

**REGULAR**

**NUMBER: 38.836**

**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 RELATING TO ASSEMBLY USES, MOBILE FUELING USES, AND TEMPORARY PUBLIC FACILITIES AND MAKING FINDINGS OF CEQA EXEMPTION**

**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**, maintaining a sufficient supply of land zoned exclusively for industrial uses and similar compatible uses is important for the health and diversity of the City’s economy and job market; and

**WHEREAS**, industrial lands have a net positive impact on the City’s budget, generating more dollars in tax revenue than they cost in service expenditures, thereby helping to offset the cost of providing City services to lands with other uses such as residential and public; and

**WHEREAS**, the zoning regulations for industrial zones in Milpitas currently conditionally permit several nonindustrial uses that may be incompatible with adjacent heavy industrial activities, and the approval of conditional use permits for several nonindustrial uses in industrial zones in recent years has begun to adversely impact the integrity of industrial areas of the City; and

**WHEREAS**, the City Council and City Manager have determined that the preservation of industrial lands is an important policy priority for Milpitas; and

**WHEREAS**, restricting or prohibiting nonindustrial land uses in industrial zoning districts is an essential component in maintaining the supply of industrial land as well as the viability of such land for heavy industrial activities; and

**WHEREAS**, there has been a recent increase in mobile fueling service vendors operating in Milpitas, and the City has recognized a need to regulate the location and operating characteristics of these businesses; 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 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”) 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 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. 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), 15301, and 15183 of the CEQA Guidelines, each as a separate and independent basis.

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

The proposed zoning amendment supports several of the guiding principles and policies of the General Plan. 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.

### **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:

Assembly” means the provision of activities for assembled groups of participants at institutions or facilities including but not limited to private and nonprofit clubs; social or fraternal organizations; and churches, temples, synagogues and other places of worship. Assembly uses in the context of groups of people is distinct from and unrelated to the definition of the industrial use “Assembly from pre-processed materials.”

–“Assembly from pre-processed materials” means assembling, packaging, or distributing 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. Assembly in the context of industrial manufacturing is distinct from and unrelated to the definition of “Assembly” involving groups of people.

“Mobile Fueling Service” means the operation of dispensing liquid fuels from tank vehicles into the fuel tanks of motor vehicles, primarily serving drivers of private vehicles as opposed to fleet vehicles. Mobile Fueling Service may also be known by other terms, including but not limited to “On-Demand Fueling,” “Wet fueling” and “Wet hosing.”

“Places of Assembly.” See “Assembly”

“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 4**

Title XI, Chapter 10, Section 4 “Residential Zones and Standards,” Subsection XI-10-4.02 “Residential Use Regulations,” Table XI-10-4.02-1 “Residential Zone Uses” of the Milpitas Municipal Code is hereby amended to read as follows:

**Table XI-10-4.02-1  
Residential Zone Uses**

Use	R1	R2	R3	R4	R5
<b>1. Commercial</b>					
Commercial services <sup>1,2</sup>	NP	NP	C	C	C
<b>2. Professional Offices and related uses</b>					

Offices <sup>1,2</sup>	NP	NP	C	C	C
<b>3. Public/Quasi-Public and Institutional Uses</b>					
Child care center	C	C	C	C	P
Nursing home <sup>3</sup>	NP	C	C	C	C
Park, playground or community center (non-profit)	C	C	C	C	C
Parking lots	C	C	C	C	C
Public service <u>use</u> <del>structure</del>	C	C	C	C	C
School (not trade or vocational)	C	C	C	C	C
<del>Social hall, lodge, fraternal organization, club and religious assembly (non-profit)</del> <u>Places of Assembly</u>	C	C	C	C	C
<b>4. Residential Uses</b>					
Condominiums and condo conversions	NP	SFR: C Duplex: C	C	C	C
Duplex (Two dwellings)	NP	P	NP	NP	NP
Group dwelling	NP	NP	NP	C	C
Guest house	C	NP	NP	NP	NP
Manufactured home <sup>4</sup>	P	P	NP	NP	NP
Multi-family dwellings (Three or more units)	NP	NP	P	P	P
Planned unit development <sup>5</sup>	P	P	P	P	P
Second residential dwelling unit <sup>6</sup>	P	SFR: P Duplex: NP	NP	NP	NP

