

ORDINANCE NO. 2017-16

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING ARTICLES 1 AND 26 OF THE
ESCONDIDO ZONING CODE PERTAINING TO
INCUBATOR USES WITHIN THE M-1 AND M-2
ZONES

Planning Case No. AZ 17-0003

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and City Council on this issue.

SECTION 2. The City Council has duly reviewed and considered all evidence submitted at said hearings, including, without limitation:

- a. Written information;
- b. Oral testimony from City staff, interested parties, and the public;
- c. The City Council staff report, dated December 20, 2017, which along with its attachments is incorporated herein by this reference as though fully set forth herein, including the Planning Commission recommendation on the request, and
- d. Additional information submitted during the Public Hearing.

SECTION 3. That the City Council has reviewed and considered the Notice of Exemption prepared for this project, in conformance with the California Environmental

Quality Act (“CEQA”) Section 15061(b)(3) “General Rule,” and has determined that all environmental issues have been addressed and finds that no significant environmental impact will result from approving the Zoning Code Amendment.

SECTION 4. That upon consideration of the staff report; Planning Commission recommendation; Findings of Fact/Factors to be Considered, attached as Exhibit “A” to this Ordinance and incorporated herein by this reference as though fully set forth herein; and all public testimony presented at the hearing held on this project, this City Council finds the proposed Zoning Code Amendment is consistent with the General Plan and does not affect any specific plans of the City of Escondido.

SECTION 5. That Articles 1 and 26 of the Escondido Zoning Code are amended as set forth in Exhibit “B” to this Ordinance and incorporated herein by reference as though fully set forth herein.

SECTION 6. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 7. That as of the effective date of this Ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 8. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15

days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 10th day of January, 2018 by the following vote to wit:

AYES : Councilmembers: DIAZ, GALLO, MORASCO, ABED

NOES : Councilmembers: NONE

ABSENT : Councilmembers: MASSON

APPROVED:



SAM ABED, Mayor of the
City of Escondido, California

ATTEST:



DIANE HALVERSON, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, DIANE HALVERSON, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2017-16 passed at a regular meeting of the City Council of the City of Escondido held on the 10th day of January, 2018, after having been read at the regular meeting of said City Council held on the 20th day of December, 2017.



DIANE HALVERSON, City Clerk of the
City of Escondido, California

ORDINANCE NO. 2017-16

EXHIBIT "A"

FINDINGS OF FACT/FACTORS TO BE CONSIDERED AZ17-0003

1. The public health, safety and welfare would not be adversely affected by the proposed Zoning Code Amendment because incubator uses would be evaluated on a case-by-case basis as part of the Conditional Use Permit process, and necessary conditions of approval would be applied. Furthermore, this Ordinance has a built in sunset provision, which would compel the City Staff, Planning Commission and City Council to reconsider the Ordinance in light of the forgoing should there be an interest to allow incubator uses to continue and extend beyond the five (5) year sunset period.
2. The proposed Zoning Code Amendment would not be detrimental to surrounding properties because incubator uses would not be industrial in nature, and conditions of approval would be applied through the Conditional Use Permit process that would restrict activities to those with negligible impacts on surrounding properties. Any compatibility issues would be analyzed and addressed as part of the Conditional Use Permit process on a case-by-case basis.
3. The General Plan contains a variety of standards, goals, and policies aimed at improving the quality of life for City residents by providing ways to raise income levels. The General Plan also encourages the recruitment and expansion of businesses that pay higher-than-average wages. Amending the Zoning Code to allow incubator uses in the M-1 and M-2 zones will assist in achieving these goals because the Zoning Code Amendment facilitates job creation, diversifies the labor force market, and facilitates higher-paying jobs that likely require a high degree of knowledge and expertise in an emerging industry.
4. The proposed amendment has been structured as a pilot program. As such, if it is determined in the future, through monitoring of implementation of the amendment, that incubator uses are not appropriate for the M-1 and M-2 zones, the amendment will become null and void after five (5) years with no further action required.
5. The proposed Zoning Code Amendment would not affect nor conflict with any adopted specific plans.

