

RESOLUTION NO. 7759**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
CERTIFYING AN ENVIRONMENTAL IMPACT REPORT FOR THE MILPITAS
TRANSIT AREA PROJECT AND ADOPTING RELATED MITIGATION FINDINGS,
FINDINGS REGARDING ALTERNATIVES, AND A STATEMENT OF OVERRIDING
CONSIDERATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT**

WHEREAS, the City of Milpitas has initiated a proposed General Plan amendment, rezoning, adoption of the Milpitas Transit Area Specific Plan (TASP), and Zoning Ordinance amendments and thus provide for transit-oriented residential and commercial redevelopment on older industrial land around existing light rail stations and a future BART station. These actions are collectively referred to as the “Project”; and

WHEREAS, the City determined that an Environmental Impact Report (“EIR”) would be required for the Project and circulated a Notice of Preparation dated April 1, 2006 to public agencies and interested parties for consultation on the scope of the EIR; and

WHEREAS, based on the responses to the Notice of Preparation, the City prepared a Draft Environmental Impact Report (“Draft EIR”) dated October 2007 (SCH No. 2006032091) which reflected the independent judgment of the City as to the potential environmental effects of the Project. The Draft EIR was circulated for a 45 day public review and comment period, from November 7, 2007 to December 21, 2007; and

WHEREAS, the Project was the subject of numerous public meetings and the Project and Draft EIR was the subject a public meeting held on November 28, 2007; and

WHEREAS, City staff reviewed all comments received on the Draft EIR during the public review period and prepared written responses providing the City’s good faith, reasoned analysis on the environmental issues raised by the comments. Revisions to the Draft EIR were identified as appropriate. City staff reviewed all written responses to comments and all revisions to the Draft EIR and determined that none of the responses and/or revisions included significant new information requiring recirculation of the Draft EIR pursuant to CEQA Guidelines § 15088.5. The comment letters, a summary of oral comments received at the November 28, 2007 meeting on the Draft EIR, written responses to comments and revisions to the Draft EIR are contained in a separately bound Final EIR dated May 2008. The November 2007 Draft EIR and the May 2008 Final EIR together constitute the final Environmental Impact Report for the Project pursuant to CEQA Guidelines §§ 15089 and 15132, and reflect the City’s independent judgment and analysis on the potential environmental impacts of the Project; and

WHEREAS, on May 28, 2008, the Planning Commission held a noticed public hearing on the Project at which time the Commission considered a written staff report, the Draft EIR, written and oral comments on the Draft EIR, the Final EIR, the Milpitas Transit Area Specific Plan document and all other oral and written comments presented to them. Based on this evidence, the Planning Commission recommended that the City Council certify the EIR , and

approve the Specific Plan, General Plan amendments, and Zoning Ordinance amendments (Resolution No. 08-018, incorporated herein by reference); and

WHEREAS, the EIR identifies the potential for significant effects on the environment from development of the Project, most but not all of which can be substantially reduced through implementation of policies included in the proposed Specific Plan; therefore, approval of the Project must include findings regarding mitigation measures and alternatives as set forth in Attachment A; and

WHEREAS, the EIR did not recommend any mitigation measures capable of reducing or avoiding environmental impacts beyond those policies as included in the Specific Plan; therefore no Mitigation Monitoring and Reporting Program is warranted; and

WHEREAS, some of the significant effects identified in the EIR cannot be lessened to a level of less than significant; therefore, approval of the Project must include a Statement of Overriding Considerations as set forth in Attachment B; and

WHEREAS, on June 3, 2008, the City Council held a noticed public hearing to consider certification of the EIR, and approval of the Project.

NOW, THEREFORE, BE IT RESOLVED that the foregoing recitals are true and correct and made a part of this resolution.

BE IT FURTHER RESOLVED that the Milpitas City Council certifies as follows:

- A. That the final EIR for the Project has been completed in compliance with CEQA and the CEQA Guidelines.
- B. That the EIR was presented to the City Council who reviewed and considered the information contained therein including the information contained in the Errata Sheet as set forth in Exhibit C prior to approving the Milpitas Transit Area Specific Plan Project.
- C. That the Final EIR reflects as amended the City's independent judgment and analysis on the potential for environmental effects of the Project.
- D. That the custodian of the documents and other materials which constitute the record of proceedings for the Project is the City of Milpitas Planning Division located at City Hall, 455 East Calaveras Boulevard, Milpitas, California 95035.

BE IT FURTHER RESOLVED that the Milpitas City Council adopts the Findings set forth in Exhibit A, and Statement of Overriding Considerations set forth in Exhibit B.

PASSED AND ADOPTED this _____ day of _____ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

EXHIBIT A

MITIGATION FINDINGS AND FINDINGS CONCERNING ALTERNATIVES FOR THE MILPITAS TRANSIT AREA PROJECT

SECTION 1: MITIGATION FINDINGS PURSUANT TO CEQA GUIDELINES SECTION 15091

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 and 15163(e), the City Council hereby makes the following findings with respect to the potential for significant environmental impacts from the Milpitas Transit Area Specific Plan Project (“Project”) and means for mitigating those impacts. The impacts and Plan policies included in the following findings are summarized rather than set forth in full. The Draft and Final EIR documents are incorporated herein by reference and should be consulted for a complete description of the impacts and policy-based mitigations.

Less Than Significant Impacts

Impacts: The proposed Milpitas Transit Area Specific Plan is a self-mitigating Plan. Any required mitigating actions have been incorporated into the Plan as regulations or policies. As a result, potentially significant impacts related to issues of land use, visual resources, safety and hazardous materials, geology, soils, seismic hazards, noise, biological resources, public services, hydrology and water quality, utilities and service systems, greenhouse gasses and climate change, cultural resources, and certain traffic and air quality impacts were found to be less than significant with implementation of the Plan and the policies and regulations therein, with no further mitigation measures necessary.

Mitigations: The Plan is self-mitigating, with no additional mitigation measures required.

Finding: Implementation of policies and regulations as incorporated into the Plan will avoid or substantially lessen the potentially significant impacts related to issues of land use, visual resources, safety and hazardous materials, geology, soils, seismic hazards, noise, biological resources, public services, hydrology and water quality, utilities and service systems, greenhouse gasses, climate change, cultural resources and certain traffic and air quality impacts (not specifically addressed below) to less than significant levels.

Significant and Unavoidable Impacts

Traffic - Intersection Impacts

Impacts 3.3-2, 3.3-4 through 3.3-15 and 3.3-18: Implementation of the proposed Plan would result in unacceptable operations at the following intersections:

- McCarthy Boulevard / Alder Drive
- Tasman Drive / Alder Drive
- Tasman Drive / I-880 SB Ramps
- Great Mall Parkway / I-880 NB Ramps

- Tasman Drive / N. First Street
- Montague Expressway / McCarthy Boulevard-O'Toole Avenue
- N. Capitol Avenue / Trade Zone Boulevard-Cropley Avenue
- Great Mall Parkway-E. Capitol Avenue / Montague Expressway
- Montague Expressway / Milpitas Boulevard
- Montague Expressway / First Street
- Montague Expressway / Zanker Road
- Montague Expressway / S. Main Street-Oakland Road
- Montague Expressway / McCandless Drive-Trade Zone
- Intersections on Montague Expressway, Capitol Avenue, and Great Mall Parkway

(DEIR pp. 3.3-79 to 3.3-87)

Policies Included in the Plan that Serve to Mitigate Impacts: The Specific Plan includes policies that, when implemented, would reduce impacts at some of the above identified intersections. Specifically, implementation of Specific Plan Policy 3.12 would provide for the preservation of future right-of-way along Capitol Avenue, Great Mall Parkway and Montague Expressway to accommodate future regional roadway improvements. Implementation of Policy 6.32 would provide for the establishment and assessment of a transportation impact fee to contribute toward traffic improvements to be undertaken in whole or in part by the County of Santa Clara or City of San Jose. Implementation of Policy 6.33 would establish and assess a separate transportation impact fee program to provide improvements to mitigate future traffic operations on the roadway segments within the City of Milpitas. Implementation of Policy 6.36 would provide for funding from the impact fees to be used toward fair share payments of improvements at Tasman Drive/I-880 southbound ramps. Implementation of Policy 6.38 would provide fair share funding for improvements at Trade Zone Boulevard/ North Capitol Avenue.

Mitigations: The Plan is self-mitigating, with no additional mitigation measures identified as feasible.

