

REGULAR

NUMBER: 38.803

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO CONDITIONAL USE PERMIT PROCESS STREAMLINING

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of April 3, 2012, upon motion by Councilmember Giordano and was adopted (second reading) by the City Council at its meeting of April 17, 2012 , upon motion by Councilmember Polanski. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES: (5) Mayor Esteves, Vice Mayor McHugh, and Councilmembers Giordano, Gomez and Polanski

NOES: (0) None

ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, on July 13, 2011, the Planning Commission established a Subcommittee for the purpose of streamlining the Conditional Use Permit process, which led to a recommendation by the Subcommittee to amend the City's zoning ordinance; and

WHEREAS, on February 8, 2012, the Planning Commission held a duly noticed public hearing on the proposed zoning ordinance revision, and considered evidence presented by City staff, the applicant, and other interested parties and recommended approval to the City Council; and

WHEREAS, the Planning Division completed an environmental assessment for the matter in accordance with the California Environmental Quality Act (CEQA), and recommends that the City Council determine this project to be exempt from CEQA; and

WHEREAS, on April 3, 2012, the City Council held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties; and

WHEREAS, the City Council finds the proposed ordinance amendments do not require further environmental clearance and consideration pursuant to Section 15061(b)(3) of the CEQA Guidelines because the project is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The project involves a process change for uses being allowed in certain zoning districts. Performance standards are proposed to ensure compatibility with surrounding uses; and

WHEREAS, the proposed amendments are consistent with the General Plan in that: (a) streamlining the conditional use permitting process encourages economic pursuits which will strengthen and promote development through stability and balance (Policy 2.a-I-3) and (b) streamlining the conditional use permitting process endeavors to maintain a balanced economic base that can resist downturns in any one economic sector (Policy 2.a-I-6); and

WHEREAS, the proposed amendments will not adversely affect the public health, safety and welfare in that performance standards are proposed or already in place that will ensure compatibility with surrounding uses.

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. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended to change the "Billiard Center" definition in an amended and restated form as follows:

"Billiards" means a "Recreation and Entertainment facility" for the public to view and participate in cue sports, such as but not limited to billiards, pocket billiards (e.g., pool), snooker, and the various forms of carom billiards.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 ("Definitions") of the Milpitas Municipal Code is hereby amended to add the new definitional entry as follows:

"Drive Through Uses" means any component or part of a building or structure which attracts or invites persons in motor vehicles to drive their vehicles upon the premises, and which is used to conduct business or used for the purpose of selling merchandise from the inside of said building to the occupants of motor vehicles.

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

Title XI, Chapter 10, Section 2.03 (“Definitions”) of the Milpitas Municipal Code is hereby amended to delete the “Internet Access Studio or internet cafe” definitional entry in its entirety.

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

Title XI, Chapter 10, Section 2.03 (“Definitions”) of the Milpitas Municipal Code is hereby amended to delete “Vehicle Oriented Window Service Facility” definitional entry in its entirety.

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

Title XI, Chapter 10, Section 5 (“Commercial Zones and Standards”) of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

XI-10-5.01 Purpose and Intent

The General Plan details the goals, objectives and policies for the City’s commercial zones, including provisions for a range of retail and office uses necessary to support the daily needs of residents of and visitors to Milpitas. It is the purpose of this section to implement the General Plan’s vision for the commercial zones through development of regulations that allow for a variety of retail and office uses, while creating distinct commercial areas that are compatible with their surrounding environment.

A. Administrative and Professional Office (CO) Zone. The purpose and intent of this zone is to provide a district for medical, business, and professional offices, and medical and dental clinics.

B. Neighborhood Commercial (C1) Zone. The purpose and intent of this zone is to provide for general commercial needs of neighborhood areas of the City and to promote stable, attractive commercial development which will afford a pleasant shopping environment and will complement the essential residential character of the neighborhood. The Neighborhood Commercial District shall contain, as permitted uses, those activities which primarily provide for the day-to-day shopping needs of the residential neighborhood it is located in. It shall not include uses which generate loud noises or unpleasant odors. It shall not include retail stores, offices or service establishments which are not open to minors or which are designed to attract customers and traffic from areas other than the neighborhood area in which they are located.

C. General Commercial (C2) Zone. The purpose and intent of this zone is to provide for the wide range of retail sales and personal and business services primarily oriented to the automobile customer to provide for general commercial needs of the City and to promote stable, attractive commercial development which will afford a pleasant shopping environment. It is intended to include those commercial uses in which shopping may be conducted by people walking to several stores as in a center and may include uses customarily of a single-purpose character served from an immediately parked automobile. Special development standards are incorporated in the district regulations in order to provide for orderly development and to minimize potential traffic hazards. The C2 District, when appropriate, will be located along major thoroughfares and in accordance with the adopted City of Milpitas General Plan.

D. Highway Services (HS) Zone. The purpose and intent of this zone is to provide for the wide range of personal and business services primarily oriented to the automobile customer and transient residential uses such as motels or mobile home parks. It is intended to include those commercial uses which customarily located outside of the Central Business District area and tend to require lots with well-maintained grounds. The highway service uses listed are of a relatively low customer volume. Special development standards are incorporated in the district regulations in order to provide for orderly development and to minimize potential traffic hazards. The HS District, when appropriate, will be located along State highways and major City thoroughfares and in accordance with the adopted City of Milpitas General Plan.

E. Town Center (TC) Zone. The purpose and intent of this zone is to provide for an area that supports a wide range of administrative, business, entertainment, residential, dining, and cultural activities in the geographic center of the City to suit the varying lifestyles of residents and visitors alike. The area is easily accessible via the City’s transportation network.

XI-10-5.02 Commercial Use Regulations.

A. Permitted and Conditionally Permitted Uses.

1. Primary uses. The uses identified in Table 5.02-1, Commercial Zone Uses, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted within enclosed structures. The primary uses identified in Table 5.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol “P” appears, the use shall be permitted.
MCS	Where the symbol “MCS” appears the use shall be permitted subject to the issuance of a Minor Conditional Use Permit by staff, in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
C	Where the symbol “C” appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.
MC	Where the symbol “MC” appears, the use shall be permitted subject to the issuance of a Minor Conditional Use Permit, in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
O	Where the symbol “O” appears, the use is subject to an alternative review process described in a subsequent footnote.

B. Prohibited Uses. The following uses are prohibited:

1. Uses where the symbol “NP” appears within Table 5.02-1.
2. Uses that have been excluded from Table 5.02-1, unless they are found by the City to be similar to permitted or conditionally permitted uses in accordance with C below.

C. Other Uses. Any other uses may be considered by the Planning Commission that are similar in accordance with the procedure prescribed in Subsection 10-54.02, Other Uses Permitted by Commission, of this Chapter.

**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
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 (stationary, equipment)	P	P	P	P	P
Paint and wallpaper stores	NP	NP	P	P	P

Use	CO	C1	C2	HS	TC
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	NP	NP	P	P	P
Tobacco shop	NP	C	C	NP	C
2. Entertainment and Recreation					
Adult business ³	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 Uses⁴					
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) ⁵	NP	P	P	P	P
Financial institutions (banks, savings and loans, etc.)	P	P	P	P	P

Use	CO	C1	C2	HS	TC
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	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 ⁷	MCSP	MCSP	MCSP	MCSP	MCSP
Private					
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 ⁶	P	P	P	P
With live entertainment/dancing	NP	NP	C	C	C
With drive-in or drive-thru	NP	C	C	C	C
With ancillary on-premise beer & wine with no separate bar	NP	MC	MC	MC	MC
9. Residential Uses					
Caretaker (in conjunction with contractor's yard or mini-storage complex)	NP	NP	C	C	NP
Residential dwellings (between 1 and 40 d.u. per gross acre)	NP	NP	NP	NP	C
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) ⁷	MCS	MCS	MCS	MCS	MCS
Car wash	NP	NP	C	C	NP
Service stations (with or without repair or retail) ^{7,8}	C	C	C	C	C
Drive through uses (restaurants, pharmacies, etc.)	NP	C	C	C	C
11. Unclassified Uses					
Accessory structures ⁹	P	P	P	P	P
Model home complex ¹⁰	NP	NP	NP	NP	P
Mortuary or crematory	NP	NP	NP	C	NP
Radio or television station	NP	NP	C	P	NP

Use	CO	C1	C2	HS	TC
Temporary seasonal sales ¹¹	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 In accordance with the Title III, Chapter 4, Adult Business Ordinance, and Subsection 13.04, Adult Businesses, of this Chapter.

⁴ For conditionally permitted uses, refer to Subsection 57.04(C) (9), Certain Industrial Uses within Commercial Districts, of this Chapter.

⁵ Refer to Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.

⁶ 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.

⁷ Refer to Subsection 5.02-1, Commercial Zone Special Uses, of this Section.

⁸ 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.

⁹ Not including warehouses on the same site as the permitted use.

¹⁰ No tract sign shall be permitted within 600 feet of a Santa Clara County Expressway.

¹¹ Refer to Section 13.11, Temporary Uses and Structures, of this Chapter.

XI-10-5.02-1 Commercial Zone Special Uses

A. Performance Standards for Certain Uses

For uses requiring approval of a Minor Conditional Use Permit by staff, in accordance with Section XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter, the following performance standards shall be met.

1. Auto Brokers. Auto Brokers may be permitted by right if the following standards are met:
 - a. Local Sales and Use Tax. In order to assist the City of Milpitas in its efforts to receive direct distribution of the local tax on materials associated with the project, the California Sales and Use Tax (the “Local Tax”) shall be allocated to the project site, to the extent reasonably possible. Evidence of tax allocation or cause as to why such allocation cannot be made shall be submitted at the time of business license submittal.
2. Group Instruction uses shall comply with the following standards:
 - a. No loitering shall be permitted before or after any classes or sessions.
3. Service stations shall comply with the following standards:
 - a. 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.
4. Small and large appliance repair uses shall comply with the following standards:
 - a. All operations shall be conducted completely within an enclosed building.
 - b. There shall be no dust, fume, or odor emitted from the premise.
 - c. The operations shall not create excessive vibrations.
 - d. The operations shall be consistent with the City’s noise standards.

XI-10-5.03 Commercial Zone General Development Standards

The following minimum requirements shall be observed, except where increased for conditional uses. The minimum requirement shall be one of the following for the district classification as designated on the zoning map.

**Table XI-10-5.03-1
Commercial Zone Development Standards**

Standard	CO	C1	C2	HS	TC
Lot Area, minimum	None	None	10,000 s.f.	Fronting major street (4 or more lanes): 1.5 ac. Fronting all other streets (two lanes):	None.

Standard	CO	C1	C2	HS	TC
				20,000 s.f.	
Lot Width, minimum	None	None	100 ft.	Fronting major street: 250 ft. Fronting all other streets: 125 ft.	None
Front Yard Setback, minimum	10 ft.	20 ft.	0 ft.	Major street: 50 ft. All other streets: 0 ft.	20 ft. 35 ft. along E. Calaveras Blvd.
Side Yard Setback (Interior), minimum	10 ft.	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District
Street Side Yard Setback, minimum	10 ft.	0 ft.	0 ft.	0 ft.	20 ft. 35 ft. along E. Calaveras Blvd.
Rear Yard Setback, minimum	10 ft. When abutting residential, not less than R District required setback	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District	0 ft. 15 ft. when abutting R District
Building Height, maximum					
Primary building	35 ft. or 3 stories	35 ft. or 2.5 stories	None	None	None ¹
Accessory building	25 ft. or 2 stories	25 ft. or 2 stories			
Parking	Refer to Section 53, Off Street Parking, of this Chapter.				
Lot Coverage	None	None	None	None	None
Floor Area Ratio	0.50	0.35	0.50	0.50	0.85
Landscaping	None	None	None	25% of front yard setback	All required setback areas and the ends of each parking aisle ²

¹ Refer to Subsection 57.04(C)(1), Applicability, of this Chapter for additional requirements.

² The Planning Commission shall determine the size of the planters through site and architectural review.

XI-10-5.04 Commercial Zone Special Development Standards

A. All Zones.

1. Areas for Collecting and Loading Recyclable Materials. There shall be provided areas for collecting materials in accordance with Subsection 54.12, Areas for collecting and loading recyclable materials, of this Chapter.
2. All outdoor storage areas of such things as trash and materials shall be within a completely enclosed building or behind a visually obscure solid wall or tight board fence a minimum six (6) feet in height and shall not be located within any front or street side yard setback area.
3. Such uses, operations or products shall not be objectionable due to odor, dust, smoke, noise, vibration or other similar causes.

B. TC Zone

1. Setbacks for Residential Projects. Except for the Calaveras Boulevard setback, all other setbacks shall be determined through a Site Development Permit.

XI-10-5.05 Conformance with Specific Plans. Properties located within Specific Plans shall conform to the underlying Specific Plan in accordance with Section XI-10-11.06, Conformance with Specific Plans, of this Chapter.

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

Title XI, Chapter 10, Section 6 (“Mixed Use Zones and Standards”) of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

XI-10-6.01 Purpose and Intent

A. Mixed Use (“MXD”) Zoning District. The purpose of the MXD zoning district is to encourage a compatible mix of residential, retail, entertainment, office and commercial service uses within the framework of a pedestrian-oriented streetscape. It is intended that the residential and commercial use allowed in the "MXD" District combine to provide for an "around-the-clock-environment" with urban open areas (i.e. plazas, squares) that serve multiple purposes and can be used for special events.

