure	C	C	C	C	C
School (not trade or vocational)	C	C	C	C	C
Social hall, lodge, fraternal organization, club and religious assembly (non-profit)	C	C	C	C	C
4. Residential Uses					
Condominiums and condo conversions	NP	SFR: C Duplex: C	C	C	C
Duplex (Two dwellings)	NP	P	NP	NP	NP
Group dwelling	NP	NP	NP	C	C
Guest house	C	NP	NP	NP	NP
Manufactured home[4]	P	NP	NP	NP	NP
Multi-family dwellings (Three or more units)	NP	NP	P	P	P
Planned unit development[5]	P	P	P	P	P
Second residential dwelling unit[6]	P	SFR: P Duplex: NP	NP	NP	NP
Single family dwelling	P	P	NP	NP	NP
5. Restaurants					
Restaurants[1,2]	NP	NP	C	P/C	P/C
6. Unclassified Uses					
Agriculture[7]	P	P	P	NP	NP
Boarding house (three or more persons)	NP	C	C	C	C
Golf course[8]	C	C	C	NP	NP
Live work units[9]	NP	NP	C	C	C
Model home complex[10]	P	P	P	P	P

[1] Refer to Subsection XI-10-4.03(A), Residential Zone Special Uses, of this Chapter, for standards.
[2] Refer to Subsection XI-10-4.03(B), Residential Zone Special Uses, of this Chapter, for standards.
[3] Licensed nursing home serving more than six (6) persons, except when used primarily for contagious sickness, mental or drug alcohol addict cases.
[4] Refer to Subsection XI-10-13.07, Manufactured Homes, of this Chapter, for standards.
[5] Refer to Subsection XI-10-54.07, Planned Unit Developments, of this Title, for standards.
[6] In conjunction with an existing legal single-family dwelling. Refer to Subsection XI-10-13.08, Second Family Unit, of this Chapter, for standards.
[7] Except for the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.
[8] Except for driving tee or range, miniature course and similar uses operated for commercial purposes.
[9] Allowed commercial uses to be specified through the Conditional Use Permit process.
[10] Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

SECTION 18. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 4.03(B) ("Commercial Services, Retail and Offices within R5 zones") of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

B. Commercial Services, Retail and Offices within R4 and R5 Zones. Commercial services, retail and offices may be permitted provided they are:

1. Less than or equal to ten thousand (10,000) square feet in gross floor area;

2. Not open past 10:00 p.m.;

3. Not specifically noted in Table XI-10-4.02-1, Residential Zone Uses, of this Chapter, requiring Conditional Use Permit approval or listed as a prohibited use; and

4. Not listed as a prohibited use in Section XI-10-4.02(B), Prohibited Uses, of this Chapter.

If items 1 through 2, above, are not met, then approval of a Conditional Use Permit is required in accordance with Section XI-10-57.04, of this Chapter.

SECTION 19. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 4.07 ("Conformance with Specific Plans") of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Conformance with Specific Plans. Properties located within Specific Plans shall conform to the underlying Specific Plan in accordance with Section XI-10-11.06, Conformance with Specific Plans, of this Chapter.

SECTION 20. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Table 5.02-1 ("Commercial Zone Uses") and its associated footnotes, of the Milpitas Municipal Code are hereby amended with the text below to read as follows:

Table XI-10-5.02-1
Commercial Zone Uses

Use	CO	C1	C2	HS	TC-W	TC-E
1. Commercial Uses						
Alcoholic beverage sales	C[6]	C	C	NP	C	C
Art/photography studio or gallery	NP	P	P	P	P	NP
Bookstore	NP	P	P	P	P	NP
Commercial services[1]	P	P	P	NP	P	NP
Funeral home or mortician	NP	NP	C	C	NP	NP
Furniture sales	NP	P	P	P	P	NP
Grocery store (supermarkets)						
Within 1,000 ft. of residential zone	NP	C	C	C	C	NP
Not within 1,000 ft. of residential zone	NP	P	P	P	P	NP
Home improvement (hardware, blinds, interior decorating, etc.)	NP	P	P	C	P	NP
Not fully enclosed operation	NP	C	C	C	C	NP
Household appliance store	NP	NP	P	P	NP	NP
Small appliance repair	NP	NP	C	P	NP	NP
Large appliance repair	NP	NP	NP	P	NP	NP
Janitorial services	NP	NP	P	P	NP	NP
Newsstand						
Indoor	P	P	P	NP	P	NP

Use	CO	C1	C2	HS	TC-W	TC-E
Outdoor	C	C	C	NP	C	NP
Nursery (flower or plant)						
Indoor	NP	NP	P[2]	P	P	NP
Outdoor	NP	NP	C	P	NP	NP
Office supply sales (stationary, equipment)	P	P	P	P	P	P
Paint and wallpaper stores	NP	NP	P	P	P	NP
Pawnshops	NP	NP	C	NP	NP	NP
Pet stores	NP	NP	P	P	P	NP
Printing (newspaper, publishing)	NP	NP	P	P	P	NP
Rentals (medical supplies, costumes, party equipment, office equipment)	NP	NP	P	P	P	NP
Retail stores, general merchandise	NP	P	P	NP	P	NP
Tanning salon	NP	NP	P	NP	P	NP
Thrift store	NP	NP	P	P	P	NP
Tobacco shop	NP	C	C	NP	C	NP
2. Entertainment and Recreation						
Adult business[3]	NP	NP	NP	P	NP	NP
Billiards	NP	C	C	C	C	NP
Bowling alley	NP	NP	P	P	P	NP
Commercial athletic facilities						
Indoor	NP	C	P	P	P	NP
Outdoor	NP	NP	NP	C	NP	NP
Internet access studio	C	C	C	C	C	C
Motion picture theater (See 7 below)						
Recreation or entertainment facility	NP	C	C	C	C	NP
Shooting range, indoor	NP	NP	NP	C	NP	NP
3. Health and Veterinarian Uses						
Animal grooming (no boarding)	NP	P	P	P	P	NP
Hospital	C	NP	C	C	C	C
Kennel	NP	NP	C	NP	NP	NP
Massage establishment	NP	NP	C	C	C	NP
Medical and dental office	P	P	P	NP	P	P
Medical and dental clinic	P	C	C	NP	C	C
Medical support laboratories	P	C	P	P	P	P
Optician and optometrist shop	P	P	P	NP	P	P
Pharmacy or drug store	NP	P	P	P	P	NP
Sauna and steam bath	NP	NP	NP	P	NP	NP
Veterinary clinic	NP	NP	P	P	P	NP
4. Industrial Uses[4]						
Assembly from pre-processed materials	NP	NP	C	NP	NP	NP
Commercial fueling facility	NP	NP	NP	C	NP	NP
Commercial laboratory	NP	NP	C	P	NP	NP
Contractor's yards and offices	NP	NP	C	C	NP	NP
Disinfection and extermination business	NP	NP	C	P	NP	NP
Dry cleaning plant	NP	NP	NP	P	NP	NP
Food storage locker	NP	NP	NP	P	NP	NP
Landscape contractor	NP	NP	C	P	NP	NP
Lumberyards	NP	NP	C	C	NP	NP
Mini-storage complex	NP	NP	C	C	NP	NP
Plumbing, sheet metal or woodworking	NP	NP	C	C	NP	NP
Research & development	NP	NP	C	NP	NP	NP
Sign sales and fabrication (Electric and neon sign, sign painting)	NP	NP	C	P	NP	NP
Warehousing and wholesale	NP	NP	C	NP	NP	NP

Use	CO	C1	C2	HS	TC-W	TC-E
5. Lodging						
Hotel and motel	NP	NP	C	C	C	C
6. Professional Offices, Financial Institutions and Related Uses						
Automatic Teller Machines (freestanding)[5]	NP	P	P	P	P	P
Financial institutions (banks, savings and loans, etc.)	P	P	P	P	P	P
General offices (administrative and business services, real estate, travel agencies, etc.)	P	P	P	P	P	P
7. Public, Quasi-Public and Assembly Uses						
Auction hall	NP	NP	C	C	C	C
Child care						
Child care center	C	C	C	C	C	C
Day care school	C	C	C	C	C	C
Large family child care home	NP	NP	NP	NP	C	C
Small family child care home	NP	NP	NP	NP	C	C
Club or social organization, religious assembly	C	C	C	C	C	C
Cultural center	NP	NP	C	C	C	C
Educational institutions						
School-elementary (K-8 Public or Private)	NP	NP	C	NP	C	C
School-secondary (9-12 Public or Private)	NP	NP	C	NP	C	C
Trade and vocational school	C	NP	P	P	NP	NP
Farmer's market (not including flea market)	NP	C	C	C	C	C
Instruction						
Group	C	C	C	C	C	NP
Private	P	P	P	P	P	NP
Library	NP	C	NP	NP	C	C
Motion picture theater						
Indoor	NP	C	C	C	C	C
Outdoor	NP	NP	NP	C	NP	NP
Parking facility, storage garage	NP	P	P	C	C	C
Public utilities	C	C	C	C	C	C
Transportation facility (taxi, limousine, etc.)	NP	NP	C	C	C	C
8. Restaurants or Food Service						
Banquet hall	NP	NP	C	C	C	C
Bar or nightclub	NP	NP	C	C	C	C
Catering establishment	NP	NP	P	P	NP	NP
Restaurants	C[6]	P	P	P	P	P
With live entertainment/dancing	NP	NP	C	C	C	C
With drive-in or drive-thru	NP	C	C	C	C	C
9. Residential Uses						
Caretaker (in conjunction with contractor's yard)	NP	NP	C	C	NP	NP
Residential dwellings (between 1 and 20 d.u. per gross acre)	NP	NP	NP	NP	C	C
Residential dwellings (between 21 and 40 d.u. per gross acre)	NP	NP	NP	NP	P	NP
10. Vehicle Related Uses						
Auto repair (tire, oil change, smog check, etc.)	NP	NP	C	C	NP	NP
Auto sales and rental, outdoor (new and used cars, RV and truck)	NP	NP	C	C	NP	NP
Auto broker (wholesale, no vehicles on site)	C	C	C	C	C	C
Car wash	NP	NP	C	C	NP	NP
Service stations (with or without repair or retail)[7]	C	C	C	C	NP	C
Vehicle oriented window service facility	NP	C	C	C	C	C
11. Unclassified Uses						
Accessory structures[8]	P	P	P	P	P	P

