

REGULAR

NUMBER: 38.828

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE ZONING CODE CONTAINED IN TITLE XI, CHAPTER 10, SECTION 6.04 OF THE MILPITAS MUNICIPAL CODE TO ALLOW A DECREASE IN DENSITIES FOR LOTS LESS THAN 20,000 SQUARE FEET IN SIZE AND LOCATED IN THE "MIXED-USE" ZONING DISTRICT

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of February 7, 2017, upon motion by Vice Mayor Grilli, 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

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, on August 17, 2016, the City initiated a request to amend the text within the General Plan and Zoning Code (the “Project”) to incorporate the allowance of a reduction of multi-family residential units for parcels less than 20,000 square feet located within areas that have a General Plan designation of “Mixed-Use” and a zoning designation as “MXD” in order to create consistency with density exceptions allowed in “Mixed-Use” and “MXD” designated parcels currently located in the specific plan areas; and

WHEREAS, the Planning Division completed an environmental assessment for the proposed action in accordance with the California Environmental Quality Act (“CEQA”), which assessment determined that the proposed project is exempt from CEQA review pursuant to Section 15061(b)(3) “General Rule Exemption” of the CEQA Guidelines; and

WHEREAS, on December 14, 2016, the Planning Commission held a duly-noticed public hearing to consider General Plan Amendment No. GP16-0001 and Zoning Code Amendment No. ZA16-0001. At the conclusion of the public hearing, the Planning Commission adopted a resolution recommending that the City Council approve General Plan Amendment No. GP16-0001 and adopt an ordinance for a Zoning Code text amendment No. ZA16-0001; and

WHEREAS, Zoning Amendment No. ZA16-0001 proposes text changes within Title XI, Chapter 10, Section 6 (Mixed-Use Zones and Standards) of the City of Milpitas Municipal Code; and

WHEREAS, General Plan Amendment No. GP16-0001 proposes an amendment of the text within the Land Use Element section of the City of Milpitas General Plan to allow a decrease in densities for lots less than 20,000 square feet bearing a “mixed-use” General Plan designation. Such proposed Amendment has been initiated by resolution for approval by the City Council, separate from this Ordinance; and

WHEREAS, per Milpitas Municipal Code § XI-10-57.02(G)(3), the City Council finds the Zoning Code text amendment set forth herein to be consistent with the General Plan, and specifically with guiding principles and policies 2.a-G-2 (*Maintain a relatively compact form. Emphasize mixed-use development to the extent feasible, to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.*), because the allowance of smaller lots to reduce density limits will allow projects that promote the blending of retail and commercial uses with residential to be appropriately scaled to individual parcels, instead of creating unrealistic residential unit counts that cannot be attained, and 2.a-G-3 (*Provide for a variety of housing types and densities that meet the needs of individuals and families.*) as allowing a reduction of units to be located on smaller lots will give the City the flexibility to craft a greater range of housing types to meet the needs of the variety of households that reside within the City of Milpitas, and 2.a-G-9 (*The city should make land use decisions that improve the City’s fiscal condition.*) because the promotion of mixed-use development increases the opportunity for increased sales tax revenue, which directly improves the City’s fiscal condition, and 2.a-G-11 (*Promote land use policy and implementation actions that improve the City’s fiscal sustainability. Maintain and enhance the City’s projected total net revenue through amendments made to the General Plan. Discourage proposed re-zonings or other discretionary land use actions that could significantly diminish revenue to the City or significantly increase the City’s service costs to the City without offsetting increases in revenue.*) because mixed-use development, by its mere design, creates service and resource efficiencies by placing residents in close proximity to goods and services, without requiring extensive City investment in expanding utilities and service areas; and

WHEREAS, per Milpitas Municipal Code § XI-10-57.02(G)(3), the City Council likewise finds that the Zoning Code text amendment set forth herein will not adversely affect the public health, safety and welfare, in that the effect would only occur in the MXD Zone and any reduced densities will continue to be in character with the surrounding neighborhood and/or adjacent lands and will have no obvious adverse effects upon the adjacent or surrounding properties; and

WHEREAS, on February 7, 2017, the City Council held a duly-noticed public hearing on the proposed action, and considered evidence presented by City staff and other interested parties; and

WHEREAS, the City Council finds that with the adoption of Zoning Code Amendment No. ZA16-0001 and General Plan Amendment No. GP16-0001, the Zoning Code and the General Plan will be 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, SECTION 6.04, TABLE XI-10-6.04-1

Title XI, Chapter 10, Section 6.04 (“Mixed Use Zone General Development Standards”), Table XI-10-6.04-1, Mixed Use Zone Standards, of the Milpitas Municipal Code is hereby amended to read as follows:

