

**NUMBER:** 38.820

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE PROHIBITING ALL NEW RESIDENTIAL USES IN THE TOWN CENTER ZONING DISTRICT

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of March 17, 2015, upon motion by Council Member Barbadillo 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:**

**WHEREAS**, Title XI, Chapter 10, Section 5 entitled “Commercial Zones and Standards” of the Milpitas Municipal Code sets forth the permitted, conditionally permitted, and prohibited uses in the Town Center Zoning district; and

**WHEREAS**, on January 14, 2015, the Planning Commission conducted a duly noticed public meeting and adopted Resolution No. 15-001 recommending the City Council amend the Milpitas Zoning Code to add “mixed use” residential to the Town Center Zoning description and to prohibit ground floor residential uses in the Town Center zone; and

**WHEREAS**, on February 3, 2015, the City Council conducted a duly noticed public hearing to consider the recommendation from the Planning Commission to add “mixed use” residential to the Town Center Zoning description and to prohibit ground floor residential uses in the Town Center zone; and

**WHEREAS**, during the City Council meeting on February 3, 2015, the City Council expressed a desire to make the Town Center a distinct commercial district and directed staff to bring forward a General Plan Amendment and Zoning Code Amendment to prohibit new residential development of any type in the Town Center; and

**WHEREAS**, on February 25, 2015, 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 adopted a resolution by a 6-1 vote that the City Council approve a General Plan amendment and Zoning Code amendment to prohibit all new residential uses in the Town Center; and

**WHEREAS**, on March 17, 2015, the City Council conducted a duly noticed public hearing to consider the recommendation from the Planning Commission to prohibit all new residential uses in the Town Center.

**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. FINDINGS**

Zoning Text Amendment (Section XI-10-57.02(G)) - The City Council makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA14-0011:

- 1. *The proposed Amendment is consistent with the General Plan.*

Prohibiting new residential uses and encouraging more commercial development meets the intent of the Town Center designation. The Town Center Zoning District is intended as the functional and visual focus of Milpitas while providing a meeting and market place for commercial, professional and entertainment uses. Prohibiting new residential uses will ensure land is available for the continued focus of a commercial district that provides identity for the City while allowing the surrounding residential development to support the commercial uses.

The project is also consistent with the following General Plan Guiding Principles and Policies:

**Guiding Principle 2.a-G-2** – Maintain a relatively compact urban form.

**Guiding Principle 2.a-G-4** – The Town Center will be the “heart” of Milpitas’ civic, cultural, business and professional life.

**Guiding Principle 2.a-G-10** – Consider long term planning and strong land use policy in managing the City’s fiscal position.

The modification of the Town Center use table is consistent with the General Plan because it furthers the identified principles and policy by using land more efficiently and will allow for additional commercial and other tax-generating uses at the street level, thereby strengthening the City’s fiscal position while achieving a commercial district in the heart of Milpitas.

2. *The proposed Amendment will not adversely affect the public health, safety and welfare of the residents of Milpitas.*

The proposed Zoning Code Amendment will result in a more efficient use of land. The land use regulations will not affect the range of uses permitted or conditionally permitted. Commercial uses already allowed in the Town Center zone will continue to be allowed. Similarly, previously approved permitted and conditionally permitted residential uses will continue to be allowed. Therefore, the general well-being of Milpitas residents will be maintained since the Town Center zone will still facilitate a broad range of land uses, but will encourage more commercial development to provide economic opportunities for the City and residents.

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

Section XI-10-5.01.E entitled “Purpose and Intent” of the Milpitas Municipal Code is hereby amended to read as follows:

Town Center (TC) Zone. The purpose and intent of this zone is to provide for an area that supports a wide range of administrative, business, entertainment, dining, and cultural activities in the geographic center of the City to suit the varying lifestyles of residents and visitors alike. The area is easily accessible via the City's transportation network.

Section XI-10-5.02.B entitled “Prohibited Uses” of the Milpitas Municipal Code is hereby amended to read as follows:

Prohibited Uses. The following uses are prohibited:

1. Uses where the symbol "NP" appears within Table 5.02-1.
2. Uses that have been excluded from Table 5.02-1, unless they are found by the City to be similar to permitted or conditionally permitted uses in accordance with C below.
3. Any residential uses in the Town Center Zone shall strictly be prohibited provided residential uses constructed on or before February 17, 2015 or any project securing an approved tentative map or site development permit for construction of residential uses on or before February 17, 2015 shall be exempt from this prohibition and Milpitas Zoning Code Section 56, Nonconforming Buildings and Uses.