Use	CO	C1	C2	HS	TC-W	TC-E
Agriculture[9]	P	NP	NP	NP	NP	NP
Model home complex[10]	NP	NP	NP	NP	P	P
Mortuary or crematory	NP	NP	NP	C	NP	NP
Radio or television station	NP	NP	C	P	NP	NP
Temporary seasonal sales[11]	NP	P	P	P	P	P

[1] Refer to the definition for "Commercial Services" in Section XI-10-2, Definitions, of this Chapter.
[2] Provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.
[3] In accordance with the Title III, Chapter 4, Adult Business Ordinance and Subsection XI-10-13.04, Adult Businesses, of this Chapter.
[4] For conditionally permitted uses refer to Subsection XI-10-57.04(C)(9), Certain Industrial Uses within Commercial Districts, of this Chapter.
[5] Refer to Subsection XI-10-57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.
[6] When intended to serve the occupants and patrons of the permitted use (office, etc.) and conducted and entered from within the building and provided there is no exterior display of advertising.
[7] Entrances to the service bays shall not be open to the street, but shall be so designed to face the rear or interior side property line. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.
[8] Not including warehouses on the same site as the permitted use.
[9] Except for the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.
[10] Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.
[11] Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

SECTION 21. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 5.05 ("Conformance with Specific Plans") of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Conformance with Specific Plans. Properties located within Specific Plans shall conform to the underlying Specific Plan in accordance with Section XI-10-11.06, Conformance with Specific Plans, of this Chapter.

SECTION 22. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Table 6.02-1 ("Mixed Use Zone Uses") and its associated footnotes, of the Milpitas Municipal Code are hereby amended with the text below to read as follows:

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

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
1. Commercial Uses				
Alcohol beverage sales	C	C	C	C
Commercial services[1]	P/C	P/C	P/C	P/C
Grocery stores (supermarkets)	C	C	C	C
Pawnshops[2]	C	C	C	C
Pet shops	C	NP	NP	NP
Retail stores, general merchandise[3]	P/C	P/C	P/C	P/C
Tanning salons	P	P	P	P
Thrift shops (used merchandise)	C	C	C	C

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
2. Entertainment and Recreation				
Billiards	C	C	C	C
Bowling alley	C	C	C	NP
Commercial athletic facilities	P	P	P	P
Internet access studio	C	C	C	C
Motion picture theater (see 6 below)				
Recreation or entertainment facility	C	C	C	C
3. Health and Veterinarian Uses				
Animal grooming (no boarding)	P	P	NP	P
Hospitals or sanitariums[4]	C	C	C	C
Massage establishment	C	C	C	C
Medical or dental offices and clinics	P	NP	P	P
Medical support laboratories	P	P	P	P
Optician and optometrist shop	P	P	P	P
Pharmacy or drug store	P	P	P	P
Veterinarian clinic	P	P	P	P
4. 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
5. Professional Offices, Financial Institutions and Related Uses[4]				
Financial institutions (banks, savings and loans, etc.)	P/C	NP	P/C	P
Offices[3]	P/C	NP	P/C	P
6. Public/Quasi Public and Assembly Uses				
Child care				
Child care center	C	P	C	P
Day care school	C	C	C	C
Large family child care home	P	P	C	P
Small family child care home	P	P	P	P
Instruction				
Group	C	NP	NP	NP
Private	P	C	P	P
Park, playground or community center[5]	NP	NP	P	P
Places of assembly[4]	C	C	C	C
Public utilities	C	C	C	C
Schools, private (elementary, middle and high)[4]	C	C	C	C
Theaters (Indoor)	C	C	C	C
Trade and vocational schools[4]	C	C	C	C
Transportation facilities[2]	C	C	C	C
7. Residential Uses				
Multi-family housing[6]	P	NP	P	P
8. Restaurants or Food Service				
Bar or nightclub	C	C	C	C
Catering establishments	C	C	C	C
Restaurants[7]	P/C	P/C	NP	P/C
With dancing and entertainment	C	C	C	C
With internet access usage	P	P	P	P
With ancillary on-premise beer & wine with no separate bar	P	P	P	P

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
9. Unclassified Uses				
Cabinet or carpenter shop[2]	C	NP	NP	NP
Janitorial and window cleaning services[2]	C	NP	NP	NP
Live-work units	P	P	P	P
Lobbies and entries for upper floor uses	P	P	NP	P
Model home complex[8]	P	P	P	P
Mixed use developments[9]	P	P	P	P
Planned Unit Development[10]	P	P	P	P
Plumbing or sheet metal shops[2]	C	NP	NP	NP
Sign shops[2]	C	NP	NP	NP
Temporary seasonal sales[11]	P	P	P	P
10. Vehicle-Related Repair , Sales and Services				
Auto sales and rental[12] Auto broker (wholesale, no vehicles on site)	C C	C C	C C	C C
Vehicle service uses[13]	C	NP	NP	C

[1] Refer to Subsection XI-10-6.02-1, Commercial Services, of this Chapter, for standards.
[2] Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards.
[3] Refer to Subsection XI-10-6.02-3, Retail and Offices, of this Chapter, for standards.
[4] Refer to Subsection XI-10-6.02-4, Quasi-Public Uses, of this Chapter, for standards.
[5] For parks, playgrounds or community center owned and operated by a government agency or a nonprofit community organization.
[6] Ground level residential is prohibited in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.
[7] Refer to Subsection XI-10-6.02-5, Restaurant Uses, of this Chapter, for standards.
[8] Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.
[9] Which include only permitted uses.
[10] Refer to Section XI-10-54.07, Planned Unit Developments, of this Chapter, for standards.
[11] Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.
[12] New and used auto, recreational vehicle and boat sales, excluding commercial vehicles, trucks, buses, vans, and farm equipment, with accessory repairs and services, only allowed if fully enclosed within a building. Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals, only if fully enclosed within a building.
[13] Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

SECTION 23. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 6.08 ("Conformance with Specific Plans") of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Conformance with Specific Plans. Properties located within Specific Plans shall conform to the underlying Specific Plan in accordance with Section XI-10-11.06, Conformance with Specific Plans, of this Chapter.

SECTION 24. AMENDMENT OF MILPITAS MUNICPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 7.02(A) ("Permitted and Conditionally Permitted Uses"), is hereby amended with the text below to read as follows:

A. Permitted and Conditionally Permitted Uses.

1. Primary uses. The uses identified in Table XI-10-7.02-1, Industrial Zone Uses, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted within enclosed structures. The primary uses identified in Table XI-10-7.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol "P" appears, the use shall be permitted.
P/C	Where the symbol "P/C" appears the use may be permitted if certain criteria is met or otherwise a Conditional Use Permit shall be required, in accordance with Subsection XI-10-57.04, Conditional Use Permits, of this Chapter.
C	Where the symbol "C" appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Subsection XI-10-57.04, Conditional Use Permits, of this Chapter.
O	Where the symbol "O" appears, the use is subject to an alternative review process described in a subsequent footnote.

2. Accessory Uses. The following accessory uses are allowed when incidental to the primary use:

   a. In MP zones, incidental services, such as restaurants and recreation facilities for employee use only and when conducted in and entered from within the building or campus.

   b. Cafeterias may be permitted when ancillary to a primary use and associated with business or industrial uses.

   c. Banquet halls may be permitted with a Conditional Use Permit, in accordance with Section XI-10-57.04, when ancillary to convention centers, hotels or motels.

SECTION 25. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Table 7.02-1 ("Industrial Zone Uses") and its associated footnotes, of the Milpitas Municipal Code are hereby amended with the text below to read as follows:

Table XI-10-7.02-1
Industrial Zone Uses

Use	**M1**	**M2**	**MP**
1. Commercial Uses			
Adult Businesses[1]	P	P	NP
Business support services	P	P	P
Commercial services	P	P	P
Janitorial services	P	P	P
Office supplies	C	C	C
Printing (newspaper, blueprint, publishing)	P	P	C
Retail stores, general merchandise[2]	C	C	C
2. Entertainment and Recreation Uses			
Billiards	C	C	C
Commercial athletic facilities	C	C	C
3. Health and Veterinarian Uses			
Hospitals	NP	NP	C
Kennel	P	P	NP
Medical support laboratories	P	P	P
Medical and dental offices and clinics[2]	P	P	P
Veterinarian hospital	P	P	P
4. Industrial Uses			
Assembly from pre-processed materials[3]	P	P	P
Auto assembly facility	NP	P	NP

Use	M1	M2	MP
Bottling facility	P	P	NP
Building material sales (equipment rental)[4]	NP	C	NP
Commercial fueling facility	C	C	NP
Commercial laboratory	P	P	P
Contractor's yard and offices[4]	NP	C	NP
Distribution facility	P	P	P
Freight and trucking yard[4]	NP	P	NP
Mini-storage complex	C	C	NP
Plumbing, sheet metal or woodworking	P	P	NP
Plant or facility (research & development, assembly, manufacturing, packaging, processing, repairing, etc. or materials, merchandise or products)	P	P	P
Pottery or tile manufacturing	P	P	NP
Recycling processing facility	C	C	NP
Warehousing and wholesale	P	P	P
5. Lodging Uses			
Hotels/motels	C	C	C
6. Professional Office Uses			
Administrative, professional or research[2]	P	P	P
Financial institutions (banks, savings and loans, etc.)	C	C	P
7. Public, Quasi-Public and Assembly Uses			
Auditorium[5]	NP	NP	C
Conference center[5]	NP	NP	C
Vocational school	C	C	C
Farmer's market (not including flea market)[6]	NP	NP	C
Public utilities[7]	P	P	P
Transportation facility (taxi, parcel service, armored car, etc.)[4]	NP	P	NP
8. Residential Uses			
Caretaker's residence	C	C	NP
9. Restaurants or Food Service Uses			
Catering	P	NP	P
Restaurants			
With on-site service of alcohol	C	C	C
Without on-site service of alcohol	C	C	C
With live entertainment/dancing	NP	NP	NP
Drive-in or drive-thru	C	C	C
10. Vehicle Related Uses			
Auto junk yard[4]	NP	C	NP
Auto repair (tire, oil change, smog check, etc.)[8]	C	P	C[9]
Service stations (with or without repair or retail)[8]	C	C	C
With car wash	NP	NP	C
Vehicle sales and rental (auto, RV and truck-new and used in operable condition)[10]	C	C	C[9]
Auto broker (wholesale, no vehicles on site)	C	C	C

[1] In accordance with the Title III, Chapter 4, Adult Business Ordinance and Subsection XI-10-13.04, Adult Businesses, of this Chapter.