B. High Density Mixed Use (“MXD2”) Zoning District. The purpose of the MXD2 zoning district is to encourage a mix of retail, restaurant, entertainment, and commercial service uses on the ground floor with residential or office uses on the floors above while maintaining a pedestrian-oriented streetscape. It is intended that the retail or restaurant space required will ensure neighborhood-oriented retail and services are provided within walking distance of high density residential development.

C. Very High Density Mixed Use (“MXD3”) Zoning District. The purpose of the MXD3 zoning district is to provide very-high density housing, retail and employment uses.

XI-10-6.02 Mixed Use Regulations

A. Permitted and Conditionally Permitted Uses.

1. Primary uses. The uses identified in Table 6.02-1, Mixed Use Zone Uses, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted within enclosed structures. The primary uses identified in Table 6.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol “P” appears, the use shall be permitted.
MCS	Where the symbol “MCS” appears, the use shall be permitted subject to the issuance of a Minor Conditional Use Permit by staff, in accordance with Section 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
C	Where the symbol “C” appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Section 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
MC	Where the symbol “MC” appears, the use shall be permitted subject to the issuance of a Minor Conditional Use Permit, in accordance with Section 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
O	Where the symbol “O” appears, the use is subject to an alternative review process described in a subsequent footnote.

2. Accessory Uses.

a. **Massage Services.** Massage services may be allowed as an accessory use to any permitted or conditionally permitted medical office, medical clinic, chiropractor practice, acupuncture practice, physical therapist, fitness and athletic facility, health care facility (such as hospitals, nursing homes and sanitariums), and accredited school, college, and university. Massage services, limited to massage of the head, neck, shoulders, hands and feet may be allowed as an accessory use to any permitted or conditionally permitted beauty salon, barbershop, and healing art practices. This section shall not exempt any person or business from complying with all the provisions of Title III, Chapter 6.

B. Prohibited Uses. The following uses are prohibited:

1. Uses where the symbol “NP” appears within Table 6.02-1.
2. The following uses are not permitted in any mixed use zone:

- a. Adult Businesses as defined in Subsection 13.04, Adult Businesses, of this Chapter.
- b. Disinfecting and extermination business.
- c. Ground level residential in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1 and Zoning Map.
- d. Outdoor storage of vehicles.
- e. Private self-storage facilities
- f. Single family detached dwellings
- g. Two family dwelling units
- h. Drive through uses (restaurants, pharmacies, etc.)

C. Other Uses. Any other uses may be considered by the Planning Commission that are similar in accordance with the procedure, prescribed in Subsection 10-54.02, Other Uses Permitted by Commission, of this Chapter.

**Table XI-10-6.02-1
Mixed Use Zone Uses**

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
1. Commercial Uses				
Alcohol beverage sales	C	C	C	C
Commercial services ¹	MCS	MCS	MCS	MCS
Grocery stores (supermarkets)	C	C	C	C
Pawnshops ²	C	C	C	C
Pet shops	C	NP	NP	NP
Retail stores, general merchandise ³	MCS	MCS	MCS	MCS
Tanning salons	P	P	P	P
Thrift shops (used merchandise)				
Retail	P	P	P	P
With collections	C	C	C	C
2. Entertainment and Recreation				
Commercial athletic facilities	P	P	P	P
Motion picture theater (see 6 below)				
Recreation or entertainment facility	C	C	C	C
3. Health and Veterinarian Uses				
Animal grooming (no boarding)	P	P	NP	P
Hospitals or sanitariums ⁴	C	C	C	C
Massage establishment	C	C	C	C
Medical or dental offices and clinics	P	NP	P	P
Medical support laboratories	P	P	P	P
Optician and optometrist shop	P	P	P	P
Pharmacy or drug store	P	P	P	P
Veterinarian clinic	P	P	P	P
4. Lodging				
Bed and breakfast	P	P	NP	NP
Boarding houses (3 or more persons)	C	C	C	C
Group dwellings	C	C	C	C
Hotels	C	P	P	P
Motels	C	C	C	C
5. Professional Offices, Financial Institutions and Related Uses ⁴				
Financial institutions (banks, savings and loans, etc.)	MCS	NP	MCS	P
Offices ³	MCS	NP	MCS	P
6. Public/Quasi Public and Assembly Uses				

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
Child care				
Child care center	C	P	C	P
Day care school	C	C	C	C
Large family child care home	P	P	C	P
Small family child care home	P	P	P	P
Instruction				
Group ¹³	P	NP	NP	NP
Private	P	P	P	P
Park, playground or community center ⁵	O	O	O	O
Places of assembly ⁴	C	C	C	C
Public utilities	C	C	C	C
Schools, private (elementary, middle and high) ⁴	C	C	C	C
Theaters (Indoor)	C	C	C	C
Trade and vocational schools ⁴	C	C	C	C
Transportation facilities ²	C	C	C	C
7. Residential Uses				
Multi-family housing ⁶	P	NP	P	P
8. Restaurants or Food Service				
Bar or nightclub	C	C	C	C
Brewery/Eateries ⁷	MCS	MCS	NP	MCS
Catering establishments	C	C	C	C
Restaurants ²	P/C	P/C	NP	P/C
With dancing and entertainment	C	C	C	C
With ancillary on-premise beer & wine with no separate bar	P	P	P	P
9. Unclassified Uses				
Artisan Studios & Live-work units, woodworking or glassworking, plumbing or metalworking and sign shops ²	MCS	MCS	MCS	MCS
Lobbies and entries for upper floor uses	P	P	NP	P
Model home complex ⁸	P	P	P	P
Mixed use developments ⁹	P	P	P	P
Planned Unit Development ¹⁰	P	P	P	P
Temporary seasonal sales ¹¹	P	P	P	P
10. Vehicle-Related Repair , Sales and Services				
Auto sales and rental ¹²	C	C	C	C
Auto broker (wholesale, no vehicles on site) ²	MCS	MCS	MCS	MCS
Vehicle service uses ¹³	C	NP	NP	C

¹ Refer to Subsection XI-10-6.02-1(B), Performance standards for certain uses, of this Chapter, for standards.

² Refer to Subsection XI-10-6.02-1, Special Uses, of this Chapter, for standards.

³ Refer to Subsection XI-10-6.02-1(B) Performance standards for certain uses, of this Chapter. ⁴ Refer to Subsection XI-10-6.02-2, Quasi-Public Uses, of this Chapter, for standards.

⁵ For parks, playgrounds or community center owned and operated by a government agency or a nonprofit community organization.

⁶ Ground level residential is prohibited in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.

⁷ Reserved

⁸ Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

⁹ Which include only permitted uses.

¹⁰ Refer to Section XI-10-54.07, Planned Unit Developments, of this Chapter, for standards.

¹¹ Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

¹² New and used auto, recreational vehicle and boat sales, excluding commercial vehicles, trucks, buses, vans, and farm equipment, with accessory repairs and services, only allowed if fully enclosed within a building. Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals, only if fully enclosed within a building.

¹³ 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.

XI-10-6.02-1 Mixed Use Zone Special Uses

A. Special Uses within all MXD zones. Certain uses noted in Table 6.02-1, Mixed Use Zone Uses may be allowed through the approval of a Conditional Use Permit and Minor Conditional Use Permits, in accordance with Subsection 57.04, Conditional Use Permits, of this Chapter, if they are not located within one thousand (1,000) feet of another same use listed below. This distance shall be measured from the property line of the parcel where such use is located.

1. Auto service uses, including but not limited to: gasoline service stations, car washes, tire shops, towing without vehicle storage and auto repair shops of all kinds, radiators, paint, body, glass, brakes, upholstery, and other similar types.
2. Local transportation service facilities (e.g. taxi, parcel service, ambulance, armored car, and van storage) without outdoor storage of vehicles.
3. Pawnshops.

B. Performance Standards for Certain Uses

For uses requiring approval of a Minor Conditional Use Permit by staff, in accordance with Section XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter, the following performance standards below shall be met.

1. Auto Brokers. Auto Brokers may be permitted by right if the following standards are met:
 - a. Local Sales and Use Tax. In order to assist the City of Milpitas in its efforts to receive direct distribution of the local tax on materials associated with the project, the California Sales and Use Tax (the “Local Tax”) shall be allocated to the project site, to the extent reasonably possible. Evidence of tax allocation or cause as to why such allocation cannot be made shall be submitted at the time of business license submittal.
2. Auto Service Uses. Auto Service uses shall comply with the following standards:
 - a. All operations shall be conducted completely within an enclosed building.
 - b. Entrances to the service bays shall not be open to the street but shall be designed to face the rear or interior side property line.
3. Artisans, Plumbing, Metalworking, Sign Shops and Woodworking or glass working shops. These uses shall comply with the following standards:
 - a. All operations shall be conducted completely within an enclosed building.
 - b. There shall be no dust, fume, or odor either emitted from the premise.
 - c. The operations shall not create excessive vibrations.
 - d. The operations shall be consistent with the City’s noise standards.
 - e. Plumbing, metalworking, sign shops, woodworking or glass working shops shall not be closer than 1,000 feet of another same use measured from the property line.
4. Commercial Services uses shall comply with the following:
 - a. When located within the MXD zone:
 - i. Located in the area designated for ground floor retail and are less than or equal to ten thousand (10,000) square feet in gross floor area;
 - ii. Located in the areas not designated for ground floor retail and are less than or equal to fifty thousand (50,000) square feet in gross floor area.
 - b. When located within the MXD2 and MXD3 zones they are less than or equal to fifty thousand (50,000) square feet in gross floor area;
 - c. They are not open past 10:00 p.m.;

- d. They are not specifically noted in Table 6.02-1, Mixed Use Zone Uses, of this chapter, requiring Conditional Use Permit approval or listed as a prohibited use;
- e. They are not listed as a prohibited use in Section 10-6.02 (B), Prohibited Uses, of this Chapter.

If items a through c above are not met, then approval of a Conditional Use Permit is required in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.

5. Group Instruction uses shall comply with the following standards:

- a. No loitering shall be permitted before or after any classes or sessions.

6. Restaurants may be permitted provided:

- a. They provide no dancing or live entertainment;
- b. They have only ancillary on-premise consumption of beer and wine associated with food sales;
- c. They have no separate bar area;
- d. When located within the MXD2 and MXD3 zones they are located on the ground floor facing a public street designated as a retail mixed use street; and
- e. They conform to the performance standards listed in this subsection (f) below.

If items (a) through (d) above are not met, then approval of a Conditional Use Permit is required in accordance with Section 57, of this Chapter.

f. Restaurant Performance Standards. Restaurants shall comply with the following performance standards:

- i. Seating shall not exceed that which the amount of parking allocated for the restaurant space would allow. A sign measuring at least one (1) foot by one (1) foot, with a lettering height of at least three (3) inches, shall be placed in a conspicuous location near the restaurant front entrance stating the maximum total seating allowed. Outdoor seating is allowed if it has been approved as part of the facility's Minor Site Development Permit or Site Development Permit and is operated in conformance with any conditions of that approval.
- ii. The restaurant shall comply with the City Council's Guidelines for Recycling Enclosures (Resolution No. 6296).
- iii. The restaurant shall incorporate measures to reduce odors to acceptable levels, including, but not limited to, installation of a scrubber, carbon filter or similar equipment, on the roof vent to control odors.
- iv. All the facility's floor drains, trash compactors and indoor mat and equipment washing areas shall be drained to the sanitary sewer.
- v. Where applicable, the restaurant shall maintain an active account with a tallow hauling company.
- vi. The restaurant shall prepare and implement a program assigning restaurant staff responsibility for complying with the following guidelines which shall be adhered to while the restaurant is in operation:
 - 1) Wash all containers and equipment in the kitchen areas so that wash water may drain into the sanitary sewer.
 - 2) Keep garbage dumpsters clean inside and out; replace very dirty dumpsters with new, clean ones.
 - 3) Double bag waste to prevent leaking.
 - 4) Place, do not drop or throw, waste-filled bags, to prevent leaking.
 - 5) Keep the ground under and around the garbage dumpsters swept.
 - 6) Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.
 - 7) Hold training sessions to instruct employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all State and local health and sanitation standards. A record of such training must be kept to prove compliance with this requirement.
 - 8) Post signs (in English and multi-lingual) inside the premises for all employees identifying procedures for food delivery and garbage disposal.
 - 9) All garbage bins shall be stored in the garbage enclosure except for the twelve (12) hours immediately before and after garbage collection.

7. Retail and Offices shall comply with the following:

- a. When located within the MXD zone:
 - i. Located in the area designated for ground floor retail and are less than or equal to ten thousand (10,000) square feet in gross floor area;
 - ii. Located in the areas not designated for ground floor retail and are less than or equal to fifty thousand (50,000) square feet in gross floor area.
- b. When located within the MXD2 and MXD3 zones they are less than or equal to fifty thousand (50,000) square feet in gross floor area;
- c. They are not open past 10:00 p.m.;
- d. They are not specifically noted in Table 6.02-1, Mixed Use Zone Uses, of this Chapter, requiring Conditional Use Permit approval or listed as a prohibited use; and
- e. They are not listed as a prohibited use in Section 10-6.02 (B), Prohibited Uses, of this Chapter.

If items a through c above are not met, then approval of a Conditional Use Permit is required in accordance with Section 57, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.

