

REGULAR

NUMBER: **201.5**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 2 OF TITLE X OF THE MILPITAS MUNICIPAL CODE, "TREE MAINTENANCE AND PROTECTION"**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of October 2, 2007 upon motion by Vice Mayor Livengood and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, 2007 upon motion by Councilmember \_\_\_\_\_. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Ogaz, City Attorney

ORDAINING CLAUSE: THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 2 of Title X of the Milpitas Municipal Code, “Tree Maintenance and Protection,” is hereby amended in its entirety to read as follows:

- -Begin Chapter- -

### **Section 1 Title and Purpose**

#### X-2-1.01 Title

This Chapter shall be known as the “Tree Maintenance and Protection Ordinance of the City of Milpitas.”

#### X-2-1.02 Purpose

The City recognizes substantial economic, environmental and aesthetic importance of the trees and plantings within the community. It shall be the City's policy to utilize applicable techniques, methods and procedures required to preserve, when feasible, all trees and plantings on City property, and all protected plantings of significant size, age, and/or benefit to the community at large.

This ordinance is part of a comprehensive plan developed in the best interest of the Milpitas community to regulate the planting and maintenance of trees and Other Plantings in or adjacent to streets and within easements, in rights-of-way and other public places within the City and where appropriate, private property, to provide for orderly development and protection of public facilities, and to regulate the removal of trees that contribute significantly to the value of land, preservation of resources, and quality of life in the City of Milpitas.

### **Section 2 Definitions**

For the purpose of this Chapter, certain words or phrases are defined.

#### X-2-2.01

(Reserved by Ordinance 201.3 (part), 10/3/00)

#### X-2-2.02

(Reserved by Ordinance 201.3 (part), 10/3/00)

#### X-2-2.03

(Reserved by Ordinance 201.3 (part), 10/3/00)

#### X-2-2.04

(Reserved by Ordinance 201.3 (part), 10/3/00)

#### X-2-2.05

(Reserved by Ordinance 201.3 (part), 10/3/00)

#### X-2-2.06

“Approved Street Tree” shall mean any tree hereafter planted within any street right-of-way or easement adjacent thereto which conforms to the Approved Street Tree List and which is planted in accordance with this Chapter. “Approved Street Tree” shall also mean any existing tree within the right-of-way or easement adjacent thereto which conforms to the established species and location in any given area, and which was planted as a required street tree under the provisions of any improvement agreement, or as otherwise approved by the Public Works Director, or any tree of the approved species and in an acceptable location which was or may be planted as a replacement.

X-2-2.07

“Approved Street Tree List” is a list that shall be maintained by the Public Works Department containing the botanical and common names of all trees authorized to be planted in the public right-of-way or tree planting easements. The list may be revised to include other suitable trees, trees to be planted for evaluation purposes, or to exclude trees deemed to be unsuitable.

X-2-2.08

“Heritage Tree Program” shall mean a program established in accordance with the provisions of this Chapter to recognize and designate individual trees or groves of trees to promote appreciation of the trees and their benefit to the community, and to nurture and protect the trees as part of the City's heritage.

X-2-2.09

“Maintenance” shall mean planting, pruning, staking, cabling, treating for pests and disease, removing, or any other act that nurtures the street tree population, sustains tree life and health, and promotes public safety.

X-2-2.10

“Other Plantings” shall mean any trees, shrubs, grass or ground cover other than public landscaping, planted within street right-of-way or easements or in proximity thereto, or on adjoining property.

X-2-2.11

“Owner/Occupant” shall mean any person owning property, as shown on the last equalized assessment roll for City taxes, or the lessee tenant, or other person having control or possession of the property.

X-2-2.12

“Tree Pruning” shall refer to the removal of diseased, dead, dying, decayed, interfering or obstructing branches, or the training of young trees to control growth and enhance performance or function in the landscape, and by developing and preserving tree structure, health and stability. No more than 25% of the tree canopy should be removed within a growing season.