Findings: Even with implementation of the above identified policies, traffic impacts at these intersections would not be reduced to levels of less than significant, and would remain as significant unavoidable impacts of the Project. Specifically, within the City of Milpitas no improvements are identified as being feasible at Tasman Drive/McCarthy Boulevard and at Tasman Drive/Alder Drive. Full improvements necessary to mitigate impacts at Tasman Drive/I-880 southbound ramps are infeasible (although funding for coordinated traffic signals per Policy 6.36 can improve conditions), and full improvements necessary to mitigate impacts at Great Mall Parkway/I-880 northbound ramps are infeasible. Required improvements at Tasman Drive/North First Street, at Montague Expressway/McCarthy Boulevard, and at North Capitol Avenue/Trade Zone Boulevard are within the City of San Jose and outside of the City of Milpitas' jurisdiction. Therefore, the identified improvements cannot be guaranteed. Similarly, required improvements at Great Mall Parkway/Montague Expressway, at Montague Expressway/Milpitas Boulevard, at Montague Expressway/First Street, at Montague Expressway/Zanker Road, at Montague

Expressway/South Main Street and at Montague Expressway/McCandless Drive are also outside of the City of Milpitas' jurisdiction. Therefore, any feasible improvements at these intersections cannot be guaranteed.

Specific economic, legal, social, technological and other benefits of the Project outweigh this impact, as further set forth in the Statement of Overriding Considerations for the Project.

Traffic - Freeway Segment Operations Impacts

Impact 3.3-16: Implementation of the proposed Plan would exacerbate unacceptable operations for four freeway segments;

- southbound I-680 between Capitol Avenue and Hostetter Road,
- southbound I-880 between Montague Expressway and Brokaw Road,
- westbound SR 237 between I-880 and McCarthy Boulevard, and
- westbound SR 237 between McCarthy Boulevard and Zanker Road

(DEIR pp. 3.3-87 to 3.3-88)

Policies Included in the Plan that Serve to Mitigate Impacts: The Plan itself is a transit-oriented plan specifically designed to encourage transit ridership and to reduce auto dependency, thus reducing regional freeway congestion.

Mitigations: The Plan is self-mitigating, with no additional mitigation measures identified as feasible.

Finding: Even with a transit-oriented plan, impacts to already unacceptable freeway operations would be a significant unavoidable impact. Specific economic, legal, social, technological and other benefits of the Project outweigh this impact, as further set forth in the Statement of Overriding Considerations for the Project.

Traffic - Cumulative Roadway Segment Operations Impacts

Impact 3.3-17: Implementation of the proposed Plan would contribute on a cumulative basis toward the degradation and exacerbation of unacceptable operations for 31 roadway segments during the a.m. peak period, and 49 roadway segments during the p.m. peak hour (DEIR pp. 3.3-88 to 3.3-89).

Policies Included in the Plan that Serve to Mitigate Impacts: The Specific Plan includes policies that, when implemented, could assist in reducing cumulative impacts at certain of the identified roadway segments. Specifically, implementation of Specific Plan Policy 6.32 would provide for the establishment and assessment of a transportation impact fee to contribute toward traffic improvements to be undertaken in whole or in part by the County of Santa Clara or City of San Jose.. This policy would provide for funding from the impact fees to be used toward fair share payments for the Montague Expressway Widening project west of Trade Zone Boulevard, the Calaveras Boulevard (SR 237) Overpass Widening project, and Capitol Avenue improvements

within the City of San Jose. Widening of these corridors will provide additional capacity between I-680 and I-880 and divert trips from other local roads, thus improving regional and city-wide circulation. Implementation of Policy 6.33 would establish and assess a separate transportation impact fee program to provide improvements to mitigate future traffic operations on the roadway segments within the City of Milpitas. Funding from the impact fees may be used toward fair share payments for signal coordination at several intersections in the Great Mall Parkway/Tasman Drive corridor, which will help to improve roadway operations.

Mitigations: The Plan is self-mitigating, with no additional mitigation measures identified as feasible.

Finding: No mitigation measures are considered feasible for any of the other roadway segments. All of those segments projected to operate at unacceptable levels will do so because no feasible mitigation measure can be implemented to increase vehicle capacity. All of these roadways are already built out and cannot be widened within the existing right-of way. The secondary impacts of widening these roadways (which would include right-of-way acquisition and demolition of existing buildings), is expected to result in a greater negative impact on the environment than accommodating the additional congestion. Thus, this impact is considered significant and unavoidable.

Specific economic, legal, social, technological and other benefits of the Project outweigh this impact, as further set forth in the Statement of Overriding Considerations for the Project.

Air Quality

Population-Based and Cumulative Emission Impacts (Impacts 3.6.1 and 3.6.5): New development under the proposed Plan would increase population and would increase vehicle miles traveled at a rate greater than assumed in the Clean Air Plan. These increases will therefore conflict with implementation of the Bay Area Ozone Strategy, and contribute to the exceedance of regional air quality standards (DEIR pp. 3.6-14 to 3.6-21 and 3.6-26).

Policies Included in the Plan that Serve to Mitigate Impacts: The Specific Plan includes numerous policies that, when implemented, would serve to reduce this impact. These policies provide for establishments of a TDM program, balancing auto traffic with bike and pedestrian connectivity, providing continuous pedestrian sidewalks and safe bike travel routes, designing local roads for slow speeds, improving pedestrian crossings at major intersections, constructing pedestrian/bicycle bridges, coordinating with VTA to provide amenities at all transit stops, encouraging alternative modes of travel, providing opportunities for close-to-home work at retail and office space, and restricting open air fireplaces. Additionally, the Plan itself is a transit-oriented plan specifically designed to encourage transit ridership and to reduce auto dependency, thus reducing regional air emissions.

Mitigations: The Plan is self-mitigating, with no additional mitigation measures identified as feasible.

Finding: Even with implementation of policies in the Plan, population growth provided for under the Plan would be inconsistent with population projections assumed in the Air District's regional

air quality planning, and would contribute to exceedances of regional air quality standards. This would be a significant and unavoidable impact.

Specific economic, legal, social, technological and other benefits of the Project outweigh this impact, as further set forth in the Statement of Overriding Considerations for the Project.

SECTION 2: FINDINGS CONCERNING ALTERNATIVES

CEQA requires that an EIR identify alternatives to a project as proposed. CEQA Guidelines §15126.6(a) specifies that the EIR identify alternatives which “would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen many of the significant environmental effects of the project.” Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors. In addition, consistent with CEQA § 21002, a project should not be approved if feasible alternatives would substantially lessen the Project’s significant effects. Two project alternatives were identified and analyzed in the EIR, a No Project Alternative, and a Reduced Residential Density alternative. Each alternative was evaluated to determine whether it would feasibly attain most of the basic objectives of the Project, or have the potential to avoid or substantially lessen any of the significant effects of the Project.

No-Project Alternative

Under the No-Project Alternative, development of the Planning Area would occur consistent with existing policies and land use designations and the existing circulation system would remain in place (DEIR p. 4-7). The majority of the Transit Area would retain its existing land uses, although much of the land between Montague Expressway and Capitol Avenue would develop as high density residential uses, as would the triangle parcel next to the future BART station and the parcels along South Main Street. The Great Mall would also undergo some continued expansion, although the same buildout for that area is expected under the proposed Plan. In addition to existing uses, new development consistent with existing policies and land use designations would produce 236,250 square feet of retail uses, 243,750 square feet of office uses, no hotel rooms, and 2,632 housing units. In comparison to the proposed Plan, this alternative would add fewer square feet of retail uses, less square feet of office space, no hotel uses, and fewer housing units. However, this alternative would also retain approximately 2.7 million square feet of existing light industrial/R&D uses. As a result, the total non-residential square footage of this scenario (at approximately 5.7 million square feet) would be greater than the proposed Plan.

As compared to the proposed Plan, the No Project Alternative would generate approximately 29,600 fewer daily trips, 1,700 fewer AM peak hour trips, and 2,600 fewer PM peak hour trips (DEIR p. 4-10 through -12). With fewer trips generated, the No Project Alternative would substantially reduce project-level and cumulative traffic impacts on study intersections and freeway segments as compared to the proposed Plan, and would substantially reduce vehicle emission impacts on air quality as compared to the proposed Plan. However, the No Project Alternative would still generate more than 23,600 new vehicle trips and would not completely avoid these significant impacts. Additionally, while contaminated soil and groundwater remediation would still be completed in areas where redevelopment would occur, as well as

areas where remediation is required by regulatory agencies, soil and groundwater conditions in the Planning Area would not be improved by as much as under the proposed Plan (DEIR p 4-12).