Single-family dwelling	P	P	NP	NP	NP
Single-room occupancy residences <sup>7</sup>	NP	NP	C	C	C
Transitional and supportive housing	P <sup>8</sup>	P <sup>8</sup>	P <sup>9</sup>	P <sup>9</sup>	P <sup>9</sup>
<b>5. Restaurants</b>					
Restaurants <sup>1,2</sup>	NP	NP	C	P/C	P/C
<b>6. Unclassified Uses</b>					
Agriculture <sup>10</sup>	P	P	P	NP	NP
Boarding house (three or more persons)	NP	C	C	C	C
Golf course <sup>11</sup>	C	C	C	NP	NP
Live work units <sup>12</sup>	NP	NP	C	C	C
Model home complex <sup>13</sup>	P	P	P	P	P
<b>7. Vehicle Related Uses</b>					
<u>Mobile Fueling Services</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>

**SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 5**

Title XI, Chapter 10, Section 5 “Commercial Zones and Standards”, Subsection XI-10-5.02 “Commercial Use Regulations”, Table XI-10-5.02-1 “Commercial Zone Uses” of the Milpitas Municipal Code is hereby amended to read as follows:

**Table XI-10-5.02-1  
Commercial Zone Uses**

Use	CO	C1	C2	HS	TC
<b>1. Commercial Uses</b>					

Alcoholic beverage sales	C <sup>6</sup>	C	C	NP	C
Art/photography studio or gallery	NP	P	P	P	P
Bookstore	NP	P	P	P	P
Commercial services <sup>1</sup>	P	P	P	NP	P
Funeral home or mortician	NP	NP	C	C	NP
Furniture sales	NP	P	P	P	P
Grocery store (supermarkets)					
Within 1,000 ft. of residential zone	NP	C	C	C	C
Not within 1,000 ft. of residential zone	NP	P	P	P	P
Head/smoke/tobacco shop	NP	C	C	NP	C
Home improvement (hardware, blinds, interior decorating, etc.)	NP	P	P	C	P
Not fully enclosed operation	NP	C	C	C	C
Household appliance store <sup>7</sup>	NP	NP	P	P	NP
Small appliance repair	NP	NP	MCS	P	NP
Large appliance repair	NP	NP	NP	P	NP
Janitorial services	NP	NP	P	P	NP
Newsstand					
Indoor	P	P	P	NP	P
Outdoor	C	C	C	NP	C
Nursery (flower or plant)					



Indoor	NP	NP	P <sup>2</sup>	P	P
Outdoor	NP	NP	C	P	NP
Office supply sales (stationery, equipment)	P	P	P	P	P
Paint and wallpaper stores	NP	NP	P	P	P
Pawnshops	NP	NP	C	NP	NP
Pet stores	NP	NP	P	P	P
Printing (newspaper, publishing)	NP	NP	P	P	P
Rentals (medical supplies, costumes, party equipment, office equipment)	NP	NP	P	P	P
Retail stores, general merchandise	NP	P	P	NP	P
Tanning salon	NP	NP	P	NP	P
Thrift store <sup>3</sup>	NP	C	P	P	P
<b>2. Entertainment and Recreation</b>					
Adult business <sup>4</sup>	NP	NP	NP	P	NP
Bowling alley	NP	NP	P	P	P
Commercial athletic facilities					
Indoor	NP	C	P	P	P
Outdoor	NP	NP	NP	C	NP
Motion picture theater (See 7 below)					
Recreation or entertainment facility	NP	C	C	C	C
Shooting range, indoor	NP	NP	NP	C	NP

