

REGULAR

NUMBER: 38.793

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS, AMENDING TITLE XI, CHAPTER 10, SECTIONS 2 AND 56 OF THE MILPITAS ZONING ORDINANCE TO INCORPORATE ADDITIONAL DEFINITIONS AND PROVISIONS RELATED TO NONCONFORMING USES

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of May 3, 2011 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:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, on October 27, 2010, the Planning Commission directed staff to initiate a Zoning Ordinance text amendment to incorporate additional provisions for nonconforming uses; 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 recommended to the City Council to determine that the proposed zoning text amendment is categorically exempt pursuant to Section 15061 of the CEQA Guidelines. The activity is covered by the general rule that CEQA applies only to projects which have the potential causing a significant effect on environment. The proposed Zoning Ordinance amendment includes a text change to Sections 2 (Definitions) and 56 (Nonconforming Buildings and Uses) of the Milpitas Municipal Code; and

WHEREAS, on December 8, 2010, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff and other interested parties, and recommends approval of the Zoning Code text amendment; and

WHEREAS, the City Council finds that the proposed Zoning Ordinance amendment is consistent with General Plan goals and objectives in that proposed text amendment encourages economic pursuit and promotes a stable development. The proposed text amendment will prevent blight by fulfilling potential long-term vacancies with uses that add to economic vitality and enhance the overall development; and

WHEREAS, the City Council finds that, with the inclusion of the amendment to the Zoning Ordinance, the document remains internally consistent; and

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. 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 new definitional entries, to be placed between the terms “Instruction, group and private” and “Internet access studio or internet cafe,” to read as follows:

“Intensity” means the degree to which land is used, measured by a combination of the type of land used and the amount of land or floor area devoted to that use.

“Intensification of Use” means to alter the character of a use to the extent that the use generates new or different impacts on the health, safety, or welfare of the surrounding neighborhood, including but not limited to the level or amount of traffic, noise, light, smoke, odor, vibration, outdoor storage, or other similar conditions associated with the use.

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

Title XI, Chapter 10, Section 56.02(C)(2), is hereby amended in its entirety to read as follows:

In all districts other than the R1, R2, and R1-H, a legal nonconforming building or structure may be added to or enlarged in a manner consistent with the criteria established in Table XI-10-57-.04-1 and if a Conditional Use Permit is obtained.

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

Title XI, Chapter 10, Section 56.03 (“Nonconforming Use of Buildings and Structures”), is hereby amended in its entirety to read as follows:

XI-10-56.03 Nonconforming Use of Buildings and Structures

- A. The continuation or change of a nonconforming use of a building or structure shall meet the requirements provided below.
 1. Continuation of Existing Nonconforming Use. A legally established use that is no longer permitted in a particular zoning district because of a modification of this Chapter shall be allowed to continue indefinitely, absent discontinuation of the use for a year or more and failure to comply with the re-establishment provisions of Section XI-10-56.03(B) below.
 2. Discontinuation of Nonconforming Use. The nonconforming use of a building, structure or portion thereof, which is discontinued for a continuous period of one (1) year or more, may be replaced only with a conforming use, absent an approved nonconforming use reestablishment set forth in Section XI-10-56.03(B) below. Nonconforming uses which have been discontinued for a period of less than one (1) year may be replaced, if (1) with a nonconforming use of the same use classification as a matter of right or (2) a nonconforming use of a different use classification, subject to compliance with the findings and procedures set forth Section XI-10-56.03(B).
 3. Changes of Use Within the Same Use Classification. An existing, ongoing nonconforming use may be changed to a different use within the same use classification. For example, a nonconforming auto repair shop use may be changed to a tire shop use, since both uses fall within the same use classification (auto service uses).
 4. Change of Use to a Different Nonconforming Use Classification. An existing, ongoing nonconforming use may be changed to a nonconforming use of a different use classification only if it can be found that the proposed use is equivalent to or more appropriate than the existing nonconforming use at the project location. The proposed use may be allowed only by way of a conditional use permit and only if, in addition, all of the following findings can be made:
 - a. The proposed nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.).
 - b. The proposed nonconforming use would be compatible with the general character of the surrounding neighborhood or district.
 - c. The proposed nonconforming use is necessary to allow gainful economic use of structures or improvements until such structures or improvements can be permanently converted to conforming uses.
- B. Re-establishment of Discontinued Nonconforming Uses Within the Midtown and Transit Area Specific Plan Areas (Sunsetting Provision).
 1. Once discontinued for a year or more, nonconforming uses only within the Midtown Specific Plan Area and the Transit Area Specific Plan Area may be re-established if all of the following findings can be made:

- a. The proposed re-establishment of a nonconforming use would not cause a nuisance to the surrounding properties and district (e.g., excessive parking demand, traffic, noise, etc.).
- b. The proposed re-establishment of a nonconforming use would be compatible with the existing general character of the surrounding neighborhood or district.
- c. The proposed re-establishment of a nonconforming use is necessary to allow gainful economic use of structures or improvements until such structures or improvements can be permanently converted to conforming uses.

In addition to the above findings, the re-establishment of a discontinued nonconforming use may only be approved by the Planning Commission by way of a conditional use permit, with the above additional findings, if (1) the proposed use lies within 1000 feet of any residential use or (2) the proposed use would require conditional use permit review under current zoning requirements for the zoning district listed in the zoning map in existence at the time the use became nonconforming. The re-establishment of a discontinued nonconforming use may be approved administratively by Planning Division staff in all other circumstances, contingent on the existence of findings by Planning Division staff that the above listed grounds for re-establishment exist.

2. This Section XI-10-56.03(B) shall become inoperative June 16, 2014, and shall be considered repealed on that date, unless a later enacted ordinance that becomes effective on or before June 16, 2014, deletes or extends that date. All other provisions of Section XI-10-56.03 shall be unaffected by this sunset clause.

SECTION 5. 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 6. PUBLICATION AND EFFECTIVE DATE

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.