*9

REGULAR

NUMBER: **38.823**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE (ZONING CODE), SECTIONS 2, 13.11, AND 24.04, TABLES 57.04-1 AND 64.02-1, AND ADDING SECTION 15, RELATING TO SPECIAL EVENTS AND ACTIVITIES**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of November 3, 2015, upon motion by Councilmember 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:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, Title XI, Chapter 10, entitled "Zoning" of the Milpitas Municipal Code sets forth the Zoning standards for the City of Milpitas; and

WHEREAS, the City Council recognizes that special events and activities such as festivals, carnivals, celebrations, and athletic events enhance the quality of life for residents and visitors alike, and provide substantial economic benefits related to additional tourism; and

WHEREAS, the use of City streets and other City-owned or controlled properties by large groups cause wear and tear on such properties and requires City staff time to provide coordination; and

WHEREAS, such special events have may have the potential to expose neighboring residents to excessive noise and traffic; and

WHEREAS, the City Council wishes to ensure that all special events are conducted in a safe and orderly fashion to benefit all those who live in and visit the City of Milpitas by establishing a structured process for permitting the use of public facilities and the staging of outdoor special events conducted by the private sector to use City streets, facilities or services, or to conduct events that occupy, impact or consume public resources as a result of the congregation of people; and

WHEREAS, uniform procedures promote and protect the rights of those organizing special events, those participating in them, and those living and working nearby; and

WHEREAS, the Milpitas Zoning Code, Chapter 10 of Title XI of the Milpitas Municipal Code, is proposed to be amended to add a new Section 15 entitled "Special Events and Activities" and to make other necessary revisions to ensure consistency regarding Special Events references throughout the Zoning Code as set forth herein; and

WHEREAS, on May 13, 2015, the Planning Commission Subcommittee reviewed staff's proposed process improvements and recommended proposed changes to the Planning Commission; and

WHEREAS, on June 10, 2015, the Planning Commission conducted a duly-noticed public hearing and received a report recommending the amendment of the Milpitas Zoning Code to better address the Special Event Permit process; and

WHEREAS, on October 14, 2015, the Planning Commission conducted a duly noticed public hearing meeting and adopted Resolution No. 15-017, recommending the City Council amend the Milpitas Zoning Code to (i) delete the definition of "Special Events" from Section 2 "Definitions"; (ii) amend Section 13 "Special Uses" to delete the existing special event provisions; (iii) add a new Section 15 entitled "Special Events and Activities"; (iv) amend Section 24 "Signs" to delete reference to Section 13 "Special Uses" and add a new reference to the new Section 15 "Special Events and Activities;" (v) delete the reference to "Special Events and Activities" in Table 57.04-1 "Applications;" and (vi) add a new reference to "Special Event Permits" to Table 64.02-1 "Development Review Process"; and

WHEREAS, on November 3, 2015, the City Council conducted a duly-noticed public hearing to consider the recommendation from the Planning Commission to amend the Zoning Code as stated herein; and

WHEREAS, the City Council finds that with the inclusion of the herein stated amendments to the Zoning Code, the Zoning Code remains internally consistent; and

WHEREAS, the City Council finds the proposed Zoning Code text amendments are categorically exempt pursuant to Section 15061 of the California Environmental Quality Act (CEQA) Guidelines. The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing significant effects on the environment.

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 and findings set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. SPECIFIC FINDINGS

Zoning Text Amendment (Section XI-10-57.02.G.3) - The City Council makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA15-0004:

Zoning Text Amendment (Section XI-10-57.02.G.3)

1. The proposed amendment is consistent with the General Plan.

The proposed Ordinance is consistent with and implements the City of Milpitas' General Plan. The Ordinance promotes and encourages events for the greater good and cultural diversity of the city and establishes a structured process for permitting special events and activities that insures the city, residents and visitors have adequate notice of proposed events and activities and that the events and activities are properly planned and coordinated.

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

- Implementing Policy No. 2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.
- Implementing Policy No. 2.d-G-2 - Develop adequate civic, recreational, and cultural centers in locations for the best service to the community and in ways which will protect and promote community beauty and growth.

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

The proposed zoning amendment will include provisions to ensure public health, safety, and the general welfare standards are met for special events and activities. The zoning provisions will provide requirements; establish permit application filing procedures, and provisions for permit approvals and denials.

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

Section XI-10-2.03 entitled "Definitions" of the Milpitas Municipal Code is amended to delete the definition of "Special Events and Activities" entirely.

