

REGULAR

NUMBER: 38.834

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTIONS OF CHAPTER 10 OF TITLE V OF THE MILPITAS MUNICIPAL CODE ESTABLISHING AN ADMINISTRATIVE HEARING PROCESS AND DISCONTINUING THE PLANNING COMMISSION SUBCOMMITTEE

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of June 18, 2019, upon motion by Councilmember Phan, 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, in late 2018, the City retained the Matrix Consulting Group to assess the organizational structure, staffing levels, service delivery, and user fees related to the development review, permitting, and inspection process; and

WHEREAS, City staff and the Matrix Consulting Group presented the report's analysis and recommendations to City Council on April 16, 2019; and

WHEREAS, one of the recommendations in the report for the Planning Department is to designate a member of the Planning Department staff as a zoning hearing officer, also known as a zoning administrator, and the City has determined that an appropriate designation would be the Planning Director or his or her designee; and

WHEREAS, a zoning administrator would streamline the review process for minor entitlement applications that currently require Planning Commission Subcommittee approval. Moreover, the zoning administrator would conduct public hearings on a regular basis for the review and subsequent approval or denial of minor entitlement applications, providing greater flexibility and frequency of hearing dates and reducing processing times of minor entitlement applications; and

WHEREAS, on April 16, 2019, the City Council considered the report prepared by the consultant and directed staff to prepare a zoning ordinance to implement the report's recommendation; and

WHEREAS, the City has prepared a Zoning Amendment ("Amendment") to the City's Municipal Code, including refinements to Section XI-10-2 ("Definitions"), Section 13 ("Special Uses"), Section 15 ("Special Events and Activities"), Section 24 ("Signs"), Section 53 ("Off-Street Parking Regulations"), Section 55 ("Exceptions"), Section 57 ("Applications"), and Section 64 ("Development Review Process"); and

WHEREAS, on May 22, 2019, the Planning Commission of 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 proposed Amendment.

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 has been assessed in accordance with the California Environmental Quality Act (Cal. Pub. Res. Code, § 21000 et seq.) ("CEQA") and the State CEQA Guidelines (14 Cal. Code Regs., § 15000 et seq.) and is categorically exempt from CEQA under CEQA Guidelines, § 15061(b)(3), 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. This Ordinance would establish an administrative hearing process, but would not permit any particular project. Therefore, it can be seen with certainty that there is no possibility that the Ordinance in question may have a significant effect on the environment; accordingly, the Ordinance is categorically exempt from CEQA.

Moreover, this Ordinance is not a "project" under CEQA per Section 15378(b)(5) of the CEQA Guidelines. Section 15378(b)(5) of the CEQA Guidelines excludes from the definition of "project" "[o]rganizational and administrative of governments that will not result in direct or indirect physical changes in the environment." The subject of this Ordinance is the establishment of the zoning administrator and discontinuance of the Planning Commission Subcommittee, which is

both an organizational and administrative change. Further, this Ordinance would not permit any particular project and, therefore, would not result in direct or indirect physical changes in the environment. Therefore, this Ordinance is not a “project” under CEQA Guidelines Section 15378 and, accordingly, is exempt from CEQA review.

SECTION 3. GENERAL PLAN CONSISTENCY

The proposed Zoning Amendment to establish a zoning administrator is an implementation action that will improve the City’s fiscal sustainability because it will reduce expenses for the applicant and the City by reducing the timeline associated with application processing and the corresponding reduction in permitting costs. This is consistent with Land Use Guiding Principle 2.a-G-11, which aims to promote land use policy and implementation actions that improve the City’s fiscal sustainability. Establishing a zoning administrator will not conflict with or impede achievement of any of the goals, policies, or land use designations established in the General Plan. Therefore, this Zoning Amendment to establish the zoning administrator is consistent with the General Plan, specifically, Land Use Guiding Principle 2.a-G-11

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

The following entries in Title XI, Chapter 10, Section 2 “Definitions,” Subsection XI-10-2.02 “General Definitions,” of the Milpitas Municipal Code are hereby amended to read as follows:

- L. The words "Planning Commission" or "Commission" shall mean the City Planning Commission.
- M. The word "Council" shall mean the City Council, the governing body of the City.
- N. The word "City" shall mean the City of Milpitas.
- O. The word "County" shall mean the County of Santa Clara.
- P. The word "State" shall mean the State of California.
- Q. The words "Zoning Ordinance" or "this Chapter" or "Zoning Code" shall mean Title XI, Chapter 10 of the Municipal Code of the City.
- R. The words "General Plan" shall mean the General Plan of the City.
- S. The word "code" shall mean the municipal code of the City.
- T. Unless otherwise indicated, reference in this Chapter to whole numbers of sections includes all of the decimal-numbered paragraphs listed under such whole number section; i.e., a reference to Section 1.00 includes Subsections 1.01, 1.01-1 where the same are applicable.
- U. The word "lot" includes "plot".
- V. The word "building" includes "structure" except as specified.
- W. The words "Enforcement Officer" mean that person or persons specifically designated by the City Manager to enforce the provisions of this Chapter.
- X. The words “Zoning Administrator” shall mean the City Zoning Administrator.

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE IX, CHAPTER 10, SECTION 13

Title XI, Chapter 10, Section 13 “Special Uses,” Subsection XI-10-13.11(D)(2) “Temporary Uses and Structures” of the Milpitas Municipal Code is hereby amended to read as follows:

For temporary seasonal sales located on church/religious sites and school sites within residential (R) zoning districts, the Zoning Administrator may approve the request through a Minor Site Development Permit.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 15

Title XI, Chapter 10, Section 15 “Review Requirement,” Table XI-10-15.03-1 “Review Requirements for Special Events” of the Milpitas Municipal Code is hereby amended to read as follows:

Threshold for review	Planning Director or Designee	Zoning Administrator
Minor Events	X	

<ul style="list-style-type: none"> •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 		
<p>Major Events</p> <ul style="list-style-type: none"> •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	
<p>Multiple Reviews</p> <ul style="list-style-type: none"> •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 four consecutive days for each recurring event. ³ •Multi-Year Events: Applicant may request a Special Event Permit good for up to three years for Special Events that will be held annually, for up to three 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
<p>Appeals or Revocations</p> <ul style="list-style-type: none"> •Hearing on a notice of decision to deny an application for Special Event Permit or to revoke or appeal a Special Event Permit. ⁴ 		X

³ Planning Director may recommend to Zoning Administrator for review and approval.

⁴ Appeals to the Zoning Administrator may only occur after denial or revocation by the Planning Director or designee.

SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 24

The following entry in Title XI, Chapter 10, Section 24 “Signs,” Subsection XI-10-24.03(C) “General Regulations” of the Milpitas Municipal Code is hereby amended to read as follows:

- C. Design Guidelines. In considering the appropriateness of the design proposed for any sign as provided in this Section, the following criteria shall be utilized by the Planning Commission, Zoning Administrator, and Planning staff:

SECTION 8. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 53

The following entry in Title XI, Chapter 10, Section 53 “Off-Street Parking Regulations,” Subsection XI-10-53.05(B) “Maintenance of Off-Street Parking” of the Milpitas Municipal Code is hereby amended to read as follows:

- B. Temporary Sales, Storage and Advertising. The sale or storage of merchandise in permissive parking areas may be allowed by the Zoning Administrator through the approval of a Minor Site Development Permit and subject to such reasonable conditions as may be deemed necessary by the Planning Commission to ensure adequate parking, access and circulation.

SECTION 9. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 53

The following entry in Title XI, Chapter 10, Section 53 “Off-Street Parking Regulations,” Subsection XI-10-54.10(C)(2)(a) “Maintenance of Off-Street Parking” of the Milpitas Municipal Code is hereby amended to read as follows:

- a. For any nonresidential or new multi-family projects and single-family tract projects within a zoning district combined with the "S" Overlay District, fences at the rear and side yards may be eight (8) feet maximum height when approved by the Zoning Administrator through a Site Development Permit.

SECTION 10. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 55

The following entry in Title XI, Chapter 10, Section 55 “Exceptions,” Subsection XI-10-55.03(8)(e) “Rear Yard – Building Additions for R1 and R2” of the Milpitas Municipal Code is hereby amended to read as follows:

- e. Applications for building permit pursuant to this section shall provide the Planning Division with sufficient information to determine the remaining rear yard setback and coverage of the required rear yard area as specified in (a) through (c) above. Building additions proposed for all legal, conforming single-family and two-family dwellings in the Valley Floor Residential districts require review and approval by the Planning Division or Zoning Administrator, pursuant to Section 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.