The No-Project Alternative does not meet the Project's primary objective of meeting the Midtown Specific Plan requirement for preparation of a coordinated development plan for the parcels at and around the proposed BART station to promote transit-oriented development. Nor does it meet the basic Project objectives of: a) transitioning the area from an industrial area to one that supports higher intensity mixed uses; b) strengthening the City's tax base by provide opportunities for retail and hotel, ownership housing, and high-density employment uses; c) building transit-oriented development around light rail and future BART stations with an emphasis on housing to maximize transit ridership and meet regional housing/ transportation goals; d) building quality neighborhoods and commercial districts that are desirable in the market place and hold their value over time; and e) including employment uses in the area so that there is an appropriate mix of uses that meets market demand, creates a balance of uses for the City overall, and allows people to work near homes and transit. ***Based on the above discussion, the City Council hereby determines the No Project alternative to be infeasible.***

Reduced Residential Density Alternative

Under the Reduced Residential Density Alternative, the land use plan would be almost identical to the proposed Plan. It would differ from the proposed Plan by reducing residential densities permitted in the Boulevard Mixed Use areas, and by removing the Transit Density Overlay designation, an approach used in the proposed Plan to allow certain parcels near the BART station to receive a 25 percent density increase. In comparison to the proposed Plan, this alternative would add more square feet of retail uses, fewer square feet of office space, the same amount of hotel use, and fewer housing units. Overall, this alternative would result in approximately 3% less non-residential space and approximately 21% fewer residential units than the proposed Plan (DEIR p. 4-2)

Overall, the Reduced Residential Density Alternative would have reduced environmental impacts relative to the proposed Plan due to its lower growth in population and jobs, resulting in fewer automobile trips and hence less traffic congestion, air pollution, noise, and greenhouse gas emissions. As compared to the proposed Plan, the Reduced Residential Density Alternative would generate approximately 9,000 fewer daily trips, 1,000 fewer AM peak hour trips, and 1,000 fewer PM peak hour trips; or approximately 18 percent fewer trips than the proposed Plan. The same study intersections (with one exception) and freeway segments would be impacted with development of this alternative as would be impacted under the proposed Plan (DEIR p. 4-10). The difference in impacts between the proposed Plan and the Reduced Residential Density Alternative is not substantial. The difference in land development, visual resources, utility usage, waste generation, and greenhouse gas emissions between this alternative and the proposed plan is noticeable, but not significant.

To the extent this alternative provides for preparation of a coordinated development plan for the parcels at and around the proposed BART station and promotes transit-oriented development, it meets some of the Project objectives but not to the same extent as the proposed Plan. Specifically, although the Reduced Residential Density Alternative would build transit-oriented development around light rail and future BART stations with an emphasis on housing to maximize

transit ridership and meet regional housing/transportation goals, it would not maximize the massive public investment in the BART and VTA light rail systems by placing as many residential and employment uses within walking distance as possible, and it would not meet the region's broader housing needs. As a consequence, the development not accommodated by the Reduced Residential Alternative would instead occur at the urban fringe in lower density areas that are further away from mass transit options. The resultant scenario would be moderate density development in the Planning Area with a slightly lower environmental impact than the proposed Plan. ***Based on the above discussion, the City Council hereby determines the Reduced Residential Density alternative to be infeasible.***

EXHIBIT B

STATEMENT OF OVERRIDING CONSIDERATIONS

General

Pursuant to CEQA Guidelines § 15093, the City Council of the City of Milpitas makes this Statement of Overriding Considerations for those impacts identified in the Milpitas Transit Area Specific Plan Project EIR as significant and unavoidable.

The City Council has carefully considered each impact in reaching its decision to approve the Milpitas Transit Area Project (“Project”) whose primary focus is transit-oriented residential and commercial redevelopment on industrial land around existing light rail stations and a future BART station. Although the City Council believes that many of the unavoidable environmental effects identified in the EIR will be substantially lessened by policies and regulations incorporated into the Project, the Council recognizes that implementation of the Project carries with it unavoidable adverse environmental effects.

The City Council specifically finds that to the extent that the identified adverse or potentially adverse impacts of the Project have not been mitigated to acceptable levels, there are specific economic, legal, social, technological, environmental, land use, and other considerations that support approval of the Project.

Unavoidable Significant Adverse Impacts

The following unavoidable significant environmental impacts are associated with the proposed Project as identified in the EIR. The impacts cannot be mitigated to less than significant by changes or alterations to the Project.

Traffic Impact: Unacceptable Intersection Operations. Redevelopment as proposed under the Milpitas Transit Area Specific Plan could result in unacceptable operations at multiple intersections in and around the project site (Impacts 3.3-2, 3.3-4 through 3.3-15 and 3.3-18 discussed in the DEIR on pages 3.3-79 to 3.3-87). The Plan incorporates policies to reduce impacts at these intersections through preservation of future right-of-way, establishment of a Regional Transportation Impact Fee program and establishment of a Plan-Area Traffic Fee program. However, funding of identified feasible improvements with revenues from these fees will not be enough to meet acceptable standards at all identified intersections.

Traffic Impact: Unacceptable Freeway Operations. Added traffic from implementation of the proposed Plan will exacerbate already unacceptable traffic operations on four freeway segments (Impact 3.3-16 discussed in the DEIR on pages 3.3-87 to 3.3-88). Regional freeway impacts are mitigated through participation in the Countywide Deficiency Plan (CDP), which requires impact fees to be used to provide for regional and freeway improvements. The CDP has not received final approval through the Santa Clara Valley Transportation Authority, and freeway improvements are outside the jurisdiction of the City of Milpitas. Since freeway improvement

cannot be predicted with certainty, and no other feasible mitigation exists, the impact is identified as significant and unavoidable.

Traffic Impact: Cumulatively Unacceptable Roadway Segment Operations. Added traffic from implementation of the proposed Plan would degrade and exacerbate unacceptable operations for multiple roadway segments (impact 3.3-17 discussed in the DEIR on pages 3.3-88 to 3.3-89). The Plan incorporates policies to reduce impacts at some roadway segments through preservation of future right-of-way and establishment of a Regional Transportation Impact Fee program. However, some roadways are already built out and no feasible mitigation measure can be implemented to increase vehicle capacity. Thus, the impact is considered significant and unavoidable.

Air Quality Impact: Population-Based and Cumulative Emissions. New development under the proposed Plan would contribute to the exceedance of regional air quality standards and could increase population and vehicle miles traveled in the area at a rate greater than that assumed in the regional air quality planning, therefore conflicting with implementation of the Bay Area Ozone Strategy (Impacts 3.6-1 and 3.6-5 discussed in the DEIR on pages 3.6-14 to 3.6-21 and 3.6-26). There are many policies in the Plan as well as the Milpitas General Plan that mitigate these impacts, including policies that encourage alternative modes of travel. However, even with incorporation of these policies the impact would not be reduced to less than significant levels and is considered significant and unavoidable.

Overriding Considerations

The City Council has balanced the benefits of the Project to the City of Milpitas against the significant and potentially significant adverse impacts identified in the EIR that have not been eliminated or mitigated to a level of insignificance. To the extent that the Project would result in unavoidable significant impacts described in the EIR, the City Council hereby determines that such unavoidable impacts are outweighed by the benefits of the Project as further set forth below. The City Council, acting pursuant to CEQA Guidelines Section 15093, hereby determines that unavoidable impacts of the Project are outweighed by the need to redevelop industrial land around existing light rail stations and a future BART station with transit-oriented residential and commercial uses. The City Council has considered the public record of proceedings on the proposed Project and has determined that approval of the Project would result in the transition of an industrial area to higher intensity mixed uses that will increase the city's tax base, result in desirable neighborhoods and commercial districts, and maximize transit ridership to help meet regional housing/transportation goals.

Upon consideration of the public record of proceedings on the Project, the City Council hereby determines that substantial evidence is included in the record demonstrating the housing, social, environmental, economic and other benefits that the City will derive from implementation of the Project. The City Council further determines that approval and implementation of the Project will result in the following substantial public benefits.

Transitions an Industrial Area to an Area That Supports Higher Intensity Mixed Uses. The Plan provides the opportunity to intensify development in an appropriate area around transit stations, and responds to strong market interest in high density types of development.

Strengthens the City's Tax Base: The Plan provides opportunities for new retail and hotel uses, ownership housing, and high-density employment uses. The result will be increases in property values and property tax revenues, in addition to increased sales tax revenue, increased occupancy tax from hotels, and increased business activity.

Builds Transit-Oriented Development Around Light Rail and Future BART Stations to Maximize Transit Ridership: The Plan provides for a minimum of 6,250 new residential units and 800,000 square feet of employment space near existing and planned transit facilities. It encourages higher residential densities and non-residential building intensity on those sites closest to the planned future BART station and near light rail transit nodes in order to support transit ridership. It also provides a design for the BART station and parking structure that is compatible with an urban transit village district, and provides reasonable auto access from Montague Expressway, Milpitas Boulevard, and Capitol Avenue.