EXHIBIT "B"
Proposed Changes to the Zoning Code
AZ17-0003

I. Amend the various Zoning Code sections to read as specified below (The changes are listed in order by section number, with (note: ~~strikeout~~) typeface illustrating deletions and underline typeface illustrating new text)

Sec. 33-564. Land uses.

(a) Principal Uses and Structures. The following Table 33-564 lists those uses which are permitted (P) or subject to a conditional use permit (C) in industrial districts. Major conditional use permits (C) and minor conditional use permits (C#) shall be processed pursuant to Article 61, Division 1 of this chapter.

Table 33-564

PERMITTED AND CONDITIONALLY PERMITTED PRINCIPAL USES

Use Title	I-O	M-1	M-2	I-P
Administrative and business offices	P			P
Agriculture livestock (not including animal waste processing facilities)		C	P	
Ammunition manufacturing		C	C	
Animal boarding (indoor boarding only) and training, feeding, care, grooming and "daycare" ² . Does not include animal shelters****, sales or breeding		P	P	
Animal hospital and care		P	P	
Assembly	P	P	P	P
Auction services	P	P	P	P
Auto, RV and boat sales**(subject to Article 57)	P	P	P	P
Automotive services (excluding gasoline service stations)		P	P	
Banks/automated teller machines		P	P	P
Boat repair		P	P	
Building materials**	P	P	P	P
Bulk fertilizer (not including animal waste processing facilities)			C	
Cabinet manufacturer/wholesaler**	P	P	P	P
Canning/curing seafood		C	C	
Carpeting manufacturer/wholesaler**	P	P	P	P/C
Communication facilities (subject to Article 34)	P	P	P	P
Construction services	P	P	P	P
Crematoriums	P	P	P	P
Daycare (subject to Article 57)				C
Electrical wholesale houses**	P	P	P	P
Emergency shelters****		P		
Equipment sales and leasing (subject to Article 57)		P	P	
Experimental-type industrial uses	C	C	C	C
Feed stores**	P	P	P	P
Fleet fueling		P	P	
Furniture manufacturer/wholesaler**	P	P	P	P
Government services	P			
Grain mills		C	P	
Green waste compost facility			C	
Health and fitness facilities	C#			C#
Heavy construction equipment** (e.g., tractors, earth moving equipment, etc.)	P	P	P	P
Helipads		C	C	C

Use Title	I-O	M-1	M-2	I-P
Industrial hardware**	P	P	P	P
Landscape materials** (e.g., soil, compost, wood chips)	P	P	P	P
Lumber yards**	C	C#	P	C
Manufacturing	P	P	P	P
Masonry products**	P	P	P	P
Materials batch plants and concrete recycling			C	
Medical laboratories	P	P	P	P
Oil refinery and bulk stations (located outside of the HCO zone)			C	
Plumbing supply**	P	P	P	P
Postsecondary vocational training schools, limited to training for uses which are permitted or conditionally permitted in the zone	C	C	C	C
Power plants			C	C
Primary metal manufacturing			C	
Recycling facilities ¹				
Reverse vending machine ¹	P	P	P	
Small processing facility ¹		P/C	P	
Large processing facility ¹		C	C	
Repair services	P	P	P	P
Restaurants		C#	C#	C#
Slaughter houses/meat products		C	C	
Social and charitable services (including emergency shelters)***		C		
Solid waste transfer facility			C	
Storage yards		C	P	
Swap meet		C		
Trades	P	P	P	P
Transmission/communication facilities		C	C	
Transportation facilities	P	P	P	
Uses involving hazardous chemicals or waste*	C	C	C	C
Utilities	P	P	P	
Vehicle, shredding and dismantling		C	P	
Warehousing and distribution	P	P	P	P
Wholesale	P	P	P	P

Notes:

- * = As determined by the director and the fire chief based on information provided by the business describing the quantity and nature of hazardous chemicals used.
- ** = Retail ~~or support service components~~ ~~component~~ greater than the maximum fifteen (15) percent floor area/sales allowed by section 33-565 (Accessory uses and structures) under "Incidental Use" regulations is allowed only in M-1 and M-2 zones, subject to conditions in section 33-566—Specialized retail uses.
- *** = Only on sites immediately adjacent to the general commercial zone and within five hundred (500) feet of public transportation.
- **** = Only on sites within the emergency shelter overlay, Figure 33-661, and subject to the requirements of Article 27.
- ***** = Dog shelters generally means an establishment, especially one supported by charitable contributions, that provides a temporary home for dogs, cats and other animals that are offered for adoption.
- 1 = Pursuant to Article 33 of the zoning code (recycling facilities).
- 2 = Pursuant to section 33-576 of this article (animal boarding and daycare).
- P = Permitted use.
- C = Conditionally permitted use subject to issuance of a conditional use permit; either major (C) or minor (C#) (pursuant to Article 61, Division 1 of this chapter).

- (b) The following business uses shall be classified as "environmentally sensitive businesses":
- (1) If any portion of the business is classified as a group H occupancy, except divisions 4 and 5, pursuant to California Building Code section 307.1, as amended;
 - (2) If the business operations require the approval of, or a permit from, the San Diego County Air Pollution Control District;
 - (3) Any business that operates under a permit or conditions imposed by state or federal laws regarding odor or the release of airborne contaminants;
 - (4) Any business that requires a conditional use permit for operation, and which is identified in the conditional use permit as a business producing odors derived from hazardous materials or hazardous waste;
 - (5) Any business that requires an industrial waste users discharge permit, pursuant to section 22-176 of the Escondido Municipal Code;
 - (6) Any business that is required to prepare and submit a storm water pollution prevention plan, pursuant to Escondido Municipal Code section 22-26; and
 - (7) Any business that identifies itself as using any hazardous manufacturing or industrial processes, as identified on its business license application or a fire department inspection form. (Ord. 94-37, § 1, 11-9-94; Ord. No. 97-05, § 2, 4-2-97; Ord. No. 2000-28, § 4, 10-4-00; Ord. No. 2000-37R, § 4, 12-13-00; Ord. No. 2001-31R, § 15, 12-5-01; Ord. No. 2013-09R, § 4, 11-6-13; Ord. 2015-04, § 4, 3-4-15; Ord. No. 2016-12, § 4, 9-28-16; Ord. No. 2016-15, § 4, 10-26-16; Ord. No. 2017-03R, § 4, 3-22-17)

Sec. 33-565. Accessory uses and structures.

(a) Accessory uses and structures are permitted in the industrial zones, provided they are incidental to and do not substantially alter the character of the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, the following:

Table 33-565

PERMITTED ACCESSORY USES AND STRUCTURES

Use Title	I-O	M-1	M-2	I-P
Bus stop shelters**	P	P	P	P
Cafeteria, operated in conjunction with a permitted use for the convenience of persons employed upon the premises	P	P	P	P
Caretakers' or watchperson's dwelling	P	P	P	P
Commercial sales and service <u>uses</u> clearly incidental and secondary to a principal permitted use <u>as provided for in section 33-565(b)</u>	P	P	P	P
<u>Incubator uses as provided for in section 33-565(c)</u>		C#	C#	
Cottage food operations and home occupations as provided for in Article 44	P	P	P	P
Employee recreational facilities and play areas	P	P	P	P
Other accessory uses and buildings customarily appurtenant to a permitted use	P	P	P	P

Use Title	I-O	M-1	M-2	I-P
Satellite dish antennas*	P	P	P	P
Storage buildings incidental to a permitted use	P	P	P	P

Notes:

* Subject to special regulations—see section 33-700.