[2] When found necessary to serve and appropriate to the industrial area.

[3] Assembling, packaging, or distribution from previously prepared materials, such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, electric or electronic instruments and devices such as television, radios, and pharmaceutical products.

[4] 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.

[5] Shall be ancillary to the primary use or associated with business or industrial uses.

[6] Refer to Subsection XI-10-13.10, Farmers Markets, of this Chapter.

[7] Includes service facilities, electric transmission and distribution substations and public utility service centers.

[8] Entrances to the service bays shall not be open to the street, but shall be so designed to face the rear or interior side property line.
[9] Within MP zones, rental and repair may be considered only when ancillary to new auto dealerships.
[10] Within MP zones, boat and camper sales are prohibited. Dealerships shall be on property at least three (3) acres or greater in area.

SECTION 26. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 7.05 ("Conformance with Specific Plans") of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Conformance with Specific Plans. Properties located within Specific Plans shall conform to the underlying Specific Plan in accordance with Section XI-10-11.06, Conformance with Specific Plans, of this Chapter.

SECTION 27. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Table 10.02-1 ("Institutional Zone Uses") and its associated footnotes, of the Milpitas Municipal Code are hereby amended with the text below to read as follows:

Table XI-10-10.02-1
Institutional Zone Uses

Use	**Institutional Zone**
Correctional facility	C
Educational institutions:[1]	
Public colleges or universities	O
Private colleges or universities	C
Public schools	O
Farmer's market (not including flea market)	C
Government offices and related facilities (Federal, State and Local)	C
Hospital or sanitarium (Public)[1]	C
Library (Public)	C
Medical clinic or offices (Public)	C
Museum	C
Parks	C
Public utility or public service use or structure	C
Temporary seasonal sales[2]	P
Transportation facility	C

[1] State has authority over permitting process regarding public facilities.
[2] Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

SECTION 28. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 10.05 ("Conformance with Specific Plans") of the Milpitas Municipal Code is hereby added in its entirety with the text below to read as follows:

Conformance with Specific Plans. Properties located within Specific Plans shall conform to the underlying Specific Plan in accordance with Section XI-10-11.06, Conformance with Specific Plans, of this Chapter.

SECTION 29. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 11.06 ("Conformance with Specific Plans") of the Milpitas Municipal Code is hereby added with the text below to read as follows:

Conformance with Specific Plans

A. Midtown Specific Plan.

1. The Midtown Specific Plan policies, as well as the Design Guidelines and Standards set forth in Chapter 8 of the Plan, shall apply to all properties within the Midtown area if any one or more of the following occurs:

    a. Whenever a new building is constructed, regardless of size;

    b. Whenever the use of an existing building is expanded or changed to a use requiring 50% or more off-street parking spaces, as determined by the City's adopted parking standards; or

    c. Whenever an existing building is increased in gross floor area by 10% of the existing gross floor area or is enlarged by 500 or more square feet, whichever is less (all additions or enlargements completed since May 2, 2002 shall be totaled).

    If exterior building or site improvements (including signage) are proposed that do not fall under Subsections (a) through (c) above, such improvements shall be designed to conform to the Transit Area policies, guidelines and standards applicable to the improvements, without requiring additional Transit Area-related improvements to be imposed.

2. Whenever an entitlement is required for projects within the Specific Plan, in addition to all of the required findings, the following finding shall also be made:

    The proposed use complies and is consistent with the Specific Plan.

B. Transit Area Specific Plan.

1. The Transit Area Specific Plan policies, including policies for specific subdistricts in Chapter 4 and the Development Standards and Design Guidelines set forth in Chapter 5 of the Plan, shall apply to all properties within the Transit Area if any one or more of the following occurs:

    a. Whenever a new building is constructed, regardless of size;

    b. Whenever the use of an existing building is expanded or changed to a use requiring 50% or more off-street parking spaces, as determined by the City's adopted parking standards; or

    c. Whenever an existing building is increased in gross floor area by 10% of the existing gross floor area or is enlarged by 500 or more square feet, whichever is less (all additions or enlargements completed since the adoption of the Specific Plan June 3, 2008 shall be totaled).

    If exterior building or site improvements (including signage) are proposed that do not fall under Subsections (a) through (c) above, such improvements shall be designed to conform to the Transit Area policies, guidelines and standards applicable to the improvements, without requiring additional Transit Area-related improvements to be imposed.

2. The policies and standards of the Transit Area Specific Plan will supersede the Midtown Specific Plan and the General Plan in the transit area. Should a conflict between the existing plans and codes arise within the Transit Area, the policies and standards of the Transit Area Specific Plan shall govern.

3. Whenever an entitlement is required for projects within the Specific Plan, in addition to all of the required findings, the following finding shall also be made:

    The proposed use complies and is consistent with the Specific Plan.

SECTION 30. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 12.07 ("Recreation & Entertainment (-RE) Overlay District") of the Milpitas Municipal Code is hereby added in its entirety with the text below to read as follows:

A. Purpose and Intent. The Recreation & Entertainment Overlay District (-RE) is intended to be a special district to allow a unique mixture of indoor and outdoor recreation and entertainment uses that attract patrons from the surrounding region.

The purposes of the Recreation & Entertainment Overlay District (-RE) 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.

B. Applicability. The RE Overlay is indented to be combined with commercial and industrial districts located west of Interstate 880.

C. Use Regulations

a. Permitted and Conditionally Permitted Uses.
   i. Primary uses. The uses identified in Table 12.07-1 shall be the primary uses allowed to occur on a property. The primary uses identified are either permitted (P), conditionally permitted (C), or not permitted (NP) in the underlying zoning districts.

b. Accessory uses. The following accessory uses are allowed when incidental to the primary use:

   i. Cafeterias in industrial areas may be permitted when ancillary to a primary use and associated with business or industrial uses.

c. Other Uses. Any other uses may be considered by the Planning Commission that are similar in accordance with the procedure prescribed in Subsection 10-54.02, Other Uses Permitted by Commission, of this Chapter.

D. Development Standards. The development standards for the underlying base zoning district shall apply.

Table 12.07-1
Recreation & Entertainment Overlay District Uses

Use	**C2**	**HS**	**MP**	**M1**
1. Commercial Uses				
Alcoholic beverage sales	C	C	C[1]	C[1]
Art/photography studio or gallery	P	P	C	C
Bookstore	P	P	NP	NP
Business support services	P	P	P	P
Commercial services[2]	P	P	P	P
Furniture sales	P	P	NP	C
Grocery store (supermarkets) Within 1,000 ft. of residential zone Not within 1,000 ft. of residential zone	 C P	 C P	 NP NP	 NP NP
Home improvement (hardware, blinds, interior decorating, etc.)	P	C	NP	NP
Household appliance store	P	P	NP	NP
Janitorial services	P	P	P	P
Newsstand	P	P	P	P
Nursery (flower or plant)	P	P	NP	NP

Use	C2	HS	MP	M1
Office supply sales (stationary, equipment)	P	P	C	C
Pawnshop	C	NP	NP	NP
Pet store	P	P	NP	NP
Rentals (medical supplies, costumes, party equipment, office equipment)	P	P	P	P
Retail stores, general merchandise	P	C	NP	NP
Thrift store	P	P	NP	NP
Tobacco shop	C	C	NP	NP
2. Entertainment, Recreation & Food Services				
Amusement park	C	C	C	C
Aquatic center or park	C	C	C	C
Banquet hall	C	C	C	C
Bars or nightclubs (including dancing/entertainment)	C	C	C	C
Billiards	C	C	C	C
Bowling alley	P	C	C	C
Cafeteria	P	P	P	P
Card room	C	C	C	C
Catering establishment	P	P	P	P
Indoor motion picture theater	C	C	C	C
Internet access studio	C	C	C	C
Recreation or entertainment facility	C	C	C	C
Restaurants (With drive-in and drive-thru)	P C	P C	P C	P C
Shooting range, indoor	NP	C	NP	NP
3. Health and Veterinarian Uses				
Animal grooming (no boarding)	P	P	NP	NP
Commercial athletic facilities	P	P	P	P
Hospitals	C	C	C	NP
Kennel	C	NP	NP	P
Massage establishment	C	C	NP	NP
Medical and dental clinic	C	NP	NP	P
Medical and dental office	P	NP	NP	P
Medical support laboratories	P	P	P	P
Optician and optometrist shop	P	NP	NP	NP
Pharmacy or drug store	P	P	NP	NP
Sauna and steam bath	C	P	NP	NP
Tanning salon	P	P	NP	NP
Veterinary clinic	C	C	P	P
4. Industrial Uses[3]				
Assembly from pre-processed materials[4]	C	P	P	P
Bottling facility	NP	NP	NP	P
Commercial laboratory	C	P	P	P