Builds Quality Neighborhoods and Commercial Districts that are Desirable in the Market Place and Hold Their Value Over Time: The Plan would enhance the street network to help alleviate traffic problems, add new streets to create smaller blocks in residential and mixed use areas, encourage higher density and intensity where taller buildings fit the scale of larger streets, ensure the pedestrian-oriented character by creating richly detailed streetscapes with good connectivity, create subareas with differing character, and set aside adequate park acreage that provide for active and passive recreation.

Includes Employment Uses: The Plan provides for an appropriate mix of uses that can meet market demand, create a balance of uses for the city overall, and allows people to work near homes and transit.

EXHIBIT C
ERRATA SHEET

Response 5-E on page 2-32 of the Transit Area Plan Final EIR (and thereby the Draft EIR) is amended as follows:

“The terms and conditions by which the City of Milpitas can acquire additional wastewater treatment capacity rights are contained in the “Master Agreement for Wastewater Treatment between the City of San Jose, the City of Santa Clara and the City of Milpitas” (the Master Agreement). The Master Agreement generally sets forth rights and obligations of the respective jurisdictions with respect to discharge of wastewater into the San Jose/Santa Clara WPCP, outlines the capacity rights for each member agency, payment of cost-sharing obligations and plant administration. Under the WPCP Master Agreement, any agency can declare flow as “excess pooled capacity”. Once that declaration has been made, ~~the cities of San Jose and Santa Clara have the right of first refusal to such excess capacity, and after that, any other~~ agency has the right to purchase excess capacity as recommended by the Treatment Plan Advisory Committee. The City of Milpitas can then offer to acquire excess capacity at a price set by the terms of the Master Agreement.”

Policy 6.32 of the Transit Area Specific Plan (referenced in response 1-D and 5-M of the Final EIR) is amended as follows:

Policy 6.32: The City shall establish and assess a transportation impact fee program to contribute towards traffic improvements to be undertaken whole or in part by the County of Santa Clara or City of San Jose. This fee will go toward the Montague Expressway Widening project ~~west~~east of Trade Zone Boulevard, the Calaveras Boulevard (SR 237) Overpass Widening project, and Capitol Avenue improvements within the City of San Jose.

RESOLUTION NO. 7760

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE TRANSIT AREA PROJECT GENERAL PLAN AMENDMENTS (GP08-0002) AND ADOPTING THE TRANSIT AREA SPECIFIC PLAN (SP08-0001)

WHEREAS, in 2005, the City of Milpitas initiated a planning process for an approximately 437 acre area at the southern limits of the city, generally bounded by South Milpitas Boulevard to the east, the Lower Penitencia Creek to the west, and the Great Mall to the north; and

WHEREAS, the City prepared the Transit Area Specific Plan dated May 2008, attached as Exhibit B, after a process involving design workshops, community and stakeholder meetings, Planning Commission and City Council meetings. Related amendments to the General Plan were also prepared and are attached as Exhibit A. The General Plan amendments consist of changes to the text, tables, and land use map to ensure consistency between the Transit Area Specific Plan with the City's General plan. These amendments, the Transit Area Specific Plan, the Environmental Impact Report, and related Zoning Ordinance amendments are collectively referred to herein as the Transit Area Project; and

WHEREAS, the Planning Commission held a public hearing on the Transit Area Project on May 28, 2008. The Planning Commission considered reports from staff and written and public testimony from affected parties and recommended the City Council approve the Transit Area Project; and

WHEREAS, the City Council held a public hearing on the Transit Area Project on June 3, 2008, and considered reports from staff, written and public testimony affected parties, and minor revisions to the Specific Plan as set forth in an Errata Sheet attached as Exhibit C; and

WHEREAS, the City Council did review and consider the Environmental Impact Report, consisting of both the Final and Draft EIRs, which identified the potential for significant effects on the environment from development of the Transit Area, and adopted Resolution No. 7759 certifying the EIR; and

NOW, THEREFORE, BE IT RESOLVED that the City Council makes the following findings regarding the General Plan amendments and Transit Area Specific Plan:

- The amendments to the General plan and the Transit Area Specific Plan are in the public interest.
- The Transit Area Specific Plan is consistent with the General Plan, as amended.
- The City Council considered the certified Environmental Impact Report for the Transit Area Project and a Statement of Overriding Considerations before taking action on the General Plan amendments and the Transit Area Specific Plan.

BE IT FURTHER RESOLVED that the City Council hereby approves the General Plan amendments attached as Exhibit A and the Transit Area Specific Plan attached as Exhibit B as amended by the minor revisions attached as Exhibit C.

PASSED AND ADOPTED this ____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

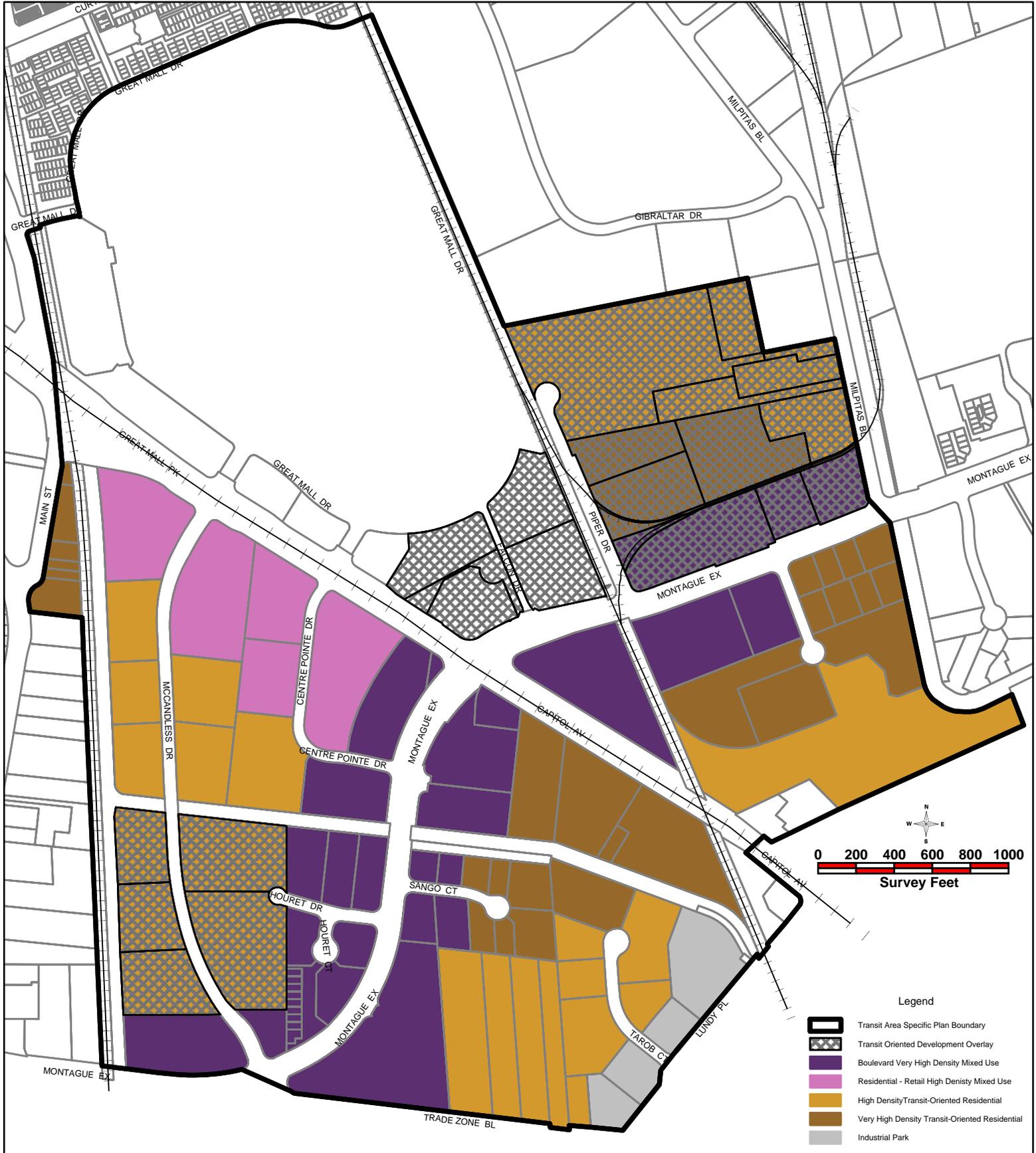
EXHIBIT A

GENERAL PLAN AMENDMENTS



City of Milpitas
Milpitas Transit Area Specific Plan
General Plan Amendment No. GP08-0002