SECTION 11. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 57, SUBSECTION XI-10-57.03 (B)(1)(a)

The following entry in Title XI, Chapter 10, Section 57 “Applications,” Subsection XI-10-57.03(B)(1)(a) “Review by Planning Commission” of the Milpitas Municipal Code is hereby amended to read as follows:

- a. Review by Zoning Administrator. The Zoning Administrator has the authority to review Site Development Permits, subject to the concurrent review and appeal provisions of Section XI-10-64.04-1, Consideration of Concurrent Applications, and Section XI-10-64.05, Appeals, of this Chapter.

SECTION 12. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 57, SUBSECTION XI-10-57.03(B)(2)

The following entry in Title XI, Chapter 10, Section 57 “Applications,” Subsection XI-10-57.03(B)(2) “Minor Site Development Permits” of the Milpitas Municipal Code is hereby amended to read as follows:

Minor Site Development Permits. Either Planning staff or Zoning Administrator has the authority to review Minor Site Development Permits, subject to the concurrent review and appeal provisions listed above [Section XI-10-57.07(B)(1)] and Section XI-10-57.07(C)(2), Applicability, or when another section of this Title requires such review. When the Zoning Administrator determines that it is in the public interest for the Minor Site Development Permit application to be considered by the Planning Commission, the Zoning Administrator shall forward the application to the Planning Commission for review in the same manner as Site Development Permits, as described in subsection XI-10-57.03(E)(1), Review Procedures, Site Development Permits, below. No public hearing is necessary for a Minor Site Development Permit when heard by the Zoning Administrator.

SECTION 13. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 57, SUBSECTION XI-10-57.03(C)(2)

The following entries in Title XI, Chapter 10, Section 57 “Applications,” Subsection XI-10-57.03(C)(2)(a) and (d) “Minor Site Development Permits” of the Milpitas Municipal Code are hereby amended to read as follows:

- a. Review by Zoning Administrator:
 - i. Any deletion or amendment of a previously imposed condition of approval for a Minor Site Development Permit approved by the Zoning Administrator.
 - ii. Review for certain alterations or additions to residential, nonresidential and mixed-use sites/buildings, as indicated in Table XI-10-57.03-1, Additions or Alterations Requiring Minor Site Development Permits. Projects that exceed the threshold for planning staff review, as indicated in Table XI-10-57.03-1, Additions or Alterations Requiring Minor Site Development Permits.
- d. Planning Division staff may require review by the Zoning Administrator at their discretion.

SECTION 14. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 57, TABLE XI-10-57.03-1

The following entry in Title XI, Chapter 10, Section 57 “Applications,” Table XI-10-57.03-1 “Additions or Alterations Requiring Minor Site Development Permits” of the Milpitas Municipal Code is hereby amended to read as follows:

Project Type	Zoning Administrator	Staff review
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SECTION 15. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 57

The following entries in Title XI, Chapter 10, Section 57 “Applications,” Subsection XI-10-57.03(E) “Review Procedures” of the Milpitas Municipal Code are hereby amended to read as follows:

- E. Review Procedures.
 - 1. Site Development Permit.
 - a. The Zoning Administrator shall hold a public hearing on said application upon such notice as is required in Section XI-10-64, Development Review Process, of this Chapter.
 - b. After conclusion of the hearing, the Zoning Administrator may approve the application, approve it subject to such conditions as the Zoning Administrator may impose, or disapprove the application.

For applications requiring City Council approval, the Planning Commission shall forward its recommendation to the City Council.

- i. The Planning Commission may impose such conditions as it deems necessary to protect the best interests of the surrounding property, of the neighborhood, and as it deems in conformity with the requirements of the General Plan.
- 2. Minor Site Development Permit.
 - a. Review by Zoning Administrator. The Zoning Administrator shall indicate by action minutes whether the proposed site plan for a project shall be approved, approved with modifications and/or conditions, or denied.
 - i. The Zoning Administrator may require review by the Planning Commission at its discretion.
 - b. Review by Planning Division. The Planning Division staff shall make investigations as necessary to determine whether or not the proposed project conforms or may be conditioned to conform fully to the intent of the Zoning and Sign Ordinances.