<b>3. Health and Veterinarian Uses</b>					
Animal grooming (no boarding)	NP	P	P	P	P
Hospital	C	NP	C	C	C
Kennel	NP	NP	C	NP	NP
Massage establishment	NP	NP	C	C	C
Medical and dental office	P	P	P	NP	P
Medical and dental clinic	P	C	C	NP	P
Medical support laboratories	P	C	C	C	C
Optician and optometrist shop	P	P	P	NP	P
Pharmacy or drug store	NP	P	P	P	P
Sauna and steam bath	NP	NP	NP	P	NP
Veterinary clinic	NP	NP	P	P	P
<b>4. Industrial Uses <sup>5</sup></b>					
Assembly from pre-processed materials	NP	NP	C	NP	NP
Commercial fueling facility	NP	NP	NP	C	NP
Commercial laboratory	NP	NP	C	P	NP
Contractor's yards and offices	NP	NP	C	C	NP
Disinfection and extermination business	NP	NP	C	P	NP
Dry cleaning plant	NP	NP	NP	P	NP
Food storage locker	NP	NP	NP	P	NP

Landscape contractor	NP	NP	C	P	NP
Lumberyards	NP	NP	C	C	NP
Mini-storage complex	NP	NP	C	C	NP
Plumbing, metalworking, glassworking or woodworking	NP	NP	C	C	NP
Research & development	NP	NP	C	NP	NP
Sign sales and fabrication (Electric and neon sign, sign painting)	NP	NP	C	P	NP
Warehousing and wholesale	NP	NP	C	NP	NP
<b>5. Lodging</b>					
Hotel and motel	NP	NP	C	C	C
<b>6. Professional Offices, Financial Institutions and Related Uses</b>					
Automatic teller machines (freestanding) <sup>6</sup>	NP	P	P	P	P
Financial institutions (banks, savings and loans, etc.)	P	P	P	P	P
General offices (administrative and business services, real estate, travel agencies, etc.)	P	P	P	P	P
<b>7. Public, Quasi-Public and Assembly Uses</b>					
Auction hall	NP	NP	C	C	C
Child care					
Child care center	C	C	C	C	C
Day care school	C	C	C	C	C
Large family child care home	NP	NP	NP	NP	C
Small family child care home	NP	NP	NP	NP	C

<del>Club or social organization, religious assembly</del> <u>Places of Assembly</u>	C	C	C	C	C
Cultural center	NP	NP	C	C	C
Educational institutions					
Schools, private (elementary, middle, high)	NP	NP	C	NP	C
Trade and vocational school	C	NP	P	P	C
Farmer's market (not including flea market)	NP	C	C	C	C
Instruction					
Group <sup>8</sup>	MCS	MCS	MCS	MCS	MCS
Private	P	P	P	P	P
Motion picture theater					
Indoor	NP	C	C	C	C
Outdoor	NP	NP	NP	C	NP
Parking facility, storage garage	NP	P	P	C	C
Public utilities	C	C	C	C	C
Transportation facility (taxi, limousine, etc.)	NP	NP	C	C	C
<b>8. Restaurants or Food Service</b>					
Banquet hall	NP	NP	C	C	C
Bar or nightclub	NP	NP	C	C	C
Catering establishment	NP	NP	P	P	P
Restaurants	C <sup>7</sup>	P	P	P	P

With live entertainment/dancing	NP	NP	C	C	C
With drive-in or drive-through	NP	C	C	C	C
With ancillary on-premise beer & wine with no separate bar	NP	MC	PMC	MC	MC
<b>9. Residential Uses</b>					
Caretaker (in conjunction with contractor's yard or mini-storage complex)	NP	NP	C	C	NP
Emergency shelters <sup>9</sup>	NP	NP	NP	P/C	NP
Single-room occupancy residences <sup>10</sup>	NP	NP	NP	C	NP
<b>10. Vehicle Related Uses</b>					
Auto repair (tire, oil change, smog check, etc.)	NP	NP	C	C	NP
Auto sales and rental, outdoor (new and used cars, RV and truck)	NP	NP	C	C	NP
Auto broker (wholesale, no vehicles on site)	MCS	MCS	MCS	MCS	MCS
Car wash	NP	NP	C	C	NP
Mobile Fueling Services	NP	NP	NP	NP	NP
Service stations (with or without repair or retail) <sup>11</sup>	C	C	C	C	C
Drive through uses (restaurants, pharmacies, etc.)	NP	C	C	C	C
<b>11. Unclassified Uses</b>					
Accessory structures <sup>12</sup>	P	P	P	P	P
Model home complex <sup>13</sup>	NP	NP	NP	NP	P
Mortuary or crematory	NP	NP	NP	C	NP
Radio or television station	NP	NP	C	P	NP

