

PLEASE NOTE:

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REGULAR

NUMBER: 38.837

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTIONS OF CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO ASSEMBLY AND OTHER NON-INDUSTRIAL USES IN THE M2 HEAVY INDUSTRIAL ZONING DISTRICT 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, 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”), and Subsection 56.04 (“Nonconforming Use of Land”) of the Municipal Code; and

WHEREAS, on June 26, 2019 and July 31, 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 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. 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.

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. Therefore, the proposed Amendment is consistent with the General Plan.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 2, SUBSECTION 2.03

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.

“Places of Assembly.” See “Assembly”

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 4, SUBSECTION 4.02, TABLE XI-10-4.02-1

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
1. Commercial					
Commercial services ^{1,2}	NP	NP	C	C	C
2. Professional Offices and related uses					
Offices ^{1,2}	NP	NP	C	C	C
3. Public/Quasi-Public and Institutional Uses					
Child care center	C	C	C	C	P
Nursing home ³	NP	C	C	C	C
Park, playground or community center (non-profit)	C	C	C	C	C
Parking lots	C	C	C	C	C
School (not trade or vocational)	C	C	C	C	C
Social hall, lodge, fraternal organization, club and religious assembly (non-profit) Places of Assembly	C	C	C	C	C
4. Residential Uses					
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 ⁴	P	P	NP	NP	NP
Multi-family dwellings (Three or more units)	NP	NP	P	P	P
Planned unit development ⁵	P	P	P	P	P
Second residential dwelling unit ⁶	P	SFR: P Duplex: NP	NP	NP	NP
Single-family dwelling	P	P	NP	NP	NP
Single-room occupancy residences ⁷	NP	NP	C	C	C
Transitional and supportive housing	P ⁸	P ⁸	P ⁹	P ⁹	P ⁹
5. Restaurants					
Restaurants ^{1,2}	NP	NP	C	P/C	P/C
6. Unclassified Uses					
Agriculture ¹⁰	P	P	P	NP	NP
Boarding house (three or more persons)	NP	C	C	C	C
Golf course ¹¹	C	C	C	NP	NP
Live work units ¹²	NP	NP	C	C	C

Model home complex ¹³	P	P	P	P	P
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¹ Refer to Subsection XI-10-4.03(A), Residential Zone Special Uses, of this Chapter, for standards.

² Refer to Subsection XI-10-4.03(B), Residential Zone Special Uses, of this Chapter, for standards.

³ Licensed nursing home serving more than six persons, except when used primarily for contagious sickness, mental or drug alcohol addict cases.

⁴ Refer to Subsection XI-10-13.07, Manufactured Homes, of this Chapter, for standards.

⁵ Refer to Subsection XI-10-54.07, Planned Unit Developments, of this Title, for standards.

⁶ In conjunction with an existing or proposed legal single-family dwelling or duplex. Refer to Subsection XI-10-13.08, Accessory Dwelling Units, of this Chapter, for standards.

⁷ Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter

⁸ Permitted only in single family dwellings

⁹ Permitted only in multi-family dwellings

¹⁰ Except for the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.

¹¹ Except for driving tee or range, miniature course and similar uses operated for commercial purposes.

¹² Allowed commercial uses to be specified through the Conditional Use Permit process.

¹³ Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 5, SUBSECTION 5.02, TABLE XI-10-5.02-1

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
1. Commercial Uses					
Alcoholic beverage sales	C ⁶	C	C	NP	C
Art/photography studio or gallery	NP	P	P	P	P
Bookstore	NP	P	P	P	P
Commercial services ¹	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 ⁷	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 ²	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 ³	NP	C	P	P	P
2. Entertainment and Recreation					
Adult business ⁴	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
3. Health and Veterinarian Uses					
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
4. Industrial Uses ⁵					
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
5. Lodging					
Hotel and motel	NP	NP	C	C	C
6. Professional Offices, Financial Institutions and Related Uses					
Automatic teller machines (freestanding) ⁶	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
7. Public, Quasi-Public and Assembly Uses					
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
Club or social organization, religious assembly <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 ⁸	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
8. Restaurants or Food Service					
Banquet hall	NP	NP	C	C	C
Bar or nightclub	NP	NP	C	C	C
Catering establishment	NP	NP	P	P	P
Restaurants	C ⁷	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
9. Residential Uses					
Caretaker (in conjunction with contractor's yard or mini-storage complex)	NP	NP	C	C	NP
Emergency shelters ⁹	NP	NP	NP	P/C	NP
Single-room occupancy residences ¹⁰	NP	NP	NP	C	NP
10. Vehicle Related Uses					
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
Service stations (with or without repair or retail) ¹¹	C	C	C	C	C
Drive through uses (restaurants, pharmacies, etc.)	NP	C	C	C	C
11. Unclassified Uses					

Accessory structures ¹²	P	P	P	P	P
Model home complex ¹³	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 ¹⁴	NP	P	P	P	P

¹ Refer to the definition for "Commercial Services" in Section 2, Definitions, of this Chapter.

² Provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.

