



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Move to Waive the First Reading and Introduce Ordinance No. 38.836 Amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 5, 7, 10, and 13 Relating to Nonindustrial Land Uses in Industrial Zoning Districts, Mobile Fueling Services, and Temporary Public Safety Facilities. (Staff Contact: Rozalynne Thompson, Senior Planner, 408-586-3278)
Category:	Public Hearings-Community Development
Meeting Date:	8/20/2019
Staff Contact:	Rozalynne Thompson, 408-586-3278
<u>Recommendation:</u>	<ol style="list-style-type: none"> 1) Conduct a public hearing and move to close the hearing following comments. 2) City Attorney shall read aloud title of Ordinance No.38.836. 3) Consider the exemption from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15183 (Projects consistent with General Plan), Section 15301 (Existing Facilities) and 15061(b)(3) (Common Sense Exemption). 4) Move to waive the first reading beyond the title and introduce Ordinance No. 38.836 Amending Milpitas Municipal Code Section 2 (“Definitions”), Subsection 4.02 (“Residential Use Regulations”), Subsection 5.02 (“Commercial Use Regulations”), Subsection 7.02 (“Industrial Use Regulations”), Subsection 7.04 (“Industrial Zone Special Development and Performance Standards”), Subsection 10.02 (“Institutional Use Regulations”), and Subsection 13.11 (“Temporary Uses and Structures”).

Background:

On June 26, 2019, the Planning Commission considered a series of zoning text amendments that generally fall into three categories: (1) protective restrictions on land uses in the industrial zoning districts, particularly the Heavy Industrial (M2) district, including prohibiting assembly, entertainment, commercial services, offices, hotels, medical and veterinary facilities, retail and wholesale sales, and other similar nonindustrial uses; (2) establishing mobile fueling service operations as conditionally permitted in the industrial zoning districts, with safety-related performance standards, and prohibiting mobile fueling in commercial and residential zones; and (3) additional provisions to allow public safety uses, such as fire stations and police stations, in the industrial zoning districts on a temporary basis (up to three years) upon approval of a Minor Conditional Use Permit.

Given the impending August 13, 2019 deadline to execute the lease with the property owner of the site of the temporary fire station, the Planning Commission voted seven to zero to recommend approval of the proposed zoning text amendments related to temporary public safety uses in industrial zones at the June 26, 2019 meeting. The Planning Commission continued discussion on the other zoning text amendments related to non-industrial uses in industrial zones and mobile fueling services to the July 31, 2019 meeting.

At its July 31, 2019 meeting, the Planning Commission voted six to zero to recommend approval of the proposed zoning text amendment with the following modifications for the Council’s consideration:

1. Allowing existing non-industrial uses in industrial zoning districts to expand their existing footprint, if needed, up to twenty percent within two years of the adoption of this ordinance. Staff would develop specific eligibility criteria for consideration of expansion of existing non-industrial uses.
2. With respect to mobile fueling services, consider minimum and maximum insurance coverage requirements, limit the number of company vehicles, and subject each operation to a yearly review.

Assembly Uses and Other Nonindustrial Uses in Industrial Zones

In 2009, the City enacted revisions to the zoning ordinance that prohibited “places of assembly” in the industrial zones. This change was made in response to a study conducted by Conley Consulting Group, as part of the implementation of the City’s Economic Strategic Action Plan adopted in 2005, analyzing the impacts of the conversion of industrial land to nonindustrial uses. The zoning restriction on “places of assembly” was intended to preserve the industrial areas of Milpitas and to improve compatibility of uses in these areas.