XI-10-6.02-2 Quasi-Public Uses within MXD Zone

A. The following quasi-public uses may be permitted within the MXD zones provided their location is first approved by the Planning Commission, in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter, and they are not located within one thousand (1,000) feet of the parcel boundary of another quasi-public use listed below. This distance shall be measured from the property line of the parcel where such use is located.

1. Places of meeting or assembly, such as auditoriums, banquet halls, fraternal or union hall, churches and other religious institutions.
2. Hospitals or sanitariums.
3. Private elementary, middle or high school.
4. Vocational schools, if not found objectionable due to noise, odor, vibration or other similar health, safety and welfare basis.

XI-10-6.03 Affordable Housing

Affordable housing units should be provided in all new housing projects. While twenty percent (20%) is the minimum goal, affordable unit requirements will be determined on a project by project basis, taking into consideration the size and location of the project, the type of housing unit, proximity to transit and the mix of affordable units in the vicinity.

XI-10-6.04 Mixed Use Zone General Development Standards

A. Standards within Specific Plan Areas.

For properties located within a Specific Plan, refer to the Specific Plan for development standards. When a standard is not listed within the Specific Plan, the standards listed within the zoning ordinance shall govern.

B. General Standards. The following minimum requirements shall be observed. The minimum requirement shall be one of the following for the district classification as designated on the zoning map.

**Table XI-10-6.04-1
Mixed Use Zone Development Standards**

Standards	MXD	MXD2	MXD3
Non-residential lot area minimum	Individual sites shall be of such size that all space requirements provided in this section are satisfied.	Individual sites shall be of such size that all space requirements provided in this section are satisfied.	Individual sites shall be of such size that all space requirements provided in this section

Standards	MXD	MXD2	MXD3
			are satisfied.
Density, Minimum-Maximum Residential (Dwellings) ¹	21 min. 30 max. per gross acre	31 min. 40 max. per gross acre. For additional standards refer to Section 6.04(C), Multi-Family Residential Density within the MXD2 and MXD3 zones.	41 min. 60 max. per gross. For additional standards refer to Section 6.04(C), Multi-Family Residential Density within the MXD2 and MXD3 zones.
Front and Street-Side Yard Setback, Minimum	Refer to Section 6.04(D), Front and Street-Side Yard Setbacks.	Refer to Section 6.04(D), Front and Street-Side Yard Setbacks.	12 ft. min--20 ft. max For additional standards refer to Section 6.04(D), Front and Street-Side Yard Setbacks, of this chapter.
Interior-Side Yard Setback, Minimum ²	Ground Level Commercial Area: 0 ft. All other areas: 10 ft.	0 ft. Except when abutting residential use and for portions of buildings over 60 ft or four stories tall, where the interior side yards shall be a minimum of 10 ft.	10 ft. 15 ft. when abutting residential. 20 ft. for portions of buildings over 60 ft. or four stories tall.
Rear Yard Setback, Minimum ³	10 ft.	10 ft 15 ft. when abutting residential 20 ft. for portions of buildings over 60 ft or four stories tall.	15 ft. 20 ft. when abutting residential 30 ft. for portions of buildings over 60 ft. or four stories tall.
Floor Area Ratio, Non-Residential and Mixed Use projects	For buildings and portions thereof: .75 max.	1.5 max. Refer to Section 6.04(F), Floor Area Ratio, Non-Residential.	2.0 max. Refer to Section 6.04(F), Floor Area Ratio, Non-Residential.
Commercial Area, Minimum	Not Applicable	200 sq. ft. of retail, restaurant, or pedestrian-oriented commercial service uses, allowed in Table 6-02-1, Mixed Use Zone Uses, must be provided for every unit, using the minimum density.	Not Applicable
Building Height ⁴	Principal building: 3 stories and 45 ft.	Principal building: 6 stories or 75 ft. Principal buildings with frontage along Great Mall Parkway: 12 Stories or 150 ft.	Principal buildings: 12 stories or 150 ft. Greater height, up to 20 stories may be allowed through the approval of a Conditional Use

Standards	MXD	MXD2	MXD3
		Greater height, up to 20 stories may be allowed through the approval of a Conditional Use Permit.	Permit.
Landscaping	Refer to Section 6.04(G), Landscaping.	Refer to Section 6.04(G), Landscaping.	Refer to Section 6.04(G), Landscaping.
Parking	Refer to Section 53, Off Street Parking Regulations, of this Chapter.	Refer to Section 53, Off Street Parking Regulations, of this Chapter.	Refer to Section 53, Off Street Parking Regulations, of this Chapter.

¹ For MXD3 properties, density may be averaged over contiguous parcels.

² To mitigate the effects of adjacent service commercial or light industrial uses, increased setbacks and other measures, such as solid six-foot fence or masonry wall, shall be considered on a case by case basis by the Planning Commission during the Site Development Permit process, taking into consideration the nature of adjacent uses.

³ See Note 2 above.

⁴ Within the MXD zone, special architectural features, such as towers or corner elements may be up to 55 ft.

C. Multi-Family Residential Density within the MXD2 and MXD3 zones.

1. MXD2 Standards.

- The minimum number of multi-family residential units may be reduced for parcels less than twenty thousand (20,000) square feet.
- Units with four bedrooms shall be counted as one and one-half (1.5) units when calculating density.
- In buildings which have ground floor retail, restaurant, child care, or commercial service uses as allowed in Table 6.02-1, Mixed Use Zone Uses, the square footage of said uses does not contribute to the density limits.

2. MXD3 Standards.

- Units with four bedrooms shall be counted as one and one-half (1.5) units when calculating density.
- In buildings which have ground floor retail, restaurant, child care, or commercial service uses as allowed in Table 6.02-1, Mixed Use Zone Uses, the square footage of said uses does not contribute to the density limits.

D. Front and Street-Side Yard Setbacks. The front and street-side yard setbacks shall be as follows:

1. All zones.

- Where a public easement prevents a building from being located at its required minimum or maximum setbacks, the building shall be located as close to the back of said easement as possible.
- Trellises, canopies and fabric awnings may project up to five (5) into minimum front and street side setback areas and public right of ways, provided they are not less than eight (8) feet above the sidewalk.
- All buildings shall be oriented towards the street. Primary building entrances shall be oriented toward the street.

2. MXD zones:

- All areas.
 - Balconies, bay windows, porches, stoops, trellises, canopies and awnings may project into the minimum setback areas provided at least sixty percent (60%) of the required setback area is landscaping.
 - A building's first floor may be recessed from either the maximum front and street side building setback line or the specified build-to-line for the purposes of an arcade, or a small gathering/dining or special entry area.

The arcade shall have a minimum height of (8) feet, a minimum width of eight (8) feet. Other recessed areas may have maximum depth of ten (10) feet, and may not exceed forty percent (40%) of the building's street

facing elevation. An entry door area up to nine (9) feet wide may be recessed up to four (4) feet from the back of the sidewalk.

b. Within the Midtown Specific Plan

i. The Ground Level Commercial Area (as shown on the Specific Plan Land Use Map, Figure 3.1), shall have a build-to-line that is fifteen (15) feet behind the curb. The fifteen (15) feet between the curb and the building build-to-line shall be developed with sidewalk and street trees.

c. Outside the Midtown Specific Plan

i. Minimum of eight (8) feet and a maximum of fifteen (15) feet from back of sidewalk. The sidewalk shall be based on either the existing sidewalk or assumed ten (10) foot wide sidewalk, whichever is wider.

3. MXD2 zones:

a. All areas.

i. Balconies, bay windows, porches, stoops, trellises, canopies and awnings may project into the setback areas up to the property line.

ii. A building's first floor may be recessed from the front and street side building setback line for the purposes of an arcade, outdoor dining area, or special entry area.

The arcade shall have a minimum height of (8) feet, and a minimum width of eight (8) feet. Other recessed areas may have a maximum depth of ten (10) feet, and may not exceed twenty percent (20%) of the building's street facing elevation. An entry door area up to nine (9) feet wide may be recessed up to four (4) feet from the front and street-side building setback.

b. Within the Transit Area Specific Plan.

i. Setbacks are defined and illustrated in the street sections of Chapter 5 of the Transit Area Specific Plan.

c. Outside the Transit Area Specific Plan

i. Minimum eight (8) feet and a maximum of fifteen (15) feet from back of sidewalk.

E. Floor Area Ratio, Non-Residential.

In addition to the standards listed in Table 6.04-1 Mixed Use Zone Development Standards for MXD2 and MXD3 zoned properties, the following shall apply:

1. A Floor Area Ratio of two and a half (2.5) for non-residential buildings may be considered for individual sites with a Conditional Use Permit, in accordance with Section 57, Conditional Uses Permitted by Commission, of this Chapter.

2. There are no FAR or density limits for hotels.

3. In buildings which have ground floor retail, restaurant, child care, or commercial service uses as provided for in Table 6.02-1, Mixed Use Zone Uses, the square footage of said uses does not contribute to the FAR calculation.

4. Buildings which include both non-residential uses and residential uses on the upper floors shall be considered "non-residential," and Floor Area Ratio standards shall apply.

F. Landscaping

All required front and street setback areas shall be landscaped or paved to allow for outdoor seating, display or goods, or street furniture.

G. Park and Open Space Requirements for Residential Uses

1. Areas within Midtown Specific Plan

a. All residential projects within the Midtown Specific Plan area shall provide park land at a ratio of three and one-half (3 1/2) acres per one thousand (1,000) population. Up to one and one-half (1 1/2) of each three and one-half (3 1/2) total park acres required (43%) may be satisfied by the provision of private recreational areas. The remaining park land requirement must be satisfied by either dedication of land to the City for public parks and

open space, or payment of an in-lieu fee, as set forth in Section 9 (Park Dedication) of the Milpitas Subdivision Ordinance (Title XI, Chapter 1).

b. A minimum of twenty-five percent (25%) of the total site shall be usable open space or recreational facilities. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas.

c. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas. Balconies and porches located above ground level with a minimum dimension of 4 1/2 feet constructed for use by dwelling units shall be exempt from the useable open space dimension standards above and within Section 2 of this Chapter, and may be considered to satisfy usable open space requirements. Each dwelling unit shall be provided with private open space as follows:

- i. Balconies and porches (above ground level): minimum sixty (60) square feet; or
- ii. Patios (at ground level): minimum one hundred square feet.

2. Areas within Transit Area Specific Plan

a. All residential projects shall provide park land at a ratio of three and one-half (3.5) acres per one thousand (1,000) population.

i. Two (2) of the required three and one-half (3.5) acres must be satisfied by either dedication of land to the City for public parks and open space, or payment of an in-lieu fee, as set forth in Section 9 (Park Dedication) of the Milpitas Subdivision Ordinance (Title XI, Chapter 1). Land dedication is required if a park is shown on a property on Figure 3-8 of the Transit Area Specific Plan.

ii. Up to one and one-half (1.5) of each three and one-half (3.5) total park acres required (43%) may be satisfied by the provision of private recreational areas. Private open space cannot be shared between separate developments.

b. Each residential project shall provide adequate on-site usable open space or recreational facilities to the approval of the Planning Commission through the Site Development Permit process. Each dwelling unit shall be provided with private open space as follows:

- i. Balconies (above ground level): minimum forty (40) square feet; or
- ii. Patios and porches (at ground level): minimum fifty (50) square feet.

c. All development projects shall dedicate land for parks if a park is shown on a property on Figure 3-8 of the Transit Area Specific Plan.

d. All commercial development projects shall dedicate and/or improve public trails if a trail is shown on a property on Figure 3-8 of the Transit Area Specific Plan.

e. Twenty percent (20%) of a landscape buffer area may count towards the public park and open space requirements when it includes trails or wide sidewalks connected to the pedestrian and bicycle network.

f. Park Sites: Parks must be bordered by public streets, or public right-of-way such as a trail or railroad right-of-way, on at least three sides.

3. Areas outside Specific Plans

a. All residential projects outside a Specific Plan area shall comply with the park land dedication provisions provided in Section 9.06 (Amount of Park Land to be Dedicated) of the Milpitas Subdivision Ordinance.

XI-10-6.05 (Repealed by Ord. 38.785, 4/07/09)

XI-10-6.06 Special Development Standards

A. Utilities

1. Utilities shall be placed in underground or subsurface conduits.

2. All mechanical equipment, ground transformers and meters shall be located and screened to minimize visual impacts.

3. Rooftop mechanical equipment shall be concealed from street level views through roof designs that are architecturally integrated with the building, such as equipment wells and parapets.
4. Public utility distribution meters, vaults and similar installations shall be consolidated in a single area whenever possible and located away from highly visible areas such as street corners and public open spaces.
5. Backflow preventors shall be located within landscaped setback areas and painted black or dark green to minimize visual impact. Where no landscaped setback areas exist the backflow preventors shall be incorporated into the front of the building to minimize visual obtrusiveness.
6. Refuse and recycling containers shall not be visible from a public or private street. Such containers shall be stored either within the parking facility of the building or within a vehicular accessway with screening designed to meet the requirements of this section.
7. Trash enclosure walls shall incorporate building materials and colors that match the architecture of the building, and be well landscaped.
8. All telecommunications antennas shall be building facade or roof mounted and screened appropriately.
9. On Main Street only telecommunication facilities that are disguised to appear as a part of the building architecture (i.e. “stealth” antennas) may be used.

