

RESOLUTION NO. 8339

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING GENERAL PLAN AMENDMENT NO. GP13-0001 TO CREATE A CITYWIDE FREEWAY CORRIDOR OVERLAY ESTABLISHING A FRAMEWORK FOR NEW AND INFILL DEVELOPMENTS WITHIN THREE HUNDRED (300) FEET OF INTERSTATE 680, INTERSTATE 880, AND STATE ROUTE 237 LOCATED IN THE CITY OF MILPITAS TO REQUEST AN INCREASE OF UP TO TWENTY PERCENT (20%) ABOVE THE MAXIMUM PERMITTED FLOOR AREA RATIO IN THE MILPITAS GENERAL PLAN AND MILPITAS ZONING ORDINANCE

WHEREAS, on January 30, 2013, an application was submitted by TMS McCarthy, Inc., a California corporation, to create a Pacific Mall Freeway Corridor Overlay increasing the maximum permitted Floor Area Ratio ("FAR") from 0.50 to 0.52 to allow the demolition of a portion of the McCarthy Ranch Marketplace, and to construct 284,587 square feet of retail space, including a 240 room hotel. The project is located at 11-111 Ranch Drive (APN: 22-053-002, -003, -006, and -007).; and

WHEREAS, the City Council is considering the approval of the development application described above in a separate resolution and Council action, distinct and separate from the amendment to the General Plan to create a Citywide Freeway Corridor Overlay as further described in this Resolution; and

WHEREAS, the City of Milpitas ("City") believes a Citywide Freeway Corridor Overlay allowing properties within three hundred (300) feet of a highway located in the City of Milpitas to request an increase of up to twenty percent (20%) above the maximum permitted FAR in the General Plan and Milpitas Zoning Code will spur retail and commercial developments in the City, increase sales tax and other revenues to the City, and will not be detrimental or injurious to the public health, safety, and general welfare of the residents of the City; and

WHEREAS, the Planning Division completed an environmental assessment for a General Plan Amendment to create a Citywide Freeway Corridor Overlay in accordance with the requirements of the California Environmental Quality Act of 1970, as amended (CEQA), and State and local guidelines implementing CEQA, and determined that the General Plan Amendment to create a Citywide Freeway Corridor Overlay is not a "project" under CEQA and State and local guidelines implementing CEQA as further described below; and

WHEREAS, on January 8, 2014, the Planning Commission held a duly-noticed public hearing on the subject application for the Pacific Mall Freeway Corridor Overlay and City Freeway Corridor Overlay and considered evidence presented by City staff, the applicant, and other interested parties and recommended approval of General Plan Amendment GP13-0001 for the consideration of the Citywide Overlay District to the City Council.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The City Council has reviewed and exercised its independent judgment on the environmental assessment completed for the General Plan Amendment to create a Citywide Freeway Corridor Overlay in accordance with the requirements of the CEQA, and State and local guidelines implementing CEQA, and determined that the General Plan Amendment to create a Citywide Freeway Corridor Overlay is not a “project” under CEQA and State and local guidelines implementing CEQA. The General Plan Amendment is not a “project” as defined in Section 21065 of CEQA since the General Plan Amendment does not create either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The General Plan Amendment creates a framework for eligible properties to submit a development application to request an increase in the maximum permitted floor area space in the Milpitas General Plan and Milpitas Zoning Code. Any eligible properties interested in a development exceeding the maximum FAR in the Milpitas General Plan and Milpitas Zoning Code will be required to submit a development application for the applicable discretionary permit(s) as required under the Milpitas Zoning Code and to comply with the requirements of CEQA and State and local guidelines implementing CEQA.
3. **General Plan Amendment Findings.** In accordance with Municipal Code Section XI-10-57.02(G), the City Council further finds that:
 - a. *The proposed amendment is internally consistent with those portions of the General Plan which are not being amended.*

The proposed Citywide Freeway Corridor Overlay will create a framework for properties within three hundred (300) feet of a highway located in the City of Milpitas to submit development application(s) requesting an increase in the maximum permitted FAR in the Milpitas General Plan and Milpitas Zoning Ordinance. The proposed amendment does not conflict with other sections of the Milpitas General Plan. The Milpitas General Plan Amendment provides for a description of the Overlay District and intends for its applicability to be implemented through the Zoning Ordinance as each project will be required to apply for the applicable discretionary permit(s) under the Zoning Ordinance and comply with the requirements of CEQA and State and local guidelines implementing CEQA.

Additionally, the proposed General Plan Amendment supports the following Land Use Principles and Policies in the General Plan:

- 2.a-1-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.
- 2.a.1-7: Endeavor to maintain a balanced economic base that can resist downturns in any one economic sector.

The proposed Citywide Freeway Corridor Overlay will help promote economic development in the City of Milpitas. Revitalizing the freeway corridor in the City will increase sales tax and other revenues to the City.

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

The General Plan Amendment is not a “project” as defined in Section 21065 of CEQA since the General Plan Amendment does not create either a direct physical change in the

environment, or a reasonably foreseeable indirect physical change in the environment. The General Plan Amendment creates a framework for eligible properties to submit a development application to request an increase in the maximum permitted floor area space in the Milpitas General Plan and Milpitas Zoning Code. Any eligible properties interested in a development exceeding the maximum FAR in the Milpitas General Plan and Milpitas Zoning Code will be required to submit a development application for the applicable discretionary permit(s) as required under the Milpitas Zoning Code and comply with the requirements of CEQA and State and local guidelines implementing CEQA. Through the review and consideration of such discretionary permit(s), the City will evaluate an adverse impact the proposed project may have on the public health, safety, and welfare.

4. Based on the foregoing, the City Council of the City of Milpitas hereby approves General Plan Amendment No. GP13-0001, subject to the above Findings and the General Plan Text Amendment attached hereto as Exhibit 1.

PASSED AND ADOPTED this 4th day of February 2014, by the following vote:

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

NOES: (0) None

ABSENT: (0) None

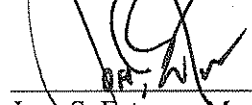
ABSTAIN: (0) None

ATTEST:



Mary Lavelle, City Clerk

APPROVED:



Jose S. Esteves, Mayor

APPROVED AS TO FORM:



Michael J. Ogaz, City Attorney

EXHIBIT 1

GENERAL PLAN TEXT AMENDMENT

Page 2-16

Citywide Freeway Corridor Overlay

The purpose of the Citywide Freeway Corridor Overlay (-FC) is to establish a framework for new and infill developments within three hundred (300) feet of Interstate 680, Interstate 880, and Route 237 located in the City of Milpitas to request an increase in the maximum permitted Floor Area Ratio by up to twenty percent (20%) above the maximum permitted Floor Area Ratio in the Milpitas General Plan and Milpitas Zoning Ordinance. The process for such request will be further defined in the Milpitas Zoning Ordinance.