


CERTIFICATION OF CITY CLERK

ORDINANCE NO. 38.850

I, Suzanne Guzzetta, City Clerk of the City of Milpitas, do hereby certify that the attached Ordinance is a true and correct copy of Ordinance No. 38.850 of the City of Milpitas, that this Ordinance was duly enacted and adopted by the City Council of the City of Milpitas at a meeting of the City Council held on the 6th of December, 2022, and that a summary thereof was published in the local newspaper and posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of Milpitas, California, this 13th day of December, 2022.



Suzanne Guzzetta
Milpitas City Clerk

REGULAR

NUMBER: 38.850

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTION 13 "SPECIAL USES" OF CHAPTER 10 "ZONING" OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO OUTDOOR DINING, AND MAKING FINDINGS OF CEQA EXEMPTION

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of November 15, 2022, upon motion by Mayor Rich Tran and was adopted (second reading) by the City Council at its meeting of December 6, 2022, upon motion by Mayor Rich Tran. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

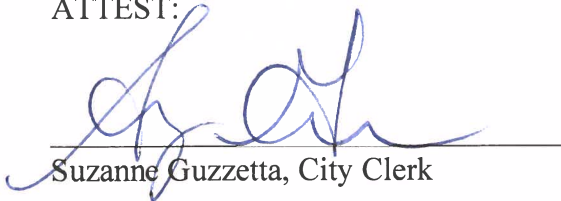
AYES: (4) Mayor Tran, Councilmembers Chua, Dominguez, and Phan

NOES: (0) None

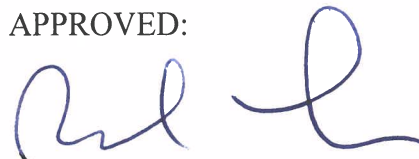
ABSENT: (1) Vice Mayor Montano

ABSTAIN: (0) None

ATTEST:


Suzanne Guzzetta, City Clerk

APPROVED:


Rich Tran, Mayor

APPROVED AS TO FORM:



Michael Mutalipassi, 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, in 2020 the City established a Temporary Outdoor Dining Program, allowing the limited use of parking areas and other outdoor spaces on a temporary basis, to help local restaurants survive financially during the COVID-19 pandemic; and

WHEREAS, in July 2021 following the lifting of state and local COVID-19 health restrictions on indoor dining, and in light of interest among local restaurant owners in continuing to offer outdoor dining areas on a long-term basis, the City of Milpitas extended its temporary guidelines for outdoor dining until permanent regulations and a formal approval process for outdoor dining areas could be established; and

WHEREAS, the City desires to establish new standards and regulations for the location, site design, and operation of outdoor dining areas and to provide an efficient permitting process for outdoor dining as an accessory use to restaurants and cafes; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to the City’s Municipal Code, adding a new Subsection 13.19 “Outdoor Dining” under Chapter 10 “Zoning” of Title XI; and

WHEREAS, on October 26, 2022, the Planning Commission held a duly noticed public hearing on the subject application, at which all those in attendance were given the opportunity to speak on the Zoning Text Amendment; and

WHEREAS, this ordinance is exempt from the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* (“CEQA”), each as a separate and independent basis, pursuant to CEQA Guidelines Section 15183 (projects consistent with the General Plan) 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

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), which exempts from CEQA any project where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

This ordinance would create new regulations related to outdoor dining in conjunction with restaurants and cafés (which are existing permitted uses in commercial areas under the zoning ordinance). It would enact standards for the location, siting, design, and operational elements of outdoor dining that are comparable to standards for other commercial land uses, and City staff review would be required to ensure that outdoor dining areas are appropriately designed and maintained and that they comply with all applicable requirements. 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.

As a separate and independent basis, this Ordinance is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). The proposed zoning amendments serve to implement several goals and policies in the Land Use and Community Design Elements by allowing safe, well-designed outdoor dining areas in appropriate locations to support Milpitas restaurants and cafes while also promoting active commercial areas. Therefore, the proposed Amendment is consistent with the General Plan and is exempt from CEQA review.

SECTION 3. GENERAL PLAN CONSISTENCY

The Land Use and Community Design Elements of the City’s General Plan include several policies and actions related to supporting local business development and promoting vibrant, livable commercial areas in Milpitas through land use standards and design guidelines that allow public gathering places, outdoor uses and amenities, and high-quality design in both the public and private realms. The proposed municipal code amendments would facilitate implementation of these policies by permitting and encouraging outdoor dining in well-designed and appropriately located spaces in commercial districts. Allowing high-quality outdoor dining spaces on a permanent basis would contribute to vibrant, visually appealing, and pedestrian-oriented commercial areas in Milpitas.

