

RESOLUTION NO. 20-002

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING THAT THE CITY COUNCIL ADOPT CITY-INITIATED ZONING TEXT AMENDMENT NO. 20-002 TO REGULATE SHORT-TERM RENTALS OF RESIDENCES WITHIN THE CITY OF MILPITAS, AND MAKING CEQA FINDING OF EXEMPTION FROM ENVIRONMENTAL REVIEW PURSUANT TO CEQA GUIDELINES SECTIONS 15061(B)(3), 15183, AND 15308

WHEREAS, the City of Milpitas, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the growing popularity of “home-sharing” and other short-term rentals, through the use of websites such as Airbnb and HomeAway, allow homeowners, landlords, and tenants to list homes, apartments, and rooms for rent at the price and duration of their choosing; and

WHEREAS, short-term rentals may reduce the supply of permanent housing stock and negatively impact the character of residential neighborhoods due to excessive noise, disorderly conduct, overcrowding, traffic congestion, illegal parking, the accumulation of refuse, and other effects that are a threat to the public health, safety, or welfare; related the City has a legitimate interest in preserving the long-term housing stock of the City and maintaining the character of its residential neighborhoods; and

WHEREAS, the City prohibits any uses that have been excluded from the “use tables” found throughout Chapter 10 “Zoning” of Title XI “Zoning, Planning, and Annexation” of the Milpitas Municipal Code; and

WHEREAS, short-term rentals are not expressly permitted or conditionally permitted by the City’s zoning ordinance in any district, so they are currently prohibited in accordance with Chapter 10 “Zoning” of Title XI “Zoning, Planning, and Annexation” of the Milpitas Municipal Code; and

WHEREAS, the City Council intends to adopt a zoning ordinance permitting short-term rentals in zoning districts where residential uses are allowed, subject to the regulations contained in Chapter 10 “Zoning” of Title XI “Zoning, Planning, and Annexation” of the Milpitas Municipal Code; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to Section 2 “Definitions,” Section 4 “Residential Zones and Standards,” Section 6 “Mixed Use Zones and Standards, Section 13 “Special Uses”, and Section 53 “Off-Street Parking Regulations” of the Zoning Code (Article XI of the Municipal Code), attached hereto as **Exhibit A**; and

WHEREAS, the Planning Commission makes and accepts as its own the findings set forth in this Resolution; and

WHEREAS, the Planning Commission is an advisory body to the City Council; and

WHEREAS, the Planning Commission hereby finds and determines that the project is exempt from CEQA review, each as a separate and independent basis, pursuant to CEQA Guidelines section 15061(b)(3) (Common Sense Exemption), section 15183 (Project Consistent with a Community Plan, General Plan, or Zoning), and 15308 (Actions by Regulatory Agencies for Protection of the Environment); and

WHEREAS, on June 26, 2019, the Planning Commission held a duly-noticed public hearing on the subject application, at which all those in attendance were given the opportunity to speak on the Amendment; and

WHEREAS, on January 29, 2020, the Planning Commission held a second duly-noticed public hearing on the subject application, at which all those in attendance were given the opportunity to speak on the Amendment; and

WHEREAS, the Planning Commission has considered all of the written and oral testimony presented at the public hearing in making its decision; and

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

SECTION 1. Recitals.

The Planning Commission 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 Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. California Environmental Quality Act Findings

The Planning Commission recommends that the City Council find, under California Environmental Quality Act (“CEQA”) Guidelines Section 15061(b)(3) that the introduction and adoption of this Ordinance is not subject to review under CEQA. CEQA Guidelines Section 15061(b)(3), also known as the “common sense exemption,” states that CEQA only applies to projects that have the potential for causing a significant effect on the environment, and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. A “significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project. This Ordinance would create new zoning requirements for a use that is not currently regulated in Milpitas (short-term rentals) for the purpose of protecting environmental quality, public health, and public safety. Therefore, it can be seen with certainty that there is no possibility that the ordinance in question would have a significant effect on the environment. Accordingly, the ordinance is exempt from CEQA review.