Subsections XI-10.13.11.G through J, inclusive, of the Milpitas Municipal Code are amended and renumbered as follows:

G. 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 use of 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.

H. Temporary Contractor's Office. Temporary contractors' 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.

I. 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.

Title XI, Chapter 10 is amended to add a new Section 15 entitled "Special Events and Activities" to read as follows:

Section 15 - Special Events and Activities

XI-10-15.01 - Purpose and Intent

The purpose and intent of this Section is to provide a regulatory framework for permitting Special Events. Special Events shall be conducted so as not to cause any detrimental effects to surrounding properties and the community, and shall not violate any other ordinance or regulation of the City. The provisions set forth in this Section shall establish criteria for characterizing events as "Special Events" and standards and conditions for approving and permitting such Special Events.

XI-10-15.02 - Applicability

Unless identified as exempt below, this Section shall apply to Special Events on private property and public streets, sidewalks, alleys, parks, ways, public places, and public rights-of-way as described in Subsections 15.03 through 15.22 of this Section.

XI-10-15.03 - Review Requirement

Special Events shall require review and approval in accordance with Table XI-10-15.03-1, below.

Table XI-10-15.03-1
Review Requirements for Special Events

Threshold for review	**Planning Director or Designee**	**Planning Commission Subcommittee**	**Hearing Officer**
Minor Events • Any Special Event with or without amplified sound that does not exceed four consecutive days (including set up and tear down). • Block parties on a residential street.[1]	X		
Major Events • Any Special Event that exceeds four consecutive days (including set up and tear down); up to seven days with or without amplified sound and/or street closures or any event that anticipates crowds exceeding 1,000 people.[2]	X		
Multiple Reviews • Recurring Special Events (up to four events per calendar year): Applicant may request a one-time review and issuance of a Special Event Permit for events which occur up to four times per calendar year for a permissible duration of 4 consecutive days for each recurring event.[3] • Multi-Year Events: Applicant may request a Special Event Permit good for up to three (3) years for Special Events that will be held annually, for up to three (3) consecutive years in the same location. Applicant must demonstrate that the same event location, layout, date and times are adhered to for each event.[3]	X	X	
Appeals or Revocations • Hearing on a notice of decision to			X

deny an application for Special Event Permit or to revoke or appeal a Special Event Permit.[4]			

1 See MMC V-100-13.05
2 Permits for events exceeding seven (7) days may be granted at the Planning Director's discretion.
3 Planning Director may recommend to Planning Commission Subcommittee for review and approval.
4 Appeals to Hearing Officer may only occur after denial or revocation by the Planning Director or designee.

XI-10-15.04 - Definitions

The definitions set forth in this part shall govern the application and interpretation of this Section.

1. "Amplified Sound" means any sound created by the use of sound amplification equipment and/or performance with electric or acoustic instruments associated with a special event.
2. "Athletic Events" means a physical or endurance activity that includes but is not limited to races, runs, walkathons, bicycle tours and the like.
3. "Block Party" means a party for all the residents of a block or neighborhood, typically held on a temporarily closed City street.
4. "Business day" means any day except Saturday, Sunday and holidays observed by the City of Milpitas.
5. "Business License" means a permit issued by the City of Milpitas that allows individuals, companies, or other entities to transact and conduct business within the City limits.
6. "City Official" means an authorized officer of the City of Milpitas as appointed by the City Manager or City Council.
7. "Director" means the Director or head of the department(s) designated to issue Special Event Permits, or such other person or persons designated by the Director to fulfill the responsibilities identified as the Director's responsibilities herein.
8. "Downtown" means the main business or commercial areas within the Midtown and Transit Area Specific Plan districts and the Town Center Zoning District.
9. "First Amendment Event" means conduct, the sole or principal object of which is the expression, dissemination or communication by verbal, visual, literary, or auditory means of opinion, views or ideas. Expressive activity includes, but is not limited to, public oratory and distribution of literature.
10. "Food Truck Event" means an event where a more than three (3) food trucks gather in one location.
11. "Indigent Natural Person" includes, but is not limited to, a person enrolled or participating in a federal or state government assistance program for low-income or indigent persons such as general assistance, CalWORKS, Medi-Cal, food stamps, Supplemental Security Income (SSI), Women, Infants and Children (WIC), U.S. Department of Housing and Urban Development (HUD) Section 8 rental housing subsidy, and other subsidized or public housing.
12. "Indoor/Outdoor Facility Rental Agreement" means a rental agreement issued by the Recreation Services Department to conduct a special event in a park.
13. "Outside Agency" means any local, state or federal regulatory agency responsible for administering permits to allow certain activities within their purview. Outside agencies includes but not limited to other City jurisdictions, Santa Clara Valley Water District (SCVWD), Santa Clara Valley Transportation Authority (VTA), California Department of Transportation (Caltrans), California Department of Alcoholic Beverage Control, Santa Clara Country Department of Environmental Health and Santa Clara County Roads and Airports.
14. "Parade" means an organized group marching in procession on a street. Parades do not include races, runs or other athletic events.
15. "Park", for purposes of this Section, means all outdoor areas managed by the Recreation Services Department, which are identified as a City park by the City, made available for use by the public as a park for recreation or open space purposes, and over which the City has the right of use for such purposes. The term "park" does not include outdoor areas adjacent to community centers not otherwise located within a City park, or property owned by school districts even if the property is used by the City for recreational purposes.
16. "Paseo" means a mall designed and used for pedestrian passage between two or more parallel streets and which is owned or controlled by the City. The definition of "paseo" includes any adjacent sidewalks.

