

**REGULAR**

**NUMBER: 38.808**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING TITLE XI, CHAPTER 10, SECTIONS 2, 5, 13, AND 53 OF THE MILPITAS ZONING ORDINANCE TO CONDITIONALLY ALLOW LIVE-WORK UNITS WITHIN THE TOWN CENTER ZONING DISTRICT, FURTHER DEFINE LIVE-WORK UNITS, INTRODUCE LIVE-WORK UNIT SPECIFICATIONS, AND ADD THE LIVE-WORK PARKING REQUIREMENTS**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of May 7, 2013, upon motion by Councilmember Giordano 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 March 19, 2013, an application was submitted by Doyle Heaton with DRG Builders Inc., 3480 Buskirk Avenue, Suite 260, Pleasant Hill, CA 94523, requesting to amend the text within the Zoning Ordinance to incorporate “live-work” units as a conditionally permitted use within the Town Center Zoning District, to introduce “live-work” specifications under Section 13 for Special Uses, and to further define “live-work” units in Section 2 for Definitions; and

**WHEREAS**, the Planning Commission recommended to the City Council to determine that the proposed zoning text amendment is 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 of causing a significant effect on the environment. The proposed Zoning Ordinance amendment includes a text change to Sections 2 (Definitions), 5 (Commercial Zones), 13 (Special Uses), and Section 53 (Parking) of the Municipal Code; and

**WHEREAS**, the Planning Commission, during its March 27, 2013 meeting, reviewed the applicant’s request to approve four live-work units at 375 Los Coches Boulevard and recommended a zoning text amendment to conditionally allow live-work units in the Town Center Zoning District; and

**WHEREAS**, the Planning Commission recommends that live-work units in the Town Center Zoning District will be compatible and complimentary; and

**WHEREAS**, on April 10, 2013, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties and recommended approval of the text amendment; and

**WHEREAS**, the City Council finds the Zoning Ordinance text amendment to be consistent with the General Plan, and specifically guiding principles and policies 2.a-G-2, 2.a-g-3, 2.a-g-4, and 2.a-I-20, in that the addition of “live-work” units within the Town Center Zoning District provides a new type of housing and a compatible transition from single-family homes to commercial, cultural, and civic uses, and that the use will support the distinctive identity and image envisioned by the General Plan for the Town Center area; and

**WHEREAS**, the City Council finds the Zoning Ordinance text amendment will not adversely affect the public health, safety, and welfare in that the Town Center Zoning District and the addition of the “live-work” type of residential use will support both the residential and commercial/cultural/administrative/business type of uses allowed in the Town Center District; and

**WHEREAS**, the City Council finds that with the inclusion of the amendment to the Zoning Ordinance, the document will remain 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. 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 to change the definition of “live-work unit to read as follows:

**“Live-Work Unit”** means a dwelling unit with a separate living space attached to a work space within the same unit. The work space and the living space must be occupied by the same tenant. Live-work uses allow one non-residential employee, more customers, and a broader range of uses than permitted in Home Occupations. See **XI-10-13.12 within Special Uses** for Live-Work Unit purpose, intent, and regulations.

Uses permitted or conditionally permitted within the underlining zoning district apply unless otherwise prohibited in Section 10-13.(E). Additional uses covered by this designation include, but are not limited to:

- Art and craft work;
- Office only use;
- Accountant;
- Architects;
- Artists and artisans;
- Attorneys;
- Computer software and multimedia related professionals;
- Engineers;
- Fashion;
- Interior and other designers; and
- Commercial Service

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

Title XI, Chapter 10, Section 5 (“Commercial Zones and Standards”), Table XI-10-5.02-1, 9. Residential Uses, of the Milpitas Municipal Code is hereby amended with the addition of “live-work” units as a conditionally permitted use within the Town Center Zoning District, which shall read as follows:

Use	CO	C1	C2	HS	TC
<b>9. Residential Uses</b>					
<b>Live-Work Units</b>	<b>NP</b>	<b>NP</b>	<b>NP</b>	<b>NP</b>	<b>C</b>