XI-10-6.07 Exceptions to Standards

1. Exceptions to all but the use, floor area ratio, density, and park land requirement regulations of this Section may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section 57, Conditional Uses Permitted by Commission, of this Chapter.
2. In addition to the required findings under Chapter 57, the Planning Commission must be able to make the following two additional findings for such exceptions:
 - a. The exceptions meet the design intent identified within the Zoning District and/or Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
 - b. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.

XI-10-6.08 Conformance with Specific Plans. Properties located within Specific Plans shall conform to the underlying Specific Plan in accordance with Section XI-10-11.06, Conformance with Specific Plans, of this Chapter.

SECTION 8. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 7 (“Industrial Zones and Standards”) of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

XI-10-7.01 Purpose and Intent

A. Light Industrial (M1) Zone. The M1 Light Industrial District is reserved for the construction, use and occupancy of buildings and facilities for office, research, limited and light manufacturing, and other uses compatible with the district.

B. Heavy Industrial (M2) Zone. The M2 Heavy Industrial District is reserved for the construction, use, and occupancy of buildings and facilities for office, research, general manufacturing, warehousing and distribution and other uses compatible with the district.

C. Industrial Park (MP) Zone. The MP District is intended to accommodate, in a park-like setting, a limited group of research, professional, packaging and distribution facilities and uses which may have unusual requirements for space, light, and air, and the operation of which are clean and quiet and which meet the standards set herein.

XI-10-7.02 Industrial Use Regulations

A. Permitted and Conditionally Permitted Uses.

1. Primary uses. The uses identified in Table XI-10-7.02-1, Industrial Zone Uses, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted within enclosed structures. The primary uses identified in Table XI-10-7.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol “P” appears, the use shall be permitted.
MCS	Where the symbol “MCS” appears the use shall be permitted subject to the issuance of a Minor Conditional Use Permit, in accordance with Subsection XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.
C	Where the symbol “C” appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Subsection XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.
MC	Where the symbol “MC” appears, the use shall be permitted subject to the issuance of a Minor Conditional Use Permit, in accordance with Section 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
O	Where the symbol “O” appears, the use is subject to an alternative review process described in a subsequent footnote.

2. Accessory Uses. The following accessory uses are allowed when incidental to the primary use:
- In 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.
 - Cafeterias may be permitted when ancillary to a primary use and associated with business or industrial uses.
 - Banquet halls may be permitted with a Conditional Use Permit, in accordance with Section XI-10-57.04, when ancillary to convention centers, hotels or motels.

B. Prohibited Uses. The following uses are prohibited:

- Uses where the symbol “NP” appears within Table 7.02-1.
- Uses that have been excluded from Table 7.02-1, unless they are found by the City to be similar to permitted or conditionally permitted uses in accordance with C below.

C. Other Uses. Any other uses may be considered by the Planning Commission that are similar in accordance with the procedure prescribed in Subsection 10-54.02, Other Uses Permitted by Commission, of this Chapter.

**Table XI-10-7.02-1
Industrial Zone Uses**

Use	M1	M2	MP
1. Commercial Uses			
Adult Businesses ¹	P	P	NP
Business support services	P	P	P
Commercial services	P	P	P
Janitorial services	P	P	P
Office supplies	C	C	C
Printing (newspaper, blueprint, publishing)	P	P	C
Retail stores, general merchandise ²	C	C	C
2. Entertainment and Recreation Uses			
Billiards	C	C	C
Commercial athletic facilities	C	C	C
3. Health and Veterinarian Uses			
Hospitals	NP	NP	C
Kennel	P	P	NP
Medical support laboratories	P	P	P
Medical and dental offices and clinics ²	P	P	P
Veterinarian hospital	P	P	P
4. Industrial Uses			
Assembly from pre-processed materials ³	P	P	P
Auto assembly facility	NP	P	NP

Use	M1	M2	MP
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	C	C
6. Professional Office Uses			
Administrative, professional or research ²	P	P	P
Financial institutions (banks, savings and loans, etc.)	C	C	P
7. Public, Quasi-Public and Assembly Uses			
Auditorium ⁵	NP	NP	C
Conference center ⁵	NP	NP	C
Vocational school	C	C	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
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	C	C
Without on-site service of alcohol	C	C	C
With live entertainment/dancing	NP	NP	NP
Drive-in or drive-thru	C	C	C
10. Vehicle Related Uses			
Auto junk yard ⁴	NP	C	NP
Auto repair (tire, oil change, smog check, etc.) ⁸	C	P	C ⁹
Service stations (with or without repair or retail) ⁸	C	C	C
With car wash	NP	NP	C
Vehicle sales and rental (auto, RV and truck-new and used in operable condition) ¹⁰	C	C	C ⁹
Auto broker (wholesale, no vehicles on site) ¹¹	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 (8) 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 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.

⁹ Within MP zones, rental and repair may be considered only when ancillary to new auto dealerships.

¹⁰ Within MP zones, boat and camper sales are prohibited. Dealerships shall be on property at least three (3) acres or greater in area.

XI-10.7.03 Industrial Zone General Development Standards

A. The following minimum or maximum requirements shall be observed.

**Table XI-10-7.03-1
Industrial Zone Development Standards**

Standard	M1	M2	MP
Lot Area, minimum	None	None	Individual sites shall be of such size to that all space requirements in this table are satisfied.
Lot Width, minimum	None	None	100 ft.
Front Yard Setback, minimum	Along major street: 35 ft. from face of curb. Along non-major street: 25 ft. from face of curb.	Along major street: 35 ft. from face of curb. Along non-major street: 25 ft. from face of curb.	35 ft.
Side Yard Setback (interior), minimum	None	None	10 ft.
Street Side Yard Setback, minimum	Same as front yard setback	Same as front yard setback	Same as front yard setback
Rear Yard Setback, minimum	None	None	20 ft.
Building Height, maximum	None. However, prior to construction of any structure that exceeds three (3) stories or thirty-five (35) feet in height, the Planning Commission must make the following finding: That any such excess height will not be detrimental to the light, air or privacy of any other structure or use currently existing or anticipated.		
Parking	Refer to Section 53, Off Street Parking, of this Chapter.		
Floor Area Ratio	0.40	0.40	0.50
Landscaping	Refer to Subsection 7.03(B)		

B. Areas of Lot Required to be Landscaped. Landscaped areas shall mean any area planted with plant material (trees, shrubs, ground cover, etc.). Landscape areas shall be exclusive of parking and vehicular traffic area (direct driveways excepted) and this shall be shown on the site plan in detail for Planning Commission approval.

The following areas shall be landscaped:

1. Required front yard area.
2. Required street side yard area.

This may be adjusted, by the Planning Commission, if it is found that adequate landscaping adjacent to the building(s) is provided to compensate for a reduction.

C. Fences, Hedges and Walls. All planting, fencing and walls for new development, including but not restricted to fences and walls along rear and interior side property lines shall be approved by the Planning Commission. Modifications regarding landscaping, fencing and walls at existing developed sites shall be subject to the provisions of Subsection 54.10, Fences and Walls, of this Chapter.

D. Utilities. All wires, pipes, cables and utility connections shall be placed in underground or subsurface conduits. All above ground transformers and vaults for new development shall be adequately screened to the approval of the Planning Commission. Modifications regarding subsurface conduits or above ground transformers and vaults at existing developed sites shall be subject to the provisions of Subsection 54.16, Trash Enclosures, Equipment and their Screening, of this Chapter.

E. Areas for Collecting and Loading Recyclable Materials. There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of Subsection 54.12, Areas for collecting and loading recyclable materials, of this Chapter.

F. Legal Nonconforming projects. Existing developments lawful at the time of installation or improvements which have been approved and a building permit issued prior to June 17, 1982, and installed in conformance with said approval and permit are considered legal nonconforming projects.

XI-10.7.04 Industrial Zone Special Development and Performance Standards

A. Performance Standards

For uses requiring approval of a Minor Conditional Use Permit by staff, in accordance with Section XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter, the following performance standards shall be met.

1. Auto Brokers. Auto Brokers may be permitted by right if the following standards are met:
 - a. Local Sales and Use Tax. In order to assist the City of Milpitas in its efforts to receive direct distribution of the local tax on materials associated with the project, the California Sales and Use Tax (the “Local Tax”) shall be allocated to the project site, to the extent reasonably possible. Evidence of tax allocation or cause as to why such allocation cannot be made shall be submitted at the time of business license submittal.

B. Special Development Standards in All Industrial Zones

1. Abutting any R District. Where any M District abuts any R District, there shall be provided one hundred (100) feet between any M building and any R District. Applicants are advised that mitigating improvements may be needed to eliminate any adverse impacts from the residences and that additional requirements may be imposed on the developer to remedy the situation.
2. Outdoor Storage. Outdoor storage for such things as trash and materials shall be permitted only when said storage areas are suitably screened with a solid wall or tight board fence and are located at least one hundred (100) feet from any R District and not within any required front or street side yard. Said location and screening of outdoor storage areas shall be to the approval of the Planning Commission. Modifications regarding outdoor storage at existing developed sites shall be subject to the provisions of Subsection 54.16, Trash Enclosures, Equipment and their Screening, of this Chapter.

C. Special Development Standards in MP Zones

1. Uses in the MP District shall be such those they:
 - a. Emit no obnoxious, toxic or corrosive fumes or gases.
 - b. Emit no odors perceptible at the property line.
 - c. Emit no smoke.
 - d. Discharge into the air no dust or other particular matter created by any industrial operations or emanating from any products stored prior or subsequent to processing.
 - e. Produce no heat or glare perceptible beyond the lot boundaries.
 - f. Utilize all lighting in a manner which produces no glare on public streets or on any other parcel.
 - g. Produce no physical vibrations perceptible at or beyond the lot boundaries.
 - h. Produce no electromagnetic radiation or radioactive emission injurious to human beings, animals or vegetation, except under controlled operations being conducted observing standards or methods or operation established by the Nuclear Regulatory Commission. Electromagnetic radiation or radioactive emissions shall not be of an intensity that interferes with the use of any other property.
 - i. Do not engage in the production or storage of any material designed for use as an explosive, or in the use of such material in production.
 - j. Indicate that all industrial uses shall use only gas, electricity, or preheated oil as a fuel; provided, however, that oil-burning equipment may be installed for stand-by emergency use only.

XI-10-7.05 Conformance with Specific Plans. Properties located within Specific Plans shall conform to the underlying Specific Plan in accordance with Section XI-10-11.06, Conformance with Specific Plans, of this Chapter.

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

Title XI, Chapter 10, Section 57 (“Applications”) of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

XI-10-57.01 Purpose and Intent

These provisions are intended to prescribe the procedures for filing and processing specific applications when required or permitted by this chapter.

XI-10-57.02 General Plan/Specific Plan/Zoning Amendments

A. Purpose and Intent. The purpose of this section is the establishment of procedures for amending the General Plan, Specific Plans and Zoning Ordinance.

1. This section provides a method for amending the General Plan, as it may become necessary, or desirable from time to time, or as required by State law. It is intended that this section be consistent and in compliance with Section 65350 et seq. of the Government Code.

2. This section provides a method for the adoption of specific plans. In addition, it is the purpose of this section to provide a method for amending specific plans to ensure their continued effectiveness and responsiveness to community concerns and market demands over time. It is intended that the provisions of this section shall be consistent with Section 65450 et seq. of the Government Code.

3. Amendments to the Zoning Ordinance are necessary to maintain its effectiveness as a regulatory and informational document and to ensure its consistency with the General Plan, adopted specific plans and State law. Zoning amendments are also necessary to provide for the implementation of the City’s General Plan.

B. Authority. The City Council is the final authority on General Plan, Specific Plan and, Zoning amendments, including amendments to the Zoning Map. The Planning Commission shall provide recommendations to the City Council regarding zoning amendments.

Amendments to zone boundaries or text of this title that are not consistent with the General Plan must be accompanied by a General Plan amendment application.

C. Applicability. A General Plan, Specific Plan and/or Zoning Amendment may be initiated for the following:

1. In accordance with the provisions of the Government Code of the State of California, any amendment to this Chapter which changes any property from one zone to another or imposes any regulation or removes or modifies any regulation relating to land, buildings, structures, signs, billboards, lots, yards, courts, and open spaces, off-street parking and loading, building setback lines or civic districts or which prezones unincorporated land.

2. Any other amendment to this Chapter, General Plan or Specific Plan may be adopted by the City Council as other ordinances are adopted.

3. Nothing contained in this Chapter, however, shall be construed to be a limitation on the power of the City Council to adopt an interim zoning ordinance as an urgency measure in accordance with the procedures and relating to the subject matter set forth in the Government Code of the State of California. (Ord. 38.780 (26) (part), 8/19/08)

D. Initiation of Amendments to the General Plan, a Specific Plan, Zoning Ordinance or Zoning Map.

An amendment to this Chapter under Subsection 57.02(C) may be initiated in any of the following ways:

1. By a majority vote of the Planning Commission or the City Council.
2. By a property owner who seeks to have his parcel rezoned.
3. By the owners of fifty percent or more of the area of all the property sought to be rezoned.