Exhibit A



Preface

The Milpitas General Plan was significantly revised in 1994 in order to update and improve the clarity of the document. It has had only a few minor revisions since then. The January 2002 update incorporated the Midtown Specific Plan and included revisions to the General Plan land use map and text for consistency between these documents. The June 2008 update incorporates the Transit Area Plan, adding new land use designations and references to the area plan. Some of the major editorial and map changes include adding the following new land use categories:

- ~~**Mixed Use:** Allows a mixture of commercial, office, retail, services, residential, and public and quasi-public uses. Residential densities range from 21 to 30 dwelling units per gross acre.~~
- ~~**Multifamily — Very High Density:** Allows new multifamily housing. Residential densities range from 31 to 40 dwelling units per gross.~~ **Retail Mixed-Use:** This designation provides for retail, hotel, and office uses located immediately south of the Great Mall.
- ~~**Transit Oriented Development Overlay:** The TOD overlay is located in areas within a quarter mile radius around existing and future planned transit stations. The TOD overlay is in conjunction with any base General Plan Land Use designations including the following: Multifamily High Density, Multifamily Very High Density, Mixed Use, Retail Subcenter, General Commercial, Industrial Business Park, Manufacturing and Warehousing, and Park and Recreation. Due to the proximity of transit, the TOD overlay allows for an increase to the residential densities permitted in the underlying land use designation (e.g., 41 to 60 dwelling units per gross acre in the Multifamily Very High Density designation and 31 to 40 dwelling units per gross acre in the Mixed Use designation) and up to a maximum 20% parking reduction.~~ **Boulevard Very High Density Mixed-Use:** This classification is intended to provide high-density housing, retail, and employment along Montague Expressway with a landscaped boulevard character. Permitted uses include residential, office, commercial, and medical uses.
- ~~**Gateway Office Overlay:** The Gateway Office Overlay applies to areas with an underlying general commercial designation that are well-suited for higher intensity office development due to locations near various gateways to the City. New "Class A" office development may be developed to an intensity of a Floor Area Ratio (FAR) of 1.5.~~ **Residential-Retail High Density Mixed-Use:** This district is intended to be a true mixed-use area with retail, restaurants, and services on the ground floor, and residential or office uses on floors above. The residential density is a minimum average gross density of 31 units per acre and a maximum of 40 units per gross acre. Sites may be developed for office and hotel uses without residential development, although ground floor retail or restaurant square footage will still be required.
- **Very-High Density Transit Oriented Residential:** Intended to create residential districts near BART and light rail stations, this designation requires housing to be built at an average density of at least 41 units per gross acre, up to a maximum of 60 units per gross acre. Small, local-serving commercial uses are permitted at the ground floor level, including retail, restaurants, and personal service uses.
- **High Density Transit Oriented Residential:** These properties are intended for medium-density residential neighborhoods further from BART, at the interior of subdistrict neighborhoods. A minimum average gross density of 21 units per acre is

required, up to a maximum of 40 units per acre. Residential and related uses are allowed, but not commercial uses.

The Midtown Specific Plan requires new residential development within that planning area to provide public parks at a ratio of 3.5 acres per 1,000 persons as compared to the standard of 5.0 acres per 1,000 for the area located outside the Midtown Planning Area. It also provides for a new bike lane on Abel Street and consolidates the Milpitas Historic Commercial District into the Midtown planning area. The Transit Area Plan was developed to create an attractive high-density urban neighborhood with a mix of land uses around the light rail stations and future BART station and to create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit.

The land that is now Milpitas was in pre-historic times part of the home territory of the Tamyen tribelet of the Coastanoan Indians; remnants of two notable village sites from the period can be found in the City. Milpitas' present-day origins can be traced to the presence of Spaniards in the South Bay in the latter part of the 18th century. In the mid-19th century, the area was a stopover-point for travelers between Sutter Fort and San Jose. By the late 1850s, a stage line was operating between San Jose and Oakland with stops in Milpitas.

In the latter part of the 19th century, Milpitas emerged as a marketing center for farmers widely scattered along the plain and the hills. The Southern Pacific Railroad ran a line from Stockton to San Jose reaching Milpitas in 1869, which led to initiation of new commercial enterprises and consolidation of Milpitas' position as an important shipping point of the rapidly farmanizing valley. In 1920s, construction of the San Jose branch of the Western Pacific Railroad gave the community access to a second rail line.

As late as the early 1950s, orchards and farms dotted the Milpitas landscape. In 1953, the Ford Motor Company began constructing an assembly plant south of downtown in a strip between the two railroad tracks; the town was incorporated in the following year.

Milpitas has outstripped its origins to rapidly grow into a suburban center of 62,698 people providing 52,090 jobs in 2000¹. Even though much of the City is fairly new — with the exception of the Great Mall (previously Ford Motor Company plant), and some scattered subdivisions and buildings along Main Street, virtually the entire City has been built over the last 30 years. Rapid growth in the region has left little room for expansion of the City boundaries in the flatlands.

A comprehensive update of the City's General Plan was conducted in 1994. Several minor amendments have occurred since then. In response to the City's needs and state law, this Plan describes the City's ideas for its future and the ways in which it intends to transform these ideas into reality. The General Plan incorporates the Midtown Specific Plan, approximately 972-800 acres of land in the center of Milpitas, and the Transit Area Plan, approximately 437 acres of land at the south end of the City, by reference. The Midtown Specific Plan and Transit Area Plan establishes, in more specific terms, the nature, character and location of activities and development; guides the orderly growth of ~~Midtown Milpitas~~ the Midtown area and southern area near transit; defines the nature of development and the physical framework of ~~that those areas~~; and provides a basis for future implementing actions to improve and beautify the areas.

This chapter provides an overview of the scope and organization of the General Plan. A glossary of planning terms used in the Plan is included in the Appendix.

¹ Based on 2000 Census data and Projections 2002 (ABAG).

1.1 Scope and Requirements of the General Plan

State law requires each California City and county to prepare a general plan. A general plan is defined as “a comprehensive, long-term general plan for the physical development of the county or city, and any land outside its boundaries which in the planning agency’s judgment bears relation to its planning.” Thus, the Planning Area can include land beyond the City’s corporate limits. State requirements call for general plans that “comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.”

While they allow considerable flexibility, state planning laws do establish some requirements for the issues that general plans must address. The California Government Code establishes both the content of general plans and rules for their adoption and subsequent amendment. Together, state law and judicial decisions establish three overall guidelines for general plans:

- **The General Plan Must Be Comprehensive.** This requirement has two aspects. First, the General Plan must be geographically comprehensive. That is, it must apply throughout the entire incorporated area and it should include other areas that the City determines are relevant to its planning. Second, the General Plan must address the full range of issues that affect the City’s physical development.
- **The General Plan Must Be Internally Consistent.** This requirement means that the General Plan must fully integrate its separate parts and relate them to each other without conflict. “Horizontal” consistency applies as much to figures and diagrams as to the general plan text. It also applies to data and analysis as well as policies. All adopted portions of the General Plan, whether required by state law or not, have equal legal weight. None may supersede another, so the General Plan must resolve conflicts among the provisions of each element.
- **The General Plan Must Be Long-Range.** Because anticipated development will affect the City and the people who live or work there for years to come, state law requires every general plan to take a long-term perspective. While the time-horizon at which build-out of the Milpitas General Plan would occur is not specified, it is expected that this would take place over a 15- to 25-year period. An on-going review and evaluation process, which enables the Plan’s time-horizon to be regularly extended, is provided for in this Plan.

Consistency between the General Plan and Specific Plans

Section 65359 of the Government Code requires that specific plans that are applicable to the same areas affected by a general plan should be consistent with the general plan.

The Midtown Specific Plan adopted in 2002 is consistent with the General Plan as follows:

- The Midtown Plan furthers the Land Use Guiding Principles by providing a mixture of land uses that recognize Milpitas' emerging role as transit hub, and a center of housing and employment in the Silicon Valley. It serves to maintain a compact urban form and further diversifies Milpitas' housing stock by providing for higher residential densities, and it extends the city's park-like setting by providing for parks and creek-side trails and open spaces throughout the Specific Plan area.
- The Midtown Plan is consistent with and furthers the Land Use Policies in that it focuses on infill development in a transitioning urban area and supports preservation and adaptive reuse of historical landmarks in the Specific Plan area.
- The Midtown Plan addresses the jobs/housing balance programs by providing for new higher density housing in close proximity to industrial and employment centers
- The Midtown Plan supports the provision of adequate schools through the payment of developer fees for new development.
- The Midtown Plan provides for improving the viability of pedestrian, bicycle and transit systems by including provisions such as wider sidewalks, traffic calming, streetscape improvements, pedestrian routes to transit stations and improvements to the citywide trail network.
- The Midtown Plan maintains the architectural and landscape elements that contribute to the identity and history of the City by requiring new developments to be harmonious with older structures without falsely attempting to reproduce historic structures, and supports rehabilitation and adaptive reuse of local, state and federally designated historic buildings.
- The Midtown Plan ensures the conservation, development and use of natural resources by providing "smart growth" through infill development and providing for the improvement of parks and creek-side trails designed to serve the needs of all residents of the community.

