



MILPITAS PLANNING COMMISSION AGENDA REPORT

Meeting Date: February 13, 2008

PUBLIC HEARING

APPLICATION: Zoning Amendment No. ZA08-0001, Entitlement and Permit Streamlining and Public Hearing Notification Changes

APPLICATION SUMMARY: Text amendments to streamline the entitlement and permit process and increase the requirements of the public hearing notification process.

LOCATION: Citywide
APPLICANT: City of Milpitas, 455 E. Calaveras Blvd.
OWNER: NA

RECOMMENDATION: Close the public hearing.
Adopt Resolution 08-006 recommending approval of amendments to the City Council.

PROJECT DATA:
General Plan/
Zoning Designation:
Overlay District:
Specific Plan:

Site Area:
Any other pertinent info:

CEQA Determination: Exempt

PLANNER: Sheldon S. Ah Sing, Senior Planner

PJ:

ATTACHMENTS:
A. PC meeting minutes of January 23, 2008
B. Exhibits showing modifications through strikeout (deletion) and underline (addition) to Zoning Ordinance.

BACKGROUND

In 1980 the City Council adopted the Site and Architectural combining district, commonly referred to as the “S” Zone. The purpose of the “S” Zone is to ensure harmonious development with surrounding land uses. On September 15, 1998, the City Council adopted Ordinances 38.716 and 124.20 to streamline review of signs and minor projects. Many of the affected projects were required to go through a review process because of they were located within the “S” Zone. The ordinances created a Planning Commission Subcommittee and process for projects that are minor in scope.

The Planning Commission expressed desire to further streamline the entitlement process in December 2007. Staff presented proposed amendments and engaged a discussion with the Planning Commission at their meeting of January 23, 2008 to receive concurrence and further direction. The minutes of that meeting are available as Attachment A.

PROJECT DESCRIPTION

This report is a discussion of potential text amendments to the Zoning Ordinance with the intent of the Planning Commission making a recommendation to the City Council. This report summarizes detailed changes to the Zoning Ordinance as presented to the Planning Commission in January. The project entails clarifying sections of the Zoning Ordinance, streamlining the planning review process and increasing the requirements for the public hearing notification process as directed by the City Council.

Attachment B of this report includes the strikeout (deletion) and underline (addition) changes to the Zoning Ordinance as proposed by staff.

Discussion

Specifically, Section 42, “S” Combining District (Site and Architectural Review or “S” Zone) is seen as a section that would be modified extensively. The “S” Combining district encompasses all zoning districts except R1-6, R1-8, and R1-10. The section includes the purpose of the district, the types of projects that require an “S” Zone review and a description of the “S” Zone review process. Projects located within the “S” Zone require Planning Commission, Planning Commission Subcommittee or staff review. The most time intensive review is the Planning Commission review, with the least time intensive review being staff review. Ultimately, all projects require some form of staff review.

In addition, some uses that require a Conditional Use Permit would be affected by the proposed amendments. Conditional Use Permits are reviewed by the Planning Commission. Ancillary text amendments would result to make the Zoning Ordinance internally consistent as a result of any of the other changes proposed.

Purpose

The original Zoning Ordinance was developed in 1955 and has not been comprehensively updated since. There has been some confusion from the public and consultants working as an extension of staff about the “S” Zone application and review process. The code is not very clear and some instances there are inconsistencies. There is an opportunity this year to amend the code to create an easy to understand and internally consistent Zoning Ordinance. In addition, it has been nearly ten years since the first attempt to streamline the development review process and further improvements are warranted.

Section 42 Site and Architectural District and Review

Staff proposes to modify the “S” Zone Section to change the name of the district from “Site and Architectural Combining District” to “Site and Architectural Overlay District”. It is more common in the Planning profession to use the term “Overlay” rather than “Combining”. Essentially, they are the same, but using current terminology will reduce confusion amongst developers, architects and other land use professionals. It is the intent that other “Combining” districts, such as the Transit Oriented Development would also change to “Overlay” later this year with subsequent amendment efforts.

The Section currently mingles the discussion of the overlay district with the review process and “S” Zone application. With turnover in staff over the past year and the introduction of consultant services, there has been confusion as to how to interpret this section because the code is not very clearly organized. Staff proposes to create distinctive subsections that outline the purpose and intent of the district, the application and describe in detail, the review process. The intent is to make the code so that someone can read it and understand whether their project requires review by the Planning Commission, the Planning Commission Subcommittee or is a ministerial project reviewed by staff.

Entitlement Name Change

Staff proposes to change the name of the “S” Zone entitlement to Site Development Permit or SDP, which would be more familiar to developers and the public since it is more descriptive. Presently, the code does differentiate between what can be approved by the Planning Commission Subcommittee and staff very clearly. Staff proposes to outline specifically what projects require the SDP. Staff proposes that those items that can be solely approved by staff should be included in “Section 54, General Provisions” of the Zoning Ordinance, which would describe the criteria of planning staff may approve the request. If the criteria are not met, then discretionary review may be required and noted as an exception.

New “Minor” Entitlement

In streamlining the process staff discovered that further confusion resulted from the fact that certain amendments to “S” Zone Reviews required public hearings, while some did not. Staff proposes to create a new entitlement “Minor Site Development Permit” (MSDP) when such projects only need review by the Planning Commission Subcommittee. The Subcommittee does not hold public hearings. It will be clear for the public and staff that a SAP is ultimately reviewed by the Planning Commission, whereas a MSDP is ultimately reviewed by the Planning Commission Subcommittee, unless the Subcommittee decides that the Planning Commission needs to review the project, or the Planning Director believes the project contains public controversy, in which case the Planning Commission shall review the request.

Section 54 General Provisions

Section 54 provides performance and development standards for various types of development. Typically, projects meeting these general provisions are approved by staff. However, there are exceptions that may be considered by the Planning Commission. Provisions that were included in Section 42 that are being considered for staff review are proposed to be included in Section 54.

Signs

Staff proposes that freestanding signs up to six feet in non-residential zones be reviewed by staff. There is an inconsistency within the Sign Ordinance [30-3.01(d)] and Table 30-7.01 for new building

signs for single tenant structures, where one section requires Subcommittee approval, while the other section allows review by staff. Staff proposes to allow staff to review new building signs for single tenant structures.

Uses

Some uses require the Planning Commission to approve a Conditional Use Permit prior to applying for a business license. Staff proposes the following changes:

Food stores and supermarkets that are located within 1,000 feet of residentially zoned property as measured from the exterior walls of the store should require approval of a CUP, if the project is not within 1,000 feet of residentially zoned property, then staff may approve the business license. New performance standards regarding delivery times and noise will be created.

Currently model homes and residential home sales offices require a CUP; staff proposes that these be reviewed by staff. These projects are temporary and are removed upon sale of all of the residential units.

The Planning Commission at the January 23, 2008 meeting, directed staff to consider allowing stealth designed wireless telecommunications facilities to be reviewed by staff. Staff proposes a new definition to establish criteria for a project that could be considered for staff review.

Public Hearing Notification Changes

The Open Government Subcommittee recommended to the City Council that public hearing notifications should be increased from a 300 foot radius to 1,000 feet for General Plan Amendments, Zoning Amendments, Conditional Use Permits and Environmental Impact Report reviews. The Subcommittee also recommended that public hearing notifications increase from 300 feet to 500 feet for Variances. In addition, the recommendation included requiring staff to conduct at least one community meeting for General Plan Amendments, Zoning Amendments and Environmental Impact Report Reviews and that the City provide a ¼ page advertisement a local newspaper for General Plan Amendments, Zoning Amendments, Conditional Use Permits and Variances.

The City Council concurred with their recommendations and staff will provide the Planning Commission a subsequent meeting the specific language to consider the zoning text amendment.

Ancillary Changes

Making the changes to the Zoning Ordinance requires internal consistency within the document. Other proposed changes to the Zoning Ordinance resulted because of changes to section numbers, entitlement names and other inconsistencies requiring clarification such as the appeal process and review of development proposals.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan

The project contemplates changing the way the Zoning Ordinance implements the policies of the General Plan by streamlining the planning review process. The project maintains consistency with the General Plan.

Zoning Ordinance

The amendments ensure internal consistency within the Zoning Ordinance.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is exempt from further environmental review pursuant to Section 15061(b)(3), since the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. It can be seen with certainty, that this text amendment project contemplating streamlining the review process and increasing the public hearing notification process will not affect the environment.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State Law. In addition, notice was sent to interested parties on record wanting to receive notice of major projects, which include Zoning Amendments. At of the time of the writing of this report, there have been no inquires from the public.

CONCLUSION

The proposed changes are intended to create a clear and informative code by clarifying, eliminating inconsistencies and when warranted, streamlining the process for shorter review times.

RECOMMENDATION

STAFF RECOMMENDS that the Planning Commission adopt Resolution 08-006, recommending approval of the proposed text amendments to the City Council.

Attachments:

- A. Planning Commission meeting minutes of January 23, 2008.
- B. Exhibits showing modifications through strikeout (deletion) and underline (addition) to Zoning Ordinance.
- C. Resolution 08-006

Attachment B

XI. NEW BUSINESS

3. ZONING CODE AMENDMENTS

Sheldon Ah Sing, Project Planner, presented a discussion on Entitlement, Permit Streamlining and the Public Hearing Notification process and seeks concurrence and direction from the Planning Commission.

Commissioner Tabladillo asked why does approval for a chain link fence need to go to Subcommittee and not just stay with staff. Mr. Lindsay said staff is trying to discourage chain link fences in the Midtown Area and wants to encourage higher quality material so most applicants would not want to go to Subcommittee and therefore will go with the higher quality.

City Attorney Mike Ogaz asked how does the proposal that multi-family additions greater than 200 square feet be reviewed by staff change from what is currently in the code. Mr. Ah Sing said that right now, single-family home additions in the R1 and R2 district over 200 feet have to go to Subcommittee and staff if trying to reduce the burden by having it reviewed directly by staff.

Chair Williams asked if telecom towers will be reviewed by the Planning Commission or Subcommittee. Mr. Lindsay said currently telecom communication facility requires a Use Permit however staff will review it and come back with suggestions to streamline the process.

Mr. Lindsay suggested that staff review and approve antenna stealth designs and the Planning Commission review monopoles and freestanding structures that include stealth designs.

Vice Chair Mandal asked for clarification on freestanding signs up to 6 feet in non-residential areas. Mr. Lindsay said there are a lot of changes to freestanding signs in the business districts and staff would like to approve them instead of them going to Subcommittee to expedite the process.

Chair Williams suggested that staff revise full store supermarkets within a 1,000 feet be reviewed by the Planning Commission be revise to 2,000 feet.

Chair Williams asked about projects containing public controversy. Mr. Ah Sing said that staff can approve minor changes, the Subcommittee can approve significant changes without public controversy and controversial projects go directly to the Planning Commission.

Chair Williams asked how much improvement the City will see by staff streamlining the zoning code. Mr. Lindsay said he looked at a years worth of Subcommittee items, there is a considerable time savings overall for the time an applicant has to wait for a decision.

Commissioner Ciardella asked if a customer's project is denied by staff, could he or she appeal the project to the Planning Commission. Mr. Lindsay said that staff needs to look at the appeal process within the Municipal Code in the zoning chapter to make sure there is recourse.

Commissioner Tabladillo asked if the fees will change and Mr. Lindsay said yes. Items that go to the Subcommittee are charged \$250 and there is no charge for over the counter approvals.

Chair Williams asked staff to proceed on with the Zoning Code Amendments on behalf of the Commission.

Attachment C

Exhibit 1, Changes to Section 42 Site and Architectural Combining District

Exhibit 2, Changes to Section 54 General Provisions

Exhibit 3, Changes to Reviewing Wireless Telecommunications Facilities

Exhibit 4, Changes to Public Notification Requirements

Exhibit 5, Changes to Chapter 30 Signs

Exhibit 6, Changes to Model Home Complexes and Sales offices

Exhibit 7, Ancillary Changes

Exhibit 8, Changes to Food Stores

Exhibit 9, Changes to Combining District Name

Attachment C

Exhibit 1, Changes to Section 42 Site and Architectural Combining District

Changes To Section 42 Site And Architectural Combining District

SECTION 42 SITE AND ARCHITECTURAL (-S) COMBINING OVERLAY DISTRICT (SITE DEVELOPMENT PERMITS AND MINOR SITE DEVELOPMENT PERMITS AND ARCHITECTURAL REVIEW OR "S" ZONE)

10-42.01 Purpose Site and Architectural (-S) Overlay District

10-42.02 Applicability Site Development Permits and Minor Site Development Permits

10-42.03 Requirements Generally

10-42.04 Application—Contents

10-42.05 Application—Investigation and Report

10-42.06 Additional Information Required

10-42.07 Special Conditions

10-42.08 Planning Commission Decision

10-42.09 Compliance With Conditions

10-42.10 Applications for Modification of or Amendment

10-42.11 Consideration of "S" Zone Pending Zoning Amendment

10-42.01 Site and Architectural (-S) Overlay District

A. Purpose and Intent

Site and Architectural (-S) Overlay District Development Review or an "S" Zone is intended to be a distinct district that promotes orderly, attractive and harmonious development; recognize environmental limitations on development; stabilize land values and investments; and promote the general welfare by preventing or disallowing establishment of uses or erection of structures having qualities which would not meet the specific intent clauses or performance standards of this Chapter or which are not properly related to their sites, surroundings, traffic circulation, or their environmental setting. Where the use proposed, the adjacent land uses, environmental significance or limitations, topography, or traffic circulation is found to so require, the Planning Commission may establish more stringent regulations than those otherwise specified for the District. (Ord. 38.636 (part), 8/2/88: Ord. 38 (part), 3/15/55)

10-42.02 B. Applicability

The following regulations shall apply in all districts which are combined with the "S" District. Prior to approving a new "S" Zone application or an "S" Zone amendment application pursuant to Section 42.10, the Planning Commission shall hold a noticed public hearing in accordance with Title XI, Chapter 10, Sections 64.01, 64.02 and 65. (Ord. 38.706 (part), 7/16/96: Ord. 38.636 (part), 8/2/88: Ord. 38.199, 2/17/70; Ord. 38 (part), 3/15/55)

The provisions in this section apply to development within the -S Overlay District. These provisions do not apply to any property within the R1-6, R1-8, and R1-10 districts.

1. Permitted and Conditionally Permitted Uses. Permitted and conditional uses within the (-S) Overlay are the same uses as those allowed within the underlying zoning districts.

10.42.02 Site Development Permits and Minor Site Development Permits

A. Purpose and Intent of Development Review for the Site and Architectural (-S) Overlay District.

Development in areas designated by (-S) are subject to either Site Development Permits or Minor Site Development Permits. Depending on the scale of development proposed, other review may be required, as well. The purpose of architectural review shall vary, according to the following criteria:

1. Site Development Permits. The Site Development Permit process provides for the review of physical improvements to a site which due to their scale, proximity to environmentally sensitive resource areas, or unique design features, require consideration. The Site Development Permit process is intended to encourage site and structural development which 1) respects the physical

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and environmental characteristics of the site, 2) ensures safe and convenient access and circulation for pedestrians and vehicles, 3) exemplifies the best professional design practices, 4) encourages individual identity for specific uses and structures, 5) encourages a distinct community or neighborhood identity, and 6) minimizes visual impacts.

2. Minor Site Development Permits. The Minor Site Development Permit process provides for the streamlined review of certain minor classes of development projects which are large enough to require consideration, but due to their scale, nature or location do not require consideration by the Planning Commission.

B. Authority.

1. Site Development Permits. The Planning Commission has the authority to review Site Development Permits, subject to the concurrent review and appeal provisions of Section 10-64.03, Consideration of Concurrent Applications, and Section 64, Development Review Process, of this Chapter. (Please refer to Section 45, "H" Hillside Combining Districts, of this Chapter for projects within the "H" District requiring review of a Site Development Permit by the Planning Commission and the City Council.)
2. Minor Site Development Permits. The Planning Commission Subcommittee consisting of two (2) Planning Commissioners has the authority to review Minor Site Development Permits, subject to the concurrent review and appeal provisions listed above. When the Planning Subcommittee determines that it is in the public interest for the Minor Site Development Permit application to be considered by the Planning Commission, the Planning Subcommittee shall forward the application to the Planning Commission for review in the same manner as Site Development Permits, as described in subsection (E)(1), Review Procedures, Site Development Permits, of this section. No public hearing is necessary for a Minor Site Development Permit when heard by the Planning Commission Subcommittee.

C. Applicability.

1. Site Development Permits. A Site Development Permit is required for:
 - a. New main buildings
 - b. New accessory buildings over 2,500 square feet
 - c. New parking lots
 - d. Roof top equipment which exceeds the height of existing roof screens, if line-of-sight drawings demonstrate that the equipment will be visible from surrounding "worst case" view points from on-site parking areas, adjacent public streets and adjacent residentially zoned property.
 - e. Additions or alterations to multi-family residential, nonresidential and mixed-use buildings that include:
 - i. Additions of 10,000 square feet or greater for non-residential and mixed-use buildings.
 - ii. Additions of 5,000 square feet or greater or ten percent (10%) of the existing building gross floor area, whichever is less, to non-residential and mixed use buildings adjacent to residential or MHP Overlay Districts or uses.
 - iii. Additions 200 square feet or greater for multi-family residential buildings.

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- iii.f. Any deletion or amendment of a previously imposed condition of approval for a Site Development and Architectural Permit.
- g. Any building color changes to designated historical or cultural resources. Refer to Chapter 4, Cultural Resources Preservation Program, of this Title.

2. Minor Site Development Permits. A Minor Site Development Permit is required for:

- a. Any deletion or amendment of a previously imposed condition of approval for a Minor Site Development Permit.
- b. Alterations or additions to residential, nonresidential and mixed-use buildings, as indicated in Table 10-42-02, Additions or Alterations Requiring Minor Site Development Permits. Please refer to Section 54, General Provisions, of this Chapter, for development standards and review procedures for types of projects not listed in Table 10-42.02.
- c. Planning Division staff may require review by the Planning Commission Subcommittee at their discretion.

**Table 10-42.02
Additions or Alterations Requiring Minor Site Development Permits.**

Project Type	Minor Site Development Permit	Other/Exempt Projects
Building Color		<p><i>Staff may approve:</i></p> <p>A. Outside Hillside Combining District:</p> <ul style="list-style-type: none"> 1. Color changes for all buildings so long as the proposed colors are earth tone, muted and/or compatible with the surrounding area and development. 2. Color changes for buildings within a PUD, if proposal complies with PUD. <p>B. Within Hillside Combining District:</p> <ul style="list-style-type: none"> 1. Color changes for residences including homes within a PUD which does not specify color choices, so long as the proposed colors are earth tone, muted and compatible with the surrounding development. Applicant shall submit letter of support from applicable homeowners association.
Re-Roof	Change to wood shake, non tri-laminate or metal roofing material.	<p><i>Staff may approve:</i></p> <p>Change to any other roofing material.</p>
Exterior Lighting	Additional light standards on-site, adjacent to residential development.	Refer to Subsection 54.24, Lighting, of this Chapter for standards.
Fences/Walls	Chain link fencing	Refer to Subsection 54.11, Fences and Walls, of this Chapter for

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	<p>1. Chain link fencing in commercial and industrial districts. The following standards shall apply:</p> <p>a. Fencing shall be at the rear or interior side of the site.</p> <p>b. The fencing shall consist of vinyl clad chain link with or without vinyl slats. Type of chain link fencing (i.e. deletion of vinyl clad requirement, use of slats) shall be to the discretion of the Planning Commission Subcommittee (i.e., in circumstances where the proposed fencing is to continue a line of existing chain link fencing).</p> <p>c. Fencing material and color shall be compatible with surrounding development.</p> <p>d. Parking lot fencing/gates shall be approved by the City's Fire Department.</p>	<p>standards.</p>
<p>Minor Exterior Building Changes, Including But Not Limited to, Doors, Entryways, Patios and Patio Covers, Walkways, ATM's, Awnings, Loading Areas</p>	<p>A. Non-Residential and Mixed Use Districts:</p> <p>1. In non-residential and mixed use districts, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Title X-2.00:</p> <p>a. Significant decorative amenities within public view such as fountains, artwork or murals.</p> <p>b. Stand alone ATMs or ATM kiosks.</p> <p>B. Hillside Combining District:</p> <p>1. Minor exterior building changes as described below, provided that the project complements</p>	<p><i>Staff may approve:</i></p> <p>A. Non-Residential and Mixed Use Districts:</p> <p>1. Minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Title X-2.00:</p> <p>a. New main entryways to the building which feature architectural projections (i.e., porticos, entryway roof covers, trellises, etc.).</p> <p>b. Windows and person doors which match existing or which complement the building facade.</p> <p>c. New or expanded patios, patio covers, awnings and canopies.</p> <p>d. Landscape deletion (i.e., shrubs</p>

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	<p>the colors, materials and design of the building.</p> <p>a. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>b. Windows, window awnings and person doors which match existing or which complement the building facade.</p>	<p>and groundcovers) to accommodate new walkways which are required for building exiting purposes or handicap accessibility.</p> <p>d. ATM's proposed on an exterior wall.</p> <p>e. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>f. Replacement of windows with roll-up doors (and vice versa) when located toward the interior side or rear of a site.</p> <p>g. Metal canopies over equipment storage yards at the rear of commercial or industrial sites, provided they are not visible from public streets or abutting a Residential or Mobile Home Park combining district or use.</p> <p>h. New loading areas and revisions to existing loading areas.</p> <p>B. Residential Districts</p> <p>1. In all residential districts (excluding –H Combining), minor exterior building changes as described below, provided that the project complements the colors, materials, and design of the building.</p> <p>a. Awnings, patio covers, and gazebos which comply with height, setback, and yard coverage requirements. The applicant shall provide the Planning Division with written, signed consent of applicable homeowners association.</p> <p>b. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>c. Windows and person doors which match existing or which complement the building facade.</p> <p>2. Minor exterior building changes for</p>
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		residences within Hillside Overlay District PUD's which are specifically conditioned to allow a staff approval process for alterations subsequent to initial construction of the home.
Landscaping	<p>(1) Deletion of non-required landscaping exceeding 200 square feet in area, to accommodate modifications to existing developed sites.</p> <p>However, in non-residential and mixed use districts, and for conditional uses within Residential districts (excluding -H Overlay district), no net reduction in the number of on-site trees and no loss of protected trees, as defined in Title X-2.00 of the Milpitas Municipal Code, may be approved.</p>	<p><i>Staff may approve:</i></p> <ol style="list-style-type: none"> 1. Replacement planting of similar landscape materials and addition of landscaping. Landscaping shall comply with Ordinance No. 238 (water efficient landscape regulations). Landscaping within the -H Overlay district shall comply with City Council Resolution No. 6066. 2. Deletion of non-required landscaping up to 200 square feet in area to accommodate modifications to existing developed sites. However, in non-residential and mixed use districts, and for conditional uses within residential districts (excluding -H Overlay District), no net reduction in the number of on-site trees and no loss of protected trees, as defined in Title X-2.00 of the Milpitas Municipal Code, may be approved.
Building Additions	<p>A. Non-residential and Mixed Use Districts:</p> <ol style="list-style-type: none"> 1. All non-residential and mixed use building additions for legal, conforming buildings not adjacent to residential or Mobile Home Park Overlay District or use. <ol style="list-style-type: none"> a. Size of building addition shall not exceed 10,000 square feet or ten percent (10%) of the existing building gross floor area, whichever is less. Calculation shall cumulatively count all additions or enlargements completed since June 20, 2003. b. In addition to other development standards, the following shall also apply: 	<p><i>Staff may approve:</i></p> <ol style="list-style-type: none"> 1. Residential building additions in R1 and R2 districts. 2. Residential building additions in multi-family districts up to 200 square feet. 3. All single-family dwellings in Hillside Overlay PUD's which specifically allow for staff approval. (refer to Section 56.03 of this Chapter regarding non-conforming buildings). In addition to other development standards, the following shall also apply: <ol style="list-style-type: none"> a. The applicant shall provide the Planning Division with written, signed consent of applicable homeowners association. b. Existing front yard paving shall be brought into conformance.

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	<p>i. Architecture shall match that of existing building in terms of material, colors, style, etc.</p> <p>ii. The height of the addition shall not exceed the height of the adjacent portion of the existing building.</p> <p>B. Residential Districts</p> <p>1. All single-family dwellings in Hillside PUD's which are specifically conditioned not to require Planning Commission or City Council review for building additions (refer to Section 56.03 of this Chapter regarding non-conforming buildings). In addition to other development standards, the following shall also apply:</p> <p>a. The applicant shall provide the Planning Commission Subcommittee with written, signed consent of applicable homeowners association.</p> <p>b. Existing front yard paving shall be brought into conformance.</p> <p>c. The addition shall comprise building materials, colors and style which complement the existing structure.</p>	<p>c. The addition shall comprise building materials, colors and style which complement the existing structure.</p> <p>4. Building addition to an existing single-family dwelling in residential and mixed use zones, in order to accommodate a second family unit, as defined in Subsection 2.69.1 of this Chapter. The development standards listed in Subsection 54.22 of this Chapter shall apply.</p>
<p>Accessory Buildings</p>	<p>A. Non-Residential and Mixed Use Districts:</p> <p>1. Accessory buildings up to 2,500 square feet in area, provided that the proposed structure is not adjacent to a residential or Mobile Home Park Overlay district or use, and provided that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. The following shall also apply:</p>	<p><i>Staff may approve:</i></p> <p>A. Residential Only</p> <p>1. Accessory buildings in residential districts (excluding -H Combining District), provided building height, parking, setback, yard coverage and other ordinance requirements are met. The following shall also apply:</p> <p>a. Accessory buildings for conditional uses in Residential R1 and R2 districts and for permitted and conditional uses in R3 and</p>

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	<p>a. Accessory buildings must be located on the rear half of the lot. On corner lots, the accessory building must be set back from the adjacent street as least as far as the main building.</p> <p>b. Accessory buildings must be of permanent construction (no modular buildings or metal buildings) with the exception of small pre-fabricated structures for chemical storage and the like, so long as such structures are adequately screened from public rights-of-way.</p> <p>c. Architecture shall match that of the existing building in terms of material, colors, style, etc.</p> <p>d. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Title X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an accessory building.</p>	<p>R4 districts shall comprise building materials, colors and style which complement the existing main structure.</p> <p>b. The applicant shall provide the Planning Division with written, signed consent of adjoining residential property owners and applicable homeowners association.</p> <p>2. Accessory building in residential and mixed use districts in order to accommodate a second family unit, as defined in Subsection 2.69.1 of this Chapter. The development standards listed in Subsection 54.22 of this Chapter shall apply.</p>
<p>Trash/Recycling Enclosures</p>	<p>1. Trash/recycling, equipment or storage enclosures up to 200 square feet proposed in the front half of the lot for non-residential districts.</p> <p>Enclosures exceeding 200 square feet in size in commercial, industrial and mixed use districts and enclosures for conditional uses in residential districts.</p> <p>Any trash enclosure adjacent to residential or Mobile Home Park Overlay district or use. In addition to the standards listed in Subsection, 54.23(B), Trash Enclosures, of this Chapter.</p> <p>b. Enclosures for noise-generating</p>	<p><i>Staff may approve:</i></p> <p>1. Trash/recycling, equipment or storage enclosures up to 200 square feet in size in commercial, industrial and mixed use districts, proposed at the rear of the building or lot and where least visible from public rights-of-way.</p> <p>Refer to Subsection 54.23(B), Trash Enclosures, of this Chapter, for standards.</p>

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	equipment (i.e. generators) may not be approved near Residential or Mobile Home Park combining districts or uses.	

10-42.04 D. Submittal Requirements Application--Contents

No building permit shall be issued for a use, and no use of any parcel shall take place, in a district which is combined with the "S" Overlay Combining District unless those items listed below in Subsection 42.04 have been submitted to and approved by the review authority Planning Commission or upon appeal to the City Council. Every application for Site Development and Architectural Permit Development Review shall be in proper form and shall be accompanied by plans drawn to scale indicating clearly and with full dimensions the following information if applicable:

- 42.04-1. Site plan -- parcel dimensions in distance.
- 42.04-2. Buildings and structures -- their location, size, height, colors and materials.
- 42.04-3. Dimensions of yards and open spaces between buildings.
- 42.04-4. Fences and walls -- their architectural design, location, height, colors and materials.
- 42.04-5. Parking spaces -- their location, number and dimensions.
- 42.04-6. Access -- vehicular, pedestrian and service, with points of ingress and egress and the internal circulation pattern of the parking lot area.
- 42.04-7. Street dedications and improvements -- existing and proposed, if any.
- 42.04-87. Signs -- their location, size, types of materials, and lighting method.
- 42.04-98. Loading or service areas -- their location and dimensions.
- 42.04-109. Lighting -- its architectural design, location and light patterns.
- 42.04-1110. Landscaping -- its location, size, quantity and type of plant material.
- 42.04-1211. Shadow studies -- drawings showing shadows of the building or structures (taken on December 22nd, between the hours of 10:00 a.m. and 2:00 p.m.).
- 42.04-1312. Such other data as may be required under the circumstances of the case to permit the City Council, Planning Commission, Planning Commission Subcommittee, or Planning Division staff to make the required approvals. (Ord. 38.716 (part), 9/15/98; Ord. 38.636 (part), 8/2/88)

10-42.05 E. Review Procedures. Application--Investigation and Report

1. Site Development Permit.

- a. Following receipt of a completed application and required environmental documentation, a public hearing before the Planning Commission shall be noticed and held in compliance with Section 64, Development Review Process, of this Chapter.

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- b. The Planning Division shall prepare a written report which shall be presented to the Planning Commission and/or City Council, based on investigations as necessary to determine whether the project conforms or may be conditioned to conform fully to the intent of the underlying district.

The Planning Division, upon receipt of an application for Site and Architectural Review or "S" Zone, shall make such investigations as necessary to determine whether or not the proposed Use or Structure conforms or may be conditioned to conform fully to the intent clauses and performance standards for the underlying District(s) as herein set forth. For applications requiring review by the Planning Commission or the City Council, the Planning Division shall prepare a written report which shall be presented to the Planning Commission and/or City Council, and a copy shall be made available to the applicant and property owner prior to the Planning Commission's and City Council's review date. (Ord. 38.716 (part), 9/15/98; Ord. 38.706 (part), 7/16/96; Ord. 38.636 (part), 8/2/88)

- c. After completion of the Planning Commission hearing, the Planning Commission shall determine if the proposed project shall be approved, approved with modifications and/or conditions, or denied.

2. Minor Site Development Permit.

- a. Following receipt of an application, Planning Division staff shall make investigations as necessary to determine whether or not the proposed project conforms or may be conditioned to conform fully to the intent of the underlying district. After the application is deemed complete and required environmental documentation is completed, a review before the Planning Commission Subcommittee shall be held.

- b. The Planning Commission Subcommittee shall indicate by action minutes whether the proposed site plan for a project shall be approved, approved with modifications and/or conditions, or denied.

- i. Planning Commission Subcommittee may require review by the Planning Commission at their discretion.

- ii. If the Planning Commission Subcommittee members disagree on a decision for a project, then the project will be agendized for Planning Commission review, with no additional fees required.

10-42.03 F. Required Findings ments Generally

Approval may be granted by the Planning Commission, or by the City Council upon appeal or within the Hillside District if all of the following findings are made, based on the evidence in the public record:

1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.
2. The project is consistent with the Milpitas Zoning Ordinance.
3. The project is consistent with the Milpitas General Plan.
4. If located within a Specific Plan the Midtown area, the project is consistent with that the Midtown Specific Plan. (Ord. 38.759 (part), 4/2/02; Ord. 38.706 (part), 7/16/96; Ord. 38.636 (part), 8/2/88)

G. Planning Commission Subcommittee or Staff Approvals.

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In approving any project subject to this section, the Planning Division staff or Planning Commission Subcommittee shall find all of the following:

1. The development recognizes and respects the nature of the neighborhood and site, development patterns, materials used, and the expectations of those who will see and use the building;
2. The development assures that modifications satisfy functional requirements, and screened with appropriate compatible materials; and
3. The development assures that the modification will not interfere with the privacy, quiet enjoyment or view of the surrounding properties.

10-42.06 Additional Information Required

The Planning Commission may require additional information in connection with the project in order to protect the character of other property in the neighborhood. Such regulations may include, but are not limited to, adequate screening of said lot by a fence or wall, landscaping, paving and lighting. (Ord. 38.636 (part), 8/2/88)

G. Appeals.

An appeal of the decision by staff or on Site Development Permits or Minor Site Development Permits shall be reviewed in accordance with Section 64.05, Appeals, of this Chapter.

10-42.07 Special Conditions

In any district that is combined with an "S" District, the Planning Commission may specify, but shall not be limited to, building line setbacks, yard regulations, area regulations and building height limits which will protect the general character of the neighborhood. (Ord. 38.636 (part), 8/2/88)

10-42.08 Planning Commission Decision

At the conclusion of such review, the Planning Commission shall determine from the reports, data, and testimony submitted, whether the use and structures will meet the requirements and intent of this Chapter, and upon making an affirmative determination, may approve the application. If, from the information submitted, the Planning Commission finds that compliance with the requirements of this Chapter has not been secured, it shall approve, conditionally approve or disapprove the application subject to specified conditions, changes, or additions as will secure compliance.

No building permit shall issue for a use, and no use of any parcel shall take place, in a district which is combined with the "S" Combining District unless those items listed in Subsection 42.04 have been submitted to and approved by the Planning Commission or upon appeal to the City Council. (Ord. 38.706 (part), 7/16/96; Ord. 38.636 (part), 8/2/88)

10-42.09 H. Compliance With Conditions

Whenever a plan for the development of a building site has been the subject of a Site Development and Architectural Permit Development Review or "S" Zone process as herein above specified and has been given final approval, the building and site thereafter shall be constructed and perpetually maintained in compliance with the plan in conformance to all details specified thereon and subject to all the conditions set forth in the action of approval, unless modified or amended pursuant to Section 42.10. Lack of compliance shall constitute a violation of Chapter 10 (Zoning, Planning and Annexation) and the Site Development Permit "S" Zone approval. (Ord. 38.760 (3), 9/17/02; Ord. 38.636 (part), 8/2/88)

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10-42.10 I. Applications for Modification of or Amendment

Projects shall be developed in conformity with project approvals. If the applicant wishes to modify the project, as approved, the applicant shall submit revised plans and any other applicable information to the City for review by the Planning Division. The Planning Division staff shall make one of the following determinations regarding the request:

1. Insignificant Modifications. If the Planning Division determines that the modifications are minor, the modifications may be approved administratively.
2. Significant Modifications Without Public Impact or Concern. If the Planning Division determines that the modifications are significant enough to warrant discretionary review but will not have public impacts or cause public concern, then the modifications shall be referred to the Planning Commission Subcommittee for consideration. If the original application for a project required a public hearing, then the Planning Commission Subcommittee review of modifications shall not require a public hearing.
3. Significant Modifications with Public Impact or Concern. If the Planning Division determines that the modifications are significant enough to warrant discretionary review and have the potential for public impact or concern, then the modifications shall be referred to the final decision-making authority for the original project. If the original application for a project required a public hearing, then the final decision-making authority's review of modifications shall require a public hearing, in accordance with Section 64, Notice and Appeal, of this chapter.

10-42.11 Consideration of "S" Zone Pending Zoning Amendment

Upon the close of a public hearing before the Planning Commission on the question of an amendment to this Chapter to change property from one zone to another, and upon favorable report thereon by the Commission, the Commission may consider such matters and regulations as are set forth in this Section 42. The Commission may conditionally impose such requirements and regulations upon the subject property as the Commission is authorized to impose by this Section 42 and may conditionally grant "S" Zone approval thereto; said requirements and regulations shall be imposed and said approval shall be granted upon the express condition that said property shall be rezoned in accordance with the specific recommendation of the Planning Commission relating to zoning, and shall not take effect unless and until said property is rezoned in accordance with specific recommendations of the Planning Commission and until the ordinance amending this Chapter in accordance with the specific recommendation of the Planning Commission shall take effect. (Ord. 38.636 (part), 8/2/88)

~~42.10-1~~ The Planning Commission shall hear and decide on applications to modify or amend any conditions or site, architectural or landscape approvals. Amendments shall be subject to the same procedure and regulations as those applicable to the original application, except for minor site, architectural and landscape modifications as specified herein, which shall be subject to the approval of the Planning Division or a Planning Commission Subcommittee consisting of two Commissioners. The following "S" Zone amendments shall be subject to a public hearing and review by the Planning Commission as required by Section 42.02 of this chapter.

- ~~(a)~~ Additions of 10,000 square feet or greater;
- ~~(b)~~ Any deletion or amendment of a previously imposed condition of approval;
- ~~(c)~~ A proposal which in the opinion of the Principal Planner or the Planning Commission Chair has a likelihood of affecting public health, safety or welfare or resulting in substantial public controversy.

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42.10-2 Minor Modifications Subject to Approval by Planning Commission Subcommittee or Planning Division Staff.

The items set forth herein are subject to approval by the Planning Commission Subcommittee or Planning Division staff, as specified herein. An applicant for a minor amendment shall submit a filing fee in accord with a schedule adopted by Council Resolution and shall also submit one set of plans illustrating the proposed modifications and any other drawings or materials as required under the circumstances of the case to permit the Planning Division or Planning Commission Subcommittee to make the required approvals. Notwithstanding any other provision of Chapter 10, a public hearing is not required prior to approval by the Planning Division Staff or Planning Commission Subcommittee for the items set forth in Section 42.10-2.

If the Planning Division staff or Planning Commission Subcommittee deny a project, or if the Planning Division staff or Planning Commission Subcommittee believe, in its sole discretion, that the application is beyond their approval authority due to the controversial nature of the project, or uncertainty regarding the finished appearance of the proposed project, then the Planning Division staff may require review by the Planning Commission Subcommittee in the event of a decision by the Planning Division staff, and the Planning Commission Subcommittee may require review by the Planning Commission in the event of a decision by the Planning Commission Subcommittee. If the Planning Commission Subcommittee members disagree on a decision for a project, then the project will be agendaized for Planning Commission review, with no additional fees required. The Planning Division staff or Planning Commission Subcommittee shall not approve any modifications which: (1) delete or amend any required special conditions which may affect the overall design and development of the site; (2) which affect environmental impacts (i.e., noise, traffic, geological constraints, etc.) based on previous environmental review of the project; and (3) delete or amend any issue or condition specifically relating to public health and safety.

In addition, the Planning Division staff or Planning Commission Subcommittee should ensure that any approval (1) recognizes and respects the nature of the neighborhood and site, development patterns, materials used, and the expectations of those who will see and use the building; (2) assures that modifications satisfy functional requirements, are interesting to view, yet uncluttered and screened with appropriate compatible materials; and (3) assure that the modification will not interfere with the privacy, quiet enjoyment or view of the surrounding properties.

Additionally, if the applicant desires review by the Planning Commission, staff shall agendaize the project for the next available Planning Commission meeting. Any decision by the Planning Division staff or Planning Commission Subcommittee is subject to appeal to the Planning Commission and ultimately the City Council, pursuant to the provisions set forth in Chapter 10.

The following criteria shall apply to minor modifications for the following project types in "S" combining districts. Certain minor modifications may be approved in the Hillside district, as specified below and in Section 45.09 of this Chapter.