In April 2015, an application for a Conditional Use Permit was submitted to the Planning Department to establish the Al Hilaal Mosque and Community Center in an existing building located at 372-374 Turquoise Street in the Heavy Industrial (M2) zoning district. A facility for religious worship is considered a “place of assembly” under the City’s zoning ordinance. The Zoning Code did not permit assembly uses in the Heavy Industrial (M2) zone and General Plan Implementing Policy 2.a-I-9 prohibited non-industrial uses into industrial lands. The applicant concurrently requested a zoning text amendment and General Plan Amendment to conditionally permit assembly uses in industrial zones. Staff recommended denial of both the project and the zoning text amendment on the grounds that the proposed zoning changes and the requested land use were inconsistent with the City’s General Plan. On July 8, 2015, the Planning Commission voted to recommend approval of the zoning text change to conditionally permit assembly uses in the M2 zone and directed staff to return with a CEQA study and a resolution supporting approval of the Conditional Use Permit for the mosque.

In light of strong community support for the mosque and concerns about the difficulty in finding a suitable property for the mosque elsewhere in Milpitas, on January 11, 2017, the Planning Commission recommended that the City Council approve (1) a General Plan Amendment to remove a policy prohibiting “social organizations” within industrial areas, (2) a Zoning Text Amendment to conditionally permit “places of assembly” uses in the Industrial Park (MP), Light Industrial (M1), and Heavy Industrial (M2) zones, and (3) the Conditional Use Permit for the Al Hilaal Mosque at 372-374 Turquoise Street. The City Council approved the General Plan Amendment, Zoning Text Amendment, and Conditional Use Permit on February 7, 2017.

Following the Council’s approval of these changes to the General Plan and zoning regulations, several other assembly uses have been established in the city’s industrial areas, including a Bingo facility and three additional places of worship. Due to potential adverse effects on these non-industrial uses from noise, hazardous materials, and truck traffic inherent in the surrounding industry and potential exposure to discharge, leakage, and spill of hazardous materials from nearby industrial uses that store or use these materials, these establishments face high costs and time-consuming efforts related to measuring and mitigating risk factors related to adjacent industrial uses. Consequently, despite the City’s recent approval of assembly uses in the M2 zone, over the past two years as noted above, City decision makers and staff have recognized that allowing assembly, entertainment, retail, commercial services, and other similar uses in the Heavy Industrial (M2) Zoning District is not a wise long-term planning and economic development policy approach. Allowing non-industrial uses to locate in industrial areas creates land use conflicts and undermines the viability of these areas for the intended purpose of supporting heavy industrial uses and economic activity. To preserve industrial lands in Milpitas and ensure that these areas can continue to support manufacturing and heavy industry in the future, staff recommends that the Council restrict the Heavy Industrial (M2) Zoning District only to uses that are compatible with heavy industrial activity.

The ordinance would prohibit any new assembly, entertainment, and non-industrial uses from operating in the M2 Zoning District; however, existing assembly, entertainment, and non-industrial uses would be rendered nonconforming uses. A nonconforming use is a legally established use that is no longer permitted in a particular zoning district. Given their legal nonconforming status, existing assembly, entertainment, and non-industrial uses will be allowed to continue to operate.

Mobile Fueling Services in Milpitas

Mobile fueling services have become increasingly popular and available in the Bay Area in recent years. Mobile fueling service is the on-demand delivery and dispensing of fuel for private vehicles from special trucks equipped with fuel tanks at a location convenient to the customer, as opposed to the vehicle owner pumping his or her own fuel at a service station or other location with a fixed fuel storage tank.

Mobile fueling in Milpitas is currently subject to regulations in the Fire Code (Municipal Code Section V-300-2.111) and requires a Temporary Fire Permit. In late 2016 the City adopted the 2016 California Fire Code, along with local amendments to the City's Fire Code including regulations for mobile fueling (also known as on-demand fueling); these regulations became effective on January 1, 2017. The City issued the first Temporary Fire Permits for on-demand mobile fueling on January 12, 2017 for four corporate office sites located in the Industrial Park (MP) zone: the Irvine Company, KLA, SanDisk, and Cisco. Later that year the City entered into a pilot project with a mobile fueling vendor at a commercial/retail location, the Great Mall. Temporary permits from the Fire and Planning Departments, including Conditions of Approval, were issued to this vendor on December 3, 2017.