The Transit Area Plan, adopted in 2008, is consistent with the General Plan as follows:

- The Transit Area Plan furthers the Land Use Guiding Principles by providing high-density residential, mixed use and transit oriented land uses that balance Milpitas' regional and local roles by providing housing, employment and transportation options. It helps promote a compact urban form by allowing increased heights, mixes of uses and growth focused on infill and redevelopment opportunities.
- The Transit Area Plan addresses the jobs/housing balance programs by providing for new higher density housing in close proximity to employment centers and transit hubs.
- The Transit Area Plan supports the provision of adequate schools through the payment of developer fees for new development.

- The Transit Area Plan provides for improving the viability of pedestrian, bicycle and transit systems by including provisions such as pedestrian amenities, wider sidewalks, traffic calming, streetscape improvements, pedestrian routes to transit stations and improvements to the citywide trail network.
- The Transit Area Plan promotes increased transit use and intermodal commuting options by focusing development near existing and proposed transit facilities.
- The Transit Area Plan ensures the conservation, development and use of natural resources by providing "smart growth" through infill development and providing for the improvement of parks and creek-side trails designed to serve the needs of all residents of the community.

2.1 Population and Growth

Population Growth

The Planning Area's 2000 population is 62,698. Between 1980 and 1990, the Planning Area grew at a rate of 2.44 percent per year, twice as fast as Santa Clara County as a whole (Table 2-1). The City has recently (between 1990 and 2000) grown at an even faster rate as compared to the County (2.1 percent compared to 1.2 percent per year).

Buildout under the 2008~~2~~ land use designations of the General Plan would result in an additional population of approximately ~~13,708~~17,900 in the City, or a total population of about ~~77,400~~108,400 in the Planning Area. However, this may be affected as a result of any Plan amendments that may subsequently be adopted.

<u>Table 2-1</u>						
<u>Population Estimates and Projections</u>						
	<u>1980</u>	<u>1990</u>	<u>2000</u>	<u>2005</u>	<u>2010 Population Projections</u>	<u>Estimated Buildout Population</u>
<u>City of Milpitas</u>	<u>37,820</u>	<u>50,690</u>	<u>62,698</u>	<u>64, 800</u>	<u>69,200</u>	<u>108,300^b</u>
<u>Milpitas Planning Area</u>	<u>37,950</u>	<u>50,951</u>	<u>63,392</u>	<u>64, 900</u>	<u>69,300</u>	<u>108,400^b</u>
<u>Santa Clara County</u>	<u>1,295,073</u>	<u>1,497,577</u>	<u>1,682,585</u>	<u>1,763,000</u>	<u>1,867,500</u>	<u>2,279,100^a</u>
<p>^a ABAG's, Projections 2007, projects a 2030 population of 2,279,100 for Santa Clara County.</p> <p>^b Adjusted to include General Plan Amendments since 2002 and the 2008 Transit Area Specific Plan which projects a 2030 population.</p> <p>Sources: <u>Association of Bay Area Governments, 2007;</u></p>						

While buildout of the General Plan is expected to occur over a 15- to 25-year period, the time at which buildout would occur is not specified in or anticipated by the Plan.

Land Availability

Table 2-2 summarizes the status, as of ~~April 2002~~May 2008, of developed and vacant land within City limits under the different General Plan land use classifications. About one-third of the developed land in the Valley Floor is devoted to Single Family Low-Density Residential use, with all designated residential areas accounting for about 46 percent of the Valley Floor. Half of the vacant land in the Valley Floor is designated for industrial (Manufacturing and Industrial Park) uses. About 15 percent of the total land in the Valley Floor is vacant and available for development.

Table 2-2
2002 Citywide Land Availability

	DEVELOPED		UNDEVELOPED ¹		TOTAL	
	Acres	Units	Acres ²	Units ³	Acres	Units
HILLSIDE						
Hillside Medium Density	<u>8995</u>	<u>9699</u>	<u>4610</u>	<u>96</u>	105	105
Hillside Low Density	218	39	154	39	372	78
Hillside Very Low Density	<u>4442</u>	<u>4516</u>	<u>3,577</u> <u>3576</u>	<u>4039</u>	3,618	55
Ed. R. Levin County Park	1,530	0	0	0	1,530	0
Total Hillside	1,878	<u>450</u> <u>154</u>	<u>3,747</u> <u>3740</u>	<u>8884</u>	5,625	238
VALLEY FLOOR						
Single Family Low Density	<u>2,092</u> <u>2097</u>	<u>9,474</u> <u>9495</u>	<u>75</u>	36	<u>2,099</u> <u>2102</u>	<u>9,507</u> <u>9531</u>
Single Family Mod. Density	185	1,359	30	283	215	1,642
Multi-Family Med. Density	165	1,417	0	0	165	1,417
Multi-Family High Density	<u>324</u> <u>237</u>	<u>4,339</u> <u>4707</u>	<u>270</u>	<u>4350</u>	<u>354</u> <u>237</u>	<u>4,774</u> <u>4707</u>
Multifamily Very High Density	<u>44</u>	<u>2484</u>	<u>76</u>	<u>3580</u>	<u>120</u>	<u>6064</u>
Transit Oriented Residential High Density	<u>94</u>	<u>0</u>	<u>94</u>	<u>3760</u>	<u>94</u>	<u>3760</u>
Transit Oriented Residential Very High Density	<u>47</u>	<u>0</u>	<u>47</u>	<u>2820</u>	<u>47</u>	<u>2820</u>
Mixed Use	<u>3</u>	<u>195</u>	<u>71</u>	<u>2470</u>	<u>74</u>	<u>2665</u>

Table 2-2
2002 Citywide Land Availability

	DEVELOPED		UNDEVELOPED ¹		TOTAL	
	Acres	Units	Acres ²	Units ³	Acres	Units
Residential-Retail High Density Mixed Use	0	0	22	0	22	0
Boulevard Very High Density Mixed Use	0	0	24	0	24	0
Town Center	82	331	9	0	87	331
Professional/Admin. Office	12	0	2	0	14	0
Retail Subcenter	56	0	4	0	60	0
General Commercial	341	0	0	0	341	0
Highway Service	227	563	44	0	271	563
Industrial Park	712	0	111	0	823	0
Manufacturing	736	0	6	0	742	0
Public	300	0	0	0	300	0
Parks and Greenways	138	0	31	0	169	0
Major Streets, Freeways & Rail	604	0	48	0	652	0
Total Valley Floor	6,080	20,551	624	12,949	6,559	33,500
<p>1. Undeveloped acres include parcels that are either vacant or under-developed in terms of their potential under the current General Plan land use designation.</p> <p>2. Area is in "gross acres" (i.e., includes minor streets, storm channels, etc.).</p> <p>3. Estimate of potential number of future dwelling units.</p>						

Table 2-4 Standards For Density And Development Intensity				
Land Use Designation	Residential Density (units/ gross acre)	Maximum Permitted Floor-Area Ratio — FAR	Residential Population	
			Persons/ Housing Unit ¹	Persons/ Acre
VALLEY FLOOR				
Residential				
Single-family Low	3-5	n.a.	3.63 <u>3.87</u>	4412 - 4820
Single-family Moderate	6-15	n.a.	3.43 <u>3.13</u>	2019 - 5447
Multifamily Medium ^a	7-11	n.a.	3.13 <u>3.3</u>	2322 - 3635
Multifamily High	12-20	n.a.	3.13 <u>2.8</u>	3438 - 5663
Multifamily High with Special PUD approval	21-40	n.a.	2.69 <u>2.52</u>	5653 - 408101
Multifamily Very High	31-40	n.a.	2.52 <u>2.69</u>	8379 - 408101
Multifamily Very High with TOD Overlay	41-60	n.a.	2.52 <u>2.69</u>	440104 - 464152
<u>High Density Transit-Oriented Residential</u>	<u>21-40</u>	<u>n.a.</u>	<u>2.52</u>	<u>53-101</u>
<u>Very High Density Transit-Oriented Residential</u>	<u>41-75</u> ²	<u>n.a.</u>	<u>2.52</u>	<u>104-189</u>
Mobile home Park	6-7	n.a.	1.6	10-11
Mixed Use				
Mixed Use (Residential)	21-30	n.a.	2.52 <u>2.69</u>	56-81
Mixed Use (Residential) with TOD Overlay	31-40	n.a.	2.52 <u>2.69</u>	83-108
Mixed Use (Non-Residential)	n.a.	.75	n.a.	n.a.
Mixed Use (Non-Residential) with TOD overlay	n.a.	1.0	n.a.	n.a.
<u>Residential – Retail High Density Mixed Use</u>	<u>31-50</u> ³	<u>1.5 for office</u> ⁴	<u>2.52</u>	<u>79-126</u>
		<u>No density limit for hotels</u>		
<u>Boulevard Very High Density Mixed Use</u>	<u>41-75</u> ³	<u>1.5</u> ⁴	<u>2.52</u>	<u>104-189</u>