Moreover, the Planning Commission recommends that the City Council find that the introduction and adoption of this Ordinance is not subject to CEQA pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). Section 15183 of

the CEQA Guidelines provides that projects that are consistent with a Community Plan, General Plan or Zoning for which an EIR has been certified “shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.” The proposed Amendment to permit and regulate short-term rentals is consistent with the Milpitas General Plan because it provides clear provisions for residents in Milpitas to have opportunities for ancillary income generation from short-term rentals and ensures the appropriate collection of transient occupancy taxes, which is consistent with Land Use Element 2.a-I-5 ([m]aintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints). Second, the Amendment is consistent with Housing Element Goal B-1 (Maintain High Quality Residential Environments) and Housing Element Goal B-2 (Preserve Housing Resources) because the Amendment aims to preserve the residential character of neighborhoods by establishing operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors. Further, the Amendment limits short-term rentals to single-family, two-family, and multi-family uses, thereby maintaining and preserving existing housing resources, including both senior housing units and below market units, while providing opportunities for additional income to property owners. Therefore, the proposed Amendment is consistent with the General Plan and is exempt from CEQA pursuant to Section 15183 of the CEQA Guidelines. There are no circumstances peculiar to the project or significant new or more severe impacts that were not analyzed in the General Plan CEQA analysis that require further environmental review.

The introduction and adoption of this Ordinance is also exempt under CEQA Guideline 15308 (Actions by Regulatory Agencies for Protection of the Environment). The Ordinance does not authorize any new construction, nor does it relax any standard resulting in environmental degradation, but rather imposes standards on short-term rentals to assure the maintenance, enhancement, and protection of the environment in the City.

Finally, none of the exceptions under CEQA Guidelines Section 15300.2 apply to the exemptions because the proposed ordinance will not result in a cumulative impact from successive projects of the same type in the same place, over time; the proposed ordinance is not an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances; the ordinance will not result in damage to scenic resources, including trees, historic buildings, rock outcroppings, or similar resources; the proposed ordinance will not apply to sites located on a hazardous resources; and the proposed ordinance will not cause a substantial change in the significance of a historical resource.

Accordingly, this Ordinance is exempt from CEQA review pursuant to Sections 15061(b)(3), 15183, and 15308 of the CEQA Guidelines, each as a separate and independent basis.

SECTION 3. Findings for Zoning Amendment (Milpitas Municipal Code, Subsection XI-10-57.02(G)(3))

The Planning Commission makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA19-0002:

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

The proposed zoning amendment supports several of the guiding principles and policies of the General Plan. First, the Amendment is consistent with Land Use Element 2.a-I-5 ([m]aintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints) because it provides clear provisions for residents in Milpitas to have opportunities for ancillary income generation from short-term rentals and ensures the appropriate collection of transient occupancy taxes. Second, the Amendment is consistent with Housing Element Goal B-1 (Maintain High Quality Residential Environments) and Housing Element Goal B-2 (Preserve Housing Resources) because the Amendment aims to preserve the residential character of neighborhoods by establishing operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors. Further, the Amendment limits short-term rentals to single-family, two-family, and multi-family uses, thereby maintaining and preserving existing housing resources, including both senior housing units and below market units, while providing opportunities for additional income to property owners. Therefore, the proposed Amendment is consistent with the General Plan.

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

The proposed Zoning Amendment will not adversely affect the public health, safety, and welfare due to regulations set forth that preserve residential character and establish operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors.

SECTION 4: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 20-002 recommending that the City Council adopt Zoning Text Amendment No. ZA19-0002 based on the above Findings.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on January 29, 2020.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on January 29, 2020, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Ricky Ablaza				
Tim Alcorn				
Sudhir Mandal				
Demetress Morris				
Bill Chuan				
Steve Tao				
Evelyn Chua				