Since authorizing these mobile fueling operations, the City has observed that many vendors have failed to comply with applicable regulations as well as the Conditions of Approval attached to their temporary permits. Multiple concerns associated with mobile fueling services have arisen, including problems related to fire safety, location, hours of service, traffic safety and other operational issues. Examples include vendors not following proper safety procedures, vendors not adhering to their own policies and guidelines, vendors operating in residential neighborhoods and commercial centers without authorization, and individuals smoking in the vicinity of fueling vehicles. In addition, there are some mobile fueling vendors operating in Milpitas that have not obtained the appropriate permits and authorizations from the City. In addition, mobile fueling operations have created traffic flow problems and safety concerns in residential and commercial areas. Fueling trucks have been observed double parking on the street or parking in red curb zones and driveways, forcing cars into oncoming traffic lanes and creating unsafe conditions for bicycles and pedestrians.

In response to these concerns, the City is proposing to incorporate additional regulations for mobile fueling service into the Zoning Code to allow for better control over the location and operating characteristics of these operations as well as greater monitoring and enforcement of Conditions of Approval of approved permits. The new zoning regulations would restrict mobile fueling services to safe and appropriate industrial areas of Milpitas. Mobile fueling would be allowed on private property only and would be prohibited on public or private streets. The City also proposes to require mobile fueling vendors to have a fixed business location within Milpitas so that these businesses would be subject to applicable local taxes.

There are currently 10 industrial sites in the city with valid Temporary Fire Permits that expired on June 30, 2019. These permits will remain in effect until they expire or are extended by the Fire Marshal's office, pending adoption of the proposed new regulations. The pilot mobile fueling project at the Great Mall is no longer in operation; the permit for this operation was revoked due to violations of the Conditions of Approval. One new permit application to conduct mobile fueling operations was recently submitted to the Fire Department; this permit has not yet been reviewed or approved due in part to the pending zoning amendments.

Temporary Public Safety Uses in Industrial Zones

The proposed addition of a provision allowing temporary public safety uses in industrial areas is in response to the City's need to establish a temporary fire station during the rehabilitation of the existing Fire Station No. 2. Following some difficulty in finding an appropriate location, the City has identified a suitable building for a temporary fire station located at 1126 Yosemite Drive, located in the M2 zone. However, existing zoning regulations do not allow a fire station at this location.

The zoning ordinance is currently silent on public service uses and structures in the M2 zone and other industrial zoning districts, meaning that such uses are not permitted in these zones. In addition, while "public service structures" are currently listed as a conditionally permitted use in the residential zones and "public service use or structure" is stated as a conditionally permitted use in the Institutional zone, there is no definition for the term "public service use or structure," nor does the zoning code differentiate between uses related to

public safety (e.g., fire stations, police stations) and other types of public service uses such as general government office buildings, public recreational or cultural facilities, corrections facilities, etc.

Given the critical need for a temporary fire station location in Milpitas and the shortage of available and suitable properties, the City is proposing zoning amendments that would conditionally allow public safety facilities in the industrial zones on a temporary basis (up to three years). If needed, two, six-month extensions may be requested to remove improvements.

Analysis:

Staff proposes the following changes to the City's Municipal Code in response to the issues outlined above:

Changes to Permitted and Conditionally Permitted Uses in Industrial Zones

Changes are proposed to several of the land uses listed in Table XI-10-7.02-1, *Industrial Zone Uses*. The following uses that are currently permitted ("P") or conditionally permitted ("CP") are proposed to change to not permitted ("NP"): adult businesses, commercial services, retail stores—general merchandise, billiards, commercial athletic facilities, kennels, medical and dental offices and clinics, veterinary hospitals, mini-storage complexes, hotels/motels, administrative/professional/research offices, financial institutions, vocational schools, places of assembly, and restaurants. The following uses that are currently permitted ("P") are proposed to change to conditionally permitted ("C"): business support services, medical support laboratories, and warehousing and wholesale. Service stations with car wash, which are currently not permitted ("NP") in the Light Industrial (M1) and Heavy Industrial (M2) districts, are proposed to change to conditionally permitted ("C") in both zones to be consistent with the requirement for this use in the Industrial Park (MP) zone.