17. “Permittee” means a person, company, corporation or entity that is given a permit or permission to hold a Special Event.
18. “Permit Applicant” means a person, company, corporation or entity that applies for a permit.
19. “Plaza” means a public square or similar open area in the downtown which is owned or controlled by the City. The definition of "plaza" includes any adjacent sidewalks.
20. “Public Right-Of-Way” means any street, alley, or similar parcel of land, which is deeded, dedicated, or otherwise permanently appropriated to the public for public use.
21. “Regulations” means the policies, rules and regulations mandated by the City which govern the Special Event Permit and use of City sidewalks, streets, plazas, paseos, and parks.
22. “Simple Assembly” means a gathering of persons at a park, plaza or paseo that does not include any of the following:

    a) The placement or erection of equipment or temporary structures other than one portable table and two chairs; or

    b) Activities referenced in Section XI-10-15.04 (23) (c) of this Code.

    c) For purposes of illustration, a simple assembly can be a large gathering of one hundred fifty (150) persons; no equipment or structures (other than a table and two chairs) are placed or erected; and the other activities (i.e., cooking, sale or public distribution of food and commercial merchandise) are not involved. Nothing herein prevents the use of handheld equipment, including a loudspeaker, and handheld signs at a simple assembly.

23. “Special Event” means an outdoor event that consists of any of the following:

    a) A parade or assembly consisting of persons, animals, vehicles, or any combination thereof, which is to intended to assemble or travel in unison on any street and which does not comply with applicable traffic regulations, laws, or controls;

    b) An organized assemblage of one hundred fifty (150) or more persons at a plaza or park, or seventy-five (75) or more persons on a paseo, or any assemblage that exceeds the maximum capacity of the plaza, park or paseo facility gathered for a common purpose under the direction or control of a person or organization; or

    c) An activity or event on a public right-of-way, plaza, paseo, park or private property which involves:

        i. The placement or erection of equipment or temporary structures other than one portable table and two chairs, including but not limited to a booth, tent, canopy, stage, barricade, fencing, generator, heating equipment, sound amplifier, vehicle or float;

        ii. The use of live animals, fireworks, pyrotechnics, electrical power and/or cabling, or equipment or materials that can create a risk of damage to public or private property or injury to persons;

        iii. Cooking or the sale, preparation for sale or commercial distribution of food or beverages;

        iv. The sale of commercial merchandise.

    d) An activity which involves blocking off a street or other use of a street which obstructs the normal traffic thereon.

    e) Examples of Special Events include, but are not limited to, concerts, parades, carnivals, fairs, festivals, block parties, public dances, street fairs, community events, sporting or athletic events, parties, meals, food truck gatherings, celebrations and receptions.

    f) For definitions of “Major” or “Minor” Special Events, see Table XI-10-15.03-1: Review Requirements for Special Events.

24. “Special Event Permit” means a permit issued pursuant to this Section, which authorizes the holder to conduct a Special Event at a Special Event Venue in accordance with its terms and conditions. A Special Event Permit includes a Temporary Street Closure Permit, Temporary Assembly Permit, Business License, and any outside

agency regulatory permits that may be required for the operations and activities for the aforementioned Special Event.

25. “Special Event Venue” means the outdoor area (i.e., private property, street, park, paseo, or plaza) for which a Special Event Permit has been issued.
26. “Street” means a public or private right of way used for vehicular traffic that is owned, controlled or maintained by the City. The definition of "street" includes the entire street right-of-way inclusive of any and all adjacent sidewalks.
27. “Temporary Street Closure Permit” means a permit issued by the Chief of Police of the Milpitas Police Department or designee to conduct a special event on a public street.
28. “Temporary Assembly Permit” means a permit that is issued by the City of Milpitas Fire Marshal for the temporary assembly of fifty (50) or more people associated with a Special Event.
29. “Temporary Collection Service Agreement” means an agreement between the Permittee and City’s public service provider for the trash and recycling collection.
30. “Written Request” means written, typed or email correspondence submitted by the applicant to the Director or Designee. Text messages are not included.