Table XI-10-5.02-1 entitled “Commercial Zone Uses” of the Milpitas Municipal Code is amended to read as follows:

**Table XI-10-5.02-1  
Commercial Zone Uses**

Use	CO	C1	C2	HS	TC
<b>1. Commercial Uses</b>					
Alcoholic beverage sales	C <sup>6</sup>	C	C	NP	C
Art/photography studio or gallery	NP	P	P	P	P
Bookstore	NP	P	P	P	P
Commercial services <sup>1</sup>	P	P	P	NP	P
Funeral home or mortician	NP	NP	C	C	NP

Furniture sales	NP	P	P	P	P
Grocery store (supermarkets)					
Within 1,000 ft. of residential zone	NP	C	C	C	C
Not within 1,000 ft. of residential zone	NP	P	P	P	P
Head/smoke/tobacco shop	NP	C	C	NP	C
Home improvement (hardware, blinds, interior decorating, etc.)	NP	P	P	C	P
Not fully enclosed operation	NP	C	C	C	C
Household appliance store <sup>7</sup>	NP	NP	P	P	NP
Small appliance repair	NP	NP	MCS	P	NP
Large appliance repair	NP	NP	NP	P	NP
Janitorial services	NP	NP	P	P	NP
Newsstand					
Indoor	P	P	P	NP	P
Outdoor	C	C	C	NP	C
Nursery (flower or plant)					
Indoor	NP	NP	P <sup>2</sup>	P	P
Outdoor	NP	NP	C	P	NP
Office supply sales (stationary, equipment)	P	P	P	P	P
Paint and wallpaper stores	NP	NP	P	P	P
Pawnshops	NP	NP	C	NP	NP
Pet stores	NP	NP	P	P	P
Printing (newspaper, publishing)	NP	NP	P	P	P
Rentals (medical supplies, costumes, party equipment, office equipment)	NP	NP	P	P	P
Retail stores, general merchandise	NP	P	P	NP	P
Tanning salon	NP	NP	P	NP	P
Thrift store <sup>3</sup>	NP	C	P	P	P
<b>2. Entertainment and Recreation</b>					
Adult business <sup>4</sup>	NP	NP	NP	P	NP

Bowling alley	NP	NP	P	P	P
Commercial athletic facilities					
Indoor	NP	C	P	P	P
Outdoor	NP	NP	NP	C	NP
Motion picture theater (See 7 below)					
Recreation or entertainment facility	NP	C	C	C	C
Shooting range, indoor	NP	NP	NP	C	NP
<b>3. Health and Veterinarian Uses</b>					
Animal grooming (no boarding)	NP	P	P	P	P
Hospital	C	NP	C	C	C
Kennel	NP	NP	C	NP	NP
Massage establishment	NP	NP	C	C	C
Medical and dental office	P	P	P	NP	P
Medical and dental clinic	P	C	C	NP	P
Medical support laboratories	P	C	C	C	C
Optician and optometrist shop	P	P	P	NP	P
Pharmacy or drug store	NP	P	P	P	P
Sauna and steam bath	NP	NP	NP	P	NP
Veterinary clinic	NP	NP	P	P	P
<b>4. Industrial Uses<sup>5</sup></b>					
Assembly from pre-processed materials	NP	NP	C	NP	NP
Commercial fueling facility	NP	NP	NP	C	NP
Commercial laboratory	NP	NP	C	P	NP
Contractor's yards and offices	NP	NP	C	C	NP
Disinfection and extermination business	NP	NP	C	P	NP
Dry cleaning plant	NP	NP	NP	P	NP
Food storage locker	NP	NP	NP	P	NP
Landscape contractor	NP	NP	C	P	NP