** Subject to special regulations—see section 33-1118.

(b) Sales and service uses incidental and accessory to a principally permitted use may be permitted by the Director of Community Development provided that the following standards are met:

- (1) The operations are contained within the main structure which houses the primary use.
- (2) The use occupies no more than fifteen (15) percent of the gross building square footage.
- (3) No retail sales or display of merchandise occur(s) outside the structure(s), or outside designated outdoor storage area.
- (4) All products offered for sale on the site are manufactured, warehoused, or assembled on the premises.
- (c) Sales and service uses not accessory to a principally permitted use may be conditionally permitted in the M-1 and M-2 zones, as an incubator use or activity.
 - (1) Incubator uses and/or activities shall be subject to all applicable city, state, and federal code requirements, as well as the following operational limitations:
 - (A) The use shall be permitted in the existing space of an existing industrial building or suite.
 - (B) No more than one incubator, as described by this section, shall be permitted within any industrial building complex, regardless of size.
 - (C) An incubator shall only be allowed as a sub-lessee of a bona-fide industrial user.
 - (D) The use shall occupy no more than 1,000 square feet or ten (10) percent of the total floor area of the primary industrial space from whom they sublease, whichever is less.
 - (E) Parking for incubator uses shall be determined based on the parking requirement for the proposed use, in accordance with the provisions of Article 39 of the Zoning Code, governing off-street parking requirements.
 - (F) Hours of operations shall be limited to those of the primary industrial use on site and not adversely impact industrial use activity or operations.
 - (G) Exterior signage for the use shall be limited to window signage.
 - (H) Customers of the incubator space shall be seen by appointment only.
 - (I) Incubator uses must have restrooms available for employees and customers/clients.
 - (2) The use shall be conditionally permitted for no more than four (4) years, at which time it must vacate the space. Sub-lessee shall not assign any lease agreement, or sub-let or grant any use to the premises or any part thereof without the prior written consent of the City. Upon the termination date, the sub-lessee shall be required to vacate the premises.
 - (3) This subsection shall remain in effect only until January 1, 2023, and as of that date is repealed. Any use, as described by the section, in operation after this date shall be permitted as a non-conforming use, subject to Article 61 of the Zoning Code, and shall be allowed to lawfully continue its operations until the fourth anniversary of the approval of its conditional use permit.

(Ord. 94-37, § 1, 11-9-94; Ord. No. 2013-07RR, § 4, 12-4-13)

Sec. 33-566. Specialized retail uses.

A limited list of industrial uses which contain a retail component greater than the maximum fifteen (15) percent floor area/sales allowed under the "~~accessory incidental uses~~ and structures" section shall be permitted within the M-1 and M-2 industrial zones. These uses have been determined to be industrial in nature; however, given unique circumstances involving the need to manufacture, warehouse, wholesale, and/or store their products on-site, they would not be appropriately located in the commercial zones. Those industrial uses, specified in Table 33-564 (and other uses determined to be similar in nature as permitted by the director), shall be permitted subject to the following:

(a) Prior to issuance of a building or occupancy permit, the applicant shall submit a plot plan application pursuant to Article 61, Division 8 of this chapter.

(b) The applicant shall provide parking at a ratio of one (1) space per two hundred fifty (250) square feet of floor area for that portion of the retail and display/showroom designated areas which exceed fifteen (15) percent of the gross floor area on the site (unless a lower parking ratio is deemed adequate by the director pursuant to section 33-764). Parking shall be provided at the standard industrial use ratios for the balance of the floor area on the site, pursuant to section 33-760 et seq.

(c) The applicant will be allowed only the amount of signage permitted by the citywide sign ordinance for the underlying industrial zone, pursuant to section 33-1390.

(Ord. No. 94-37, § 1, 11-9-94; Ord. No. 2017-03R, § 4, 3-22-17)

~~Sec. 33-567. Incidental uses.~~

~~_____ Sales and service uses incidental to a principally permitted use may be permitted by the director provided that the following standards are met:~~

~~_____ (a) _____ The operations are contained within the main structure which houses the primary use.~~

~~_____ (b) _____ The use occupies no more than fifteen (15) percent of the gross building square footage.~~

~~_____ (c) _____ No retail sales or display of merchandise occur(s) outside the structure(s), or outside designated outdoor storage area.~~

~~_____ (d) _____ All products offered for sale on the site are manufactured, warehoused, or assembled on the premises. (Ord. No. 94-37, § 1, 11-9-94; Ord. No. 2017-03R, § 4, 3-22-17)~~