(A) Roof Screens, Roof-Top Equipment	
Planning Staff can approve:	Planning Commission Subcommittee may approve:
(1) Roof screen expansions which exceeds the height of existing roof screens, if line-of-sight drawings demonstrate that the equipment will not be visible from surrounding "worst case" view points, including public and private rights-of-way and private properties.	(1) Note: Only the Planning Commission may approve roof-top equipment which exceeds the height of existing roof screens, if line-of-sight drawings demonstrate that the equipment will be visible from surrounding "worst case" view points, including public and private rights-of-way and private properties.
(2) New roof screens which complement	

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<p>building materials and/or include texture finish or stylized design using materials and color scheme to tie in with the building (no non-decorative plywood screens). Where possible, screening of roof top equipment shall employ a single large screen rather than numerous small screens. No parapet extensions may be approved.</p> <p>(3) Roof top equipment which exceeds the height of existing roof screens, if line of sight drawings demonstrate that the equipment will not be visible from surrounding "worst case" view points, including public and private rights-of-way and private properties.</p> <p>(4) Roof top HVAC or other potentially noisy equipment on a building which abuts a Residential or Mobile Home Park combining district or use, if the applicant submits acoustical certification that noise levels will not exceed 60 dB DNL at the shared property line. Such equipment must be visually screened from surrounding view points, including the residential uses.</p>	
<p>(B) Building Color Changes</p>	
<p>Planning Staff can approve:</p> <p>(1) Color changes for all buildings outside of the Hillside combining district and PUD's, so long as the proposed colors are earth tone, muted and/or compatible with the surrounding area and development. However, no color changes may be approved for designated historical or cultural resource structures.</p> <p>(2) Color changes for buildings within a PUD, including Hillside PUD's, so long as building color complies with any listed development standards or special conditions of that PUD.</p>	<p>Planning Commission Subcommittee may approve:</p> <p>(1) Color changes for residences within the Hillside combining district, including homes within a PUD which does not specify color choices, so long as the proposed colors are earth tone, muted and compatible with the surrounding development. Applicant shall submit letter of support from applicable homeowners association.</p> <p>(2) No color changes may be approved for designated historical or cultural resource structures.</p>
<p>(C) Re-Roofs</p>	
<p>Planning Staff can approve:</p> <p>1) Re-roofs for flat roofs, behind parapets, which are not visible from surrounding view points.</p>	<p>Planning Commission Subcommittee may approve:</p> <p>1) Change in roof material for buildings in Commercial, Industrial and Mixed Use districts. However, wood shake, non tri-laminate asphalt composition and metal roof material that is reflective, corrugated, or</p>

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<p>2) Re-roofs which use the same material as previously approved. Replacement of wood shake roofs may only be approved by the Planning Commission.</p> <p>3) Change in roof material for buildings within a PUD, including Hillside PUD's, so long as the proposed roof material complies with any listed development standards of that PUD. Other materials, such as metal and tri-laminate asphalt composition, may be used in lieu of listed roof material so long as it mimics the material required.</p> <p>4) Change in roof material for all Residential Valley Floor "S" combining districts and R1-H lots, regardless of lot size, to all types of materials. However, wood shake, non tri-laminate asphalt composition and metal roof material that is reflective, corrugated or standing seam may only be approved by the Planning Commission.</p>	<p>standing seam may only be approved by the Planning Commission.</p>
<p>(D) Minor Exterior Building Changes, Including But Not Limited to, Doors, Entryways, Patios and Patio Covers, Walkways, ATM's, Awnings, Loading Areas</p>	
<p>Planning Staff Can Approve:</p> <p>(1) In Commercial, Industrial and Mixed Use districts, and for commercial uses in TOD districts, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Section X-2.00:</p> <p>a. Windows and person doors which match existing or which complement the building facade.</p> <p>b. New or expanded patios, patio covers, awnings and canopies at the rear or sides of a building, except on the street side of a corner lot.</p> <p>c. Landscape deletion (i.e., shrubs and groundcovers) to accommodate new walkways which are required for building exiting purposes or handicap accessibility.</p> <p>d. ATM's proposed on an exterior wall of</p>	<p>Planning Commission Subcommittee May Approve:</p> <p>(1) In Commercial, Industrial and Mixed Use districts, and for commercial uses in TOD districts, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Section X-2.00:</p> <p>a. New main entryways at the building front or street side which feature architectural projections (i.e., porticos, entryway roof covers, trellises, etc.).</p> <p>b. New or expanded patios, canopies/patio covers, trellises and awnings proposed at the front or street side of a building.</p> <p>c. New fountains or other decorative amenities.</p> <p>d. New loading areas and revisions to existing loading areas proposed at the front half of the building or lot, except where the project area abuts a Residential or Mobile Home Park combining district or use.</p> <p>e. ATM's proposed on a non-bank building and other pedestrian-oriented in-wall automated</p>

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<p>an existing bank in Commercial and Industrial districts.</p> <p>e. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>f. Replacement of windows with roll up doors (and vice versa) when located toward the interior side or rear of a site.</p> <p>g. Metal canopies over equipment storage yards at the rear of commercial or industrial sites, provided they are not visible from public streets or abutting a Residential or Mobile Home Park combining district or use.</p> <p>h. New loading areas and revisions to existing loading areas, when located toward the rear or side of a site, except for the street side of corner lots, or except if the project area abuts a Residential or Mobile Home Park combining district or use.</p> <p>(2) In all Residential Valley Floor "S" combining districts, minor exterior building changes as described below, provided that the project complements the colors, materials, and design of the building.</p> <p>a. Awnings, patio covers, and gazebos which comply with height, setback, and yard coverage requirements. The applicant shall provide the Planning Division with written, signed consent of adjoining residential property owners and applicable homeowners association.</p> <p>b. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>c. Windows and person doors which match existing or which complement the building facade.</p> <p>(3) Minor exterior building changes for residences within Hillside Combining District PUD's which are specifically conditioned to allow a staff approval process for alterations subsequent to</p>	<p>service machines.</p> <p>(2) In the Hillside combining district, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building.</p> <p>a. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>b. Windows, window awnings and person doors which match existing or which complement the building facade.</p>
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initial construction of the home.	
(E) Landscape Changes	
<p>Planning Staff May Approve:</p> <p>(1) Replacement planting of similar landscape materials and addition of landscaping. Landscaping shall comply with Ordinance No. 238 (water efficient landscape regulations). Landscaping within the "H" combining district shall comply with City Council Resolution No. 6066.</p> <p>(2) Deletion of non-required landscaping up to 200 square feet in area to accommodate modifications to existing developed sites. However, in Commercial, Industrial and Mixed Use districts, and for conditional uses within Residential Valley Floor "S" combining districts, no net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2.00 of the Milpitas Municipal Code, may be approved.</p>	<p>Planning Commission Subcommittee May Approve:</p> <p>(1) Deletion of non-required landscaping exceeding 200 square feet in area, to accommodate modifications to existing developed sites. However, in Commercial, Industrial and Mixed Use districts, and for conditional uses within Residential Valley Floor "S" combining districts, no net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2.00 of the Milpitas Municipal Code, may be approved.</p>
(F) Exterior Lighting	
<p>Planning Staff May Approve:</p> <p>(1) New light standards and wall-mounted light fixtures within Commercial, Industrial and Mixed Use districts on those sites which do not involve or abut Residential or Mobile Home Park combining districts or uses. New light fixtures shall match existing on-site light fixtures in terms of height, style, design and wattage, and shall be spaced appropriately to maximize pedestrian safety.</p>	<p>Planning Commission Subcommittee May Approve:</p> <p>(1) New light standards and wall-mounted light fixtures in all Valley Floor "S" combining districts. New light fixtures shall match existing on-site light fixtures in terms of height, style, design and wattage, and shall be spaced appropriately to maximize pedestrian safety. Light fixtures shall be located and shielded to prevent glare onto Residential or Mobile Home Park combining districts or uses.</p>
(G) Parking Revisions, Restriping	
<p>Planning Staff May Approve:</p> <p>(1) Parking lot restriping, including deletion of stalls, in all Valley Floor "S" combining districts, provided that minimum parking ordinance requirements are met, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code (recycling areas). However, there shall be no reduction in number of parking spaces if</p>	<p>Planning Commission Subcommittee May Approve:</p> <p>(1) Parking lot restriping, including deletion of stalls, in all districts, including Hillside, provided that parking ordinance requirements are met, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code (recycling areas).</p> <p>a. No net reduction in the number of on-site trees and no loss of protected trees, as defined in</p>

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<p>the site contains restaurants or banks. The following requirements shall apply:</p> <p>a. In Commercial, Industrial, Mixed Use, R3 and R4 districts, new driveways from public rights-of-way may not be approved.</p> <p>b. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2.00 of the Milpitas Municipal Code, may be approved to accommodate parking revisions.</p>	<p>Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate parking revisions.</p>
<p>(H) Fences, Walls</p>	
<p>Planning Staff May Approve:</p> <p>(1) Fences in Commercial and Industrial districts, which comply with height and openwork construction requirements listed in Section XI-10-54.11 of the Milpitas Municipal Code (Fences), and which comply with the following:</p> <p>a. Chain link or barb wire perimeter fencing may not be approved.</p> <p>b. Fencing/wall material and color shall be compatible with surrounding development.</p> <p>c. Fencing at the front or street side of a site in the Commercial or Industrial districts must consist of decorative wrought iron, steel picket or masonry construction (no chain link) and shall require Traffic Engineering clearance.</p> <p>d. Parking lot fencing/gates shall be cleared by the City's Fire Department.</p> <p>(2) Fences in Residential "S" combining districts, which comply with height and openwork construction requirements listed in Section XI-10-54.11 of the Milpitas Municipal Code (Fences), and which comply with the following:</p> <p>a. Chain link or barb wire perimeter fencing may not be approved.</p> <p>b. Parking lot fencing/gates shall be cleared by the City's Fire Department.</p>	<p>Planning Commission Subcommittee May Approve:</p> <p>(1) Fences in the Mixed Use District which meet the height and openwork construction requirements listed in Section XI-10-54.11 of the Milpitas Municipal Code (Fences). Any fencing/gates in parking lots requires clearance by the City's Fire Department.</p> <p>(2) Chain link perimeter fencing in Commercial and Industrial districts, which comply with the following:</p> <p>a. Fencing shall be at the rear or interior side of the site.</p> <p>b. The fencing shall consist of vinyl clad chain link with or without vinyl slats. Type of chain link fencing (i.e., deletion of vinyl clad requirement, use of slats) shall be to the discretion of the Planning Commission Subcommittee (i.e., in circumstances where the proposed fencing is to continue a line of existing chain link fencing).</p> <p>c. Fencing material and color shall be compatible with surrounding development.</p> <p>d. Parking lot fencing/gates shall be cleared by the City's Fire Department.</p>

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(I) Building Additions

Planning Staff May Approve:

~~(1) Residential building additions for legal, conforming single-family and two-family dwellings in the Valley Floor Residential "S" combining districts, and for legal, non-conforming residences in the R1 and R2 "S" Combining districts, and for legal conforming or non-conforming single-family dwellings in Hillside PUD's which specifically allow for staff approval, provided building height, parking, setback, yard coverage, impervious surface coverage, landscaping, open space and other ordinance requirements are met (refer to Section 56.03 of this Chapter regarding non-conforming buildings). The following shall also apply:~~

- ~~a. The building addition shall be on the rear half of the building and shall not exceed 200 square feet in size.~~
- ~~b. The applicant shall provide the Planning Division with written, signed consent of adjoining residential property owners and applicable homeowners association.~~
- ~~c. Existing front yard paving shall be brought into conformance.~~
- ~~d. The addition shall comprise building materials, colors and style which complement the existing structure.~~

~~(2) Building addition to an existing legal conforming or non-conforming single-family dwelling in the R1, R2, R3, R4, MXD and "H" combining districts, in order to accommodate a second family unit, as defined in Subsection 2.69.1 of this Chapter. The development standards listed in Subsection 54.22 of this Chapter shall apply.~~

Planning Commission Subcommittee May Approve:

~~(1) Commercial and Industrial building additions for legal, conforming buildings, provided that the site is not adjacent to a Residential or Mobile Home Park combining district or use, and that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. Size of building addition shall not exceed 5,000 square feet or ten percent (10%) of the existing building gross floor area, whichever is less. Calculation shall cumulatively count all additions or enlargements completed since June 20, 2003. The following shall also apply:~~

- ~~a. Architecture shall match that of existing building in terms of material, colors, style, etc.~~
- ~~b. The height of the addition shall not exceed the height of the adjacent portion of the existing building.~~
- ~~c. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an addition.~~

~~(2) Residential building additions exceeding 200 square feet in size for legal, conforming single-family and two-family dwellings in the Valley Floor Residential "S" combining districts, and for legal, non-conforming residences in the R1 and R2 district "S" Combining districts, and for legal conforming or non-conforming single-family dwellings in Hillside PUD's which are specifically conditioned not to require Planning Commission or City Council review for building additions, provided building height, parking, setback, yard coverage, impervious surface coverage, landscaping, open space and other ordinance requirements are met (refer to Section 56.03 of this Chapter regarding non-conforming buildings). The following shall also apply:~~

- ~~a. The applicant shall provide the Planning Commission Subcommittee with written, signed consent of adjoining residential property owners and applicable homeowners association.~~
- ~~b. Existing front yard paving shall be brought into conformance.~~
- ~~c. The addition shall comprise building materials, colors and style which complement the existing structure.~~

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	<p>Note: For a building addition accommodating a second family unit as defined in Subsection 2.69.1 of this Chapter, Planning staff has approval authority, as per Subsection 42.10-2.1.2 of this Chapter.</p>
<p>(J) Accessory Buildings</p>	
<p>Planning Staff May Approve:</p> <p>(1) Accessory buildings in the Residential Valley Floor “S” combining districts, provided building height, parking, setback, yard coverage and other ordinance requirements are met. The following shall also apply:</p> <p>a. Accessory buildings for conditional uses in Residential R1 and R2 districts and for permitted and conditional uses in R3 and R4 districts shall comprise building materials, colors and style which complement the existing main structure.</p> <p>b. The applicant shall provide the Planning Division with written, signed consent of adjoining residential property owners and applicable homeowners association.</p> <p>(2) Accessory building in the R1, R2, R3, R4, MXD and “H” combining districts in order to accommodate a second family unit, as defined in Subsection 2.69.1 of this Chapter. The development standards listed in Subsection 54.22 of this Chapter shall apply.</p>	<p>Planning Commission Subcommittee May Approve:</p> <p>(1) Accessory buildings up to 2,500 square feet in area in Commercial, Industrial and Mixed Use districts, provided that the proposed structure is not adjacent to a Residential or Mobile Home Park combining district or use, and provided that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. The following shall also apply:</p> <p>a. Accessory buildings must be located on the rear half of the lot. On corner lots, the accessory building must be set back from the adjacent street as least as far as the main building.</p> <p>b. Accessory buildings must be of permanent construction (no modular buildings or metal buildings) with the exception of small pre-fabricated structures for chemical storage and the like, so long as such structures are adequately screened from public rights-of-way.</p> <p>c. Architecture shall match that of the existing building in terms of material, colors, style, etc.</p> <p>d. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an accessory building.</p>
<p>(K) Trash/Recycling Enclosures, Transformers, Above Ground Tanks, Exterior Equipment, Equipment Enclosures and Storage Areas</p>	
<p>Planning Staff May Approve:</p> <p>(1) Trash/recycling, equipment or storage enclosures up to 200 square feet in size in Commercial, Industrial and Mixed Use districts, proposed at the rear of the building or lot and where least visible from public rights-of-way, and which comply with the following:</p> <p>a. Enclosure may not be approved adjacent to a Residential or Mobile Home Park combining district or use.</p>	<p>Planning Commission Subcommittee May Approve:</p> <p>(1) Trash/recycling, equipment or storage enclosures exceeding 200 square feet in size in Commercial, Industrial and Mixed Use districts and enclosures for conditional uses in Valley Floor Residential “S” combining districts. The following shall apply:</p> <p>a. Colors and materials of the enclosure shall complement the building and shall consist of masonry wall such as split face block or masonry finished to match the building.</p>

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<p>b. On the street side of corner lots, enclosure must be set back at least as far as the main building.</p> <p>c. Colors and materials of the enclosure shall complement the building and shall consist of masonry wall such as split face block or masonry finished to match the building or other solid screening material utilizing colors and materials which complement the building.</p> <p>d. Gates shall be solid metal painted to match the enclosure.</p> <p>e. The enclosure shall screen the dumpsters, trash compactors or equipment.</p> <p>f. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure.</p> <p>g. When feasible, sides and rear of the enclosure shall be landscaped.</p> <p>h. On-site parking shall meet ordinance requirements, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code.</p> <p>(2) Above ground transformers, tanks and other exterior equipment in Commercial, Industrial and Mixed Use districts, which are located at the rear of the building or lot and which comply with the following:</p> <p>a. Equipment shall not be approved adjacent to a Residential or Mobile Home Park combining district or use.</p> <p>b. Equipment shall be completely screened from view by dense shrubbery, masonry wall such as split face block or masonry finished to match the building, or other solid screening material utilizing colors and materials which complement the building. Chain link fencing with or without slats may not be approved in the Mixed Use district, but may be</p>	<p>b. Gates shall be solid metal painted to match the enclosure.</p> <p>c. The enclosure shall screen the dumpsters or trash compactors.</p> <p>d. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure.</p> <p>e. When feasible, sides and rear of enclosure in all districts shall be landscaped.</p> <p>f. On-site parking shall meet ordinance requirements, except as provided in Section XI-10-54.15-3 of the Milpitas Municipal Code.</p> <p>g. Trash enclosures shall be located as far away as possible from Residential or Mobile Home Park combining districts or uses.</p> <p>h. Enclosures for noise-generating equipment (i.e. generators) may not be approved near Residential or Mobile Home Park combining districts or uses.</p> <p>(2) Above ground transformers, tanks, and other exterior equipment in Commercial, Industrial and Mixed Use districts and for conditional uses in Valley Floor Residential "S" Combining districts. The following shall apply:</p> <p>a. The equipment shall be set back from adjacent streets as least as far as the main building and shall be screened from view by dense shrubbery, masonry wall such as split face block or masonry finished to match the building, or other screening material utilizing colors and materials which complement the building. In Commercial and Industrial districts, the Subcommittee shall have the discretion to approve vinyl clad chain link fencing with or without matching vinyl slats, depending on the visibility of the location.</p> <p>b. On-site parking shall meet minimum standards.</p> <p>c. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate a tank, transformer or other equipment.</p> <p>d. In Commercial and Industrial districts, installed</p>
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<p>approved in the Commercial and Industrial districts if it is an expansion of an existing approved chain link enclosure and it is not visible from public viewing points (see #2 above).</p> <p>c. On the street side of corner lots, the equipment and its screening must be set back at least as far as the main building.</p> <p>d. On-site parking shall meet minimum standards.</p> <p>e. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Section X-2-7.01 of the Milpitas municipal Code, may be approved to accommodate a tank, transformer or equipment.</p> <p>f. In Commercial and Industrial districts, the installed height of the transformer, tank or equipment shall not exceed ten (10) feet. In the Mixed Use district, the installed height shall not exceed six (6) feet.</p> <p>(3) Temporary contractor's office trailers and construction-related storage trailers in undeveloped and developed sections of the City, which comply with the following:</p> <p>a. The location of such trailers shall not obstruct driveways or traffic access aisles; the applicant shall demonstrate that parking will not be negatively impacted.</p> <p>b. The colors and materials shall complement the main building, if one exists.</p> <p>c. Any exterior noise-generating equipment associated with trailers shall not be within 300 feet of a Residential or Mobile Home Park combining district or use.</p> <p>d. The trailers shall be removed upon cessation of permitted construction activity.</p>	<p>height of the transformer, tank or equipment shall not exceed the building height. Exception: Equipment exceeding building height may be approved if it is proposed at the rear of the building, and the applicant can demonstrate with line-of-sight drawings that the equipment will not be seen from public viewing points. In the Mixed Use district, the installed height shall not exceed six (6) feet.</p> <p>e. If adjacent to a Residential or Mobile Home Park combining district or use, installed height of the equipment shall not exceed six (6) feet.</p> <p>f. Generators may not be approved if located adjacent to a Residential or Mobile Home Park combining district or use.</p> <p>(3) Temporary contractor's office trailers and construction-related storage trailers in undeveloped and developed sections of the City, when any of the following apply:</p> <p>a. The location of such trailers obstructs or partially obstructs driveways and traffic access aisles.</p> <p>b. Parking is negatively impacted.</p> <p>c. The colors and materials do not complement the main building if one exists.</p> <p>d. Any exterior noise-generating equipment associated with trailers are within 300 feet of a Residential or Mobile Home Park combining district or use.</p>
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(Ord. 38.761 (part), 5/20/03; Ord. 38.760 (2, 3), 9/17/02; Ord. 38.716 (part), 9/15/98; Ord. 38.706 (part), 7/16/96; Ord. 38.636 (part), 8/2/88)

Attachment C

Exhibit 2, Changes to Section 54 General Provisions

Changes To Section 54 General Provisions

SECTION 54 GENERAL PROVISIONS

- 10-54.01 ~~Purpose and Intent Conformance with All Sections of This Code~~
- 10-54.02 Other Uses Permitted by Commission
- 10-54.03 Improvement of Parking Areas, Auto Sales Areas and Loading Areas
- 10-54.04 Zoning of Annexed Areas
- 10-54.05 Height: Height Conformance
- 10-54.06 Area: Area Requirements
- 10-54.07 Planned Unit Development Approval
- 10-54.08 Home Occupation
- 10-54.09 Accessory Buildings and Structures
- 10-54.10 Geologic Hazard Zones
- 10-54.11 Fences ~~and Walls~~
- 10-54.12 Homebuyer Awareness of General Plan
- 10-54.13 Exemptions for Certain Nonconforming Uses
- 10-54.14 Mobile Home Development Standards
- 10-54.15 Areas for Collecting and Loading Recyclable Materials
- 10-54.16 Large Family Child Care Homes and Child Care Centers
- 10-54.17 School Mitigation Impact Fees/School Availability for Residential General Plan Amendments and Rezoning of New Residential Development Projects
- 10-54.18 Adult Business Location Requirements
- 10-54.19 Condominium Conversions
- 10-54.20 Density Bonus for Affordable Housing Developments (entire section)
- 10-54.21 Accessory Uses
- 10-54.22 Second family unit
- ~~10-54.23 Trash Enclosures, Equipment and their Screening~~
- ~~10-54.24 Lighting~~
- ~~10-54.25 Temporary Contractor's Office~~
- ~~10-54.26 Model Home Complexes and Sales Offices~~

~~10-54.01 Purpose and Intent Conformance with All Sections of This Code~~

~~The intent of this chapter is to provide general development standards for the City, resulting in new development that is harmonious with existing development in the surrounding area. The standards provided in this chapter apply to all zones, unless otherwise indicated. The standards and may be modified to be more stringent through the review process, when it is required for a project.~~

~~A. Conformance with All Sections of This Code~~

~~No building or structure shall be erected, reconstructed, structurally altered, enlarged, moved or maintained, nor shall any building, structure or land be used or designed to be used for any use other than is permitted in the district in which such building, structure or land is located and then only after applying for and securing all permits and licenses required by all laws and ordinances. (Ord. 38 (part), 3/15/55)~~

~~10-54.02 Other Uses Permitted by Commission~~

~~Where the term "other uses similar to the above" is mentioned, it shall be deemed to mean other uses which, in the judgment of the Commission as evidenced by a written decision, are similar to the uses listed in the same section and are not objectionable to the general welfare. "Other Uses" so determined by the Commission shall be regarded as listed uses. In no instance, however, shall these regulations be so interpreted to permit a use in a district when such use is specifically listed and permitted in a less restricted district: e.g., a use specifically set forth in the "C2" District shall not be permitted in the "C1" District. (Ord. 38 (part), 3/15/55)~~

Changes To Section 54 General Provisions

10-54.03 Improvement of Parking Areas, Auto Sales Areas and Loading Areas

Every parcel of land hereafter used as a private or public parking area, automobile and trailer sales area, or loading area shall be improved in accordance with Chapter 13, Section 18, Title II (Building Regulations) of the Milpitas Municipal Code and Section 53 of Chapter 10 (Zoning, Planning and Annexation) and landscaped as per Section 53.09 of Chapter 10 (Zoning, Planning and Annexation) and landscaping requirements specific to the zoning district in which the parking area, automobile and trailer sales area or loading area is located, unless otherwise exempted by the City's land use or zoning regulations. (Ord. 38.760 (3), 9/17/02; Ordinance 38.196, 1/20/70: Ord. 38 (part), 3/15/55)

10-54.04 Zoning of Annexed Areas

Any area annexed to the City after the effective date of this amendment shall immediately upon such annexation be automatically classified as an Agricultural District with the "S" Combining District ("A-S" Zone), unless said area is located east of the alignment of Piedmont Road, Evans Road, North Park Victoria Drive and Interstate 680 Freeway as shown on the adopted General Plan and more specifically defined as the westerly boundary of the "Hillside Area" as defined in the General Plan, in which case said area shall be classified as Single-Family District -- Hillside with the "H" Combining District (specifically "R1-H"). (Ord. 38.672 (part), 9/15/92: Ord. 38.616 (A), 10/7/86: Ord. 38.355, 9/16/75: Ord. 38 (part), 3/15/55)

10-54.05 Height: Height Conformance

Except as hereinafter provided, no building or structure shall hereafter be erected or reconstructed which exceeds the height limit established for the district wherein such building or structure is located. (Ord. 38 (part), 3/15/55)

10-54.06 Area: Area Requirements

Except as hereinafter provided, no building or structure shall be hereafter erected or located on a lot unless such building, structure or enlargement conforms with the area regulations of the district in which it is located.

- 54.06-1 No parcel of land held under separate ownership at the time the ordinance codified in this Section became effective shall be reduced in any manner below the minimum lot width and lot area required by this Chapter.
- 54.06-2 No lot area shall be so reduced or diminished that the yards or other open spaces shall be smaller than prescribed by this Chapter, nor shall the occupancy be increased in any manner except in conformity with the regulations herein established.
- 54.06-3 No required yard or other open space around an existing building, or which is hereafter provided around any building for the purpose of complying with the provisions of this Chapter, shall be considered as providing a yard or open space for any other building; nor shall any yard or other required open space on an adjoining lot be considered as providing a yard or open space on a lot whereon a building is to be erected.
- 54.06-4 Every building hereafter erected shall be located on a lot as herein defined. In no case shall there be more than one (1) main residential building and its accessory buildings on one (1) lot. Group dwellings, court apartments and semi-detached dwellings shall be considered as one (1) main residential building on one lot.
- 54.06-5 No parking area, parking space or loading space which existed at the time the ordinance codified in this Section became effective, or which subsequent thereto is provided for the

Changes To Section 54 General Provisions

purpose of complying with the provisions of this Chapter, shall thereafter be relinquished or reduced in any manner below the requirements established in this Section, unless equivalent facilities are provided elsewhere.

- 54.06-6 No building permit shall be issued for a building or structure on a lot which abuts a street dedicated to a portion of its required width and which lot is located on that side thereof from which no dedication was secured, unless the yards provided on such lot include both that portion of the lot lying within the future street and the required yards.
- 54.06-7 No building permit shall be issued for a building or structure on a corner lot when such building or structure is to be oriented in such a manner as to reduce the front yard requirement on the street on which such corner lot had its frontage at the time this Ordinance became effective.
- 54.06-8 Every required front, side and rear yard shall be open unobstructed from the ground to the sky.
- 54.06-9 At each end of a through lot there shall be a front yard of the depth required by this Chapter for the district in which each street frontage is located; provided, however, that one of such front yards may serve as a required rear yard.
- 54.06-10 Any lot of record, whether developed or undeveloped, existing in accordance with law at the time of reclassification by the City of Milpitas, which after said reclassification is less than the minimum lot area required by the zoning district to which it is reclassified shall notwithstanding have all the rights and privileges of said zoning district.
- (a) Said rights and privileges shall only remain valid where said lot of record is not modified as to size, shape or area subsequent to said reclassification.
- (b) Where the yard regulations, as required by the zoning district to which said lot of record is reclassified, cannot reasonably be complied with because of insufficient minimum lot area by virtue of said reclassification, said regulations may be modified or determined by the Commission as provided for in Section 58. (Ord. 38.367, 12/16/75; Ord. 38 (part), 3/15/55)

10-54.07 Planned Unit Development Approval

The purpose of planned unit development approval is to allow diversification in the relationships of various buildings, structures, and open spaces in planned building groups and the allowable heights of said buildings and structures, while insuring substantial compliance to the District Regulations and other provisions of this Chapter, in order that the intent of this Chapter, in requiring adequate standards related to the public health, safety and general welfare, shall be observed without unduly inhibiting the advantages of modern site planning for residential, commercial, or industrial purposes. Where use is made of the planned unit development process as provided in this section, a building permit shall not be issued for such development, or part thereof, until the City has approved said development as herein provided.

- 54.07-1 Application for planned unit developments shall be made on a form prescribed for this purpose by the City of Milpitas.
No application shall be accepted for a use which will require change of zoning district, unless said application is accompanied for an application for a zoning amendment, as provided in Section 62.
- 54.07-2 Application shall be accompanied by a general development plan showing the use or uses, dimensions and locations of proposed structures and of acres to be reserved for vehicular

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and pedestrian circulation, parking, public uses such as schools and playgrounds, landscaping, and other open spaces, and architectural drawings and sketches demonstrating the design and character of the proposed uses and the physical relationship of the uses. Such other pertinent information shall be included as may be required by the Commission.

- 54.07-3 Application shall be accompanied by a fee which shall be established by City Council Resolution.
- 54.07-4 The Planning Commission shall hold at least one public hearing, prior to making its recommendations to the City Council. Upon receipt of the recommendation of the Planning Commission, the City Council shall hold at least one public hearing, prior to any final action on an application.
- 54.07-5 Notice of hearing shall be given in accordance with the provisions of Subsection 64 of this Chapter.
- 54.07-6 In order to grant a Planned Unit Development permit the Planning Commission and City Council shall determine that the following standard requirements have been met:
- (a) The proposed development will result in an intensity of land utilization no higher than and standards of open spaces at least as high as permitted or specified otherwise for such development in the General Plan, Zoning Ordinance and Subdivision Ordinance.
 - (b) The development will not create traffic congestion pursuant to the California Environment Quality Act (CEQA). However, if traffic congestion is created by the proposed development, the traffic impacts will be mitigated by traffic improvements proposed by the developer or by funding capital projects and by on-site provisions for traffic circulation and parking or, if it cannot be mitigated, the Planning Commission and City Council shall issue any necessary findings pursuant to CEQA.
 - (c) For residential development in the Valley Floor Planning Area, as defined in the Milpitas General Plan Land Use Element, the maximum dwelling unit density per gross acre shall be the upper limit of the corresponding General Plan density range within each zoning designation. In the case of the Valley Floor Planning Area residential developments proposed on land zoned "R-3" (Multiple Family Residential) an overall density of up to forty (40) units per gross acre can be approved if the following criteria are found by the City Council to be met.
 - (1) Sewer capacity and water availability will be sufficient to accommodate the proposed project density as well as other future planned unit development downstream from the project site. Any improvements to the sewer or water system that would be required to accommodate any higher density proposals may be made conditions of project approval;
 - (2) Traffic from increased "R-3" density must not cause any local street intersection to decrease its Level of Service (LOS) below "E" Volume/Capacity greater than 0.99 as determined by the City of Milpitas Transportation Division when added to existing traffic. A traffic report or analysis may be required to address the traffic impacts from the proposed project. Traffic impacts from approved, underdeveloped projects and future planned or proposed roadway improvements may be factored into the traffic report or analysis. If the traffic impacts cannot be mitigated, the Planning Commission and City Council shall issue any necessary findings pursuant to CEQA.

In addition to the finding that standard requirements in this section have been met, the Planning Commission and City Council must also make the following findings based on

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evidence in the record in order to approve the Planned Unit Development application:

- (a) Development of the site under the provisions of the Planned Unit Development will result in public benefit not otherwise attainable by application of the regulations of general zoning districts.
- (b) The proposed Planned Unit Development is consistent with the Milpitas General Plan; and
- (c) The proposed development will be in harmony with the character of the surrounding neighborhood and will have no adverse effects upon the adjacent or surrounding development, such as shadows, view obstruction, or loss of privacy that are not mitigated to acceptable levels.

54.07-7 The Planning Commission shall make its recommendation to the City Council within 45 days of the date of the filing of said application (pending any necessary zoning amendment). The Commission may recommend to the City Council that the permit be denied, that permit be approved as submitted, or that the permit be approved, subject to various conditions. Within 30 days of the receipt of the recommendation from the Planning Commission, the City Council shall hold a hearing, as required by paragraphs 54.07-3 and 54.07-4 of this subsection. The City Council shall consider the report of the Planning Commission but shall not be bound thereby. Upon the close of the hearing, the City Council may deny the permit, approve the permit as submitted, or approve the permit subject to such conditions as it deems necessary (in addition to or other than those recommended by the Planning Commission).

Any planned unit development, as authorized, shall be subject to all conditions imposed by the City and shall be excepted from other provisions of this Chapter, only to the extent specified in said permit.

54.07-8 Following the issuance of a planned unit development by the City Council, the Building Inspector shall issue a building permit and shall insure the development is undertaken and completed in conformance with the approved plans.

54.07-9 A Planned Unit Development permit may be revoked after notice to the permittee and hearing in any case where the conditions of such permit have not been complied with. The revocation of the permit shall only be made after written notice of violation is mailed to the holder of the permit. The permit holder shall be given the opportunity to explain why the permit should not be revoked. The Planning Commission and City Council shall hold a public hearing regarding the permit. After receiving the Planning Commission's recommendations on permit, the City Council at its discretion may revoke the permit issued if they determine that the previous conditions of approval have not been complied with. The public hearing shall be held in accordance with Title XI, Chapter 10, Sections 64.01, 64.02, and 65.

If a Planned Unit Development is submitted in conjunction with the Tentative Map application, then the approval of the Planned Unit Development shall run concurrent with and expire with the approved Tentative Map.

Where no Tentative Map is submitted in conjunction with the Planned Unit Development application, and the Planned Unit Development permit has not been used within one (1) year after the date of granting thereof, the permit granted shall be null and void.

54.07-10 No area designated for use as a "Common Green" or "Park" upon any map or plat or plan which has been approved as part of a Planned Unit Development may be used for any purpose other than a common green or park or playground, including but not limited to a school playground as approved by the City Planning Commission. (Ord. 38.706 (part), 7/16/96; amended during 2-92 supplement; Ord. 38.610, 9/2/86; Ord. 38.526, 1/20/81; Ord.

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38.377, 9/7/76; Ord. 38.92, 12/6/66; Ord. 38.89, 7/7/66; Ord. 38.68, 4/15/65; Ord. 38 (part), 3/15/55)

10-54.08 Home Occupation

Definition. A home occupation is a business enterprise conducted within a dwelling by the residents of the dwelling and which is incidental and secondary to the use the dwelling for residential purposes.

- 54.08-1 Purpose. The purpose of this Section is to provide residents with the ability to work at home yet ensure that the business does not interfere with, detract from, or otherwise adversely affect the character of the neighborhood.
- 54.08-2 Regulations:
- (a) All persons operating a home occupation must obtain a home occupation permit from the City prior to commencing any business. It is unlawful to operate a home occupation without a permit.
 - (b) Only the residents of the dwelling may operate the home occupation. No employees associated with the home occupation shall report to work on the premises.
 - (c) The home occupation shall not involve more than one client visitation on the premises at any time.
 - (d) The home occupation shall not be operated in a manner which creates noise, vibrations, dust, odor, smoke or television and radio interference affecting adjoining properties.
 - (e) No signs are permitted either on or off the premises in connection with the home occupation. Products or equipment produced or used by home occupation shall not be displayed in a manner which is visible from the exterior of the dwelling.
 - (f) There shall be no storage of materials or supplies outdoors in a manner which is visible from adjacent properties or public ways.
 - (g) The home occupation shall not require modification or exterior alterations of the dwelling in which a home occupation is conducted.
 - (h) The home occupation shall be conducted entirely within the dwelling except for those types of occupations which are conducted entirely off-site and away from the dwelling.
 - (i) The occupations listed below shall not be considered incidental and secondary to the residence because they will change the residential character of the dwelling and because they change the character of the neighborhood:
 - (1) Barber and beauty shops or similar cosmetology establishments;
 - (2) Kennels and other boarding for pets;
 - (3) Mechanical and auto repairs;
 - (4) Medical and dental offices;
 - (5) Retail sales (excluding retail sales in which all products are sold over the phone or internet and shipped to the customer).

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- 54.08-3 Violation of Regulations. Violation of any provision of this Chapter may result in the revocation of the home occupation permit after notice and an opportunity for a hearing has been given to the permittee. (Ord. 38.760 (3), 9/17/02; Ord. 38.703, 7/18.95: Ord. 38.175, 1/7/69: Ord. 38.164, 6/4/68: Ord. 38 (part), 3/15/55)

10-54.09 Accessory Buildings and Structures

All accessory buildings and structures, as well as building additions as described in Section 55.04-11, in the rear yard are limited cumulatively to a total area not exceeding thirty percent (30%) of the area of the required rear yard, except where noted below. Projection of eaves of accessory buildings and structures shall not be closer than three (3) feet to any side or rear lot line.

- 54.09-1 An accessory building may be erected detached from the principal building, or erected as an integral part of the principal building, or it may be connected therewith by a breezeway or similar structure.

- 54.09-2 An accessory building attached to the main building shall be made structurally a part and have a common wall with the main building and shall comply in all respects with the requirements of this Chapter applicable to the main building.

Unless so attached, an accessory building in an "R" District shall be located on the rear one-half (1/2) of the lot and at least six (6) feet from any dwelling building existing or under construction on the same lot and at least fourteen (14) feet from a residential structure existing or under construction on any adjacent lot. Any accessory building shall not be located within three (3) feet of any rear lot line or side line of the rear half of an adjacent lot or within seven (7) feet of the side line of the front half (1/2) of any adjacent lot; and, in the case of a corner lot, shall not project beyond the front line required or existing on the adjacent lot.

- 54.09-3 Recreation shelters and storage shelters shall be permitted as accessory buildings provided that these uses are not equipped for use as living quarters.

- 54.09-4 Guest house accessory buildings shall not be closer than six (6) feet from the nearest point of the main building. There shall be not more than one (1) guest house on any one (1) building site.

- 54.09-5 Deleted by Ord. No. 38.760.

- 54.09-6 A porte-cochere may be permitted over a driveway in a side yard provided such structure is not more than fifteen (15) feet in height, twenty-four (24) feet in length, not closer than three (3) feet from the side lot line, and is entirely open on at least three (3) sides, except for the necessary supporting columns.

- 54.09-7 Open, unenclosed stairways, or balconies, not covered by a roof or canopy, may extend or project into a required rear yard not more than four (4) feet, and such balconies may extend into a required front yard not more than thirty (30) inches. Openwork type railing not more than three and one-half (3-1/2) feet in height may be installed or constructed on any open, unenclosed stairways, or balconies, not covered by a roof or canopy.

- 54.09-8 Open, unenclosed porches, and decks, not covered by a roof or canopy, which do not extend above the finished floor level of the first floor of the building, may extend or project into any rear or side yard, but in no event shall the structure come closer than three (3) feet to any adjoining property line. Openwork type railing not more than three and one-half (3-1/2) feet in height may be installed or constructed on any porch or deck.

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- 54.09-9 Platforms, landing places, concrete slabs, walkways and paved areas not covered by a roof or canopy and up to eighteen (18) inches above the ground may extend or project into any rear or side yard but in no event shall the projection come closer than three (3) feet to any adjoining property line with the exception of walkways four (4) feet in width or less which may extend to the property line. These projections are excluded from the 30% maximum required rear yard coverage.
- 54.09-10 Patio covers, including but not limited to gazebos and pergolas shall not exceed 12 feet in height. Built-in barbecue pits and fountains shall not exceed 6 feet in height. None of these structures shall come closer than three (3) feet to any side or rear property line. Patio covers are as defined in Section 2.65-1.
- 54.09-11 In-ground pools, in-ground spas, and associated decking no more than eighteen (18) inches above ground shall not come closer than 3 feet to any side or rear property line. These accessory structures are excluded from the 30% maximum allowed rear yard coverage.
- 54.09-12 Fences, walls, latticework screen and guard railings are exempt from the accessory building and structure provisions.
- 54.09-13 Depressed ramps and handicap ramps, may be located in any front, side or rear yard but in no case shall come closer than three (3) feet to any adjoining property line. Openwork type railing and guard railing for safety protection around depressed ramps not more than three and one-half (3-1/2) feet in height above ground level adjacent thereto may be installed or constructed on any ramp.
- 54.09-14 Open, unenclosed fire escapes may extend or project into any front, side or rear yard not more than four (4) feet.
- 54.09-15 Utility or mechanical equipment structures, such as pool equipment units and air conditioning units shall not come closer than 3 feet to any side or rear property line.
- 54.09-16 Wireless Communication Facilities exempt from obtaining a conditional use permit as per Section 57.02-15.1:
- a) No vertical structure associated with an Antenna (hereinafter "Tower or Mast") shall exceed the maximum height of a structure permitted in the zoning district in which the structure is located by more than twenty-five (25) feet (hereinafter "Maximum Height") except as provided in this Section. The Maximum Height shall be measured to the highest point of the Tower or Mast or Antenna(s) mounted thereon.
 - b) All Towers or Masts must be attached to the main structure or to a foundation. In any event, the design of the attachment must meet or exceed the Tower or Mast manufacturer's recommended design for such structural attachment or foundation. Guy wires may only be used as a means of support for Towers or Masts only if such Tower or Mast does not exceed 20 feet in height. Wire antennas suspended from Towers or Masts shall not be considered guy wires. Such manufacturer's recommended design shall be submitted with the building permit application and shall form the basis for permitting and subsequent inspection.
 - c) The sum of equivalent flat plate wind load(s) in square feet of all equipment needed for the communication facility to function and that are mounted on the Tower or Mast shall not exceed 100% of the Tower or Mast manufacturer's maximum wind loading specification for a minimum 70 mph wind if located on the valley floor and 80 mph wind if located within the hillside area.

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- d) No part of any Antenna mounted on a Tower or Mast may extend closer than 3 feet to a property line whether fixed or movable, or forward of the front of the building. However, in no case shall any such antenna encroach into a utility easement within which overhead power lines are located. If such antenna serves a multi-family unit that is within a multi-family building where the unit does not adjoin a side or rear yard of the building, such antenna attached to the unit or attached to a structure attached to the unit may extend forward of the front of the building by no more than 3 feet. However, in no case shall any such encroachment forward of the front of the building extend into a public right-of-way or private accessway.
- e) All Towers and Masts attached to a foundation must be located within the side or rear yard and no closer than 10 feet from a property line. However, in no case shall a Tower and/or Mast encroach into a utility easement.
- f) Receive-only radio and television antennas, citizens band facilities and data communications facilities and satellite dishes one meter or less in diameter in residential zones, or two meters or less in diameter in commercial and industrial zones shall not be installed between a public right-of-way and a structure. Any of the aforementioned wireless communication facilities that are preempted by federal law that are proposed to be located in the area between a public right-of-way and a structure, shall be allowed without a use permit if such facility is attached to said structure and if such location provides the only unobstructed view required for the facility to function.
- g) There shall be no more than two antenna support structures that exceed 20 feet in height per parcel.
- h) A Tower or Mast may exceed the Maximum Height referenced in subsection a) above only by an extendable Tower or Mast provided that (a) the collapsed height of the Tower or Mast and Antenna(s) does not exceed the Maximum Height and (b) the extendable Tower or Mast shall be permitted to exceed the Maximum Height only during communications operations and shall be lowered to the Maximum Height upon termination of each operating session.
- i) Masts, Towers and Antennas shall not be painted and shall be limited to gray, black, white, brown, tan, silver, gold, pale blue, dark green or any other color compatible with surrounding structures or vegetation.
- j) If an Antenna, Tower or Mast is no longer used for its intended purpose, it shall be removed.
- k) All operations of Tower or Mast mounted Antenna(s) must meet applicable FAA and FCC rules and regulations and any emissions must meet applicable FCC and ANSI radiation safety guidelines. (Ord. 38.761 (part), 5/20/03; Ord. 38.760 (3), 9/17/02; Ord. 38.667 (part), 1/21/92; Ord. 38.342, 7/2/74; Ord. 38.19, 1/17/61; Ord. 38 (part), 3/15/55)
(Also see Section 55.04-5)

10-54.10 Geologic Hazard Zones

- 54.10-1 Any zoning application proposed for new real estate development or structure for human occupancy shall be subject to approval in accordance with the policies and criteria established by the State Mining and Geology Board and findings of the State Geologist in conformance with the requirements of the Public Resources Code, Section 2621, et seq. (Ordinance 38.347, 10/15/74; Ord. 38 (part), 3/15/55)

10-54.11 Fences **and Walls**

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A. Purpose and Intent. The purpose and intent of this section is to establish standards for fences and walls and similar screening that limit their visual and traffic impacts, but allow for the privacy and architectural interest afforded by such structures. The purpose of a stricter fence or wall height limit in the front yard is to provide for an open street scene, to allow the primary structures on a street to be visible and to contribute to the visual character of the neighborhood, and to allow for unobstructed views of traffic to and from driveways.

This section establishes standards for all fences and walls, including those not requiring a Building Permit. (For information regarding whether a fence or wall requires a Building Permit, please contact the City's Building Division).

B. Standards for Fences and Walls in All Zones. Unless otherwise provided for in the specific standards for individual zones, the following standards shall apply to fences and walls and to all structural elements supporting the fences, walls and hedges, including pilasters, trellises, etc. In addition to the regulations set forth in this section, all fences and walls shall be constructed and maintained so that they do not constitute a hazard to traffic, persons or property.

54.11-1. Measurement of Fence and Wall Height. The height of a fence or wall shall be measured from the finished grade to the top of fence or wall at any point (including barbed-wire tops). Where the finished grade is a different elevation on either side of the fence or wall, the height may be measured from the side having the highest elevation.

2. Prohibited Fences. Barbed wire fences within four (4) feet of a public sidewalk, electrically charged fences and fences which interfere with public utilities or public easements are not permitted.

