



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Introduce Ordinance No. 38.837 Amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 5, 7, and 56 Relating to Assembly and other Non-industrial Uses in the M2 Heavy Industrial Zoning District
Category:	Public Hearings-Community Development
Meeting Date:	10/15/2019
Staff Contact:	Rozalynne Thompson, Senior Planner, 408-586-3278
<u>Recommendations:</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. 38.837.3) Move to waive the first reading beyond the title and introduce Ordinance No. 38.837 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"), and Subsection 56.04 ("Nonconforming Use of Land").

Background:

In 2009, the City Council amended the Zoning Code to prohibit "places of assembly" in all industrial zoning districts. The Council approved these amendments 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, demonstrating the adverse fiscal and economic impacts of the conversion of industrial land to non-industrial uses. As noted in the study, non-industrial "places of assembly" need to be restricted in industrial areas to preserve the limited industrial areas of Milpitas and to ensure the compatibility of uses in these areas.

In April 2015, the City received an application for a Conditional Use Permit to locate the Al-Hilaal Mosque and Community Center in an existing building located at 372-374 Turquoise Street in the M2 Heavy Industrial Zone. A facility for religious worship is defined as a "place of assembly" under the City's Zoning Code. Because the Zoning Code prohibited assembly uses in the M2 Heavy Industrial Zone, the applicant concurrently requested a zoning text amendment to allow assembly uses with approval of a Conditional Use Permit in industrial zones. Staff recommended denial of both the project and the zoning text amendment because the proposed land use and associated zoning changes were inconsistent with the Milpitas General Plan. On July 8, 2015, the Planning Commission recommended approval of the zoning text amendment to allow assembly uses in the M2 Heavy Industrial Zone with approval of a Conditional Use Permit, and staff subsequently returned with a CEQA study and draft Resolution supporting approval of the Conditional Use Permit for the mosque.

On January 11, 2017, the Planning Commission recommended approval of the proposed Al-Hilaal Mosque and Community Center 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. 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 Code Text Amendment to conditionally permit "places of assembly" uses in all industrial (M1, M2, and MP) zoning districts, and; (3) a Conditional Use Permit for the Al-Hilaal Mosque at 372-374 Turquoise Street. The City Council subsequently approved the General Plan Amendment, Zoning Text Amendment, and Conditional Use Permit on February 7, 2017.

Analysis:

As the City's Zoning Code has continued to evolve over the past two years, City decision-makers and staff have recognized that allowing assembly and other non-industrial uses (entertainment, retail, commercial services, etc.) in the M2 Heavy Industrial Zone is not a wise long-term planning and economic development policy approach. Allowing non-industrial uses to locate in heavy industrial areas creates significant land use conflicts and public safety concerns and undermines the integrity and viability of these areas for the intended purpose of supporting heavy industrial uses and economic activity. Thus, to preserve areas zoned for heavy industrial use in Milpitas, address public safety concerns, and ensure that these areas can continue to support manufacturing and heavy industry in the future, staff recommends that the Council restore prior restrictions on assembly and other non-industrial uses in the M2 Heavy Industrial Zone. These uses would still be allowed in the M1 Light Industrial and MP Industrial Park Zones.

On August 20, 2019, the Council considered a Zoning Ordinance Amendment to restrict assembly and other non-industrial uses in the M2 Heavy Industrial Zone. After considering the proposed amendment the Council directed staff to bring back, at a future date, a revised amendment with added language to allow the expansion of existing assembly uses in the M2 Heavy Industrial Zone for a limited time.

In response to Council direction, staff has prepared a revised Zoning Ordinance Amendment that would restrict assembly and other non-industrial uses in the M2 Heavy Industrial Zone but allow limited expansion (up to 25 percent of total floor area) of *existing assembly* uses approved with a Conditional Use Permit since February 7, 2017. On that date, the Council adopted Ordinance No. 38.827 to amend the Zoning Code to conditionally allow assembly uses in the City's industrial zoning districts for the first time. The proposed amendment would allow limited expansion of assembly uses in the M2 Heavy Industrial Zone with approval of a new Conditional Use Permit Amendment and Site Development Permit by the Planning Commission. This special allowance for limited expansion of existing assembly uses would sunset on December 31, 2020.

Proposed Zoning Code Amendment:

Staff proposes the following changes to Table XI-10-7.02-1, *Industrial Zone Uses*, in the City's Municipal Code:

Changes from Permitted ("P") or Conditionally Permitted ("CP") 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

Changes from Permitted ("P") to Conditionally Permitted ("CP"):

Business support services, medical support laboratories, and warehousing and wholesale

Changes from Not Permitted ("NP") to Conditionally Permitted ("CP"):

Service stations with car wash

Although not currently allowed in the M1 Light Industrial and M2 Heavy Industrial Zoning Districts, gas stations would be allowed with approval of a Conditional Use Permit under the proposed Zoning Code amendment. This change is consistent with the current requirements for this use in the Industrial Park (MP) Zone.

In addition, because the Zoning Code does not currently include a definition for "assembly-type uses," a definition for "Assembly" has been added to Subsection XI-10-2.03, *Definitions*. Moreover, the uses "Social hall, lodge, fraternal organization, club and religious assembly (non-profit)" in Table XI-10-4.02-1 "Residential Zone Uses" and "Club or social organization, religious assembly" in Table XI-10-5.02-1 "Commercial Zone Uses" have been replaced with "Places of Assembly."

Further, Subsection XI-10-56.03(C) ("Nonconforming Buildings and Uses") has been added to the Zoning Ordinance to allow limited expansion (up to 25 percent of floor area) of existing assembly uses in the M2 Heavy Industrial Zone. This type of limited expansion would be subject to the Site Development Permit and Conditional Use Permit processes outlined in Section 57 "Applications."

Policy Alternative:

Alternative: Adopt a stricter Zoning Code Amendment that would restrict assembly and other non-industrial uses in the M2 Heavy Industrial Zone with no special allowance for expansion.

Pros: Restricting the expansion of assembly and other non-industrial uses in heavy industrial areas will reduce public safety concerns and will limit land use conflicts that undermine the integrity and viability of these areas for the intended purpose of supporting heavy industrial uses and economic activity.

Cons: Existing assembly uses located in the M2 Heavy Industrial Zone would be strictly regulated as legal non-conforming uses and would not be able to expand.

Reason not recommended: A tight restriction on assembly and non-industrial uses within the City's industrial zoning districts 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.

Allow any expansion of assembly and other non-industrial land uses within the City's industrial zoning districts exposes such uses to excessive noise, hazardous materials, and truck traffic from surrounding industry. These establishments already face high costs and time-consuming efforts related to measuring and mitigating risk factors related to adjacent industrial uses. Moreover, potential new industrial uses may be deterred from locating in Milpitas if they are not protected by the City's zoning regulations from the inherent risk of being located in proximity to non-industrial uses. This inhibits the City's ability to attract manufacturing employers and support expansion of existing businesses.

Environmental:

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 environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) and, as a separate and independent basis, Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

Recommendations:

- 1) Conduct a public hearing and move to close the hearing following comments.
- 2) City Attorney shall read aloud title of Ordinance No. 38.837.
- 3) Move to waive the first reading beyond the title and introduce Ordinance No. 38.837 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"), and Subsection 56.04 ("Non-conforming Use of Land").

Attachments:

- A. Draft Ordinance No. 38.837 for introduction
- B. Alternative Draft Ordinance No. 38.837 for introduction (no expansion)
- C. Planning Commission Resolution No. 19-021
- D. Letter from Milpitas Charity Bingo dated August 12, 2019