E. Submittal Requirements. Refer to the most recent submittal requirements required by the Planning Division.

F. Review Procedures.

1. Initiation by City Council or Planning Commission

- a. Any amendment initiated by the Planning Commission or City Council shall be first referred to the Planning Commission.

b. The Planning Commission shall hold a public hearing on any said proposed amendment (whether initiated by Council or Planning Commission) after notice given in accordance with the provisions of Section 64, Development Review Process, of this Chapter.

c. At the conclusion of the hearing, the Planning Commission shall make a recommendation to the City Council, including the reasons for its recommendation. A recommendation shall be made within forty days after the reference from the City Council on any said proposed amendment, unless the City Council consents to an extension of time. Failure of the Planning Commission to report to the City Council within forty days after the reference (unless the City Council shall have consented to an extension of time) shall be deemed to be an approval of the proposed amendment.

d. On receipt of the Planning Commission recommendation, the City Council shall hold a public hearing thereon after notice (given in accordance with the provisions of Section 64, Development Review Process, of this Chapter).

i. Provided, however, if the matter under consideration is an amendment to change property from one zone to another, and the Planning Commission has recommended against said amendment, the City Council shall not be required to hold a public hearing or take any further action unless an interested party shall request a hearing in writing filed (with the City Clerk) within ten days after the Planning Commission files its recommendation with the City Council. Such a written request for a hearing shall be in lieu of appeal rights provided for in Subsection 64.05, Appeals, of this Chapter.

e. After the conclusion of the hearing, the City Council may approve, modify or disapprove the recommendation of the Planning Commission.

i. Provided, however, that any modification of the proposed amendment by the City Council shall be referred back to the Planning Commission for a report and recommendation; the Planning Commission shall not hold a public hearing thereon unless requested to do so by the City Council. Failure of the Planning Commission to report to the Council within forty days after the reference shall be deemed to be an approval of the proposed modification.

2. Initiation by property owner.

a. The Planning Commission shall hold a public hearing on any said proposed amendment (whether initiated by Council or Planning Commission) after notice given in accordance with the provisions of Section 64, Development Review Process, of this Chapter.

b. At the conclusion of the hearing, the Planning Commission shall make a recommendation to the City Council, including the reasons for its recommendation.

c. On receipt of the Planning Commission recommendation, the City Council shall hold a public hearing thereon after notice (given in accordance with the provisions of Section 64, Development Review Process, of this Chapter).

G. Required Findings.

1. Prior to the approval of a General Plan amendment, all of the following findings shall be made:

a. The proposed amendment is internally consistent with those portions of the General Plan which are not being amended.

b. The proposed amendment will not adversely affect the public health, safety, and welfare.

2. Prior to the approval of a new specific plan or a specific plan amendment, the following findings shall be made:

a. The proposed specific plan or specific plan amendment is consistent with the goals, objectives, policies, and programs of the General Plan, and is necessary and desirable to implement the provisions of the General Plan.

b. The uses proposed in the specific plan or specific plan amendment are compatible with adjacent uses and properties.

c. The proposed specific plan or specific plan amendment will not adversely affect the public health, safety and welfare.

In the case of a specific plan amendment, the following additional finding shall be made prior to its adoption:

d. The proposed specific plan amendment will not create internal inconsistencies within the specific plan.

3. Prior to approval of a zoning amendment or amendment to the zoning maps, the following findings shall be made:
 - a. The proposed amendment is consistent with the General Plan.
 - b. The proposed amendment will not adversely affect the public health, safety and welfare.

H. Approval Runs with the Land. The approval of a General Plan, Specific Plan and/or Zoning amendment shall run with the land, and shall continue to be valid upon a change of ownership of the site to which it applies.

I. Expiration of Application and Time Extension

If an ordinance proposing to change the zoning of certain land (by amendment to the Zoning Ordinance of the City of Milpitas) is not adopted (by a second reading) within 12 months of the date of its introduction (by first reading), then the application giving rise to said ordinance shall be deemed to have expired (without notice to the applicant) and the unadopted ordinance shall not then be capable of adoption by second reading. Provided, however:

1. Upon recommendation of the Planning Commission, the City Council may grant an extension of time for second reading and adoption not to exceed 12 months subject to the following requirements:
 - a. no more than one such extension may be granted, and
 - b. the extension must be granted by the Council within 12 months of the date of introduction of the ordinance, and
 - c. new conditions may be imposed upon the zone change.
2. Nothing herein contained shall be construed to prevent a subsequent application for a change of zone of the same land or the subsequent introduction of a new ordinance changing the zone of said land.

XI-10-57.03 Site Development Permits and Minor Site Development Permits

A. Purpose and Intent. Development in areas designated by the Site and Architectural Overlay District (-S) or other development that is otherwise specified in this Chapter as requiring review is subject to either Site Development Permits or Minor Site Development Permits. The (-S) Overlay District is described in Subsection XI-10-12.05, Site and Architectural Overlay District, of this Chapter. Signs are discussed in Section XI-10-24, Signs, of this Chapter. Depending on the scale of development proposed, other review may be required, as well. The purpose of architectural review shall vary, according to the following criteria:

1. Site Development Permits. The Site Development Permit process provides for the review of physical improvements to a site which due to their scale, proximity to environmentally sensitive resource areas, or unique design features, require consideration. The Site Development Permit process is intended to encourage site and structural development which 1) respects the physical and environmental characteristics of the site, 2) ensures safe and convenient access and circulation for pedestrians and vehicles, 3) exemplifies the best professional design practices, 4) encourages individual identity for specific uses and structures, 5) encourages a distinct community or neighborhood identity, and 6) minimizes visual impacts.
2. Minor Site Development Permits. The Minor Site Development Permit process provides for the streamlined review of certain minor classes of development projects which are large enough to require consideration, but due to their scale, nature or location do not require consideration by the Planning Commission.

B. Authority.

1. Site Development Permits.
 - a. Review by Planning Commission. The Planning Commission has the authority to review Site Development Permits, subject to the concurrent review and appeal provisions of Section XI-10-64.04-1, Consideration of Concurrent Applications, and Section XI-10-64.05, Appeals, of this Chapter.
 - b. Review by City Council. In addition to the provisions of Section XI-10-64.04-1, Consideration of Concurrent Applications, and Section XI-10-64.05, Appeals, of this Chapter, the City Council has the authority to review the following projects:
 - i. Projects within the Hillside (-H) Overlay District, in accordance with Section XI-10-45, “H” Hillside Combining Districts, of this Chapter.
 - ii. Any off site advertising structures adjacent to interstate freeway and state highways, and off site advertising directional signs, in accordance with Section XI-10-24.05(G) and (H), of this Chapter.

2. Minor Site Development Permits. Either Planning staff or the Planning Commission Subcommittee consisting of two (2) Planning Commissioners has the authority to review Minor Site Development Permits, subject to the concurrent review and appeal provisions listed above [Section XI-10-57.07(B)(1)] and Section XI-10-57.07(C)(2), Applicability, or when another section of this Title requires such review. When the Planning Subcommittee determines that it is in the public interest for the Minor Site Development Permit application to be considered by the Planning Commission, the Planning Subcommittee shall forward the application to the Planning Commission for review in the same manner as Site Development Permits, as described in subsection XI-10-57.03(E)(1), Review Procedures, Site Development Permits, below. No public hearing is necessary for a Minor Site Development Permit when heard by the Planning Commission Subcommittee.

C. Applicability.

1. Site Development Permits. A Site Development Permit is required for:
 - a. New main buildings
 - b. New accessory buildings over 2,500 square feet
 - c. New parking lots
 - d. Roof top equipment which exceeds the height of existing roof screens, if line-of-sight drawings demonstrate that the equipment will be visible from surrounding “worst case” view points from on-site parking areas, adjacent public streets and adjacent residentially zoned property.
 - e. Additions or alterations to multi-family residential, nonresidential and mixed-use buildings that include:
 - i. Additions of 10,000 square feet or greater for non-residential and mixed-use buildings.
 - ii. Additions of 5,000 square feet or greater or ten percent (10%) of the existing building gross floor area, whichever is less, to non-residential and mixed use buildings adjacent to residential or (-MHP) Overlay Districts or uses.
 - iii. Additions 200 square feet or greater for multi-family residential buildings.
 - f. Any deletion or amendment of a previously imposed condition of approval for a Site Development Permit.
 - g. Any building color changes to designated cultural resources. Refer to Chapter 4, Cultural Resources Preservation Program, of this Title.
 - h. Certain signs, in accordance with Section XI-10-24.04, Signs Subject to Review, of this Chapter.
 - i. Sign programs, in accordance with Section XI-10-24.05(F), Sign Programs, of this Chapter.
 - j. Any Off-site Advertising Displays Adjacent to Interstate Highways and State Routes, in accordance with Section XI-10-24.05(G).
 - k. Any Off-Site Directional Signs adjacent to roadways other than Interstate Highways and State Routes, in accordance with Section XI-10-24.05(I).
2. Minor Site Development Permits.
 - a. Review by Planning Commission Subcommittee:
 - i. Any deletion or amendment of a previously imposed condition of approval for a Minor Site Development Permit approved by the Planning Commission Subcommittee.
 - ii. Review for certain alterations or additions to residential, nonresidential and mixed-use sites/buildings, as indicated in Table XI-10-57.03-1, Additions or Alterations Requiring Minor Site Development Permits. Projects that exceed the threshold for planning staff review, as indicated in Table XI-10-57.03-1, Additions or Alterations Requiring Minor Site Development Permits.
 - b. Review by Planning staff:
 - i. Certain signs, in accordance with Section XI-10-24.04, Signs Subject to Review, of this Chapter.
 - c. Review for certain alterations or additions to residential, nonresidential and mixed-use sites/buildings, as indicated in Table XI-10-57.03-1, Additions or Alterations Requiring Minor Site Development Permits. Please refer to Section XI-10-54, General Provisions, of this Chapter, for development standards and review procedures for types of projects not listed in Table XI-10-57.03-1.
 - d. Planning Division staff may require review by the Planning Commission Subcommittee at their discretion.

Table XI-10-57.03-1
Additions or Alterations Requiring Minor Site Development Permits

Project Type	Planning Commission Subcommittee	Staff review
Accessory Buildings	<p>A. Non-Residential and Mixed Use Districts:</p> <ol style="list-style-type: none"> Accessory buildings up to 2,500 square feet in area, provided that the proposed structure is not adjacent to a residential or Mobile Home Park Overlay (-MHP) district or use, and provided that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. The following shall also apply: <ol style="list-style-type: none"> Accessory buildings must be located on the rear half of the lot. On corner lots, the accessory building must be set back from the adjacent street at least as far as the main building. Accessory buildings must be of permanent construction (no modular buildings or metal buildings) with the exception of small pre-fabricated structures for chemical storage and the like, so long as such structures are adequately screened from public rights-of-way. Architecture shall match that of the existing building in terms of material, colors, style, etc. 	<p>A. Residential Only</p> <ol style="list-style-type: none"> Accessory buildings in residential districts (excluding -H Combining District), provided building height, parking, setback, yard coverage and other ordinance requirements are met. The following shall also apply: <ol style="list-style-type: none"> Accessory buildings for conditional uses in Residential R1 and R2 districts and for permitted and conditional uses in R3 and R4 districts shall comprise building materials, colors and style which complement the existing main structure. Accessory building in residential and mixed use districts in order to accommodate a second family unit, as defined in Subsection XI-10-2.03, Definitions, of this Chapter. The development standards listed in Subsection XI-10-18.08, Second Family Unit, of this Chapter shall apply. <p>B. All zones</p> <ol style="list-style-type: none"> Community emergency caches as defined in Subsection XI-10-2.03, Definitions, of this Chapter are exempt. Refer to Subsection XI-10-54.08(B)(12) for performance standards.
Building Additions	<p>A. Non-residential and Mixed Use Districts:</p> <ol style="list-style-type: none"> All non-residential and mixed use building additions for legal, conforming buildings not adjacent to residential or Mobile Home Park Overlay District or use. <ol style="list-style-type: none"> Size of building addition shall not exceed 10,000 square feet or ten percent (10%) of the existing building gross floor area, whichever is less. Calculation shall cumulatively count all additions or enlargements completed since June 20, 2003. In addition to other development standards, the following shall also apply: <ol style="list-style-type: none"> Architecture shall match that of existing building in terms of material, colors, style, etc. 	<ol style="list-style-type: none"> Residential building additions in R1 and R2 districts. Residential building additions in multi-family districts up to 200 square feet. All single-family dwellings in Hillside (-H) Overlay PUDs which specifically allow for staff approval. (refer to Section XI-10-56, Non-conforming Buildings and Uses, of this Chapter regarding non-conforming buildings). In addition to other development standards, the following shall also apply: <ol style="list-style-type: none"> Existing front yard paving shall be brought into conformance. The addition shall comprise building materials, colors and style which complement the existing structure. Building addition to an existing single-