X-2-2.13

“Street Tree Planting” shall mean the planting of City street trees within the public right-of-way, in parks and in easements dedicated to tree planting. Street trees shall be planted in residential neighborhoods within tree planting easements in suitable vacant planting sites, which avoid conflicts with underground utilities and hardscapes.

X-2-2.14

“Tree Removal” means either 1) complete removal, such as cutting a tree to the ground; or 2) taking any action that would lead to the death of a tree or cause permanent damage that may compromise tree health and stability. Tree removal may include, but shall not be limited to, severe pruning or topping, girdling, poisoning, over watering, under watering, trenching, excavating, or altering the soil grade around the tree trunk.

X-2-2.15

“Tree Topping” is the removal of large branches to a stub, or smaller lateral not large enough to assume a terminal role. Tree topping is not an approved tree pruning practice for City street trees or protected trees, and is considered tree removal under this Chapter.

X-2-2.16

“Unapproved Street Tree” shall mean any tree planted within street right-of-way or easements or in proximity thereto, or on adjoining property, which does not qualify as an Approved Street Tree.

### **Section 3 Responsibilities**

#### **X-2-3.01 Public Works Director**

The Public Works Director shall be responsible for administering and enforcing the provisions of this Chapter. He or she shall undertake maintenance and planting programs and controls as may be required to carry out the provisions of this Chapter consistent with facilities and resources available. He or she may designate certain representatives to administer any portion of this Chapter.

#### **X-2-3.02 Approved Street Tree List**

The Public Works Department shall prepare an “Approved Street Tree List” containing the botanical and common names of all trees authorized to be planted in the public right-of-way or tree planting easements adjacent thereto. The Public Works Department shall make the list available to the public, and revise the list to include other suitable trees, trees to be planted for evaluation purposes only, or to exclude trees deemed to be unsuitable. All trees hereafter planted in any street or easement adjacent thereto or which may encroach upon such street right-of-way shall conform to the Approved Street Tree List, except as may be specifically approved under Subsection 4.01-1.

### **Section 4 Permits Required**

#### **X-2-4.01 Planting Permits**

It shall be unlawful for any person to plant or cause to be planted any tree in any public right-of-way without first obtaining a written permit from the Public Works Department, except as provided in Subsection 4.01-1. Said permit shall specify the location and variety of trees or plants to be planted.

4.01-1 Street trees or Other Plantings that are required to be planted by a subdivider or developer in accordance with plans and specifications approved by the City, may be planted without a permit, provided however, that such trees and plantings shall conform to City approved plans and specifications and shall be planted under the supervision of the Public Works Department.

#### **X-2-4.02 Permit Required for Removal**

It shall be unlawful for any person other than City personnel in the performance of their duties to remove any street tree, protected tree or heritage planting without first applying for a permit issued by the Public Works Department. The Public Works Department may determine that a tree authorized for removal be replaced by the permittee through the compensation methods described in Section X-2-9.01, subsections (a), (b) or (c).

#### **X-2-4.03 Permit Required for Pruning**

It shall be unlawful for any person, other than City personnel, to trim any Approved Street Tree without first obtaining a permit from the Public Works Department. The permit shall be issued when the Public Works Department finds that pruning is necessary and that the proposed method is satisfactory. A permit is not required for removing sucker growth, watersprouts, low hanging branches less than 4" in diameter causing obstructions, or for the removal of less than ten percent (10%) of the tree canopy.

#### **X-2-4.04**

(Reserved by Ordinance 201.3, 10/3/00)

## **Section 5 Maintenance**

### **X-2-5.01 Removal, Replacement and Planting of Trees**

Consistent with the availability of resources, the Public Works Department shall initiate and administer a program to provide for the planting, maintenance, care, removal, and replacement of Approved Street Trees. Except for an emergency, which shall be an imminent threat of injury to persons or property, a tree protected by this Chapter may not be removed without the review and approval of the Public Works Director or his or her designee.

