

URGENCY

NUMBER: 38.804

TITLE: AN UNCODIFIED URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS EXTENDING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, PROCESSING AND APPROVAL OF APPLICATIONS FOR CONVERSIONS OF CERTAIN INDUSTRIAL AND/OR COMMERCIAL ZONES TO RESIDENTIAL ZONES

HISTORY: This Ordinance was introduced by the City Council at its meeting of _____, upon motion by _____ and was adopted immediately as an interim urgency ordinance pursuant to the provisions of California Government Code Section 65858(b). 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, Government Code section 65858 allows a city to adopt, as an urgency measure, an interim ordinance prohibiting any uses which may be in conflict with any contemplated general plan, specific plan, or zoning ordinance amendment proposal which the legislative body, planning commission, or planning department is intending to study within a reasonable time, in order to protect the public safety, health and welfare; and

WHEREAS, significant concerns have been raised in the community regarding the slow decay and inability of current zoning regulations and plans to address the increasing number of rezone applications, thereby threatening the historic and planned areas of the City for industrial and commercial activities and the continued protection and growth of long-term, high paying jobs; and

WHEREAS, citizens and businesses within the City of Milpitas have expressed concerns regarding the impact that a proliferation of new residential developments within or adjacent to industrial establishments within the City may negatively affect the future desirability of the City as a place for productive, employment-creating activity and possibly expose such new residential developments to harmful noise, air, and other public health impacts; and

WHEREAS, on February 7, 2012, the City Council passed an initial 45-day moratorium on the acceptance, processing or approval of applications to rezone certain areas currently zoned for industrial and/or commercial uses to residential uses; and

WHEREAS, City staff requires further time provided by a temporary moratorium in order to study the cumulative effects of past and future proposed rezones of areas zoned for industrial uses to residential uses on the City's jobs to housing balance, sewer capacity, water capacity, and other infrastructure limitations; and

WHEREAS, this moratorium shall apply only to applications associated with the industrial and commercial zones set forth in Exhibit 1 of this Ordinance; and

WHEREAS, a public hearing was held by the City Council on March 20, 2012, after the provision of duly required legal notice under Government Code Section 65090; and

WHEREAS, at the March 20, 2012, City Council meeting, the City Council received City staff analysis and reports and received public testimony on the negative effects of ad hoc conversions of areas currently zoned for industrial and/or commercial uses to residential uses; and

WHEREAS, the City Council therefore finds that the approval of new applications for zoning conversions or rezones to residential uses, while possible amendments to the Zoning Ordinance and review of appropriate land use planning to maintain a healthy jobs to housing balance are being studied, could result in conflicts with any proposed amendments and would undermine the purpose of studying such amendments, thereby reducing the quality of life within the community by detrimentally affecting the overall public health, safety and welfare; and

WHEREAS, the City Council also finds that the continued ad hoc rezone of industrial and commercial properties presents a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare; and

WHEREAS, furthermore, to the extent that extension of the interim ordinance might have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing, the City Council hereby finds the continued approval of the development of multifamily housing projects would have a specific, adverse impact upon the public health or safety. This finding is based upon the submission and report by City staff of evidence that further ad hoc zoning conversions of areas currently zoned for industrial and/or commercial uses to residential uses might subject residential users to adverse public health and safety threats. Such threats include, but are not limited to, unwarranted and incompatible exposure to noise, vibration, toxic and chemical releases, inadequate transportation access and facilities for emergency first responder services and daily travel, and other essential services and infrastructure for residents; and

WHEREAS, the City Council finds that the interim ordinance and its extension are necessary to mitigate or avoid the adverse impacts identified herein and that there is no feasible alternative to satisfactorily mitigate or avoid the adverse impacts identified as well or better, with a less burdensome or restrictive effect, than the extension of the interim ordinance.

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. PREPARATION OF ZONING CODE AND/OR SPECIFIC PLAN AND GENERAL PLAN AMENDMENTS

The City Council hereby directs the Planning and Neighborhood Services Department to continue preparing a Zoning Code amendment and, if necessary, Specific Plan and General Plan amendment, governing the standards and allowable extent of rezones or conversions of areas currently zoned for industrial uses and/or commercial uses to residential uses, and to present such zoning and/or Specific Plan and General Plan amendments to the Planning Commission as soon as possible in order for the Planning Commission to make a recommendation to the City Council.

SECTION 3. EXTENSION OF TEMPORARY MORATORIUM

The City Council hereby extends the initial 45-day moratorium, adopted on February 7, 2012 and expiring on March 23, 2012, on the acceptance, processing or approval of applications to rezone certain areas currently zoned for industrial and/or commercial uses to residential uses for an additional four (4) months and fifteen (15) days (i.e., a total of 135 extra days). Such extension shall be applied after the expiration of the initial 45-day period, thereby extending the moratorium until August 5, 2012, or until such time as the City concludes the review described above and amends the Zoning Ordinance and/or relevant Specific Plan and General Plan to address the negative public health, safety and welfare effects that such ad hoc conversions of existing industrial zones to residential zones have on the community. This moratorium shall apply only to applications associated with the industrial and commercial zones set forth in Exhibit 1 of this Ordinance.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council finds that adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) and 15308 of the CEQA Guidelines.

