

RESOLUTION NO. 14-026

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
APPROVING SITE DEVELOPMENT PERMIT NO. SD14-0009 FOR A
FREESTANDING SIGN OVER 6 FEET IN HEIGHT LOCATED AT 690 GIBRALTAR
DRIVE**

WHEREAS, on May 21, 2014, an application was submitted by Sylvester Ramirez, 690 Gibraltar Drive, Milpitas, CA 95035 on behalf of DevCon Construction, for a new freestanding sign over 6 feet in height located at 690 Gibraltar Drive. The property is located within the Heavy Industrial Zoning District with a Site and Architectural Overlay (APN: 86-42-010).

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project exempt under CEQA per Section 15303 (New Construction or Conversion of Small Structures).

WHEREAS, DevCon Construction desires to upgrade their existing sign into a modern, visually appealing sign.

WHEREAS, on June 11, 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.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission 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 Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The project is categorically exempt from further CEQA review under Section 15303 (New Construction or Conversion of Small Structures) of the CEQA Guidelines because the proposed freestanding sign is considered a small structure. The proposed freestanding sign is considered a small structure in that it constitutes a small portion of the built environment for the parcel.

Section 3: Site Development Permit (Section XI-10-57-03(F)) - *The Planning Commission makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD14-0009:*

- 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.*

The project is consistent with this finding because it is aesthetically harmonious with adjacent and surrounding development in that the design of the proposed freestanding sign complements and is designed in context with the buildings around it. The cabinet is made of aluminum material while the graphics are routed acrylic with an aluminum laminate.

b) The project is consistent with the Milpitas General Plan, specifically Policy 2.a-I-3:

The project is consistent with this finding because it provides on-street visibility for business identity and branding purposes which will encourage economic pursuits by promoting name recognition and assisting with business retention and growth in Milpitas.

c) The project is consistent with the Milpitas Zoning Ordinance:

The project is consistent with the Sign Ordinance because it meets the regulations and design standards set forth in the Sign Ordinance. The Sign Ordinance specifies that the maximum permissible sign area in non-residential zones is either one square foot of sign for each two lineal feet of building perimeter or two square feet of sign for each one lineal foot of public street frontage. Therefore, the maximum allowed signage for this parcel is 635.50 square feet. This project is proposing 40.98 square feet of signage and thus it is well within the limits of allowed signage. Furthermore, one freestanding sign is allowed for each parcel's public street frontage, and an additional freestanding sign is allowed for parcels that have more than 300 feet of public street frontage. The public street frontage is 317.75 feet, so this parcel is allowed two freestanding signs. Since only one freestanding sign is proposed, it is in compliance with this requirement. Additionally, the maximum allowed height for the sign is 25-feet in non-residential areas. The proposed sign is 12'-2", within the maximum allowed height. Lastly, the materials for the sign are of high-quality material and the location of the sign in relation to the height and the location of the building are appropriate.

Section 4: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 14-026 approving Site Development Permit No. SD14-0009 based on the above Findings and Conditions of Approval incorporated herein.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on June 11, 2014.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on June 11, 2014 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Demetress Morris				
Gurdev Sandhu				
Garry Barbadillo				
Hon Lien (alternate)				

EXHIBIT 1

**CONDITIONS OF APPROVAL
SITE DEVELOPMENT PERMIT NO. SD14-0009****General Conditions**

1. General Compliance. The applicant, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Site Development Permit No. SD14-0009 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
6. Project Job Account. If Permittee’s project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee’s private job account is paid in full and the required deposit has been made.

Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.

7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on June 11, 2014 in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

- (P) = Planning
- (B) = Building
- (E) = Engineering
- (F) = Fire Prevention
- (CA) = City Attorney