XI-10-15.05 - Permit Required

No person, company, corporation or entity shall conduct or cause to be conducted, participate or engage in, hold, manage, permit, or allow another to conduct a Special Event in, on or upon any street, paseo, plaza or park unless authorized to do so as follows:

A. By this Section or otherwise by this Code;

B. Pursuant to the terms of a permit, lease or contract which has been entered into by the City in accordance with the provisions of this Code or as specifically authorized by the City Council; or

C. In accordance with a Special Event Permit.

XI-10-15.06 - Exceptions to Permit Requirement

Notwithstanding any other provision of this Chapter, the following activities are exempt from the Special Event Permit requirement:

A. Activities on a street conducted by a governmental agency acting within the scope of its authorized functions;

B. A simple assembly on an area of a plaza or park that is open to the public and which has not been reserved for use, provided that the assembly meets the definition of “Simple Assembly” herein and remains in compliance with all regulations applicable to the plaza or park, including but not limited to the capacity limits of the applicable area of the plaza or park.

C. Park rental for the purpose of private party not open to the general public.

D. Private small gatherings and parties typically held at home that do not involve amplified sound and are not incompatible with the generally intended use of the property and have no impact on the neighborhood or community.

E. First Amendment events planned in response to a contemporaneous public event or decision which could not have been known in advance. However, the person conducting, organizing or sponsoring the First Amendment event shall, if practicable, provide notice to the Milpitas Police Department no later than forty-eight (48) hours prior to the commencement of the First Amendment event if there is any possibility that the event will interfere with the flow of traffic.

XI-10-15.07 - Issuance of Special Event Permits

A. The Director or designee is authorized to issue Special Event Permits consistent with Table XI-10-15.03-1. (Review Requirements for Special Events)

B. Special Event Permits are issued on a first-come, first-served basis to applicants who comply with the permit application procedure and requirements set forth in XI-10-15.13 (Permit Application Filing Time) and the regulations issued under this Section.

C. The Director or designee may condition any permit issued pursuant to this Section with reasonable requirements concerning the time, place or manner of holding the Special Event as is necessary to coordinate multiple uses of public property, assure preservation of public property and public spaces; prevent dangerous, unlawful or prohibited uses, protect the safety of persons and property and to control vehicular and pedestrian traffic in and around the venue, provided that such requirements shall not be imposed in a manner that will unreasonably restrict expressive or other activity protected by the California or United States Constitutions. Conditions may include, but are not limited to, the following:

1. The establishment of an assembly or disbanding area for a parade or like event;
2. The accommodation of a Special Event's pedestrian and vehicular traffic, including restricting events to City sidewalks, portions of a street, or other public right-of-way;
3. Conditions designed to avoid or lessen interference with public safety functions and/or emergency access;
4. The number and type of vehicles, animals, or structures to be displayed or used in the conduct of the Special Event;
5. The written representation of the Special Event applicant that any stages, booths, floats, structures, vehicles or equipment to be used or operated during the Special Event are safely constructed and can be safely operated, and conform to the requirements of all applicable codes;
6. A cleaning and repair deposit if the event includes the placement of a booth, tent, canopy, stage, barricade, fencing, generator, heating equipment, float, vehicle, portable restrooms, dumpsters, carnival rides, or any structure or equipment on the public right-of-way or within a public paseo, plaza, or park that requires a permit or approval from the City;
7. Display or use of animals;
8. Operation of water stations;
9. Application of materials on City property;
10. Use of fireworks, pyrotechnics, or equipment or materials that create substantial risk of damage to City property;
11. Sporting events on non-athletic fields;
12. Cooking, preparation for sale, or sale of food or beverage;
13. The provision and use of traffic cones or barricades or traffic control personnel;
14. The provision or operation of first aid stations or sanitary facilities, including sanitary facilities with disabled access;
15. The provision of a waste and recycling management plan, and the clean-up and restoration of the site of the Special Event;
16. The use of sound amplification equipment, and restrictions on the amount of noise generated by motors and other equipment used in the course of the Special Event;
17. The manner of providing notice of permit conditions to Special Event vendors or participants and community notice of the Special Event to those businesses or residents who may be directly affected by the conduct of the event;
18. The provision or use of emergency services;
19. The reasonable designation of alternate sites, times, or dates;

20. The obtaining of any and all business licenses or other necessary permits required by local and State governmental agencies for the sale or distribution of food, beverage or other goods or services at the Special Event;

21. The manner by which alcohol sales and service, if any, shall be conducted at the Special Event;

22. The precautions necessary for the protection of wildlife, native plants and sensitive habitats, streams, lakes and waterways within or adjacent to the Special Event.

