

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 February 19, 2008, upon motion by Vice Mayor Livengood 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>

		<ul style="list-style-type: none"> 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. h. New loading areas and revisions to existing loading areas. <p>B. Residential Districts</p> <ul style="list-style-type: none"> 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. <ul style="list-style-type: none"> 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. b. Minor changes to architectural elements which do not change the overall design of a building. c. Windows and person doors which match existing or which complement the building facade. 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>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> <ul 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.

	<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 ³	Appeal
Conditional Use Permits	10-57			Decision	Appeal
Development				Recommend	Decision

Agreements					
Minor Site Development Permits	10-42		Decision	Appeal ³	Appeal
Planned Unit Development	10-54.07			Recommend	Decision
Site Development Permits	10-42			Decision Recommend ⁴	Appeal Decision ⁴
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.
3. The Planning Commission’s decision may be appealed to the City Council, whose decision shall be final.
4. 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 in accordance with the provisions of Section 5, Chapter 20, Title I of the Milpitas Municipal Code, and Table 10-64.02, Decision-Making Body and Role, of this Section.
- 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 39. 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 40. 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 41. 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 42. 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 43. 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 44. 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 45. 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 46. 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 47. 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	X						
Off-Site Directional Church, Religious Assembly, Institutional Sign	AP	X								
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 48. 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 49. PUBLICATION AND EFFECTIVE DATE

Pursuant to the provisions of Government Code Section 36933, Summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within (15) days after the adoption of this Ordinance the Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this ordinance or otherwise voting. This ordinance shall become effective April 17, 2008.