54.11-2 B. Standards for Fences and Walls on Regulations for the Valley Floor.

54.11-3 1. Height Limitations. Fences and walls shall not exceed six (6) feet in height at the rear and side yards, and forty-two (42) inches in height at the front yard.

54.11-4 2. Exceptions:

- a. ~~For~~ For any non-residential or new multi-family projects and single-family tract projects within a zoning district combined with the "S" Overlay Combining District, fences at the rear and side yards may be eight (8) feet maximum height when approved by the Planning Commission through a Site Development Permit.
- b. In all zoning districts, fences at the rear or side yard adjacent to recreational areas, athletic fields or courts may be twelve (12) feet maximum height provided that the portion of the fence higher than six (6) feet is of approved openwork.
- c. In all zoning districts, fences at the front yard and within thirty-five (35) feet of a street corner shall be of approved openwork.
- d. In residential zoning districts fences at the rear and side yards may exceed six (6) feet but not exceed eight (8) feet in height provided written consent of adjoining residential property owners is received. See Building Code for permit requirements for fences exceeding six (6) feet in height.
- e. In any Commercial or Industrial zoning district, fences or walls used for the purpose of screening or providing security to mechanical equipment such as but not limited to air conditioning units, chemical tanks or tank farms or the like, may exceed six (6) feet in height subject to the provisions of Section 54.23, Trash Enclosures, Equipment and their Screening 42.10 of this Chapter.

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~~54.11-5C. Standards for Fences and Walls within Regulations for the Hillside District.~~

~~1. Height Limitations. Fences or walls shall not exceed fifty-four (54) inches in height, and be an openwork design, and may be located anywhere on the parcel. No city review of this type fence is required.~~

~~54.11-6 2. Construction Materials. All fence post and supporting framework material shall be wood in order to maintain the rural character of the hills. The Planning Commission, under the "H" Combining District review process, may approve any other type material for the posts.~~

~~54.11-7 3. Openwork Design. Openwork type fences shall be comprised of materials which results in a minimum of seventy-five percent (75%) visual transparency within every square foot area, posts excluded. Chain link fences and cyclone type fences are not considered an approved material in the area.~~

~~54.11-8 Height Limitations. Fences shall not exceed fifty-four (54) inches in height, and be an openwork design, and may be located anywhere on the parcel. No city review of this type fence is required.~~

~~54.11-9 4. Exceptions:~~

- ~~(a) In any zoning district combined with the "H" Combining District fences at the rear and side yards which exceed fifty-four (54) inches in height and those fences other than an openwork design may be constructed on a parcel or lot, if and when their location and design have first been approved by the Planning Commission.~~
- ~~(b) In any zoning district combined with the "H" Combining District fences around tennis courts, and the like as determined by the Planning Commission, may be eight (8) feet maximum height provided that the portion of the fence higher than six (6) feet is an approved openwork design. Chain link fencing may be used, in this case, as an approved openwork design. The Planning Commission, under the "H" Combining District review process, may approve fences over eight (8) feet in height.~~

~~All tennis courts and the like shall be screened from view from the valley floor with landscape materials, as outlined in the City Council Hillside Landscape Policy, with said landscaping to the approval of the Planning Commission.~~

- ~~(c) Barbed wire fences, using a post material other than wood, may be erected on any parcel two (2) acres or more without Planning Commission review or approval.~~

~~54.11-10 Prohibited Fences. Barbed wire fences within four (4) feet of a public sidewalk, electrically charged fences and fences which interfere with public utilities or public easements are not permitted. (Ord. 38.716 (part), 9/15/98; Ord. 38.652 (part), 7/17/90; Ord. 38.553, 11/16/82; Ord. 38.389, 4/5/77; Ord. 38 (part), 3/15/55)~~

10-54.12 Homebuyer Awareness of General Plan

At the time of initial sale of a newly constructed R1 home, the residential builder's sales staff shall be required to obtain the signatures of the buyers that they have been made aware of the adopted General Plan proposed land uses for the area within the general neighborhood of the proposed purchase site, and received a copy of said General Plan map.

If the buyer needs further detail of types of specific uses possible within a given General Plan designation, he shall be directed to make inquiry at the Milpitas Planning Department. (Ord. 38.505, 5/6/80; Ord. 38 (part), 3/15/55)

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10-54.13 Exemptions for Certain Nonconforming Uses

- 54.13-1 The provisions amending Sections 30, 31 and 35 of this Chapter, related to development standards, shall not apply to any existing improvements (buildings, landscaping, fencing or parking) lawful at the time of installation or improvements which have been approved by the Planning Commission and for which a building permit issued prior to June 17, 1982, and installed in conformance with said approval and permit.
- 54.13-2 The provisions amending Sections 53.14 and 53.22 of this Chapter, related to parking stall dimensions and compact stall ratios and location, shall not apply to any existing improvements (buildings or parking facilities) lawful at the time of installation or improvements which have been approved by the Planning Commission and for which a building permit issued prior to November 19, 1992, and installed in conformance with said approval and permit. (Ord. 38.675 (part), 10/20/92; Ord. 38.547, 5/19/82; Ord. 38 (part), 3/15/55)

10-54.14 Mobile Home Development Standards

- 54.14-1 A single mobile home may be permitted on lots zoned for single-family dwellings where it has been determined the lot and structure are compatible:
- (a) In districts where site plan and architectural review is not generally required for single-family dwellings, the site plan and architectural review process shall be utilized to initially determine if a lot and structure is compatible for a mobile home. Compatibility of a lot and structure shall be determined by such factors as height, bulk and character of other structures in the neighborhood. If a lot and structure is determined to be compatible, site plan and architectural review is limited only to specifying roof overhang, roofing material and siding material based on the following standards.
- 54.14-2 The following development standards shall be applicable to the establishment of mobile homes as single-family dwellings in the R1, and AR Districts:
- (a) Mobile homes and any garages, carports, and other structures attached thereto, must conform to all regulations for single-family dwellings applicable to the zone.
 - (b) Mobile homes must be certified under the National Manufactured Housing Construction and Safety Standards Act of 1974.
 - (c) Mobile homes must be attached to a permanent engineered perimeter foundation system approved by the Chief Building Official and pursuant to Section 18551 of the State Health and Safety Code.
 - (d) Mobile homes must be covered with stucco and/or wood siding or an exterior material commonly found on new conventionally erected single-family dwellings in the surrounding area.
 - (e) The roofing material must be wood or composition shingles or other materials commonly found on conventionally erected single-family dwellings in the surrounding area. The roof must have a minimum pitch with respect to roofing material in accordance with the City of Milpitas Building Code.
 - (f) The roof must have eave and gable overhangs of not less than eighteen (18) inches measured horizontally from the vertical side of the mobile home. The overhang must be constructed with materials commonly found on conventionally erected single-family dwellings in the surrounding area and must be at the same slope and be covered with the

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same roofing material as the roof itself.

- (g) The exterior covering and roofing materials of the garage, carport, or any other structure attached to the mobile home must be the same as for the mobile home.

54.14-3 As used in this Section, "commonly found" means an architectural feature or construction material that occurs or appears frequently on conventionally erected single-family dwellings within five hundred (500) feet of the boundaries of the lot or parcel on which a mobile home is proposed as determined by the Planning Commission. (Ord. 38.541, 4/20/82: Ord. 38 (part), 3/15/55)

10-54.15 Areas for Collecting and Loading Recyclable Materials

54.15-1 Recycling Areas At New Developments. Areas for collecting and loading recyclable materials are required for:

- (a) Any project for which a building permit will be required for a commercial, industrial, or institutional building, or residential building having five (5) or more living units, where solid waste is collected and loaded; and any residential project where solid waste is collected and loaded in a location serving five (5) or more units using containers of one (1) cubic yard or larger.
- (b) Any new public facility where solid waste is collected and loaded and any improvements for areas of a public facility used for collecting and loading solid waste in containers of one (1) cubic yard or larger.

54.15-2 Recycling Areas At Existing Developments. Recycling areas are required to be added to existing development projects if one or more of the following conditions occurs:

- (a) The area subject to modifications or amendment is that part of a development which is used for collecting and loading solid waste. This condition applies regardless of the size of the modification, or
- (b) A single modification, or multiple modifications which are constructed within a twelve (12) month period, which collectively adds thirty (30%) percent or more to the existing gross floor area of the development project.

54.15-3 Waiver of parking spaces, encroachment into landscaping or open space areas for voluntary participation:

- (a) When the property owner or tenant, with the property owner's approval, voluntarily participates in the recycling program in an existing development, the recyclable area may utilize up to two (2) parking spaces or encroach into any side or rear yard landscape setback or open space area for the location of the recycling container if no other area is available. The ~~Planning Division Community Development Manager~~ may approve of the plan and shall provide a written decision supporting the decision.
- (b) Provided further, if the ~~Planning Division Community Development Manager~~ does not approve the property owner's or tenant's request, they have the right to appeal by filing ~~an a Site Development Permit "S" Zone Amendment~~ application to the Planning Commission. There shall be no filing fee associated with this review.
- (c) The loss of the two (2) parking spaces shall not be deducted from the total count of parking for the purpose of meeting the on-site parking criteria, from calculating the gross floor area of the building or seating requirement, or for any other use that is determined by the amount of parking space.

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- 54.15-4 Design Guidelines. The design and construction of recycling areas shall be reviewed in accordance with the guidelines adopted by Council Resolution for recycling areas. (Ord. 38.687 (2), 4/19/94)

10-54.16 Large Family Child Care Homes and Child Care Centers

- 54.16-1 Purpose. The purpose of provisions dealing with childcare facilities is to allow regulation of such facilities to the extent provided herein. However, nothing is intended to allow regulation to a greater extent than allowed by State law.
- 54.16-2 Large family child care homes may be approved administratively by the Planning Division, provided that the applicant submits information to the Planning Division demonstrating compliance with applicable development standards listed in Subsection 54.16-4, and the applicant obtains approval from the Fire Department.
- 54.16-3 Child care centers shall require approval of a Conditional Use Permit by the Planning Commission, as per Section 57 of this Chapter. The applicable development standards listed in Subsection 54.16-4 shall be addressed in the Use Permit process.
- 54.16-4 Development Standards
- 54.16-4.1 Density. Large family child care homes shall be spaced at least three hundred (300) feet apart from each other. This spacing requirement does not apply to small family childcare homes.
- 54.16-4.2 Off-Street Parking Requirements. There shall be provided off-street parking spaces for automobiles in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in Subsection 54.03.
- 54.16-4.3 Hours of operation. For large family child care homes, hours of operation shall not occur before 6:30 A.M or after 7:30 P.M., in order to maintain compatibility with neighboring properties and limit noise during night-time hours. Hours of operation shall be determined through the Use Permit process and shall be based on compatibility with neighboring properties and other planning principles as set forth in Section 57 of this Chapter.
- 54.16-4.4 Fence Height. Outdoor play areas for childcare centers shall be enclosed with a six-foot high fence. The fence type shall be compatible with neighboring properties and other planning principles as set forth in Section 57 of this Chapter.
- 54.16-5 Code Enforcement Procedures. If any large family child care home is operating in a manner that constitutes a nuisance, the child care facility operator shall work with the Planning Division to address the nuisance, through such actions as adjusting hours of operation, adjusting hours of outdoor play, staggering times for child drop-off and pick-up, and the like. If any childcare center is operating in a manner which constitutes a nuisance, the Planning Commission shall reopen the Use Permit to add or change conditions of approval addressing the issue(s). If the nuisance continues, the Planning Commission may review the Use Permit with a recommendation to the City Council pursuant to Section 63.06 (Revocation, Suspension and Modification). (Ord. 38.761 (part), 5/20/03: Ord. 38.702 (1) (part), 8/15/95)

10-54.17 School Mitigation Impact Fees/School Availability for Residential General Plan Amendments and Rezoning of New Residential Development Projects

- 54.17-1 School Availability. This Section provides a mechanism by which the City Council can assess whether any potential burden on school availability created by proposed residential project

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has been appropriately addressed, prior to approval of a General Plan amendment and rezoning of new residential development projects.

54.17-2 Applicability.

- (a) The provisions of this Section are applicable only to school availability for the Milpitas Unified School District.
- (b) This Section shall apply to all residential General Plan amendments and rezoning of new residential development projects, except Council initiated General Plan amendments, rezonings and senior citizen housing projects.
- (c) For the purpose of this Section "senior citizen housing" shall mean dwelling units limited to residents of fifty-five (55) years and older through enforceable restrictions in accordance with Civil Code Section 51.3.

54.17-3 Participating School District. "Participating school district" shall mean the Milpitas Unified School District is entitled to the maximum fee permitted pursuant to Government Code 65995 upon having filed a timely school availability statement in accordance with Section 54.17-4.

54.17-4 School Facility Availability Statement.

- (a) The school availability statement shall be filed with the City Clerk by September 15th of each year.
- (b) The school availability statement shall include all the following information:
 - (1) Capacity and enrollment projections, with a ten (10) year projection horizon, analyzing the capacity of the District's school facilities to accommodate the projected District-wide student enrollment.
 - (2) The District's current capital improvement program (CIP), if available.
 - (3) The District's current fee justification study and schedule of any development fees adopted by the District.
 - (4) A description of the measures that the District has taken, studied and rejected or is currently studying to increase student capacity as found in the long range facility master plan.
 - (5) A description of closed or undeveloped school sites owned by the District, including the location and size of each site.
 - (6) A copy of an annual audit of the use of any and all funds collected, expended and retained from developers for the purpose of capital facilities (e.g., Fund 54), and a description of the use or planned use of these resources to provide facility capacity.
 - (7) A copy of the resolution passed by the School Board attesting that the School District is entitled to the maximum fee permitted pursuant to Government Code 65995 and that the information provided in the school availability statement demonstrates that, based on a ten (10) year horizon, there is inadequate school capacity available in the district to accommodate future development.
 - (8) A District contact person to coordinate inquiries from the City and development community.

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54.17-5 Procedure.

- (a) Within five (5) days of the filing of the residential General Plan Amendment and rezoning of new residential development projects subject to this Section, the applicant shall deliver a summary of the residential General Plan Amendment and rezoning of new residential development project and site location map on a form approved by the Community Development Director, to the Milpitas Unified School District. In addition, the applicant shall make an offer to meet with the school district superintendent or the superintendent's designee's within twenty (20) days after delivering the GPA and rezoning of new residential development project summary.
- (b) The applicant shall file proof with the Director that the GPA and rezoning of new residential development project summary and offer to meet has been delivered to the Milpitas Unified School District.
- (c) If the applicant has made the offer to meet and attended a meeting scheduled within the required period, the requirement that the applicant meet with the MUSD shall be deemed satisfied. The MUSD failure to schedule and or attend a meeting within the required period shall be deemed a waiver of the requirement for the applicant to meet with the school district.
- (d) Within thirty (30) days after the delivery of the GPA and rezoning of new residential development project summary, the applicant shall notify the Director, with a copy of the MUSD whether the applicant has met, reached an agreement regarding the provision of school facilities, or made an irrevocable offer.

54.17-6 Findings.

- (a) The City Council may approve a residential GPA and rezoning of new residential development projects other than a Council initiated General Plan amendment, rezoning or senior citizen housing, served by the MUSD, only after finding that school availability is not unreasonably burdened by the project because:
 - (1) There is no substantial lack of school availability to serve this project; or
 - (2) The applicant has entered into an agreement with the MUSD or has made an irrevocable offer to reasonably address any burden on school availability created by the project; whether the offer was accepted or not. For purposes of this finding an irrevocable offer consistent with the adopted City policy shall be deemed to reasonably address any burden on school availability created by the project.
- (b) If no finding is made pursuant to Subsection 54.17-6(a), the residential GPA and rezoning of new residential development project shall be phased or denied, unless the City Council determines that the benefits of the project outweigh the burden on school availability which will be created by approving the application.
- (c) If applicant has not entered into an agreement with the MUSD and has not made an irrevocable offer consistent with the City Policy, the applicant shall have the burden of proof of establishing that a finding required by this Section can be made. Nothing herein shall limit the discretion of the City Council to make any finding that it deems appropriate. (Ord. 38.704, 7/18/95)

10-54.18 Adult Business Location Requirements

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- 54.18-1 Purpose and Intent. The purpose of this Subsection is to establish reasonable and uniform regulations regarding the location of Adult Businesses, which will permit the location of Adult Businesses in certain areas but which will also reduce or prevent neighborhood blight, maintain property values; and reduce the incidence of unlawful activity by preventing the concentration of Adult Businesses or their close proximity to incompatible uses.
- 54.18-2 Definitions.
- (a) "Adult Businesses" means any of the following:
- (1) Adult Arcade. The term "adult arcade" as used in this Subsection, means any place to which the public is permitted or invited, wherein coin-operated, currency-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, television sets, monitors, receivers, transmitters, video cassette players or other images producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting, describing or relating to specified sexual activities or specified anatomical areas.
 - (2) Adult Bookstore. The term "adult bookstore" as used in this subsection means an establishment that has thirty (30) percent or more of its stock in books, visual or audio representations which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities and/or specified anatomical areas.
 - (3) Adult Cabaret. The term "adult cabaret" as used in this subsection, means a nightclub, restaurant, or similar business establishment which: (1) regularly features live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities; and/or (2) which regularly features persons who appear seminude; and/or (3) shows films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
 - (4) Adult Hotel/Motel. The term "hotel/motel" as use in this subsection means a hotel or motel or similar commercial establishment which:
 1. Offers public accommodations, for any form of consideration, which provide patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and which advertises the availability of this sexually oriented type of material by means of any off-premises advertising including but not limited to newspapers, magazines, pamphlets or leaflets, radio or television; and
 2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours or allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours, or rents any single room more than twice in a 24-hour period.
 - (5) Adult Motion Picture Theater. The term "adult motion picture theater" as used in this subsection, means a business establishment in which for any form of consideration, films, motion pictures, video cassettes, video tapes, laser discs, slides or similar photographic or electronic reproductions are regularly shown and thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis

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- upon the depiction or description of specified sexual activities or specified anatomical areas.
- (6) Adult Theater. The term "adult theater," as used in this Subsection, means a theater, concert hall, auditorium or similar establishment which, for any form of consideration, regularly features live performances which are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities.
 - (7) Escort. The term "escort" as used in this subsection, means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
 - (8) Escort Agency. The term "escort agency" as used in this subsection means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
 - (9) Modeling Studio. The term "modeling studio" as used in this subsection, means a business which provides, for pecuniary compensation, monetary or other consideration, hire or reward, figure models who, for the purposes of sexual stimulation of patrons, display specified anatomical areas to be observed, sketched, photographed, painted, sculpted or otherwise depicted by persons paying such consideration. Modeling studio does not include schools maintained pursuant to standards set by the State Board of Education. Modeling studio further does not include a studio or similar facility owned, operated, or maintained by an individual artist or group of artists, and which does not provide, permit, or make available specified sexual activities.
- (b) Distinguished or Characterized by an Emphasis Upon. As used in this subsection, the term "distinguished or characterized by an emphasis upon" shall mean and refer to the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or predominant character and theme are the depiction of the enumerated sexual activities or anatomical areas.
 - (c) Nudity or a State of Nudity. The term "nudity or a state of nudity" as used in this subsection, means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the areola or nipple, or the showing of the covered male genitals in a discernible turgid state.
 - (d) Regularly Features. The term "regularly features" with respect to an adult motion picture theater, theater or adult cabaret means a regular and substantial course of conduct. The fact that live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities occurs on two (2) or more occasions within a thirty (30) day period, three (3) or more occasions within a sixty (60) day period, or four (4) or more occasions within a one hundred and eighty (180) day period, shall to the extent permitted by law be deemed to be a regular and substantial course of conduct.
 - (e) School. The term "school" as used in this subsection is an institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This definition includes kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does

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not include a vocational or professional institution of higher education, including a community or junior college, college, or university. The term "school" as used in this subsection also means day care center or facilities.

- (f) Seminude. The term "seminude" as used in this subsection, means a state of dress in which clothing covers no more than the genitals, pubic region, and areolas of the female breast, as well as portions of the body covered by supporting straps or devices.
- (g) Specified Anatomical Areas. The term "specified Anatomical Areas" as used in this subsection, means and includes any of the following:
 - 1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breast below a point immediately above the top of the areola; or
 - 2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
 - 3. Any device, costume or covering that simulates any of the body parts included in subdivisions 1 or 2 above.
- (h) Specified Sexual Activities means and includes any of the following:
 - 1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
 - 2. Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
 - 3. Masturbation, actual or simulated;
 - 4. Human genitals in a state of sexual stimulation, arousal or tumescence; or
 - 5. Excretory functions as part of or in connection with any of the activities set forth in 1 through 4 of this subsection.
- (i) Establishment of an Adult Business. As used in this subsection, to "establish" an Adult Business shall mean and include any of the following:
 - 1. The opening or commencement of any Adult Business as a new business;
 - 2. The conversion of an existing business, whether or not an Adult Business, to any Adult Business defined herein;
 - 3. The addition of any of the Adult Businesses defined herein to any other existing Adult Business; or
 - 4. The relocation of any such Adult Business.

54.18-3 Location and Distance Regulations.

- (a) Adult Businesses shall only be allowed in H-S (Highway Service), M1 (Light Manufacturing) and M-2 (Manufacturing) districts.
- (b) No Adult Business shall be allowed:

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1. Within 1,000 feet of any school, public park or recreation area, residential district, mobile home park or MHP District, church or religious institution;
 2. Within 500 feet of any other Adult Business premises.
- (c) Any Adult Business lawfully established and lawfully operating under the Milpitas Municipal Code is not in violation of these regulations by the subsequent establishment of a school, public park or recreation area, residential district, or church or religious institution within the respective distances specified above for each type of use. This provision applies only to the renewal of an Adult Business permit and does not apply when an application for an Adult Business permit is submitted after such permit has been revoked.
- (d) Distance between any two (2) Adult Business premises shall be measured in a straight line, without regard to intervening structures or objects, from the nearest entrance of an adult business premises to the nearest entrance of the second adult business premises. The distance between any Adult Business premises and any school, public park or recreation area, residential district, church or religious institution shall also be measured in a straight line, without regard to intervening structures or objects, from the nearest entrance of the Adult Business premises to the nearest property line of a school, public park or recreation area, residential zone, or church or religious institution. (Ord. 38.711 (part), 8/20/96)

10-54.19 Condominium Conversions

- 54.19-1 Purpose. The City of Milpitas is concerned with maintaining an adequate supply of housing for its citizens including rental housing. The adopted Housing Element of the Milpitas General Plan contains the following goal statements, pertinent to this matter:
- (a) To encourage the provision of a variety of individual choice of tenure, housing type, and location.
 - (b) Within our ability, to provide opportunities for Milpitas citizens to meet their housing needs in the housing market.
 - (c) To encourage the cooperation within the housing market so that suppliers and consumers can function more effectively, consistent with community growth goals.
 - (d) That zoning is to be used in ways which will encourage variety and mix in housing types and provide adequate sites for housing persons of all races, ages, ethnic groups, and income levels in Milpitas. Housing is considered a basic necessity and any scarcity within the community area has both a direct and indirect adverse impact on public safety, health and welfare (including but not limited to, health and safety problems relating to the quality of housing). In times of low vacancy rate and high housing cost many people cannot afford to buy homes within the community or its nearby market area and are forced to rent housing in apartments or other multiple dwellings. The unregulated conversion of rental apartment units to condominiums ownership may aggravate such a serious situation and force citizens to move out of the community.
- 54.19-2 Declaration of Housing Shortage. When the number of vacant apartments being offered for rent or lease in the City is equal to or less than six (6) percent of the total number of such dwelling units offered for and under rental or lease agreement in the City, a housing shortage exists which is inconsistent with the purposes of this chapter and with the declared goals of the City relating to its Housing Element of its adopted General Plan.

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- 54.19-3 Determination of Vacancy Rate and Surplus. Whenever an application for a condominium conversion is filed, the Planning Division shall conduct a vacancy rate survey of the existing rental apartment dwelling units in the City. This survey shall be completed within forty-five (45) days from the date the application for condominium conversion is deemed complete.
- 54.19-4 Surplus Required for Conversion Application. An application for condominium conversion of existing multiple family rental housing units to residential condominium ownership shall not be approved unless there is a vacancy surplus of existing apartments which equals six (6%) percent or greater of the total number of such units, within the City, as of the most recent determination made pursuant to Section 7.14-3; and if all of the adult tenants lawfully in possession of two-thirds of the units indicate their desire to convert such project to condominium ownership, in writing, to the City. In no event shall a number of lots, parcels, units, or rights of exclusive occupancy proposed exceed the vacancy surplus by forty (40) percent. Nothing herein contained shall be construed to prevent the payment of any consideration by landlord to tenant, provided however, consent obtained by payment to a tenant shall not be considered by the Council to be a free and willing consent unless payment of the same consideration is made to all tenants regardless of consent.
- 54.19-5 Development Standards. The following standards are required for any Residential Condominium Conversion development.
- (a) Off-Street Parking: Conformance to the current off-street parking standards as contained in Section 7, "R3" Multi-Family District.
 - (b) Landscape and Open Space: Conformance to the current landscape and open space requirements as contained in Section 7, "R3" Multi-Family District.
 - (c) Housing and Fire: Conformance to the current Housing codes and Fire Regulations of the City of Milpitas.
 - (d) Meters and Control Valves: The consumption of gas and electricity within each unit shall be separately metered so that the unit owner can be separately billed for each utility. A water shut-off valve shall be provided for each unit or for each plumbing fixture.
 - (e) Overcurrent Protection: Each unit shall have its own panel board for all electrical circuits which serve the unit.
 - (f) Impact Sound Insulation: Wall and floor-ceiling assemblies shall conform to the sound installation performance criteria promulgated in Title 25, California Administrative Code, Section 1092, or its successor, and may be only replaced by another floor covering that provides the same or greater insulation.
- 54.19-6 Prohibition of Discrimination Against Prospective Buyers with Children. In no case shall a project which can reasonably accommodate children, as determined by the Planning Commission, limit initial sales to households or individuals without children.
- 54.19-7 Protection of Tenant Rights. Approval of a Conditional Use Permit for Condominium Conversion is subject to the City Council finding that the requirements of Section 66427.1(a) and (b) of the California Subdivision Map Act have been completed in accordance with State Law. Said Sections deal with:
- (a) Notice to tenant(s) of intention to convert; and
 - (b) Tenant(s) exclusive right to purchase their unit(s) upon the same terms and conditions that such unit(s) will be initially offered to the general public or terms more favorable to the tenant(s). (Ord. 38.761 (part), 5/20/03)

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10-54.20 Density Bonus for Affordable Housing Developments (entire section)

- 54.20-1 Purpose. The Density Bonus regulations are intended to encourage the provision of affordable housing in the community by granting density bonuses and other incentives to developers of residential projects that construct or otherwise provide for housing units that will be available for purchase or rent by senior citizens and lower income persons and households. The Density Bonus provisions are applicable in all zoning districts that allow residential development. This Ordinance is adopted in conformance with Chapter 4.3 of Title 7 of the Government Code, Section 65915, et seq.
- 54.20-2 Density Bonus Authorization. The City Council, after recommendation by the Planning Commission, may authorize an increase in allowable dwelling unit density for those residential projects that assist in meeting the lower income or senior housing needs of the community. When the Planning Commission and Council make a finding that a developer has complied with the requirements of Subsections 54.20-3 and 54.20-12, the City Council, after recommendation by the Planning Commission, may award a density increase, with the approval of the project. The applicant shall submit site and architectural plans for the project (per Section 42.04 of this Chapter) for review and approval in conjunction with the Planning Commission and City Council consideration of the Density Bonus application. The Planning Commission shall hold at least one public hearing, prior to making its recommendation to the City Council. Upon receipt of the recommendation of the Planning Commission, the City Council shall hold at least one public hearing, prior to any final action on an application. Notice of hearing shall be given in accordance with the provisions of Section 64 of this Chapter.
- 54.20-3 Density Bonus Conditions.
- A. When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the city shall provide the applicant incentives or concessions for the production of housing units and childcare facilities as prescribed in this section.
 - B. The city shall grant a density bonus and incentives or concessions described in Section 54.20-4 when the applicant for the housing development seeks and agrees to construct at least any one of the following criteria:
 - (1) Ten percent (10%) of the total units in a housing development for lower income households as defined in Section 50079.5 of the State Health and Safety Code.
 - (2) Five percent (5%) of the total units in a housing development for very low-income households as defined in Section 5015 of the State Health and Safety Code.
 - (3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the State Civil Code.
 - (4) Ten percent (10%) of the total dwelling units in a condominium project as defined in subdivision (f) or in a planned development project as defined in subdivision (k) of Section 1351 of the State Civil Code for persons and families of moderate income, as defined in Section 50093 of the State Health and Safety Code.
 - C. If the housing development meets criteria (1), (2), or (3) above, the density bonus shall be an increase of 20% over the maximum allowable residential density under the general plan and zoning ordinance. If the housing development meets criterion (4) above, the density bonus shall be an increase of 5% over the maximum allowable residential density under the general plan and zoning ordinance.

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- D. If at least one of the above criteria is met, an additional density bonus shall be granted as per the following sliding scale:
- (1) An additional 2.5% density bonus for each increase of 1% Very Low-Income units above the initial 5% threshold;
 - (2) A density increase of 1.5% for each 1% increase in Lower-Income units above the initial 10% threshold; and
 - (3) A 1% density increase for each 1% increase in Moderate-Income condominium or planned development units above the initial 10% threshold.
- E. The total of the density bonuses pursuant to paragraphs C and D above shall not exceed 35% for the proposed housing development.

54.20-4 Concessions and Incentives. Any project that meets the minimum criteria specified in Section 54.20-3(B) for a density bonus is entitled to concessions depending upon the amount of affordable housing provided as follows:

- (1) For projects that provide either 5% of the units affordable to Very Low-Income households, 10% of the units affordable to Low-Income households, or 10% Moderate-Income condominiums, the developer is entitled to one concession;
- (2) When the number of affordable units is increased to 10% Very Low-Income units, 20% Lower-Income units, or 20% Moderate-Income condominiums, the developer is entitled to two concessions; and
- (3) When the number of affordable units is increased to 15% Very Low-Income, 30% Low-Income, or 30% Moderate-Income household condominiums, the number of concessions is increased to three concessions.

Requested concessions shall be approved unless the City makes either of the following findings in writing and based on substantial evidence.

- a. The concession is not required in order to provide for affordable housing costs as defined in State Health and Safety § 50052.2, or for rents for the affordable units pursuant to Section 54.20-13.
- b. The concession would have a specific adverse impact as defined in State Government Code § 65589.5(d)(2) upon the public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

54.20-5 Land Donation. A density bonus of 15% over the maximum allowable residential density under the general plan and zoning ordinance is available to projects that donate land for residential use. The land must satisfy all of the following requirements prior to granting the density bonus:

- (1) Have the appropriate general plan designation and zoning to permit construction of units affordable to Very Low-Income households in an amount not less than 10% of the units in the residential development;

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- (2) Be at least one acre in size or of sufficient size to permit development of at least 40 units; and
- (3) Be served by adequate public facilities and infrastructure.

A density bonus based on land donation may be combined with the density bonus in Section 54.20-3; however, the maximum combined density bonus that can be granted is 35%. When the land is transferred, it must have all the permits and approvals necessary for the development of the Very Low-Income housing units. The land transfer shall occur prior to or concurrent with approval of the final subdivision map, parcel map, or residential development application. The land and affordable units must be subject to deed restrictions ensuring continued affordability. The city may require that the land be transferred to a developer instead of the city.

54.20-6 Parking Standards. If a project qualifies for a density bonus, the developer may request and the City must grant the following parking standards for the entire development project:

- (1) Zero to one bedroom—one on-site parking space;
- (2) Two to three bedrooms—two on-site parking spaces;
- (3) Four and more bedrooms—two and one-half on-site parking spaces.

These numbers are inclusive of guest parking and handicapped parking and may be tandem or uncovered but cannot be on street. The parking standards may be requested even if no density bonus is requested.

54.20-7 Waivers and Modifications of Development Standards. The City may not impose a development standard that makes it infeasible to construct the housing development with the proposed density bonus. In addition to requesting incentives and concessions, applicants may request the waiver of development standards and shall show that the waiver is necessary to make the housing units economically feasible.

For the purpose of this section, development standards are defined as site or construction conditions that apply to a residential development pursuant to any local policy, resolution or regulation. The requested waiver shall be approved unless the City makes either of the findings set forth in Section 54.20-4.

54.20-8 Determination of Maximum Allowable Densities. The maximum allowable density per gross acre prior to applying the density bonus shall be as specified in the Milpitas Zoning Ordinance for the applicable zoning or overlay district or PUD process, as listed in Sections 8.05-2 (R4 district), 22.04-7 (TC district), 38.05-4 (MXD district), 43.05 (TOD overlay district), and 54.07-6(c) (PUD process for R3 district) of this Chapter, and in City Council Resolution No. 3489 as amended from time to time (R1, R2 and R3 districts).

54.20-9 Applicability. The density bonus referred to in this Section shall apply to housing developments consisting of five or more dwelling units.

54.20-10 Unit Type and Location. All affordable units shall be reasonably dispersed throughout the project, shall contain on average the same number of bedrooms as the nonaffordable units in the project, and shall be comparable with the nonaffordable units in terms of appearance, materials and finished quality. The Planning Commission may recommend to the City Council modifying the requirements as to unit size or type, if it is found that such a modification would better serve the affordable housing need of Milpitas.

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- 54.20-11 Agreement. Prior to final building inspection and occupancy for a project containing affordable units, the applicant shall execute and record at the Santa Clara County Recorder's Office the City's Agreement Imposing Restrictions on Real Property, which Agreement shall explain the affordability requirements. The agreement shall be approved by the Milpitas City Attorney prior to recordation.
- 54.20-12 Retaining Affordability. A developer shall agree to, and the City shall insure continued affordability of, all lower- or very low-income density bonus units for thirty (30) years or a longer period of time, if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. If the City does not grant at least one (1) additional concession or incentive, in addition to a density bonus as specified in Subsection 54.20-3, the developer shall agree to, and the City shall ensure continued affordability for a minimum of ten (10) years of all lower or very low-income housing units receiving a density bonus.
- 54.20-13 Affordable Rents. Those units targeted for lower-income households, as defined in Section 50079.5 of the Health and Safety Code shall be affordable at a rent that does not exceed thirty (30%) of sixty (60%) percent of the Santa Clara County median income. Those units targeted for very low-income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty (30%) of fifty (50%) percent of County median income.
- 54.20-14 Relation to statute. Density bonus requirements not specified in these regulations shall be governed by the State Density Bonus Law, Government Code section 65915, et seq. (Ord. 38.767 (part), 2/7/06; Ord. 38.761 (part), 5/20/03)

10-54.21 Accessory Uses

In addition to those accessory uses specifically listed in the zoning district sections of this chapter, the following accessory uses shall be allowed:

- 54.21-1 Massage Services
Massage services may be allowed as an accessory use to any permitted or conditionally permitted medical office, medical clinic, chiropractor practice, acupuncture practice, physical therapist, fitness and athletic facility, health care facilities (such as hospitals, nursing homes and sanitariums), and accredited school, college, and university. Massage services, limited to massage of the head, neck and shoulders, may be allowed as an accessory use to any permitted or conditionally permitted beauty salon, barbershop, and healing art practices. This section shall not exempt any person or business from complying with all the provisions of Title III, Chapter 6.

10-54.22 Second family unit

Any application for second family unit that meets the following criteria shall be approved ministerially without discretionary review or public hearing. One second family unit may be allowed per lot, subject to all of the following criteria:

1. The lot is residentially zoned and contains only one (1) existing, legal single-family dwelling unit. A maximum of one (1) second family unit shall be permitted on any lot.
2. The second family unit shall not be sold to a different owner than the main residence, and may be rented.
3. If attached to the main dwelling, the second family unit shall comply with the same building height, setback, rear yard coverage and lot coverage requirements and limitations as the main

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dwelling.

4. An attached second family unit shall be located within the living area of the existing dwelling. "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage.
5. The increased floor area of an attached second family unit in a non-Hillside combining district shall not exceed thirty (30%) percent of the existing living area, not to exceed four hundred seventy-five (475) square feet in size.
6. A detached second family unit in a non-Hillside combining district shall be located on the rear half of the lot, shall not exceed fifteen (15) feet in height, and shall be no closer than six (6) feet, and no farther than one hundred (100) feet, from the main dwelling. It shall conform to the same yard setback and rear yard coverage regulations applicable to accessory buildings and structures, as per Subsection 54.09 of this Chapter.
7. The increased floor area of an attached second family unit in the Hillside combining district shall not exceed thirty (30%) percent of the existing living area, not to exceed one thousand two hundred (1,200) square feet in size. However, in no case shall the overall building size exceed that allowed in Section 45 of this Chapter.
8. A detached second family unit in the Hillside combining district shall not exceed seventeen (17) feet and one (1) story from finished grade to the highest ridgeline of the building, and it shall not exceed one thousand two hundred (1,200) square feet in size. It shall be located on the rear half of the lot, and shall be no closer than six (6) feet, and no farther than one hundred (100) feet, from the main dwelling, shall not cover more than thirty (30%) percent of the required rear yard, shall conform to the side yard setback requirements as the main dwelling, and shall count towards the maximum allowed impervious surface coverage for the parcel on which it is located.
9. A second family unit which is an efficiency unit, as defined Section 17958.1 of the State Health and Safety Code, shall not contain less than one hundred fifty (150) square feet.
10. The second family unit shall not have more than one (1) bedroom or more than one (1) kitchen.
11. The second family unit shall provide one (1) more off-street parking space than required for a single-family dwelling. This additional parking space may be tandem and within the required front yard so long as it is located on the driveway serving the main dwelling. Front yard coverage requirements in the R1 zoning district shall apply. No parking shall be permitted on the street side yard of a corner lot. Covered parking shall comply with the requirements in Subsection 54.09 of this Chapter. Parking space shall measure ten (10) feet by twenty (20) feet, and be improved as provided in Subsection 54.03 of this Chapter.
12. Local building codes shall apply to additions to existing single-family dwellings, as well as to detached second family units, as appropriate.
13. A permanent foundation shall be required for all second family units.
14. One (1) of the two (2) units shall be occupied by the owner of the property at the time of application submittal.
15. Any construction shall conform to site and architectural plan review, fees, charges and other zoning requirements applicable to residential construction in the zone in which the property is located.
16. The second family unit shall be designed to be architecturally compatible and visually integrated with the main dwelling. It shall employ design, materials and colors matching those of the main

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dwelling.

17. Second family units shall not be allowed where roadways, public utilities and services are inadequate, as determined by City staff, based on the City's adopted sewer and water master plans. If City staff believe that an additional residential unit will impact traffic flow along the residential street on which the unit is proposed, the applicant shall provide a traffic impact analysis for staff review. The applicant shall comply with the recommendations contained in the traffic impact analysis.

A second family unit which conforms to the requirements of this section shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second family units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth. (Ord. 38.762 §§ 2, 3, 8/5/03; Ord. 38.761 (part), 5/20/03)

10-54.23 Trash Enclosures, Equipment and their Screening

A. Purpose and intent. The location of trash enclosures and mechanical and other similar types of equipment on private property can significantly affect the visual quality of a project. Particularly important is the view of projects and their related equipment and services from adjacent streets. The requirements of this subsection are meant to address the negative visual impacts resulting from the location of trash enclosures and mechanical equipment on private property, while recognizing that they are necessary aspects of development.

B. Trash Enclosures. Trash enclosures which enclose dumpsters shall be of sufficient size to accommodate the trash and recyclable materials generated by the uses on the parcel(s) being served. The following standards shall apply:

1. When located on the street side of corner lots, the enclosure must be set back at least as far as the main building.
2. Colors and materials of the enclosure shall complement the building and shall consist of masonry wall such as split face block or masonry finished to match the building or other solid screening material utilizing colors and materials which complement the building.
3. Gates shall be solid metal painted to match the enclosure.
4. The enclosure shall screen the dumpsters, trash compactors or equipment.
5. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Title X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure.
6. When feasible, sides and rear of the enclosure shall be landscaped.
7. On-site parking shall meet ordinance requirements, except as provided in Section 54.15-3 of this Chapter.
8. Trash enclosures shall be located as far away as possible from Residential or Mobile Home Park combining districts or uses.
9. Follow the City's Engineering standards for trash enclosures.

C. Ground and roof mounted equipment.

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1. Ground mounted equipment. Ground-mounted equipment, such as air conditioning units, landscape irrigation's controls, transformers, fuse boxes, telephone equipment, gas meters, water meters, stand pipes, and fire sprinkler connectors, and other exterior equipment shall comply with the following:

a. Location. Outside the front yard setback and, when no front yard setback is required outside the area between the street and the building closest to the street and screened from public view as provided for in (b) below.

Where it is infeasible to locate ground-mounted equipment outside the front yard, ground-mounted equipment located in the front yard shall be screened from public view as provided for in (b) below.

b. Screening. Equipment shall be completely screened from view by dense shrubbery, masonry wall such as split face block or masonry finished to match the building, or other solid screening material utilizing colors and materials which complement the building. Chain link fencing with or without slats may not be approved in the Mixed Use district, but may be approved in the Commercial and Industrial districts if it is an expansion of an existing approved chain link enclosure and it is not visible from public viewing points with a Minor Site Development Permit.

c. On-site parking shall meet minimum standards.

d. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Title X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate a tank, transformer or equipment.

e. Height of equipment.

i. In Commercial and Industrial districts, the installed height of the transformer, tank or equipment shall not exceed the height of the building. Equipment exceeding building height may be approved if it is proposed at the rear of the building, and the applicant can demonstrate with line-of-sight drawings that the equipment will not be seen from public viewing points.

ii. In the Mixed Use district, the installed height shall not exceed six (6) feet.

iii. If adjacent to a Residential or Mobile Home Park combining district or use, installed height of the equipment shall not exceed six (6) feet.

f. Generators may not be approved if located adjacent to a Residential or Mobile Home Park combining district or use.

D. Roof top equipment.

All roof top equipment including, but not limited to air conditioning units, and mechanical equipment shall be shielded and architecturally screened from view from on-site parking areas, adjacent public streets and adjacent residentially zoned property as follows:

1. All roof top equipment shall be located in an area which is screened by a screening wall, parapet wall or equipment well. The height of such equipment, mounted in the well, shall not exceed the height of the architectural element used to screen the equipment. Viewsheds and sightlines shall be taken into consideration and the equipment should be placed in a location, which effects maximum screening. The Planning Division may also require additional screening devices in conjunction with tenant improvements as deemed necessary where the screening wall, parapet wall or equipment well does not provide adequate screening from the above-referred views.