XI-10-15.08 - Rules and Regulations

A. The Director is authorized to promulgate rules and regulations consistent with this Section, and to place reasonable time, place and manner conditions, consistent with this Section, on Special Event Permits, including without limitation, limits on the number of permits issued per month, the duration of a permit or event, and the times the Special Event Venue is available for event reservation as reasonably necessary to avoid adverse impacts on the community. Nothing herein limits the authority of the Director of Public Works, City Traffic Engineer, Fire Marshal, Chief of Police and/or Recreation Services Manager, to issue regulations applicable to parks, public right-of-ways, and/or private property.

B. It shall be unlawful to disobey or fail to follow regulations adopted pursuant to this Section, or any other rule, regulation, or lawful direction promulgated or made by the Director, of which such person has actual notice, however given, or as to which constructive notice has been given by appropriate sign or notice at the Special Event Venue.

XI-10-15.09 - Fees and Charges

A. An applicant for a Special Event Permit shall pay all fees, deposits and applicable City charges in the amounts and at the prescribed time, as set forth by resolution of the City Council.

B. Applications which do not adhere to the application filing time requirements in Section XI-10-15.13 (Permit Application Filing Time) may be subject to additional fees arising as a direct result of the late application. Upon conclusion of the Special Event, the City shall send an invoice to the Permittee for all fees and charges still due to the City, for the cost of services provided by the City departments and for the cost to the City of any cleaning and/or repairs to the Special Event Venue made necessary by the Permittee’s use. Permittee shall be responsible for the actual costs of cleaning and repairs made necessary by the Permittee's use of the Special Event Venue.

C. Any person who conducts, organizes, sponsors or produces a Special Event without obtaining a permit in violation of this Section shall be responsible for the actual costs of cleaning and repairs to the Special Event Venue and City departmental service charges incurred in connection with or due to the unpermitted Special Event.

D. Any indigent natural person who intends to engage in a First Amendment event who cannot afford to pay a permit fee shall not be required to pay the fee. Application for indigent status shall be made at the time of permit application and shall be accompanied by such relevant information and documentation as the Director determines is reasonably necessary to verify such status. Nothing herein shall exempt an indigent natural person from the requirement to apply for and obtain a permit under this Section.

XI-10-15.10 - Indemnification and Hold Harmless

A. Except as set forth in Subsection B below, each Permittee to whom a Special Event Permit has been granted must agree in writing to indemnify and hold the City, its officers, agents and employees, harmless from and against any and all liability and losses incurred from the conduct of Permittee or its officers, employees, and agents.

B. The requirement set forth in this Subsection shall not apply to:

1. Special events that are First Amendment events, unless Permittee has elected to provide indemnification to the City in accordance with Subsection A above in lieu of providing the insurance required in Section XI-10-15.11 (Insurance Requirement) below; and
2. Activities referenced in Section XI-10-15.06 (Exceptions to Permit Requirement) of this Code.

XI-10-15.11 - Insurance Requirements

A. As a condition of the Special Event Permit, the Permittee shall provide the Director with proof of insurance no later than eight (8) business days prior to the Special Event, which insurance shall remain in full force and effect throughout the term of the Special Event Permit. The following are excepted from the requirements of this Subsection:

1. Any Special Event where the requirement for insurance is prohibited by law;
2. Any Special Event where exemption is obtained as provided in Subsection XI-10-15.06;
3. First Amendment events that do not present any objective, substantial risk, hazard, or danger to the public health and safety, as identified by the City Manager, who shall consider the reasonably foreseeable consequences of the event. Applicants seeking approval of First Amendment events which, due to their design or schedule, do present an objective, substantial risk, hazard, or danger to the public health or safety, must either comply with the insurance requirements of this Section XI-10-15.11 or enter into a hold harmless agreement as set forth in Section XI-10-15.10 above; or
4. Special Events permitted under this Section that do not involve:
   a) The placement or erection of stages, barricades, fencing, booths, tents, canopies, floats, vehicles, generators, heating equipment, portable restrooms, dumpsters, carnival rides, or any structure or equipment requiring a permit or approval from the Building and Fire Department; and
   b) The other activities referenced in Section XI-10-15.06 (Exceptions to Permit Requirement) of this Code.

