

REGULAR

NUMBER: 38.816

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 THRIFT STORES

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of August 19, 2014, upon motion by Councilmember Giordano and was adopted (second reading) by the City Council at its meeting of September 2, 2014, upon motion by Councilmember Giordano. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES: (4) Mayor Esteves, Councilmembers Giordano, Gomez, and Montano

NOES: (0) None

ABSENT: (1) Vice Mayor Polanski

ABSTAIN: (0) None

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS:

WHEREAS, Title XI, Chapter 10, Table XI-10-5.02-1 of the Milpitas Municipal Code sets forth the commercial zone uses; and

WHEREAS, Title XI, Chapter 10, Section XI-10-5.04 of the Milpitas Municipal Code sets forth special development standards for Commercial Zoning Districts; and

WHEREAS, thrift stores are currently not permitted in the C-1, Neighborhood Commercial Zoning District and are not defined in the Definitions Section of the Milpitas Zoning Code; and

WHEREAS, on April 1, 2014, an application was submitted by Reid Lerner on behalf of Goodwill of Silicon Valley (“Goodwill”) requesting to amend the Milpitas Zoning Code to conditionally permit thrift store uses within the Neighborhood Commercial Zoning District; and

WHEREAS, on July 23, 2014, the Planning Commission held a duly-noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties; and recommended the City Council adopt an amendment to the Milpitas Zoning Code conditionally permitting thrift store uses within the Neighborhood Commercial Zoning District; and

WHEREAS, on August 19, 2014, the City Council held a hearing to consider the Planning Commission’s recommendation and evidence regarding the proposed amendment to the Milpitas Zoning Code.

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. FINDINGS

Zoning Text Amendment (Section XI-10-57.02(G)) - The City Council makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA14-0002:

- 1. *The proposed amendment is consistent with the General Plan.*

The Zoning Code Amendment is consistent with this finding because the proposed project meets the intent of the Retail Subcenter land use designation in the General Plan. The Retail Subcenter is intended to provide “neighborhood shopping facilities that provide for convenience needs, such as groceries and minor hard good purchases.” This use promotes and encourages neighborhood serving commercial uses while providing Milpitas residents with attractive commercial development which will afford a pleasant shopping environment and complement the essential residential character of the neighborhood. Specifically, the proposed use supports the following General Plan policies:

- 2.a-G-10: Consider long-term planning and strong land use policy in managing the City’s fiscal position.
- 2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.
- 2.a-1-29: Develop the Midtown area, as shown on the Midtown Specific Plan, as an attractive and economically vital district that accommodates a mixture of housing, shopping, employment, entertainment, cultural and recreational activities organized within a system of landscaped boulevards, streets and pedestrian/bicycle linkages

- 2. *The proposed amendment will not adversely affect the public health, safety, and welfare.*

The proposed amendment will not adversely affect the public health, safety and welfare of the residents of Milpitas because the proposed Zoning Code Amendment to conditionally permit thrift store uses in the Neighborhood Commercial Zoning District will require minimum performance standards and special conditions prohibiting the dumping of merchandise, forbidding outdoor storage of donated goods and materials, the immediate delivery of donated goods and materials inside the building, and limitations on the distance of thrift store uses from one another.

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

Section XI-10-2.03 entitled “Definitions” of the Milpitas Municipal Code is hereby amended to add the following definition to read as follows:

“**Thrift Store**” means any profit or nonprofit business, organization, group or otherwise that engages in or specializes in the sale or resale of previously owned or used goods and merchandise from an area greater than 25 percent of the total floor area devoted to retail sales and whose goods and merchandise are donated or primarily donated. A specialty retail store that sells used goods or merchandise not donated for sale, including but not limited to used record stores, used book stores, used furniture stores, and sports trading card stores, shall not be considered a Thrift Store for the purpose of this Chapter.

Table XI-10-5.02-1 entitled “Commercial Zone Uses” of the Milpitas Municipal Code is amended to read as follows:

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

Use	CO	C1	C2	HS	TC
1. Commercial Uses					
Alcoholic beverage sales	C ⁶	C	C	NP	C
Art/photography studio or gallery	NP	P	P	P	P
Bookstore	NP	P	P	P	P
Commercial services ¹	P	P	P	NP	P
Funeral home or mortician	NP	NP	C	C	NP
Furniture sales	NP	P	P	P	P
Grocery store (supermarkets)					
Within 1,000 ft. of residential zone	NP	C	C	C	C
Not within 1,000 ft. of residential zone	NP	P	P	P	P
Home improvement (hardware, blinds, interior decorating, etc.)	NP	P	P	C	P
Not fully enclosed operation	NP	C	C	C	C
Household appliance store ²	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
Pawnshops	NP	NP	C	NP	NP
Pet stores	NP	NP	P	P	P
Printing (newspaper, publishing)	NP	NP	P	P	P
Rentals (medical supplies, costumes, party equipment, office equipment)	NP	NP	P	P	P
Retail stores, general merchandise	NP	P	P	NP	P
Tanning salon	NP	NP	P	NP	P
Thrift store ³	NP	C	P	P	P
Tobacco shop	NP	C	C	NP	C
2. Entertainment and Recreation					
Adult business ⁴	NP	NP	NP	P	NP
Bowling alley	NP	NP	P	P	P
Commercial athletic facilities					
Indoor	NP	C	P	P	P
Outdoor	NP	NP	NP	C	NP
Motion picture theater (See 7 below)					
Recreation or entertainment facility	NP	C	C	C	C
Shooting range, indoor	NP	NP	NP	C	NP
3. Health and Veterinarian Uses					
Animal grooming (no boarding)	NP	P	P	P	P
Hospital	C	NP	C	C	C
Kennel	NP	NP	C	NP	NP
Massage establishment	NP	NP	C	C	C
Medical and dental office	P	P	P	NP	P
Medical and dental clinic	P	C	C	NP	P
Medical support laboratories	P	C	C	C	C
Optician and optometrist shop	P	P	P	NP	P
Pharmacy or drug store	NP	P	P	P	P
Sauna and steam bath	NP	NP	NP	P	NP
Veterinary clinic	NP	NP	P	P	P
4. Industrial Uses⁵					
Assembly from pre-processed materials	NP	NP	C	NP	NP
Commercial fueling facility	NP	NP	NP	C	NP
Commercial laboratory	NP	NP	C	P	NP
Contractor's yards and offices	NP	NP	C	C	NP