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Exceptions: Roof top equipment which exceeds the height of existing roof screens, if line-of-sight drawings demonstrate that the equipment will be visible from surrounding "worst case" view points from the above referred views shall only be allowed through the approval of a Site Development Permit.

2. Roof screens shall be sheathed in a matching or complementary material and color to the exterior building and may include metal panels, parapet walls or screens constructed of exterior grade plywood or other durable materials.

10-54.24 Lighting

Exterior lighting shall be shielded or recessed so that direct glare and reflections are contained within the boundaries of the parcel, and shall be directed downward and away from adjoining properties and public rights-of-way. Fixtures shall be appropriate in terms of height, style, design, scale and wattage to the use of the property. Fixtures shall be spaced appropriately to maximize pedestrian safety.

10-54.25 Temporary Contractor's Office

Temporary contractor's office trailers and construction-related storage trailers in undeveloped and developed sections of the City shall comply with the following:

1. Location. Trailers shall not obstruct driveways or traffic access aisles.
2. Other standards.
 - a. The applicant shall demonstrate that parking will not be negatively impacted.
 - b. The colors and materials shall complement the main building, if one exists.
 - c. Any exterior noise-generating equipment associated with trailers shall not be within 300 feet of a residential or mobile home park overlay district or use.
 - d. Trailers shall be removed upon cessation of permitted construction activity.

Exceptions. Any deviation from standards 1 and 2 above shall only be allowed through the approval of a Minor Site Development Permit.

10-54.26 Model Home Complexes and Sales Offices

Model home complexes and sales offices shall be conditionally allowed by the Planning Division solely for the first sale of homes within a recorded tract or condominium subdivision, subject to the following regulations:

1. Location. The model home complex and/or sales office shall be located on the same or adjacent premises as the subdivision or building project.
2. Duration. The model home complex and/or sales office shall be removed within three months of closing the sale of the final unit in the project.
3. Review Requirements. Model home complexes and/or sales offices for the sale of homes in any subdivision containing five (5) or more units require review by the Planning Division.
4. Use. The sales office shall be used only for transactions involving the sale, rent or lease of lots or units within the tract or condominium subdivision.

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5. Other Issues for Consideration. The Planning Division shall consider the hours of operation, lighting, landscaping, signage, and any other factors that may affect the model home complexes maintenance and impacts on the surrounding area and shall condition the project accordingly. Please refer to subsection 5 a, Conditions, of this section.
 - a. Conditions. In approving the model home complex or sales office, the Planning Division may impose conditions deemed necessary to ensure that the permit will be in accordance with the standards prescribed in this section. These conditions may include, but are not limited to:
 - i. Regulation of operating hours and days;
 - ii. Provision for temporary parking facilities, including vehicular ingress and egress;
 - iii. Regulation of nuisance factors such as, but not limited to, prevention of glare or direct illumination on adjacent properties, noise, vibration, smoke, dust, dirt, odors, gases and heat;
 - iv. Regulation of temporary structures and facilities, including placement, height and size, location of equipment and open spaces, including buffer areas and other yards;
 - v. Provision for sanitary and medical facilities;
 - vi. Provision for solid, hazardous and toxic waste collection and disposal;
 - vii. Provision for security and safety measures;
 - viii. Regulation of signs. In addition no sales sign shall be permitted within six hundred (600) feet of a Santa Clara County Expressway;
 - ix. Submission of a performance bond or other surety devices, satisfactory to the Planning Division, to ensure that any temporary facilities or structures used will be removed from the site within a reasonable time following the event and that the property will be restored to its former condition;
 - x. Any other conditions which will ensure the operation of the proposed temporary use in an orderly and efficient manner and in accordance with the intent and purpose of this section.
6. Other Requirements. Each site occupied by a temporary use shall be left free of debris, litter, or any other evidence of the temporary use upon completion or removal of the use, and shall thereafter be used, pursuant to the provisions of this Zoning Ordinance.

Attachment C

Exhibit 3, Changes to Reviewing Wireless Telecommunications Facilities

Changes To Reviewing Wireless Telecommunications Facilities

SECTION 57 CONDITIONAL USES PERMITTED BY COMMISSION

- 10-57.01 Considerations, Finding and Determination
- 10-57.02 Additional Uses Permitted
- 10-57.03 Conditional Use--Procedure
- 10-57.04 Consideration of Use Permit Pending Zoning Amendment

10-57.01 Considerations, Finding and Determination

- 57.01(a) Conditional Use Permit. A permit issued by the city to allow a particular land use which would not otherwise be permitted as a matter of right in a zoning district. A Conditional Use Permit may only be issued for those uses listed as Conditionally Permitted in each Zoning District (and the uses listed as conditionally permitted within this Chapter). Conditional Use Permits apply to the land or tenant space and not the permit holder.

- 57.01(b) In reviewing conditional use permit applications, the Planning Commission shall be empowered to approve, conditionally approve or disapprove said conditional use permit application based on normal planning considerations including, but not limited to, suitability of site; conformance to the Master Plan; harmony with the various elements or objectives of the Master Plan; the most appropriate use of the land throughout the City; stabilization and conservation of the value of property; traffic flow; circulation; safety for vehicular and pedestrian traffic; imposition of noises, odors and health and safety hazards upon nearby residential area; provision of adequate light, air and reasonable access; securing safety from fire and other dangers; prevent overcrowding of land; facilitating adequate provision for transportation and in general, to promote the public health, safety, peace, morals, comfort and welfare; prevention of neighborhood deterioration and blight; the objectives of zoning and planning in the community and the effect upon the City's general welfare of this proposed use in relation to surrounding uses and the community. Such conditional uses include but are not limited to the following:

57.01-1

- (1) Animal hospitals.
- (2) Auto wrecking or salvage yards.
- (3) Automobile service stations and auto car washes.
- (4) Churches.
- (5) Clinics.
- (6) Community centers and private clubs or lodges.
- (6.1) Condominiums and condominium conversions.
- (7) Golf courses.
- (8) Mobile home parks.
- (9) Mortuaries and funeral homes.
- (10) Parks and playgrounds.

Changes To Reviewing Wireless Telecommunications Facilities

(11) Public camps.

(12) Schools, elementary, high and junior college.

(13) Vehicle-oriented window service facility.

(14) Moved or relocated buildings prior to issuance of a moving permit from the Chief Building Inspector.

57.01-2 Deleted by Ord. 38.662 (A) (part).

57.01-3 Deleted by Ord. 38.662 (A) (part).
(Ord. 38.706 (part), 7/16/96; Ord. 38.491, 8/21/79; Ord. 38.485, 7/3/79; Ord. 38.395, 9/20/77;
Ord. 38.180, 6/17/69; Ord. 38 (part), 3/15/55)

10-57.02 Additional Uses Permitted

The Commission may, after a public hearing, permit the following uses in districts from which they are prohibited by this Chapter where such uses are deemed essential or desirable to the public convenience or welfare and are in harmony with the various elements or objectives of the Comprehensive Master Plan. However, any of the following uses which are marked with an asterisk shall not be allowed in the designated Hillside Area.

57.02-1(*) Airport or aircraft landing field.

57.02-1.1 Helicopter pads for medical evacuation purposes.

57.02-2(*) Cemetery.

57.02-3(*) Columbarium, crematory or mausoleum.

57.02-4(*) Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto.

57.02-5 Educational institution.

57.02-6 Government enterprise (Federal, State and Local).

57.02-7 Hospital or sanitarium.

57.02-8 Library or museum, public.

57.02-9 Nursery or greenhouse.

57.02-10 Park, playground, or recreational or community center.

57.02-11 Philanthropic institution.

57.02-11.1(*) Correctional facility.

57.02-12 Private club.

57.02-12.1(*) Fraternity or sorority house.

Changes To Reviewing Wireless Telecommunications Facilities

57.02-13 Public utility and public service use or structure.

57.02-14 Radio or television transmitter.

57.02-15 Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.

57.02-15.1 Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

A. Exempt Facilities.

Any ~~facility facilities~~ exempt from local regulation as per ~~the FCC regulations~~ and ~~those the non-commercial~~ wireless communication facilities ~~listed below~~ shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

A1. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:

1a. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and

2b. All required building permits are obtained.

B2. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:

1a. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and

2b. All required building permits shall be obtained.

C3. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

4. Stealth wireless communication facilities. The Planning Division shall review a stealth antenna installation if the project meets the definition of a stealth wireless communications facility within Section 10-2, Definitions, of this title.

57.02-16 Without limitation to the generality of the provisions of Section XI-10-57 et seq., conditional use may also be granted to accomplish any of the purposes set forth in Subsection XI-10-

Changes To Reviewing Wireless Telecommunications Facilities

57.02.

- 57.02-17 Permit in the R Districts, public parking areas or storage garages adjacent to any existing or proposed use in the multiple dwelling, commercial or industrial district.
- 57.02-18 Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.
- 57.02-19 Permit the addition or enlargement of a non-conforming building or structure in any district other than R1, R2 and R1-H, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located. In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.
- 57.02-20 Permit in districts limiting the height to two and one-half (2 1/2) stories, thirty-five (35) feet, or three (3) stories, forty-five (45) feet, schools, hospitals, sanitariums, institutions, churches and other similar uses allowed under the use regulations of this Chapter, to be erected to a height not exceeding six (6) stories or seventy-five (75) feet, provided, that the front and side yard requirements for such buildings in the "R3" District are complied with.
- 57.02-21 Permit the use of a nonconforming building, or portion thereof which has been vacant or unoccupied for a continuous period of one year, but not more than three (3) years, for a use other than that permitted in the district in which such nonconforming building is located.
- 57.02-22 Permit a less restricted use in a more restricted district as follows: any "C" District use in any other "C" District and "M1" use in the "C2" Districts; any "M2" use in an "M1" District; provided such use, due to its limited nature, modern devices, or building design, will be no more objectionable than the uses permitted in such district.
- 57.02-24 Permit temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.
- 57.02-25 Permit the reduction in the lot width requirements.
- 57.02-26 Permit agricultural uses including ranch, farm dwellings and quarters, accommodations or areas for transient labor, such as labor cabins or camps. (Ord. 38.760 (2, 3), 9/17/02; Ord. 38.676, 11/17/92; Ord. 38.633(A) (part), 3/15/88; Ord. 38.629(A) (part), 1987; Ord. 38.92, 12/6/66; Ord. 38 (part), 3/15/55)

10-57.03 Conditional Use--Procedure

Changes To Reviewing Wireless Telecommunications Facilities

- 57.03-1 Written application for the approval of uses referred to in Section 57 shall be filed in the office of the Planning Director upon forms prescribed for that purpose.
- 57.03-2 A fee shall be paid upon the filing of each application for a Use Permit in accord with a schedule adopted by Council Resolution.
- 57.03-3 The Planning Commission shall hold a public hearing on said application upon such notice as is required in Sections 64.01 and 64.02 of this Chapter.
- 57.03-4 After the conclusion of the hearing, the Planning Commission may approve the application, approve it subject to such conditions as the Planning Commission may impose or disapprove the application.
- (a) The Planning Commission may impose such conditions as it deems necessary to protect the best interests of the surrounding property, of the neighborhood, and as it deems in conformity with the requirements of the General Plan.
- 57.03-5 Approval may be granted by the Planning Commission, or by the City Council upon appeal or within the Hillside District, of a Use Permit application in accordance with this chapter if all of the following findings are made, based on the evidence in the public record:
- (a) The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare;
- (b) The proposed use is consistent with the Milpitas General Plan; and
- (c) The proposed use is consistent with the Milpitas Zoning Ordinance. (Ord. 38.706 (part), 7/16/96; Ord. 38.92, 12/6/66; Ord. 38 (part), 3/15/55)

10-57.04 Consideration of Use Permit Pending Zoning Amendment

Upon the close of a public hearing before the Planning Commission on the question of an amendment to this Chapter to change property from one (1) zone to another, and upon favorable report thereon by the Commission, the Commission may consider such matters and regulations as are set forth in Section XI-10-57. The Commission may conditionally impose such requirements and regulations upon the subject property and use as the Commission is authorized to impose by Section XI-10-57 and may conditionally approve Use Permits; said requirements and regulations shall be imposed and said approval shall be granted upon the express condition that said property shall be rezoned in accordance with the specific recommendation of the Planning Commission relating to zoning and shall not take effect unless and until said property is rezoned in accordance with specific recommendation of the Planning Commission and until the Ordinance amending this Chapter in accordance with the specific recommendation of the Planning Commission shall take effect. (Ord. 38.205, 10/20/70; Ord. 38 (part), 3/15/55)

Attachment C

Exhibit 4, Changes to Public Notification Requirements

Changes To Public Notification Requirements

SECTION 64 ~~DEVELOPMENT REVIEW PROCESS NOTICE AND APPEAL~~

- 10-64.01 Purpose and Intent~~Time~~
- 10-64.02 Authority for Land Use and Zoning Decisions~~Manner~~
- 10-64.03 Consideration of Concurrent Applications~~Appeals~~
- 10-64.04 Public Hearing ~~Expiration of Permit or Approvals~~
- 10-64.05 Appeals
- 10-64.06 Expiration of Permit or Approvals

10-64.01 Purpose and Intent

This chapter is intended to describe the general procedures for filing applications when required or permitted by this title.

10-64.02 Authority for Land Use and Zoning Decisions

Table 10-64.02 (Decision-Making Body and Role) identifies the city official or body responsible for reviewing and making decisions on each type of application, land use permit, and other entitlements required by this Zoning Ordinance.

**Table 10-64-02
Decision-Making Body and Role¹**

Type of Permit or Decision	Procedures are found in:	Planning Division	Planning Commission Subcommittee	Planning Commission	City Council
Land Use Permits and other Development Entitlements					
Conditional Use Permits	10-57			Decision	Appeal
Development Agreements				Recommend	Decision
Home Occupation Permits	10-54.08	Issuance			
Minor Site Development Permits	10-42		Decision		Appeal
Planned Unit Development	10-54.07			Recommend	Decision
Sign Review ²	30-7.01	Issuance			
Site Development Permits	10-42			Decision Recommend ³	Appeal Decision ³
Variances	10-58			Decision	Appeal
Zoning Ordinance Administration and Amendments					
General Plan Amendments				Recommend	Decision
Specific Plan Amendments				Recommend	Decision
Zoning Amendments	10-62			Recommend	Decision

1. "Recommend" means that the decision-making body makes a recommendation to a higher decision-making body; "issuance" means that the permit is a ministerial action that is issued by the decision-making body; "decision" means that the decision-making body makes the

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final decision on the matter; "appeal" means that the decision-making body may consider and decide upon appeals to the decision of an earlier decision-making body. Any decision by the Planning Commission may be appealed to the City Council as specified in Section 10-64.04, Appeals.

2. Signs meeting the minimum requirements of the signs regulations (Chapter 30) shall be reviewed by the Planning Division. Refer to Chapter 30 for specific requirements of signs that are reviewed by the Planning Commission requiring a Conditional Use Permit or Site Development Permit.
3. Refer to Section 10-45.09 regarding the process for projects within the "H" Hillside Overlay District.

10-64.03 Consideration of Concurrent Applications

A project that includes more than one application may be combined and processed concurrently, as long as all applicable processing requirements are satisfied. The purpose of allowing concurrent review is to consolidate final action on the project with the highest review authority responsible for making a decision on the applications for a project. The following shall apply to concurrently processed applications:

A. Public Hearing and Nonpublic Hearing Applications. When an application requiring a public hearing is combined with an application that does not require a public hearing, the combined applications shall require a public hearing.

B. City Council and/or Planning Commission as Highest Review Authority. When City Council and/or Planning Commission review is required for at least one (1) of the applications for a project, the final decision on all applications shall be made by the highest review authority.

When the City Council is the highest review authority for a project, all review by other bodies with approval authority over the applications shall be in the form of a recommendation to the City Council.

When the Planning Commission is the highest review authority for a project, all review by other bodies with approval authority over the applications shall be in the form of a recommendation to the Planning Commission.

C. Omitting Planning Commission Subcommittee Review. In order to eliminate redundant review and an unnecessary lengthening of the discretionary review process, it is appropriate to eliminate Planning Commission Subcommittee review of some applications. When combined applications are being processed for a project, and both Planning Commission and Planning Commission Subcommittee review are required, Planning Commission Subcommittee review shall be omitted and Planning Commission review substituted.

10-64.04 Public Hearing

10-64.04 A. Time

Time of Giving Notice. Whenever notice of hearing is required by this Chapter, it shall be given at least ten calendar days before the hearing. (Ord. 38.92, 12/6/66; Ord. 38 (part), 3/15/55)

10-64.02 B. Manner

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Manner of giving notice. Whenever notice of hearing is required by this Chapter for any of the following matters, unless otherwise provided by law:

Table 10-64.03
Public Hearing Requirements

Application¹	Required Radius	Number of Sets Stamped, Labeled Envelopes²	Number of Sets Mailing List	Community Meeting Required³
Conditional Use Permit	1000 feet	1	1	No
Development Agreements	300 feet	2	1	No
General Plan Amendment	1000 feet	3	1	Yes
Site Development Permit	300 feet	1	1	No
Specific Plan Amendment	300 feet	2	1	No
Variance	500 feet	1	1	No
Zoning Amendment	1000 feet	3	1	Yes

¹ Amendments to Conditional Use Permits, Development Agreements, Site Development Permits and Variances shall have the same requirements, unless otherwise noted.

² Projects requiring the processing of a number of applications should provide one (1) set of stamped, labeled envelopes for each review body plus one (1) mailing list for the project file.

³ A community meeting shall be held prior to the public hearing.

1. For pre-zoning of unincorporated land; an amendment to the provisions of this Chapter (including Changes of Zone); an application for a variance or a conditional use permit or new "S" Zone and amendments pursuant to Section 42.10 projects requiring a public hearing and/or a community meeting identified within Table 64.02-1, or for revocation, suspension or modification of the same, or an appeal from the action taken thereon, notice shall be given as per State of California Government Code Section 65091 and by the following:
 - a. Publishing the notice in a newspaper of general circulation within the City. In addition, for General Plan amendments, Zoning amendments, Conditional Use Permits and Variances, a second notice being a ¼ page advertisement shall be published in a newspaper of general circulation.
 - b. Posting one (1) sign notice per 1,000 lineal feet of property street frontage in a conspicuous place on the affected property visible from the street frontage. If the affected property has no street frontage, no less than one (1) sign notice shall be required to be posted.
 - c. Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code to all property owners and residential renters as specified in Table 10-64.02-1. Major environmental reviews (Environmental Impact Reports) shall require notice to all property owners and residential renters within one-thousand (1,000) feet of the subject parcel's property boundaries. ~~within three hundred (300) feet of the subject parcel's property boundaries.~~ The Planning ~~Division staff~~ Director shall have the discretion to require a 1,000 feet notification requirement for public hearings, if the project is deemed to be potentially controversial.
 - d. Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code, to the owner of the subject real estate property and the applicant, respondent or appellant.

Changes To Public Notification Requirements

~~e) Deleted.~~

~~f.e.~~ Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code to the Milpitas Unified School District and, in addition, to any other local agency expected to provide essential facilities and services to the project and whose ability to provide said facilities and services may be significantly affected.

~~64.02-22.~~ Contents of Notice of Public Hearing. All notices shall include the date, time and place of any public hearing, the identity of the hearing body and a general explanation of the matter to be considered and a general description, by text or diagram, of the location of the real property, if any, that is the subject of the hearing.

~~64.02-3 Deleted by Ord. 38.513.~~

~~64.02-43.~~ For cases not otherwise provided for herein: (and, except where otherwise required by the law of the State of California) notice shall be given by publication or posting or mailing, in the discretion of the City Manager, and in accordance with the provisions of Section I-20-2.02 of the Milpitas Municipal Code. (Ord. 38.763 (18—19), 4/20/04; Ord. 38.706 (part), 7/16/96; Ord. 38.600, 3/4/86; Ord. 38.579, 4/16/85; Ord. 38 (part), 3/15/55)

10-64.035 Appeals

64.03-1 Except as otherwise provided in Section 62.03-4(a) of this Chapter, any person aggrieved by any decision of any officer, board, commission or department of the City of Milpitas under the provisions of this Chapter may appeal said decision to the City Council in accordance with the provisions of Section 5, Chapter 20, Title I of the Milpitas Municipal Code.

64.03-2 While appeals hereunder shall be heard at general or special meetings of the City Council, no notice thereof need be given (other than as required by said Section 5, Chapter 20, Title I of the Milpitas Municipal Code). Provided, however, that if the appeal is taken from action on an application for a variance, conditional use or other permit, notice of the hearing of the appeal shall also be given in accordance with the provisions of Subsection 64.01-1 and 64.02-2 of this Chapter.

64.03-3 Exception to Appeal Procedure: Provided, however, that the time for any appeal from action of the Planning Commission in granting, granting subject to condition or denying ~~an Site Development Permit 'S' Zone~~ pending a Zoning Amendment (pursuant to the provisions of Section XI-10-42.03K2) or in granting, granting subject to condition or denying a ~~Conditional~~ Use Permit pending a zoning amendment (pursuant to the provisions of Section XI-10-57.04) shall be extended so that said appeal may be taken at any time within ten (10) days from the date that said City Council shall give second reading to the Zoning Ordinance amendment. (Ord. 38.205, 10/20/70; Ord. 38 (part), 3/15/55)

10-64.046 Expiration of Permit or Approvals

Any Conditional Use, ~~Site Development 'S' Zone~~, Variance or other permit approval granted under the terms of this Ordinance shall expire (without notice to the grantee) eighteen (18) months after the date of approval, unless the approval is used or exercised before expiration.

64.04-1 Time Extension
An extension of time not exceeding eighteen (18) months may be granted by the Planning Commission and no more than one (1) extension shall be granted. An

Changes To Public Notification Requirements

extension is valid only if approved before the pending expiration date. New conditions may be imposed on an extension of time for any permit.

64.04-2 Use of Approvals

For the purposes of Section 64.04 an approval is “used” or “exercised” if the applicant:

1. Obtains a building permit and completes a foundation, or
2. Dedicates any land or easement as required from the zoning action, or
3. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

64.04-3 Date of Approval

Unless there is an appeal the date of approval is the date on which the deciding body votes on the motion of approval. When there is an appeal, the date of approval is the date of the administrative vote on the motion finally determining the appeal. (Ord. 38.542, 4/6/82; Ord. 38 (part), 3/15/55)

Attachment C

Exhibit 5, Changes to Chapter 30 Signs

Changes To Chapter 30 Signs

SECTION 3 GENERAL REGULATIONS

- 30-3.01 Review and Approval
- 30-3.02 Maximum Permissible Sign Area
- 30-3.02(a) Commercial, Industrial, Quasi-Public, Agricultural Sales
- 30-3.02(b) Maximum Sign Area in Residential Zones
- 30-3.02(c) Limitations on Public Street Frontage.
- 30-3.03 (Reserved)
- 30-3.04 Design Guidelines
- 30-3.05 Impact Resistive Plastic
- 30-3.06 Off-site Advertising Signs Prohibited
- 30-3.07 Advertising Prohibited on Public Property
- 30-3.08 Signs for Nonconforming Uses
- 30-3.09 Nonconforming Signs
- 30-3.10 Signs Subject to Permits

30-3.01 Review and Approval

Permitted signs may be erected or painted upon posts, poles, buildings or structures subject to compliance with the following provisions:

- (a) Hillside District. The City Council, upon recommendation by the Planning Commission, shall be empowered to approve, conditionally approve or disapprove any **Site Development Permit "S" Zone** Application or **Conditional** Use Permit for any sign(s) proposed in the Hillside district, subject to the provisions of Section XI-10-45.09, and for any signs proposed on designated historical or cultural resource buildings or sites, subject to the provisions of Section XI-4-10.00.
- (b) Sign Program. The Planning Commission shall be empowered to approve, conditionally approve or disapprove a **Site Development Permit "S" Zone** Application for a sign program(s) pursuant to Section XI-30-4.04, Sign Programs.
- (c) Signs exceeding six (6) feet. The Planning Commission shall be empowered to approve, conditionally approve or disapprove freestanding signs exceeding six (6) feet in height, under the provisions of the Conditional Use Permit, as provided by Section XI-30-3.10(h)(6) of this Chapter.
- ~~(d) The Planning Commission Subcommittee shall be empowered to approve, conditionally approve or disapprove the following signs, under the provisions of Section XI-10-42.10-2: new building signs for single-tenant structures and freestanding signs up to six (6) feet in height, as measured from the closest public sidewalk or curb, on sites which are not in the Hillside District or on designated historical or cultural resource buildings or sites.~~
- (e)(d)** The Planning staff shall be empowered to approve, conditionally approve or disapprove the following signs, under the provisions of Section XI-10-42.10-2: signs which conform to an approved sign program and building signs which replace previously approved building signs, provided sign type, size and location are unchanged, on sites which are not in the Hillside District or on designated historical or cultural resource buildings or sites. **In addition, staff may approve new building signs for single-tenant structures and freestanding signs up to six (6) feet in height, as measured from the closest public sidewalk or curb, on sites which are not in the Hillside District or on designated historical or cultural resource buildings or sites.** (Ord. 124.27 (2) (part), 8/2/05)

30-3.02 Maximum Permissible Sign Area

- 30-3.02(a) Commercial, Industrial, Quasi-Public, Agricultural Sales

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The maximum permissible total sign area for commercial, industrial, quasi-public or agricultural farm product sales will conform to the following standard:

- (1) The total aggregate area of all signs permitted on any building site or property shall not exceed one (1) square foot of sign for each two (2) lineal feet of building perimeter on the subject parcel or not exceed two (2) square feet of sign for each one (1) lineal foot of public street frontage, at the applicant's discretion.
 - (a) For buildings or uses containing more than one (1) business, the allowable sign area as defined in Section (1) above shall be distributed to each business proportionately to the floor area of the subject business to the total floor area for all leasable structures on the parcel or site.
 - (b) Provided further that in the case of a shopping center or other multi-use structure containing five (5) or more stores, sign area to be allowed on those stores which have frontage on an interior pedestrian mall shall be calculated as one (1) square foot of sign area for each one (1) lineal foot of building frontage for use only on that frontage facing said area. (Ord. 124.27 (2) (part), 8/2/05)

30-3.02(b) Maximum Sign Area in Residential Zones

Sign area in Residential Zones shall comply with the following requirements:

- (1) "R1" (Single Family Residential) and "AR" (Agricultural Residential) Zones: Permanent signs erected for the purpose of announcements or nameplates shall not exceed one (1) square foot.
- (2) "R2" (Two Family Residential) District and "R3" (Multiple Family Residential) District: Permanent signs erected for permitted uses shall not exceed ten (10) square feet.
- (3) Conditional Uses in any Residential Zone (except Church/Religious Assembly Signs which are provided for in Subsection XI-30-3.10 will be allowed sign area not exceeding one (1) square foot of sign area for each three (3) lineal feet of public street frontage, provided, however, that this sign area shall not, in any case, exceed a maximum of either thirty-two (32) square feet for Valley Floor Residential Zones or twenty-four (24) square feet in the designated Hillside. (Ord. 124.27 (2) (part), 8/2/05)

30-3.02(c) Limitations on Public Street Frontage.

Public street frontage with nonaccess rights or no immediate direct access, such as flood control channels, but excluding landscaped planter areas, shall not be included in computing public street frontage for purposes of sign area calculations. Refer to Section XI-30-4.02(b) of this Chapter for additional information relating to regional shopping centers unless permitted pursuant to a sign program. (Ord. 124.27 (2) (part), 8/2/05)

30-3.03 (Reserved)

30-3.04 Design Guidelines

In considering the appropriateness of the design proposed for any sign as provided in this Section, the following criteria shall be utilized by the Planning Commission, Planning Commission Subcommittee and Planning staff:

The following factors shall be considered in the review of the design of each proposed sign:

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1. The relationship of the sign to the space on the building where the sign is to be located.
2. Relationship of the location of the sign to all facades of all buildings on the site.
3. Compatibility of materials, architecture, design, and continuity with other signs on the building.
4. Illumination of the sign as it relates to other signs on the subject building, other light sources, competition and interference of light sources and intrusion of light into residential areas.
5. Visibility and legibility (letter height and legibility, contrast-background relationship, placement and location).
6. Impact on other immediate signs in terms of visibility, legibility, and scale.
7. Traffic conditions, including but not limited to, traffic safety and circulation, visibility, road width, curb cuts, or driveway indentations, median, proximity of major intersections, signals or stops, average traveling speed or any other natural physical obstruction.
8. The proximity of the sign to residential districts.
9. Relationship of the height of the sign to the height of the building at that location.
10. Quantity of other signs in the vicinity of the subject sign on or off of the subject parcel.
11. Impact on visibility of other signs in the vicinity of the subject sign.
12. Other such factors that the Planning Commission, Planning Commission Subcommittee and Planning staff shall determine as relating to the impact of the sign to the general environment.

Each proposed sign shall be reviewed for conformity to the following criteria:

1. The sign shall relate to the architectural design of the building. An attractive scale between the sign, the building and the immediate surrounding buildings and signs shall be maintained.
2. To the extent feasible, a sign shall be graphic with design emphasis on simplicity, style, trademark, business identification and symbol. Wording shall be an integral part of the overall design.
3. All light sources shall be adequately diffused or shielded.
4. The sign's supporting structure shall be as small in density and as simple as is structurally safe.
5. Multiple signing on a single-faced building shall be reviewed for coordination of all signs architecturally and aesthetically.
6. Sign faces should be constructed of non-brittle, non-yellowing Polycarbonate material or superior.
7. Neon, bare fluorescent tubes, incandescent bulbs, light emitting diodes (LEDs) and similar devices are not permitted except pursuant to Site Development Permit "S" Zone approval.
8. Signage shall not obstruct pedestrian circulation.
9. Signs should be an integral part of the design of the storefronts of mixed-use buildings.
10. Sign letters and materials should be professionally designed and fabricated.

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11. Signs should be constructed using high-quality materials such as metal, plastic, stone and wood.
12. Exposed conduit and tubing should be mitigated so that they are inconspicuous.
13. Exposed transformers are prohibited.
14. Projecting signs mounted perpendicular to the facade of the building should be located at least eight (8) feet above the sidewalk. The outside edge should be no more than five (5) feet from the face of the building.
15. While bilingual signs are allowed, the size of English lettering should be at least equal to the size of letters of another language.
16. The business name and address shall be displayed on the tenant space if located in a multi-tenant building or on the building or property for a single occupant building. (Ord. 124.27 (2) (part), 8/2/05)

30-3.05 Impact Resistive Plastic

- (1) Impact Resistive Plastic shall be used on all internally illuminated signs utilizing plastic sign faces.
- (2) Whenever a plastic internally illuminated sign face, advertising copy or message becomes damaged and is to be replaced, said sign face shall be replaced with a sign face constructed of impact resistive plastic, as defined herein. (Ord. 124.27 (2) (part), 8/2/05)

30-3.06 Off-site Advertising Signs Prohibited

All signs except Joint Use Signs, Temporary Tract Advertising Signs, for subdivisions under construction in the City, Open House Directional Signs, Garage Sale Signs, Off-site Directional Church/Religious Assembly/Institutional Signs, Off-site Public Information Signs, Outdoor Advertising Structures as permitted by Chapter XI-14 of the Milpitas Municipal Code and Off-site Directional Signs for purposes of identifying regional shopping centers per Section XI-30-4.02 of this Chapter, shall be erected only upon the site occupied by the persons or business sought to be identified or advertised by such signs. It is the intent of this limitation to prohibit the use of exterior signs for the general advertisement of products, services or other matters having no relation to the site upon which they are placed. Signs shall not extend over street or other rights-of-way except as provided for elsewhere in this Chapter.

- (a) Provided further, that off-site public information signs may be permitted by the Planning Commission when said signs are located proximate to a major entry to the City and on privately owned property pursuant to Section XI-30-3.10(m).
- (b) Provided further, that any church, religious assembly or institution may request up to two (2) off-site directional signs to be located by the City within the public right-of-way pursuant to Section XI-30-3.10.I. (Ord. 124.27 (2) (part), 8/2/05)

30-3.07 Advertising Prohibited on Public Property

Prohibition. No merchandise shall be displayed and no person shall mark, post, paste, paint, print, nail, tack, or otherwise fasten or leave a card, banner, handbill, sign, sticker, poster, or advertisement or notice of any kind or cause the same to be done, on any real or personal property including, but not limited to any street, curb, sidewalk, alley, billboard, fence post, tree, pole, hydrant, bridge, real property or personal property or other structure within the corporate limits of the City of Milpitas, except as may be required by law.

Violation. Any violation of the above named items erected upon public property in violation of the provisions hereof may be removed and destroyed summarily by any City officer or employee. Signs so

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confiscated may be redeemed within ten (10) days on payment by the owner of costs of removal. The minimum charge for removal of any sign shall be Ten Dollars (\$10.00) per sign. Any sign not claimed within ten (10) days of removal shall become the property of the City.

Exceptions. Provided further, freestanding open house directional signs and garage sale signs may be placed within the public right-of-way pursuant to Sections XI-30-3.10(o) and XI-30-3.10(i) respectively. (Ord. 124.27 (2) (part), 8/2/05)

30-3.08 Signs for Nonconforming Uses

Signs for nonconforming uses and businesses may be permitted subject to the following:

- (a) All signs shall require the review and approval of the Planning Commission under the provisions of a Conditional Use Permit.
- (b) The total sign area allowed for any nonconforming use or parcel of land shall be calculated as specified in Section XI-30-3.02 of this Chapter but in no event shall the total sign area exceed sixty (60) square feet.
- (c) The maximum height for any freestanding sign shall not exceed ten (10) feet. (Ord. 124.27 (2) (part), 8/2/05)

30-3.09 Nonconforming Signs

- (a) Notwithstanding any other provision of this Chapter:
 - (1) All signs presently existing and not in conformity with the provisions of this Chapter shall conform to the provisions of this Chapter or be removed by December 31, 1984.
 - (2) Any sign which shall become nonconforming because of an amendment to this Chapter shall be made to conform to the provisions of this Chapter as amended or be removed no later than ten (10) years from the date of said amendment.
 - (3) Without limitation to any other provision of this Chapter or any other provision of the Milpitas Municipal Code, a nonconforming sign shall not be added to or enlarged unless such sign, including such addition and enlargement, is made to conform to all of the regulations applicable to said sign at the time of said addition or enlargement. Repairs and alterations may be made to a nonconforming sign provided that any structural alteration (other than those required by law) shall not be made unless such sign, including such alteration, is made to conform to all the regulations applicable to said sign at the time of said addition or enlargement. Replacement of the face of a sign shall not be considered to be a structural alteration. No nonconforming sign shall be moved in whole or in part to any other location on the parcel of its location unless said sign is made to conform to all of the regulations applicable to said sign at the time of said moving.
- (b) Maintenance of Signs. Nothing herein contained shall be construed to vary the provisions of this Chapter relating to the maintenance of signs in good condition. It is the intent of this Chapter that nonconforming signs shall be maintained in good condition until amortized by the provisions of this section. Signs which are not maintained in good condition (whether conforming or nonconforming) shall be subject to abatement in accordance with the other provisions of this Chapter and this section shall not be construed to be a bar thereto. (Ord. 124.27 (2) (part), 8/2/05)

30-3.10 Signs Subject to Permits

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The following signs shall be allowed pursuant to the permits required in the Zoning Districts as indicated in Matrix A and shall be regulated as follows:

- (a) Architectural Sign. An Architectural Sign shall constitute an integral part of a roof or marquee and be designed with an intent and purpose to relate to the architectural style of the main building. An Architectural Sign must have a minimum clearance of ten feet from the ground.
- (b) Area Identification Sign. An Area Identification Sign shall be erected subject to the following conditions:
 - (1) The sign surface area shall not exceed twenty-five (25) square feet in Residential areas and sixty (60) square feet in Commercial and Industrial areas.
 - (2) The materials utilized for sign construction and sign support shall not require extensive maintenance or upkeep.
- (c) Balloon Sign. A Balloon Sign shall be allowed pursuant to the provisions of a Temporary Promotional Sign for the following:
 - (1) Community-wide events (an event that either promotes and/or benefits the entire City and has been approved by the City Council (such as Art and Wine Festival, Harvest Festival and the like) or when the City Council has authorized a public street closure for an event).
 - (2) Grand openings (when first opened or after a significant remodeling) for a business.
 - (3) Promotional events for individual businesses or group of businesses on a parcel.
Balloon Signs shall be subject to the following regulations:
 - (1) Only one balloon per event.
 - (2) The maximum height of a Balloon Sign shall not exceed 50 feet in height above grade.
 - (3) An application for an Administrative Permit for a Balloon Sign must be submitted to the Planning Division at least three days prior to displaying the balloon.
 - (4) For community wide events, the balloon may be installed after five o'clock p.m. the day preceding the event, and must be removed prior to ten o'clock a.m. the day after the event.
 - (5) For grand openings and promotional events, the balloon shall be displayed for a maximum of 30 days for the first such event for a business and a maximum of 15 days for all subsequent events for a business.
 - (6) One sign may be attached to the balloon to identify the name of the shopping center, business, activity or event.
 - (7) No other smaller balloons shall be attached to the balloon or its supporting or secure lines.
 - (8) The balloon shall be securely mounted to the ground or a roof.
 - (9) The balloon shall not move by any other means than normal wind current.
 - (10) These regulations do not apply to balloons used in residential areas for noncommercial purposes.

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- (11) Display of balloon signs is limited to 4 times per calendar year for each business. Display occurrences shall be interrupted by a minimum of 30 days.
- (d) Banner Sign. A Banner Sign shall not be larger than 60 square feet in size, securely attached to a building or pole and shall be located on the premises of the business it advertises.
- (e) Church/Religious Assembly Sign. A Church/Religious Assembly Sign shall be allowed a total sign area not to exceed one hundred (100) square feet per parcel. The maximum square footage for any individual sign, either a wall sign or freestanding sign, shall not exceed a total of fifty (50) square feet. The height of any freestanding sign shall be regulated by Sections XI-30-3.10(h).
- (f) City Identification Sign. Permanent City identification signs erected on private property do not count toward the maximum sign area limits, nor the maximum number of freestanding signs allowed on a site.
- (g) Construction Sign. Construction Signs:
- (1) Shall have a maximum height of eight (8) feet when freestanding.
 - (2) Shall be constructed pursuant to an approved Building Permit if over six (6) feet in height.
 - (3) Shall require **an approval of a Site Development Permit "S" Zone Approval** by the Planning Commission if over six (6) feet in height.
 - (4) Shall have a maximum area of thirty-two (32) square feet.
 - (5) May indicate the opening date, architect, engineer, contractor, future business or lending agency.
 - (6) Shall only be placed on the site of work under construction.
 - (7) Shall be limited in number to a maximum of two (2) per street frontage to consolidate identification of companies associated with work being performed on the property. However, for tenant improvement work there shall be a limit of two (2) signs per property.
 - (8) May only be placed after issuance of a building permit for the main structure and must be removed upon final occupancy of the main structure.
- (h) Freestanding Signs. Freestanding signs shall be erected subject to the following:
- (1) Landscaped planter. Freestanding signs shall be erected in on-site landscaped planter areas.
 - (2) Number of freestanding signs on a parcel. There may be one (1) freestanding sign for each individual parcel's public street frontage. If the frontage exceeds three hundred (300) feet one (1) additional sign shall be allowed. The height of freestanding signs shall be determined from Sections XI-30-3.10(h)(7) and (8).
 - (3) Number of freestanding signs in a shopping center. In the case of a shopping center, the number of freestanding signs shall be determined as specified in subsection (h)(2) above, and any business within the shopping center may be advertised on any freestanding sign allocated to that shopping center as provided in that Section.
 - (4) Square footage deducted from total. Any square footage of sign placed on a freestanding sign shall be deducted from the total amount of allowable sign area specified in Section XI-30-3.02 above.

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- (5) Approval of freestanding signs up to six (6) feet in height. Freestanding signs up to six (6) feet in height shall be approved as provided in Section XI-30-3.01 above.
 - (6) Approval of freestanding signs over six (6) feet in height. Freestanding signs over six (6) feet in height, including their location and architectural design (not structural) of the supporting sign structure shall be reviewed after notice and hearing by the Planning Commission under the provisions of a Conditional Use Permit. The Commission shall be empowered to approve, conditionally approve or disapprove any Use Permit for a freestanding sign. The following factors shall be considered by the Planning Commission in making its decision:
 - (A) Height and size of sign.
 - (B) Structure of sign.
 - (C) Illumination of sign.
 - (D) Proximity to residential districts.
 - (E) Relationship of height and size of sign to that of parcel.
 - (F) Density of other signs in vicinity.
 - (G) Impact of other signs in vicinity.
 - (H) And such other factors that the Planning Commission shall determine as relating to the impact of the sign to the environment.
 - (7) Freestanding Sign Height in Nonresidential Zones. One (1) foot of height to a maximum of twenty-five (25) feet for each eight (8) feet of public street frontage. If a public street frontage exceeds three hundred (300) feet, then the height of the second freestanding sign shall be determined as described above, using only the public street frontage in excess of three hundred (300) feet. Any freestanding sign proposed under Section XI-30-3.10(h)(6) above may be reduced in height from the maximum twenty-five (25) foot height limit as part of the approval process specified in Section XI-30-3.3.10(h)(6). Refer to Section XI-30-4 of this Chapter for additional information.
 - (8) Freestanding Sign Height in Residential Zones as a Conditional Use. One (1) foot of height to a maximum of twenty-five (25) feet for each twenty-five (25) feet of public street frontage, except those freestanding signs on any parcel of land located in the designated Hillside which shall, in no case, exceed a height of four (4) feet measured from a warped plane parallel to the natural grade. Refer to Section XI-30-4.05 of this Chapter for additional requirements regarding Hillside signage.
 - (9) Computing street frontage. Public street frontage with nonaccess rights or no immediate direct access such as flood control channels, but excluding landscaped planter areas, shall not be included in computing public street frontage, for purposes of determining number of freestanding signs or sign height.
 - (10) Height. All freestanding sign heights shall be measured from grade level of the closest public sidewalk, curb or public street.
- (i) Garage Sale Sign. Garage Sale Signs:
- (1) Shall be no larger than six (6) square feet in sign area per side.