Use	C2	HS	MP	M1
Distribution facility	NP	NP	P	P
Lumberyard	C	C	NP	NP
Mini-storage complex with or without caretaker residence	C	C	NP	C
Plant or facility (research & development, assembly, manufacturing, processing, repairing, etc. or materials, merchandise or products)	C	NP	P	P
Plumbing, sheet metal or woodworking	C	C	NP	P
Printing (newspaper, blueprint, publishing)	P	P	C	P
Recycling processing facility	NP	NP	NP	C
Sign sales and fabrication (electric and neon sign, sign painting)	C	P	NP	P
Warehousing and wholesale	C	P	P	P
5. Lodging				
Hotels/Motels	C	C	C	C
6. Professional Offices, Financial Institutions and Related Uses				
Automatic Teller Machines (freestanding)[5]	P	P	P	P
Financial institutions (banks, savings and loans, etc.)	P	P	P	P
General office (administrative and business services, real estate, travel agencies, etc.)	P	P	P	P
7. Public, Quasi-Public and Assembly Uses				
Auction hall	C	C	C	C
Child Care				
Child care center	C	C	NP	NP
Day care school	C	C	NP	NP
Club or social organization	C	C	NP	NP
Conference center	C	C	C	C
Cultural center	C	C	C	C
Educational Institutions				
School-elementary (K-8 public or private)	C	NP	NP	NP
School-secondary (9-12 Public or Private)	C	NP	NP	NP
Trade or vocational school	P	P	C	C
Farmer's market (not including flea market)	C	C	C	C
Instruction				
Group	C	C	NP	NP
Private	P	P	NP	NP
Parking facility, storage garage	P	P	P	P
Public utilities	C	C	P	P
Religious assembly	C	C	NP	NP
Transportation facility (taxi, limousine, etc.)	C	C	NP	NP
8. Vehicle Related Uses				
Auto repair (tire, oil change, smog check, etc.)[6, 7]	C	C	C	C
Car wash	C	C	NP	NP
Service stations (with or without repair or retail)[8]	C	C	C	NP
Vehicle rental (auto, RV and truck)	C	P	C	C
Vehicle sales (auto, RV and truck-new and used in				

Use	C2	HS	MP	M1
operable condition)[9]	C	C	C	C
Auto broker (wholesale, no vehicles on site)	C	C	C	C
9. Unclassified Uses				
Radio or television station	C	P	P	P
Temporary seasonal sales[10]	P	P	NP	NP

[1] Not including stand alone off-sale alcoholic beverage outlets (such as liquor stores).
[2] Refer to the definition for "Commercial services" in Section XI-10-2, Definitions, of this Chapter.
[3] Refer to Subsection XI-10-47.04(C)(9), Certain Industrial Uses within Commercial Districts, of this Chapter.
[4] Assembling, packaging, or distribution from previously prepared materials, such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, electric or electronic instruments and devices such as televisions, radios, and pharmaceutical products.
[5] Refer to Subsection XI-10-57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.
[6] Entrances to the service bays shall not be open to the street, but shall be so designed to face the rear or interior side property line.
[7] Within MP zones, rental and repair may be considered only when ancillary to new auto dealerships.
[8] Entrances to the service bays shall not be open to the street, but shall be so designed to face the rear or interior side property line. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.
[9] Within MP zones, boat and camper sales are prohibited. Dealerships shall be on property at least three (3) acres or greater in area.
[10] Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

SECTION 31. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 13.07 ("Mobile Homes") of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Manufactured Homes

A. Purpose and Intent. This Section provides standards and procedures for individual manufactured homes on individual lots in residential zones. These standards are provided to ensure the compatibility of manufactured homes with other surrounding permitted uses, create a safe and desirable living environment for manufactured home residences, and address land use compatibility.

B. Applicability and Review Requirements. A single manufactured home may be permitted on lots zoned for single-family dwellings where it has been determined the lot and structure are compatible:

1. In districts where site plan and architectural review is not generally required for single-family dwellings, the site plan and architectural review process shall be utilized to initially determine if a lot and structure is compatible for a manufactured home. Compatibility of a lot and structure shall be determined by such factors as height, bulk and character of other structures in the neighborhood. If a lot and structure is determined to be compatible, site plan and architectural review is limited only to specifying roof overhang, roofing material and siding material based on the following standards.

C. Development Standards. The following development standards shall be applicable to the establishment of manufactured homes as single-family dwellings in the R1 District:

1. Manufactured homes and any garages, carports, and other structures attached thereto, must conform to all regulations for single-family dwellings applicable to the zone.

2. Manufactured homes must be certified under the National Manufactured Housing Construction and Safety Standards Act of 1974.

3. Manufactured homes must be attached to a permanent engineered perimeter foundation system approved by the Chief Building Official and pursuant to Section 18551 of the State Health and Safety Code.

4. Manufactured homes must be covered with stucco and/or wood siding or an exterior material commonly found on new conventionally erected single-family dwellings in the surrounding area.

5. The roofing material must be wood or composition shingles or other materials commonly found on conventionally erected single-family dwellings in the surrounding area. The roof must have a minimum pitch with respect to roofing material in accordance with the City of Milpitas Building Code.

6. The roof must have eave and gable overhangs of not less than eighteen (18) inches measured horizontally from the vertical side of the mobile home. The overhang must be constructed with materials commonly found on conventionally erected single-family dwellings in the surrounding area and must be at the same slope and be covered with the same roofing material as the roof itself.

7. The exterior covering and roofing materials of the garage, carport, or any other structure attached to the manufactured home must be the same as for the manufactured home.

8. As used in this Section, "commonly found" means an architectural feature or construction material that occurs or appears frequently on conventionally erected single-family dwellings within five hundred (500) feet of the boundaries of the lot or parcel on which a manufactured home is proposed.

SECTION 32. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 13.11 (“Temporary Uses and Structures”) is hereby added to Title XI, Chapter 10, of the Milpitas Municipal Code with text below to read as follows:

13.11 Temporary Uses and Structures

A. Purpose and Intent. The purpose of this Section is to control and regulate land use activities of a temporary nature which may adversely affect the public health, safety and welfare. The intent is to ensure that temporary uses will be compatible with surrounding land uses, to protect the rights of adjacent residences, businesses, and land owners, and to minimize any adverse effects on surrounding properties and the environment.

B. Applicability. This Section shall apply to the temporary uses and structures on private property and certain public right-of-way described in Subsections D through I of this Section. All other temporary uses shall be prohibited on private property.

C. Review Requirements. The review procedures for the temporary uses and structures allowed by this Section are specified for each use in Subsections D through I of this Section. Subsection J of this Section includes a list of potential conditions that may be imposed on a temporary use or structure project.

D. Temporary Seasonal Sales. Temporary seasonal sales such as Christmas tree or pumpkin sales lots may be permitted, subject to the following regulations:

1. Elimination of Parking. Areas used for temporary seasonal sales shall not eliminate the required parking for the primary use on the site, if there is one, or for any other site.

2. Location. Temporary seasonal sales may be located pursuant to Table XI-10-5.02-1, Commercial Zone Uses, Table XI-10-6.02-1, Mixed Use Zones, Table XI-10-10.02-1, Institutional Zone Uses, and on all church/religious sites and school sites.

   For temporary seasonal sales located on church/religious sites and school sites within residential (R) zoning districts, the Planning Commission Subcommittee may approve the request through a Minor Site Development Permit.

3. Merchandise. Temporary seasonal sales shall not engage in the sale of any merchandise not directly associated with the holidays with which the seasonal sales are associated.

4. Other Requirements. Each site occupied by a temporary use shall be left free of debris, litter, or any other evidence of the temporary use upon completion or removal of the use, and shall thereafter be used, pursuant to the provisions of this Zoning Ordinance.

5. Review Requirements. Temporary seasonal sales shall require the approval by staff, provided the standards of this Section are met.

6. Signs. Refer to Title XI, Chapter 30, for Temporary Promotional Signs. No prohibited signs, as defined in Title XI, Chapter 30, shall be allowed.

7. Time Limits. Temporary seasonal sales shall be limited to forty-five (45) days of operation per calendar year.

E. Model Home Complexes and Sales Offices. Model home complexes and sales offices may be conditionally allowed by the Planning Division solely for the first sale of homes within a recorded tract or condominium subdivision, subject to the following regulations:

1. Location. The model home complex and/or sales office shall be located on the same or adjacent premises as the subdivision or building project.

2. Duration. The model home complex and/or sales office shall be removed within three months of closing the sale of the final unit in the project.

3. Review Requirements. Model home complexes and/or sales offices for the sale of homes in any subdivision containing five (5) or more units shall require the approval of staff, provided the standards of this Section are met.

4. Use. The sales office shall be used only for transactions involving the sale, rent or lease of lots or units within the tract or condominium subdivision.

5. Other Issues for Consideration. The Planning Division shall consider the hours of operation, lighting, landscaping, signage, and any other factors that may affect the model home complexes maintenance and impacts on the surrounding area and shall condition the project accordingly. In addition, the following shall apply:

   a. Model home sales personnel shall prominently post a copy of the Milpitas General Plan and Land Use Map and to refer each purchaser of a home to said Plan and refer said purchaser to the Planning Division to answer any questions regarding interpretation of the Plan.

6. Other Requirements. Each site occupied by a temporary use shall be left free of debris, litter, or any other evidence of the temporary use upon completion or removal of the use and shall thereafter be used pursuant to the provisions of this Zoning Ordinance.

F. Parking Lot or Sidewalk Sales. Temporary parking lot or sidewalk sales may be conditionally permitted, subject to the following regulations:

1. Authorization. Written authorization for the sale shall be obtained from the property owner.

2. Location. The activity may be located in a parking lot or on a sidewalk provided that the displays and structures associated with the activity are not located in required parking/loading spaces or on public property or right-of-way.

3. Hazards. The activity shall not present a hazard to pedestrians or encroach on a required building exit. No item shall be displayed in a manner that: causes a safety hazard; obstructs the entrance to any building;

interferes with, or impedes the flow of, pedestrian or vehicle traffic; is unsightly or creates any other condition that is detrimental to the appearance of the premises or any surrounding property; or in any other manner is detrimental to the public health, safety or welfare or causes a public nuisance.

4. Review Requirements. Parking lot or sidewalk sales shall require the approval by staff, provided the standards of this Section are met.

5. Number of Occurrences. Parking lot or sidewalk sales shall be limited to four (4) occurrences during a calendar year. Each parking lot or sidewalk sales activity shall not exceed three (3) days. A minimum thirty (30) days shall lapse between occurrences.

6. Other Requirements.

   a. The site shall be maintained free of debris, litter, and upon completion or removal of the temporary use shall thereafter be used pursuant to the provisions of this Zoning Ordinance.

   b. No amplified or acoustic sound or live entertainment is allowed in conjunction with parking lot or sidewalk sales.

G. Special Events and Activities.

1. Special events and activities may be permitted, subject to the following regulations:

   a. Authorization. Written authorization for the special event and activity shall be obtained from the property owner.

   b. Location. Special events and activities may be located on non-residential private property, and public-rights-of-way.

   c. Review Requirements. Special Events and Activities shall require the approval of a Minor Site Development Permit, in accordance with Table XI-10-13.11-2, Review Requirements for Special Events and Activities, and Section 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.