**Table XI-10-6.04-1
Mixed Use Zone Development Standards**

Standards	MXD	MXD2	MXD3
Non-residential lot area minimum	Individual sites shall be of such size that all space requirements provided in this section are satisfied.	Individual sites shall be of such size that all space requirements provided in this section are satisfied.	Individual sites shall be of such size that all space requirements provided in this section are satisfied.
Density, Minimum-Maximum Residential (Dwellings) ¹	21 min. 30 max. per gross acre. For additional standards refer to Section 6.04(C), Multi-Family Residential Density within the MXD, MXD2 and MXD3 zones	31 min. 40 max. per gross acre. For additional standards refer to Section 6.04(C), Multi-Family Residential Density within the MXD, MXD2 and MXD3 zones.	41 min. 60 max. per gross. For additional standards refer to Section 6.04(C), Multi-Family Residential Density within the MXD, MXD2 and MXD3 zones.
Front and Street-Side Yard Setback, Minimum	Refer to Section 6.04(D), Front and Street-Side Yard Setbacks.	Refer to Section 6.04(D), Front and Street-Side Yard Setbacks.	12 ft. min—20 ft. max For additional standards refer to Section 6.04(D), Front and Street-Side Yard Setbacks, of this chapter.
Interior-Side Yard Setback, Minimum ²	Ground Level Commercial Area: 0 ft. All other areas: 10 ft.	0 ft. Except when abutting residential use and for portions of buildings over 60 ft or four stories tall, where the interior side yards shall be a minimum of 10 ft.	10 ft. 15 ft. when abutting residential. 20 ft. for portions of buildings over 60 ft. or four stories tall.
Rear Yard Setback, Minimum ³	10 ft.	10 ft 15 ft. when abutting residential 20 ft. for portions of buildings over 60 ft or four stories tall.	15 ft. 20 ft. when abutting residential 30 ft. for portions of buildings over 60 ft. or four stories tall.
Floor Area Ratio, Non-Residential and Mixed Use projects	For buildings and portions thereof: .75 max.	1.5 max. Refer to Section 6.04(F), Floor Area Ratio, Non-Residential.	2.0 max. Refer to Section 6.04(F), Floor Area Ratio, Non-Residential.
Commercial Area,	Not Applicable	200 sq. ft. of retail, restaurant, or pedestrian-oriented	Not Applicable

Minimum		commercial service uses, allowed in Table 6-02-1, Mixed Use Zone Uses, must be provided for every unit, using the minimum density.	
Building Height ⁴	Principal building: 3 stories and 45 ft.	Principal building: 6 stories or 75 ft. Principal buildings with frontage along Great Mall Parkway: 12 Stories or 150 ft. Greater height, up to 20 stories may be allowed through the approval of a Conditional Use Permit.	Principal buildings: 12 stories or 150 ft. Greater height, up to 20 stories may be allowed through the approval of a Conditional Use Permit.
Landscaping	Refer to Section 6.04(G), Landscaping.	Refer to Section 6.04(G), Landscaping.	Refer to Section 6.04(G), Landscaping.
Parking	Refer to Section 53, Off Street Parking Regulations, of this Chapter.	Refer to Section 53, Off Street Parking Regulations, of this Chapter.	Refer to Section 53, Off Street Parking Regulations, of this Chapter.

¹ For MXD3 properties, density may be averaged over contiguous parcels.

² To mitigate the effects of adjacent service commercial or light industrial uses, increased setbacks and other measures, such as solid six-foot fence or masonry wall, shall be considered on a case by case basis by the Planning Commission during the Site Development Permit process, taking into consideration the nature of adjacent uses.

³ See Note 2 above.

⁴ Within the MXD zone, special architectural features, such as towers or corner elements may be up to 55 ft.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 6.04, SUBSECTION (C)

Title XI, Chapter 10, Section 6.04 (“Mixed Use Zones General Development Standards”), Subsection (C) of the Milpitas Municipal Code is hereby amended to read as follows:

C. Multi-Family Residential Density within the MXD, MXD2 and MXD3 zones.

1. MXD Standards.
 - a. The minimum number of multi-family residential units may be reduced for parcels less than twenty thousand (20,000) square feet.
 - b. In buildings which have ground floor retail, restaurant, child care, or commercial service uses as allowed in Table 6.02-1, Mixed Use Zone Uses, the square footage of said uses does not contribute to the density limits.
2. MXD2 Standards.
 - a. The minimum number of multi-family residential units may be reduced for parcels less than twenty thousand (20,000) square feet.
 - b. Units with four bedrooms shall be counted as one and one-half (1.5) units when calculating density.
 - c. In buildings which have ground floor retail, restaurant, child care, or commercial service uses as allowed in Table 6.02-1, Mixed Use Zone Uses, the square footage of said uses does not contribute to the density limits.
3. MXD3 Standards.

- a. Units with four bedrooms shall be counted as one and one-half (1.5) units when calculating density.
- b. In buildings which have ground floor retail, restaurant, child care, or commercial service uses as allowed in Table 6.02-1, Mixed Use Zone Uses, the square footage of said uses does not contribute to the density limits.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”) (Public Resources Code § 21000, *et seq.*, as further governed by the CEQA Guidelines, 14 CCR 15000, *et seq.*), pursuant to Section 15061(b)(3) of the CEQA Guidelines, as it can be seen with certainty that there is no possibility that these actions may have a significant effect on the environment. On the contrary, allowing residential development at lesser densities than would otherwise apply will reduce any impacts associated with such development. The City Council further finds that allowing this density reduction will not displace any development of residential units that might otherwise have been developed on lots of less than 20,000 square feet because the impracticalities of developing residential units in higher densities has the effect of discouraging any residential development on such lots, while allowing lower density development will keep residential development onsite.

SECTION 5. SEVERABILITY

The provisions of this Ordinance are severable, 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 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.