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- (2) Shall not be placed within the vehicular or pedestrian traveled portion of the public right-of-way, except as allowed under (3) below.
- (3) May be placed within the public right-of-way in the following manner: first, in the unpaved, parkstrip area between the face of the curb and the public sidewalk, however, only in the intersection area between the end of the curb return and that point along the curbline that is fifteen (15) feet distant from the end of the curb return. If no such parkstrip, or other paved or unpaved area in the public right-of-way exists for the alternative placement of the sign so as to minimize intrusion upon the four feet minimum handicap accessible pathway, then said sign may be placed on the sidewalk as above within the public right-of-way, provided that the width of the pedestrian and handicap accessible pathway shall not be reduced by the sign placement to less than four feet.
- (4) Shall not be placed:
 - (A) In any curb return.
 - (B) In any bus or light rail stop zone.
 - (C) Within two feet of any driveway or curbcut access ramp.
 - (D) Between light rail tracks and curb.
 - (E) Adjacent to or within four feet of any disabled parking zone.
 - (F) On any median strip.
 - (G) If over three feet tall within a "Line of Sight Triangle" which shall mean a triangle of land formed by two intersecting streets, where two sides of the triangle consist of the curb lines of the intersecting streets and the third side of the triangle is a straight line drawn between points on each curbline located forty-five feet from the intersection where the prolongation of the curb lines meet.
- (5) Shall not be attached in any manner to any other structure, such as trees, lampposts, streetlights, utility poles, utility cabinets, street or traffic signs, benches, hydrants and mailboxes if said sign is placed in the public right-of-way.
- (6) Said signs shall only be allowed on Saturdays, Sundays and holidays.
- (7) Shall be limited to two per garage sale per intersection.
- (j) Grand Opening Sign. Grand-Opening Signs:
 - (1) Are permitted when used for bona-fide grand-opening functions after a business' initial occupancy, new ownership, name change or the reopening of a business that completely closed for remodeling for at least two weeks.
 - (2) Are allowed for a maximum of thirty (30) consecutive calendar days from the start date noted on the Administrative Permit.
 - (3) Shall only be displayed at the business for which the grand opening will occur.
- (k) Graphic Panel Sign. Graphic Panel Signs:
 - (1) Shall be located within five (5) feet of the main building wall.

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- (2) Shall relate to the architecture of the building and depend primarily on a graphic image for delivering their advertising message.

Note: Graphic panels do not count as freestanding signs. The display area on graphic panels counts towards overall sign area.

(l) Joint Use Sign.

- (1) A Joint Use Sign shall be approved pursuant to a Sign Program by the Planning Commission.
- (2) A Joint Use Sign shall only be approved for a commercial district under multiple ownerships, where freestanding signs for each parcel for which signage is desired, is infeasible.
- (3) The commercial district shall be characterized by close proximity of the businesses and small parcel size. A common parking field and common vehicular circulation are strongly encouraged.

(m) Off-Site Directional Church/Religious Assembly/Institutional Sign.

- (1) Any church, religious assembly or institution may request up to two (2) Off-Site Directional Church/Religious Assembly/Institutional Signs to be located by the City within the public right-of-way.
- (2) These signs shall only include the name of the church, religious assembly or institution in letters not exceeding four (4) inches in height and an arrow specifying the appropriate direction.
- (3) Requests for such signs shall be made in writing by an authorized representative of the church, religious assembly or institution and shall include the general location desired for said signs.
- (4) The City Manager, or his or her designee, shall determine the precise location and sign design based on good traffic engineering practice, and shall provide for erection of the signs.
- (5) An Administrative Permit will be required for such signs.

(n) Off-Site Public Information Signs.

- (1) May be permitted by the Planning Commission pursuant to a Conditional Use Permit when said signs are located proximate to a major entry to the City and on privately-owned property.
- (2) Shall be of a size, and shall be located, as determined by the Conditional Use Permit.

(o) Open House Directional Signs.

- (1) Shall be no larger than six (6) square feet in sign area per side.
- (2) Shall not be placed within the vehicular or pedestrian traveled portion of the public right-of-way, except as allowed under (3) below.
- (3) May be placed within the public right-of-way in the following manner: First, in the unpaved, parkstrip area between the face of the curb and the public sidewalk, however, only in the intersection area between the end of the curb return and that point along the curbline that is fifteen (15) feet distant from the end of the curb return. If no such parkstrip, or other paved or unpaved area in the public right-of-way exists for the alternative placement of the sign so as to minimize intrusion upon the four foot minimum handicap accessible pathway, then said

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sign may be placed on the sidewalk as above within the public right-of-way, provided that the width of the pedestrian and handicap accessible pathway shall not be reduced by the sign placement to less than four feet.

- (4) Shall not be placed:
 - (A) In any curb return.
 - (B) In any bus or light rail stop zone.
 - (C) Within two feet of any driveway or curbcut access ramp.
 - (D) Between light rail tracks and curb.
 - (E) Adjacent to or within four feet of any disabled parking zone.
 - (F) On any median strip.
 - (G) If over three feet tall within a "Line of Sight Triangle" which shall mean a triangle of land formed by two intersecting streets, where two sides of the triangle consist of the curblines of the intersecting streets and the third side of the triangle is a straight line drawn between points on each curbline located forty-five feet from the intersection where the prolongation of the curblines meet.
- (5) Shall not be attached in any manner to any other structure, such as trees, lampposts, streetlights, utility poles, utility cabinets, street or traffic signs, benches, hydrants and mailboxes if said sign is placed in the public right-of-way.
- (6) Said signs shall only be allowed on Saturdays, Sundays and holidays.
- (7) A maximum of two signs shall be located at a given intersection for each property advertised.
- (p) Political Signs.
 - (1) Intent. Political signs are a necessary part of our political life before an election. After the election is over, political signs become litter, create a health and safety problem and encourage blight. It is the purpose of these regulations to provide for their prompt removal after election.
 - (2) Regulations. Except as otherwise authorized in this Section, political signs and persons posting political signs shall meet the following requirements:
 - (A) Scope of Regulations. Nothing contained in this Chapter shall be construed to regulate the content of any political sign.
 - (B) Exemption for Political Signs. Political signs shall not be included in the maximum sign area permitted for any site or use.
 - (C) Notification Procedures. Any person or group erecting political signs as defined in Section XI-30-2.34 of the Sign Ordinance, shall provide the Milpitas City Clerk a notice in writing, either by registered mail or in person, including the name, address and telephone number of the person or group responsible for erecting or removing the political sign. The notice shall be provided prior to erecting any political signs.
 - (D) Removal. The responsibility for removal shall be that of the person or group identified in the notice given pursuant to Section XI-30-3.10(p)(2)(C) of this Chapter. All political signs

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shall be removed within fifteen (15) days following the election or elections to which the political sign pertains. Any political sign that is not removed within this time period is declared a public nuisance. No notice need be given by the City to that person or group to remove said sign. If the responsible person or group fails to remove any political sign, the owner of the land shall be responsible for its removal provided the owner shall be given fifteen (15) days' prior notice in writing by the City to remove said sign. Notice hereunder shall be given personally or by certified mail addressed to the owner of the land as shown on the last equalized assessment roll of the County of Santa Clara. In the exercise of the remedies provided by law or by this Chapter, City shall not be required to proceed against the property owner before proceeding against the person or group nor shall it be required to proceed against the person or group as a condition to proceeding against the landowner.

- (E) Allowable Locations. Political signs shall be permitted in any zoning district on private property without permit provided that they shall conform to all the provisions of this Chapter.
 - (i) In residential zoning districts, no such sign shall project above the height or from the sides of the dwelling or block access to or from any door or window and every such sign shall be placed in a manner to secure it from being blown or falling down. (ii) No political sign shall be erected on trees, fence posts, or public utility poles or located within any public right-of-way. No political sign erected on private property shall be placed within the traffic safety visibility area at the intersection of any street.
 - (iii) No political sign shall be erected in such a manner that will, or reasonably may be expected to, interfere with, obstruct, confuse or mislead traffic. No political sign shall be erected in a manner that will interfere with pedestrians so as to constitute a hazardous condition. No political sign shall be erected which has less horizontal or vertical clearance from any public utility lines than is prescribed by the State of California, or rules and regulations duly promulgated by agencies thereof.
- (F) Allowable Size and Height. The following limitations and requirements shall apply:
 - (i) The maximum size of political signs shall be no more than thirty-two (32) square feet in all zoning districts.
 - (ii) The maximum height of any political sign placed in all zoning districts shall be six (6) feet, measured from the ground level to the top of the sign.
- (3) Remedies. Without limitation to the remedies authorized by law or by this Chapter for the enforcement of this Chapter, City may exercise one or more of the following remedies which shall be cumulative to all other remedies:
 - (A) Enter on vacant property and abate the nuisance.
 - (B) Enter on occupied property with the consent of the owner and occupant thereof and abate the nuisance.
 - (C) After sending each candidate or landowner a 15-day prior notice, the City may remove any sign in violation of this Section and shall charge a fee of \$25.00 per sign for the reasonable cost of abatement. The \$25.00 fee shall also be assessed against the candidate for all signs removed by City staff which are installed or posted contrary to the provisions set forth in Section XI-30-3.10(p)(2)(E). The City shall demand payment for the cost of abatement from the candidate or the owner of land or both and institute legal proceedings for the collection thereof.

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- (D) Abate the nuisance and impose a charge therefore on the land pursuant to the provisions of Chapter 2, Title II of the Milpitas Municipal Code.
 - (E) Institute a civil action for abatement of the nuisance.
 - (F) Institute a criminal proceeding against candidate or landowner, or both, for violation of the provisions of this Chapter.
 - (G) Abated Sign Materials. Materials from signs abated under this Chapter shall be disposed of as rubbish by the official abating said signs.
- (q) Projecting Sign.
- (1) Clearance of Projecting Signs. Projecting Signs shall have a clearance of eight (8) feet above the ground and fourteen (14) feet above a driveway, alley, or other vehicular accessway.
 - (2) Location of Projecting Signs. Projecting Signs shall only be located on the middle one-third of the front wall of a building. This requirement may be modified by means of an approval of a Site Development Permit by the Planning Commission. "S" Zone Amendment.
 - (3) Number of Projecting Signs. Only one Projecting Sign shall be permitted for each business located on the site.
 - (4) Projecting Sign Areas. A Projecting Sign shall have a maximum size of sixteen (16) square feet per side unless increased pursuant to an approval of a Site Development Permit by the Planning Commission. "S" Zone Amendment.
 - (5) Projecting Sign Projection Limit. Projecting Signs shall not extend from the front wall to which they are attached more than eight (8) feet unless modified by an approval of a Site Development Permit by the Planning Commission. "S" Zone Amendment.
 - (6) Projecting into a public right-of-way. No such sign shall project into a public right-of-way.
- (r) Public Information Sign.
- (1) A Public Information Sign shall be located at a prominent entry to the City of Milpitas or a significant location in the City where it will be visible to large numbers of citizens.
 - (2) The location, design and size of the sign will be determined through the approval of a Site Development Permit. by the "S" Zone Amendment.
- (s) Scoreboard Sign.
- (1) Scoreboard Signs may be located on scoreboard structures located in an adult or youth outdoor playing field on public property.
 - (2) The Planning Commission may after notice and hearing, permit advertising signs to be located on the scoreboard subject to a conditional use permit.
 - (3) Advertising on any scoreboard sign shall not exceed 30% of the total scoreboard area and shall be for products or businesses available to persons of all ages.
- (t) Shopping Center Identification Sign (see Section XI-30-4.02, Regional Shopping Centers).
- (u) Temporary Promotional Sign (see Section XI-30-3.10(c) for Balloon Sign regulations).

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- (1) Temporary Promotional Signs permitted pursuant to an Administrative Permit may be placed on a business for a maximum of thirty (30) consecutive calendar days per permit for the first promotional event for a business and a maximum of fifteen (15) consecutive calendar days for all subsequent events for a business.
 - (2) A Temporary Promotional Sign will be permitted a maximum of four times per calendar year per business. Display occurrences shall be interrupted by a minimum of 30 days.
- (v) Temporary Tract Advertising Sign.
- (1) Types. The City of Milpitas authorized only the following two types of Temporary Tract Advertising Signs:
 - (A) "Major Signs."
 - (B) "Directional Signs."
 - (2) Number of Signs Allowed. The total amount of "major signs" is limited to six (6) per tract; provided, however, that the Planning Commission in its discretion may grant additional signs upon the following conditions:
 - (A) Said grant will not be contrary to or materially detrimental to public interest and welfare.
 - (3) Restrictions. None of the six (6) "major signs" shall:
 - (A) Exceed twelve (12) feet in height including appendages.
 - (B) Exceed thirty-two (32) square feet of surface area including all borders.
 - (C) Not to be closer than one hundred fifty (150) feet from any residential building.
 - (D) Be closer than one hundred (100) feet from any existing and authorized sign or billboard.
 - (E) Be set back less than fifteen (15) feet from any property boundary line on which it is to be located.
 - (F) Not be permitted within six hundred (600) feet of a Santa Clara County Expressway.
 - (4) Additional Directional Signs. Additional directional signs of a size as indicated below, under Section XI-30-3.10(u)(4)(A) of this Chapter may be allowed, as needed, in the discretion of the Planning Commission:
 - (A) Directional signs shall not exceed sixteen (16) square feet of surface area. Said directional signs shall not exceed five (5) feet in height or eight (8) feet in length.
 - (5) Removal of Temporary Tract Signs. No sign permit for a temporary tract sign shall be issued unless and until the applicant therefor has signed an agreement that upon cessation of the use under the permit, the sign involved will promptly be removed within fifteen (15) days after the expiration of the permit. Said agreement shall be accompanied by a refundable cash deposit of fifty (\$50) dollars per sign, which deposit may be used to defray the costs of the sign removal in the event the permit holder defaults upon the agreement, as aforesaid. If necessary, the City's agents may, after five (5) days' written notice to the original applicant and to the property owner of record, enter private property to remove such signs which shall then become the property of the City.

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(w) Wall Signs.

- (1) The area of Wall Signs shall be determined by Section XI-30-3.02, Maximum Permissible Sign Area.
- (2) The exposed face of a Wall sign shall be installed in a plane parallel to the plane of the wall.

(x) Window Signs.

- (1) Window Signs shall be attached directly to or within twelve (12) inches of the inside of commercial establishment's windows.
- (2) Window Signs shall not exceed twenty-five percent (25%) of the contiguous window area.
(Ord. 124.27 (2) (part), 8/2/05)

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SECTION 4 SPECIAL REGULATIONS

- 30-4.01 Shopping Centers
- 30-4.02 Regional Shopping Centers
- 30-4.03 Town Center District
- 30-4.04 Sign Programs/~~"S" Zone Approval~~
- 30-4.05 Hillside Combining District

***Note**

The following regulations pertain to signage requirements in special districts, and take precedence over other regulations in this Chapter, unless otherwise specified. (Ord. 124.27 (2) (part), 8/2/05)

30-4.01 Shopping Centers

The Planning Commission may permit the following, subject to approval of a Conditional Use Permit:

One (1) double faced freestanding sign for the purpose of identifying the center, including its principal tenants. Said sign shall have an area not exceeding three hundred (300) square feet on any one (1) face and a maximum height limit of forty-five (45) feet. Said sign shall be in addition to those signs allowed under the provisions of Section XI-30-3.10(h) of this Chapter. Furthermore, the sign area on the identification sign shall be in addition to the total sign area allowed under the provisions of Section XI-3-3.02. Refer to Section XI-3-4.02 of this Chapter for additional information relating to regional shopping centers. (Ord. 124.27 (2) (part), 8/2/05)

30-4.02 Regional Shopping Centers

- (a) For regional shopping centers, the Planning Commission may permit the following, subject to the issuance of a Conditional Use Permit or ~~Site Development Permit "S" Zone approval~~, with notice and hearing, per Section XI-10-57 or XI-10-42 of the Milpitas Municipal Code:
 - (1) An increase to the maximum site sign area not more than twenty-five percent (25%) greater than that otherwise allowed in this Chapter.
 - (2) An increase to the maximum shopping center identification sign area no more than fifty percent (50%) greater than that otherwise allowed in this Chapter, allowing up to four hundred fifty (450) square feet of sign area on such sign.
 - (3) An increase to the maximum height of shopping center identification sign not more than fifteen (15) feet taller than otherwise allowed in this Chapter, allowing up to a sixty (60) foot height.
 - (4) On-site directional sign(s). Any request for on-site directional signs within the regional shopping center shall be made in writing to the Planning Division by any authorized representative of the regional shopping center. The request shall indicate the proposed number, locations and design of the proposed on-site directional signs.
 - (5) One (1) off-site directional sign, for the purpose of identifying a regional shopping center. Any request for an off-site directional sign shall be made in writing to the Planning Division by any authorized representative of the regional shopping center. The request shall indicate the proposed location and design of the proposed directional sign.

Prior to the installation of any off-site directional sign within the public right-of-way, the sign applicant must obtain an encroachment permit from the Public Works Department. Prior to the issuance of the conditional use permit, the Public Works Director or his or her designee, shall recommend any necessary modifications of the proposed location and sign design to

Changes To Chapter 30 Signs

assure traffic safety is maintained.

- (b) For regional shopping centers encompassing at least one (1) million square feet of building area, the following apply: Where private streets delineate separate parcels within the shopping center, a parcel's private street frontage may be used instead of its public street frontage (or applicable building perimeter formula), for purposes of calculating sign area, but not for purposes of determining number of on-site freestanding signs, unless a parcel has no public street frontage. The Planning Commission may permit the following, subject to the issuance of a Conditional Use Permit or **Site Development Permit "S" Zone approval**, with notice and hearing, per Section XI-10-57 or XI-10-42 of the Milpitas Municipal Code.
 - (1) Two (2) off-site directional signs for the purpose of identifying a regional shopping center. Refer to Section XI-30-4.02(a)(5) above for additional requirements.
 - (2) Graphic panel(s) (freestanding).
 - (3) For major tenants (those with a minimum 40,000 square feet of leasable floor area), signs that move or have the illusion of movement with the approval of a Conditional Use Permit as provided for in Sections XI-10-57.01 and XI-30-4.02(d).
- (c) In considering the approval of a Conditional Use Permit or **Site Development Permit "S" Zone** application, no other deviations to the Sign Ordinance shall be permitted which are inconsistent with the provisions of this Chapter.
- (d) In considering the approval of a Conditional Use Permit or **Site Development Permit "S" Zone** application, under Subsections XI-30-4.02(a) and (b) above, the Planning Commission shall consider the design criteria in Section XI-30-3.04 in addition to the regulations specified in Sections XI-10-57 and XI-10-42. (Ord. 124.27 (2) (part), 8/2/05)

30-4.03 Town Center District

One freestanding sign shall be allowed within each subarea of the "Town Center District," with the exception of the main Town Center shopping area which shall be allowed three (3) freestanding signs. No signs shall exceed a height of forty-five (45) feet. The subareas shall be identified as follows:

- (1) Beresford Square.
- (2) Shapell Office Building.
- (3) Main Town Center shopping area, east of Milpitas Boulevard to Hillview Drive.
- (4) Hotel and offices east of Berryessa Creek.
Refer to Section XI-30-4.02 of this Chapter for additional information relating to regional shopping centers. (Ord. 124.27 (2) (part), 8/2/05)

30-4.04 Sign Programs/**"S" Zone Approval**

- (a) Signage for a new retail, office or industrial complex on four (4) or more acres having a gross floor area of 40,000 square feet or larger, a multi-tenant building, a new automobile dealership, or any buildings more than two (2) stories high shall be subject to a Sign Program. **The Sign Program shall be reviewed through a Site Development Permit /"S" Zone approval to be reviewed by the Planning Commission pursuant to Section XI-10-42.03 Site Development Permits and Minor Site Development Permits "S" Combining District (Site and Architectural Review or "S" Zone).**

Changes To Chapter 30 Signs

- (b) An existing retail, office or industrial complex (all of the businesses in the complex or shopping center, not an individual business in a complex or shopping center), multi-tenant building, automobile dealership or building more than two (2) stories high, regardless of the size of the site on which it is located, may apply for a Sign Program **"S" Zone** approval to be reviewed by the Planning Commission.
- (c) A Sign Program may deviate from the standards of the Sign Regulations if the Planning Commission makes the following findings:
 - (1) That the program's contribution to effective and attractive identification of businesses, services and uses and the design quality of the site and surrounding area will be superior to the quality that would result under the regulations and standards of the Sign Regulations;
 - (2) That all of the proposed signs of the retail, office or industrial complex, multi-tenant building, shopping center, automobile dealership or building are well-related to each other, and compatible with the style or character of existing improvements on the site and adjacent sites;
 - (3) That all of the proposed signage shall generally conform with the Design Guidelines in Section XI-30-3.04;
 - (4) No signs in the Sign Program are Prohibited Signs as regulated in Section XI-30-6; and
 - (5) That the requirements of Section XI-10-42.03 are met. (Ord. 124.27 (2) (part), 8/2/05)

30-4.05 Hillside Combining District

Signs in the Hillside combining district shall conform to the following:

- (a) Permanent signs erected for the purpose of announcements or nameplates shall not exceed one (1) square foot.
- (b) Maximum sign area for conditional uses shall be limited to one (1) square foot of sign area for each three (3) lineal feet of public street frontage, but shall, in no case, exceed twenty-four (24) square feet. See exception in Section XI-30-3.10(e) of this Chapter relating to sign area for churches.
- (c) Freestanding signs on any parcel of land located in the designated Hillside shall, in no case, exceed a height of four (4) feet measured from a warped plane parallel to the natural grade.
- (d) Any sign over one (1) square foot in area located in the designated Hillside shall be constructed of either wood or masonry materials. Incised lettering or individual letters, numbers, symbols, etc., of a metallic material mounted on said wood or masonry structure is permitted. Furthermore, all such lettering may only be illuminated by external or indirect means. (Ord. 124.27 (2) (part), 8/2/05)

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SECTION 5 EXEMPT SIGNS

30-5.01 Exempt Signs

30-5.01 Exempt Signs

A Permit shall not be required for the following types of signs:

- (a) Traffic or other municipal signs, legal notices, railroad crossings signs, danger and emergency signs.
- (b) Repainting or cleaning (or changing of the advertising copy thereon) of an advertising structure shall not be considered an erection or alteration which requires a sign permit unless a structural change is made.
- (c) Memorial sign or tablets, erected by recognized historical agencies, or names of buildings and date of erection when cut into masonry surface or when constructed of bronze or other incombustible letters and affixed flat against the wall of such building.
- (d) Signs regulating on-premises traffic and parking when less than twelve (12) square feet in area.
- (e) Window signs.
- (f) Signs used by public utilities for the safety, welfare or convenience of the public shall be exempt from the provisions of the ordinance codified in this chapter.
- (g) Poles, structures or other housings intended for the purpose of flying or otherwise displaying of the United States flag, California State flag, City or County flag or flag of any similar public agency are exempt from the approval provisions of Sections XI-30-3.01, XI-30-3.10(h)(5) and XI-30-3.10(h)(6). The flags specified herein are exempt from all other permit requirements.
- (h) House numbers, name plate or identification of house members (provided sign does not exceed two (2) square feet maximum area), mail box identification, street names, "no-trespass" signs, and other warning signs.
- (i) Signs for the California State Lottery approved by the Lottery Commission for display by Lottery Game Retailers.
- (j) Murals or other artistic paintings on walls, provided no logos, emblems or other similar devices, sign copy or illustrations of activities associated with uses on the premises or in the vicinity are included in the mural or painting.
- (k) On-Site Temporary For Sale Or Lease Signs, which shall:
 - (1) Not exceed a maximum area of thirty-two (32) square feet per sign face;
 - (2) Be limited to one (1) such sign. However, if the property has over (100) feet of street frontage, a maximum of two (2) signs per parcel is allowed;
 - (3) Be constructed pursuant to an approved building permit if over 6 feet in height;
 - (4) A sign over 6 feet in height shall require **an approval of a Conditional Use Permit "S" Zone Approval** by the Planning Commission;

Changes To Chapter 30 Signs

- (5) State that the property is for sale, lease or exchange by the owner or his or her agent and the name, address and phone number of the owner or agent and/or agency and directions;
 - (6) Be painted a light color;
 - (7) Be constructed of wood, plywood, metal or other rigid material;
 - (8) Not be placed on a private or public right-of-way;
 - (9) If advertising a tenant space, the sign shall be located on the tenant space;
 - (10) Not be allowed unless the property is on the market or there is a tenant space on the property that is vacant or will be vacated; and
 - (11) Be professionally constructed and well maintained.
- (l) Information Sign. An Information Sign:
- (1) Shall provide courtesy information or direction to the public without advertising the business products or services such as hours, entrance, exit, self-serve, credit cards, restrooms, telephone drive-up;
 - (2) Or shall serve to direct motorist and pedestrians on private property;
 - (3) Shall not be larger than Twelve (12) square feet in size; and
 - (4) Shall not be a traffic hazard.
- (m) Signs regulating the use of enumerated public facilities as provided for in Chapter 18 of Title V of the Milpitas Municipal Code.
- (n) Other signs similar to the above as provided for in Section XI-30-12.02 of this Chapter. (Ord. 124.27 (2) (part), 8/2/05)

Changes To Chapter 30 Signs

SECTION 6 PROHIBITED SIGNS

30-6.01 Prohibited Signs

30-6.01 Prohibited Signs

The following signs, or signs which contain the following elements, are Prohibited Signs:

- (a) Abandoned Signs. Abandoned Signs shall be removed within 90 days after the business the sign advertised has ceased as follows: Removal shall involve elimination of all sign copy. In addition, if the sign was mounted on a building, the building facade shall be restored to its original state to the best extent possible.
- (b) A-Frame Signs. Any A-Frame Sign with the exception of public service signs and open house directional signs.
- (c) Blinking, Flashing Lights. Any sign having blinking, flashing or fluttering lights, or any other illuminating device which has a changing light intensity, brightness or color unless approved pursuant to a Sign Program **("S" Zone)** by the Planning Commission.
- (d) Off-Site Advertising Signs with the exception of Joint Use Signs, Off-Site Advertising signs as regulated by Section XI-30-3.06 except for Temporary Tract Advertising Signs, Regional Shopping Centers signage as regulated in Section XI-30-4.02, Open-House Directional Signs, Outdoor Advertising Structures as permitted by Chapter 14 of the Milpitas Municipal Code and Off-Site Directional Signs for churches, religious assembly or institutions.
- (e) On Public Property. Any sign located on public property as regulated by Section XI-30-3.07.
- (f) Other Advertising Structure as defined in Section XI-30-2.34.
- (g) Outdoor Advertising Structures unless permitted pursuant to Chapter 14 of the Municipal Code.
- (h) Portable Signs. Any Portable Sign with the exception of public service signs and open house directional signs.
- (i) Privately-owned signs resembling Traffic Signs. Any privately-owned sign resembling any public directional sign or traffic control device.
- (j) Reflective Signs. Signs using colors that contain reflective properties.
- (k) Rotating or Moving Signs. Any sign which revolves, rotates, moves in any manner or creates the illusion of movement, rotation or revolvment, or has any visible moving, revolving or rotating surfaces or parts, is held and/or moved by a human being or animal except as otherwise provided for in Section XI-30-4.02(b)(3).
- (l) Roof Sign or Signs Extending Above Roof Ridge. Any Roof Sign or sign, which is placed on, above or attached to any building roof (above the gutter line); above or on top of any marquee; or on, above, made a part of or attached to any parapet.
- (m) Signs that are a Traffic Hazard. Any sign, which creates a traffic hazard to operators of motor vehicles or any sign, which obstructs or interferes with a motorist's vision.
- (n) Sound or Odor Emitting Signs. Any sign designed for emitting sound, odor or visible matter.

Changes To Chapter 30 Signs

- (o) Statuary Signs. Statuary when used for advertising purposes.
- (p) Temporary Signs. Temporary signs except as approved in conjunction with approved signage for Construction, Garage Sale, Grand-Opening, Open House Directional, Outdoor Advertising Structures as permitted by Chapter 14 of the Milpitas Municipal Code, Temporary Promotional and Temporary Tract Advertising Signs.
- (q) Vehicle-Mounted Signs. Vehicle-Mounted Signs where the vehicle is:
 - (1) Not legally registered;
 - (2) Not operable;
 - (3) Not parked within the confines of a striped parking space approved by the City of Milpitas, residential driveway or residential street; or
 - (4) Parked within the confines of a striped parking space approved by the City of Milpitas for more than 72-hours. (Ord. 124.27 (2) (part), 8/2/05) 702-9 (Milpitas Supp. No. 12, 10-05)

Changes To Chapter 30 Signs

Section 7 Sign Approvals by Type of Permit and by Zoning District

30-7.01 Sign Approvals by Type of Permit and by Zoning District Matrix

Sign Type	A (Agriculture)	R1, R2, R3, R4 AR (Residential)	CO (Admin & Professional)	C1 (Neigh. Commercial)	C2 (Gen. Commercial)	HS (Highway Services)	TC (Town Center)	M1, M2, MP (Ind.)	MXD (Mixed Use)	HILLSIDE (By City Council)
Architectural	X	X	S	S	S	S	S	S	S	X
Area Identification	AP	AP	AP	AP	AP	AP	CUP	AP	AP	S or CUP
City Identification	X	AP	AP	AP	AP	AP	X	AP	AP	X
Church/Religious Assy.	X	CUP	CUP	CUP	CUP	X	X	CUP	CUP	X
Construction	AP	AP	AP	AP	AP	AP	AP	AP	AP	X
Freestanding ≤ 6 feet	PCS AP	CUP	PCS AP	PCS AP	PCS AP	PCS AP	PCS AP	PCS AP	PCS AP	S or CUP
Freestanding > 6 feet	X	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	X
Grand Opening	X	X	AP	AP	AP	AP	AP	AP	AP	X
Graphic Panel	PCS	CUP	PCS	PCS	PCS	PCS	PCS	PCS	PCS	X
Off-Site Directional Church, Religious Assembly, Institutional Sign	AP	AP	AP	AP	AP	AP	AP	AP	AP	X
Off-Site Public Info.	X	CUP	CUP	CUP	CUP	CUP	X	CUP	X	X
Political (Sec. 30-3.10p)	C Clk	C Clk	C Clk	C Clk	C Clk	C Clk	C Clk	C Clk	C Clk	X
Projecting	X	X	AP	AP	AP	AP	AP	AP	AP	X
Public Information	S	S	S	S	S	S	S	S	S	X
Scoreboard Sign	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	X
Shopping Center Identification	X	X	X	S	S	S	S	S	S	X
Temporary Promotional	X	X	AP	AP	AP	AP	AP	AP	AP	X
Temporary Tract Advertising	CUP	X	X	CUP	CUP	X	X	CUP	CUP	X
Wall	X	CUP	AP	AP	AP	AP	AP	AP	AP	S or CUP

Notes for Matrix:

- AP Administrative Permit by Staff (over the counter)
- CUP Conditional Use Permit Approval Required by Planning Commission (except Hillside)
- S **Site Development Permit "S" Zone Amendment** by the Planning Commission (except Hillside)
- PCS Planning Commission Subcommittee
- X Not Permitted
- C Clk Approved by City Clerk

Attachment C

Exhibit 6, Changes to Model Home Complexes and Sales offices

Changes To Model Home Complexes And Sales Offices

SECTION 4 R1 SINGLE-FAMILY RESIDENCE DISTRICT

- 10-4.01 Purpose
- 10-4.02 Principal Permitted Uses
- 10-4.03 Accessory Uses
- 10-4.04 Conditional Uses
- 10-4.05 Height Regulations
- 10-4.06 Area, Lot, Width and Yard Requirements
- 10-4.07 Automobile Parking Restrictions
- 10-4.08 Required Improvements
- 10-4.09 Corner Lots
- 10-4.10 Areas for Collecting and Loading Recyclable Materials
- 10-4.11 Front Yard Coverage

10-4.01 Purpose

To stabilize and protect the residential characteristics of the District and to promote and encourage a suitable environment for family life. The R1 District is intended for the suburban family home and the services appurtenant thereto. (Ord. 38.19, 1/17/61; Ord. 38 (part), 3/15/55)

10-4.02 Principal Permitted Uses

The following are the principal permitted uses in an R1 District.

- 4.02-1 Single-family dwellings that contain one (1) kitchen and have internal access to all rooms and common areas, except as provided for in Section 54.22.
- 4.02-2 Planned unit developments subject to provisions of Subsection 54.07.
- 4.02-3 Agriculture, except the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.
- 4.02-4 Mobile homes subject to provisions of Subsection 54.13.
- 4.02-5 Second family unit, in conjunction with an existing legal single-family dwelling. Refer to Subsection 54.22 of this Chapter for development standards.
- 4.02-6 Model Home Complexes and Sales Offices. Refer to Subsection 54.26, Model Home Complexes and Sales Offices of this chapter for development standards.

(Ord. 38.763 (8), 4/20/04; Ord. 38.761 (part), 5/20/03; Ord. 38.541, 4/20/82; Ord. 38.19, 1/17/61; Ord. 38 (part), 3/15/55)

10-4.03 Accessory Uses

The following are the accessory uses permitted in an R1 District. (Ordinance 38.19, 1/17/61)

- 4.03-1 Boarding houses of not more than two (2) persons.
- 4.03-2 Home occupations and professional offices in home, as provided for in Subsection 54.08.
- 4.03-3 A state authorized, certified or licensed family care home, foster home, or group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent

Changes To Model Home Complexes And Sales Offices

or neglected children provided such home furnishes such care on a 24-hour a day basis.

- 4.03-4 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in Subsection 54.09.
- 4.03-5 Small family child care home.
- 4.03-6 Large family child care home, as provided for in Subsections 53.23-6 through 53.23-8 and 54.16.

(Ord. 38.763 (9), 4/20/04; Ord. 38.761 (part), 5/20/03; Ord. 38.702(2) (part), 8/15/95; Ord. 38.339, 2/19/74; Ord. 38 (part), 3/15/55)

10-4.04 Conditional Uses

The following uses may also be permitted if their location is first approved by the Commission, as provided for in Section 57.

- 4.04-1 School (elementary and high) and park, playground or community center, owned and operated by a governmental agency or a non-profit community organization; permanent church buildings (except rescue mission and temporary revival), public service structures, not including corporation yards, storage or repair yards and warehouses; and golf course (except driving tee or range, miniature course and similar uses operated for commercial purposes).
- 4.04-2 Off-street public parking areas.

~~4.04-3 Temporary tract offices and tract signs with the exception that no tract signs shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.~~

- 4.04-4 Deleted by Ord. 38.761
- 4.04-5 Guest house, subject to the criteria listed in Subsection 2.41.2 of this Chapter and to the following: Guest House shall be on a parcel two (2) acres or larger, located on the rear half of the lot, shall not cover more than thirty (30%) percent of the required rear yard, and shall conform to the side yard setback requirements of the principal building. Additionally, guest houses in the "H" Combining district shall be counted towards the maximum allowed impervious surface coverage for the lot, and shall not exceed seventeen (17) feet in height measured from a warped plane parallel to the finished grade. (Ord. 38.761 (part), 5/20/03)
- 4.04-5.1 Deleted by Ord. 38.761
- 4.04-5.2 Deleted by Ord. 38.761
- 4.04-6 Child care center.

(Ord. 38.761 (part), 5/20/03; Ord. 38.702(1) (part), 8/15/95; Ord. 38.646 (A) (part), 8/1/89; Ord. 38.605 (A), 6/3/86; Ord. 38.561, 7/19/83; Ord. 38.207, 11/17/70; Ord. 38.19, 1/17/61; Ord. 38 (part), 3/15/55)

10-4.05 Height Regulations

No principal building shall exceed thirty (30) feet in height, and no accessory building, other than guest houses or caretakers residences, shall exceed fifteen (15) feet in height. Guest house accessory building and caretaker residence shall not exceed seventeen (17) feet in height. (Ord. 38.646 (A) (part), 8/1/89; Ord. 38.19, 1/17/61; Ord. 38 (part), 3/15/55)

Changes To Model Home Complexes And Sales Offices

10-4.06 Area, Lot, Width and Yard Requirements

The following minimum requirements shall be observed, except where increased for conditional uses. The minimum requirements shall be one of the following for the district classification as designated on the zoning map. (Ord. 38.19, 1/17/61)

- 4.06-1 Lot Area
 - R1-10 Ten thousand (10,000) sq. ft.
 - R1-8 Eight thousand (8,000) sq. ft.
 - R1-6 Six thousand (6,000) sq. ft.
 - R1-5 Five thousand (5,000) sq. ft.
 - R1-4 Four thousand (4,000) sq. ft.
 - R1-3 Three thousand (3,000) sq. ft.
 - R1-2.5 Two thousand five hundred (2,500) sq. ft.

- 4.06-2 Lot Width
 - 4.06-2.1 Lot Width: Slope less than sixteen (16) percent.
 - R1-10 Eighty (80) feet
 - R1-8 Seventy (70) feet
 - R1-6 Fifty-five (55) feet
 - R1-5 Fifty (50) feet
 - R1-4 Forty (40) feet
 - R1-3 Thirty (30) feet
 - R1-2.5 Thirty (30) feet

 - 4.06-2.2 Lot Width: Slope equal to or greater than sixteen (16) percent, but less than twenty-six (26) percent.
 - R1-10 Two hundred (200) feet.

 - 4.06-2.3 Lot Width: Slope equal to or greater than twenty-six (26) percent.
 - R1-10 Three hundred (300) feet.

- 4.06-3 Front Yard
 - 4.06-3.1 Front Yard: Slope less than sixteen (16) percent.
 - R1-10 Twenty-five (25) feet
 - R1-8 Twenty-five (25) feet
 - R1-6 Twenty (20) feet
 - R1-5 Twenty (20) feet
 - R1-4 Twenty (20) feet; if access is provided to side of garage via curved driveway, fifteen (15) feet.
 - R1-3 Twenty (20) feet: if access is provided to side of garage via curved driveway, fifteen (15) feet.
 - R1-2.5 Twenty (20) feet; if access is provided to side of garage via curved driveway, fifteen (15) feet.

 - 10-4.06-3.2 Front Yard: Slope equal to or greater than sixteen (16) percent but less than twenty-six (26) percent.
 - R1-10 Forty (40) feet

Changes To Model Home Complexes And Sales Offices

10-4.06-3.3 Front Yard: Slope equal to or greater than twenty-six (26) percent.
R1-10 Forty (40) feet)

4.06-4 Side Yards

4.06-4.1 Side Yard: Slope less than sixteen (16) percent.
R1-10 One side eight (8) feet. Total both sides twenty (20) feet.
R1-8 One side seven (7) feet. Total both sides seventeen (17) feet.
R1-6 Adjacent to the garage a minimum of six (6) feet and the total of both side yards thirteen (13) feet.
R1-5 Adjacent to the garage a minimum of six (6) feet and the total of both side yards ten (10) feet.
R1-4 One side six (6) feet.
R1-3 One side five (5) feet.
R1-2.5 One side five (5) feet.

4.06-4.2 Side Yards: Slope equal to or greater than sixteen (16) percent but less than twenty-six (26) percent.
R1-10 One side twenty (20) feet. Total both sides forty-five (45) feet.

4.06-4.3 Side Yards: Slope equal to or greater than twenty-six (26) percent.
R1-10 Forty (40) feet.

4.06-5 Rear Yards

4.06-5.1 Rear Yard: Slope less than sixteen (16) percent.
R1-10 Thirty (30) feet. If principal building is two (2) stories or over, thirty-five (35) feet.
R1-8 Twenty-five (25) feet. If principal building is two (2) stories or over, thirty (30) feet.
R1-6 Twenty-five (25) feet.
R1-5 Twenty (20) feet.
R1-4 Fifteen (15) feet. If principal building is two (2) stories or over, twenty (20) feet.
R1-3 Fifteen (15) feet. If principal building is two (2) stories or over, twenty (20) feet.
R1-2.5 Fifteen (15) feet. If principal building is two (2) stories or over, twenty (20) feet.

4.06-5.2 Rear Yards: Slope equal to or greater than sixteen (16) percent but less than twenty-six (26) percent.
R1-10 Forty (40) feet.

4.06-5.3 Rear Yards: Slope equal to or greater than twenty-six (26) percent.
R1-10 Forty (40) feet.

(XI-10-4.06-2.2, 2.3, 3.2, 3.3, 4.2, 4.3, 5.2, 5.3; Ord. 38.526 (part), 1/20/81; Ord. 38.339, 9/20/77; Ord. 38 (part), 3/15/55)

10-4.07 Automobile Parking Restrictions

4.07-1 For Dwellings. There shall be provided at the time of erection of any dwelling at least two (2) permanently maintained parking spaces on the same lot with the dwelling for each dwelling. Such parking spaces shall not be less than ten (10) feet wide and twenty (20) feet long with adequate provision for ingress and egress. No automobile driveway to provide access shall be less than eight (8) feet in width.

4.07-2 Repealed by Ord. 38.384. (Ord. 38.384 (part), 10/26/76; Ord. 38.373.1, 5/4/76; Ord. 38 (part), 3/15/95)

Changes To Model Home Complexes And Sales Offices

10-4.08 Required Improvements

The above parking areas shall be improved as provided in Subsection 54.03. (Ord. 38.19 (part), 1/17/61; Ord. 38 (part), 3/15/55)

10-4.09 Corner Lots

On corner lots the side yard regulations shall be the same as for interior lots, except on the street side of a corner or reversed corner lots, in which case the side yard shall not be less than fifty percent (50%) of the front yard required on the lots in the rear of such corner lot, but such side yard need not exceed ten (10) feet, nor shall it be less than the sided yard required on interior lots. (Ord. 38.22 (part), 2/1/62; Ord. 38 (part), 3/15/55)

10-4.10 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of Subsection 54.15 of this Chapter. (Ord. 38.687 (1) (part), 4/19/94)

10-4.11 Front Yard Coverage

- (a) A portion of the required front yard may be paved. The width of the area that may be paved shall not exceed the width of the garage, or fifty percent (50%) of the lot width measured at the front property line, whichever is greater. Patios within the required front are included in this calculation. Walkways, which are not used for vehicular parking, do not count towards coverage limits. Exceptions may be granted by the Planning Commission after public hearing notification, per Section 64 of this Chapter, for **a Site Development Permit an "S" Zone Amendment** application, as described in Section 42 of this Chapter. For Hillside properties, refer to Section 45 of this Chapter for additional requirements. For regulations pertaining to parking in the front yard, refer to Milpitas Municipal Code Section V-500.
- (b) For purposes of this section, "patio" shall mean a surfaced area (concrete, brick, stone, asphalt, pavers and the like) for recreational outdoor living use, not for vehicular parking purposes, within the required front yard.
- (c) For purposes of this section, "walkway" shall mean a created surface, such as brick, stone, concrete, asphalt, pavers and the like, not exceeding six (6) feet in width, intended to facilitate pedestrian or bicycle passage, and not used for vehicular parking purposes. (Ord. 38.758, 7/3/01; Ord. 38.746, 9/21/99)

Changes To Model Home Complexes And Sales Offices

SECTION 6 R2 ONE AND TWO-FAMILY RESIDENT DISTRICT

- 10-6.01 Purpose
- 10-6.02 Principal Permitted Uses
- 10-6.03 Accessory Uses
- 10-6.04 Conditional Uses
- 10-6.05 Height Regulations
- 10-6.06 Area, Lot Width, and Yard Requirements
- 10-6.07 Automobile Parking Restrictions
- 10-6.08 Corner Lots
- 10-6.09 Areas for Collecting and Loading Recyclable Materials

10-6.01 Purpose

To stabilize and protect the residential characteristics of the District and to promote and encourage a suitable environment for family life. The R2 District is intended for suburban family homes and the community services appurtenant thereto. (Ord. 38.19 (part), 1/17/61; Ord. 38 (part), 3/15/55)

10-6.02 Principal Permitted Uses

The following are the principal permitted uses in an R2 District:

- 6.02-1 Single-family dwellings
- 6.02-2 Duplex or two-family dwellings
- 6.02-3 Planned unit development, subject to provisions of Subsection 54.07.
- 6.02-4 Agriculture, except the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.
- 6.02-5 Second family unit, in conjunction with an existing legal single-family dwelling. Refer to Subsection 54.22 of this Chapter for development standards. (Ord. 38.761 (part), 5/20/03; Ord. 38.19, 1/17/61; Ord. 38 (part), 3/15/55)

6.02-6 Model Home Complexes and Sales Offices. Refer to Subsection 54.26, Model Home Complexes and Sales Offices of this chapter for development standards.