B. Notwithstanding the timeframe set forth in Section XI-10-15.13 (Permit Application Filing Time), if an application for a Special Event Permit is submitted to the City less than fourteen (14) days prior to the Special Event under this Section, the Permittee shall provide the Director with proof of insurance as prescribed in the regulations no later than eight (8) calendar days prior to the Special Event.

XI-10-15.12 - Permit Application

A. An applicant for a Special Event Permit shall file an application on a form provided by the Director, which shall contain all of the following information:

1. The name, address, email, and telephone number of the applicant.
2. A narrative description of the proposed Special Event, including:
   a) The name of the proposed Special Event;
   b) Expected attendance numbers;
   c) A description of any proposed food, beverage or alcohol service;
   d) The schedule of events to be included in the activity;
   e) A solid waste handling plan;
   f) A security plan and/or public safety plan when required by the regulations;
   g) A traffic handing and parking plan;
   h) A pedestrian circulation plan;
   i) A temporary event signage plan.
3. The address of the proposed Special Event Venue and the specific area or areas therein which will be utilized in connection with the Special Event;

4. A detailed drawing depicting the layout of the proposed activity, including the number and location of any booths, cooking equipment, tables, canopies, stages, fencing, waste receptacles, signage, generators, and any other event equipment proposed to be placed at the Special Event Venue;
5. The date(s) and the specific times requested for use of the Special Event Venue;
6. The approximate number of vendors, if any;
7. For parades:
   a) The parade route to be followed;
   b) Start and termination points;
   c) The location of assembly and disbanding areas; and
   d) The maximum length of the parade components in miles or fractions thereof.
8. A certification that the applicant shall be financially responsible for any City fees, departmental service charges or costs that may lawfully be imposed for the Special Event;
9. The name, address, e-mail address and telephone number of the person to be contacted regarding the application or permit and, if different, the person to be contacted on the date or dates of the Special Event; and
10. The types of City services, if any, which are requested by the applicant.
11. Outside Agency and/or third party approvals.

B. An application shall not be complete until the applicant submits the permit fee as prescribed by the schedule of fees schedule established by City Council Resolution.

XI-10-15.13 - Permit Application Filing Time

A. A completed application for a Minor and Major Special Event shall be filed not less than seventy (70) business days before the proposed date of the Special Event.

B. For an event that requires a street closure on more than one public street, requires significant detouring which affects significant number or businesses or residences, or requires an encroachment permit from Caltrans, a Special Event Permit shall be filed not less than one hundred eighty (180) business days before the proposed date of the Special Event.

C. For First Amendment events not otherwise exempted from the Special Event permit requirement by Section XI-10-15.06 above, as well processions or parades that do not involve street closures, vehicles, floats, or use of equipment other than hand-held equipment, an application for a Special Event Permit shall be filed not less than fourteen (14) business days before the proposed date of the Special Event.

D. Permit applications which do not adhere to the application filing time requirements in this Section may be subject to additional fees arising as a direct result of the late submission of a Special Event Permit application. The Director shall have the authority to consider, grant or deny any application for a Special Event Permit which is filed later than the time prescribed in this Section.

XI-10-15.14 - Timeframe for Permit Decision and Permit Approval Criteria

A. The Director or designee shall approve, conditionally approve, or deny the application for a Special Event no later than twenty (20) business days after the receipt of a complete application for a Special Event.

B. The Director or designee shall approve or conditionally approve a Special Event Permit application under this Section if the Director finds that the following criteria have been met:

1. The proposed use of the property is not governed by or subject to any other permit procedures provided elsewhere in this Code or other applicable laws, rules or regulations which have not been completed at the time the Special Event Permit application is submitted;
2. With sufficient traffic controls and conditions, the Special Event will not create a threat to public safety;

3. In order to protect the health and safety of the public, the Special Event will not conflict with construction in the public right-of-way or at a public facility;

4. The Special Event will not require the diversion of public safety or other City employees from their normal duties so as to unreasonably reduce adequate levels of service to any other portion of the City;

5. The concentration of persons, animals or vehicles will not unreasonably interfere with the movement of police, fire, ambulance, and other public safety or emergency vehicles on the streets;

6. The Special Event will not unreasonably interfere with any other Special Event for which a permit has already been granted or with the provision of City services in support of other scheduled events or scheduled government functions;

7. The proposed use, event or activity will not have a significant adverse environmental impact;

8. The proposed use, event or activity does not present a substantial or unwarranted safety, noise or traffic hazard;

9. The proposed Special Event will be consistent with the regulations established for each potential venue with regard to:
   a) Size;
   b) Type of activity;
   c) Available time period; and
   d) Frequency of events.