Table XI-10-13.11-2
Review Requirements for Special Events and Activities

Threshold for review—Number of days the activity will occur during a calendar year	**Planning Staff**	**Planning Commission Subcommittee**
One - three days	X	
With amplified or acoustical sound or live entertainment		X
Four to seven days		X
With amplified or acoustical sound or live entertainment		X

   d. Number of Occurrences. Special events and activities shall be limited to four (4) occurrences and up to twenty eight (28) cumulative days during a calendar year. A minimum thirty (30) days shall lapse between occurrences.

   A single annual review is acceptable for multiple requests of up to four (4) occurrences and may be approved by the Planning Commission Subcommittee, so long as the dates for the occurrences are provided and adhered to by the applicant.

e. Exceptions: Exceptions may be granted through the approval of a Conditional Use Permit by the Planning Commission in the following instances:

i. Waiver of the minimum lapse period.

ii. Waiver of limit on number of occurrences.

f. Other Requirements.

i. Each site occupied by a temporary use shall be left free of debris, litter, or any other evidence of the temporary use upon completion or removal of the use and shall thereafter be used pursuant to the provisions of this Zoning Ordinance.

ii. Parking. Adequate parking shall be provided and maintained during the course of the activity. Public parking shall not be negatively impacted.

iii. Depending on the scope of the special event or activity, the special event and activity may require additional permits issued by other departments.

iv. When a Conditional Use Permit for a Special Event and Activity has been revoked, no other Conditional Use Permit for a Special Event and Activity shall be issued under this Section to the same location within one (1) calendar year of the date of revocation.

H. Temporary Buildings or Structures. Temporary buildings or structures may be permitted, subject to the following provisions:

1. Authorization. Written authorization for the sale shall be obtained from the property owner.

2. Location. The temporary building or structure shall not be visible from adjacent streets or right-of-ways.

3. Review Requirements. Temporary buildings or structures shall require the approval of a Conditional Use Permit, in accordance with Section XI-10-57.04, Conditional Use Permits, of this Chapter.

4. Only temporary buildings and structures serving permitted uses or uses that received a Conditional Use Permit pursuant to the underlying zoning are allowed.

5. Time limits. Temporary buildings shall not exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections. Exceptions may be granted if required by County, State or Federal agency.

I. Temporary Contractor's Office. Temporary contractor's office trailers and construction-related storage trailers in undeveloped and developed sections of the City shall comply with the following:

1. Location. Trailers shall not obstruct driveways or traffic access aisles.

2. Other Standards.

a. The applicant shall demonstrate that parking will not be negatively impacted.

b. The colors and materials shall complement the main building, if one exists.

c. Any exterior noise-generating equipment associated with trailers shall not be within 300 feet of a residential or mobile home park overlay district or use.

d. Trailers shall be removed upon cessation of permitted construction activity.

Exceptions. Any deviation from standards 1 and 2 above shall only be allowed through the approval of a Minor Site Development Permit.

J. Conditions. When considering approval of a temporary use or structure, the review authority may impose conditions deemed necessary to ensure that the permit or approval will be in accordance with the standards prescribed in this Section and the findings required for the approval. These conditions may include, but are not limited to:

1. Regulation of operating hours and days;

2. Provision for temporary parking facilities, including vehicular ingress and egress;

3. Regulation of nuisance factors such as, but not limited to, prevention of glare or direct illumination on adjacent properties, noise, vibration, smoke, dust, dirt, odors, gases and heat;

4. Regulation of temporary structures and facilities, including placement, height and size, location of equipment and open spaces, including buffer areas and other yards;

5. Provision for sanitary and medical facilities;

6. Provision for solid, hazardous and toxic waste collection and disposal;

7. Provision for security and safety measures;

8. Regulation of signs;

9. Submission of a performance bond or other surety devices, satisfactory to the review authority, to ensure that any temporary facilities or structures used will be removed from the site within a reasonable time following the event and that the property will be restored to its former condition;

10. Provision for visual screening, not limited to landscaping;

11. Any other conditions which will ensure the operation of the proposed temporary use in an orderly and efficient manner and in accordance with the intent and purpose of this Section.

SECTION 33. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 40.05 ("Conformance with Specific Plans") of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Conformance with Specific Plans. Properties located within Specific Plans shall conform to the underlying Specific Plan in accordance with Section XI-10-11.06, Conformance with Specific Plans, of this Chapter.

SECTION 34. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 54.16(C) ("Ground mounted and roof mounted equipment") of the Milpitas Municipal Code is hereby replaced in its entirety with the following text:

C. Ground- Mounted Equipment.

1. Ground-Mounted Equipment. Ground-mounted equipment, such as air conditioning units, landscape irrigation controls, transformers, fuse boxes, telephone equipment, gas meters, water meters, stand pipes, fire sprinkler connectors, and other exterior equipment shall comply with the following:

   a. Location. Outside the front yard setback and, when no front yard setback is required outside the area between the street and the building closest to the street and screened from public view as provided for in Subsection (b) below.

Where it is infeasible to locate ground-mounted equipment outside the front yard, ground-mounted equipment located in the front yard shall be screened from public view as provided for in Subsection (b) below.

b. Screening. Equipment shall be completely screened from view by dense shrubbery, masonry wall such as split face block or masonry finished to match the building, or other solid screening material utilizing colors and materials which complement the building. Chain link fencing with or without slats may not be approved in the Mixed Use district, but may be approved in the Commercial and Industrial districts if it is an expansion of an existing approved chain link enclosure and it is not visible from public viewing points with a Minor Site Development Permit.

c. On-site parking shall meet minimum standards.

d. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate a tank, transformer or equipment.

e. Height of Equipment.

   i. In Commercial and Industrial districts, the installed height of the transformer, tank or equipment shall not exceed the height of the building. Equipment exceeding building height may be approved if it is proposed at the rear of the building, and the applicant can demonstrate with line-of-sight drawings that the equipment will not be seen from public viewing points.

   ii. In the Mixed Use district, the installed height shall not exceed six (6) feet.

   iii. If adjacent to a Residential or Mobile Home Park Overlay district or use, installed height of the equipment shall not exceed six (6) feet.

f. Generators may not be approved if located adjacent to a Residential or Mobile Home Park Overlay district or use.

SECTION 35. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 54.18 ("Temporary Contractor's Office") of the Milpitas Municipal Code is hereby deleted.

SECTION 36. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 54.19 ("Model Home Complexes and Sales Offices") of the Milpitas Municipal Code is hereby deleted.

SECTION 37. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Table 57.03-1 ("Additions or Alterations Requiring Minor Site Development Permits") of the Milpitas Municipal Code is hereby deleted and replaced in its entirety to read as follows:

Table 10-57.03-1
Additions or Alterations Requiring Minor Site Development Permits.

Project Type	Minor Site Development Permit	Other/Exempt Projects
Building Color		*Staff may approve:* A. Outside Hillside Combining District: 1. Color changes for all buildings so long

Project Type	Minor Site Development Permit	Other/Exempt Projects
		as the proposed colors are earth tone, muted and/or compatible with the surrounding area and development. 2. Color changes for buildings within a PUD, if proposal complies with PUD. B. Within Hillside Combining District: 1. Color changes for residences including homes within a PUD which does not specify color choices, so long as the proposed colors are earth tone, muted and compatible with the surrounding development.
Re-Roof	Change to wood shake, non tri-laminate or metal roofing material.	*Staff may approve:* Change to any other roofing material, except wood shake, non tri-laminate or standing seam metal.
Exterior Lighting	Additional light standards on-site, adjacent to residential development.	*Staff may approve:* Additional light standards that complement existing development. Bollards with lights. Refer to Subsection XI-10-54.17, Lighting, of this Chapter for standards.
Fences/Walls	Chain link fencing 1. Chain link fencing in commercial and industrial districts. The following standards shall apply: a. Fencing shall be at the rear or interior side of the site. b. The fencing shall consist of vinyl clad chain link with or without vinyl slats. Type of chain link fencing (i.e. deletion of vinyl clad requirement, use of slats) shall be to the discretion of the Planning Commission Subcommittee (i.e., in circumstances where the proposed fencing is to continue a line of existing chain link fencing). c. Fencing material and color shall be compatible with surrounding development.	*Staff may approve:* All fence and wall materials, except chain link in commercial and industrial districts. Refer to Subsection XI-10-54.10, Fences and Walls, of this Chapter for standards.

Project Type	Minor Site Development Permit	Other/Exempt Projects
	d. Parking lot fencing/gates shall be approved by the City's Fire Department.	
Minor Exterior Building Changes, Including But Not Limited to, Doors, Entryways, Patios and Patio Covers, Walkways, ATM's, Awnings, Loading Areas	A. Non-Residential and Mixed Use Districts: 1. In non-residential and mixed use districts, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking: a. Significant decorative amenities within public view such as fountains, artwork or murals. b. Stand alone ATMs or ATM kiosks. c. If applicable, refer to "Landscaping" Section in this table. B. Hillside Combining District: 1. Minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building. a. Minor changes to architectural elements which do not change the overall design of a building. b. Windows, window awnings and person doors which match existing or which complement the building facade.	*Staff may approve:* A. Non-Residential and Mixed Use Districts: 1. Minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Title X-2.00: a. New main entryways to the building which feature architectural projections (i.e., porticos, entryway roof covers, trellises, etc.). b. Windows and doors which match existing or which complement the building facade. c. New or expanded patios, patio covers, awnings and canopies. d. Landscape deletion (i.e., shrubs and groundcovers) to accommodate new walkways which are required for building exiting purposes or handicap accessibility. e. ATM's proposed on an exterior wall. f. Minor changes to architectural elements which do not change the overall design of a building. g. Replacement of windows with roll-up doors (and vice versa) when located toward the interior side or rear of a site. h. Metal canopies over equipment storage yards at the rear of commercial or industrial sites, provided they are not visible from public streets or abutting a Residential or Mobile Home Park