In addition, because assembly uses are currently not defined in the zoning code, a definition for "Assembly" has been added to Subsection XI-10-2.03, *Definitions*.

New Mobile Fueling Service Regulations

Proposed new zoning regulations for mobile fueling service operations include the following:

A definition for "Mobile Fueling Services" has been added to Subsection XI-10-2.03, *Definitions*. The proposed definition is consistent with the California Fire Code regulations for mobile fueling (Chapter 57, Section 5707) as well as the City's current Fire Code regulations for mobile fueling operations (Milpitas Municipal Code Section V-300-2.111). Additional proposed locational standards and procedural requirements for mobile fueling services have been added as a subsection (XI-10-7.04(B)(4)) under *Industrial Zone Special Development and Performance Standards*, with cross-reference to the California Fire Code regulations and applicable local amendments.

"Mobile Fueling Service" has been added to the use tables for Residential (Table XI-10-4.02-1), Commercial (Table XI-10-5.02-1), and Industrial (Table XI-10-7.02-1). Mobile fueling is proposed to be not permitted ("NP") in all residential and commercial zones and conditionally permitted ("C") in all Industrial zones.

Following adoption of the proposed zoning amendments for mobile fueling, the Fire Department will begin to issue annual fee-based Operational Fire Permits at sites that are approved by the Planning Department through the Conditional Use Permit process.

New Provision for Temporary Public Safety Uses in Industrial Zones

A proposed definition for "Public Safety Use" has been added to Subsection XI-10-2.03, *Definitions*. In addition, proposed new definitions for "Public Service Use" and "Public Utilities" have been included to clarify the distinctions between these various categories of public uses (the terms "Public Service Use" and "Public Utilities" are currently used in the zoning code, but no definitions are given). In summary, Public Safety Uses include police and fire protection; Public Service Uses are general government services such as public administrative offices, courthouses and post offices; and Public Utilities are facilities related to essential services such as water, electricity, natural gas, and telecommunications.

A new provision for “Temporary Public Safety Uses” has been added to Subsection XI-10-13.11, *Temporary Uses and Structures*. Proposed regulations for this use include a two-year time limit and a requirement for all improvements associated with the temporary use to be removed at the time of expiration and the building or facility to be restored to its prior condition. Two, separate, six-month extensions may be requested to complete removal of all improvements.

Lastly, “Temporary Public Safety Uses” has been added as a conditional use in all Industrial zones, subject to a Minor Conditional Use Permit (“MC”), in Table XI-10-7.02-1, *Industrial Zone Uses*. “Public Safety Uses” on a permanent basis has been added as a conditional use in the Institutional zone in Table XI-10-10.02-1, *Institutional Zone Uses*.

Policy Alternatives:

Alternative 1: Do not amend the code and continue to allow nonindustrial land uses to operate in industrial zoning districts

Pros: Continue processing entitlement applications according to established procedures

Cons: Creates land use conflicts and public health and safety risks and undermines the viability of industrial lands

Reason not recommended: Continuing to allow nonindustrial land uses to operate in industrial zoning districts exposes such uses to excessive noise, hazardous materials, and truck traffic from surrounding industry. Further, these establishments face high costs and time-consuming efforts related to measuring and mitigating risk factors related to adjacent industrial uses. The proposed elimination of nonindustrial uses from the Industrial zones will protect the viability of industrial lands and help maintain a thriving center for industry in the city and region. Ensuring the continuity and integrity of industrial land contributes to a balanced and diverse land use program and economic base for Milpitas.