10-6.03 Accessory Uses

The following are the accessory uses permitted in an R2 District:

- 6.03-1 Boarding houses of not more than two (2) persons.
- 6.03-2 Home occupations and professional offices in home, as provided for in Subsection 54.08.
- 6.03-3 A State-authorized, certified or licensed family care home, foster home or group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such home furnishes care on a twenty-four-hour a day basis.
- 6.03-4 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in Subsection 54.09.

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- 6.03-5 Small family child care home.
- 6.03-6 Large family child care home, as provided for in Subsections 53.23-6 through 53.23-8 and 54.16. (Ord. 38.763 (10), 4/20/04; Ord. 38.761 (part), 5/20/03; Ord. 38.702(2) (part), 8/15/95; Ord. 38.339 (part), 2/19/74; Ord. 38.19 (part), 1/17/61; Ord. 38 (part), 3/15/55)

10-6.04 Conditional Uses

- 6.04-1 Boarding houses for three (3) or more persons.
- 6.04-2 Licensed nursing home exceeding six (6) persons.
- 6.04-3 School (Elementary and High) and park playground or community center, owned and operated by a governmental agency or a non-profit community organization; permanent church buildings (except rescue mission and temporary revival), public service structures, not including corporation yards, storage or repair yards and warehouses; and golf course (except driving tee or range, miniature course and similar uses operated for commercial purposes).
- 6.04-4 Off-street public parking areas.
- ~~6.04-5 Temporary tract offices and tract signs with the exception that no tract signs shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.~~
- 6.04-6 Child care center. (Ord. 38.763 (11), 4/20/04; Ord. 38.702 (1) (part), 8/15/95; Ord. 38.339 (part), 2/19/74; Ord. 38.207 (part), 11/17/70; Ord. 38 (part), 3/15/55)

10-6.05 Height Regulations

No principal building shall exceed either two and one-half (2 ½) stories or thirty (30) feet in height, and no accessory building shall exceed either one and one-half (1½) stories or fifteen (15) feet in height. (Ord. 38.19 (part), 1/17/61; Ord. 38 (part), 3/15/55)

10-6.06 Area, Lot Width, and Yard Requirements

The following minimum requirements shall be observed, except where increased for conditional uses.

- 6.06-1 Lot Area: Single-family -- Six thousand (6,000) square feet.
Two-family -- Eight thousand (8,000) square feet.
- 6.06-2 Lot Width: Single-family -- Fifty-five (55) feet.
Two-family -- Seventy (70) feet.
- 6.06-3 Front Yard: Single-family -- Twenty (20) feet.
Two-family -- Twenty (20) feet.
- 6.06-4 Side Yards: Single-family -- One side five (5) feet, total both sides twelve (12) feet. If principal building is two (2) stories or over; one side six (6) feet, total both sides fifteen (15) feet.
Two-family -- One side seven (7) feet, total both sides sixteen (16) feet. If principal building is two (2) stories or over; one side eight (8) feet, total both sides twenty (20) feet.

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6.06-5 Rear Yard: Single-family -- Twenty-five (25) feet.

Two-family -- Twenty-five (25) feet. If principal building is two (2) stories or over, thirty (30) feet. (Ord. 38.19 (part), 1/17/61)

10-6.07 Automobile Parking Restrictions

To be provided same as required for R1 District. (Ord. 38.19, 1/17/61)

10-6.08 Corner Lots

On corner lots the side yard regulation shall be the same as for interior lots, except on the street side of a corner or reversed corner lot, in which case the side yard shall be not less than fifty (50) percent of the front yard required on the lots in the rear of such corner lot, but such side yard need not exceed ten (10) feet, nor shall it be less than the side yard required on interior lots. (Ord. 38.22, 2/1/62; Ord. 38 (part), 3/15/55)

10-6.09 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of Subsection 54.15 of this Chapter. (Ord. 38.687 (1) (part), 4/19/94)

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SECTION 7 "R-3" MULTI-FAMILY HIGH DENSITY DISTRICT

- 10-7.01 Purpose
- 10-7.02 Principal Permitted Uses
- 10-7.03 Accessory Uses
- 10-7.04 Conditional Uses
- 10-7.05 Height Regulations
- 10-7.06 Area, Lot Width and Yard Requirements
- 10-7.07 Landscape and Open Space Requirements
- 10-7.08 On-Site Utilities Requirements
- 10-7.09 Automobile Parking and Loading Areas (Ordinance 38.57, 6/18/64)
- 10-7.10 Trash and Storage Areas and Areas for Collecting and Loading Recyclable Materials
- 10-7.11 Repealed by Ordinance 38.384, 10/26/76
- 10-7.12 Required Improvements
- 10-7.13 Corner Lots
- 10-7.14 Deleted by Ord. 38.761
- 10-7.15 Conformance with Midtown Specific Plan.

10-7.01 Purpose

To stabilize and protect the residential characteristics of the District and to promote, insofar as compatible with the intensity of land use, a suitable environment for family life. (Ord. 38.19, 1/17/61; Ord. 38 (part), 3/15/55)

10-7.02 Principal Permitted Uses

The following are the principal permitted uses in an R3 District:

- 7.02-1 Dwellings, multiple.
- 7.02-2 Planned unit developments subject to provisions of Subsection 54.07.
- 7.02-3 Agriculture, except the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.
- 7.02-4 Second family unit, in conjunction with an existing legal single-family dwelling. Refer to Subsection 54.22 of this Chapter for development standards. (Ord. 38.761 (part), 5/20/03; Ord. 38.19 (part), 1/17/61; Ord. 38 (part), 3/15/55)

7.02-5 Model Home Complexes and Sales Offices. Refer to Subsection 54.26, Model Home Complexes and Sales Offices of this chapter for development standards.

10-7.03 Accessory Uses

The following are the accessory uses permitted in an R3 District:

- 7.03-1 Rooming and boarding of not more than two (2) persons.
- 7.03-2 Home occupations and professional offices in home, as provided for in Subsection 54.08.
- 7.03-3 A State-authorized, certified or licensed family care home, foster home or a group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent

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or neglected children provided such home furnishes care on a twenty-four-hour a day basis.

- 7.03-4 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in Subsection 54.09.
- 7.03-5 Small family child care home.
- 7.03-6 Large family child care home, as provided for in Subsections 53.23-6 through 53.23-8 and 54.16. (Ord. 38.761 (part), 5/20/03; Ord. 38.702 (1) (part); Ord. 38.339 (part), 2/19/74; Ord. 38.19 (part), 1/17/61; Ord. 38 (part), 3/15/55)

10-7.04 Conditional Uses

- 7.04-1 Boarding houses for three (3) or more persons.
- 7.04-2 Group dwellings.
- 7.04-3 Hospital, sanitarium or licensed nursing home exceeding six (6) persons except for the following: clinic, animal hospital, and hospital, sanitarium, or nursing home used primarily for contagious, mental or drug or alcohol addict cases.
- 7.04-4 Child care center.
- 7.04-5 Incidental services, such as restaurants and retail sales to serve residents, provided there is no exterior display or advertising and such activities are conducted in spaces which are integral parts of a main building excluding Adult Businesses, as defined in Subsection 54.18.
- 7.04-6 Social halls, lodges, fraternal organizations and clubs, except those operated for a profit.
- 7.04-7 School (elementary and high) and park, playground or community center, owned and operated by a governmental agency or a nonprofit community organization; permanent church buildings (except rescue mission and temporary revival), public service structures, not including corporation yards, storage or repair yards and warehouses; and golf course (except driving tee or range, miniature course and similar uses operated for commercial purposes).
- 7.04-8 Repealed by Ord. 38.349.
- ~~7.04-9 Temporary tract offices and tract signs with the exception that no tract signs shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.~~
- 7.04-10 Condominiums.
- 10-7.04-11 Condominium Conversion. (Ord. 38.763 (13), 4/20/04; Ord. 38.761 (part), 5/20/03; Ord. 38.711 (part), 8/20/96; XI-10-7.04-10 and -11; Ord. 38.702 (1) (part), 8/15/95; Ord. 38.591 (part), 11/5/85; Ord. 38.485 (part), 7/3/79; Ord. 38.349 (part), 11/19/74; Ord. 38.339 (part), 2/19/74; Ord. 38.207 (part), 11/17/70; Ord. 38 (part), 3/15/55)

10-7.05 Height Regulations

No principal building shall exceed either three and one-half (3 1/2) stories or thirty-five (35) feet in height and no accessory building shall exceed either two (2) stories or twenty-five (25) feet in height. This height restriction can be waived where a planned unit development has been approved at a density in excess of twenty (20) units per gross acre in accordance with the provisions of Section XI-10-54.07-6(c). (Ord. 38.610 (A) (part), 9/2/86; Ord. 38 (part), 3/15/55)

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10-7.06 Area, Lot Width and Yard Requirements

The following minimum requirements shall be observed, except where increased for conditional uses.

- 7.06-1 Lot area: R-3-20 -- Eight thousand (8,000) square feet.
- 7.06-2 Lot area per dwelling unit: R-3 -- Two thousand (2,000) square feet. This minimum requirement can be waived where a planned unit development has been approved at a higher density in accordance with the provisions of Section XI-10-54.07-6(c)
- 7.06-3 Lot width: R-3-20 -- Seventy (70) feet.
- 7.06-4 Front yard: R-3-20 -- Twenty (20) feet.
- 7.06-5 Side Yards: R-3-20 -- One side five (5) feet, total both sides twelve (12) feet. If principal building is two (2) or two and one-half (2 1/2) stories high, one side ten (10) feet, total both sides twenty-five (25) feet. If principal building is three (3) or three and one-half (3 1/2) stories high, one side twelve (12) feet, total both sides thirty (30) feet.
- 7.06-6 Rear Yard: R-3-20 -- Thirty (30) feet. If principal building is two (2) or two and one-half (2 1/2) stories high, thirty-five (35) feet. If principal building is three (3) or three and one-half (3 1/2) stories high, forty (40) feet.
- 7.06-7 Provided that all other requirements of this title are met, the required area per dwelling unit specified above may be reduced to 1,000 square feet for each efficiency apartment, as defined herein, contained in a multiple-family dwelling. (Ord. 38.610 (A) (part), 9/2/86; Ord. 38.57 (part), 6/18/64; Ord. 38 (part), 3/15/55)

10-7.07 Landscape and Open Space Requirements

- 7.07-1 A minimum of twenty-five (25) percent of the total lot area (not including paved parking area) shall be landscaped or recreational open space, exclusive of parking and vehicular traffic area and this shall be shown on site plan in detail for Planning Commission approval.
- 7.07-2 An average of two hundred square feet of usable open space shall be provided for each dwelling unit. "Usable open space" shall mean any open space, the smallest dimension of which is at least 4 1/2 feet and which is not used as storage or for movement of motor vehicles: except that yards abutting a public street, which are not adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas. At least thirty (30) percent of required open space shall be contiguous to and provide for private usable open space of the individual dwelling unit. (Ord. 38.767 (part), 2/7/06; Ord. 38.57 (part), 6/18/64; Ord. 38 (part), 3/15/55)

10-7.08 On-Site Utilities Requirements

Where the allowable dwelling units exceed six (6) for a single parcel or the total area to be subdivided exceeds three (3) acres, all on-site utilities are to be placed underground.

- 7.08-1 Television antennas are to be centralized for structures of four (4) or more units. (Ord. 38.57 (part), 6/18/64; Ord. 38 (part), 3/15/55)

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10-7.09 Automobile Parking and Loading Areas (Ordinance 38.57, 6/18/64)

- 7.09-1 For Multiple-Family dwellings, there shall be provided at the time of erection of a new dwelling or an addition to an existing dwelling at least two (2) permanent automobile off-street parking spaces for each dwelling unit plus additional guest spaces equal to twenty (20) percent of the total amount required in a Multiple-Family dwelling. All required parking spaces shall be located to the rear of the front setback line.
- 7.09-1.5 Parking space dimensions shall be as follows:
- (a) Standard parking spaces shall be a minimum of nine (9) feet wide by eighteen (18) feet long.
 - (b) Compact parking spaces shall be a minimum of 7.5 feet wide by 15 feet long. When compact parking spaces are used in garages with more than two spaces each space shall be marked as compact.
 - (c) Tandem parking spaces shall be a maximum of two (2) parking spaces deep.
- 7.09-2 A minimum of one (1) off-street parking space is required for each efficiency apartment, as defined herein.
- 7.09-3 All multiple-family dwelling units that require two (2) permanent off-street parking spaces each, shall have at least one (1) space covered. Efficiency apartments, as defined herein, may provide an uncovered off-street parking space.
- 7.09-4 For Multiple-Family dwelling units that require two (2) permanent off-street parking spaces, two (2) parking space deep tandem parking as surface parking or garage parking shall be allowed for each dwelling unit. All tandem parking spaces shall be assigned and marked for residents only.
- 7.09-5 A maximum of forty (40) percent of parking may be compact parking spaces. No compact parking spaces are allowed for guest parking.
- 7.09-6 There shall be provided off-street parking for automobiles in terms of design layout and sufficient quantity in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in subsection 54.03. (Ord. 38.761 (part), 5/20/03; Ord. 38.648 (A), 11/7/89)

10-7.10 Trash and Storage Areas and Areas for Collecting and Loading Recyclable Materials

- 7.10-1 There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of subsection 54.15 of this Chapter.
- 7.10-2 All outdoor storage and trash areas shall be within a completely enclosed building or behind a solid wall or tight board fence a minimum of six (6) feet in height. (Ord. 38.760 (3), 9/17/02; Ord. 38.687 (1) (part), 4/19/94)

10-7.11 Repealed by Ordinance 38.384, 10/26/76

10-7.12 Required Improvements

Parking and loading areas shall be improved as provided in Subsection 54.03. (Ord. 38.57, 6/18/64)

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10-7.13 Corner Lots

On corner lots the side yard regulation shall be the same as for interior lots except on the street side of a corner or reversed corner lot, in which case the side yard shall not be less than fifty (50) percent of the front yard required on the lots in the rear of such corner lot, but such side yard need not exceed ten (10) feet, nor shall it be less than the side yard required on interior lots. (Ord. 38.57, 6/18/64)

10-7.14 Deleted by Ord. 38.761

10-7.15 Conformance with Midtown Specific Plan.

The Midtown Specific Plan policies, as well as the Design Guidelines and Standards set forth in Chapter 8 of the Plan, shall apply to all properties within the Midtown area if any one or more of the following occurs:

- (a) Whenever a new building is constructed, regardless of size;
- (b) Whenever the use of an existing building is expanded or changed to a use requiring 50% or more off-street parking spaces, as determined by the City's adopted parking standards; or
- (c) Whenever an existing building is increased in gross floor area by 10% of the existing gross floor area or is enlarged by 500 or more square feet, whichever is less (all additions or enlargements completed since May 2, 2002 shall be totaled).

If exterior building or site improvements (including signage) are proposed that do not fall under (a) through (c) above, such improvements shall be designed to conform to the Midtown policies, guidelines and standards applicable to the improvements, without requiring additional Midtown-related improvements to be imposed. (Ord. 38.760 (2), 9/17/02)

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SECTION 8 "R4" MULTI-FAMILY VERY HIGH DENSITY DISTRICT

- 10-8.01 Purpose and Intent
- 10-8.02 Principal Permitted Uses
- 10-8.03 Accessory Uses
- 10-8.04 Conditional Uses
- 10-8.05 Development Standards
- 10-8.06 Off-Street Parking
- 10-8.07 Park and Open Space Requirements for Residential Uses.
- 10-8.08 Utilities
- 10-8.09 Conformance with Midtown Specific Plan
- 10-8.10 Affordable Housing
- 10-8.11 Exceptions to Standards

10-8.01 Purpose and Intent

To stabilize and protect the residential characteristics of the District and to promote a suitable residential environment. The "R4" District is intended to provide for higher-density residential "villages" structured around transit stations, streets, creek side open spaces, trails and parks. (Ord. 38.759 (part), 4/2/02)

10-8.02 Principal Permitted Uses

The following are the principal permitted uses in an R4 District:

- 8.02-1 Multiple family dwellings.
- 8.02-2 Planned Unit Developments subject to provisions of subsection 54.07.
- 8.02-3 Second family unit, in conjunction with an existing legal single-family dwelling. Refer to Subsection 54.22 of this Chapter for development standards. (Ord. 38.761 (part), 5/20/03; Ord. 38.759 (part), 4/2/02)
- 8.02-4 Model Home Complexes and Sales Offices. Refer to Subsection 54.26, Model Home Complexes and Sales Offices of this chapter for development standards.

10-8.03 Accessory Uses

The following are the accessory uses permitted in an "R4" District:

- 8.03-1 Home occupations and professional offices in home, as provided in subsection 54.08.
- 8.03-2 A State authorized, certified or licensed family care home, foster home or group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such care home furnishes care on a 24-hour a day basis.
- 8.03-3 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in subsection 54.09.
- 8.03-4 Small family child care home.
- 8.03-5 Large family child care home, as provided for in Subsections 53.23-6 through 53.23-8 and 54.16. (Ord. 38.761 (part), 5/20/03; Ord. 38.759 (part), 4/2/02)

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10-8.04 Conditional Uses

- 8.04-1 Boarding houses for three (3) or more persons.
- 8.04-2 Group dwellings.
- 8.04-3 Child care centers.
- 8.04-4 Live-work units; allowed commercial uses to be specified through the use permit process.
- 8.04-5 Park, playground or community center, owned and operated by a governmental agency or a non-profit community organization.
- 8.04-6 Public service structures, not including corporation yards, storage or repair yards and warehouses.
- ~~8.04-7 Temporary tract offices and tract signs with the exception that no tract sign shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.~~
- 8.04-8 Condominium conversion, subject to the regulations set forth in Section 54.19. (Ord. 38.763 (14), 4/20/04: Ord. 38.761 (part), 5/20/03: Ord. 38.759 (part), 4/2/02)

10-8.05 Development Standards

- 8.05-1 Structure Height. No building shall exceed four (4) stories and sixty (60) feet in height, including special architectural elements such as towers and spires.
- 8.05-2 Residential Density. Residential development shall be a minimum of thirty-one (31) dwelling units per gross acre and shall not exceed forty (40) dwelling units per gross acre.
- 8.05-3 Front and Street Side Setbacks.
 - (a) There shall be a minimum building setback of eight (8) feet and a maximum building setback of fifteen (15) feet from back of sidewalk. The sidewalk shall be based on either existing sidewalk or an assumed 10-foot wide sidewalk, whichever is wider.
 - (b) Where a public easement prevents a building from being located at its required minimum or maximum setback lines, the building shall be located as close to the back of said easement as possible.
 - (c) Porches, stairs and balconies may be located in the front and street side setback areas provided they are incorporated into an integrated landscape concept where the majority of the setback areas are reserved for landscaping. Stairs and porches may project up to six (6) feet into the minimum setback.
 - (d) Required front and street side setback areas shall be landscaped.
- 8.05-4 Interior Side and Rear Yard Setbacks.

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- (a) Interior Side Yard. Minimum ten (10) feet.
- (b) Rear Yard. Minimum ten (10) feet.
- (c) Balconies, bay windows and awnings may project up to six (6) feet into the interior side or rear setback areas.
- (d) Interior side and rear setback areas shall be landscaped but may also be occupied by accessory buildings and drive aisles. (Ord. 38.759 (part), 4/2/02)

10-8.06 Off-Street Parking

8.06-1 There shall be at least the following:

- (a) Studio: one (1) covered automobile stall per unit.
- (b) One (1) bedroom: one and one-half (1 1/2) covered automobile stalls per unit.
- (c) Two (2) or more bedrooms: two (2) covered automobile stalls per unit.
- (d) Guest parking: fifteen percent (15%) of automobile stalls required in (a) through (c) above. May be covered or uncovered.
- (e) Bicycle parking: five percent (5%) of automobile stalls required in (a) through (d) above.

8.06-2 Parking is prohibited in the front and street side setback areas.

8.06-2.5 Parking space dimensions shall be as follows:

- (a) Standard parking spaces shall be a minimum of nine (9) feet wide by eighteen (18) feet long.
- (b) Compact parking spaces shall be a minimum of 7.5 feet wide by 15 feet long. When compact parking spaces are used in garages with more than two spaces each space shall be marked as compact.
- (c) Tandem parking spaces shall be a maximum of two (2) parking spaces deep.

8.06-3 For Multiple-Family dwelling units that require two (2) permanent off-street parking spaces, two (2) parking space deep tandem parking as surface or garage parking shall be allowed for each dwelling unit. All tandem parking spaces shall be assigned and marked for residents only.

8.06-4 Carports shall be no more than eight (8) parking stalls wide and shall be separated from one another by a four (4) foot wide (interior dimension) landscape island, planted with a tree.

8.06-5 A maximum of forty (40) percent of parking may be compact parking spaces. No compact parking spaces are allowed for guest parking.

8.06-6 There shall be provided off-street parking for automobiles in terms of design layout and sufficient quantity in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in Subsection 54.03. (Ord. 38.761 (part), 5/20/03; Ord. 38.760 (2), 9/17/02; Ord. 38.759 (part), 4/2/02)

10-8.07 Park and Open Space Requirements for Residential Uses.

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- 8.07-1 All residential projects within the Midtown Specific Plan area shall provide park land at a ratio of three and one-half (3 1/2) acres per one thousand (1,000) population. Up to one and one-half (1 1/2) of each three and one-half (3 1/2) total park acres required (43%) may be satisfied by the provision of private recreational areas. The remaining park land requirement must be satisfied by either dedication of land to the City for public parks and open space, or payment of an in-lieu fee, as set forth in Section 9 (Park Dedication) of the Milpitas Subdivision Ordinance (Title XI, Chapter 1).
- 8.07-1.1 All residential projects outside the Midtown Specific Plan area shall comply with the park land dedication provisions provided in Section 9.06 (Amount of Park Land to be Dedicated) of the Milpitas Subdivision Ordinance.
- 8.07-2 A minimum of twenty-five percent (25%) of the total site shall be usable open space or recreational facilities. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas.
- 8.07-3 Balconies and porches located above ground level with a minimum dimension of 4 1/2 feet constructed for use by dwelling units shall be exempt from the usable open space dimension standards above and within in Section 2 of this chapter, and may be considered to satisfy usable open space requirements. Each dwelling unit shall be provided with private open space as follows:
- (a) Balconies and porches (above ground level): minimum sixty (60) square feet; or
 - (b) Patios (at ground level): minimum one hundred square feet. (Ord. 38.767 (part), 2/7/06; Ord. 38.760 (3), 9/17/02; Ord. 38.759 (part), 4/2/02)

10-8.08 Utilities

- 8.08-1 Utilities shall be placed in underground or subsurface conduits.
- 8.08-2 All mechanical equipment, ground transformers and meters shall be located and screened to minimize visual impacts.
- 8.08-3 Rooftop mechanical equipment shall be concealed from street level views through roof design that is architecturally integrated with the building, such as equipment wells and parapets.
- 8.08-4 Public utility distribution meters, vaults and similar installations shall be consolidated in a single area whenever possible and located away from highly visible areas such as street corners and public open spaces.
- 8.08-5 Backflow preventors shall be located within the landscaped setback areas and painted black or dark green to minimize visual impact. Where no landscaped setback areas exist the backflow preventors shall be incorporated into the front of the building to minimize visual obtrusiveness.
- 8.08-6 Refuse and recycling containers shall not be visible from a public or private street. Such containers shall be stored either within the parking facility of the building or within a vehicular accessway with screening designed to meet the requirements of Section 8.08-7.
- 8.08-7 Trash enclosure walls shall incorporate building materials and colors that match the architecture of the building, and be well landscaped.

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- 8.08-8 All telecommunication antennas shall be a building facade or roof mounted and screened appropriately.
- 8.08-9 On Main Street only telecommunication facilities disguised to appear as a part of the building architecture (i.e. "stealth" antennas) may be used. (Ord. 38.760 (3), 9/17/02; Ord. 38.759 (part), 4/2/02)

10-8.09 Conformance with Midtown Specific Plan

The Midtown Specific Plan policies, as well as the Design Guidelines and Standards set forth in Chapter 8 of the Plan, shall apply to all properties within the Midtown area if any one or more of the following occurs:

- (a) Whenever a new building is constructed, regardless of size;
- (b) Whenever the use of an existing building is expanded or changed to a use requiring 50% or more off-street parking spaces, as determined by the City's adopted parking standards; or
- (c) Whenever an existing building is increased in gross floor area by 10% of the existing gross floor area or is enlarged by 500 or more square feet, whichever is less (all additions or enlargements completed since May 2, 2002 shall be totaled).

If exterior building or site improvements (including signage) are proposed that do not fall under (a) through (c) above, such improvements shall be designed to conform to the Midtown policies, guidelines and standards applicable to the improvements, without requiring additional Midtown-related improvements to be imposed. (Ord. 38.760 (3), 9/17/02; Ord. 38.759 (part), 4/2/02)

10-8.10 Affordable Housing

Affordable housing units should be provided in all new housing projects. While twenty percent (20%) is the minimum goal, affordable unit requirements will be determined on a project by project basis, taking into consideration the size and location of the project, the type of housing unit, proximity to transit and the mix of affordable units in the vicinity. (Ord. 38.759 (part), 4/2/02)

10-8.11 Exceptions to Standards

- 8.11-1 Exceptions to all but the use, density and park land requirement regulations (Subsections 8.02, 10-8.03, 8.04, 8.05-2 and 8.07-1) of this Section 8 may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section 57.
- 8.11-2 In addition to the required findings under Chapter 57, the Planning Commission must be able to make the following two additional findings for such exceptions:
- (a) The exceptions meet the design intent identified within the Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
 - (b) The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard. (Ord. 38.759 (part), 4/2/02)

Changes To Model Home Complexes And Sales Offices

10-9.00 AR AGRICULTURAL RESIDENCE DISTRICT

- 10-9.00 AR Agricultural Residence District
- 10-9.01 Purpose
- 10-9.02 Principal Permitted Uses
- 10-9.03 Accessory Uses
- 10-9.04 Conditional Uses
- 10-9.05 Height Regulations
- 10-9.06 Area, Lot Width and Yard Requirements
- 10-9.07 Automobile Parking Restrictions
- 10-9.08 Required Improvements

10-9.01 Purpose

To stabilize and protect the residential characteristics of certain portions of the hillside area where due to slope and inherent geologic problems it is necessary to maintain low intensity development for the public welfare. The AR District is intended for semi-rural residential homes and services appurtenant thereto. (Ord. 38 (part), 3/15/55)

10-9.02 Principal Permitted Uses

The following are the principal permitted uses:

- 9.02-1 Single-family dwellings.
- 9.02-2 Planned unit developments subject to provisions of Subsection XI-10-54.07.
- 9.02-3 Agriculture, except the raising of animals or fowl for commercial purposes, or the sale of any product at retail on the premises.
- 9.02-4 Mobile homes subject to provisions of Subsection XI-10-54.14. (Ord. 38.541, 4/20/82; Ord. 38 (part), 3/15/55)
- 9.02-5 Model Home Complexes and Sales Offices. Refer to Subsection 54.26, Model Home Complexes and Sales Offices of this chapter for development standards.

10-9.03 Accessory Uses

The following are the accessory uses permitted:

- 9.03-1 Rooming and boarding of not more than two (2) persons.
- 9.03-2 Home occupations and professional offices in home as provided for in Subsection XI-10-54.08.
- 9.03-3 A State-authorized, certified or licensed family care home, foster home or group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such home furnishes such care on a twenty-four (24) hour a day basis.
- 9.03-4 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in Subsection XI-10-54.09.

Changes To Model Home Complexes And Sales Offices

9.03-5 Family day-care homes for not more than six (6) children. (Ord. 38 (part), 3/15/55)

10-9.04 Conditional Uses

The following uses may also be permitted if their location is first approved by the Commission, as provided for in Section XI-10-57.

9.04-1 Parks and playgrounds for community centers, owned and operated by a governmental agency or a non-profit community organization; permanent church buildings (except rescue mission and temporary revival), public service structures, not including corporation yards or storage or repair yards, warehouses; and golf course (except driving tee or range, miniature course and similar uses operated for commercial purposes).

9.04-2 Off-street public parking areas.

~~9.04-3 Temporary tract offices and tract signs with the exception that no tract sign shall be permitted within six hundred (600) feet of a Santa Clara County expressway.~~

9.04-4 The raising of animals or fowl for commercial purposes, or the sale of any agricultural products at retail on the premises. (Ord. 38.633 (A) (part), 3/15/88; Ord. 38 (part), 3/15/55)

10-9.05 Height Regulations

No principal building shall exceed either three and one-half (3½) stories or forty (40) feet in height, and no accessory building shall exceed seventy-five (75) feet in height. (Ord. 38 (part), 3/15/55)

10-9.06 Area, Lot Width and Yard Requirements

The following minimum requirements shall be observed, except where increased for conditional uses. The minimum requirement shall be one of the following for the district classification as designated on the Zoning Map.

9.06-1 Lot Area:
AR-20 -- twenty (20) acre.
AR-15 -- fifteen (15) acre.

9.06-2 Lot Width:
AR-20 -- two hundred (200) feet.
AR-15 -- one hundred seventy-five (175) feet.
AR-10 -- one hundred fifty (150) feet.

9.06-3 Front:
AR-20 -- forty (40) feet.

Side & Rear:
AR-15 -- forty (40) feet.
(Ord. 38.399, 9/20/77; Ord. 38 (part), 3/15/55)

10-9.07 Automobile Parking Restrictions

Changes To Model Home Complexes And Sales Offices

9.07-1 For dwellings. There shall be provided at the time of erection of any dwelling at least two (2) permanently maintained parking spaces, on the same lot with the dwelling, for each dwelling unit. Such parking spaces shall be not less than ten (10) feet wide and twenty (20) feet long with adequate provision for ingress and egress. No automobile driveway to provide access shall be less than fourteen (14) feet in width.

9.07-2 Repealed by Ord. 38.384. (Ord. 38.384, 10/26/76; Ord. 38 (part), 3/15/55)

10-9.08 Required Improvements

The above parking areas shall be improved as provided in Subsection XI-10-54.03. (Ord. 38.355, 9/15/75; Ord. 38 (part), 3/15/55)

Attachment C

Exhibit 7, Ancillary Changes

Ancillary Changes

10-63.06 Revocation, Suspension, Modification

63.06-1(a) The City Council shall have the power to revoke, suspend or modify any permit, variance or approval issued under the provisions of this Chapter (including, but not limited to conditional use permit, variances, or ~~Site Development Permits "S" Zone approval~~) for breach of any condition or requirement imposed upon the granting of said permit, variance or approval.

10-4.11 Front Yard Coverage

(a) A portion of the required front yard may be paved. The width of the area that may be paved shall not exceed the width of the garage, or fifty percent (50%) of the lot width measured at the front property line, whichever is greater. Patios within the required front are included in this calculation. Walkways, which are not used for vehicular parking, do not count towards coverage limits.

Exceptions may be granted by the Planning Commission after public hearing notification, per Section 64 of this Chapter, for ~~an a Site Development Permit "S" Zone Amendment~~ application, as described in Section 42 of this Chapter. For Hillside properties, refer to Section 45 of this Chapter for additional requirements. For regulations pertaining to parking in the front yard, refer to Milpitas Municipal Code Section V-500.

10-53.19 Markings and Modifications To Lots and Spaces

The location of each parking space shall be identified and maintained by surface markings or other effective means, so as to be readily identifiable at all times.

Site ~~Development Permit and Architectural~~ approval, as provided for in Section 42 of this Chapter, shall be required for any construction of new parking lots. Modifications to existing lots and spaces, including restriping or elimination of spaces, shall be subject to the provisions of Section ~~53 42-10~~ of this Chapter. (Ord. 38.716 (part), 9/15/98: Ord. 38.665 (part), 10/29/91: Ord. 38 (part), 3/15/55)

10.2.78-5 Wireless Communications Facility, Stealth

A stealth wireless communications facility shall mean any antenna designed to be architecturally integrated into a building that is architecturally consistent with the building design. Examples include a steeple, cupola or tower element on a building and do not include flag poles, mono-poles or other structures designed to house antennae and resemble natural features.

Attachment C

Exhibit 8, Changes to Food Stores

Changes To Food Stores

SECTION 18 "C1" NEIGHBORHOOD COMMERCIAL

- 10-18.01 Purpose and Intent
- 10-18.02 Principal Permitted Uses
- 10-18.03 Uses Permitted Subject to Receiving a Conditional Use Permit
- 10-18.04 Development Standards
- 10-18.05 Off-Street Parking Requirements
- 10-18.06 Areas for Collecting and Loading Recyclable Materials
- 10-18.07 Conformance with Midtown Specific Plan

10-18.01 Purpose and Intent

To provide for general commercial needs of neighborhood areas of the City and to promote stable, attractive commercial development which will afford a pleasant shopping environment and will complement the essential residential character of the neighborhood. The Neighborhood Commercial District shall contain, as permitted uses, those activities which primarily provide for the day-to-day shopping needs of the residential neighborhood it is located in. It shall not include uses which generate loud noises or unpleasant odors. It shall not include retail stores, offices or service establishments which are not open to minors or which are designed to attract customers and traffic from areas other than the neighborhood area in which they are located. (Ord. 38.371, 2/17/76; Ord. 38 (part), 3/15/55)

10-18.02 Principal Permitted Uses

The following are the principal permitted uses in a C1 Neighborhood Commercial District:

18.02-1 Retail stores, offices and service establishments including:

1. Art and antique stores.
2. Artists supply stores.
3. Bakery goods stores intended to serve only that neighborhood area in which they are located.
4. Banks.
5. Barber shops and beauty shops.
6. Deleted by Ord. 38.511.
7. Candy stores.
8. Christmas tree sales lots.
9. Deleted by Ord. 38.511.
10. Cleaning and laundry establishments intended to serve only that neighborhood area in which they are located.
11. Clothing stores intended to serve only that neighborhood area in which they are located.
12. Department stores intended to serve only that neighborhood area in which they are located.
13. Drug stores intended to serve only that neighborhood area in which they are located.

Changes To Food Stores

14. Retail florists.
15. Deleted by Ord. 38.511. Food stores, delicatessens, and supermarkets that are located over 1,000 feet from residential development or uses.
16. Furniture stores.
17. Gift shops.
18. Hardware stores intended to serve only that neighborhood area in which they are located.
19. Hobby shops.
20. Deleted by Ord. 38.511.
21. Household repair shop.
22. Interior decorating shops.
23. Jewelry stores.
24. Leather goods and luggage stores.
25. Deleted by Ord. 38.511.
26. Locksmiths.
- 26.1 Medical and dental offices.
27. Millinery shops.
28. Music stores.
29. Deleted by Ord. 38.511.
30. Deleted by Ord. 38.511.
31. Office, business or professional.
32. Optician and optometrist shops.
33. Deleted by Ord. 38.511.
34. Deleted by Ord. 38.511.
35. Photographic supply stores.
36. Photography studios.
37. Picture framing shops.
38. Retail pressing establishments.
39. Realtors and real estate offices.

Changes To Food Stores

- 40. Deleted by Ord. 38.511.
 - 41. Deleted by Ord. 38.511.
 - 42. Shoe repair shops.
 - 43. Shoe stores intended to serve only that neighborhood area in which they are located.
 - 44. Deleted by Ord. 38.511.
 - 45. Sporting goods stores.
 - 46. Stamp and coin stores.
 - 47. Stationery stores.
 - 48. Retail tailor and dressmaking shops.
 - 49. Toy stores.
 - 50. Travel bureaus.
 - 51. Deleted by Ord. 38.511.
 - 52. Watch and clock repair shops.
- 18.02-2 Any other uses which are added to this list by the City Planning Commission, in accord with the procedure prescribed in Section XI-10-54.02.
- 18.02-3 Parking lots improved in conformity with the standards prescribed for required off-street parking facilities in Section XI-10-54.03.
- 18.02-4 Accessory structures and uses, not including warehouses, on the same site as a permitted use. (Ord. 38.761 (part), 5/20/03; Ord. 38.511 (part), 5/6/80; Ord. 38.123, 5/7/68; Ord. 38 (part), 3/15/55)

10-18.03 Uses Permitted Subject to Receiving a Conditional Use Permit

The following uses may also be permitted if their location is first approved by the Commission, as provided for in Section XI-10-57:

- 18.03-1 Arcades, with mechanical or electronic games or games of skill or science.
- 18.03-2 Automobile service stations with or without service bays. Entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line.
- 18.03-3 Book and rental libraries.
- 18.03-4 Cigar store (tobacco shop).
- 18.03-4.1 Small and large family child care home, and child care center.
- 18.03-5 Churches and other religious institutions.

Changes To Food Stores

- 18.03-5.1 Commercial athletic facilities, conducted wholly within a building, such as but not limited to health spas and gyms; tennis, handball or racquetball, etc.
- 18.03-5.2 Farmers' Market, excluding flea market.
- 18.03-6 Food stores, delicatessens, and supermarkets **that are within 1,000 feet of residential development and uses.**
- 18.03-7 Household appliance stores.
- 18.03-8 Liquor stores.
- 18.03-8.1 Medical and dental clinics.
- 18.03-9 Music and dance studios.
- 18.03-10 Newsstands.
- 18.03-11 Paint and wallpaper stores.
- 18.03-12 Pet and bird stores.
- 18.03-13 Post offices.
- 18.03-14 Private clubs and lodges.
- 18.03-15 Public buildings and grounds.
- 18.03-16 Public utility and public service pumping stations, power stations, drainage ways and structures, storage tanks and transmission lines found by the City Planning Commission to be necessary for the public health, safety or welfare.
- 18.03-17 Restaurants, restaurants which include on-premise consumption of alcoholic beverages when found clearly incidental to the primary food service, or restaurants which include internet usage for customers, but excluding dancing or live entertainment.
- 18.03-18 Self-service laundry.
- 18.03-19 Temporary tract advertising signs with the exception that no tract signs shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.
- 18.03-20 Theater, indoor, excluding Adult Theaters or Adult Motion Picture Theaters, as defined in Subsection 54.18.
- 18.03-21 Variety stores.
- 18.03-22 Vehicle oriented window service facility.
- 18.03-23 Video sales and rental store.
(Ord. 38.770 (4) (part), 1/2/07; Ord. 38.761 (part), 5/20/03; Ord. 38.760 (3), 9/17/02; Ord. 38.711 (part), 8/20/96; Ord. 38.702 (1) (part), 8/15/95; Ord. 38.697 (1) (part), 12/20/94; Ord. 38.662 (A) (part), 1/8/91; Ord. 38.551, 9/7/82; Ord. 38 (part), 3/15/55)

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10-18.04 Development Standards

18.04-1 Height. Uses located in the C1 Neighborhood Commercial District shall be limited so as not to allow a building or structure to exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height. Freestanding sign heights are regulated by Ordinance No. 124, Signs enacted as Chapter 30, Title XI of the Milpitas Municipal Code.

18.04-2 Front Yards. Twenty (20) feet.

18.04-3 Side Yards and Rear Yards.

(a) Deleted.

(b) Where the rear or side of a commercial lot abuts a Residential District there shall be a rear yard or a side yard of not less than fifteen (15) feet in depth or width, or both.

18.04-3.1 Floor Area Ratio. Subject to XI-10-2.38.2, the Floor Area Ratio is .35 (35%).

18.04-4 Standard Conditions.

(a) All uses and operations, except off-street parking and loading, reverse vending machines or mobile recycling units and other uses and activities customarily conducted out-of-doors, shall be conducted within a completely enclosed building.

(b) All outdoor storage areas of such things as trash and materials shall be within a completely enclosed building or behind a solid wall or tight board fence a minimum of six (6) feet in height.

(c) All operating equipment to be located on the roof of any new building shall be enclosed so as to be shielded from view in a manner to the approval of the Planning Commission. Modifications regarding operating equipment and screen materials at existing developed sites shall be subject to the provisions of Section 42.10 of this Chapter. (Ord. 38.761 (part), 5/20/03; Ord. 38.760 (3), 9/17/02; Ord. 38.716 (part), 9/15/98; Ord. 38.713 (1) (part), 12/3/96; Ord. 38.629 (A) (part), 1987; Ord. 38.473, 3/6/79; Ord. 38.185, 8/5/69; Ord. 38 (part), 3/15/55)

10-18.05 Off-Street Parking Requirements

There shall be provided off-street parking for automobiles in terms of design layout and sufficient quantity in accordance with the requirements of Section 53. All such parking shall be improved as provided for in Subsection 54.03. (Ord. 38.760 (3), 9/17/02; Ord. 38.384, 10/26/76; Ord. 38 (part), 3/15/55)

10-18.06 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of Subsection 54.15 of this Chapter. (Ord. 38.687 (1) (part), 4/19/94)

10-18.07 Conformance with Midtown Specific Plan

The Midtown Specific Plan policies, as well as the Design Guidelines and Standards set forth in Chapter 8 of the Plan, shall apply to all properties within the Midtown area if any one or more of the following occurs:

Changes To Food Stores

- a) Whenever a new building is constructed, regardless of size; or
- b) Whenever the use of an existing building is expanded or changed to a use requiring 50% or more off-street parking spaces, as determined by the City's adopted parking standards; or
- c) Whenever an existing building is increased in gross floor area by 10% of the existing gross floor area or is enlarged by 500 or more square feet, whichever is less (all additions or enlargements completed since May 2, 2002 shall be totaled).

If exterior building or site improvements (including signage) are proposed that do not fall under a) through c) above, such improvements shall be designed to conform to the Midtown policies, guidelines and standards applicable to the improvements, without requiring additional Midtown-related improvements to be imposed. (Ord. 38.760 (2), 9/17/02)

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SECTION 19 "C2" GENERAL COMMERCIAL DISTRICT

- 10-19.01
- 10-19.02 Principal Permitted Uses
- 10-19.03 Uses Permitted Subject to Securing a Conditional Use Permit
- 10-19.04 Development Standards
- 10-19.05 Traffic Hazards
- 10-19.06 Off-Street Parking Requirements
- 10-19.07 Standard Conditions
- 10-19.08 Areas for Collecting and Loading Recyclable Materials
- 10-19.09 Conformance with Midtown Specific Plan

10-19.01

The following regulations shall apply in the C2 General Commercial District.