Project Type	Planning Commission Subcommittee	Staff review
	<p>ii. The height of the addition shall not exceed the height of the adjacent portion of the existing building.</p> <p>B. Residential Districts</p> <p>1. All single-family dwellings in Hillside (-H) PUDs which are specifically conditioned not to require Planning Commission or City Council review for building additions (refer to Section XI-10-56, Non-Conforming Buildings and Uses, of this Chapter regarding non-conforming buildings). In addition to other development standards, the following shall also apply:</p> <p>a. Existing front yard paving shall be brought into conformance.</p> <p>b. The addition shall comprise building materials, colors and style which complement the existing structure.</p>	<p>family dwelling in residential and mixed use zones, in order to accommodate a second family unit, as defined in Subsection XI-10-2.03, Definitions, of this Chapter. The development standards listed in Subsection XI-10-18.08, Second Family Unit, of this Chapter shall apply.</p>
Building Color		<p>A. Outside Hillside Combining District:</p> <p>1. Color changes for all buildings so long as the proposed colors are earth tone, muted and/or compatible with the surrounding area and development.</p> <p>2. Color changes for buildings within a PUD, if proposal complies with PUD.</p> <p>B. Within Hillside Combining District:</p> <p>1. Color changes for residences including homes within a PUD which does not specify color choices, so long as the proposed colors are earth tone, muted and compatible with the surrounding development.</p>
Equipment & Service Enclosures (Trash, recycling, equipment or storage)	<p>1. Enclosures up to 200 square feet proposed in the front half of the lot for non-residential districts.</p> <p>2. Enclosures exceeding 200 square feet in size in commercial, industrial and mixed use districts and enclosures for conditional uses in residential districts.</p> <p>3. Any trash enclosure adjacent to residential or Mobile Home Park Overlay (-MHP) district or use. In addition to the standards listed in Subsection, 54.16(B), Trash Enclosures, of this Chapter.</p> <p>4. Enclosures for noise-generating equipment (i.e. generators) may not be</p>	<p>1. Enclosures up to 200 square feet in size in commercial, industrial and mixed use districts, proposed at the rear of the building or lot and where least visible from public rights-of-way.</p> <p>a. Refer to Subsection XI-10-54.16(B), Trash Enclosures, of this Chapter, for standards.</p>

Project Type	Planning Commission Subcommittee	Staff review
	approved near Residential or Mobile Home Park (-MHP) overlay districts or uses.	
Exterior Lighting	Additional light standards on-site, adjacent to residential development.	<p>Additional light standards that complement existing development.</p> <p>Bollards with lights.</p> <p>Refer to Subsection XI-10-54.17, Lighting, of this Chapter for standards.</p>
Fences/Walls	<p>Chain link fencing</p> <p>1. Chain link fencing in commercial and industrial districts. The following standards shall apply:</p> <p>a. Fencing shall be at the rear or interior side of the site.</p> <p>b. The fencing shall consist of vinyl clad chain link with or without vinyl slats. Type of chain link fencing (i.e. deletion of vinyl clad requirement, use of slats) shall be to the discretion of the Planning Commission Subcommittee (i.e., in circumstances where the proposed fencing is to continue a line of existing chain link fencing).</p> <p>c. Fencing material and color shall be compatible with surrounding development.</p> <p>d. Parking lot fencing/gates shall be approved by the City's Fire Department.</p>	<p>All fence and wall materials, except chain link in commercial and industrial districts.</p> <p>Refer to Subsection XI-10-54.10, Fences and Walls, of this Chapter for standards.</p>
Landscaping	Deletion. Deletion of landscaping not otherwise required by the Milpitas Municipal Code or by condition of approval exceeding 200 square feet. Requests may include the loss of any protected trees, as defined in Title X-2.00 of the Milpitas Municipal Code, and the net reduction of on-site trees.	<p>1. Replacement. Replacement planting of similar landscape materials and addition of landscaping. Landscaping shall comply with Ordinance 238 (water efficient landscape regulations). Landscaping within the –H overlay district shall comply with City Council Resolution No. 6066.</p> <p>2. Deletion. Deletion of landscaping not otherwise required by Milpitas Municipal Code or by condition of approval up to 200 square feet.</p> <p>However, in non-residential and mixed uses within residential districts (excluding –H overlay district), there shall be no net reduction in the number of on-site trees, and no loss of any protected trees, as defined in Title X-2.00 of the Milpitas Municipal Code, may be approved.</p> <p>Exemption. Deletions permitted for groundcover and shrubs to accommodate new walkways which are required for building</p>

Project Type	Planning Commission Subcommittee	Staff review
Minor Exterior Building Changes, Including But Not Limited to, Doors, Entryways, Patios and Patio Covers, Walkways, ATM's, Awnings, Loading Areas	<p>A. Non-Residential and Mixed Use Districts:</p> <p>1. In non-residential and mixed use districts, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking:</p> <p>a. Significant decorative amenities within public view such as fountains, artwork or murals.</p> <p>b. Stand alone ATMs or ATM kiosks.</p> <p>c. If applicable, refer to "Landscaping" Section in this table.</p> <p>B. Hillside (-H) Combining District:</p> <p>1. Minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building.</p> <p>a. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>b. Windows, window awnings and person doors which match existing or which complement the building facade.</p>	<p>exiting purposes or handicap accessibility.</p> <p>A. Non-Residential and Mixed Use Districts:</p> <p>1. Minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Title X-2.00:</p> <p>a. New main entryways to the building which feature architectural projections (i.e., porticos, entryway roof covers, trellises, etc.).</p> <p>b. Windows and doors which match existing or which complement the building facade.</p> <p>c. New or expanded patios, patio covers, awnings and canopies.</p> <p>d. Landscape deletion (i.e., shrubs and groundcovers) to accommodate new walkways which are required for building exiting purposes or handicap accessibility.</p> <p>e. ATM's proposed integrated into an exterior wall.</p> <p>f. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>g. Replacement of windows with roll-up doors (and vice versa) when located toward the interior side or rear of a site.</p> <p>h. Metal canopies over equipment storage yards at the rear of commercial or industrial sites, provided they are not visible from public streets or abutting a Residential or Mobile Home Park combining district or use.</p> <p>i. New loading areas and revisions to existing loading areas.</p> <p>B. Residential Districts</p> <p>1. In all residential districts (excluding -H Combining), minor exterior building changes as described below, provided that the project complements the colors, materials, and design of the building.</p> <p>a. Awnings, patio covers, and gazebos which comply with height, setback, and yard coverage requirements.</p> <p>b. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>c. Windows and person doors, which match</p>

Project Type	Planning Commission Subcommittee	Staff review
		existing or which complement the building facade. 2. Minor exterior building changes for residences within Hillside Overlay District PUDs, which are specifically conditioned to allow a staff approval process for alterations subsequent to initial construction of the home.
Re-Roof	Change to wood shake, non tri-laminate or metal roofing material.	Change to any other roofing material, except wood shake, non tri-laminate or standing seam metal.
Tenant Improvements (interior only)		When windows face streets or driveways, Planning Division staff shall ensure that windows provide a storefront experience (reducing opaque window appearances) to the extent possible.

D. Submittal Requirements.

No building permit shall be issued for a use, and no use of any parcel shall take place, in a district which is combined with the (-S) Overlay District unless those items listed below in have been submitted to and approved by the review authority or upon appeal to the City Council. Every application for Site Development Permit shall be in proper form and shall be accompanied by plans drawn to scale indicating clearly and with full dimensions the following information if applicable:

1. Site plan -- parcel dimensions in distance.
Buildings and structures -- their location, size, height, colors and materials.
3. Dimensions of yards and open spaces between buildings.
4. Fences and walls -- their architectural design, location, height, colors and materials.
5. Parking spaces -- their location, number and dimensions.
6. Access -- vehicular, pedestrian and service, with points of ingress and egress and the internal circulation pattern of the parking lot area.
7. Street dedications and improvements -- existing and proposed, if any.
8. Signs -- their location, size, type of sign, types of materials and colors, and lighting method.
9. Loading or service areas -- their location and dimensions.
10. Lighting -- its architectural design, location and light patterns.
11. Landscaping -- its location, size, quantity and type of plant material.
12. Shadow studies -- drawings showing shadows of the building or structures (taken on December 22nd, between the hours of 10:00 a.m. and 2:00 p.m.).
13. Such other data as may be required under the circumstances of the case to permit the City Council, Planning Commission, Planning Commission Subcommittee, or Planning Division staff to make the required approvals.

E. Review Procedures.

1. Site Development Permit.
 - a. The Planning Commission shall hold a public hearing on said application upon such notice as is required in Section XI-10-64, Development Review Process, of this Chapter.
 - b. After conclusion of the hearing, the Planning Commission may approve the application, approve it subject to such conditions as the Planning Commission may impose, or disapprove the application.

For applications requiring City Council approval, the Planning Commission shall forward its recommendation to the City Council.

- i. The Planning Commission may impose such conditions as it deems necessary to protect the best interests of the surrounding property, of the neighborhood, and as it deems in conformity with the requirements of the General Plan.

2. Minor Site Development Permit.

a. Review by Planning Commission Subcommittee. The Planning Commission Subcommittee shall indicate by action minutes whether the proposed site plan for a project shall be approved, approved with modifications and/or conditions, or denied.

i. Planning Commission Subcommittee may require review by the Planning Commission at its discretion.

ii. If the Planning Commission Subcommittee members disagree on a decision for a project, then the project will be placed on the agenda for Planning Commission review, with no additional fees required.

b. Review by Planning Division. The Planning Division staff shall make investigations as necessary to determine whether or not the proposed project conforms or may be conditioned to conform fully to the intent of the Zoning and Sign Ordinances.

If the project does not comply, a notice of corrections shall be prepared and returned to the applicant. If the applicant resubmits for review and the project still does not comply with the required regulations or is not in accordance with the approved conditions of approval, the Planning Division shall deny the application.

F. Required Findings.

1. General Findings (except signs). Approval may be granted by the Planning Commission or the City Council if all of the following findings are made, based on evidence in the public record:

a. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.

b. The project is consistent with the Milpitas Zoning Ordinance.

c. The project is consistent with the Milpitas General Plan.

d. In the case of a project located within a Specific Plan, the following additional finding shall be made:

i. The project is consistent with the Specific Plan.

2. Signs. Approval may be granted by the Planning Commission or the City Council if all of the following findings are made, based on evidence in the public record:

a. All elements of the sign, including design, lighting, scale, length and materials, are consistent with the intent of the General Plan, the Sign Ordinance and any applicable Specific Plan;

b. The design, scale and materials of the sign harmonize with the architectural design and details of the building or site it serves;

c. The design and scale of the sign is appropriate to the distance from which the sign is normally viewed;

d. The design and materials of the sign provide a contrast between the background and letters;

e. If a freestanding sign is included in the sign application, the design, scale or location of the building dictates the use of freestanding signs, rather than building-mounted signs;

f. For Sign Programs, in addition to the findings for signs, the following additional findings shall be made, based on evidence in the public record:

i. The provisions of the Sign Program ensure consistency in design and style of all new signs,

ii. The provisions of the Sign Program address compatibility of the design and style of any existing signs on the building or site, and

iii. All new signs within the Sign Program are in compliance with the design guidelines of this Chapter.

G. Planning Commission Subcommittee or Staff Approvals.

In approving any project subject to this section, the Planning Division staff or Planning Commission Subcommittee shall find all of the following:

1. The development recognizes and respects the nature of the neighborhood and site, development patterns, materials used, and the expectations of those who will see and use the building;

2. The development assures that modifications satisfy functional requirements, and are screened with appropriate compatible materials; and

3. The development assures that the modification will not interfere with the privacy, quiet enjoyment or view of the surrounding properties.
4. For projects including signs, only the following findings shall be made:
 - a. The design, including lighting, scale, length and materials, of the sign is consistent with the intent of the design elements of the General Plan, any applicable Design Guidelines, respective specific plan or Site and Architectural Overlay District in which the sign is to be located;
 - b. The design, scale and materials of the sign harmonize with the architectural design and details of the building or site it serves;
 - c. The design and scale of the sign is appropriate to the distance from which the sign is normally viewed;
 - d. The design and materials of the sign provide a contrast between the background and letters;
 - e. If a freestanding sign is included in the sign application, the design, scale or location of the building dictates the use of freestanding signs, rather than building-mounted signs;
5. For projects including signs within sign programs, only the following finding shall be made:
 - a. The sign conforms to the approved sign program.

H. Appeals.

An appeal of the decision by staff or on Site Development Permits or Minor Site Development Permits shall be reviewed in accordance with Section XI-10-64.05, Appeals, of this Chapter.

I. Compliance With Conditions.

Whenever a plan for the development of a building site has been the subject of a Site Development and Permit process as hereinabove specified and has been given final approval, the building and site thereafter shall be constructed and perpetually maintained in compliance with the plan in conformance to all details specified thereon and subject to all the conditions set forth in the action of approval, unless modified or amended pursuant to Section XI-10-57.03(I), Applications for Modification of or Amendment, of this Chapter. Lack of compliance shall constitute a violation of Chapter 10 (Zoning, Planning and Annexation) and the Site Development Permit.

J. Applications for Modification of or Amendment

Projects shall be developed in conformity with project approvals. If the applicant wishes to modify the project, as approved, the applicant shall submit revised plans and any other applicable information to the City for review by the Planning Division. The Planning Division staff shall make one of the following determinations regarding the request:

1. Insignificant Modifications. If the Planning Division determines that the modifications are minor, the modifications may be approved administratively.
2. Significant Modifications Without Public Impact or Concern. If the Planning Division determines that the modifications are significant enough to warrant discretionary review but will not have public impacts or cause public concern, then the modifications shall be referred to the Planning Commission Subcommittee for consideration. If the original application for a project required a public hearing, then the Planning Commission Subcommittee review of modifications shall not require a public hearing.
3. Significant Modifications With Public Impact or Concern. If the Planning Division determines that the modifications are significant enough to warrant discretionary review and have the potential for public impact or concern, then the modifications shall be referred to the final decision-making authority for the original project. If the original application for a project required a public hearing, then the final decision-making authority's review of modifications shall require a public hearing, in accordance with Section XI-10-64, Development Review Process, of this Chapter.