³ Refer to XI-10-5.04, Commercial Zone Special Development Standards, of this Chapter.

⁴ In accordance with the Title III, Chapter 4, Adult Business Ordinance, and Subsection 13.04, Adult Businesses, of this Chapter.

⁵ For conditionally permitted uses, refer to Subsection 57.04(C) (9), Certain Industrial Uses within Commercial Districts, of this Chapter.

⁶ Refer to Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.

⁷ When intended to serve the occupants and patrons of the permitted use (office, etc.) and conducted and entered from within the building and provided there is no exterior display of advertising.

⁸ Refer to Subsection 5.02-1, Commercial Zone Special Uses, of this Section.

⁹ Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter.

¹⁰ Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.

¹¹ Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

¹² Not including warehouses on the same site as the permitted use.

¹³ No tract sign shall be permitted within 600 feet of a Santa Clara County Expressway.

¹⁴ Refer to Section 13.11, Temporary Uses and Structures, of this Chapter.

SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 7, SUBSECTION 7.02, A(2)

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, SUBSECTION 7.02, TABLE XI-10-7.02-1

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:

Table XI-10-7.02-1
Industrial Zone Uses

Use	M1	M2	MP
1. Commercial Uses			
Adult Businesses ¹	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	CNP	C
Printing (newspaper, blueprint, publishing)	P	<u>NP</u>	C
Retail stores, general merchandise ²	C	<u>NPC</u>	C
2. Entertainment and Recreation Uses			
Billiards	C	<u>NPC</u>	C
Commercial athletic facilities	C	<u>NPC</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 ²	P	<u>NP</u>	P
Veterinarian hospital	P	<u>NP</u>	P
4. Industrial Uses			
Assembly from pre-processed materials ³	P	P	P
Auto assembly facility	NP	P	NP
Bottling facility	P	P	NP
Building material sales (equipment rental) ⁴	NP	C	NP
Commercial fueling facility	C	C	NP
Commercial laboratory	P	P	P
Contractor's yard and offices ⁴	NP	C	NP
Distribution facility	P	P	P
Freight and trucking yard ⁴	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
6. Professional Office Uses			
Administrative, professional or research ²	P	<u>NP</u>	P
Financial institutions (banks, savings and loans, etc.)	C	<u>NP</u>	P
7. Public, Quasi-Public and Assembly Uses			
Auditorium ⁵	NP	NP	C
Conference center ⁵	NP	NP	C
Vocational school	C	<u>NP</u>	C
Farmer's market (not including flea market) ⁶	NP	NP	C
Public utilities ⁷	P	P	P
Transportation facility (taxi, parcel service, armored car, etc.) ⁴	NP	P	NP
Temporary Public Safety Uses ⁸	C	C	C
Places of assembly ¹²	C	<u>NP</u>	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	<u>NP</u>	C
Without on-site service of alcohol	C	<u>NP</u>	C
With live entertainment/dancing	NP	NP	NP
Drive-in or drive-thru	C	<u>NP</u>	C
10. Vehicle Related Uses			

Auto junk yard ⁴	NP	C	NP
Auto repair (tire, oil change, smog check, etc.) ⁹	C	P	C ¹⁰
Service stations (with or without repair or retail) ⁹	C	C	C
With car wash	NP	CNP	C
Vehicle sales and rental (auto, RV and truck-new and used in operable condition) ¹¹	C	C	C ¹⁰
Auto broker (wholesale, no vehicles on site) ¹²	MCS	MCS	MCS

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

² When found necessary to serve and appropriate to the industrial area.

³ 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.

⁴ 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.

⁵ Shall be ancillary to the primary use or associated with business or industrial uses.

⁶ Refer to Subsection XI-10-13.10, Farmers Markets, of this Chapter.

⁷ Includes service facilities, electric transmission and distribution substations and public utility service centers.

⁸ See Subsection XI-10-13.11(G), Temporary Public Safety Uses.

⁹ Entrances to the services bays shall not be open to the street, but shall be so designed to face the rear or interior side property line.

¹⁰ Within MP zones, rental and repair may be considered only when ancillary to new auto dealerships.

¹¹ Within MP zones, boat and camper sales are prohibited. Dealerships shall be on property at least three acres or greater in area.

¹² See Subsection XI-10-7.04(A)(1), Industrial Zone Special Development and Performance Standards.

SECTION 9. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 7, SUBSECTION 7.04

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 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.

SECTION 10. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 56

Title XI, Chapter 10, Section 56 "Nonconforming Buildings and Uses" Subsection XI-10-56.03 "Nonconforming Use of Buildings and Structures" of the Milpitas Municipal Code is hereby amended and Subsection XI-10-56.03, (C) is hereby added to read as follows:

C. Expansion of Assembly Uses in the Heavy Industrial (M2) Zoning District.

1. Assembly uses approved after February 7, 2017, that are rendered legally non-conforming may expand in floor area up to 25 percent of existing floor area until December 31, 2020. Such expansions shall require approval of a Site Development Permit and Conditional Use Permit by the Planning Commission in accordance with the provisions of Section 57 "Applications."

SECTION 11. 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 12. 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.