#### **X-2-5.01-1 Tree Planting**

The City will annually plant Approved Street Trees in suitable vacant planting sites in the public rights-of-way, and in tree planting easements. Trees with attributes most appropriate to their location and surroundings will be selected by the Public Works Director or his or her designee from the Approved Street Tree List. Trees planted in the public right-of-way and tree planting easements shall conform to the City street tree planting standard detail. The current resident, or if there is no current resident, then the owner shall be responsible for the adequate watering and protection of City street trees in tree planting easements.

#### **X-2-5.01-2 Tree Planting Appeal**

An appeal of Approved Street Tree planting in tree planting easements on residential property shall be made to the Public Works Director within two weeks of planting notification. Such appeal shall be in writing and signed by the resident or if none is available, the owner.

#### **X-2-5.02 Removal of Trees or Plantings in Public Right-of-Way**

The City may remove any Other Plantings that constitute a hazard or may endanger public health, safety or property, or which constitutes an obstruction to the vision of traffic. Said removal shall not be made, however, without prior notice to the property owner as provided for in Section X-2-8.02, unless the Public Works Department determines in his or her sole discretion that removing said tree or planting is immediately necessary for the protection of the public health, safety or property.

#### **X-2-5.03 Tree Replacement**

Consistent with the availability of resources, the City shall replace Approved Street Trees in suitable vacant planting sites, or Other Plantings that have died or may have been removed for any reason.

#### **X-2-5.04 Maintenance of Unapproved Street Trees or Other Plantings**

The City is not responsible for maintaining Unapproved Street Trees or Other Plantings in or adjacent to or overhanging any street. Maintenance of such Other Plantings shall be the responsibility of the property owner, provided, however, the City may prune, trim, or remove such Other Plantings if the property owner refuses to maintain the plantings him or herself, in accordance with Section X-2-8.02.

#### **X-2-5.05**

(Reserved by Ordinance 201.3, 10/3/00)

#### **X-2-5.06 Abuse or Mutilation**

It shall be unlawful for any person to break, destroy, or mutilate any Approved Street Tree, tree stake, any public tree, shrub or plant in any public place including parks, or to set fire or permit any fire to cause damage to any portion of any street tree or other public planting; or to attach or place any rope or wire (other than one used to support a young or broken tree), sign, poster or other device on any street tree; or to permit or allow any gaseous, liquid or solid substance harmful to such tree to come in contact with any portion of any street tree; or to place or maintain any concrete or other solid substance or impervious

membrane so as to impede free access of water or air to the roots. No solid paving or impervious membranes shall be placed closer than twenty-four inches (24") from the edge of any Approved Street Tree. Any Approved Street Tree or protected tree compromised in health and stability by abuse or mutilation shall be considered a tree removal, and compensation for removal may be sought under the provisions of this Chapter.

## **Section 6 Other Plantings and Improvements**

### **X-2-6.01 Responsibility for Other Plantings**

Any person owning or occupying property adjacent to the public right of way shall be responsible for planting, maintenance and care of any plantings other than Approved Street Trees in those areas between the curb and right-of-way or easement. Maintenance of such areas shall include but not limited to weeding, pruning, spraying and watering.

6.01-1 Exception: The City shall maintain those planting areas within the street, which are developed and landscaped as a public improvement.

### **X-2-6.01-2 Hardscape in Lieu of Other Plantings**

Any person owning or occupying property adjacent to the public right of way shall be responsible for any hardscape placed between the curb and right-of-way or easement, including but not limited to brick, pavers and cement and the maintenance and care of any hardscape including but not limited to weeding, grinding and replacement.

### **X-2-6.02 Regulations for Other Plantings**

A property owner may plant various plantings, including but not limited to lawn, ivy, various perennials or annuals, and shrubs not to exceed two feet (2') in height that will not interfere with the functioning of any curb, gutter, sidewalk, water meter, fire hydrant, or other public facility, and will not interfere with or impair the growth of any Approved Street Tree, and will not constitute a public nuisance as described in Section X-2-8.02 of this Chapter, in planting strips and easements

6.02-1 Exception: No person shall plant or cause to be planted any planting in any area of the public street developed and landscaped as a public improvement and maintained by the City.

## **Section 7 Tree Protection and Heritage Tree Program**

### **X-2-7.01 Existing Trees Protected**

It shall be unlawful to remove existing trees within the City except in accordance with Subsection X-2-4.02.