K. Modifications, Suspensions and/or Revocations Initiated by the City. Refer to Section XI-10-63.06, Revocation, Suspension, Modification, of this Chapter.

XI-10-57.04 Conditional Use Permits and Minor Conditional Use Permits

A. Purpose and Intent.

1. The purpose and intent of the Conditional Use Permit process is to provide a review of land uses which would not otherwise be permitted as a matter of right in a zoning district because of their nature, have an impact on the surrounding environment and for the determination of whether or not the proposed use is appropriate for its proposed location.

The Conditional Use Permit process is intended to encourage uses to be located in a manner that is:

- a. Consistent with the City's zones;
- b. Sensitive to community and neighborhood identity; and
- c. Minimizes impacts to adjacent uses, including traffic flow; circulation; safety for vehicular and pedestrian traffic; imposition of noises, odors and health and safety hazards upon nearby residential area; provision of adequate light, air and reasonable access; securing safety from fire and other dangers; prevent overcrowding of land; facilitating adequate provision for transportation and in general, to promote the public health, safety, peace, morals, comfort and welfare; prevention of neighborhood deterioration and blight; the objectives of zoning and planning in the community and the effect upon the City's general welfare of this proposed use in relation to surrounding uses and the community. Review of a use may require the consideration of site plan issues related to the use, as well.

2. It is the purpose of the Minor Conditional Use Permit process to provide for the streamlined review of uses that may have an impact on the surrounding environment and require discretionary review, but due to their nature, scale or location, do not require discretionary consideration by the full Planning Commission. Either the Planning Commission Subcommittee or Planning staff has the authority to review Minor Conditional Use Permits. The Minor Conditional Use Permit process has as its purpose the same goals for uses described for the Conditional Use Permit process above.

B. Authority.

1. Conditional Use Permits. The Planning Commission has the authority to approve Conditional Use Permits, subject to concurrent review and appeal provisions of Section XI-10-64, Development Review Process, of this Chapter.
2. Minor Conditional Use Permits. Minor Conditional Use Permits may be approved either by the Planning Commission Subcommittee or administratively by Planning staff.
 - a. Review by the Planning Commission Subcommittee. The Planning Commission Subcommittee has the authority to approve Minor Conditional Use Permits for those uses listed in the use tables of the Zoning Ordinance. Such approvals shall be subject to the concurrent review and appeal provisions of Section XI-10-64, Development Review Process, of this Chapter.
 - b. Review by Planning staff. Planning staff has the authority to administratively approve Minor Conditional Use Permits for those uses listed in the use tables of the Zoning Ordinance. Such approvals shall be subject to concurrent review and appeal provisions of Section XI-10-64, Development Review Process, of this Chapter. Planning staff-level issued Minor Conditional Use Permits shall not require a public hearing or notice.

C. Applicability.

1. Conditional Use Permits. Conditional Use Permits are required as indicated by the use tables in Residential, Mixed Use, Commercial, Industrial, Institutional, Park and Open Space, and other land use districts of this Chapter. Conditional Use Permits are also required for the following requests:

Table XI-10-57.04-1

Use/Modifications	As provided for in:	Notes
Height		
Height. For buildings that exceed three (3) stories or thirty-five (35) feet within the MP and TC districts.	Table XI-10-7.03-1, Industrial Zone Development Standards and Table XI-10-5.03-1 Commercial Zone Development Standards	
Height. For buildings that exceed six (6) stories or eight-five (85) feet within the -OO overlay district up to a maximum of eight (8) stories or one hundred fifteen	Section XI-10-12.02, Gateway Office (-OO) Overlay District	

Use/Modifications	As provided for in:	Notes
(115) feet in height.		
Height. Permit in R2 and R3 districts, schools, hospitals, sanitariums, institutions, churches and other similar uses allowed under the use regulations of this Chapter, to be erected to a height not exceeding six (6) stories or seventy-five (75) feet, provided, that the front and side yard requirements for such buildings in the “R3” District are complied with.		
Non-conforming		
Nonconforming buildings and structures	Section XI-10-56.02(C), Additions to,--enlargements and--Moving of nonconforming buildings and structures	See footnote 1
Nonconforming uses, change of use	Section XI-10-56.03, Nonconforming use of buildings and structures	
Parking		
Parking location	Section XI-10-53.13(A), Location of Parking	
Tandem parking	Section XI-10-53.07(D), Tandem Parking Spaces and Section XI-10-53.13(B), Parking Space Size	
Temporary Uses and Structures		
Special event and activity	Section XI-10-13.11(I), Special events and activities	
Temporary buildings and structures	Section XI-10-13.11(H), Temporary Uses and Structures.	
Other		
Certain industrial uses within commercial districts	Table XI-10-5.02-1, Commercial Zone Uses.	
Exceptions to performance standards	See the zoning districts use standards in XI-10-05, Residential Zones, XI-10-06, Mixed Use Zones, and XI-10-07, Industrial Zones.	
Lot width reduction		
Wireless telecommunications facilities	Section XI-10-13.09, Wireless Telecommunications Facilities, of this Chapter, for specific standards and exempted facilities.	

¹ In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 (September 17, 2002) shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this Subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

a. Other Uses. The Planning Commission may, after a public hearing, permit the following uses in districts from which they are prohibited by this Chapter where such uses are deemed essential or desirable to the public convenience or welfare and are in harmony with the various elements or objectives of the General Plan.

However, any of the following uses which are marked with an asterisk shall not be allowed in the designated Hillside Combining District.

- i. Helicopter pads for medical evacuation purposes.
- ii. Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.
- iii. Library or museum, public.
- iv. Park, playground, or recreational or community center.
- v. Public utility and public service use or structure.

vi. Radio or television transmitter.

vii. Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.

2. Minor Conditional Use Permits. Minor Conditional Use Permits are required as indicated by the use tables in Residential, Mixed Use, Commercial, Industrial, Institutional, Park and Open Space, and other land use districts of this Chapter.

D. Submittal Requirements. Refer to the most recent submittal requirements required by the Planning Division.

E. Review Procedures.

1. Conditional Use Permits.

a. The Planning Commission shall hold a public hearing on said application upon such notice as is required in Section XI-10-64, Development Review Process, of this Chapter.

b. After the conclusion of the hearing, the Planning Commission may approve the application, approve it subject to such conditions as the Planning Commission may impose, or disapprove the application.

i. The Planning Commission may impose such conditions as it deems necessary to protect the best interests of the surrounding property, of the neighborhood, and as it deems in conformity with the requirements of the General Plan.

2. Minor Conditional Use Permits.

a. Review by Planning Commission Subcommittee. The Planning Commission Subcommittee shall consider a Minor Conditional Use Permit application when authorized to do so under the use tables of the Zoning Ordinance and hold a public hearing on application upon such notice as is required in Section XI-10-64, Development Review Process, of this Chapter.

i. After the conclusion of the hearing, the Planning Commission Subcommittee may approve the application, approve it subject to such conditions as the Planning Commission Subcommittee may impose, or disapprove the application.

a) The Planning Commission Subcommittee may impose such conditions as it deems necessary to protect the best interests of the surrounding property, of the neighborhood, and as it deems in conformity with the requirements of the General Plan.

b) If the Planning Commission Subcommittee members disagree on a decision for a project, then the project will be placed on the agenda for Planning Commission review, with no additional fees required.

b. Review by Planning staff. The Planning Division shall administratively consider a Minor Conditional Use Permit when authorized to do so under the use tables of the Zoning Ordinance. Planning staff shall investigate as necessary to determine whether or not the proposed project conforms or may be conditioned to conform fully to the intent of this Chapter. No public hearing or notice shall be required for an administrative level Minor Conditional Use Permit.

If the project does not comply, a notice of correction shall be prepared and returned to the applicant. If the applicant resubmits for review and the project still does not comply with the required regulations or is not in accordance with the approved conditions of approval, the Planning Division shall deny the application.

F. Required Findings for Conditional Use Permits and Minor Conditional Use Permits.

1. General Findings. Approval may be granted by the appropriate decision-making body, of a Conditional Use Permit or Minor Conditional Use Permit application in accordance with this Chapter if all of the following findings are made, based on the evidence in the public record:

a. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare;

b. The proposed use is consistent with the Milpitas General Plan; and

c. The proposed use is consistent with the Milpitas Zoning Ordinance.

In the case of a project located within a Specific Plan, the following additional finding shall be made:

d. The proposed use is consistent with the Specific Plan.

2. **Specific Findings.** In addition to the general findings required in Subsection (F)(1), above, specific findings shall be made prior to the approval of an application for a Conditional Use Permit for the following requests:

Table XI-10-57.04-2

Use/Modification	Specific Finding
Height	
Height. For buildings that exceed three (3) stories or thirty-five (35) feet within the MP and TC districts.	The project exhibits exceptional architecture and aesthetic merit to warrant the excess height.
Height. For buildings that exceed six (6) stories or eight-five (85) feet within the -OO overlay district up to a maximum of eight (8) stories or one hundred fifteen (115) feet in height.	The project exhibits exceptional architecture and aesthetic merit to warrant the excess height.
Other	
Certain Industrial Uses within Commercial Districts	The site is within close proximity to industrial uses or districts and is suitable for the type and intensity of use that is proposed.

G. Consideration of Conditional Use Permit or Minor Conditional Use Permit Pending Zoning Amendment

Upon the close of a public hearing before the Planning Commission on the question of a Zoning Amendment to change property from one zone to another, and upon favorable report thereon by the Commission, the Commission may consider such matters and regulations as are set forth in Subsection XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.

The Commission may conditionally impose such requirements and regulations upon the subject property and use as the Commission is authorized to impose by Subsection XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter, and may conditionally approve Conditional Use Permits; said requirements and regulations shall be imposed and said approval shall be granted upon the express condition that said property shall be rezoned in accordance with the specific recommendation of the Planning Commission relating to zoning and shall not take effect unless and until said property is rezoned in accordance with specific recommendation of the Planning Commission and until the Ordinance amending this Chapter in accordance with the specific recommendation of the Planning Commission shall take effect.

H. Appeals. An appeal of the action on a Conditional Use Permit or Minor Conditional Use Permit shall be reviewed in accordance with Section XI-10-64, Development Review Process, of this Chapter.

I. Modifications Requested by the Applicant. Projects shall be developed in conformity with project approvals. If the applicant wishes to modify the project, as approved, the applicant shall submit revised plans and any other applicable information to the City for review by the Planning Division. The Planning Division staff shall make one of the following determinations regarding the request:

1. **Insignificant Modifications.** If the Planning Division determines that the modifications are minor, the modifications may be approved administratively.
2. **Significant Modifications With or Without Public Impact or Concern.** If the Planning Division determines that the modifications are significant enough to warrant discretionary review and have the potential for public impact or concern, then the modifications shall be referred to the final decision-making authority for the original project in the case of non-staff level issued permits, or to the Planning Commission in the case of staff-level issued Minor Conditional Use Permits. If the original application for a project required a public hearing, then the final decision-making authority's review of modifications shall require a public hearing, in accordance with Section XI-10-64, Development Review Process, of this Chapter.

J. Modifications, Suspensions and/or Revocations Initiated by the City. Refer to Section XI-10-63.06, Revocation, Suspension, Modification, of this Chapter.

K. Approval Runs with the Land. The approval of a Conditional Use Permit or Minor Conditional Use Permit shall run with the land, and shall continue to be valid upon a change of ownership of the site to which it applies, unless the decision-making authority places limits on the effective time of the approval.

XI-10-57.05 Density Bonus Permits

A. Purpose and Intent. The purpose and intent of the density bonus process is to ensure compliance with State regulations and regulations set forth in Subsection 54.15, Density Bonus for Affordable Housing Developments, of this Chapter.

B. Review Procedures. Refer to Subsection 54.15(C), Review Requirements, of this Chapter.

XI-10-57.06 - Variances

A. Purpose and Intent.

1. Zoning variances. The purpose and intent of the variance process is to provide relief from the substantive provisions of this Chapter when the strict application of these provisions deprives the property for which the Variance is sought of privileges enjoyed by other property in the vicinity and under identical zoning classification because of special circumstances applicable to the property (including, but not limited to size, shape, topography, location or surroundings).

A Variance is a permit issued by the City that sanctions deviations from the adopted Zoning Ordinance regulations related to physical standards of development, such as lot size, building setback, and height limits. A Variance may not be granted to allow a use or density not otherwise allowed within the zoning district.

2. Sign variances. The intent of this section is to establish a procedure for granting exceptions to the strict application of the size, number, height, length and location requirements for signs within Chapter 30 (Sign Ordinance) of this title. The granting of a variance requires findings to be met based on the site's or business' unique location or orientation in order to achieve adequate sign visibility.

B. Authority.

1. The Planning Commission shall have approval authority of Variances relating to development within all districts other than the Hillside (-H) Overlay district.

2. The City Council shall have approval authority, upon recommendation by the Planning Commission, of Variances relating to developments within the Hillside (-H) Overlay district.

C. Applicability.

1. Zoning variances. Unless indicated otherwise by this title, a variance is required to deviate from any of the standards contained within the Zoning Ordinance.