SECTION 16. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 57, SUBSECTION XI-10-57.04

The following entries in Title XI, Chapter 10, Section 57 “Applications,” Subsection XI-10-57.04 “Conditional Use Permits and Minor Conditional Use Permits” of the Milpitas Municipal Code are hereby amended to read as follows:

- A. Purpose and Intent.
 - 2. It is the purpose of the Minor Conditional Use Permit process to provide for the streamlined review of uses that may have an impact on the surrounding environment and require discretionary review, but due to their nature, scale or location, do not require discretionary consideration by the full Planning Commission. Either the Zoning Administrator or Planning staff has the authority to review Minor Conditional Use Permits. The Minor Conditional Use Permit process has as its purpose the same goals for uses described for the Conditional Use Permit process above.
- B. Authority.
 - 2. Minor Conditional Use Permits. Minor Conditional Use Permits may be approved either by the Zoning Administrator or administratively by Planning staff.

- a. Review by the Zoning Administrator. The Zoning Administrator has the authority to approve Minor Conditional Use Permits for those uses listed in the use tables of the Zoning Ordinance. Such approvals shall be subject to the concurrent review and appeal provisions of Section XI-10-64, Development Review Process, of this Chapter.

SECTION 17. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 64, TABLE XI-10-64.02-1

Title XI, Chapter 10, Section 64 “Development Review Process,” Table XI-10-64.02-1 “Decision-Making Body and Role” of the Milpitas Municipal Code is hereby 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	Zoning Administrator	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 (Zoning Administrator)	XI-10-57.04		Decision		Appeal	Appeal
Minor Conditional Use Permits (Staff Review)	XI-10-57.04	Decision			Appeal	Appeal
Minor Site Development Permits (Zoning Administrator)	XI-10-57.03		Decision		Appeal	Appeal
Minor Site Development Permits (Staff Review)	XI-10-57.03	Decision	Appeal		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		Appeal 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 Zoning Administrator may be appealed to the Planning Commission and 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 18. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 64, SUBSECTION XI-10-64.03(C)

Title XI, Chapter 10, Section 64 “Development Review Process,” Subsection XI-10-64.03(C) “Consideration of Concurrent Applications” of the Milpitas Municipal Code is hereby amended to read as follows:

- C. Omitting Zoning Administrator Review. In order to eliminate redundant review and an unnecessary lengthening of the discretionary review process, it is appropriate to eliminate Zoning Administrator review of some applications. When combined applications are being processed for a project, and both Planning Commission and Zoning Administrator review are required, Zoning Administrator review shall be omitted and Planning Commission review substituted.

SECTION 19. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 64, TABLE XI-10-64.04-1

Title XI, Chapter 10, Section 64 “Development Review Process,” Table XI-10-64.04-1 “Public Hearing Requirements” of the Milpitas Municipal Code is hereby amended to read as follows:

Project ¹	Notification Required Radius	Community Meeting Required ²
Conditional Use Permit	1,000 feet	No
Development Agreements	300 feet	No
Environmental Impact Report	1,000 feet	No ³
General Plan Amendment	1,000 feet	Yes
Mobile Home Park Conversion Permit	Within the mobile home park	Yes
Minor Conditional Use Permit ⁴	300 feet	No
Site Development Permit	300 feet	No
Specific Plan Amendment	300 feet	No
Variance	500 feet	No
Zoning Amendment	1,000 feet	Yes

¹ Amendments to Conditional Use Permits, Development Agreements, Site Development Permits and Variances shall have the same requirements, unless otherwise noted.

² A community meeting shall be held prior to the public hearing.

³ Follow the requirements of the California Environmental Quality Act.

⁴ Only for Minor Conditional Use Permits issued by the Zoning Administrator.

SECTION 20. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 64, SUBSECTION XI-10-64.07 (C) AND (E)

The following entries in Title XI, Chapter 10, Section 64 “Development Review Process,” Subsection XI-10-64.07 “Extension of Time,” (C) and (E), of the Milpitas Municipal Code are hereby amended to read as follows:

- C. Processing Extension Requests. Extension requests for approved applications described in Section XI-10-57, Applications, of this Chapter shall be processed in the same manner as a new application, except that the extension request shall only be reviewed by the Planning Commission or Zoning Administrator for Minor Conditional Use Permits, as the decision-making authority. A request for an extension of time may be approved, conditionally approved or denied. If approved, conditions may be added to the approved application.
- E. Length of extension. The Planning Commission or Zoning Administrator shall only grant a single time extension within the time period specified in the approval or for eighteen (18) months if no time is specified.

SECTION 21. 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 22. 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.