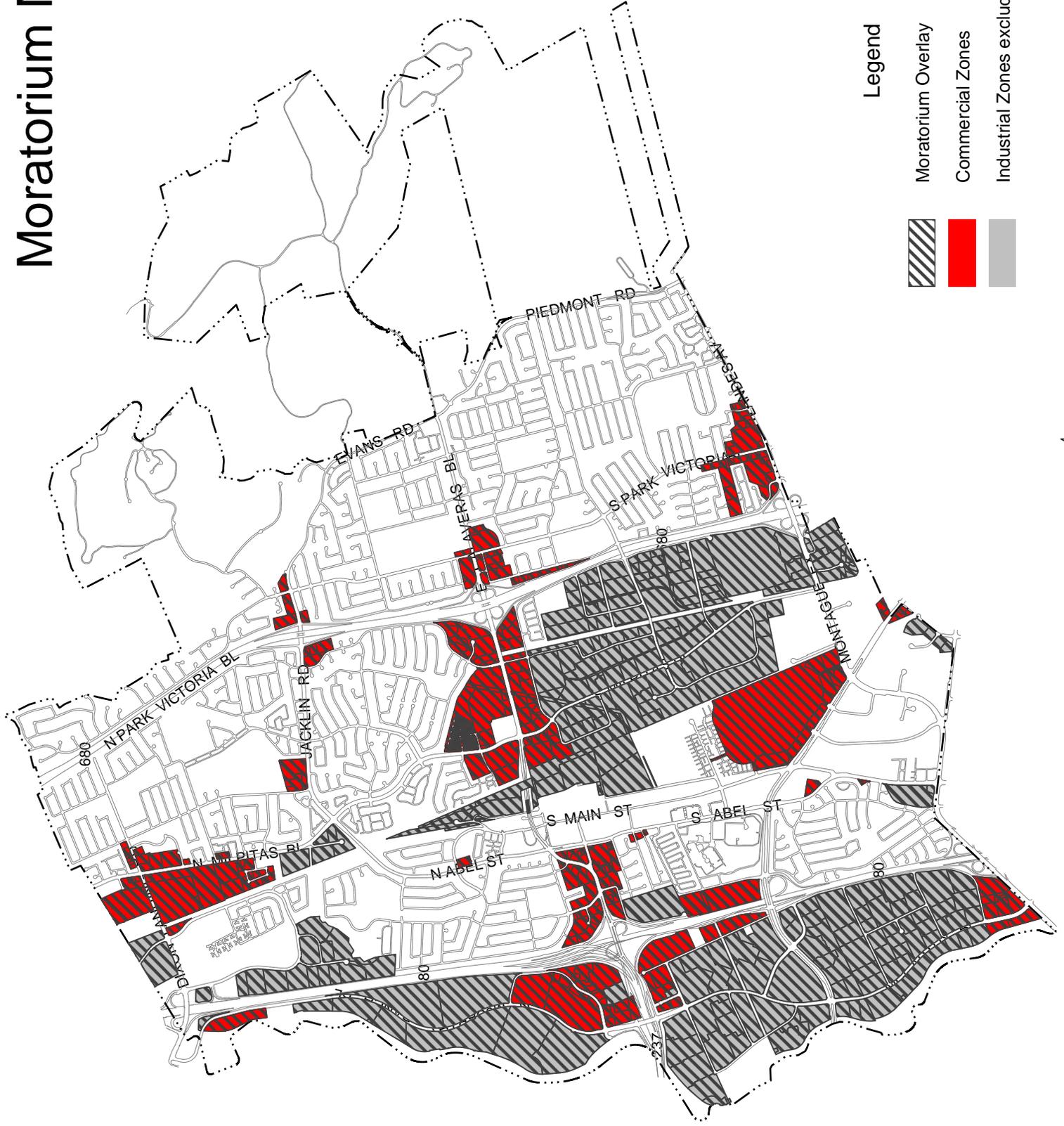
SECTION 5. SEVERABILITY

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. EFFECTIVE DATE AND POSTING

In accordance with Government Code Section 65858(b), this Ordinance is effective immediately as an urgency interim ordinance and shall be in full force and effect from the date of its adoption and shall provide for a four (4) month and fifteen (15) day (i.e., 135-day) extension, starting from March 23, 2012 and ending on August 5, 2012. This period may be extended by the City Council in accordance with the provisions of California Government Code Section 65858. 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.

Moratorium Map Exhibit



- Legend**
- Moratorium Overlay
 - Commercial Zones
 - Industrial Zones excluding Pending Projects