Temporary seasonal sales <sup>14</sup>	NP	P	P	P	P
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**SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 7**

The following entry in Title XI, Chapter 10, Section 7 “Industrial Zones and Standards”, Subsection XI-10-7.02, A (2) “Industrial Use Regulations” of the Milpitas Municipal Code is hereby amended to read as follows:

- A. Permitted and Conditionally Permitted Uses.
  - 2. Accessory Uses. The following accessory uses are allowed when incidental to the primary use:
    - a. In M1 and MP zones, incidental services, such as restaurants and recreation facilities for employee use only and when conducted in and entered from within the building or campus.

**SECTION 8. 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	<u>NP</u>	NP
Business support services	P	<u>NP</u>	P
Commercial services	P	<u>NP</u>	P
Janitorial services	P	<u>NP</u>	P
Office supplies	C	<u>€NP</u>	C
Printing (newspaper, blueprint, publishing)	P	<u>NP</u>	C
Retail stores, general merchandise <sup>2</sup>	C	<u>NP€</u>	C

2. Entertainment and Recreation Uses			
Billiards	C	<u>NP</u> €	C
Commercial athletic facilities	C	<u>NP</u> €	C
3. Health and Veterinarian Uses			
Hospitals	NP	NP	C
Kennel	P	<u>NP</u>	NP
Medical support laboratories	P	<u>NP</u>	P
Medical and dental offices and clinics <sup>2</sup>	P	<u>NP</u>	P
Veterinarian hospital	P	<u>NP</u>	P
4. Industrial Uses			
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	<u>NP</u> C	C
6. Professional Office Uses			
Administrative, professional or research <sup>2</sup>	P	<u>NP</u> P	P
Financial institutions (banks, savings and loans, etc.)	C	<u>NP</u> 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	<u>NP</u> C	C
Farmer's market (not including flea market) <sup>6</sup>	NP	NP	C
Public utilities <sup>7</sup>	P	P	P
Temporary Public Safety Uses <sup>8</sup>	MC	MC	MC
Transportation facility (taxi, parcel service, armored car, etc.) <sup>4</sup>	NP	P	NP
Places of assembly <sup>9</sup>	C	<u>NP</u> C	C
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	<del>NP</del>	C
Without on-site service of alcohol	C	<del>NP</del>	C
With live entertainment/dancing	NP	NP	NP
Drive-in or drive-thru	C	<del>NP</del>	C
10. Vehicle Related Uses			
Auto junk yard <sup>4</sup>	NP	C	NP
Auto repair (tire, oil change, smog check, etc.) <sup>10</sup>	C	P	C <sup>11</sup>
Mobile Fueling Service <sup>12</sup>	C	C	C
Service stations (with or without repair or retail) <sup>10</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>13</sup>	C	C	C <sup>11</sup>
Auto broker (wholesale, no vehicles on site) <sup>14</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> ~~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. See Subsection XI-10-13.11(G), Temporary Public Safety Uses.~~

<sup>9</sup> ~~Within MP zones, rental and repair may be considered only when ancillary to new auto dealerships. See Subsection XI-10-7.04(B)(3), Industrial Zone Special Development and Performance Standards for Places of Assembly.~~

<sup>10</sup> ~~Within MP zones, boat and camper sales are prohibited. Dealerships shall be on property at least three acres or greater in area. 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>11</sup> ~~See Subsection XI-10-7.04, Industrial Zone Special Development and Performance Standards. Within MP zones, rental and repair may be considered only when ancillary to new auto dealerships.~~

<sup>12</sup> See Subsection XI-10-7.04(B)(4), Industrial Zone Special Development and Performance Standards for Mobile Fueling Services.

<sup>13</sup> Within MP zones, boat and camper sales are prohibited. Dealerships shall be on property at least three acres or greater in area.

<sup>14</sup> See Subsection XI-10-7.04(A)(1), Industrial Zone Special Development and Performance Standards for Auto Brokers.