Table 2-4				
Standards For Density And Development Intensity				
Land Use Designation	Residential Density (units/ gross acre)	Maximum Permitted Floor-Area Ratio — FAR	Residential Population	
			Persons/ Housing Unit¹	Persons/ Acre
Commercial				
Town Center	up to 40 ² 40 ⁵	0.85	<u>Varies⁶</u>	<u>Varies⁶</u>
General Commercial ^a	n.a.	0.50	n.a.	n.a.
Retail Sub-center ^a	n.a.	0.35	n.a.	n.a.
Professional and Administrative Office	n.a.	0.5	n.a.	n.a.
<u>Retail Transit-Oriented</u>	<u>n.a.</u>	<u>2.25</u>	<u>n.a.</u>	<u>n.a.</u>
Industrial				
Industrial Park	n.a.	0.5	n.a.	n.a.
Manufacturing and Warehousing ^a	n.a.	0.4	n.a.	n.a.
HILLSIDE				
Residential				
Very Low Density	up to 0.1	n.a.	3.6	less than 1
Low Density	up to 1.0	n.a.	3.6	up to 4
Medium Density	up to 3.0	n.a.	3.6	up to 11
^a The TOD Overlay does not change the standards for density and development intensity for the underlying land use designations.				
¹ Based on an overall average <u>3.643.14</u> household population per Milpitas total housing unit (Census 2000 <u>baseline with Department of Finance data update</u>).				
² <u>Up to 90 du/ac with a Use Permit pursuant to the Transit Area Plan</u>				
³ <u>Up to 60 du/ac with a Use Permit pursuant to the Transit Area Plan</u>				
⁴ <u>Up to 2.5 FAR with a Use Permit pursuant to the Transit Area Plan</u>				
⁵ Findings necessary.				
⁶ Depends on the density of housing provided.				

Single-family Low Density. 3 to 5 units per gross acre. All housing units are to be individually owned, either on separate lots or as part of a clustered Planned Unit Development. Single-unit detached residences will be the typical housing type in this category.

Single-family Moderate Density. 6 to 15 units per gross acre. All housing units are to be individually owned, either on separate lots or as part of a clustered Planned Unit Development. Developments with densities ranging from 7 to 10 units per acre may be approved only if proposals are found to be consistent with policies and programs of the General Plan and compatible with the surrounding neighborhood. Single-unit attached residences will typically be built within this density range. Densities higher than 10 units per acre would be consistent only for sites of 5 acres or less, accompanied by specific findings relating to:

- Appropriate relationship to surrounding land uses.
- Affordability (for PUDs the acceptable floor area range is 600 to 1,100 sq. ft.)

Multifamily Medium Density. 7 to 11 units per gross acre. This density range would allow single-family attached and semi-detached houses and duplexes.

Multifamily High Density. 12 to 20 units per gross acre. This density range would accommodate a variety of housing types, ranging from row houses to triplexes and four-plexes, stacked townhouses and walk-up garden apartments. Densities up to 40 units per gross acre may be permitted for proposals designed as Planned Unit Developments (PUDs) provided that the following criteria are met:

- Sewer and water service is sufficient to accommodate the proposal as well as other developments permitted by the General Plan. Any improvements to the sewer or water system that would be required to accommodate any such higher density proposals would be made conditions of project approval;
- Cumulative traffic, from the increased density and other existing or future projects, must not cause any street intersection to operate below Level of Service (LOS) E; and
- The design of such higher density projects will not have adverse shadow, view obstruction or loss of privacy impacts that are not mitigated to acceptable levels.

Multifamily Very High Density. This designation allows for multifamily housing at 31 to 40 dwelling units per gross acre. This density range would accommodate a variety of housing types, ranging from row houses and townhouses to lofts and stacked flats with structured parking. Increased densities are permitted within the Transit Oriented Development overlay zone (TOD). Refer to page 2-15.

High Density Transit-Oriented Residential. A classification similar to the Midtown Plan's Multifamily Very High Density" designation, these properties are intended for medium-density residential neighborhoods further from BART, at the interior of subdistrict neighborhoods. A minimum average gross density of 21 units per acre is required, up to a maximum of 40 units per acre. Residential and related uses are allowed, but not commercial uses.

Very High Density Transit-Oriented Residential. Intended to create residential districts near BART and light rail stations, this designation requires housing to be built at an average density of at least 41 units per gross acre, up to a maximum of 60 and 90 units per gross acre. Small local-serving commercial uses are permitted at the ground floor level, including retail, restaurants, and personal services uses

Mobile-home Park. This is an overlay category that may be combined with Single-family Low Density, Multifamily Medium Density and Multifamily High Density Residential, or Highway Service classifications. Mobile home Park, along with accessory uses, is the permitted use. Maximum residential density would range from 6 to 7 units per gross acre when combined with the use classifications as follows:

- **Single-family Low Density Residential:** 6 housing units per gross acre.
- **Multifamily Medium & High Density Residential, and Highway Service:** 7 housing units per gross acre.

In addition to the above-stipulated densities, one additional housing unit per gross acre may be permitted upon a finding by the Planning Commission that the proposed project is of a superior functional and aesthetic design based upon it exceeding adopted mobile home park development standards.

MIXED USE

Mixed Use. Residential component: 21 to 30 units per gross acre; non-residential component: FAR of .75 . This designation allows for commercial offices, retail and services, high density residential and public and quasi-public uses. Mixed-use buildings can contain a combination of residential and commercial uses. The intensity for the non-residential component is a maximum floor area ratio (FAR) of .75. The residential density is 21 to 30 units per gross acre and is calculated separately from the non-residential component. Increased residential densities are permitted within the Transit Overlay District (TOD). Refer to page 2-15.

Residential – Retail High Density Mixed Use. This district is intended to be a true mixed use area with retail, restaurants, and services on the ground floor, and residential or office uses on the floors above. The residential density is a minimum average gross density of 31 units per acre and a maximum of between 40 and 60 units per gross acre. In addition, 200 square feet of retail or restaurant space is required per unit, using the minimum density (i.e. the requirement is based on the number of units required to meet the minimum density). Sites may be developed for office and hotel uses without residential development, although ground floor retail or restaurant square footage will still be required. For nonresidential projects, the minimum FAR ranges from 1.5 to 2.25. However there is no FAR limit for hotels. An FAR of 2.5 may be permitted on individual sites with approval of a conditional use permit by the Planning Commission.

Boulevard Very High Density Mixed Use. This classification is intended to provide high-density housing, retail, and employment along Montague Expressway with a landscaped boulevard character. Projects may include a wholly residential or non-residential concept or a project that integrates residential and non-residential uses vertically or horizontally.

Permitted uses include residential, office, commercial, and medical uses. Sites developed with a mix of uses, or non-residential uses, must adhere to the FAR maximum which ranges from 1.5 to 2.25. Residential projects shall have a minimum average gross density of 41 units per acre and can be built up to between 60 to 90 units per acre.

An FAR of 2.5 may be permitted on individual sites with approval of a conditional use permit by the Planning Commission. Special criteria would need to be met, including the following: (1) the proposed uses include a hotel or office uses that create substantial new jobs, and do not include residential uses; (2) the design of the project is on extremely high quality and is compatible with the scale of surrounding buildings; (3) there are no adverse traffic impacts beyond those studied in the Transit Area Plan EIR or the project will be required to mitigate such impacts individually; and (4) buildings do not shade public parks or plazas more than 30% between 10 AM and 3 PM as measured on March 15.