SECTION 4. AMENDEMENT TO MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Section 13 (“Special Uses”) of Chapter 10 (“Zoning”) of Title XI of the Milpitas Municipal Code is hereby amended to add Subsection 13.19 as follows:

XI-10-13.19 – Outdoor Dining

- A. Purpose and Intent. The purpose of the outdoor dining regulations is to increase opportunities for restaurants to expand dining area into outdoor spaces, supporting local businesses and enhancing dining experience for Milpitas residents and visitors; to promote active, vibrant, pedestrian-oriented commercial districts and shopping centers; and to ensure that outdoor dining spaces are safe, well designed, and attractive.
- B. Definitions
 - 1. Outdoor dining area: Any privately owned outdoor area serving as an extension of the indoor customer seating area for a café or restaurant, which occupies space adjacent to the business that was formerly used for vehicle parking, pedestrian circulation, or similar use unrelated to the seating or customers.
- C. Review and Approval Procedures

1. New or modified outdoor dining areas on private property may be approved with a Minor Site Development Permit (Staff Review) pursuant to Subsection XI-10-57.03(B)(2) of this Chapter.
2. In cases where the underlying zoning district requires a Conditional Use Permit (CUP) for a restaurant, an existing establishment with an approved CUP may add or modify an outdoor dining area with approval of a Minor Site Development Permit. No amendment to the approved CUP shall be required.
3. Written permission from the owner of record of the subject property shall be required as part of the Minor Site Development Permit application for outdoor dining. This requirement shall apply to stand-alone restaurants as well as those located within a multi-tenant commercial center or mixed-use development.

D. Location and Siting Requirements

1. Outdoor dining shall be permitted in any zone where restaurants are a permitted use (or where restaurants are conditionally permitted and a CUP has been approved for the restaurant).
2. Outdoor dining areas may be established on privately owned lots subject to the following requirements:
 - a. Dining areas may be located within outdoor areas adjacent to restaurants, such as existing private sidewalks and walkways, patios, etc. A minimum five (5) foot wide path of travel shall be maintained along all pedestrian walkways from parking areas and public sidewalks to all public building entrances.
 - b. Outdoor dining areas may be located within, and may replace, existing off-street parking spaces (see also Subsection XI-10-13.19(E)) on privately owned parcels.
 - i. Parking spaces to be converted to outdoor dining areas must be immediately adjacent to the restaurant establishment. An outdoor dining area shall not be separated from the restaurant by any vehicular drive aisle.
 - ii. No existing accessible parking spaces required per Title 24, California Building Standards Code, and the Americans with Disabilities Act may be removed to accommodate outdoor dining areas.

- c. Outdoor dining areas shall be subject to the base zone regulations for minimum setbacks from property lines. Any permanent canopies, pergolas or similar shade structures requiring a building permit shall be subject to base zone regulations for maximum lot coverage.
- d. Outdoor dining areas shall not be located within required loading zones or stormwater treatment areas, nor be located so as to obstruct access to utilities.
- e. Outdoor dining areas shall be subject to all emergency access regulations per the California Fire Code.
- f. Outdoor dining areas shall not be located in a manner that creates a potential safety hazard.

E. Allowed Reductions to Required Off-Street Parking

- 1. For restaurants located in the MXD, MXD2, and MXD3 zones or in any commercial zone within the Milpitas Metro Specific Plan or Milpitas Gateway-Main Street Specific Plan areas, total required off-street parking as specified in Subsection XI-10-53.09 – Off-Street Parking Required by Land Use may be reduced by up to 50 percent to accommodate new or expanded outdoor dining areas in existing parking areas.
- 2. No minimum parking requirements shall apply to restaurants located within one-half mile of the Milpitas Transit Center.
- 3. For restaurants located in any other area of the city, required off-street parking may be reduced by up to 15 percent to accommodate new or expanded outdoor dining areas in existing parking areas, provided that the size of the outdoor dining area is 800 square feet or less.
- 4. For multi-tenant commercial properties with shared parking, allowed reductions to required parking to accommodate outdoor dining shall be based on the total parking requirement for all uses and establishments on the subject property, not solely on the parking requirement for the restaurant(s) proposing to add or expand outdoor dining areas. The shared parking standards established in Section XI-10-53.11 shall apply to locations with shared parking arrangements.

F. Design Standards

- 1. Barriers and Materials
 - a. Outdoor dining areas shall be delineated by a substantial and durable barrier that separates the dining area from vehicular drive aisles and parking spaces.

- b. Materials. Barriers should be made from high-quality materials (e.g., wood or iron railings and fencing, planter boxes, decorative concrete barriers).
 - i. Materials and design of barriers and associated amenities should be consistent with the design and appearance of the restaurant and complementary to the character and design of the surrounding district.
 - ii. Plywood or other unfinished materials used for construction of a barrier to delineate and protect an outdoor dining area shall be painted or covered in siding or other finished materials approved by the Planning Department.
 - iii. Chain link fencing, corrugated metal, unfinished wood materials, stanchions, retractable belts, screens, and small landscape planters are not acceptable materials for barriers for outdoor dining areas and shall be prohibited.
- c. Solid portions of barriers for outdoor dining areas shall be no more than three (3) feet in height. Transparent, shatterproof glass (plexiglass or similar material) may be placed above a three-foot solid barrier, up to a total maximum height of six (6) feet (for freestanding plexiglass over a solid barrier). If the outdoor dining area has a permanent shade or roof structure, plexiglass or other transparent materials may extend to the height of the ceiling.
- d. Barriers may be permanent or movable. If movable, they should be well secured and designed to support weight leaning against them.
- e. Barriers shall have one opening for emergency access, with a minimum width of 36 inches, for every 20 linear feet of barrier.
- f. Barriers adjacent to parking spaces shall be marked with reflective material, such as tape or plastic reflective strips.