Alternative 2: Do not amend the zoning code to regulate mobile fueling services

Pros: None

Cons: Ad hoc administration and enforcement of permits, no standard permit procedures, inability to use land use mechanisms to regulate mobile fueling service uses

Reason not recommended: Multiple concerns associated with mobile fueling services have arisen, including problems related to fire safety, location, hours of service, traffic safety and other operational issues. Amending the zoning code to provide a regulatory framework for mobile fueling services uses will allow for better control over the location and operating characteristics of these operations as well as greater monitoring and enforcement of Conditions of Approval of approved permits.

Alternative 3: Do not amend the zoning code to add a provision allowing temporary public safety uses in industrial zoning districts

Pros: None.

Cons: “Public Safety Uses” would be prohibited in industrial zoning districts

Reason not recommended: The zoning ordinance is currently silent on public service uses and structures in the M2 zone and other industrial zoning districts, meaning that such uses are not permitted in these zones. Given the City’s need to establish a temporary fire station at 1126 Yosemite Drive, a site located in the Heavy Industrial (M2) zoning district, during the rehabilitation of the existing permanent station, the current zoning code would prohibit such a use. The proposed zoning amendment that would conditionally allow public safety facilities in the industrial zones on a temporary basis (up to two years) would meet the City’s critical need for a temporary fire station location in Milpitas given the shortage of available and suitable properties.

California Environmental Quality Act:

Pursuant to Section 15061(b)(3) of the California Code of Regulations (CEQA Guidelines), staff has determined 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 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 the ordinance in question would have a significant effect on the environment; accordingly, the ordinance under Section 15061(b)(3) is exempt from CEQA review.

Moreover, 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 Land Use Element includes several policies and guidelines related to preserving industrial lands, ensuring a balanced and diverse economic base, and prioritizing the City’s fiscal well-being when making land use decisions. The Amendment restricting uses in the industrial zones help accomplish all these goals. In addition, the Amendment regulating mobile fueling services is aligned with the goals and objectives related to orderly and planned management of uses in the Land Use Element, as well as those related to effective fire protection services in the Seismic and Safety Element. 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 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.

Accordingly, this Ordinance is exempt from CEQA review pursuant to Sections 15061(b)(3), 15183, and 15301 of the CEQA Guidelines, each as a separate and independent basis.

PUBLIC COMMENT/OUTREACH:

The City Clerk provided public notice of the proposed zoning amendments in accordance with City and state public noticing requirements. At the time of writing this report, representatives from a mobile fueling service provider has inquired about staff’s recommendations and the format of the public hearing. A notice was published in the *Milpitas Post* on August 10, 2019. A public notice was also provided on the City’s website, www.ci.milpitas.ca.gov, and posted at City Hall.

Economic Development Director Alex Andrade has conferred with various employers in the industrial lands to discuss the proposed amendments with respect to nonindustrial uses in industrial lands. Moreover, on August 15, 2019, Planning and Economic Development staff provided a letter explaining the purpose of the proposed zoning ordinance amendments as additional notice to operators of assembly, entertainment, and nonindustrial land uses in the Heavy Industrial (M2) Zoning District.

Recommendation:

- 1) Conduct a public hearing and move to close the hearing following comments.

- 2) City Attorney shall read aloud title of Ordinance No. 38.836.
- 3) Consider the exemption from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15183 (Projects consistent with General Plan), Section 15301 (Existing Facilities) and 15061(b)(3) (Common Sense Exemption).
- 4) Move to waive the first reading beyond the title and introduce Ordinance No. 38.836 Amending Milpitas Municipal Code Section 2 (“Definitions”), Subsection 4.02 (“Residential Use Regulations”), Subsection 5.02 (“Commercial Use Regulations”), Subsection 7.02 (“Industrial Use Regulations”), Subsection 7.04 (“Industrial Zone Special Development and Performance Standards”), Subsection 10.02 (“Institutional Use Regulations”), and Subsection 13.11 (“Temporary Uses and Structures”)

Attachments:

- a) Planning Commission Resolution No. 19-021
- b) Proposed City Council Ordinance No. 38.836 for introduction