10. For parades, the parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays en-route in order to limit the impacts on the flow of traffic through the City; and

11. The proposed Special Event does not meet the grounds for denial or revocation specified in Section XI-10-15.15 (Permit Denial or Revocation).

C. In determining whether to approve a permit application, no consideration may be given to the message of the event, the content of the speech, the identity or associational relationships of the applicant or its members or affiliates, or to any assumptions or predictions as to the amount of support or hostility which may be aroused in the public by the content of the speech or the message conveyed during the event.

D. The Director may condition any permit with reasonable requirements, as outlined in Section XI-10-15.07 (Issuance of Event Permits), and applicants may be required to pay permit fees and deposits, as outlined in XI-10-15.09 (Fees and Charges).

E. The Special Event Permit shall not be issued until the applicant has paid all required fees and deposits.

XI-10-15.15 - Permit Denial or Revocation

A. The Director or designee shall deny an application for a Special Event Permit or revoke a Special Event Permit if the Director finds any of the following:

1. Fraud, misrepresentation or any false statement contained in the application for a Special Event Permit, including without limitation, in carrying out the Special Event in a way not consistent with the application;

2. Failure to comply with the provisions of this Section or the regulations;

3. Failure to comply with the conditions of the Special Event Permit, including without limitation, failure to timely pay applicable fees and City charges, provide indemnification or insurance certificate or security deposit within the times required, or failure to comply with all other permit requirements, licensing requirements, or regulations required to conduct the activities described as part of the Special Event in the permit application or any amendment thereto;

4. The Special Event Venue or any substantial portion thereof is not available due to fire, casualty, act of God, emergency maintenance activity or public emergency;
5. The proposed event will conflict with a previously scheduled event organized by the City for use of the Special Event Venue, or with a Special Event or other permitted use previously approved to be held at the Special Event Venue;
6. The proposed event, as designed, will unreasonably impede, obstruct, impair or interfere with reasonable access to adjacent properties and the applicant will not agree to redesign the proposed event so as to allow reasonable access to the adjacent properties;
7. The Special Event Venue, including but not limited to the proposed areas for assembly or disbanding of parades, cannot physically accommodate the number of participants expected to participate and/or the items necessary or proposed to support the event;
8. The proposed activity or event will violate a federal, State or local law or regulation;
9. One or more of the approval criteria specified in Section XI-10-15.14 (Timeframe for Permit Decision and Permit Approval Criteria) is not met;
10. The requirements specified in Section XI-10.15.13 (Permit Application Filing Time) are not met.

XI-10-15.16 - Final Permit Approval

A. If the Director or designee has issued a Conditional Special Event Permit, the Permittee shall submit the final event plans and demonstrate all permit conditions have been satisfied at least ten (10) business days prior to the event. If the Permittee does not submit verification that the permit conditions have been met within the applicable deadline specified in this Subsection, the Special Event Permit will be deemed revoked.

B. Upon receipt of the final event plans and verification that permit conditions have been met consistent with Section XI-10-15.14 (Timeframe for Permit Decision and Permit Approval Criteria) above, the Director or designee shall issue written confirmation that such conditions have been met in the form of a final Special Event Permit or other written confirmation. The final Special Event Permit or confirmation shall be issued no later than five (5) business days after receipt of the final event plans and verification of compliance with permit conditions or two (2) business days prior to the first day of the Special Event, whichever occurs earlier.

C. At the discretion of the Director or designee an extension of the deadline for submission of final event plans or verification of permit conditions may be granted.

XI-10-15.17 - Notice of Decision

A. The Director or designee shall notify an applicant or Permittee in writing of the decision to approve, conditionally approve, or deny the application for a Special Event Permit or to revoke a Special Event Permit, in the event that the revocation is prior to the date of the proposed activity.

B. The notice of decision shall state any conditions required, the reasons for the conditions, or the grounds for denial of the application or revocation of the Special Event Permit. The notice shall notify the applicant or Permittee of the hearing opportunity pursuant to Section XI-10-15.18 (Hearing).

C. Notification shall be deemed satisfied and issued when the notice is placed, postage prepaid, in the United States mail, and addressed to the applicant at the address shown on the permit application.

D. Except as set forth in Subsection F, a written request for a hearing must be received no later than ten (10) calendar days after the date of the notice of decision.

E. If the notice of decision to deny, revoke or impose conditions on a Special Event Permit is issued five (5) or fewer business days prior to the proposed event, the notice of decision shall notify the applicant or Permittee of the time, date and location of the hearing.

