

**REGULAR**

**NUMBER: 38.836**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTIONS 2, 7, 10, AND 13 OF CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO TEMPORARY PUBLIC FACILITIES**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_ 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**, 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**, California Government Code Section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

**WHEREAS**, the City has a need to establish a temporary fire station during the construction of a new permanent station, and has identified a suitable available property at 1126 Yosemite Drive, located in the Heavy Industrial (M2) zoning district; and

**WHEREAS**, the regulations for the M2 zoning district do not currently allow public service or public safety uses either on a short-term or long-term basis, and changes to the M2 zoning regulations are necessary in order to allow the operation of a temporary fire station, a critical public safety facility; and

**WHEREAS**, the City has prepared a Zoning Amendment (“Amendment”) to the City’s Municipal Code, including refinements to Section 2 (“Definitions”), Subsection 7.02 (“Industrial Use Regulations”), Subsection 10.02 (“Institutional Use Regulations”), and Subsection 13.11 (“Temporary Uses and Structures”) of the Municipal Code; and

**WHEREAS**, on June 26, 2019 the Planning Commission for the City of Milpitas held a lawfully noticed public hearing to solicit public comment and consider the proposed Amendment, take public testimony, and make a recommendation to the City Council on the project; and

**WHEREAS**, this ordinance is exempt from the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.*, each as a separate and independent basis, pursuant to CEQA Guidelines Section 15183 (projects consistent with the General Plan); Section 15301 (existing facilities) and Section 15061(b)(3) (no possibility of significant environmental effect).

**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. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that this ordinance is categorically exempt from the

California Environmental Quality Act (“CEQA”) under CEQA Guidelines, § 15061(b)(3), also known as the “common sense exemption”, which exempts from CEQA any project 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. 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 impose more restrictive land use regulations in the city’s industrial areas than those currently in effect, and further would create new zoning requirements for a use that is not currently regulated in Milpitas (mobile fueling) 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 this Ordinance would have a significant effect on the environment; accordingly, this Ordinance is exempt from CEQA review.

Moreover, the City Council hereby finds that the introduction and adoption of this Ordinance is categorically exempt from 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 Amendment to conditionally permit temporary public safety uses in industrial zones supports the Seismic and Safety Element goal of promoting high-quality, efficient fire protection services because it will allow operation of a temporary fire station in a suitable location during the construction of a permanent fire station in another location. Therefore, the proposed Amendment is consistent with the General Plan. Therefore, the proposed Amendment is consistent with the General Plan and is exempt from CEQA pursuant to Section 15183 of the CEQA Guidelines.

The introduction and adoption of this Ordinance is also exempt under CEQA Guideline 15301 (Existing Facilities). Section 15301 of the State CEQA Guidelines provides an exemption for “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.” Given that that the proposed ordinance would impose more restrictive regulations in the City’s industrial areas and would create new zoning requirements to uses not currently regulated, but would ultimately operate in existing public or private structures, facilities, mechanical equipment, the proposed ordinance is categorically exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines.

### **SECTION 3. GENERAL PLAN CONSISTENCY**

The proposed zoning amendment to conditionally permit temporary public safety uses in industrial zones supports the Seismic and Safety Element goal of promoting high-quality, efficient fire protection services because it will allow operation of a temporary fire station in a suitable location during the construction of a permanent fire station in another location. Therefore, the proposed Amendment is consistent with the General Plan.

**SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 2**

Title XI, Chapter 10, Section 2 “Definitions”, Subsection XI-10-2.03 “Definitions” of the Milpitas Municipal Code is hereby amended to add the following definitions to read as follows:

“Public Safety Use” means facilities for public safety or emergency services, including police and fire protection.

“Public Service Use” means facilities owned and operated by governmental agencies that provide services to the general public, including but not limited to federal, state and municipal administration buildings, courthouses, and post offices.

“Public Utilities” means facilities for the production, storage, treatment, transmission and/or distribution of electricity, natural gas, water, wastewater, and telecommunications and other similar essential services.

**SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 7**

Title XI, Chapter 10, Section 7 “Industrial Zones and Standards”, Subsection XI-10-7.02 “Industrial Use Regulations,” Table XI-10-7.02-1 of the Milpitas Municipal Code is hereby amended to read as follows:

Use	M1	M2	MP
<b>1. Commercial Uses</b>			
Adult Businesses <sup>1</sup>	P	P	NP
Business support services	P	P	P
Commercial services	P	P	P
Janitorial services	P	P	P
Office supplies	C	C	C
Printing (newspaper, blueprint, publishing)	P	P	C
Retail stores, general merchandise <sup>2</sup>	C	C	C
<b>2. Entertainment and Recreation Uses</b>			

Billiards	C	C	C
Commercial athletic facilities	C	C	C
<b>3. Health and Veterinarian Uses</b>			
Hospitals	NP	NP	C
Kennel	P	P	NP
Medical support laboratories	P	P	P
Medical and dental offices and clinics <sup>2</sup>	P	P	P
Veterinarian hospital	P	P	P
<b>4. Industrial Uses</b>			
Assembly from pre-processed materials <sup>3</sup>	P	P	P
Auto assembly facility	NP	P	NP
Bottling facility	P	P	NP
Building material sales (equipment rental) <sup>4</sup>	NP	C	NP
Commercial fueling facility	C	C	NP
Commercial laboratory	P	P	P
Contractor's yard and offices <sup>4</sup>	NP	C	NP
Distribution facility	P	P	P
Freight and trucking yard <sup>4</sup>	NP	P	NP
Mini-storage complex	C	C	NP
Plumbing, metalworking, glassworking or woodworking	P	P	NP