7.01-1 Trees protected in this Section are:

- (a) All trees which have a fifty-six-inch (56") or greater circumference of any trunk measured 4½ feet from the ground and located on developed residential property.
- (b) All trees which have a thirty-seven-inch (37") or greater circumference of any trunk measured 4½ feet from the ground and located on developed commercial or industrial property.
- (c) All trees which have a thirty-seven-inch (37") or greater circumference of any trunk measured 4½ feet from the ground, when removal relates to any transaction for which zoning approval or subdivision approval is required.
- (d) Any tree existing at the time of a zoning or subdivision approval and was a specific subject of such approval or otherwise covered by subsection (b) above.

(e) All trees which have a thirty-seven-inch (37") or greater circumference of any trunk measured 4½ feet from the ground and located on a vacant, undeveloped or underdeveloped property.

(f) All heritage trees or groves of trees as defined in Section X-2-2.10.

7.01-2 Measurement of circumference for the purpose of applying Subsection 2-7.01-1 shall be made with a taut tape, four feet six inches above the ground.

7.01-3

(a) Heritage tree designation may be applied by resolution of the City Council to individual trees or a grove of trees of any size or species within the City of Milpitas that are distinctive, of special historical value or significant community benefit.

(b) A tree or grove of trees may be designated as a heritage tree or heritage tree grove upon a finding that it is unique and of importance to the community due to any of the following factors:

1. It is an outstanding specimen or grove of a desirable species.
2. It is one of the largest or oldest trees or grove of trees in Milpitas.
3. The tree or grove of trees possesses distinctive form, size, age, location and/or historical significance.

(c) A heritage tree designation may be requested by any person with the written consent of the property owner.

(d) Heritage tree designation may be removed by resolution of the City Council by its own motion, or by recommendation from the Community Advisory Commission upon written request by any person.

## **Section 8 Enforcement**

### **X-2-8.01 Abatement by Pruning on Public Right-of-Way**

The Public Works Director shall be empowered to authorize pruning of any Approved Street Tree, Unapproved Street Tree, or other planting in the public right-of-way or easement without prior notice to the property owner, if the Public Works Director determines in his or her sole discretion that the Approved Street Tree, Unapproved Street Tree, or Other Plantings constitute an immediate danger to public health, safety or property. All pruning costs incurred shall be recovered in accordance with Section X-2-9.01 and Section 10.

### **X-2-8.02 Public Nuisance on Private or Public Property**

Any Approved Street Tree, Unapproved Street Tree, or Other Plantings growing on public or private property that interferes with the use of or endangers any public sewer, sidewalk, Approved Street Tree, street or other facility or which impairs traffic visibility or which is maintained in violation of the provisions of this Chapter, may be declared a public nuisance. A City street tree or other tree protected under this Chapter that has been topped or mutilated may be declared a public nuisance by the Public Works Department and may be abated in accordance with the provisions of this Chapter. (Ord. 201.3 (part), 10/3/00).

All costs incurred to abate the public nuisance shall be recovered in accordance with X-2-9.01 and Section 10.

## **Section 9 Replacement or Compensation**

X-2-9.01 In pursuit of the City's remedy for the unlawful removal or damage to any City street tree or heritage planting in violation of this Chapter, the City shall seek cost recovery through the following:

- (a) Reimbursement to the City for the full costs of time and materials to prune, remove and/or replace trees within the public right-of-way or tree planting easements; or
- (b) Reimbursement to the City for the value of the removed or damaged tree as determined by an arborist certified by the International Society of Arboriculture utilizing the current edition of the “Guide for Plant Appraisal, International Society of Arboriculture;” or
- (c) A combination of the above terms as determined by the Public Works Director.