Project Type	Minor Site Development Permit	Other/Exempt Projects
		combining district or use. i. New loading areas and revisions to existing loading areas. B. Residential Districts 1. In all residential districts (excluding –H Combining), minor exterior building changes as described below, provided that the project complements the colors, materials, and design of the building. a. Awnings, patio covers, and gazebos which comply with height, setback, and yard coverage requirements. b. Minor changes to architectural elements which do not change the overall design of a building. c. Windows and person doors which match existing or which complement the building facade. 2. Minor exterior building changes for residences within Hillside Overlay District PUDs which are specifically conditioned to allow a staff approval process for alterations subsequent to initial construction of the home.
Landscaping	Deletion. Deletion of landscaping not otherwise required by the Milpitas Municipal Code or by condition of approval exceeding 200 square feet. Requests may include the loss of any protected trees, as defined in Title X-2.00 of the Milpitas Municipal Code, and the net reduction of on-site trees.	*Staff may approve:* 1. Replacement. Replacement planting of similar landscape materials and addition of landscaping. Landscaping shall comply with Ordinance 238 (water efficient landscape regulations). Landscaping within the –H overlay district shall comply with City Council Resolution No. 6066. 2. Deletion. Deletion of landscaping not otherwise required by Milpitas Municipal Code or by condition of approval up to 200 square feet. However, in non-residential and mixed uses within residential districts (excluding –H overlay district), there shall be no net reduction in the number of on-site trees, and no loss of any protected trees, as defined in Title X-2.00 of the Milpitas Municipal Code,

Project Type	Minor Site Development Permit	Other/Exempt Projects
		may be approved. Exemption. Deletions permitted for groundcover and shrubs to accommodate new walkways which are required for building exiting purposes or handicap accessibility.
Building Additions	A. Non-residential and Mixed Use Districts: 1. All non-residential and mixed use building additions for legal, conforming buildings not adjacent to residential or Mobile Home Park Overlay District or use. a. Size of building addition shall not exceed 10,000 square feet or ten percent (10%) of the existing building gross floor area, whichever is less. Calculation shall cumulatively count all additions or enlargements completed since June 20, 2003. b. In addition to other development standards, the following shall also apply: i. Architecture shall match that of existing building in terms of material, colors, style, etc. ii. The height of the addition shall not exceed the height of the adjacent portion of the existing building. B. Residential Districts 1. All single-family dwellings in Hillside PUDs which are specifically conditioned not to require Planning Commission or City Council review for building additions (refer to Section XI-10-56, Non-Conforming Buildings and Uses, of this Chapter regarding non-conforming buildings). In	*Staff may approve:* 1. Residential building additions in R1 and R2 districts. 2. Residential building additions in multi-family districts up to 200 square feet. 3. All single-family dwellings in Hillside Overlay PUDs which specifically allow for staff approval. (refer to Section XI-10-56, Non-conforming Buildings and Uses, of this Chapter regarding non-conforming buildings). In addition to other development standards, the following shall also apply: a. Existing front yard paving shall be brought into conformance. b. The addition shall comprise building materials, colors and style which complement the existing structure. 4. Building addition to an existing single-family dwelling in residential and mixed use zones, in order to accommodate a second family unit, as defined in Subsection XI-10-2.03, Definitions, of this Chapter. The development standards listed in Subsection XI-10-18.08, Second Family Unit, of this Chapter shall apply.

Project Type	Minor Site Development Permit	Other/Exempt Projects
	addition to other development standards, the following shall also apply: a. Existing front yard paving shall be brought into conformance. b. The addition shall comprise building materials, colors and style which complement the existing structure.	
Accessory Buildings	A. Non-Residential and Mixed Use Districts: 1. Accessory buildings up to 2,500 square feet in area, provided that the proposed structure is not adjacent to a residential or Mobile Home Park Overlay district or use, and provided that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. The following shall also apply: a. Accessory buildings must be located on the rear half of the lot. On corner lots, the accessory building must be set back from the adjacent street as least as far as the main building. b. Accessory buildings must be of permanent construction (no modular buildings or metal buildings) with the exception of small pre-fabricated structures for chemical storage and the like, so long as such structures are adequately screened from public rights-of-way. c. Architecture shall match that of the existing building in terms of material, colors, style, etc.	*Staff may approve:* A. Residential Only 1. Accessory buildings in residential districts (excluding -H Combining District), provided building height, parking, setback, yard coverage and other ordinance requirements are met. The following shall also apply: a. Accessory buildings for conditional uses in Residential R1 and R2 districts and for permitted and conditional uses in R3 and R4 districts shall comprise building materials, colors and style which complement the existing main structure. 2. Accessory building in residential and mixed use districts in order to accommodate a second family unit, as defined in Subsection XI-10-2.03, Definitions, of this Chapter. The development standards listed in Subsection XI-10-18.08, Second Family Unit, of this Chapter shall apply. B. All zones 1. Community emergency caches as defined in Subsection XI-10-2.03, Definitions, of this Chapter are exempt. Refer to Subsection XI-10-54.08(B)(12) for performance standards.
Trash/Recycling Enclosures	1. Trash/recycling, equipment or storage enclosures up to 200 square feet proposed in the front half of the lot for non-residential	*Staff may approve:* 1. Trash/recycling, equipment or storage enclosures up to 200 square feet in

Project Type	Minor Site Development Permit	Other/Exempt Projects
	districts. 2. Enclosures exceeding 200 square feet in size in commercial, industrial and mixed use districts and enclosures for conditional uses in residential districts. 3. Any trash enclosure adjacent to residential or Mobile Home Park Overlay district or use. In addition to the standards listed in Subsection, 54.16(B), Trash Enclosures, of this Chapter. 4. Enclosures for noise-generating equipment (i.e. generators) may not be approved near Residential or Mobile Home Park combining districts or uses.	size in commercial, industrial and mixed use districts, proposed at the rear of the building or lot and where least visible from public rights-of-way. a. Refer to Subsection XI-10-54.16(B), Trash Enclosures, of this Chapter, for standards.

SECTION 38. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 57.04(J) ("Applications for Modification of or Amendment"), of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

J. Modifications Requested by the Applicant. Projects shall be developed in conformity with project approvals. If the applicant wishes to modify the project, as approved, the applicant shall submit revised plans and any other applicable information to the City for review by the Planning Division. The Planning Division staff shall make one of the following determinations regarding the request:

1. Insignificant Modifications. If the Planning Division determines that the modifications are minor, the modifications may be approved administratively.

2. Significant Modifications Without Public Impact or Concern. If the Planning Division determines that the modifications are significant enough to warrant discretionary review but will not have public impacts or cause public concern, then the modifications shall be referred to the Planning Commission Subcommittee for consideration. If the original application for a project required a public hearing, then the Planning Commission Subcommittee review of modifications shall not require a public hearing.

3. Significant Modifications with Public Impact or Concern. If the Planning Division determines that the modifications are significant enough to warrant discretionary review and have the potential for public impact or concern, then the modifications shall be referred to the final decision-making authority for the original project. If the original application for a project required a public hearing, then the final decision-making authority's review of modifications shall require a public hearing, in accordance with Section XI-10-64, Development Review Process, of this Chapter.

SECTION 39. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 57.03(K) ("Modifications, Suspensions and/or Revocations Initiated by the City") of the Milpitas Municipal Code is hereby added in its entirety to read as follows:

K. Modifications, Suspensions and/or Revocations Initiated by the City. Refer to Section XI-10-63.06, Revocation, Suspension, Modification, of this Chapter.

SECTION 40. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 57.04 ("Conditional Use Permits") of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

A. Purpose and Intent. The purpose and intent of the Conditional Use Permit process is to provide a review of land uses which would not otherwise be permitted as a matter of right in a zoning district because of their nature, have an impact on the surrounding environment and for the determination of whether or not the proposed use is appropriate for its proposed location.

The Conditional Use Permit process is intended to encourage uses to be located in a manner that is:

1. Consistent with the City's zones;

2. Sensitive to community and neighborhood identity; and

3. Minimizes impacts to adjacent uses, including traffic flow; circulation; safety for vehicular and pedestrian traffic; imposition of noises, odors and health and safety hazards upon nearby residential area; provision of adequate light, air and reasonable access; securing safety from fire and other dangers; prevent overcrowding of land; facilitating adequate provision for transportation and in general, to promote the public health, safety, peace, morals, comfort and welfare; prevention of neighborhood deterioration and blight; the objectives of zoning and planning in the community and the effect upon the City's general welfare of this proposed use in relation to surrounding uses and the community. Review of a use may require the consideration of site plan issues related to the use, as well.

B. Authority. The Planning Commission has the authority to approve Conditional Use Permits, subject to concurrent review and appeal provisions of Section XI-10-64, Development Review Process, of this Chapter.

C. Applicability.

1. Conditional Use Permits are required as indicated by the use tables in Residential, Mixed Use, Commercial, Industrial, Institutional, Park and Open Space, and other land use districts of this Chapter. Conditional Use Permits are also required for the following requests:

Table XI-10-57.04-1

Use/Modifications	As provided for in:	Notes
Height		
Height. For buildings that exceed three (3) stories or thirty-five (35) feet within the MP and TC districts.	Table XI-10-7.03-1, Industrial Zone Development Standards and Table XI-10-5.03-1 Commercial Zone Development Standards	
Height. For buildings that exceed six (6) stories or eight-five (85) feet within the -OO overlay district up to a maximum of eight (8) stories or one hundred fifteen (115) feet in height.	Section XI-10-12.02, Gateway Office (-OO) Overlay District	
Height. Permit in R2 and R3 districts, schools, hospitals, sanitariums, institutions, churches and other similar uses allowed under the use regulations of this Chapter, to be erected to a height not exceeding six (6) stories or seventy-five (75) feet, provided, that the front and side yard requirements for such buildings in the "R3" District are complied with.		

Use/Modifications	As provided for in:	Notes
Non-conforming		
Nonconforming buildings and structures	Section XI-10-56.02(C), Additions to,--enlargements and--Moving of nonconforming buildings and structures	See footnote 1
Nonconforming uses, change of use	Section XI-10-56.03, Nonconforming use of buildings and structures	
Parking		
Parking location	Section XI-10-53.13(A), Location of Parking	
Tandem parking	Section XI-10-53.07(D), Tandem Parking Spaces and Section XI-10-53.13(B), Parking Space Size	
Temporary Uses and Structures		
Special event and activity	Section XI-10-13.11(I), Special events and activities	
Temporary buildings and structures	Section XI-10-13.11(H), Temporary Uses and Structures.	
Other		
Certain industrial uses within commercial districts	Table XI-10-5.02-1, Commercial Zone Uses.	
Lot width reduction		
Wireless telecommunications facilities	Section XI-10-13.09, Wireless Telecommunications Facilities, of this Chapter, for specific standards and exempted facilities.	