2. Sign variances. Unless indicated otherwise by Section XI-24, Signs, of this Chapter, a sign variance is required for the following:

- a. Any sign that exceeds the maximum standards;
- b. Any sign that exceeds the individual sign area allowed;
- c. Any business or site that exceeds the maximum sign area allowed;
- d. Any sign that exceeds the permitted sign height.

D. Submittal Requirements. Refer to the most recent submittal requirements required by the Planning Division.

E. Review Procedures.

1. General Procedures. The Planning Commission, or where applicable, the City Council shall be empowered to impose such conditions upon the grant of a Variance as it deems desirable and shall impose such conditions as will assure that the Variance does not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and zone in which said property is located.

2. The Planning Commission shall hold a public hearing on each application for a Variance upon such notice as is required in Section XI-10-64, Development Review Process, of this Chapter.

3. For Variances not involving the Hillside (-H) Overlay district, the Planning Commission shall review the application and render its decision.

4. For Variances involving the Hillside (-H) Overlay, the Planning Commission shall make a recommendation to the City Council. The City Council shall hold a public hearing, with notice as required in Section XI-10-64, Development Review Process, of this Chapter, review the application and the Commission's recommendation, and render its decision.

F. Required Findings.

1. Zoning variances. Prior to the approval of an application for a variance, all of the following findings shall be made:
 - a. Due to special circumstances applicable to the subject property including size, shape, topography, location or surroundings, the strict application of the Zoning Ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity under identical zone classifications.
 - b. The granting of the variance is necessary for the preservation of a substantial property right possessed by other property in the same vicinity and zone and otherwise denied the subject property.
 - c. The required conditions of approval assure that the adjustment authorized will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity subject to the same zoning regulations.
 - d. The granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
 - e. The granting of a variance is consistent with the General Plan and the intent of this title.
2. Sign variances. Prior to the approval of an application for a sign variance, all of the following findings shall be made:
 - a. Special conditions and extraordinary circumstances applicable to the property involved or its intended uses, which were not created by the owner or tenant, and which do not apply generally to other properties with the same land use exist that do not allow the site or business to achieve the goals and objectives of this Chapter for adequate business identification.
 - b. Literal enforcement of the provisions of the City of Milpitas the Sign Ordinance will result in unnecessary hardship inconsistent with the spirit and intent of the Sign Ordinance.
 - c. The granting of the variance is not contrary to the intent of the General Plan, Zoning or Sign Ordinance, or any applicable Specific Plan and will not be contrary to, nor materially detrimental to public interest and welfare, or injurious to conforming signs in the City.
 - d. The variance to be granted is one that will require the least modification of the prescribed regulation, and the minimum variance that will accomplish that purpose.
 - e. The granting of a variance is not considered a grant of special privileges inconsistent with the limitations of other similarly situated properties.

G. Appeals. An appeal of the action on any variance shall be reviewed in accordance with Section XI-10-64, Development Review Process, of this Chapter.

H. Modifications Requested by the Applicant. Projects shall be developed in conformity with project approvals. If the applicant wishes to modify the project, as approved, the applicant shall submit revised plans and any other applicable information to the City for review by the Planning Division. The Planning Division staff shall make one of the following determinations regarding the request:

1. Insignificant Modifications. If the Planning Division determines that the modifications are minor, the modifications may be approved administratively.
2. Significant Modifications with or without Public Impact or Concern. If the Planning Division determines that the modifications are significant enough to warrant discretionary review and have the potential for public impact or concern, then the modifications shall be referred to the final decision-making authority for the original project. If the original application for a project required a public hearing, then the final decision-making authority's review of modifications shall require a public hearing, in accordance with Section XI-10-64, Development Review Process, of this Chapter.

I. Modifications and/or Revocations Initiated by the City. Refer to Section XI-10-63.06, Revocation, Suspension, Modification, of this Chapter.

J. Other Review Requirements. For other general requirements related to the review of applications, such as time limits on approvals and requests for extensions of approvals, please refer to Section XI-10-64, Development Review Process, of this Chapter.

K. Approval Runs with the Land. The approval of a variance shall run with the land, and shall continue to be valid upon a change of ownership of the site to which it applies

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

Title XI, Chapter 10, Section 64 (“Development Review Process”) of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

XI-10-64.01 Purpose and Intent. This Chapter is intended to describe the general procedures for filing applications when required or permitted by this title.

XI-10-64.02 Authority for Land Use and Zoning Decisions. Table XI-10-64.02-1 (Decision-Making Body and Role) identifies the city official or body responsible for reviewing and making decisions on each type of application, land use permit, and other entitlements required by this Zoning Ordinance.

**Table XI-10-64.02-1
Decision-Making Body and Role¹**

Type of Permit or Decision	Procedures are found in:	Planning Division	Planning Commission Subcommittee	Planning Commission	City Council
Land Use Permits and other Development Entitlements					
Staff Review ²		Issuance		Appeal	Appeal
Conditional Use Permits	XI-10-57.04			Decision	Appeal
Development Agreements				Recommend	Decision
Minor Conditional Use Permits (Planning Commission Subcommittee)	XI-10-57.04		Decision	Appeal	Appeal
Minor Conditional Use Permits (Staff Review)	XI-10-57.04	Decision		Appeal	Appeal
Minor Site Development Permits (Planning Commission Subcommittee)	XI-10-57.03		Decision	Appeal	Appeal
Minor Site Development Permits (Staff Review)	XI-10-57.03	Decision		Appeal	Appeal
Mobile Home Park Conversion Permit	Title XI, Chapter 20			Recommend	Decision
Planned Unit Development	XI-10-54.07			Recommend	Decision
Site Development Permits	XI-10-57.03			Decision Recommend ³	Appeal Decision ³
Variances	XI-10-57.06			Decision	Appeal
Zoning Ordinance Administration and Amendments					
General Plan Amendments	XI-10-57.02			Recommend	Decision
Specific Plan Amendments	XI-10-57.02			Recommend	Decision
Zoning Amendments	XI-10-57.02			Recommend	Decision

¹ "Recommend" means that the decision-making body makes a recommendation to a higher decision-making body; "issuance" means that the permit is a ministerial action that is issued by the decision-making body; "decision" means that the decision-making body makes the final decision on the matter; "appeal" means that the decision-making body may consider and decide upon appeals to the decision of an earlier decision-making body. Any decision by the Planning Commission may be appealed to the City Council as specified in Section XI-10-64.05, Appeals and Title I, Chapter 20, of the City's Municipal Code.

² Includes Home Occupation Permits (Section XI-10-13.05), Minor Site Development Permits (Section XI-10-57.03) reviews requiring building permits and other reviews by Planning Division staff not requiring a building permit or review by other decision-making bodies. Any appeal shall first be to the Planning Commission. The Planning Commission's decision, in turn, may be appealed to the City Council, whose decision shall be final.

³ Refer to Section XI-10-45.09 regarding the process for projects within the "H" Hillside Overlay District.

XI-10-64.03 Consideration of Concurrent Applications

A project that includes more than one application may be combined and processed concurrently, as long as all applicable processing requirements are satisfied. The purpose of allowing concurrent review is to consolidate final action on the project with the highest review authority responsible for making a decision on the applications for a project. The following shall apply to concurrently processed applications:

A. Public Hearing and Nonpublic Hearing Applications. When an application requiring a public hearing is combined with an application that does not require a public hearing, the combined applications shall require a public hearing.

B. City Council and/or Planning Commission as Highest Review Authority. When City Council and/or Planning Commission review is required for at least one (1) of the applications for a project, the final decision on all applications shall be made by the highest review authority.

When the City Council is the highest review authority for a project, all review by other bodies with approval authority over the applications shall be in the form of a recommendation to the City Council.

When the Planning Commission is the highest review authority for a project, all review by other bodies with approval authority over the applications shall be in the form of a recommendation to the Planning Commission.

C. Omitting Planning Commission Subcommittee Review. In order to eliminate redundant review and an unnecessary lengthening of the discretionary review process, it is appropriate to eliminate Planning Commission Subcommittee review of some applications. When combined applications are being processed for a project, and both Planning Commission and Planning Commission Subcommittee review are required, Planning Commission Subcommittee review shall be omitted and Planning Commission review substituted.

XI-10-64.04 Public Hearing

A. Time. Time of Giving Notice. Whenever notice of hearing is required by this Chapter, it shall be given at least ten (10) calendar days before the hearing.

B. Manner. Manner of giving notice. Whenever notice of hearing is required by this Chapter for any of the following matters, unless otherwise provided by law:

**Table XI-10-64.04-1
Public Hearing Requirements**

Project¹	Notification Required Radius	Community Meeting Required²
Conditional Use Permit	1,000 feet	No
Development Agreements	300 feet	No
Environmental Impact Report	1,000 feet	No ³
General Plan Amendment	1,000 feet	Yes
Mobile Home Park Conversion Permit	Within the mobile home park	Yes
Minor Conditional Use Permit ⁴	1,000 feet	No
Site Development Permit	300 feet	No
Specific Plan Amendment	300 feet	No
Variance	500 feet	No
Zoning Amendment	1,000 feet	Yes

¹ Amendments to Conditional Use Permits, Development Agreements, Site Development Permits and Variances shall have the same requirements, unless otherwise noted.

² A community meeting shall be held prior to the public hearing.

³ Follow the requirements of the California Environmental Quality Act.

⁴ Only for Minor Conditional Use Permits issued by the Planning Commission Subcommittee.

1. For projects requiring a public hearing and/or a community meeting identified within Table XI-10-64.04-1, or for revocation, suspension or modification of the same, or an appeal from the action taken thereon, notice shall be given as per State of California Government Code Section 65091 and by the following:

- a. Publishing the notice in a newspaper of general circulation within the City. In addition, for General Plan amendments, Zoning amendments, Conditional Use Permits and Variances, a second notice being a quarter (¼) page advertisement shall be published in a newspaper of general circulation.
- b. Posting one (1) sign notice per 1,000 lineal feet of property street frontage in a conspicuous place on the affected property visible from the street frontage. If the affected property has no street frontage, no less than one (1) sign notice shall be required to be posted.
- c. Mailing the notice. It shall be the responsibility of the applicant to furnish the labor and materials regarding copies, postage, envelopes and labels for mailing of the notice.
 - i. Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code to all property owners and residential renters as specified in Table 10-64.04-1. The Planning Division staff shall have the discretion to require a 1,000 feet notification requirement for public hearings, if the project is deemed to be potentially controversial.
 - ii. Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code, to the owner of the subject real estate property and the applicant, respondent or appellant.
 - iii. Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code to the Milpitas Unified School District and, in addition, to any other local agency expected to provide essential facilities and services to the project and whose ability to provide said facilities and services may be significantly affected.

XI-10-64.05 Effective Date of Approval

Unless there is an appeal the date of approval is the date on which the decision-making body votes on the motion of approval. When there is an appeal, the date of approval is the date of the administrative vote on the motion finally determining the appeal.

XI-10-64.06 Expiration of Permit or Approvals

A. Expiration of an Approved Application. An application approved in accordance with this Chapter shall be deemed to have expired, when either of the following occurs:

1. When the activity permitted by the approved application is not commenced, as defined in Subsection B of this Section, Commencement of a Permitted Activity, within two (2) years, or for projects submitted with tentative maps, within the time limits of the tentative map. The time period during which a project must be commenced starts on the effective date of a decision approving a project, as defined in Section XI-10-64.05, Effective Date of Approval, of this Chapter.
2. When the activity permitted by the approved application has lapsed, as defined in Subsection C of this Section, Lapse of a Permitted Activity.

B. Commencement of a Permitted Activity. An activity permitted by an approved application shall be deemed to have commenced when the project:

1. Completes a foundation associated with the project, or
2. Dedicates any land or easement as required from the zoning action, or
3. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

C. Lapse of a Permitted Activity. An activity permitted by an approved application shall be deemed to have lapsed at the following times:

1. In accordance with Section XI-10-56.03(A)(3), Continuation, expansion and change of use, of this Chapter, regarding nonconforming uses.

2. When that activity ceases operation and/or the business closes at such location for a period of at least one (1) year.

D. Renewal of an Expired Application. Any approved application which has been allowed to expire shall be subject to the filing of a new application pursuant to Section XI-10-57, Applications, of this Chapter.

XI-10-64.07 Extension of Time

A. Authority. An extension of time may be issued for approved applications by the Planning Commission.

B. Submittal of Extension Requests.

1. Time Limits on Submitting Extension Requests. Unless otherwise provided by State law, extension requests for approved applications described in Section XI-10-57, Applications, of this Chapter shall only be considered if the written request for the extension is filed with the Planning Division prior to the approved application's expiration date.

2. Method of Request. Requests for extensions shall be made in writing and shall state the reasons why an extension is needed.

C. Processing Extension Requests. Extension requests for approved applications described in Section XI-10-57, Applications, of this Chapter shall be processed in the same manner as a new application, except that the extension request shall only be reviewed by the Planning Commission or Planning Commission Subcommittee for Minor Conditional Use Permits, as the decision-making authority. A request for an extension of time may be approved, conditionally approved or denied. If approved, conditions may be added to the approved application.

D. Circumstances Under Which Extensions May Be Granted. An extension of the approval of a project may be granted if the current findings for the specific type of permit be made by the decision-making authority.

E. Length of extension. The Planning Commission or Planning Commission Subcommittee shall only grant a single time extension within the time period specified in the approval or for eighteen (18) months if no time is specified.

SECTION 11. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect 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 shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.