2. Shade Structures, Tables and Chairs, and Other Amenities

- a. Permanent overhead shade structures (e.g. pergolas) may be allowed for outdoor dining areas. The design and location of any permanent overhead shade structure shall complement the main restaurant and shall be subject to review and approval by the Planning Department. All permanent overhead shade structures shall require a building permit.

- b. Permanent overhead shade structures shall be durable and made from high-quality materials such as wood or metal. Plywood, corrugated metal, and corrugated polycarbonate are prohibited as materials for roofing or shade structures.
 - c. The maximum height for all overhead shade structures for outdoor dining areas shall be 12 feet.
 - d. Non-permanent shade equipment, such as umbrellas, fabric canopies, or retractable awnings, are permitted, provided they are made from high-quality materials and removed or stored when the outdoor dining area is not in use.
 - i. For awnings projecting from buildings, the minimum vertical clearance shall be eight (8) feet and the maximum extension from the face of a building shall be seven (7) feet.
 - ii. Awnings and umbrellas should have no words or advertising other than the name and logo of restaurant establishment.
 - e. Tables and chairs should be of a high-quality and visually appealing material such as wood or metal. Inexpensive plastic or vinyl tables and chairs are not permitted.
 - f. The layout of outdoor dining areas should incorporate spaces for landscape planters with decorative plants and flowers.
3. Traffic Safety. A minimum two (2) foot setback shall be required between an outdoor dining area barrier and any adjacent parking space(s).
4. Accessibility Requirements
- a. Outdoor dining areas shall have hard, non-slip surfaces, such as concrete, tile, stone, or wood/composite decking. Soft surfaces such as dirt, gravel, and lawn are not permitted.
 - b. If an outdoor dining area is located on a raised platform or in a sunken area, a ramp must be provided that meets the requirements of the California Building Code and the Americans with Disabilities Act.
 - c. A minimum of five (5) percent of the seats provided in an outdoor dining area shall be wheelchair accessible.
 - d. Minimum dimensions for wheelchair accessible seating spaces shall be 30 inches wide by 48 inches deep. Access to all such seating spaces shall be provided via a path with a minimum unobstructed width of 36 inches.

5. Fire Safety. All outdoor dining areas shall comply with the requirements of the California Fire Code. Minor Site Development Permit applications for new or modified outdoor dining areas are subject to review and approval by the Milpitas Fire Department.
6. Lighting. No electrical wires for lighting elements shall cross the required clear path of travel along a public sidewalk or private pedestrian walkway. Solar lighting is encouraged for outdoor dining areas.
7. Signage. All restaurant signage shall comply with Section XI-10-24 – Signs of this Chapter. No additional signage shall be permitted in outdoor dining areas.

G. Operational Standards

1. Hours of Operation.
 - a. The hours of operation for outdoor dining areas shall be limited to the hours the restaurant is open for ordering and serving of meals.
 - b. In addition to Subsection XI-10-13.19(G)(1)(a), in no case shall outdoor dining be permitted before 7:00 am, seven (7) days per week, or after 10:00 pm Sunday through Thursday and after 11:00 pm Friday and Saturday.
2. Alcoholic Beverages.
 - a. The restaurant owner or manager shall coordinate with the California Department of Alcoholic Beverage Control (ABC) regarding alcohol sales in conjunction with outdoor dining.
 - b. The restaurant owner or manager shall obtain approval from ABC for a modified license to extend the permitted area for serving alcohol to include all outdoor dining areas associated with the restaurant and shall provide proof of such approval to the City of Milpitas Planning Department.
3. No smoking or vaping shall be permitted within outdoor dining areas.
4. Outdoor preparation and/or storage of food is not permitted within outdoor dining areas.
5. All live entertainment in outdoor dining areas is subject to the provisions of Subsections XI-10-5.04(E) and XI-10-6.06(B) of this Chapter.
6. Maintenance Requirements.

- a. Outdoor dining areas shall be kept clean and free of litter and debris at all times.
- b. All plants and landscaping shall be maintained in good health.
- c. All plexiglass or other transparent materials used as part of an outdoor seating barrier shall be regularly cleaned and provide a clear view from the outdoor seating area. Cracked, broken, or discolored materials are prohibited and shall be replaced immediately.

SECTION 5. 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.

SECTION 6. CERTIFICATION

The City Clerk shall either: (a) have this ordinance published in a newspaper of general circulation within 15 days after its adoption, or; (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five days before its adoption and again within 15 days after its adoption.

SECTION 7. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 8. NOTICE OF CEQA EXEMPTION

The City Council hereby directs staff to prepare, execute, and file with the County of Santa Clara Clerk a notice of CEQA exemption within five (5) working days of the adoption of this Ordinance.