[1] In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 (September 17, 2002) shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this Subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

2. Other Uses. The Planning Commission may, after a public hearing, permit the following uses in districts from which they are prohibited by this Chapter where such uses are deemed essential or desirable to the public convenience or welfare and are in harmony with the various elements or objectives of the General Plan.

   However, any of the following uses which are marked with an asterisk shall not be allowed in the designated Hillside Combining District.

   a. Helicopter pads for medical evacuation purposes.

   b. Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto*.

   c. Library or museum, public.

   d. Park, playground, or recreational or community center.

   e. Public utility and public service use or structure.

   f. Radio or television transmitter.

   g. Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.

D. Submittal Requirements. Refer to the most recent submittal requirements required by the Planning Division.

E. Review Procedures.

a. The Planning Commission shall hold a public hearing on said application upon such notice as is required in Section XI-10-64, Development Review Process, of this Chapter.

b. After the conclusion of the hearing, the Planning Commission may approve the application, approve it subject to such conditions as the Planning Commission may impose, or disapprove the application.

i. The Planning Commission may impose such conditions as it deems necessary to protect the best interests of the surrounding property, of the neighborhood, and as it deems in conformity with the requirements of the General Plan.

F. Required Findings.

1. General Findings. Approval may be granted by the Planning Commission, or by the City Council upon appeal or within the Hillside District, of a Conditional Use Permit application in accordance with this Chapter if all of the following findings are made, based on the evidence in the public record:

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;

b. The proposed use is consistent with the Milpitas General Plan; and

c. The proposed use is consistent with the Milpitas Zoning Ordinance.

In the case of a project located within a Specific Plan, the following additional finding shall be made:

d. The proposed use is consistent with the Specific Plan.

2. Specific Findings. In addition to the general findings required in Subsection (F)(1), above, specific findings shall be made prior to the approval of an application for a Conditional Use Permit for the following requests:

Table XI-10-57.04-2

Use/Modification	**Specific Finding**
Height	
Height. For buildings that exceed three (3) stories or thirty-five (35) feet within the MP and TC districts.	The project exhibits exceptional architecture and aesthetic merit to warrant the excess height.
Height. For buildings that exceed six (6) stories or eight-five (85) feet within the -OO overlay district up to a maximum of eight (8) stories or one hundred fifteen (115) feet in height.	The project exhibits exceptional architecture and aesthetic merit to warrant the excess height.
Other	
Certain Industrial Uses within Commercial Districts	The site is within close proximity to industrial uses or districts and is suitable for the type and intensity of use that is proposed.

G. Consideration of Conditional Use Permit Pending Zoning Amendment

Upon the close of a public hearing before the Planning Commission on the question of a Zoning Amendment to change property from one zone to another, and upon favorable report thereon by the Commission, the

Commission may consider such matters and regulations as are set forth in Subsection XI-10-57.04, Conditional Use Permits, of this Chapter.

The Commission may conditionally impose such requirements and regulations upon the subject property and use as the Commission is authorized to impose by Subsection XI-10-57.04, Conditional Use Permits, of this Chapter, and may conditionally approve Conditional Use Permits; said requirements and regulations shall be imposed and said approval shall be granted upon the express condition that said property shall be rezoned in accordance with the specific recommendation of the Planning Commission relating to zoning and shall not take effect unless and until said property is rezoned in accordance with specific recommendation of the Planning Commission and until the Ordinance amending this Chapter in accordance with the specific recommendation of the Planning Commission shall take effect.

H. Appeals. An appeal of the action on a Conditional Use Permit shall be reviewed in accordance with Section XI-10-64, Development Review Process, of this Chapter.

I. Modifications Requested by the Applicant. Projects shall be developed in conformity with project approvals. If the applicant wishes to modify the project, as approved, the applicant shall submit revised plans and any other applicable information to the City for review by the Planning Division. The Planning Division staff shall make one of the following determinations regarding the request:

1. Insignificant Modifications. If the Planning Division determines that the modifications are minor, the modifications may be approved administratively.

2. Significant Modifications with or without Public Impact or Concern. If the Planning Division determines that the modifications are significant enough to warrant discretionary review and have the potential for public impact or concern, then the modifications shall be referred to the final decision-making authority for the original project. If the original application for a project required a public hearing, then the final decision-making authority's review of modifications shall require a public hearing, in accordance with Section XI-10-64, Development Review Process, of this Chapter.

J. Modifications, Suspensions and/or Revocations Initiated by the City. Refer to Section XI-10-63.06, Revocation, Suspension, Modification, of this Chapter.

K. Approval Runs with the Land. The approval of a Conditional Use Permit shall run with the land, and shall continue to be valid upon a change of ownership of the site to which it applies, unless the decision-making authority places limits on the effective time of the approval.

SECTION 41. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 63.06 ("Revocation, Suspension, Modification"), of the Milpitas Municipal Code is hereby amended to read as follows:

1. Modifications.

   a. Initiation and review. The Planning Commission or City Council may initiate review of a permit (including, but not limited to Conditional Use Permit, Variances, or Site Development Permits) for the purpose of deciding whether modification is needed, only after written notice of a violation or public nuisance is mailed to the holder of the permit.

      i. After initiation, a public hearing before the Planning Commission shall be noticed and held in compliance with Section XI-10-64, Development Review Process, of this Chapter.

      ii. After completion of the public hearing, the Planning Commission may modify the Permit.

      iii. An aggrieved party may appeal this decision to the City Council in accordance with Section XI-10-64, Development Review Process, of this Chapter.

2. Revocations or Suspensions

   a. Initiation and Review. The City Council may initiate review of a Permit (including, but not limited to Conditional Use Permit, Variance or Site Development Permit) or receive a recommendation from the Planning Commission for the purpose of deciding whether modification and/or suspension or revocation are needed.

      i. If the City Council does request review, a public hearing before the Planning Commission shall be noticed and held in compliance with Section XI-10-64, Development Review Process, of this Chapter.

      ii. After completion of the Planning Commission hearing, the Planning Commission shall recommend to the City Council, by resolution, whether the Permit shall be modified or revoked.

      iii. Following receipt of a recommendation on the Permit from the Planning Commission (when requested) or following City Council initiation, the City Council shall conduct a public hearing in compliance with Section XI-10-64, Development Review Process, of this Chapter.

      iv. After completion of the public hearing, the City Council may modify or revoke the Permit.

3. Required Findings.

   a. General Findings for Modifications/Revocation. A Permit may be modified or revoked if any of the following conditions exist:

      i. Conditions of approval of the Permit are being violated or are not being satisfied; or

      ii. The Permit or approval is being exercised in a manner that constitutes a public nuisance; or

      iii. The application contained incorrect, false or misleading information; or

      iv. The permit or approval is being exercised in a manner which is contrary to the public health, safety and welfare.

SECTION 42. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 64 ("Development Review Process"), of the Milpitas Municipal Code is hereby repealed and replaced in its entirety with the text below to read as follows:

XI-10-64.01 Purpose and Intent. This Chapter is intended to describe the general procedures for filing applications when required or permitted by this title.

XI-10-64.02 Authority for Land Use and Zoning Decisions. Table XI-10-64.02 (Decision-Making Body and Role) identifies the city official or body responsible for reviewing and making decisions on each type of application, land use permit, and other entitlements required by this Zoning Ordinance.

Table XI-10-64.02
Decision-Making Body and Role[1]

Type of Permit or Decision	Procedures are found in:	Planning Division	Planning Commission Subcommittee	Planning Commission	City Council
Land Use Permits and other Development Entitlements					
Staff Review[2]		Issuance		Appeal[3]	Appeal
Conditional Use Permits	XI-10-57.04			Decision	Appeal

Type of Permit or Decision	Procedures are found in:	Planning Division	Planning Commission Subcommittee	Planning Commission	City Council
Development Agreements				Recommend	Decision
Minor Site Development Permits	XI-10-57.03		Decision	Appeal[3]	Appeal
Mobile Home Park Conversion Permit	Title XI, Chapter 20			Recommend	Decision
Planned Unit Development	XI-10-54.07			Recommend	Decision
Site Development Permits	XI-10-57.03			Decision Recommend[4]	Appeal Decision[4]
Variances	XI-10-57.06			Decision	Appeal
Zoning Ordinance Administration and Amendments					
General Plan Amendments	XI-10-57.02			Recommend	Decision
Specific Plan Amendments	XI-10-57.02			Recommend	Decision
Zoning Amendments	XI-10-57.02			Recommend	Decision

[1] "Recommend" means that the decision-making body makes a recommendation to a higher decision-making body; "issuance" means that the permit is a ministerial action that is issued by the decision-making body; "decision" means that the decision-making body makes the final decision on the matter; "appeal" means that the decision-making body may consider and decide upon appeals to the decision of an earlier decision-making body. Any decision by the Planning Commission may be appealed to the City Council as specified in Section XI-10-64.05, Appeals.

[2] Includes Home Occupation Permits (Section XI-10-13.05), reviews requiring building permits and other reviews by Planning Division staff not requiring a building permit or review by other decision-making bodies. Any appeal shall first be to the Planning Commission. The Planning Commission's decision, in turn, may be appealed to the City Council, whose decision shall be final.

[3] The Planning Commission's decision may be appealed to City Council, whose decision shall be final.

[4] Refer to Section XI-10-45.09 regarding the process for projects within the "H" Hillside Overlay District.

10-64.03 Consideration of Concurrent Applications

A project that includes more than one application may be combined and processed concurrently, as long as all applicable processing requirements are satisfied. The purpose of allowing concurrent review is to consolidate final action on the project with the highest review authority responsible for making a decision on the applications for a project. The following shall apply to concurrently processed applications:

A. Public Hearing and Nonpublic Hearing Applications. When an application requiring a public hearing is combined with an application that does not require a public hearing, the combined applications shall require a public hearing.

B. City Council and/or Planning Commission as Highest Review Authority. When City Council and/or Planning Commission review is required for at least one (1) of the applications for a project, the final decision on all applications shall be made by the highest review authority.