F. Notwithstanding any other provision of this Subsection XI-10-15.17, if a notice of decision to deny or revoke a Special Event Permit issued for a First Amendment event less than thirty (30) calendar days from the date of the proposed event, any appeal from said decision shall proceed immediately to a court of competent

jurisdiction. The notice of decision shall become final unless a written request for hearing is received within the time limits set forth in this Subsection.

XI-10-15.18 - Hearing

A. Upon receipt of a timely written request for a hearing as outlined in Section XI-10-15.17 (Notice of Decision), the Director shall schedule a hearing before a hearing officer and shall promptly notify the applicant or Permittee of the hearing date, time and location.

B. At the hearing, the applicant or Permittee may present any relevant evidence. The appeal will be conducted informally; no formal rules of evidence shall apply. The applicant or Permittee may be represented by any person.

C. After closing the hearing, the hearing officer shall give a decision sustaining, reversing or modifying the decision to deny or revoke the Special Event Permit or specific permit conditions. A written notice of final decision shall be placed, postage prepaid, in the United States mail, addressed to the Permittee or applicant at the address shown on the permit application.

D. The decision of the hearing officer shall be final.

XI-10-15.19 - Display of Permit

A copy of the Special Event Permit shall be exhibited upon demand of any City Official.

XI-10-15.20 - Permit Amendment

A. If a Permittee desires to change the location, time, or duration or other significant aspect of the description of an event subject to a Special Event Permit, the Permittee shall apply for an amendment to the Special Event Permit.

B. A Special Event Permit amendment application must be filed with the Director no later than fifteen (15) business days in advance of the Special Event.

C. The Director shall grant, deny, or approve with modifications, the Special Event Permit amendment no later than seven (7) business days of receipt of the amendment application.

D. The provisions set forth in Section XI-10-15.17 (Notice of Decision), Section XI-10-15.18 (Hearing) and Section XI-10-15.19 (Display of Permit) shall apply to all applications for Special Event Permit amendments.

XI-10-15.21 - Immediate Revocation - Conditions

Any Special Event Permit may be revoked on the day of the Special Event without prior written notice and without a hearing, if the City Council, the City Manager, the Director, the Fire Marshal or the Chief of Police, or their authorized designees, determines that:

1. Revocation is in the interest of the immediate public health or safety because of fire, casualty, act of God or a public emergency; or

2. The Permittee is in violation of the provisions of this Section, the regulations, or the terms of the Special Event Permit.

The grounds for revocation shall be communicated at the time notice is provided. The Permittee, immediately upon receipt of the notification that the Special Event Permit has been revoked, shall cease the activity and shall commence with restoring the Special Event Venue to its condition prior to the activity.

XI-10-15.22 - Interference with Event

A. It shall be unlawful for a person to place any booth, table, chair, stool, structure, vehicle, or piece of equipment in any area for which a Special Event Permit has been issued, without the consent of the Permittee.

B. This Subsection shall not apply to persons acting under the direction and control of the City.

Subsection F of XI-10-24 entitled “Signs” of the Milpitas Municipal Code is amended as follows:

XI-10-24.04 – Signs Subject to Review

F. Standards for Specific Types of Temporary Signs.

1. Balloon Sign. A balloon sign shall be allowed pursuant to the provisions of a temporary promotional sign for the following:

a. Community-wide events (an event that either promotes and/or benefits the entire City and has been approved through the Special Events and Activities process in Section 15, of this Chapter (such as Art and Wine Festival, Harvest Festival and the like) or when the City has authorized a public street closure for an event).”

Table XI-10.57.04-1 of the Milpitas Municipal Code is amended to read as follows:

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.		
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	
Parking Structures	Section XI-10-53(H)(4), Parking	

	Structures	
Temporary Uses and Structures		
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.	
Exceptions to performance standards	See the zoning districts use standards in XI-10-05, Residential Zones, XI-10-06, Mixed Use Zones, and XI-10-07, Industrial Zones.	
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.

Table XI-10-64.02-1 entitled "Decision-Making Body and Role[1]" of the Milpitas Municipal Code is amended to read as follows:

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

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

Permits (Staff Review)						
Minor Site Development Permits (Planning Commission Subcommittee)	XI-10-57.03		Decision		Appeal	Appeal
Minor Site Development Permits (Staff Review)	XI-10-57.03	Decision			Appeal	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[3]	Appeal Decision[3]
Special Event Permits	XI-15.03	Decision		Appeal		
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 and Title I, Chapter 20, of the City's Municipal Code.

[2] Includes Home Occupation Permits (Section XI-10-13.05), Minor Site Development Permits (Section XI-10-57.03) 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] Refer to Section XI-10-45.09 regarding the process for projects within the "H" Hillside Overlay District.

SECTION 4. 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 5. 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.