## SECTION 9. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 7

Title XI, Chapter 10, Section 7 “Industrial Zones and Standards,” Subsection XI-10-7.04, B(3) “Industrial Zone Special Development and Performance Standards” of the Milpitas Municipal Code is hereby amended and Subsection XI-10-7.04, B(4) is hereby added to read as follows:

### B. Special Development Standards in All Industrial Zones.

3. Places of Assembly. Places of Assembly are prohibited in the M2 Heavy Industrial Zone. When any place of assembly use is established in an M1 or MP zone after the effective date of this Ordinance, such use shall be subject to the following requirements:
  - a. Applicant shall submit a review of potential hazardous site conditions and potential exposure of site users to these conditions. At a minimum, a Phase I Environmental Site Assessment (ESA) shall be performed for each proposed assembly use within the City's Light Industrial (M1), Heavy Industrial (M2), and Industrial Park (MP) zoning districts. Each individual project shall comply with the recommendations of the Phase I Environmental Site Assessment (which may include conducting Phase II sampling and implementing the recommendations of the Phase II ESA that may include cleanup of hazardous materials) and demonstrate that exposure of site users to hazardous materials conditions would be below established thresholds prior to approval of the Conditional Use Permit. In addition, an Accidental Release Assessment (ARA) shall be performed for each proposed assembly use within the City's Light Industrial (M1), ~~Heavy Industrial (M2),~~ and Industrial Park (MP) zoning districts to determine if unacceptable safety risks may result from the proposed change in use. The ARA shall review and evaluate any and all Risk Management Plans prepared for facilities in the vicinity under the California Accidental Release Prevention (CalARP) program. The environmental professional preparing the ARA shall determine, based on Alternative Release Scenarios, whether the proposed new assembly use would result in unacceptable safety risks due to proximity of uses handling or emitting acutely hazardous materials. If unacceptable risks are identified, the proposed use shall not be allowed.
  - b. —Applicant shall submit a further noise study. The noise study shall demonstrate that ambient noise conditions within the vicinity of the proposed assembly use do not exceed the City's "normally acceptable" Noise Compatibility Standard of 70 dBA Ldn. In the event that existing conditions exceed the "normally acceptable" standard the proposed assembly use may be required to install noise insulating materials to achieve the interior noise standard. Also as a condition of approval, proposed assembly uses shall be required to sign a disclosure of acknowledgment that they agree to operate within an existing industrial area and may be subject to noise levels that exceed the City of Milpitas's Noise Compatibility Standards for noise-sensitive uses.
  - c. No assembly use shall install or otherwise use exterior public address systems or other noise generating equipment that exceeds the 70 dBA noise standard.

- d. No new structure shall be construed within the M1, ~~M2~~, or MP zoning district for use as a place of assembly and no more than 50% of the square footage of any existing structure within the M1, ~~M2~~, or MP zoning district shall be converted to use as a place of assembly.
  - e. No exterior modifications to any existing structure within the M1, ~~M2~~, or MP zoning district shall be permitted if such modifications would materially alter the structure's appearance or future use as an industrial building.
4. Mobile Fueling Services. All Mobile Fueling Service operations shall comply with the operational and safety standards in the California Fire Code Chapter 57, Section 5707, as may be amended from time to time, including any applicable local amendments.
- a. Mobile Fueling Service operations shall be prohibited in private street rights of way.
  - b. Any vendor offering Mobile Fueling Service operations within the City of Milpitas shall establish a physical address within the city limits for business management purposes. A fixed address for a Mobile Fueling Service may be co-located on the premises of a service station or it may be a stand-alone office, in which case it shall be considered a business support office and may be located in any zoning district where such use is permitted.
  - c. Mobile Fueling Service operations shall be subject to all applicable local taxes.
  - d. An operations plan for a Mobile Fueling Service operation shall be submitted as part of the application for a Conditional Use Permit pursuant to Section XI-10-57.04 of this chapter.
  - a. ~~Subsequent to the approval of a Conditional Use Permit for Mobile Fueling Service, an Operational Fire Permit pursuant to Milpitas Municipal Code Section V-300-2.15 shall be required.~~

**SECTION 10. 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
Public safety uses	C
Public service uses	C
Public utilities	C
Temporary seasonal sales <sup>2</sup>	P
Transportation facility	C

**SECTION 11. 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 12. 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 13. 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.