## **Section 10 Abatement Procedure**

### **X-2-10.01 Notification of Nuisance**

Whenever the Public Works Director determines that any property within the City is being maintained contrary to one or more of the provisions of this Chapter, he/she will give written notice (“Notice to Abate”) to the owner/ occupant(s) (as defined in Section X-2-2.11) of said property stating the section(s) being violated. Such notice shall set forth a reasonable time limit, in no event less than or equal to thirty (30) calendar days, for correcting the violation(s) of Section X-2-8.02, not less than or equal to fifteen (15) calendar days, for correcting the violation(s) and may also set forth suggested methods of correcting the same unless the Public Works Director determines that the condition constitutes a threat to the health and safety of any person, in which event, the Public Works Director may designate a shorter time limit for correcting the violation. The notice shall inform the owner/occupant of City programs that provide fiscal assistance to very low and low income persons for the repair and rehabilitation of residential property. Such notice shall be served upon the owner/occupant in accordance with provisions of Section X-2-10.3.

#### **X-2-10.01-1 Exception for Undue Hardship**

The notice shall also inform the owner/occupant, excluding an owner acting as landlord of rental property, that upon written request of the owner/occupant submitted within seven (7) calendar days of the “Notice to Abate,” the Public Works Director, in his or her sole discretion, may allow for a time limit in excess of thirty (30) days for correcting the violation in cases where strict enforcement of the time limit would result in an undue hardship on the owner/occupant. In the written request, the owner/occupant shall state the reasons why strict enforcement of the time limit would result in an undue hardship.

#### **X-2-10.02 Administrative Hearing to Abate Nuisance**

In the event said owner/occupant shall fail, neglect or refuse to comply with the “Notice to Abate,” the Public Works Director shall conduct an administrative hearing to ascertain whether said violation constitutes a public nuisance.

#### **X-2-10.03 Notice of Hearing**

Notice of said administrative hearing shall be served upon the owner/occupant not less than seven (7) calendar days before the time fixed for hearing. Notice of the hearing shall be served in person or by certified mail to the owner/occupant's last known address. Service shall be deemed complete at the time notice is personally served or deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder.

Notice shall be substantially in the format set forth below:

**NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE**

This is a notice of hearing before the Public Works Director (or his/her designees) to ascertain whether certain property situated in the City of Milpitas, State of California, known and designated as (public right-of-way address) \_\_\_\_\_, in said City, and more particularly described as Assessor’s Parcel Number \_\_\_\_\_ constitutes a public nuisance subject to abatement pursuant to Chapter X-2 of the Milpitas Municipal Code. If said property, in whole or part, is found to constitute a public nuisance as defined in the Milpitas Municipal Code and if the same is not properly abated by the owner/occupant, such nuisance may be abated by municipal authorities, in which case the cost of such rehabilitation, repair, or abatement will be assessed upon such property and such costs, together with interest thereon, may constitute a special assessment or lien upon such property until paid. In addition, you may be cited for violation of the provisions of the Municipal Code and subject to an administrative fine.

Said alleged conditions consist of the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The method(s) of abatement are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All persons having an interest in said matters may attend the hearing and their testimony and evidence will be dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

\_\_\_\_\_  
Public Works Director

Time and Date of Hearing: \_\_\_\_\_

Location of Hearing: \_\_\_\_\_

**X-2-10.04 Administrative Hearing by Public Works Director or His/Her Designees**

At the time stated in the notice, the Public Works Director shall hear and consider all relevant evidence, objections or protests, and shall receive testimony relative to such alleged public nuisance and to proposed rehabilitation, repair, removal or abatement of such property. Said hearing may be continued from time to time.

If the Public Works Director finds that such public nuisance does exist and that there is sufficient cause to rehabilitate, abate, remove or repair the same, the Public Works Director shall prepare findings and an order, which shall specify the nature of the nuisance, the method(s) of abatement and the time within which the work shall be commenced and completed. A copy of the findings and order shall be served on all owner/occupants of the subject property in accordance with the provisions of Section X-2-10.03. In addition, a copy of the findings and order shall be forthwith conspicuously posted on the property. The order shall set forth the time within which such work shall be completed by the owner/occupant, in no event less than fifteen (15) calendar days. The findings and order of the Public Works Director shall be final.