Purpose and Intent

The C2 District is intended to provide for the wide range of retail sales and personal and business services primarily oriented to the automobile customer to provide for general commercial needs of the City and to promote stable, attractive commercial development which will afford a pleasant shopping environment. It is intended to include those commercial uses in which shopping may be conducted by people walking to several stores as in a center and may include uses customarily of a single-purpose character served from an immediately parked automobile. Special development standards are incorporated in the district regulations in order to provide for orderly development and to minimize potential traffic hazards. The C2 District, when appropriate, will be located along major thoroughfares and in accordance with the adopted City of Milpitas General Plan. (Ord. 38.637 (part), 8/16/88: Ord. 38 (part), 3/15/55)

XI-10-19.02 Principal Permitted Uses

No building, structure or land shall be used and no building or structure shall be hereafter erected, structurally altered or enlarged, except for the following uses:

- 19.02-1 Any use permitted in the C1 Neighborhood Commercial District.
- 19.02-2 Antique store.
- 19.02-3 Appliance store or business.
- 19.02-4 Auditorium.
- 19.02-5 Barbershop, beauty salon.
- 19.02-6 Bookstore, except Adult Businesses as defined Subsection 54.18.
- 19.02-7 Banks and similar financial institutions.
- 19.02-8 Bowling alley.
- 19.02-9 Vocational schools (except schools which teach all types of acupressure, massage or similar procedures), if not found objectionable due to noise, odor, vibration or other similar health,

Changes To Food Stores

- safety or welfare basis.
- 19.02-10 Blueprinting, photostating, and photo developing.
 - 19.02-11 Catering establishment.
 - 19.02-12 Deleted by Ord. 38.702.
 - 19.02-13 Commercial athletic facilities, conducted wholly within a building, such as but not limited to health spas and gyms; tennis, handball or racquetball, etc.
 - 19.02-14 Department or furniture stores.
 - 19.02-15 Florist store.
 - 19.02-16 Fraternal or union halls and offices.
 - 19.02-17 Hardware store.
 - 19.02-18 Deleted by Ord. 38.710.
 - 19.02-19 Janitorial services and window cleaning services.
 - 19.02-20 Jewelry store.
 - 19.02-21 Laundries and dry cleaning.
 - 19.02-22 Mailbox rentals.
 - 19.02-23 Newspaper printing, printing, lithographing and publishing.
 - 19.02-24 Medical or dental clinic and laboratory.
 - 19.02-25 Music store or music instruction.
 - 19.02-26 Offices: business, professional, administrative, medical, dental, etc.
 - 19.02-27 Photo finishing store.
 - 19.02-28 Rentals: sickroom supplies, costumes, and party equipment, etc.
 - 19.02-29 Repairs, rental and distribution of office or business equipment.
 - 19.02-30 Retail stores or businesses.
 - 19.02-31 Shoe stores and repair.
 - 19.02-32 Telephone answering service.
 - 19.02-33 Telephone exchange.
 - 19.02-34 Deleted by Ord. 38.705.
 - 19.02-35 Thrift store.

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- 19.02-35.1 Tutoring centers.
- 19.02-36 Upholstering shop, if conducted wholly within a completely enclosed building.
- 19.02-37 Deleted by Ord. 38.697.
- 19.02-38 Wholesale or discount merchandise broker, excluding exterior storage.
- 19.02-39 Other uses similar to the above as provided for in Subsection XI-10-54.02. (Ord. 38.761 (part), 5/20/03; Ord. 38.711 (part), 8/20/96; Ord. 38.710 (part), 8/6/96; Ord. 38.702 (3) (part), 8/15/95; Ord. 38.697 (2), 12/20/90; Ord. 38.694 (2) (part), 10/4/94; Ord. 38.637 (part), 8/16/88; Ord. 38.551, 9/7/82; Ord. 38 (part), 3/15/55)

10-19.03 Uses Permitted Subject to Securing a Conditional Use Permit

The following uses may also be permitted in their location if first approved by the Commission, as provided for in Section XI-10-57:

- 19.03-1 Arcades, with mechanical or electronic games or games of skill or science, excluding Adult Arcades as defined in Subsection 54.18.
- 19.03-2 Auction halls.
- 19.03-3 Auto repair shops of all kinds, radiators, paint, body, glass, brakes, upholstery and other types, if all operations are conducted wholly within a completely enclosed building.
- 19.03-4 Auto, mobile home, recreational vehicle and truck rental agency.
- 19.03-5 Auto, mobile home, recreational vehicle, truck and boat sales with accessory repairs and services. Said accessory repairs and services shall be conducted wholly within a completely enclosed building.
- 19.03-6 Auto sales, outdoor (new and used cars in operable condition only).
- 19.03-7 Automobile service stations with or without service bays. Entrances to the service bays shall not be open to the street but shall be so designed to face the rear or interior side property line.
- 19.03-7.1 Billiard center.
- 19.03-8 Cabinet or carpenter shop if conducted wholly within a completely enclosed building.
- 19.03-9 Car wash.
- 19.03-9.1 Small and large family child care home, and child care center.
- 19.03-10 Cocktail lounges with or without live entertainment, excluding Adult Businesses as defined in Subsection 54.18.
- 19.03-11 Commercial laboratories, analytical chemists.
- 19.03-12 Commercial recreation, not conducted wholly within a building, such as but not limited to miniature golf, go-cart tracks, batting range, skateboard park, water slide, swimming pools, etc.

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- 19.03-13 Contractors' yards and offices.
- 19.03-14 Churches.
- 19.03-15 Disinfection and extermination business.
- 19.03-16 Electric and neon sign shops if conducted wholly within a completely enclosed building.
- 19.03-16.1 Farmers' Market, excluding flea market.
- 19.03-17 Food stores, such as supermarkets, convenience stores, ~~etc.~~ that are located within 1,000 feet of residential development or uses.
- 19.03-18 Funeral homes, morticians.
- 19.03-19 Halls for banquets, etc.
- 19.03-19.1 Hospital or sanitarium (except pet hospital).
- 19.03-20 Liquor stores.
- 19.03-21 Local transportation service facilities (taxi, parcel service, ambulance, armored car and van storage).
- 19.03-22 Lumberyards.
- 19.03-23 Tanning salons.
- 19.03-24 Mini-storage complex with or without caretaker residence.
- 19.03-25 Motels and Hotels, excluding Adult Hotels/Motels, as defined in Subsection 54.18.
- 19.03-26 Nursery, flower or plant, provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.
- 19.03-27 Pawnshops.
- 19.03-28 Pet hospitals and veterinarians.
- 19.03-29 Plumbing or sheet metal shop, if conducted wholly within a completely enclosed building.
- 19.03-29.1 Private elementary, middle, or high school.
- 19.03-30 Deleted by Ord. 38.688.
- 19.03-31 Public services, including electric distributing substation, fire or police station and the like.
- 19.03-32 Public utility service yards, garages, and substations.
- 19.03-33 Radio or television stations.
- 19.03-34 Rentals: tools, trucks, trailers, etc., which include outdoor storage areas.
- 19.03-35 Residential buildings, caretakers.

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- 19.03-36 Restaurants, restaurants which include on-premise consumption of alcoholic beverages when found clearly incidental to the primary food service or including dancing or live entertainment, or restaurants which include internet usage for customers, excluding Adult Businesses, as defined in Subsection 54.18.
- 19.03-37 Self-service storage facilities such as mini-storage complex, etc.
- 19.03-38 Sign painting shop, if conducted wholly within a completely enclosed building.
- 19.03-39 Temporary tract advertising signs with the exception that no tract sign shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.
- 19.03-39.1 Theaters, indoor only, excluding Adult Theaters or Adult Motion Picture Theaters as defined in Subsection 54.18.
- 19.03-40 Tire shops.
- 19.03-41 Vehicle oriented window service facility.
- 19.03-42 Video sales and rental store.
(Ord. 38-770 (4) (part), 1/2/07; Ord. 38.761 (part), 5/20/03; Ord. 38.760 (3), 9/17/02; Ord. 38.711 (part), 8/20/96; Ord. 38.710 (part), 8/6/96; Ord. 38.705 (2), 8/15/95; Ord. 38.702 (1) (part), 8/15/95; Ord. 38.697 (1) (part), 12/20/94; Ord. 38.694 (2) (part), 10/4/94; Ord. 38.688 (part), 3/15/94; Ord. 38.662 (A) (part), 1/8/91; Ord. 38.637 (part), 8/16/88; Ord. 38.551, 9/7/82; Ord. 38.591, 11/5/85; Ord. 38.511, 5/6/80; Ord. 38 (part), 3/15/55)

10-19.04 Development Standards

- 19.04-1 Height of Structures. No limitation subject to compliance with all applicable City Codes and ordinances.
- 19.04-2 Lot Area. Ten thousand (10,000) square feet minimum, except those lots in existence at the time of the adoption of this amendment to the Zoning Ordinance.
- 19.04-3 Minimum Lot Width. One hundred (100) feet measured at front property line abutting a major street, except those lots in existence at the time of the adoption of this amendment to the Zoning Ordinance.
- 19.04-4 Front Yard. None.
- 19.04-5 Rear Yards and Side Yards. Where the rear or side of a Commercial lot abuts a Residential District there shall be a rear yard or a side yard of not less than fifteen (15) feet in depth or width, or both.
- 19.04-6 Floor Area Ratio. Subject to XI-10-2.38.2, the Floor Area Ratio is .50 (50%). (Ord. 38.713 (1) (part), 12/3/96; Ord. 38.637 (part), 8/16/88; Ord. 38.473, 3/6/79; Ord. 38 (part), 3/15/55)

10-19.05 Traffic Hazards

In every case where a parcel is located in a C2 District that is combined with the special S Zoning Area, the Planning Commission shall review and approve, among other factors, the specific location and amount of accessways with regard toward the elimination or reduction of any potential traffic hazards. In addition, the Commission may require the construction of temporary median barriers where deemed necessary based on ultimate street construction. (Ord. 38.637 (part), 8/16/88)

Changes To Food Stores

10-19.06 Off-Street Parking Requirements

There shall be provided off-street parking for automobiles in terms of design layout and sufficient quantity in accordance with the requirements of Section 53. All such parking shall be improved as provided for in Subsection 54.03. (Ord. 38.760 (3), 9/17/02; Ord. 38.637 (part), 8/16/88; Ord. 38 (part), 3/15/55)

10-19.07 Standard Conditions

- 19.07-1 All uses and operations, except off-street parking and loading, reverse vending machines or mobile recycling units and other uses and activities customarily conducted out-of-doors, shall be conducted within a completely enclosed building.
- 19.07-2 All outdoor storage areas of such things as trash and materials shall be within a completely enclosed building or behind a visually obscure solid wall or tight board fence a minimum six (6) feet in height.
- 19.07-3 Such uses, operations or products shall not be objectionable due to odor, dust, smoke, noise, vibration or other similar causes. (Ord. 38.760 (3), 9/17/02; Ord. 38.637 (part), 8/16/88; Ord. 38.629 (A) (part), 10/27/87; Ord. 38 (part), 3/15/55)

10-19.08 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of Subsection 54.15 of this Chapter. (Ord. 38.687 (1) (part), 4/19/94)

10-19.09 Conformance with Midtown Specific Plan

The Midtown Specific Plan policies, as well as the Design Guidelines and Standards set forth in Chapter 8 of the Plan, shall apply to all properties within the Midtown area if any one or more of the following occurs:

- a) Whenever a new building is constructed, regardless of size; or
- b) Whenever the use an existing building is expanded or changed to a use requiring 50% or more off-street parking spaces, as determined by the City's adopted parking standards; or
- c) Whenever an existing building is increased in gross floor area by 10% of the existing gross floor area or is enlarged by 500 or more square feet, whichever is less (all additions or enlargements completed since May 2, 2002 shall be totaled).

If exterior building or site improvements (including signage) are proposed that do not fall under a) through c) above, such improvements shall be designed to conform to the Midtown policies, guidelines and standards applicable to the improvements, without requiring additional Midtown-related improvements to be imposed. (Ord. 38.760 (2), 9/17/02)

Attachment C

Exhibit 9, Changes to Combining District Name

Changes to Combining District Name

SECTION 3 ZONING DISTRICTS

- 10-3.01 Districts
- 10-3.02 Combining Regulations
- 10-3.03 Zoning Map
- 10-3.04 Letter Designation Includes All Aspects of the Zone
- 10-3.05 Most Restrictive and Least Restrictive Zones
- 10-3.06 Reference to General Provisions and Exceptions

10-3.01 Districts

In order to carry out the purpose and provisions of this Chapter, the City is hereby divided into districts known as:

Full Name	Short Name
"R1" Single-Family District	"R1" District
"R2" One and Two-Family District	"R2" District
"R3" Multiple-Family District	"R3" District
"AR" Agricultural Residence	"AR" District
"CO" Administrative & Professional Office District	"CO" District
"C1" Neighborhood Commercial District	"C1" District
"C2" General Commercial District	"C2" District
"HS" Highway Service District	"HS" District
"TC" Town Center District	"TC" District
"M1" Light Industrial District	"M1" District
"M2" Heavy Industrial District	"M2" District
"MP" Industrial Park District	"MP" District
"A" Agricultural District	"A" District
"POS" Park and Open Space District	"POS" District
"R4" Multiple Family Very High Density District	"R4" District
"MXD" Mixed Use District	"MXD" District

(Ord. 38.759 (part), 4/2/02; Ord. 38.733 (part), 1/6/98; Ord. 38 (part), 3/15/55)

10-3.02 Combining Regulations

In addition to the foregoing district certain combining regulations are established as set forth in this Chapter, said combining regulations being as follows:

Full Name	Short Name
"S" Site and Architectural Overlay District Special Zoning Area	"S" District
"MHP" Mobile Home Park Combining District	"MHP" District
"TOD" Transit Oriented Development District	"TOD" District
"OO" Gateway Office Overlay Combining District	"OO" District
"H" Hillside Combining District	"H" District

(Ord. 38.761 (part), 5/20/03; Ord. 38.759 (part), 4/2/02; Ord. 38.663 § B (part), 8/20/91; Ord. 38 (part), 3/15/55)

Changes to Combining District Name

10-3.03 Zoning Map

The districts aforesaid and the boundaries of such districts are shown upon the map attached hereto and made a part of this Chapter, being designated as the "Zoning Map of the City of Milpitas," together with "Sectional District Map of the City of Milpitas" supplementary thereto, consisting of an "Index Map" to sectional district maps numbered consecutively from 1 to 4, inclusive, and said map and all notations, references and other information shown thereon shall be as much a part of this Chapter as if the matters and information set forth by said map were all fully described herein. (Ord. 38 (part), 3/15/55)

10-3.04 Letter Designation Includes All Aspects of the Zone

Whenever the terms "R" District, "C" District or "M" District are used herein, they shall be deemed to refer to all districts containing the same letter in their names; for example, the term "C" District shall include the "C1" and "C2" District. (Ord. 38 (part), 3/15/55)

10-3.05 Most Restrictive and Least Restrictive Zones

The "R1" District is the most restrictive and the "M2" District is the least restricted. (Ord. 38 (part), 3/15/55)

10-3.06 Reference to General Provisions and Exceptions

For "General Provisions" and "Exceptions" pertaining to the following district regulations, see Sections 54 and 55 inclusive. (Ord. 38 (part), 3/15/55)

REGULAR

NUMBER: 38.776

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, AMENDING SECTIONS: 2 DEFINITIONS, 3 ZONING DISTRICTS, 4 SINGLE FAMILY DISTRICT, 6 ONE AND TWO FAMILY RESIDENCE DISTRICT, 7 MULTIPLE FAMILY RESIDENCE DISTRICT, 8 MULTI-FAMILY VERY HIGH DENSITY DISTRICT, 9 AGRICULTURAL RESIDENCE DISTRICT, 18 NEIGHBORHOOD COMMERCIAL DISTRICT, 19 GENERAL COMMERCIAL DISTRICT, 42 S COMBINING DISTRICT, 53 OFF-STREET PARKING REGULATIONS, 54 GENERAL PROVISIONS, 57 CONDITIONAL USE PERMIT, AND 64 NOTICE AND APPEAL OF TITLE XI CHAPTER 10 ZONING AND CHAPTER 30 SIGNS TITLE XI FOR THE PURPOSE OF STREAMLINING PLANNING REVIEW, CLARIFYING INCONSISTENCIES AND INCREASING THE PUBLIC NOTIFICATION REQUIREMENTS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, 2008, upon motion by Councilmember _____ and was adopted (second reading) by the City Council at its meeting of _____, 2008 upon motion by Councilmember _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael Ogaz, City Attorney

SECTION 1. RECITALS AND FINDINGS

WHEREAS, on August 21, 2007, the City Council of the City of Milpitas directed staff to implement the recommended changes from the Open Government Subcommittee regarding increasing public notification requirements; and

WHEREAS, on December 12, 2007, the Planning Commission of the City of Milpitas directed staff to review the Zoning Ordinance for opportunities to streamline the planning review process; and

WHEREAS, on January 23, 2008, the Planning Commission heard a presentation from staff regarding streamlining the entitlement process and concurred with staff's findings; and

WHEREAS, the Planning Commission held a duly noticed public hearing on February 13, 2008 and heard evidence prepared by staff and comments by the public and recommends approval of the amendments; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and that the Planning Commission determined this project is categorically exempt per Section 15061(b)(3) in that the project will not have the potential to cause a significant effect on the environment. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment because the project involves changing procedures and process.

WHEREAS, the City Council finds that the amendments are consistent with the General Plan in that the changes do not effect the implementation of the General Plan beyond shortening review times and promoting an open government; and

WHEREAS, the City Council finds that proposed amendment will not adversely affect the public health, safety and welfare in that the project contemplates changes to the development review and public hearing process; and

WHEREAS, the City Council finds that with the inclusion of the amendments the Zoning Ordinance remains internally consistent.

ORDAINING CLAUSE:

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

SECTION 2. Chapter 10, Section 2.78-5 of Title XI of the Milpitas Municipal Code is hereby added to read as follows:

Wireless Communications Facility, Stealth

A stealth wireless communications facility shall mean any antenna designed to be architecturally integrated into a building that is architecturally consistent with the building design. Examples include a steeple, cupola or tower element on a building and do not include flag poles, mono-poles or other structures designed to house antennae and resemble natural features.

SECTION 3. Chapter 10, Section 3.02 of Title XI of the Milpitas Municipal Code, "Combining Regulations" is hereby amended in its entirety to read as follows:

In addition to the foregoing district certain combining regulations are established as set forth in this Chapter, said combining regulations being as follows:

Full Name	Short Name
“S” Site and Architectural Overlay District	“S” District
“MHP” Mobile Home Park Combining District	“MHP” District
“TOD” Transit Oriented Development District	“TOD” District
“OO” Gateway Office Overlay Combining District	“OO” District
“H” Hillside Combining District	“H” District

SECTION 4. Chapter 10, Section 4.02-6 of Title XI of the Milpitas Municipal Code is hereby added to read as follows:

Model Home Complexes and Sales Offices. Refer to Subsection 54.26, Model Home Complexes and Sales Offices of this chapter for development standards.

SECTION 5. Chapter 10, Section 4.04-3 of Title XI of the Milpitas Municipal Code is hereby deleted in its entirety.

SECTION 6. Chapter 10, Section 4.11 (a) of the Milpitas Municipal Code, “Front Yard Coverage” is hereby amended in its entirety to read as follows:

A portion of the required front yard may be paved. The width of the area that may be paved shall not exceed the width of the garage, or fifty percent (50%) of the lot width measured at the front property line, whichever is greater. Patios within the required front are included in this calculation. Walkways, which are not used for vehicular parking, do not count towards coverage limits. Exceptions may be granted by the Planning Commission after public hearing notification, per Section 64 of this Chapter, for a Site

Development Permit application, as described in Section 42 of this Chapter. For Hillside properties, refer to Section 45 of this Chapter for additional requirements. For regulations pertaining to parking in the front yard, refer to Milpitas Municipal Code Section V-500.

SECTION 7. Chapter 10, Section 6.02-6 of Title XI of the Milpitas Municipal Code is hereby added to read as follows:

Model Home Complexes and Sales Offices. Refer to Subsection 54.26, Model Home Complexes and Sales Offices of this chapter for development standards.

SECTION 8. Chapter 10, Section 6.04-5 of Title XI of the Milpitas Municipal Code is hereby deleted in its entirety.

SECTION 9. Chapter 10, Section 7.02-5 of Title XI of the Milpitas Municipal Code is hereby added to read as follows:

Model Home Complexes and Sales Offices. Refer to Subsection 54.26, Model Home Complexes and Sales Offices of this chapter for development standards.

SECTION 10. Chapter 10, Section 7.04-9 of Title XI of the Milpitas Municipal Code is hereby deleted in its entirety.

SECTION 11. Chapter 10, Section 8.02-4 of Title XI of the Milpitas Municipal Code is hereby added to read as follows:

Model Home Complexes and Sales Offices. Refer to Subsection 54.26, Model Home Complexes and Sales Offices of this chapter for development standards.

SECTION 12. Chapter 10, Section 8.04-7 of Title XI of the Milpitas Municipal Code is hereby deleted in its entirety.

SECTION 13. Chapter 10, Section 9.02-5 of Title XI of the Milpitas Municipal Code is hereby added in its entirety as follows:

Model Home Complexes and Sales Offices. Refer to Subsection 54.26, Model Home Complexes and Sales Offices of this chapter for development standards.

SECTION 14. Chapter 10, Section 9.04-3 of Title XI of the Milpitas Municipal Code is hereby deleted in its entirety.

SECTION 15. Chapter 10, Section 18.02(15) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

Food stores, delicatessens, and supermarkets that are located over 1,000 feet from residential development or uses.

SECTION 16. Chapter 10, Section 18.03-6 of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

Food stores, delicatessens, and supermarkets that are within 1,000 feet of residential development and uses.

SECTION 17. Chapter 10, Section 19.03-17 of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

Food stores, such as supermarkets, convenience stores that are located within 1,000 feet of residential development or uses.

SECTION 18. Chapter 10, Section 42 of Title XI of the Milpitas Municipal Code “S” Combining District (Site and Architectural Review or “S” Zone)” is hereby amended in its entirety to read as follows:

--Begin Chapter--

SECTION 42 SITE AND ARCHITECTURAL (-S) OVERLAY DISTRICT (SITE DEVELOPMENT PERMITS AND MINOR SITE DEVELOPMENT PERMITS)

10-42.01 Site and Architectural (-S) Overlay District

10-42.02 Site Development Permits and Minor Site Development Permits

10-42.01 Site and Architectural (-S) Overlay District

A. Purpose and Intent.

Site and Architectural (-S) Overlay District is intended to be a distinct district that promotes orderly, attractive and harmonious development; recognize environmental limitations on development; stabilize land values and investments; and promote the general welfare by preventing or disallowing establishment of uses or erection of structures having qualities which would not meet the specific intent clauses or performance standards of this Chapter or which are not properly related to their sites, surroundings, traffic circulation, or their environmental setting. Where the use proposed, the adjacent land uses, environmental significance or limitations, topography, or traffic circulation is found to so require, the Planning Commission may establish more stringent regulations than those otherwise specified for the District.

B. Applicability.

The provisions in this section apply to development within the -S Overlay District. These provisions do not apply to any property within the R1-6, R1-8, and R1-10 districts.

1. Permitted and Conditionally Permitted Uses. Permitted and conditional uses within the (-S) Overlay are the same uses as those allowed within the underlying zoning districts.

10.42.02 Site Development Permits and Minor Site Development Permits

A. Purpose and Intent of Development Review for the Site and Architectural (-S) Overlay District.

Development in areas designated by (-S) are subject to either Site Development Permits or Minor Site Development Permits. Depending on the scale of development proposed, other review may be required, as well. The purpose of architectural review shall vary, according to the following criteria:

1. Site Development Permits. The Site Development Permit process provides for the review of physical improvements to a site which due to their scale, proximity to environmentally sensitive resource areas, or unique design features, require consideration. The Site Development Permit process is intended to encourage site and structural development which 1) respects the physical and environmental characteristics of the site, 2) ensures safe and convenient access and circulation for pedestrians and vehicles, 3) exemplifies the best professional design practices, 4) encourages individual identity for specific uses and structures, 5) encourages a distinct community or neighborhood identity, and 6) minimizes visual impacts.
2. Minor Site Development Permits. The Minor Site Development Permit process provides for the streamlined review of certain minor classes of development projects which are large enough to require consideration, but due to their scale, nature or location do not require consideration by the Planning Commission.

B. Authority.

1. Site Development Permits. The Planning Commission has the authority to review Site Development Permits, subject to the concurrent review and appeal provisions of Section 10-64.03, Consideration of Concurrent Applications, and Section 64, Development Review Process, of this Chapter. (Please refer to Section 45, "H" Hillside Combining Districts, of this Chapter for projects within the "H" District requiring review of a Site Development Permit by the Planning Commission and the City Council.)
2. Minor Site Development Permits. The Planning Commission Subcommittee consisting of two (2) Planning Commissioners has the authority to review Minor Site Development Permits, subject to the concurrent review and appeal provisions listed above. When the Planning Subcommittee

determines that it is in the public interest for the Minor Site Development Permit application to be considered by the Planning Commission, the Planning Subcommittee shall forward the application to the Planning Commission for review in the same manner as Site Development Permits, as described in subsection (E)(1), Review Procedures, Site Development Permits, of this section. No public hearing is necessary for a Minor Site Development Permit when heard by the Planning Commission Subcommittee.

C. Applicability.

1. Site Development Permits. A Site Development Permit is required for:
 - a. New main buildings
 - b. New accessory buildings over 2,500 square feet
 - c. New parking lots
 - d. Roof top equipment which exceeds the height of existing roof screens, if line-of-sight drawings demonstrate that the equipment will be visible from surrounding “worst case” view points from on-site parking areas, adjacent public streets and adjacent residentially zoned property.
 - e. Additions or alterations to multi-family residential, nonresidential and mixed-use buildings that include:
 - i. Additions of 10,000 square feet or greater for non-residential and mixed-use buildings.
 - ii. Additions of 5,000 square feet or greater or ten percent (10%) of the existing building gross floor area, whichever is less, to non-residential and mixed use buildings adjacent to residential or MHP Overlay Districts or uses.
 - iii. Additions 200 square feet or greater for multi-family residential buildings.
 - f. Any deletion or amendment of a previously imposed condition of approval for a Site Development Permit.
 - g. Any building color changes to designated cultural resources. Refer to Chapter 4, Cultural Resources Preservation Program, of this Title.
2. Minor Site Development Permits. A Minor Site Development Permit is required for:
 - a. Any deletion or amendment of a previously imposed condition of approval for a Minor Site Development Permit.
 - b. Alterations or additions to residential, nonresidential and mixed-use buildings, as indicated in Table 10-42-02, Additions or Alterations Requiring Minor Site Development Permits. Please refer to Section 54, General Provisions, of this Chapter, for development standards and review procedures for types of projects not listed in Table 10-42.02.
 - c. Planning Division staff may require review by the Planning Commission Subcommittee at their discretion.

**Table 10-42.02
Additions or Alterations Requiring Minor Site Development Permits.**

Project Type	Minor Site Development Permit	Other/Exempt Projects
Building Color		<p><i>Staff may approve:</i></p> <p>A. Outside Hillside Combining District:</p> <ol style="list-style-type: none"> 1. Color changes for all buildings so long as the proposed colors are earth tone, muted and/or compatible with the surrounding area and development. 2. Color changes for buildings within a PUD, if proposal complies with PUD. <p>B. Within Hillside Combining District:</p> <ol style="list-style-type: none"> 1. Color changes for residences including homes within a PUD which does not specify color choices, so long as the proposed colors are earth tone, muted and compatible with the surrounding development. Applicant shall submit letter of support from applicable homeowners association.
Re-Roof	Change to wood shake, non tri-laminate or metal roofing material.	<p><i>Staff may approve:</i></p> <p>Change to any other roofing material.</p>
Exterior Lighting	Additional light standards on-site, adjacent to residential development.	Refer to Subsection 54.24, Lighting, of this Chapter for standards.
Fences/Walls	<p>Chain link fencing</p> <ol style="list-style-type: none"> 1. Chain link fencing in commercial and industrial districts. The following standards shall apply: <ol style="list-style-type: none"> a. Fencing shall be at the rear or interior side of the site. b. The fencing shall consist of vinyl clad chain link with or without vinyl slats. Type of chain link fencing (i.e. deletion of vinyl clad requirement, use of slats) shall be to the discretion of the Planning Commission Subcommittee (i.e., in circumstances where the proposed fencing is to continue 	Refer to Subsection 54.11, Fences and Walls, of this Chapter for standards.

	<p>a line of existing chain link fencing).</p> <p>c. Fencing material and color shall be compatible with surrounding development.</p> <p>d. Parking lot fencing/gates shall be approved by the City's Fire Department.</p>	
<p>Minor Exterior Building Changes, Including But Not Limited to, Doors, Entryways, Patios and Patio Covers, Walkways, ATM's, Awnings, Loading Areas</p>	<p>A. Non-Residential and Mixed Use Districts:</p> <p>1. In non-residential and mixed use districts, minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Title X-2.00:</p> <p>a. Significant decorative amenities within public view such as fountains, artwork or murals.</p> <p>b. Stand alone ATMs or ATM kiosks.</p> <p>B. Hillside Combining District:</p> <p>1. Minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building.</p> <p>a. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>b. Windows, window awnings and person doors which match existing or which complement the building facade.</p>	<p><i>Staff may approve:</i></p> <p>A. Non-Residential and Mixed Use Districts:</p> <p>1. Minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building, with no loss of required parking, no net reduction in the number of on-site trees and no loss of protected trees as defined in Title X-2.00:</p> <p>a. New main entryways to the building which feature architectural projections (i.e., porticos, entryway roof covers, trellises, etc.).</p> <p>b. Windows and person doors which match existing or which complement the building facade.</p> <p>c. New or expanded patios, patio covers, awnings and canopies.</p> <p>d. Landscape deletion (i.e., shrubs and groundcovers) to accommodate new walkways which are required for building exiting purposes or handicap accessibility.</p> <p>d. ATM's proposed on an exterior wall.</p> <p>e. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>f. Replacement of windows with roll-up doors (and vice versa) when located toward the interior side or rear of a site.</p>

		<p>g. Metal canopies over equipment storage yards at the rear of commercial or industrial sites, provided they are not visible from public streets or abutting a Residential or Mobile Home Park combining district or use.</p> <p>h. New loading areas and revisions to existing loading areas.</p> <p>B. Residential Districts</p> <p>1. In all residential districts (excluding –H Combining), minor exterior building changes as described below, provided that the project complements the colors, materials, and design of the building.</p> <p>a. Awnings, patio covers, and gazebos which comply with height, setback, and yard coverage requirements. The applicant shall provide the Planning Division with written, signed consent of applicable homeowners association.</p> <p>b. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>c. Windows and person doors which match existing or which complement the building facade.</p> <p>2. Minor exterior building changes for residences within Hillside Overlay District PUD’s which are specifically conditioned to allow a staff approval process for alterations subsequent to initial construction of the home.</p>
<p>Landscaping</p>	<p>(1) Deletion of non-required landscaping exceeding 200 square feet in area, to accommodate modifications to existing developed sites.</p> <p>However, in non-residential and mixed use districts, and for conditional uses within Residential districts (excluding -H Overlay district), no net reduction in the</p>	<p><i>Staff may approve:</i></p> <p>1. Replacement planting of similar landscape materials and addition of landscaping. Landscaping shall comply with Ordinance No. 238 (water efficient landscape regulations). Landscaping within the - H Overlay district shall comply with City Council Resolution No. 6066.</p>

	<p>number of on-site trees and no loss of protected trees, as defined in Title X-2.00 of the Milpitas Municipal Code, may be approved.</p>	<p>2. Deletion of non-required landscaping up to 200 square feet in area to accommodate modifications to existing developed sites. However, in non-residential and mixed use districts, and for conditional uses within residential districts (excluding - H Overlay District), no net reduction in the number of on-site trees and no loss of protected trees, as defined in Title X-2.00 of the Milpitas Municipal Code, may be approved.</p>
<p>Building Additions</p>	<p>A. Non-residential and Mixed Use Districts:</p> <ol style="list-style-type: none"> 1. All non-residential and mixed use building additions for legal, conforming buildings not adjacent to residential or Mobile Home Park Overlay District or use. <ol style="list-style-type: none"> a. Size of building addition shall not exceed 10,000 square feet or ten percent (10%) of the existing building gross floor area, whichever is less. Calculation shall cumulatively count all additions or enlargements completed since June 20, 2003. b. In addition to other development standards, the following shall also apply: <ol style="list-style-type: none"> i. Architecture shall match that of existing building in terms of material, colors, style, etc. ii. The height of the addition shall not exceed the height of the adjacent portion of the existing building. <p>B. Residential Districts</p> <ol style="list-style-type: none"> 1. All single-family dwellings in Hillside PUD's which are specifically conditioned not to 	<p><i>Staff may approve:</i></p> <ol style="list-style-type: none"> 1. Residential building additions in R1 and R2 districts. 2. Residential building additions in multi-family districts up to 200 square feet. 3. All single-family dwellings in Hillside Overlay PUD's which specifically allow for staff approval. (refer to Section 56.03 of this Chapter regarding non-conforming buildings). In addition to other development standards, the following shall also apply: <ol style="list-style-type: none"> a. The applicant shall provide the Planning Division with written, signed consent of applicable homeowners association. b. Existing front yard paving shall be brought into conformance. c. The addition shall comprise building materials, colors and style which complement the existing structure. 4. Building addition to an existing single-family dwelling in residential and mixed use zones, in order to accommodate a second family unit, as defined in Subsection 2.69.1 of this Chapter. The development standards listed in Subsection 54.22 of this Chapter shall apply.

	<p>require Planning Commission or City Council review for building additions (refer to Section 56.03 of this Chapter regarding non-conforming buildings). In addition to other development standards, the following shall also apply:</p> <ul style="list-style-type: none"> a. The applicant shall provide the Planning Commission Subcommittee with written, signed consent of applicable homeowners association. b. Existing front yard paving shall be brought into conformance. c. The addition shall comprise building materials, colors and style which complement the existing structure. 	
<p>Accessory Buildings</p>	<p>A. Non-Residential and Mixed Use Districts:</p> <ul style="list-style-type: none"> 1. Accessory buildings up to 2,500 square feet in area, provided that the proposed structure is not adjacent to a residential or Mobile Home Park Overlay district or use, and provided that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. The following shall also apply: <ul style="list-style-type: none"> a. Accessory buildings must be located on the rear half of the lot. On corner lots, the accessory building must be set back from the adjacent street as least as far as the main building. b. Accessory buildings must be of permanent construction (no modular buildings or metal buildings) with the exception of small pre-fabricated structures for chemical storage and the like, so long as such 	<p><i>Staff may approve:</i></p> <p>A. Residential Only</p> <ul style="list-style-type: none"> 1. Accessory buildings in residential districts (excluding -H Combining District), provided building height, parking, setback, yard coverage and other ordinance requirements are met. The following shall also apply: <ul style="list-style-type: none"> a. Accessory buildings for conditional uses in Residential R1 and R2 districts and for permitted and conditional uses in R3 and R4 districts shall comprise building materials, colors and style which complement the existing main structure. b. The applicant shall provide the Planning Division with written, signed consent of adjoining residential property owners and applicable homeowners association. 2. Accessory building in residential and mixed use districts in order to accommodate a second family unit, as defined in Subsection 2.69.1 of this Chapter. The development

	<p>structures are adequately screened from public rights-of-way.</p> <p>c. Architecture shall match that of the existing building in terms of material, colors, style, etc.</p> <p>d. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Title X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an accessory building.</p>	standards listed in Subsection 54.22 of this Chapter shall apply.
Trash/Recycling Enclosures	<p>1. Trash/recycling, equipment or storage enclosures up to 200 square feet proposed in the front half of the lot for non-residential districts.</p> <p>Enclosures exceeding 200 square feet in size in commercial, industrial and mixed use districts and enclosures for conditional uses in residential districts.</p> <p>Any trash enclosure adjacent to residential or Mobile Home Park Overlay district or use. In addition to the standards listed in Subsection, 54.23(B), Trash Enclosures, of this Chapter.</p> <p>b. Enclosures for noise-generating equipment (i.e. generators) may not be approved near Residential or Mobile Home Park combining districts or uses.</p>	<p><i>Staff may approve:</i></p> <p>1. Trash/recycling, equipment or storage enclosures up to 200 square feet in size in commercial, industrial and mixed use districts, proposed at the rear of the building or lot and where least visible from public rights-of-way.</p> <p>Refer to Subsection 54.23(B), Trash Enclosures, of this Chapter, for standards.</p>

D. Submittal Requirements.

No building permit shall be issued for a use, and no use of any parcel shall take place, in a district which is combined with the "S" Overlay District unless those items listed below in have been submitted to and approved by the review authority or upon appeal to the City Council. Every application for Site Development Permit shall be in proper form and shall be accompanied by plans drawn to scale indicating clearly and with full dimensions the following information if applicable:

1. Site plan -- parcel dimensions in distance.
2. Buildings and structures -- their location, size, height, colors and materials.
3. Dimensions of yards and open spaces between buildings.
4. Fences and walls -- their architectural design, location, height, colors and materials.
5. Parking spaces -- their location, number and dimensions.
6. Access -- vehicular, pedestrian and service, with points of ingress and egress and the internal circulation pattern of the parking lot area.
7. Street dedications and improvements -- existing and proposed, if any.
8. Signs -- their location, size, types of materials, and lighting method.
9. Loading or service areas -- their location and dimensions.
10. Lighting -- its architectural design, location and light patterns.
11. Landscaping -- its location, size, quantity and type of plant material.
12. Shadow studies -- drawings showing shadows of the building or structures (taken on December 22nd, between the hours of 10:00 a.m. and 2:00 p.m.).
13. Such other data as may be required under the circumstances of the case to permit the City Council, Planning Commission, Planning Commission Subcommittee, or Planning Division staff to make the required approvals.

E. Review Procedures.

1. Site Development Permit.
 - a. Following receipt of a completed application and required environmental documentation, a public hearing before the Planning Commission shall be noticed and held in compliance with Section 64, Development Review Process, of this Chapter.
 - b. The Planning Division shall prepare a written report which shall be presented to the Planning Commission and/or City Council, based on investigations as necessary to determine whether the project conforms or may be conditioned to conform fully to the intent of the underlying district.
 - c. After completion of the Planning Commission hearing, the Planning Commission shall determine if the proposed project shall be approved, approved with modifications and/or conditions, or denied.
2. Minor Site Development Permit.
 - a. Following receipt of an application, Planning Division staff shall make investigations as necessary to determine whether or not the proposed project conforms or may be conditioned

to conform fully to the intent of the underlying district. After the application is deemed complete and required environmental documentation is completed, a review before the Planning Commission Subcommittee shall be held.

- b. The Planning Commission Subcommittee shall indicate by action minutes whether the proposed site plan for a project shall be approved, approved with modifications and/or conditions, or denied.
 - i. Planning Commission Subcommittee may require review by the Planning Commission at their discretion.
 - ii. If the Planning Commission Subcommittee members disagree on a decision for a project, then the project will be agendized for Planning Commission review, with no additional fees required.

F. Required Findings.

Approval may be granted by the Planning Commission or the City Council if all of the following findings are made:

1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.
2. The project is consistent with the Milpitas Zoning Ordinance.
3. The project is consistent with the Milpitas General Plan.
4. If located within a Specific Plan area, the project is consistent with that Specific Plan.

G. Planning Commission Subcommittee or Staff Approvals.

In approving any project subject to this section, the Planning Division staff or Planning Commission Subcommittee shall find all of the following:

1. The development recognizes and respects the nature of the neighborhood and site, development patterns, materials used, and the expectations of those who will see and use the building;
2. The development assures that modifications satisfy functional requirements, and screened with appropriate compatible materials; and
3. The development assures that the modification will not interfere with the privacy, quiet enjoyment or view of the surrounding properties.

G. Appeals.

An appeal of the decision by staff or on Site Development Permits or Minor Site Development Permits shall be reviewed in accordance with Section 64.05, Appeals, of this Chapter.

H. Compliance With Conditions.

Whenever a plan for the development of a building site has been the subject of a Site Development and Permit process as herein above specified and has been given final approval, the building and site thereafter shall be constructed and perpetually maintained in compliance with the plan in conformance to all details specified thereon and subject to all the conditions set forth in the action of approval, unless modified or amended pursuant to Section 42.10. Lack of compliance shall constitute a violation of Chapter 10 (Zoning, Planning and Annexation) and the Site Development Permit

I. Applications for Modification of or Amendment

Projects shall be developed in conformity with project approvals. If the applicant wishes to modify the project, as approved, the applicant shall submit revised plans and any other applicable information to the City for review by the Planning Division. The Planning Division staff shall make one of the following determinations regarding the request:

1. **Insignificant Modifications.** If the Planning Division determines that the modifications are minor, the modifications may be approved administratively.
2. **Significant Modifications Without Public Impact or Concern.** If the Planning Division determines that the modifications are significant enough to warrant discretionary review but will not have public impacts or cause public concern, then the modifications shall be referred to the Planning Commission Subcommittee for consideration. If the original application for a project required a public hearing, then the Planning Commission Subcommittee review of modifications shall not require a public hearing.
3. **Significant Modifications with Public Impact or Concern.** If the Planning Division determines that the modifications are significant enough to warrant discretionary review and have the potential for public impact or concern, then the modifications shall be referred to the final decision-making authority for the original project. If the original application for a project required a public hearing, then the final decision-making authority's review of modifications shall require a public hearing, in accordance with Section 64, Notice and Appeal, of this chapter.

SECTION 19. Chapter 10, Section 53.19, "Markings and Modifications to Lots and Spaces" of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

The location of each parking space shall be identified and maintained by surface markings or other effective means, so as to be readily identifiable at all times.

Site Development Permit approval, as provided for in Section 42 of this Chapter, shall be required for any construction of new parking lots. Modifications to existing lots and spaces, including restriping or elimination of spaces, shall be subject to the provisions of Section 53 of this Chapter.