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

Title XI, Chapter 10, Section 13 (“Special Uses”) of the Milpitas Municipal Code is hereby amended with the addition of a new “live-work” units entry, to be placed at the end of the section, which shall read as follows:

**13.12 Live-Work Units**

- A. Purpose and Intent.** The purpose of this Section is to control and regulate land use activities for the live-work unit. The intent of a live-work unit is to allow small-scale business activities in residential uses which meet certain standards. No portion of the live-work unit may be separately occupied or sold. Live-work uses are allowed one non-residential employee, and a broader range of uses than permitted in Home Occupations, and therefore are subject to granting of a conditional use permit to ensure compatibility.
- B. Applicability.** This Section shall apply to existing and new residential development that includes live-work units.

**C. Review Requirements.** Live-work units shall require the approval of a Conditional Use Permit, in accordance with Subsection 57.04, Conditional Use Permits, of this Chapter.

**D. Minimum Performance Standards**

1. A business license and certificate of occupancy shall be obtained for every commercial space within the live-work units.
2. Living space shall occupy a minimum of 60% of the total gross floor area of the unit.
3. The commercial component as designated on the floor plan approved through the conditional use permit shall remain commercial and cannot be converted to a residential use.
4. The residential component as designated on the floor plan approved through the conditional use permit shall remain residential and cannot be converted to commercial use.
5. The commercial component of a live-work unit shall be located on the first floor with the main entry facing the street or common pedestrian space. The residential unit shall have direct interior access to the commercial unit.
6. The residential unit shall provide additional exterior access to the main residential unit that is not through the commercial component.
7. Exterior Appearance: The commercial component of the live-work unit shall have a commercial, store front appearance located on the 1<sup>st</sup> floor of the home.
8. The commercial component shall be restricted to the unit and shall not be conducted in the yard, garage, or any accessory structure. Commercial outdoor storage use not permitted.
9. Shall demonstrate compliance with parking per Section 53 for required parking spaces.
10. Sign size, location, illumination and materials, shall be consistent with the architectural building design and approved through a master sign program.
11. Business shall not involve the use of hazardous materials or produce medical or hazardous waste, except those that are below permitted amounts in accordance with the California Fire Code and as amended by the Milpitas Municipal Code V-300-2.10.
12. This use shall be conducted in compliance with all appropriate local, state and federal laws and regulations and in conformance with the approved use permit.
13. All foods must be produced, prepared, packaged, stored, transported, and marketed in compliance with County Department of Environmental Health standards.
14. The commercial use shall not create external noise, odor, glare, vibration or electrical interference detectable to the normal sensory perception by adjacent neighbors.
15. Uses permitted or conditionally permitted within the underlining zoning district apply unless otherwise prohibited in Section 10-13.(E).

**E. Prohibited Uses**

1. Any use not permitted within the underlying zoning district is prohibited along with the following:
  - a. Adult-oriented businesses;
  - b. Astrology;
  - c. Palmistry;
  - d. Massage;
  - e. Sauna or spa;
  - f. Pharmacy or drug store
  - g. Head/smoke/tobacco shop;
  - h. Tattoo and piercing;
  - i. Veterinary services, including grooming and boarding, and the breeding or care of animals for hire or for sale;
  - j. All vehicle related uses such as auto sales, repair, or maintenance of vehicles including boats, motorcycles, or recreational vehicles;
  - k. Places of assembly;
  - l. Group instruction;
  - m. Club or social organization;
  - n. Religious assembly;
  - o. Educational institutions;
  - p. Motion picture theaters; and
  - q. Sit down restaurants

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

Title IX, Chapter 10, Section 53, Table 53.09-1 (“Number of Parking Spaces Required”), is amended with the addition of a new row for live-work unit parking requirement, which shall read as follows:

<b>I. Residential Uses</b>	
<i>Live-Work Units</i>	<i>Single family and duplexes</i> parking requirements shall apply, plus 1.5 for the commercial component

**SECTION 6. 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 7. 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.