In the event the owner/occupant fails to abate the nuisance as ordered, the Public Works Director shall cause the same to be abated by City employees or private contract. The costs shall be billed to the owner/occupant, as specified in Sections X-2-11.01 through X-2-11.05. In appropriate circumstances, the Public Works Director shall request the City Attorney to obtain all necessary judicial approval for entry onto the subject premises for abatement purposes.

#### X-2-10.05 Hearing Procedure Before Public Works Director and His/Her Designees

All hearings shall be tape recorded. Hearings need not be conducted according to the technical rules of evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state. Irrelevant and unduly repetitious evidence shall be excluded.

#### X-2-10.06 Appeal of Decision by Public Works Director and His/Her Designees to the City Council

The decision of the Public Works Director and His/Her Designees may be appealed to the City Council in conformance with the provisions of Milpitas Municipal Code Section I-20-5.

#### X-2-10.07 Limitation on Filing Judicial Action

Any judicial action appealing the City Council's decision and order shall be commenced within thirty (30) calendar days of the date of service of the decision.

#### X-2-10.08 Summary Abatement of Immediate Hazard or Obstruction

In the event of:

- (a) A nuisance defined by statute, ordinance or resolution as a public nuisance which constitutes an immediate danger to persons or property;
- (b) A nuisance defined by statute, ordinance or resolution as a public nuisance which is located or maintained on public property including, but not limited to, any public right-of-way, highway, sidewalk, easement, park or building; or
- (c) Any obstruction or encroachment to free passage upon any public property (which is hereby declared to be a public nuisance) including, but not limited to, any public right-of-way, highway, easement, sidewalk, park or building, the Public Works Director may, forthwith and without notice, abate said nuisance and recover the cost of abatement as provided for in Section X-2-10.04. Summary abatement may include the temporary removal to a safe location of persons placed in immediate danger from a public nuisance. In such event, the City shall be entitled to recover all costs related to the removal, including but not limited to, storage of possessions and rental of living accommodations, as well as any other recoverable cost provided for in Section X-2-10.04.

#### X-2-11. Cost Recovery

##### X-2-11.01 Recovery of Costs

This section establishes procedures for the recovery of administrative costs, as well as attorneys' fees and costs, incurred by the City in the enforcement process, for the abatement of conditions defined as a nuisance by Section X-2-2.01 and Section X-2-2.02.

##### X-2-11.02 Definition of Costs

For the purposes of this Chapter, "costs" shall mean full costs for material and labor, including staff time expended and reasonably related to nuisance abatement cases, for items including, but not limited to, investigation, site inspection and monitoring, testing, reports, telephone contacts, correspondence and

meetings with affected parties, as well as all attorneys fees incurred pursuant to any action, administrative proceeding, or special proceeding to abate the nuisance including but not limited to filing fees and fees for witnesses. Pursuant to Government Code section 38773.5(a), where the City seeks to recover attorney fees at the initiation of any action or proceeding, a prevailing opposing party may recover its reasonable attorney fees to the extent that the amount of said fees does not exceed the amount of reasonable attorney fees incurred by the City in the action or proceeding.

#### X-2-11.03 Cost Accounting and Recovery Required

The City shall maintain records of all costs incurred by responsible City departments associated with the enforcement process pursuant to this Chapter and shall recover the costs from the property owner/occupant as provided by this section.

#### X-2-11.04 Notice of Cost Recovery Requirements

The Public Works Director shall include in the "Notice to Abate" a statement of the intent of the City to charge the property owner/occupant for all costs incurred by the City if the violation is not corrected as required. The notice shall state that the property owner/occupant will receive at the conclusion of the enforcement case a summary of enforcement costs associated with the processing of the case.

#### X-2-11.05 Collection of Charges

Such costs shall be recoverable as provided for in Sections X-2-8.01 and X-2-8.02.