When the City Council is the highest review authority for a project, all review by other bodies with approval authority over the applications shall be in the form of a recommendation to the City Council.

When the Planning Commission is the highest review authority for a project, all review by other bodies with approval authority over the applications shall be in the form of a recommendation to the Planning Commission.

C. Omitting Planning Commission Subcommittee Review. In order to eliminate redundant review and an unnecessary lengthening of the discretionary review process, it is appropriate to eliminate Planning Commission Subcommittee review of some applications. When combined applications are being processed for a project, and both Planning Commission and Planning Commission Subcommittee review are required, Planning Commission Subcommittee review shall be omitted and Planning Commission review substituted.

XI-10-64.04 Public Hearing

A. Time. Time of Giving Notice. Whenever notice of hearing is required by this Chapter, it shall be given at least ten (10) calendar days before the hearing.

B. Manner. Manner of giving notice. Whenever notice of hearing is required by this Chapter for any of the following matters, unless otherwise provided by law:

Table XI-10-64.03
Public Hearing Requirements

Project[1]	Notification Required Radius	Community Meeting Required[2]
Conditional Use Permit	1,000 feet	No
Development Agreements	300 feet	No
Environmental Impact Report	1,000 feet	No[3]
General Plan Amendment	1,000 feet	Yes
Mobile Home Park Conversion Permit	Within the mobile home park	Yes
Site Development Permit	300 feet	No
Specific Plan Amendment	300 feet	No
Variance	500 feet	No
Zoning Amendment	1,000 feet	Yes

[1] Amendments to Conditional Use Permits, Development Agreements, Site Development Permits and Variances shall have the same requirements, unless otherwise noted.
[2] A community meeting shall be held prior to the public hearing.
[3] Follow the requirements of the California Environmental Quality Act.

1. For projects requiring a public hearing and/or a community meeting identified within Table XI-10-64.03, or for revocation, suspension or modification of the same, or an appeal from the action taken thereon, notice shall be given as per State of California Government Code Section 65091 and by the following:

   a. Publishing the notice in a newspaper of general circulation within the City. In addition, for General Plan amendments, Zoning amendments, Conditional Use Permits and Variances, a second notice being a quarter (¼) page advertisement shall be published in a newspaper of general circulation.

   b. Posting one (1) sign notice per 1,000 lineal feet of property street frontage in a conspicuous place on the affected property visible from the street frontage. If the affected property has no street frontage, no less than one (1) sign notice shall be required to be posted.

   c. Mailing the notice. It shall be the responsibility of the applicant to furnish the labor and materials regarding copies, postage, envelopes and labels for mailing of the notice.

      i. Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code to all property owners and residential renters as specified in Table10-64.03. The Planning Division staff shall have the discretion to require a 1,000 feet notification requirement for public hearings, if the project is deemed to be potentially controversial.

      ii. Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code, to the owner of the subject real estate property and the applicant, respondent or appellant.

iii. Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code to the Milpitas Unified School District and, in addition, to any other local agency expected to provide essential facilities and services to the project and whose ability to provide said facilities and services may be significantly affected.

10-64.05 Effective Date of Approval

Unless there is an appeal the date of approval is the date on which the decision-making body votes on the motion of approval. When there is an appeal, the date of approval is the date of the administrative vote on the motion finally determining the appeal.

10-64.06 Expiration of Permit or Approvals

A. Expiration of an Approved Application. An application approved in accordance with this Chapter shall be deemed to have expired, when either of the following occurs:

1. When the activity permitted by the approved application is not commenced, as defined in Subsection B of this Section, Commencement of a Permitted Activity, within two (2) years, or for projects submitted with tentative maps, within the time limits of the tentative map. The time period during which a project must be commenced starts on the effective date of a decision approving a project, as defined in Section XI-10-64.05, Effective Date of Approval, of this Chapter.

2. When the activity permitted by the approved application has lapsed, as defined in Subsection C of this Section, Lapse of a Permitted Activity.

B. Commencement of a Permitted Activity. An activity permitted by an approved application shall be deemed to have commenced when the project:

1. Completes a foundation associated with the project, or

2. Dedicates any land or easement as required from the zoning action, or

3. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

C. Lapse of a Permitted Activity. An activity permitted by an approved application shall be deemed to have lapsed at the following times:

1. In accordance with Section XI-10-56.03(A)(3), Continuation, expansion and change of use, of this Chapter, regarding nonconforming uses.

2. When that activity ceases operation and/or the business closes at such location for a period of at least one (1) year.

D. Renewal of an Expired Application. Any approved application which has been allowed to expire shall be subject to the filing of a new application pursuant to Section XI-10-57, Applications, of this Chapter.

10-64.07 Extension of Time

A. Authority. An extension of time may be issued for approved applications by the Planning Commission.

B. Submittal of Extension Requests.

1. Time Limits on Submitting Extension Requests. Unless otherwise provided by state law, extension requests for approved applications described in Section XI-10-57, Applications, of this Chapter shall only be considered if the written request for the extension is filed with the Planning Division prior to the approved application's expiration date.

2. Method of Request. Requests for extensions shall be made in writing and shall state the reasons why an extension is needed.

C. Processing Extension Requests. Extension requests for approved applications described in Section XI-10-57, Applications, of this Chapter shall be processed in the same manner as a new application, except that the extension request shall only be reviewed by the Planning Commission as the decision-making authority. A request for an extension of time may be approved, conditionally approved or denied. If approved, conditions may be added to the approved application.

D. Circumstances Under Which Extensions May Be Granted. An extension of the approval of a project may be granted if the current findings for the specific type of permit be made by the decision-making authority.

E. Length of extension. The Planning Commission shall only grant a single time extension within the time period specified in the approval or for eighteen (18) months if no time is specified.

SECTION 43. AMENDMENT OF THE CITY OF MILPITAS ZONING SECTIONAL MAP

The Zoning Map of the City of Milpitas, which was adopted as part of Ordinance No. 38, enacted as Chapter XI-10 (Zoning, Planning and Annexation) of the Milpitas Municipal Code of said City, is hereby amended by adding a new Sectional District Map No. 578, a copy of which is attached hereto and incorporated herein as Exhibit 1. This Sectional District map shall be kept in un-codified form and kept on file with the City Clerk or his or her designee.

SECTION 44. SEVERABILITY

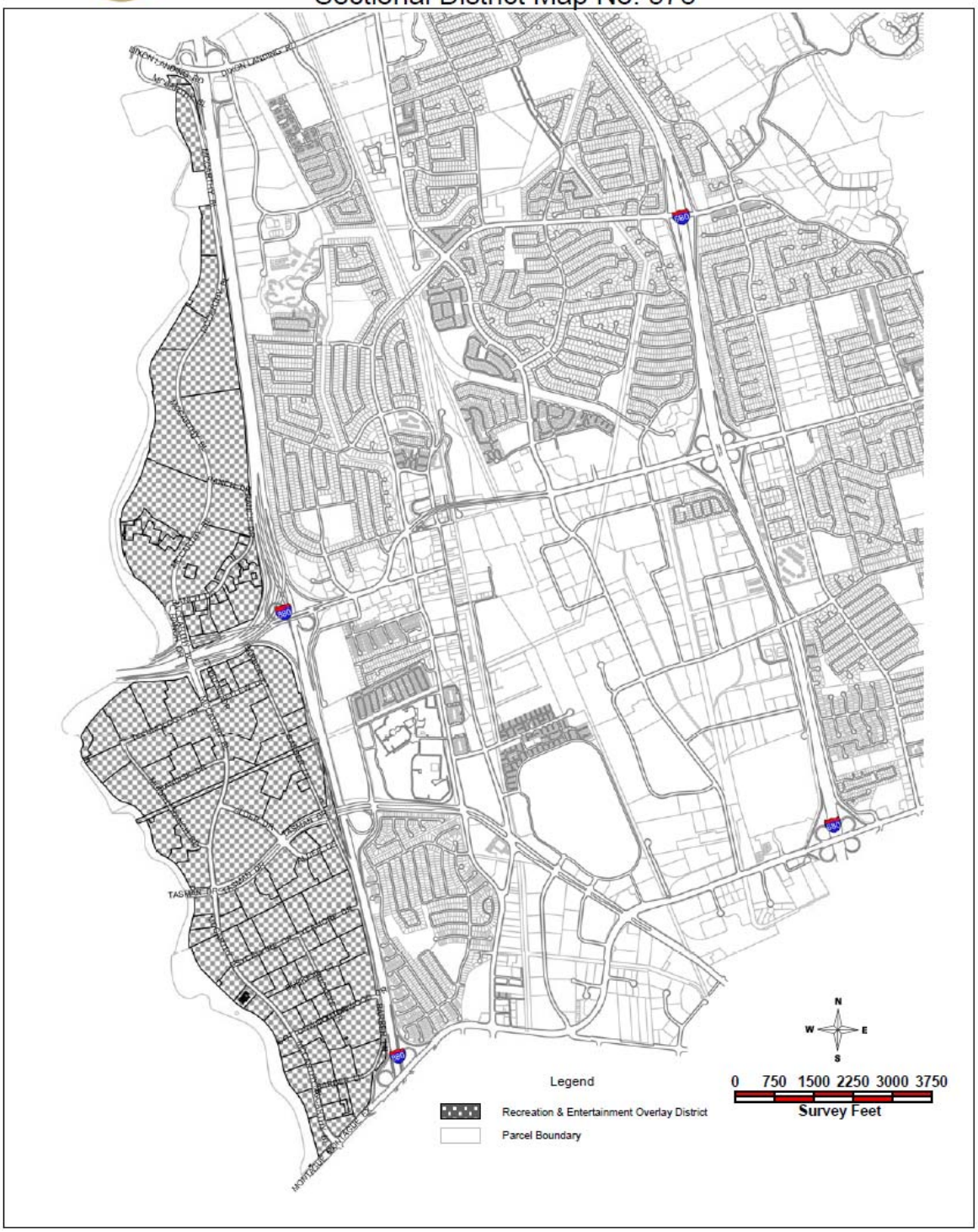
The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 45. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

EXHIBIT 1 ZONING SECTIONAL MAP

City of Milpitas

Recreational and Entertainment Overlay District

Sectional District Map No. 578