Lumberyards	NP	NP	C	C	NP
Mini-storage complex	NP	NP	C	C	NP
Plumbing, metalworking, glassworking or woodworking	NP	NP	C	C	NP
Research & development	NP	NP	C	NP	NP
Sign sales and fabrication (Electric and neon sign, sign painting)	NP	NP	C	P	NP
Warehousing and wholesale	NP	NP	C	NP	NP
<b>5. Lodging</b>					
Hotel and motel	NP	NP	C	C	C
<b>6. Professional Offices, Financial Institutions and Related Uses</b>					
Automatic teller machines (freestanding) <sup>6</sup>	NP	P	P	P	P
Financial institutions (banks, savings and loans, etc.)	P	P	P	P	P
General offices (administrative and business services, real estate, travel agencies, etc.)	P	P	P	P	P
<b>7. Public, Quasi-Public and Assembly Uses</b>					
Auction hall	NP	NP	C	C	C
Child care					
Child care center	C	C	C	C	C
Day care school	C	C	C	C	C
Large family child care home	NP	NP	NP	NP	C
Small family child care home	NP	NP	NP	NP	C
Club or social organization, religious assembly	C	C	C	C	C
Cultural center	NP	NP	C	C	C
Educational institutions					
Schools, private (elementary, middle, high)	NP	NP	C	NP	C
Trade and vocational school	C	NP	P	P	C
Farmer's market (not including flea market)	NP	C	C	C	C
Instruction					
Group <sup>8</sup>	MCS	MCS	MCS	MCS	MCS

Private	P	P	P	P	P
Motion picture theater					
Indoor	NP	C	C	C	C
Outdoor	NP	NP	NP	C	NP
Parking facility, storage garage	NP	P	P	C	C
Public utilities	C	C	C	C	C
Transportation facility (taxi, limousine, etc.)	NP	NP	C	C	C
<b>8. Restaurants or Food Service</b>					
Banquet hall	NP	NP	C	C	C
Bar or nightclub	NP	NP	C	C	C
Catering establishment	NP	NP	P	P	P
Restaurants	C <sup>7</sup>	P	P	P	P
With live entertainment/dancing	NP	NP	C	C	C
With drive-in or drive-through	NP	C	C	C	C
With ancillary on-premise beer & wine with no separate bar	NP	MC	PMC	MC	MC
<b>9. Residential Uses</b>					
Caretaker (in conjunction with contractor's yard or mini-storage complex)	NP	NP	C	C	NP
Emergency shelters <sup>9</sup>	NP	NP	NP	P/C	NP
Single-room occupancy residences <sup>10</sup>	NP	NP	NP	C	NP
<b>10. Vehicle Related Uses</b>					
Auto repair (tire, oil change, smog check, etc.)	NP	NP	C	C	NP
Auto sales and rental, outdoor (new and used cars, RV and truck)	NP	NP	C	C	NP
Auto broker (wholesale, no vehicles on site)	MCS	MCS	MCS	MCS	MCS
Car wash	NP	NP	C	C	NP
Service stations (with or without repair or retail) <sup>11</sup>	C	C	C	C	C
Drive through uses (restaurants, pharmacies, etc.)	NP	C	C	C	C
<b>11. Unclassified Uses</b>					
Accessory structures <sup>12</sup>	P	P	P	P	P

Model home complex <sup>13</sup>	NP	NP	NP	NP	P
Mortuary or crematory	NP	NP	NP	C	NP
Radio or television station	NP	NP	C	P	NP
Temporary seasonal sales <sup>14</sup>	NP	P	P	P	P

<sup>1</sup> Refer to the definition for "Commercial Services" in Section 2, Definitions, of this Chapter.

<sup>2</sup> Provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.

<sup>3</sup> Refer to XI-10-5.04, Commercial Zone Special Development Standards, of this Chapter.

<sup>4</sup> In accordance with the Title III, Chapter 4, Adult Business Ordinance, and Subsection 13.04, Adult Businesses, of this Chapter.

<sup>5</sup> For conditionally permitted uses, refer to Subsection 57.04(C) (9), Certain Industrial Uses within Commercial Districts, of this Chapter.

<sup>6</sup> Refer to Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.

<sup>7</sup> 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.

<sup>8</sup> Refer to Subsection 5.02-1, Commercial Zone Special Uses, of this Section.

<sup>9</sup> Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter.

<sup>10</sup> Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.

<sup>11</sup> 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.

<sup>12</sup> Not including warehouses on the same site as the permitted use.

<sup>13</sup> No tract sign shall be permitted within 600 feet of a Santa Clara County Expressway.

<sup>14</sup> Refer to Section 13.11, Temporary Uses and Structures, of this Chapter.

### **SECTION 3. 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 4. 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.