#### X-2-12 Lien Procedure

##### X-2-12.01 Record of Cost of Abatement

The Public Works Director shall keep an account of the costs, as defined in Section X-2-11.02 for abating such nuisance on each separate lot or parcel of land where the work is done by the City and shall render an itemized report in writing showing the cost of abatement, including the rehabilitation or repair of said property, including any salvage value relating thereto. A copy of the same shall be posted for at least five (5) calendar days upon such property, together with a notice of the right to appeal to the Public Works Director. A copy of said report and notice shall be served upon the owner/occupants of said property, based on the last equalized assessment roll or the supplemental roll, whichever is more current. If the owner/occupant of record, after diligent search, cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in the county in which the property is located. Proof of said posting and service shall be made by affidavit filed with the City Clerk. The owner/occupant shall have thirty (30) calendar days from the date upon which the notice is served to reimburse the City for its costs or to otherwise make arrangements for repayment as to which the City, in its sole discretion, may agree.

##### X-2-12.02 Assessment and Lien

The total cost for abating such nuisance, as so confirmed by the Public Works Director, shall, upon failure to pay the costs as specified in Section X-2-12.01, constitute a lien or special assessment pursuant to Government Code Sections 38773.1 (nuisance abatement lien) against the respective lot or parcel of land to which it relates.

After confirmation and recordation of a Notice of Special Assessment, a certified copy of the Public Works Director's decision shall be filed with the Santa Clara County Assessor's Office on or before August 1 of each year, whereupon it shall be the duty of said Assessor to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes and thereafter said amounts shall be collected at the same time and in the same

manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided of ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessments. Upon recordation in the Office of the County Recorder, a Notice of Lien, as so made and confirmed, shall constitute a lien on said property and from the date of recording shall have the force, effect, and priority of a judgment lien.

In the alternative, after such recordation, such lien may be foreclosed by an action brought by the City for a money judgment or by any other means provided by law.

A Notice of Lien for recordation shall be in form substantially as follows:

**NOTICE OF LIEN**

(Claim of City of Milpitas)

Pursuant to the authority vested by the provisions of Section X-2-8.02 of the Milpitas Municipal Code, the Public Works Director of the City of Milpitas did on or about the \_\_\_ day of \_\_\_\_\_, 20\_\_ , rehabilitate, repair or abate a public nuisance on said real property, pursuant to an order to abate issued by \_\_\_\_\_ on \_\_\_\_\_ ; and the Public Works Director of the City of Milpitas did on the \_\_\_ day of \_\_\_\_\_, 20\_\_ , assess the cost of such rehabilitation, repair or abatement upon the real property hereinafter described; and the same has not been paid nor any part thereof; and that said City of Milpitas does hereby claim a lien on such rehabilitation, repair, or abatement in the amount of said assessment, to wit; the sum of \$\_\_\_\_\_: and the same, shall be a lien upon said real property until the same has been paid in full and discharged of record.

The real property hereinabove mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Milpitas, County of Santa Clara, State of California, owned by and more particularly described as follows (legal description): (description)

Dated this\_\_ day of \_\_\_\_\_, 20\_\_ .

\_\_\_\_\_  
Public Works Director

In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the amount of the lien, the name of the agency on whose behalf the lien was imposed, the date of the abatement order, the public right-of-way address, legal description, and the name and address of the recorded owner/occupant of the property shall be recorded by the governmental agency. A nuisance abatement and the release of the lien shall be indexed in the grantor-grantee index.

X-2-13.00 Interest on Liens

X-2-13.01 Amount of Interest on City Liens and Assessments-- Findings

The City Council finds and declares that the establishment of an interest accrual requirement as to unpaid City liens and assessments upon real property, which are of record with the County Recorder for Santa Clara County, is a necessary and appropriate exercise of the City Council's police power.

#### X-2-13.02 Accrual of Interest on Liens and Assessments

Unless otherwise prohibited by law or regulation, all liens and assessments which are imposed by the City against any real property located in the City of Milpitas that are recorded on and after the effective date of this regulation shall accrue interest at the rate of eight percent (8%) annually until the lien or assessment, including interest thereon, is paid in full.

--End Chapter--

#### Section 2. PUBLICATION AND EFFECTIVE DATE

Pursuant to the provisions of Government Code §36933, a Summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.

#### Section 3. SEVERABILITY

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.