Plant or facility (research & development, assembly, manufacturing, packaging, processing, repairing, etc. or materials, merchandise or products)	P	P	P
Pottery or tile manufacturing	P	P	NP
Recycling processing facility	C	C	NP
Warehousing and wholesale	P	P	P
5. Lodging Uses			
Hotels/motels	C	C	C
6. Professional Office Uses			
Administrative, professional or research <sup>2</sup>	P	P	P
Financial institutions (banks, savings and loans, etc.)	C	C	P
7. Public, Quasi-Public and Assembly Uses			
Auditorium <sup>5</sup>	NP	NP	C
Conference center <sup>5</sup>	NP	NP	C
Vocational school	C	C	C
Farmer's market (not including flea market) <sup>6</sup>	NP	NP	C
Public utilities <sup>7</sup>	P	P	P
<u>Temporary Public Safety Uses<sup>8</sup></u>	<u>MC</u>	<u>MC</u>	<u>MC</u>
Transportation facility (taxi, parcel service, armored car, etc.) <sup>4</sup>	NP	P	NP
8. Residential Uses			
Caretaker's residence	C	C	NP
9. Restaurants or Food Service Uses			

Catering	P	NP	P
Restaurants			
With on-site service of alcohol	C	C	C
Without on-site service of alcohol	C	C	C
With live entertainment/dancing	NP	NP	NP
Drive-in or drive-thru	C	C	C
<b>10. Vehicle Related Uses</b>			
Auto junk yard <sup>4</sup>	NP	C	NP
Auto repair (tire, oil change, smog check, etc.) <sup>89</sup>	C	P	C <sup>11</sup>
Service stations (with or without repair or retail) <sup>89</sup>	C	C	C
With car wash	NP	NP	C
Vehicle sales and rental (auto, RV and truck-new and used in operable condition) <sup>4011</sup>	C	C	C <sup>109</sup>
Auto broker (wholesale, no vehicles on site) <sup>4412</sup>	MCS	MCS	MCS

<sup>1</sup> In accordance with the Title III, Chapter 4, Adult Business Ordinance and Subsection XI-10-13.04, Adult Businesses, of this Chapter.

<sup>2</sup> When found necessary to serve and appropriate to the industrial area.

<sup>3</sup> Assembling, packaging, or distribution from previously prepared materials, such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, electric or electronic instruments and devices such as television, radios, and pharmaceutical products.

<sup>4</sup> When conducted wholly within a completely enclosed building or within an area enclosed on all sides with a solid wall or fence (e.g. chain link with slats) not less than eight feet in height.

<sup>5</sup> Shall be ancillary to the primary use or associated with business or industrial uses.

<sup>6</sup> Refer to Subsection XI-10-13.10, Farmers Markets, of this Chapter.

<sup>7</sup> Includes service facilities, electric transmission and distribution substations and public utility service centers.

<sup>8</sup> See Subsection XI-10-13.11(G), Temporary Safety Uses

<sup>89</sup> Entrances to the service bays shall not be open to the street, but shall be so designed to face the rear or interior side property line.

<sup>910</sup> Within MP zones, rental and repair may be considered only when ancillary to new auto dealerships.

<sup>4011</sup> Within MP zones, boat and camper sales are prohibited. Dealerships shall be on property at least three acres or greater in area.

<sup>4412</sup> See Subsection XI-10-7.04, Industrial Zone Special Development and Performance Standards.

## **SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 10**

Title XI, Chapter 10, Section 10 “Special Uses”, Subsection XI-10-10.02 “Institutional Use Regulations,” Table XI-10-10.02-1 “Institutional Zone Uses” of the Milpitas Municipal Code is hereby amended to read as follows:

**Table 10.02-1  
Institutional Zone Uses**

Use	Institutional Zone
Correctional facility	C
Educational institutions : <sup>1</sup>	
Public colleges or universities	O
Private colleges or universities	C
Public schools	O
Farmer's market (not including flea market)	C
Government offices and related facilities (Federal, State and Local)	C
Hospital or sanitarium (Public) <sup>1</sup>	C
Library (Public)	C
Medical clinic or offices (Public)	C
Museum	C
Parks	C
<del>Public Utility or public service use or structure</del>	<del>C</del>
<u>Public safety uses</u>	<u>C</u>
<u>Public service uses</u>	<u>C</u>
<u>Public utilities</u>	<u>C</u>



Temporary seasonal sales <sup>2</sup>	P
Transportation facility	C

**SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13**

Title XI, Chapter 10, Section 13 “Special Uses,” Subsection XI-10-13.11 (I) (J) “Temporary Uses and Structures” of the Milpitas Municipal Code is hereby amended to read as follows:

I. Temporary Public Safety Uses. Temporary public safety uses may be conditionally permitted in the Industrial zoning districts, subject to the following provisions:

1. Interim Status. Public safety uses approved on a temporary basis are intended to serve a critical interim need only, such as during construction of a permanent facility in another location.
2. Time Limit. Temporary public safety uses shall be limited to a total of two (2) years. Two separate extensions, up to six months each, may be granted at the discretion of the Planning Director.
3. Review Procedures. Temporary public safety uses shall require approval by staff pursuant to the Minor Conditional Use Permit procedure set forth in Section XI-10-57.04.
4. Upon expiration of the approved term of the temporary public safety use, all building and site improvements associated with the temporary use shall be removed and the facility shall be restored to its prior condition.
5. As a condition of approval of a Minor Conditional Use Permit for a temporary public safety use, the City may require the permittee to post a surety bond and/or provide other security in an amount determined by the City. The security shall be of sufficient amount to ensure compliance with the conditions of the permit and this chapter.

J. 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.

## **SECTION 8. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision, or part has no effect on the validity of the remainder.

## **SECTION 9. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The City Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.