SECTION 20. Chapter 10, Section 54 of Title XI of the Milpitas Municipal Code, "General Provisions," is hereby amended to read as follows:

--Begin Chapter--

10-54.01 Purpose and Intent

10-54.02 Other Uses Permitted by Commission

10-54.03 Improvement of Parking Areas, Auto Sales Areas and Loading Areas

10-54.04 Zoning of Annexed Areas

- 10-54.05 Height: Height Conformance
- 10-54.06 Area: Area Requirements
- 10-54.07 Planned Unit Development Approval
- 10-54.08 Home Occupation
- 10-54.09 Accessory Buildings and Structures
- 10-54.10 Geologic Hazard Zones
- 10-54.11 Fences and Walls
- 10-54.12 Homebuyer Awareness of General Plan
- 10-54.13 Exemptions for Certain Nonconforming Uses
- 10-54.14 Mobile Home Development Standards
- 10-54.15 Areas for Collecting and Loading Recyclable Materials
- 10-54.16 Large Family Child Care Homes and Child Care Centers
- 10-54.17 School Mitigation Impact Fees/School Availability for Residential General Plan Amendments and Rezoning of New Residential Development Projects
- 10-54.18 Adult Business Location Requirements
- 10-54.19 Condominium Conversions
- 10-54.20 Density Bonus for Affordable Housing Developments (entire section)
- 10-54.21 Accessory Uses
- 10-54.22 Second family unit
- 10-54.23 Trash Enclosures, Equipment and their Screening
- 10-54.24 Lighting
- 10-54.25 Temporary Contractor's Office
- 10-54.26 Model Home Complexes and Sales Offices

SECTION 21. Chapter 10, Section 54.01 of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

Purpose and Intent

The intent of this chapter is to provide general development standards for the City, resulting in new development that is harmonious with existing development in the surrounding area. The standards provided in this chapter apply to all zones, unless otherwise indicated. The standards and may be modified to be more stringent through the review process, when it is required for a project.

A. Conformance with All Sections of This Code

No building or structure shall be erected, reconstructed, structurally altered, enlarged, moved or maintained, nor shall any building, structure or land be used or designed to be used for any use other than is permitted in the district in which such building, structure or land is located and then only after applying for and securing all permits and licenses required by all laws and ordinances.

SECTION 22. Chapter 10, Section 54.11, "Fences" of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

Fences and Walls

A. Purpose and Intent. The purpose and intent of this section is to establish standards for fences and walls and similar screening that limit their visual and traffic impacts, but allow for the privacy and architectural interest afforded by such structures. The purpose of a stricter fence or wall height limit in the front yard is to provide for an open street scene, to allow the primary structures on a street to be

visible and to contribute to the visual character of the neighborhood, and to allow for unobstructed views of traffic to and from driveways.

This section establishes standards for all fences and walls, including those not requiring a Building Permit. (For information regarding whether a fence or wall requires a Building Permit, please contact the City's Building Division).

B. Standards for Fences and Walls in All Zones. Unless otherwise provided for in the specific standards for individual zones, the following standards shall apply to fences and walls and to all structural elements supporting the fences, walls and hedges, including pilasters, trellises, etc. In addition to the regulations set forth in this section, all fences and walls shall be constructed and maintained so that they do not constitute a hazard to traffic, persons or property.

1. **Measurement of Fence and Wall Height.** The height of a fence or wall shall be measured from the finished grade to the top of fence or wall at any point (including barbed-wire tops). Where the finished grade is a different elevation on either side of the fence or wall, the height may be measured from the side having the highest elevation.
2. **Prohibited Fences.** Barbed wire fences within four (4) feet of a public sidewalk, electrically charged fences and fences which interfere with public utilities or public easements are not permitted.

C. Standards for Fences and Walls on the Valley Floor.

1. **Height Limitations.** Fences and walls shall not exceed six (6) feet in height at the rear and side yards, and forty-two (42) inches in height at the front yard.
2. **Exceptions:**
 - a. For any non-residential or new multi-family projects and single-family tract projects within a zoning district combined with the "S" Overlay District, fences at the rear and side yards may be eight (8) feet maximum height when approved by the Planning Commission through a Site Development Permit.
 - b. In all zoning districts, fences at the rear or side yard adjacent to recreational areas, athletic fields or courts may be twelve (12) feet maximum height provided that the portion of the fence higher than six (6) feet is of approved openwork.
 - c. In all zoning districts, fences at the front yard and within thirty-five (35) feet of a street corner shall be of approved openwork.
 - d. In residential zoning districts fences at the rear and side yards may exceed six (6) feet but not exceed eight (8) feet in height provided written consent of adjoining residential property owners is received. See Building Code for permit requirements for fences exceeding six (6) feet in height.
 - e. In any Commercial or Industrial zoning district, fences or walls used for the purpose of screening or providing security to mechanical equipment such as but not limited to air conditioning units, chemical tanks or tank farms or the like, may exceed six (6) feet in height subject to the provisions of Section 54.23, Trash Enclosures, Equipment and their Screening

of this Chapter.

D. Standards for Fences and Walls within the Hillside District.

1. Height Limitations. Fences or walls shall not exceed fifty-four (54) inches in height, and be an openwork design, and may be located anywhere on the parcel. No city review of this type fence is required.
2. Construction Materials. All fence post and supporting framework material shall be wood in order to maintain the rural character of the hills. The Planning Commission, under the "H" Combining District review process, may approve any other type material for the posts.
3. Openwork Design. Openwork type fences shall be comprised of materials which results in a minimum of seventy-five percent (75%) visual transparency within every square foot area, posts excluded. Chain link fences and cyclone type fences are not considered an approved material in the area.
4. Exceptions:
 - a. In any zoning district combined with the "H" Combining District fences at the rear and side yards which exceed fifty-four (54) inches in height and those fences other than an openwork design may be constructed on a parcel or lot, if and when their location and design have first been approved by the Planning Commission.
 - b. In any zoning district combined with the "H" Combining District fences around tennis courts, and the like as determined by the Planning Commission, may be eight (8) feet maximum height provided that the portion of the fence higher than six (6) feet is an approved openwork design. Chain link fencing may be used, in this case, as an approved openwork design. The Planning Commission, under the "H" Combining District review process, may approve fences over eight (8) feet in height.

All tennis courts and the like shall be screened from view from the valley floor with landscape materials, as outlined in the City Council Hillside Landscape Policy, with said landscaping to the approval of the Planning Commission.

- c. Barbed wire fences, using a post material other than wood, may be erected on any parcel two (2) acres or more without Planning Commission review or approval.

SECTION 23. Chapter 10, Section 54.15-3(a) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

When the property owner or tenant, with the property owner's approval, voluntarily participates in the recycling program in an existing development, the recyclable area may utilize up to two (2) parking spaces or encroach into any side or rear yard landscape setback or open space area for the location of the recycling container if no other area is available. The Planning Division may approve of the plan and shall provide a written decision supporting the decision.

SECTION 24. Chapter 10, Section 54.15-3(b) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

Provided further, if the Planning Division does not approve the property owner's or tenant's request, they have the right to appeal by filing a Site Development Permit application to the Planning Commission. There shall be no filing fee associated with this review.

SECTION 25. Chapter 10, Section 54.23, "Trash Enclosures, Equipment and their Screening" of Title XI of the Milpitas Municipal Code is hereby added to read as follows:

Trash Enclosures, Equipment and their Screening

A. Purpose and intent. The location of trash enclosures and mechanical and other similar types of equipment on private property can significantly affect the visual quality of a project. Particularly important is the view of projects and their related equipment and services from adjacent streets. The requirements of this subsection are meant to address the negative visual impacts resulting from the location of trash enclosures and mechanical equipment on private property, while recognizing that they are necessary aspects of development.

B. Trash Enclosures. Trash enclosures which enclose dumpsters shall be of sufficient size to accommodate the trash and recyclable materials generated by the uses on the parcel(s) being served. The following standards shall apply:

1. When located on the street side of corner lots, the enclosure must be set back at least as far as the main building.
2. Colors and materials of the enclosure shall complement the building and shall consist of masonry wall such as split face block or masonry finished to match the building or other solid screening material utilizing colors and materials which complement the building.
3. Gates shall be solid metal painted to match the enclosure.
4. The enclosure shall screen the dumpsters, trash compactors or equipment.
5. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Title X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure.
6. When feasible, sides and rear of the enclosure shall be landscaped.
7. On-site parking shall meet ordinance requirements, except as provided in Section 54.15-3 of this Chapter.
8. Trash enclosures shall be located as far away as possible from Residential or Mobile Home Park combining districts or uses.
9. Follow the City's Engineering standards for trash enclosures.

C. Ground and roof mounted equipment.

1. Ground mounted equipment. Ground-mounted equipment, such as air conditioning units, landscape irrigation's controls, transformers, fuse boxes, telephone equipment, gas meters, water meters, stand pipes, and fire sprinkler connectors, and other exterior equipment shall comply with the following:

- a. Location. Outside the front yard setback and, when no front yard setback is required outside the area between the street and the building closest to the street and screened from public view as provided for in (b) below.

Where it is infeasible to locate ground-mounted equipment outside the front yard, ground-mounted equipment located in the front yard shall be screened from public view as provided for in (b) below.

- b. Screening. Equipment shall be completely screened from view by dense shrubbery, masonry wall such as split face block or masonry finished to match the building, or other solid screening material utilizing colors and materials which complement the building. Chain link fencing with or without slats may not be approved in the Mixed Use district, but may be approved in the Commercial and Industrial districts if it is an expansion of an existing approved chain link enclosure and it is not visible from public viewing points with a Minor Site Development Permit.
- c. On-site parking shall meet minimum standards.
- d. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Title X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate a tank, transformer or equipment.
- e. Height of equipment.
 - i. In Commercial and Industrial districts, the installed height of the transformer, tank or equipment shall not exceed the height of the building. Equipment exceeding building height may be approved if it is proposed at the rear of the building, and the applicant can demonstrate with line-of-sight drawings that the equipment will not be seen from public viewing points.
 - ii. In the Mixed Use district, the installed height shall not exceed six (6) feet.
 - iii. If adjacent to a Residential or Mobile Home Park combining district or use, installed height of the equipment shall not exceed six (6) feet.
- f. Generators may not be approved if located adjacent to a Residential or Mobile Home Park combining district or use.

D. Roof top equipment.

All roof top equipment including, but not limited to air conditioning units, and mechanical equipment shall be shielded and architecturally screened from view from on-site parking areas, adjacent public streets and adjacent residentially zoned property as follows:

1. All roof top equipment shall be located in an area which is screened by a screening wall, parapet wall or equipment well. The height of such equipment, mounted in the well, shall not exceed the height of the architectural element used to screen the equipment. Viewsheds and sightlines shall be taken into consideration and the equipment should be placed in a location, which effects maximum screening. The Planning Division may also require additional screening devices in conjunction with tenant improvements as deemed necessary where the screening wall, parapet wall or equipment well does not provide adequate screening from the above-referred views.

Exceptions: Roof top equipment which exceeds the height of existing roof screens, if line-of-sight drawings demonstrate that the equipment will be visible from surrounding “worst case” view points from the above referred views shall only be allowed through the approval of a Site Development Permit.

2. Roof screens shall be sheathed in a matching or complementary material and color to the exterior building and may include metal panels, parapet walls or screens constructed of exterior grade plywood or other durable materials.

SECTION 26. Chapter 10, Section 54.24, “Lighting” of Title XI of the Milpitas Municipal Code is hereby added to read as follows:

Lighting

Exterior lighting shall be shielded or recessed so that direct glare and reflections are contained within the boundaries of the parcel, and shall be directed downward and away from adjoining properties and public rights-of-way. Fixtures shall be appropriate in terms of height, style, design, scale and wattage to the use of the property. Fixtures shall be spaced appropriately to maximize pedestrian safety.

SECTION 27. Chapter 10, Section 54.25, “Temporary Contractor’s Office” of Title XI of the Milpitas Municipal Code is hereby added to read as follows:

Temporary Contractor’s Office

Temporary contractor’s office trailers and construction-related storage trailers in undeveloped and developed sections of the City shall comply with the following:

1. Location. Trailers shall not obstruct driveways or traffic access aisles.
2. Other standards.
 - a. The applicant shall demonstrate that parking will not be negatively impacted.
 - b. The colors and materials shall complement the main building, if one exists.
 - c. Any exterior noise-generating equipment associated with trailers shall not be within 300 feet of a residential or mobile home park overlay district or use.
 - d. Trailers shall be removed upon cessation of permitted construction activity.

Exceptions. Any deviation from standards 1 and 2 above shall only be allowed through the approval of a Minor Site Development Permit.

SECTION 28. Chapter 10, Section 54.26, “Model Home Complexes and Sales Offices” of Title XI of the Milpitas Municipal Code is hereby added to read as follows:

Model Home Complexes and Sales Offices

Model home complexes and sales offices shall be conditionally allowed by the Planning Division solely for the first sale of homes within a recorded tract or condominium subdivision, subject to the following regulations:

1. Location. The model home complex and/or sales office shall be located on the same or adjacent premises as the subdivision or building project.
2. Duration. The model home complex and/or sales office shall be removed within three months of closing the sale of the final unit in the project.
3. Review Requirements. Model home complexes and/or sales offices for the sale of homes in any subdivision containing five (5) or more units require review by the Planning Division.
4. Use. The sales office shall be used only for transactions involving the sale, rent or lease of lots or units within the tract or condominium subdivision.
5. Other Issues for Consideration. The Planning Division shall consider the hours of operation, lighting, landscaping, signage, and any other factors that may affect the model home complexes maintenance and impacts on the surrounding area and shall condition the project accordingly. Please refer to subsection 5a, Conditions, of this section.
 - a. Conditions. In approving the model home complex or sales office, the Planning Division may impose conditions deemed necessary to ensure that the permit will be in accordance with the standards prescribed in this section. These conditions may include, but are not limited to:
 - i. Regulation of operating hours and days;
 - ii. Provision for temporary parking facilities, including vehicular ingress and egress;
 - iii. Regulation of nuisance factors such as, but not limited to, prevention of glare or direct illumination on adjacent properties, noise, vibration, smoke, dust, dirt, odors, gases and heat;
 - iv. Regulation of temporary structures and facilities, including placement, height and size, location of equipment and open spaces, including buffer areas and other yards;
 - v. Provision for sanitary and medical facilities;
 - vi. Provision for solid, hazardous and toxic waste collection and disposal;
 - vii. Provision for security and safety measures;
 - viii. Regulation of signs. In addition no sales sign shall be permitted within six hundred (600) feet of a Santa Clara County Expressway;
 - ix. Submission of a performance bond or other surety devices, satisfactory to the Planning Division, to ensure that any temporary facilities or structures used will be removed from the site within a reasonable time following the event and that the property will be restored to its former condition;

- x. Any other conditions which will ensure the operation of the proposed temporary use in an orderly and efficient manner and in accordance with the intent and purpose of this section.
6. Other Requirements. Each site occupied by a temporary use shall be left free of debris, litter, or any other evidence of the temporary use upon completion or removal of the use, and shall thereafter be used, pursuant to the provisions of this Zoning Ordinance.

SECTION 29. Chapter 10, Section 57.02-15.1, “Wireless Communication Facility” of Title XI of the Milpitas Municipal Code is hereby amended in entirety as follows:

Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

A. Exempt Facilities.

Any facility exempt from local regulation as per the FCC and those wireless communication facilities listed below shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

1. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:
 - a. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and
 - b. All required building permits are obtained.
2. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:
 - a. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and
 - b. All required building permits shall be obtained.
3. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

4. Stealth wireless communication facilities. The Planning Division shall review a stealth antenna installation if the project meets the definition of a stealth wireless communications facility within Section 10-2, Definitions, of this title.

SECTION 30. Chapter 10, Section 63.06(a) of Title XI of the Milpitas Municipal Code, “Revocation, Suspension, Modification” is hereby amended in its entirety to read as follows:

63.06-1(a) The City Council shall have the power to revoke, suspend or modify any permit, variance or approval issued under the provisions of this Chapter (including, but not limited to conditional use permit, variances, or Site Development Permits for breach of any condition or requirement imposed upon the granting of said permit, variance or approval.

SECTION 31. Chapter 10, Section 64 of Title XI of the Milpitas Municipal Code, “Notice and Appeal,” is hereby amended in its entirety to read as follows:

--Begin Chapter--

SECTION 64 DEVELOPMENT REVIEW PROCESS

- 10-64.01 Purpose and Intent
- 10-64.02 Authority for Land Use and Zoning Decisions
- 10-64.03 Consideration of Concurrent Applications
- 10-64.04 Public Hearing
- 10-64.05 Appeals
- 10-64.06 Expiration of Permit or Approvals

10-64.01 Purpose and Intent

This chapter is intended to describe the general procedures for filing applications when required or permitted by this title.

10-64.02 Authority for Land Use and Zoning Decisions

Table 10-64.02 (Decision-Making Body and Role) identifies the city official or body responsible for reviewing and making decisions on each type of application, land use permit, and other entitlements required by this Zoning Ordinance.

**Table 10-64-02
Decision-Making Body and Role¹**

Type of Permit or Decision	Procedures are found in:	Planning Division	Planning Commission Subcommittee	Planning Commission	City Council
Land Use Permits and other Development Entitlements					
Staff Review ²		Issuance		Appeal	Appeal
Conditional Use Permits	10-57			Decision	Appeal
Development				Recommend	Decision

Agreements					
Minor Site Development Permits	10-42		Decision		Appeal
Planned Unit Development	10-54.07			Recommend	Decision
Site Development Permits	10-42			Decision Recommend ³	Appeal Decision ³
Variances	10-58			Decision	Appeal
Zoning Ordinance Administration and Amendments					
General Plan Amendments				Recommend	Decision
Specific Plan Amendments				Recommend	Decision
Zoning Amendments	10-62			Recommend	Decision

1. “Recommend” means that the decision-making body makes a recommendation to a higher decision-making body; “issuance” means that the permit is a ministerial action that is issued by the decision-making body; “decision” means that the decision-making body makes the final decision on the matter; “appeal” means that the decision-making body may consider and decide upon appeals to the decision of an earlier decision-making body. Any decision by the Planning Commission may be appealed to the City Council as specified in Section 10-64.04, Appeals.
2. Includes Home Occupation Permits (Section 10-54.08), reviews requiring building permits and other reviews by Planning Division staff not requiring a building permit or review by other decision-making bodies. Any appeal shall be to the Planning Commission prior to the City Council, if necessary.
3. Refer to Section 10-45.09 regarding the process for projects within the ‘H’ Hillside Overlay District.

10-64.03 Consideration of Concurrent Applications

A project that includes more than one application may be combined and processed concurrently, as long as all applicable processing requirements are satisfied. The purpose of allowing concurrent review is to consolidate final action on the project with the highest review authority responsible for making a decision on the applications for a project. The following shall apply to concurrently processed applications:

- A. Public Hearing and Nonpublic Hearing Applications.** When an application requiring a public hearing is combined with an application that does not require a public hearing, the combined applications shall require a public hearing.
- B. City Council and/or Planning Commission as Highest Review Authority.** When City Council and/or Planning Commission review is required for at least one (1) of the applications for a project, the final decision on all applications shall be made by the highest review authority.

When the City Council is the highest review authority for a project, all review by other bodies with approval authority over the applications shall be in the form of a recommendation to the City Council.

When the Planning Commission is the highest review authority for a project, all review by other bodies with approval authority over the applications shall be in the form of a recommendation to the Planning Commission.

C. **Omitting Planning Commission Subcommittee Review.** In order to eliminate redundant review and an unnecessary lengthening of the discretionary review process, it is appropriate to eliminate Planning Commission Subcommittee review of some applications. When combined applications are being processed for a project, and both Planning Commission and Planning Commission Subcommittee review are required, Planning Commission Subcommittee review shall be omitted and Planning Commission review substituted.

10-64.04 Public Hearing

A. Time

Time of Giving Notice. Whenever notice of hearing is required by this Chapter, it shall be given at least ten calendar days before the hearing. (Ord. 38.92, 12/6/66; Ord. 38 (part), 3/15/55)

B. Manner

Manner of giving notice. Whenever notice of hearing is required by this Chapter for any of the following matters, unless otherwise provided by law:

**Table 10-64.03
Public Hearing Requirements**

Application¹	Required Radius	Number of Sets Stamped, Labeled Envelopes²	Number of Sets Mailing List	Community Meeting Required³
Conditional Use Permit	1000 feet	1	1	No
Development Agreements	300 feet	2	1	No
General Plan Amendment	1000 feet	3	1	Yes
Site Development Permit	300 feet	1	1	No
Specific Plan Amendment	300 feet	2	1	No
Variance	500 feet	1	1	No
Zoning Amendment	1000 feet	3	1	Yes

1. Amendments to Conditional Use Permits, Development Agreements, Site Development Permits and Variances shall have the same requirements, unless otherwise noted.

2. Projects requiring the processing of a number of applications should provide one (1) set of stamped, labeled envelopes for each review body plus one (1) mailing list for the project file.

3. A community meeting shall be held prior to the public hearing.

1. For projects requiring a public hearing and/or a community meeting identified within Table 64.02-1, or for revocation, suspension or modification of the same, or an appeal from the action taken thereon, notice shall be given as per State of California Government Code Section 65091 and by the following:

a. Publishing the notice in a newspaper of general circulation within the City. In addition, for General Plan amendments, Zoning amendments, Conditional Use Permits and Variances, a second notice being a ¼ page advertisement shall be published in a newspaper of general circulation.

- b. Posting one (1) sign notice per 1,000 lineal feet of property street frontage in a conspicuous place on the affected property visible from the street frontage. If the affected property has no street frontage, no less than one (1) sign notice shall be required to be posted.
 - c. Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code to all property owners and residential renters as specified in Table 10-64.02-1. Major environmental reviews (Environmental Impact Reports) shall require notice to all property owners and residential renters within one-thousand (1,000) feet of the subject parcel's property boundaries. The Planning Division staff shall have the discretion to require a 1,000 feet notification requirement for public hearings, if the project is deemed to be potentially controversial.
 - d. Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code, to the owner of the subject real estate property and the applicant, respondent or appellant.
 - e. Mailing the notice, in accordance with Section I-20-2.02 of the Milpitas Municipal Code to the Milpitas Unified School District and, in addition, to any other local agency expected to provide essential facilities and services to the project and whose ability to provide said facilities and services may be significantly affected.
2. Contents of Notice of Public Hearing. All notices shall include the date, time and place of any public hearing, the identity of the hearing body and a general explanation of the matter to be considered and a general description, by text or diagram, of the location of the real property, if any, that is the subject of the hearing.
 3. For cases not otherwise provided for herein: (and, except where otherwise required by the law of the State of California) notice shall be given by publication or posting or mailing, in the discretion of the City Manager, and in accordance with the provisions of Section I-20-2.02 of the Milpitas Municipal Code. (Ord. 38.763 (18—19), 4/20/04; Ord. 38.706 (part), 7/16/96; Ord. 38.600, 3/4/86; Ord. 38.579, 4/16/85; Ord. 38 (part), 3/15/55)

10-64.05 Appeals

- 64.03-1 Except as otherwise provided in Section 62.03-4(a) of this Chapter, any person aggrieved by any decision of any officer, board, commission or department of the City of Milpitas under the provisions of this Chapter may appeal said decision to the City Council in accordance with the provisions of Section 5, Chapter 20, Title I of the Milpitas Municipal Code.
- 64.03-2 While appeals hereunder shall be heard at general or special meetings of the City Council, no notice thereof need be given (other than as required by said Section 5, Chapter 20, Title I of the Milpitas Municipal Code). Provided, however, that if the appeal is taken from action on an application for a variance, conditional use or other permit, notice of the hearing of the appeal shall also be given in accordance with the provisions of Subsection 64.01-1 and 64.02-2 of this Chapter.
- 64.03-3 Exception to Appeal Procedure: Provided, however, that the time for any appeal from action of the Planning Commission in granting, granting subject to condition or denying a Site Development Permit pending a Zoning Amendment (pursuant to the provisions of Section XI-10-42.03K) or in granting, granting subject to condition or denying a Conditional Use Permit pending a zoning amendment (pursuant to the provisions of Section XI-10-57.04) shall be extended so that said appeal may be taken at any time within ten (10) days from the

date that said City Council shall give second reading to the Zoning Ordinance amendment. (Ord. 38.205, 10/20/70; Ord. 38 (part), 3/15/55)

10-64.06 Expiration of Permit or Approvals

Any Conditional Use, Site Development, Variance or other permit approval granted under the terms of this Ordinance shall expire (without notice to the grantee) eighteen (18) months after the date of approval, unless the approval is used or exercised before expiration.

64.04-1 Time Extension

An extension of time not exceeding eighteen (18) months may be granted by the Planning Commission and no more than one (1) extension shall be granted. An extension is valid only if approved before the pending expiration date. New conditions may be imposed on an extension of time for any permit.

64.04-2 Use of Approvals

For the purposes of Section 64.04 an approval is “used” or “exercised” if the applicant:

1. Obtains a building permit and completes a foundation, or
2. Dedicates any land or easement as required from the zoning action, or
3. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

64.04-3 Date of Approval

Unless there is an appeal the date of approval is the date on which the deciding body votes on the motion of approval. When there is an appeal, the date of approval is the date of the administrative vote on the motion finally determining the appeal. (Ord. 38.542, 4/6/82; Ord. 38 (part), 3/15/55)

SECTION 32. Chapter 30, Section 3.01 of Title XI of the Milpitas Municipal Code, “Review and Approval” is hereby amended in its entirety to read as follows:

Review and Approval

Permitted signs may be erected or painted upon posts, poles, buildings or structures subject to compliance with the following provisions:

- a. Hillside District. The City Council, upon recommendation by the Planning Commission, shall be empowered to approve, conditionally approve or disapprove any Site Development Permit application or Conditional Use Permit for any sign(s) proposed in the Hillside district, subject to the provisions of Section XI-10-45.09, and for any signs proposed on designated historical or cultural resource buildings or sites, subject to the provisions of Section XI-4-10.00.
- b. Sign Program. The Planning Commission shall be empowered to approve, conditionally approve or disapprove a Site Development Permit Application for a sign program(s) pursuant to Section XI-30-4.04, Sign Programs.
- c. Signs exceeding six (6) feet. The Planning Commission shall be empowered to approve, conditionally approve or disapprove freestanding signs exceeding six (6) feet in height, under the

provisions of the Conditional Use Permit, as provided by Section XI-30-3.10(h)(6) of this Chapter.

- d. The Planning staff shall be empowered to approve, conditionally approve or disapprove the following signs, under the provisions of Section XI-10-42.10-2: signs which conform to an approved sign program and building signs which replace previously approved building signs, provided sign type, size and location are unchanged, on sites which are not in the Hillside District or on designated historical or cultural resource buildings or sites. In addition, staff may approve new building signs for single-tenant structures and freestanding signs up to six (6) feet in height, as measured from the closest public sidewalk or curb, on sites which are not in the Hillside District or on designated historical or cultural resource buildings or sites. (Ord. 124.27 (2) (part), 8/2/05)

SECTION 33. Chapter 30, Section 3.04 of Title XI of the Milpitas Municipal Code, "Design Guidelines" is hereby amended in its entirety to read as follows:

Design Guidelines

In considering the appropriateness of the design proposed for any sign as provided in this Section, the following criteria shall be utilized by the Planning Commission, Planning Commission Subcommittee and Planning staff:

The following factors shall be considered in the review of the design of each proposed sign:

1. The relationship of the sign to the space on the building where the sign is to be located.
2. Relationship of the location of the sign to all facades of all buildings on the site.
3. Compatibility of materials, architecture, design, and continuity with other signs on the building.
4. Illumination of the sign as it relates to other signs on the subject building, other light sources, competition and interference of light sources and intrusion of light into residential areas.
5. Visibility and legibility (letter height and legibility, contrast-background relationship, placement and location).
6. Impact on other immediate signs in terms of visibility, legibility, and scale.
7. Traffic conditions, including but not limited to, traffic safety and circulation, visibility, road width, curb cuts, or driveway indentations, median, proximity of major intersections, signals or stops, average traveling speed or any other natural physical obstruction.
8. The proximity of the sign to residential districts.
9. Relationship of the height of the sign to the height of the building at that location.
10. Quantity of other signs in the vicinity of the subject sign on or off of the subject parcel.
11. Impact on visibility of other signs in the vicinity of the subject sign.

12. Other such factors that the Planning Commission, Planning Commission Subcommittee and Planning staff shall determine as relating to the impact of the sign to the general environment.

Each proposed sign shall be reviewed for conformity to the following criteria:

1. The sign shall relate to the architectural design of the building. An attractive scale between the sign, the building and the immediate surrounding buildings and signs shall be maintained.
2. To the extent feasible, a sign shall be graphic with design emphasis on simplicity, style, trademark, business identification and symbol. Wording shall be an integral part of the overall design.
3. All light sources shall be adequately diffused or shielded.
4. The sign's supporting structure shall be as small in density and as simple as is structurally safe.
5. Multiple signing on a single-faced building shall be reviewed for coordination of all signs architecturally and aesthetically.
6. Sign faces should be constructed of non-brittle, non-yellowing Polycarbonate material or superior.
7. Neon, bare fluorescent tubes, incandescent bulbs, light emitting diodes (LEDs) and similar devices are not permitted except pursuant to Site Development Permit approval.
8. Signage shall not obstruct pedestrian circulation.
9. Signs should be an integral part of the design of the storefronts of mixed-use buildings.
10. Sign letters and materials should be professionally designed and fabricated.
11. Signs should be constructed using high-quality materials such as metal, plastic, stone and wood.
12. Exposed conduit and tubing should be mitigated so that they are inconspicuous.
13. Exposed transformers are prohibited.
14. Projecting signs mounted perpendicular to the facade of the building should be located at least eight (8) feet above the sidewalk. The outside edge should be no more than five (5) feet from the face of the building.
15. While bilingual signs are allowed, the size of English lettering should be at least equal to the size of letters of another language.
16. The business name and address shall be displayed on the tenant space if located in a multi-tenant building or on the building or property for a single occupant building. (Ord. 124.27 (2) (part), 8/2/05)

SECTION 34. Chapter 30, Section 3.10(g)(3) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

Shall require approval of a Site Development Permit by the Planning Commission if over six (6) feet in height.

SECTION 35. Chapter 30, Section 3.10(q)(2) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

Location of Projecting Signs. Projecting Signs shall only be located on the middle one-third of the front wall of a building. This requirement may be modified by means of an approval of a Site Development Permit by the Planning Commission.

SECTION 36. Chapter 30, Section 3.10(q)(4) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

Projecting Sign Areas. A Projecting Sign shall have a maximum size of sixteen (16) square feet per side unless increased pursuant to an approval of a Site Development Permit by the Planning Commission.

SECTION 37. Chapter 30, Section 3.10(q)(5) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

Projecting Sign Projection Limit. Projecting Signs shall not extend from the front wall to which they are attached more than eight (8) feet unless modified by an approval of a Site Development Permit by the Planning Commission.

SECTION 38. Chapter 30, Section 3.10(r)(2) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

The location, design and size of the sign will be determined through the approval of a Site Development Permit.

SECTION 40. Chapter 30, Section 4 of Title XI of the Milpitas Municipal Code, "Special Regulations" is hereby amended as follows:

SECTION 4 SPECIAL REGULATIONS

30-4.01 Shopping Centers

30-4.02 Regional Shopping Centers

30-4.03 Town Center District

30-4.04 Sign Programs

30-4.05 Hillside Combining District

SECTION 41. Chapter 30, Section 4.02(a) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

For regional shopping centers, the Planning Commission may permit the following, subject to the issuance of a Conditional Use Permit or Site Development Permit, with notice and hearing, per Section XI-10-57 or XI-10-42 of the Milpitas Municipal Code:

SECTION 42. Chapter 30, Section 4.02(b) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

For regional shopping centers encompassing at least one (1) million square feet of building area, the following apply: Where private streets delineate separate parcels within the shopping center, a parcel's private street frontage may be used instead of its public street frontage (or applicable building perimeter formula), for purposes of calculating sign area, but not for purposes of determining number of on-site freestanding signs, unless a parcel has no public street frontage.

The Planning Commission may permit the following, subject to the issuance of a Conditional Use Permit or Site Development Permit, with notice and hearing, per Section XI-10-57 or XI-10-42 of the Milpitas Municipal Code.

- (1) Two (2) off-site directional signs for the purpose of identifying a regional shopping center. Refer to Section XI-30-4.02(a)(5) above for additional requirements.
- (2) Graphic panel(s) (freestanding).
- (3) For major tenants (those with a minimum 40,000 square feet of leasable floor area), signs that move or have the illusion of movement with the approval of a Conditional Use Permit as provided for in Sections XI-10-57.01 and XI-30-4.02(d).

SECTION 43. Chapter 30, Section 4.02(c) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

In considering the approval of a Conditional Use Permit or Site Development Permit application, no other deviations to the Sign Ordinance shall be permitted which are inconsistent with the provisions of this Chapter.

SECTION 44. Chapter 30, Section 4.02(d) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

In considering the approval of a Conditional Use Permit or Site Development Permit application, under Subsections XI-30-4.02(a) and (b) above, the Planning Commission shall consider the design criteria in Section XI-30-3.04 in addition to the regulations specified in Sections XI-10-57 and XI-10-42. (Ord. 124.27 (2) (part), 8/2/05)

SECTION 45. Chapter 30, Section 4.04 of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

Sign Programs

- (a) Signage for a new retail, office or industrial complex on four (4) or more acres having a gross floor area of 40,000 square feet or larger, a multi-tenant building, a new automobile dealership, or any buildings more than two (2) stories high shall be subject to a Sign Program. The Sign Program shall be reviewed through a Site Development Permit by the Planning Commission pursuant to Section XI-10-42.03 Site Development Permits and Minor Site Development.
- (b) An existing retail, office or industrial complex (all of the businesses in the complex or shopping center, not an individual business in a complex or shopping center), multi-tenant building, automobile dealership or building more than two (2) stories high, regardless of the size of the site on which it is located, may apply for a Sign Program approval to be reviewed by the Planning Commission.

(c) A Sign Program may deviate from the standards of the Sign Regulations if the Planning Commission makes the following findings:

- (1) That the program’s contribution to effective and attractive identification of businesses, services and uses and the design quality of the site and surrounding area will be superior to the quality that would result under the regulations and standards of the Sign Regulations;
- (2) That all of the proposed signs of the retail, office or industrial complex, multi-tenant building, shopping center, automobile dealership or building are well-related to each other, and compatible with the style or character of existing improvements on the site and adjacent sites;
- (3) That all of the proposed signage shall generally conform with the Design Guidelines in Section XI-30-3.04;
- (4) No signs in the Sign Program are Prohibited Signs as regulated in Section XI-30-6; and
- (5) That the requirements of Section XI-10-42.03 are met. (Ord. 124.27 (2) (part), 8/2/05)

SECTION 46. Chapter 30, Section 5.01(k)(4) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

A sign over 6 feet in height shall require approval of a Conditional Use Permit by the Planning Commission;

SECTION 47. Chapter 30, Section 6.01(c) of Title XI of the Milpitas Municipal Code is hereby amended in its entirety to read as follows:

Blinking, Flashing Lights. Any sign having blinking, flashing or fluttering lights, or any other illuminating device which has a changing light intensity, brightness or color unless approved pursuant to a Sign Program by the Planning Commission.

SECTION 48. Chapter 30, Section 7.01 of Title XI of the Milpitas Municipal Code, “Sign Approvals by Type of Permit and by Zoning District Matrix” is hereby amended in its entirety to read as follows:

Sign Type	A (Agriculture)	R1, R2, R3, R4 AR (Residential)	CO (Admin & Professional)	C1 (Neigh. Commercial)	C2 (Gen. Commercial)	HS (Highway Services)	TC (Town Center)	M1, M2, MP (Ind.)	MXD (Mixed Use)	HILLSIDE (By City Council)
Architectural	X	X	S	S	S	S	S	S	S	X
Area Identification	AP	AP	AP	AP	AP	AP	CUP	AP	AP	S or CUP
City Identification	X	AP	AP	AP	AP	AP	X	AP	AP	X
Church/Religious Assy.	X	CUP	CUP	CUP	CUP	X	X	CUP	CUP	X
Construction	AP	AP	AP	AP	AP	AP	AP	AP	AP	X
Freestanding ≤ 6 feet	AP	CUP	AP	AP	AP	AP	AP	AP	AP	S or CUP
Freestanding > 6 feet	X	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	X
Grand Opening	X	X	AP	AP	AP	AP	AP	AP	AP	X
Graphic Panel	PCS	CUP	PCS	PCS	PCS	PCS	PCS	PCS	PCS	X
Off-Site Directional Church,	AP	AP	AP	AP	AP	AP	AP	AP	AP	X

Religious Assembly, Institutional Sign										
Off-Site Public Info.	X	CUP	CUP	CUP	CUP	CUP	X	CUP	X	X
Political (Sec. 30-3.10p)	C Clk	X								
Projecting	X	X	AP	X						
Public Information	S	S	S	S	S	S	S	S	S	X
Scoreboard Sign	CUP	X								
Shopping Center Identification	X	X	X	S	S	S	S	S	S	X
Temporary Promotional	X	X	AP	X						
Temporary Tract Advertising	CUP	X	X	CUP	CUP	X	X	CUP	CUP	X
Wall	X	CUP	AP	S or CUP						

Notes for Matrix:

- AP Administrative Permit by Staff (over the counter)
- CUP Conditional Use Permit Approval Required by Planning Commission (except Hillside)
- S Site Development Permit by the Planning Commission (except Hillside)
- PCS Planning Commission Subcommittee
- X Not Permitted
- C Clk Approved by City Clerk

SECTION 49. 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.

SECTION 50. PUBLICATION AND EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after adoption, and prior to the expiration of 15 days from the passage thereof shall be published at least once in a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara, thenceforth and thereafter the same shall be in full force and effect.

ATTACHMENT E

3. ZONING
AMENDMENT NO.
ZA08-0001

Sheldon Ah Sing, Senior Planner, presented a consideration of amendments to the zoning ordinance, sign ordinance and open government ordinance texts. The City proposes to amend the zoning ordinance, sign ordinance and open government ordinance as follows: Amending the Zoning Ordinance by: 1) clarifying Section 42, "S" Combining District and streamlining the entitlement review process by; a) renaming "Combining" to "Overlay"; b) renaming the "S" Zone entitlement to "Site Development Permit" and creating a "Minor Site Development Permit" for Planning Commission Subcommittee projects; c) requiring only certain types of roof materials be reviewed by said Subcommittee, with other roof reviewed by staff; d) requiring only significant decorative amenities be reviewed by said Subcommittee, with other minor features reviewed by staff; e) requiring only additional light standards within non-residential zones adjacent to residential areas be reviewed by said Subcommittee; f) require only chain link fencing be reviewed by said Subcommittee; g) requiring that all single family and duplex residential additions be reviewed by staff and all multi-family residential additions greater than 200 square feet be reviewed by said Subcommittee; h) require that above ground equipment be reviewed by staff; 2) requiring model home projects to be reviewed by staff; 3) requiring only food supermarkets located within 2,000 feet of residential development to require a Conditional Use Permit (projects outside 2,000 feet of residential development may be reviewed by staff); 4) allowing staff to review stealth designed wireless facilities; and 5) ensuring internal consistency within the ordinance through ancillary text amendments. Amending the Sign Ordinance by: 1) allowing freestanding signs under six feet to be reviewed by staff and 2) allowing signs for single-tenant buildings to be reviewed by staff. Amending the Open Government Ordinance by: 1) increasing the public notification radius for General Plan Amendments, Zoning Amendments, Conditional Use Permits and Environmental Impact Report to 1,000 feet; 2) increasing the public notification radius for Variances to 500 feet; 3) require at least one community meeting for General Plan Amendments, Zoning Amendments and Environmental Impact Reports; and 4) require the City to provide a ¼ page advertisement in a local newspaper for General Plan Amendments, Zoning Amendments, Conditional Use Permits and Variances. Mr. Ah Sing recommended the Planning Commission Adopt Resolution 08-006, recommending approval to the City Council.

Chair Williams said he has concerns about A frame signs that end up on public property and asked how does staff enforce this since it is done on a complaint basis only and not proactively.

City Attorney Mike Ogaz said that the municipal code allows for enforcement of any provision that is violated within the code and that would include prohibition against A frame signs by issuance of an infraction citation and those range in \$100 for the first violation, \$200 for second violation and \$500 for a third violation.

Mr. Lindsay said that currently, the Planning Commission does not have a role within the appeal process as it currently stands within the code. Some of the comments that were heard in the last meeting about due process with the staff decisions is that staff is recommending that the Planning Commission consider a role within the appeal process if that staff does make a decision at the counter and the applicant is in disagreement and they would like to have another body review, instead of having the issue going straight to Council, it would go to the Planning Commission first. Staff felt that this was a good idea and if the Commission agrees, will take this recommendation to Council.

Chair Williams and Vice Chair Mandal said they are in agreement with the Planning Commission taking on the appeal process.

Commissioner Ciardella asked how staff would determine a six foot fence if it is built on a planter box. Mr. Ah Sing said it would be determined from the finished grade on either side of the fence with the highest elevation.

Commissioner Galang asked what type of roof materials will be reviewed by the Subcommittee. Mr. Ah Sing said staff is proposing that the Subcommittee review a change from existing roofing to wood shake, non tri-laminate or metal roofing.

Commissioner Tabladillo asked why minor site development decisions that would be rendered by the Subcommittee are appealed to the City Council and not the Planning Commission. Mr. Ah Sing said that is the way the code is currently written and would like direction to recommend to City Council that the Planning Commission receive the appeals before they go to City Council.

Commissioner Tabladillo felt that it would be a good idea because it would give the applicant the opportunity to appeal first to the Planning Commission rather going straight to Council.

Commissioner Tabladillo asked if this is a standard that other cities have. Mr. Lindsay said the Planning Commission Subcommittee is a very unique feature of the City of Milpitas and he is not aware of any other city that has a Subcommittee like this within the County. As far as the appeal process of staff's decision going to a Planning Commission, staff did not survey other cities to see if there is a similar process.

City Attorney Mike Ogaz said it is very common for a Planning Commission to review decisions before going to City Council.

Chair Williams opened the public hearing.

Frank De Smidt, Chamber of Commerce, said he was on two sign code enforcement task force. He said each time the sign ordinance was reviewed they suggested proactive enforcement however the Council reversed that and voted against it because they did not want City staff looking for violators. He said the only way A frame signs are enforced would be if they are in the public right-of-way or blocking pedestrians. He agreed with Chair Williams that it might be a good idea for staff to review the enforcement of A frame signs.

Motion to close the public hearing.

M/S: Mandal/Ciardella

AYES: 6

NOES: 0

Motion to approve Zoning Amendment No. ZA08-0001, Adopt Resolution 08-006 recommending approval to the City Council with the modification that the Planning Commission serve as the appellate body for decisions that are made at the staff and Subcommittee level.

M/S: Mandal/Ali-Santosa

AYES: 5

NOES: 0

ABSTENTION: 1 (Galang)

UNAPPROVED
Planning Commission Minutes

February 13, 2008