Disinfection and extermination business	NP	NP	C	P	NP
Dry cleaning plant	NP	NP	NP	P	NP
Food storage locker	NP	NP	NP	P	NP
Landscape contractor	NP	NP	C	P	NP
Lumberyards	NP	NP	C	C	NP
Mini-storage complex	NP	NP	C	C	NP
Plumbing, metalworking, glassworking or woodworking	NP	NP	C	C	NP
Research & development	NP	NP	C	NP	NP
Sign sales and fabrication (Electric and neon sign, sign painting)	NP	NP	C	P	NP
Warehousing and wholesale	NP	NP	C	NP	NP
5. Lodging					
Hotel and motel	NP	NP	C	C	C
6. Professional Offices, Financial Institutions and Related Uses					
Automatic Teller Machines (freestanding) ⁶	NP	P	P	P	P
Financial institutions (banks, savings and loans, etc.)	P	P	P	P	P
General offices (administrative and business services, real estate, travel agencies, etc.)	P	P	P	P	P
7. Public, Quasi-Public and Assembly Uses					
Auction hall	NP	NP	C	C	C
Child care					
Child care center	C	C	C	C	C
Day care school	C	C	C	C	C
Large family child care home	NP	NP	NP	NP	C
Small family child care home	NP	NP	NP	NP	C
Club or social organization, religious assembly	C	C	C	C	C
Cultural center	NP	NP	C	C	C
Educational institutions					
Schools, private (-elementary, middle, high)	NP	NP	C	NP	C
Trade and vocational school	C	NP	P	P	C
Farmer's market (not including flea market)	NP	C	C	C	C
Instruction					
Group ⁸	MCS	MCS	MCS	MCS	MCS
Private	P	P	P	P	P
Motion picture theater					
Indoor	NP	C	C	C	C
Outdoor	NP	NP	NP	C	NP
Parking facility, storage garage	NP	P	P	C	C
Public utilities	C	C	C	C	C

Transportation facility (taxi, limousine, etc.)	NP	NP	C	C	C
8. Restaurants or Food Service					
Banquet hall	NP	NP	C	C	C
Bar or nightclub	NP	NP	C	C	C
Catering establishment	NP	NP	P	P	P
Restaurants	C ⁷	P	P	P	P
With live entertainment/dancing	NP	NP	C	C	C
With drive-in or drive-through	NP	C	C	C	C
With ancillary on-premise beer & wine with no separate bar	NP	MC	PMC	MC	MC
9. Residential Uses					
Caretaker (in conjunction with contractor's yard or mini-storage complex)	NP	NP	C	C	NP
Emergency shelters ⁹	NP	NP	NP	P/C	NP
Residential dwellings (between 1 and 40 d.u. per gross acre)	NP	NP	NP	NP	C
Single-room occupancy residences ¹⁰	NP	NP	NP	C	NP
10. Vehicle Related Uses					
Auto repair (tire, oil change, smog check, etc.)	NP	NP	C	C	NP
Auto sales and rental, outdoor (new and used cars, RV and truck)	NP	NP	C	C	NP
Auto broker (wholesale, no vehicles on site)	MCS	MCS	MCS	MCS	MCS
Car wash	NP	NP	C	C	NP
Service stations (with or without repair or retail) ¹¹	C	C	C	C	C
Drive through uses (restaurants, pharmacies, etc.)	NP	C	C	C	C
11. Unclassified Uses					
Accessory structures ¹²	P	P	P	P	P
Model home complex ¹³	NP	NP	NP	NP	P
Mortuary or crematory	NP	NP	NP	C	NP
Radio or television station	NP	NP	C	P	NP
Temporary seasonal sales ¹⁴	NP	P	P	P	P

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section XI-10-5.04 entitled “Commercial Zone Special Development Standards” is hereby amended to add the following provision to read as follows:

C. Neighborhood Commercial (C1) Zone

Thrift stores shall comply with each of the following standards:

1. Signage prohibiting dumping of merchandise during non-business hours shall be installed in conspicuous locations to the satisfaction of the Planning Director indicating penalties and fines for such activity. Signage shall include daytime collection hours for donated goods.
2. A designated area inside the building shall be established for the receipt, sorting and processing of goods. Donated goods shall be accepted only inside the building and during regular business hours; no donated goods shall be left outside. Loading and unloading must take place in a designated area that shall be cleared, cleaned and maintained before closing of business each day.
3. The storefront windows shall be permanently maintained as displays of merchandise in a professional and attractive manner (i.e., unsightly clothing racks and displays shall not be placed adjacent to the windows).
4. Any goods or materials left outside of the store overnight shall be removed immediately upon the thrift store opening the next business day.
5. Outdoor storage or display of donated goods or merchandise shall not be permitted.
6. The subject property shall be maintained free of trash, debris, any all other goods at all times.
7. Thrift stores shall not be located closer than one thousand (1000) feet from another thrift store.

SECTION 3. 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 4. 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.