COMMERCIAL

Town Center. This designation provides for a variety of commercial, civic and residential uses appropriate to the Center's role as the functional and visual focus of Milpitas. The Town Center is a meeting place and a market place, the home of commercial and professional firms, an entertainment area and a place for restaurants and hotels. The Center consists of two distinct sub-areas, one to the east of Hillview Drive, the other to the west. The development concept for the Town Center is to have predominantly office and highway serving uses (hotels, restaurants, etc.) in the East Area, and predominantly retail and entertainment uses in the West Area. This separation into distinct sub-areas allows for a variety of uses within the Town Center and yet, through their separateness, ensures that they will reinforce rather than negatively affect each other.

Because of this unique and relatively intensive mix of activities, very high density residential developments (i.e., up to 40 units per acres) may be permitted within the Town Center because of the increased economic support the residents would offer to the commercial uses.

General Commercial. This classification provides for a wide range of retail sales, and personal and business services accessed primarily by the automobile. It includes 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 adjacently parked automobile.

Retail Sub-Center. This classification accommodates neighborhood shopping facilities that provide for convenience needs, such as groceries and minor hardgood purchases. The General Plan provides for nine sub-centers, between two and 20 acres in size, distributed throughout the City.

Professional and Administrative Office. This classification provides advantageous locations for medical, law, and similar services required to serve residents and businesses. While office uses can be located in all of the commercial districts, the Professional Administrative Office areas are solely for these uses.

Table 2-7				
Land Availability For Job Growth, 20080				
General Plan Land Use Designation	20080 Vacant and Under-developed Land (Acres)	Estimated Potential New Jobs¹	Assumptions	
			Average FAR	Building square feet/employee
Professional/Administrative Office	2	80	.35	375
Retail Subcenter	42.68	122	.25	500
General Commercial	276.43	823	.25	500
Highway Service	34	744	.25	500
Industrial Park	272109	12,0066450	.35	375
Manufacturing	571.48	2,3471	.35	375
Town Center	9	277	.30	425
Mixed Use	62.13	184160	.30	425
Mixed Use w/ TOD Overlay	402.61	307270	.30	425
General Commercial w/ Gateway Office Overlay	12	2,091	1.5	375
Total	433.184 Acres	18,948.9805 Jobs		

FAR = Building floor area to site area ratio.

¹ Estimated new jobs rounded to nearest 10.

Midtown

- 2.a-1-22** Develop the Midtown area, as shown on the Midtown Specific Plan, as an attractive and economically vital district that accommodates a mixture of housing, shopping, employment, entertainment, cultural and recreational activities organized within a system of landscaped boulevards, streets and pedestrian/bicycle linkages.
- 2.a-1-23** Require development in the Midtown area to conform to the adopted design guidelines/requirements contained in the Midtown Specific Plan.

Transit Area

- 2.a.1-24** Develop the Transit area, as shown on the Transit Area Plan, as attractive, high density, urban neighborhoods with a mix of land uses around the light rail stations and the future BART station. Create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each subdistrict.
- 2.a.1-25** Require development in the Transit area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.

Child Care

commercial and employment centers and to other transit stations in surrounding jurisdictions. The bus transfer station and park-and-ride lot, at North Main Street and Weller Lane acts as a hub for most of the bus lines that serve Milpitas. Frequent service (less than 30 minute headway) is offered primarily during peak hours (6 AM to 9 AM and 3 PM to 6 PM on weekdays) while headway increase to 30 minutes or more during the midday, after 6 PM and on weekends and holidays.

The Santa Clara County Transportation Agency (SCCTA) provides bus service for the Milpitas Planning Area. Local bus routes provide service to Mountain View, Sunnyvale, Great America, southeast and east San Jose, and Evergreen College, at average headway of 15 to 30 minutes during commute hours. Service to the Fremont BART station is provided by express buses. Other destinations offered by SCCTA include Los Altos and Moffett Field. Additionally, AC Transit provides lines to the Fremont BART station. Details on transit service are included in Appendix B.

Light Rail. The Locally Preferred Alternative for the Tasman Corridor Project, selected by the Metropolitan Transportation Commission and the Santa Clara County Transportation Agency, ~~would-extended~~ the existing light rail in the County through Milpitas. The Eastern Segment of the Tasman Corridor ~~would-was~~ extend east from the existing terminus of the Guadalupe Corridor near North First Street in the City of San Jose, pass through Milpitas, and ~~terminates~~ just east of I-680 in San Jose. Of the 19 new stations that ~~would-were~~ be constructed as part of the Tasman Corridor Project, three ~~would-are~~ ~~located~~ be in Milpitas (see General Plan Diagram in Chapter 2).

The Transit Area Plan, adopted in 2008, maximizes the opportunity to focus development around the light rail stations, as well as the planned BART station. High Density residential and commercial land use designations are identified in the plan which will optimize the potential to increase transit ridership.

EXHIBIT B

MAY 2008 TRANSIT AREA SPECIFIC PLAN

EXHIBIT C

ERRATA SHEET

Policy 6.32 of the Transit Area Specific Plan is amended as follows:

Policy 6.32: The City shall establish and assess a transportation impact fee program to contribute towards traffic improvements to be undertaken whole or in part by the County of Santa Clara or City of San Jose. This fee will go toward the Montague Expressway Widening project east of Trade zone Boulevard, the Calaveras Boulevard (SR 237) Overpass Widening project, and Capitol Avenue improvements within the City of San Jose.

REGULAR

NUMBER: 38.777

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, AMENDING TITLE XI CHAPTER 10 FOR THE PURPOSE OF IMPLEMENTING THE TRANSIT AREA SPECIFIC PLAN

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, the City of Milpitas has initiated a proposed General Plan amendment, a Midtown Specific Plan amendment, rezoning, adoption of the Milpitas Transit Area Specific Plan (TASP), and other related actions needed to implement the Plan and thus provide for transit-oriented residential and commercial redevelopment on older industrial land around existing light rail stations and a future BART station. These actions are collectively referred to as the "Project"; and

WHEREAS, the City determined that an Environmental Impact Report ("EIR") would be required for the Project and circulated a Notice of Preparation dated April 1, 2006 to public agencies and interested parties for consultation on the scope of the EIR; and

WHEREAS, based on the responses to the Notice of Preparation, the City prepared a Draft Environmental Impact Report ("Draft EIR") dated October 2007 (SCH No. 2006032091) which reflected the independent judgment of the City as to the potential environmental effects of the Project. The Draft EIR was circulated for a 45 day public review and comment period, from November 7, 2007 to December 21, 2007; and

WHEREAS, the Project was the subject of numerous public meetings and the Project and Draft EIR was the subject a public meeting held on November 28, 2007; and

WHEREAS, the Planning Commission held a duly noticed public hearing on May 28, 2008 and heard evidence prepared by staff and comments by the public and recommends approval of the amendments; and

WHEREAS, with respect to the EIR, the City has prepared findings, facts in support of findings, statement of overriding considerations, mitigation monitoring program and incorporated them into the final EIR and resolved and certified in a separate resolution adopted by the City Council of the City of Milpitas; and

WHEREAS, the City Council finds that the amendments are consistent with the General Plan in that the project amends goals and policies of the General Plan reflecting the vision of the Transit Area Plan; and

WHEREAS, the City Council finds that proposed amendment will not adversely affect the public health, safety and welfare in that the project contemplates a vision that includes the harmonious development of new housing, retail, infrastructure and ensures compatibility with existing uses that may not transition to the new vision in the immediate future; 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. The Zoning Map of the City of Milpitas, which was adopted as part of Ordinance No. 38, enacted as Chapter XI-10 (Zoning, Planning and Annexation) of the Milpitas Municipal Code of said City, is hereby amended by adding a new Section District No. 570, a copy of which is attached hereto and incorporated herein.

SECTION 3. The exterior boundaries of the Zoning Map of the City of Milpitas as shown on the map entitled "Index Map to Section District Maps, Zoning Map of the City of Milpitas", which Index Map was

adopted as a part of Ordinance No. 38 of the City of Milpitas, and which is referred to in Section 3.03 of Ordinance No. 38, are hereby amended by adding Sectional District No. 570, referred to in Section 2 of this Ordinance.

SECTION 4. Chapter 10, Section 3.01 of Title XI of the Milpitas Municipal Code, “Districts” is hereby amended to read as follows:

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
"R4" Multiple Family Very High Density District	"R4" District
"R5" Urban Residential	"R5" 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
"MXD" Mixed Use District	"MXD" District
"MXD2" High Density Mixed Use District	"MXD2" District
"MXD3" Very High Density Mixed Use District	"MXD3" 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

SECTION 5. Chapter 10, Section 3.03 of Title XI of the Milpitas Municipal Code, “Zoning Map” is hereby amended to read as follows:

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, 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.

SECTION 6. Chapter 10, Section 4 of Title XI of the Milpitas Municipal Code “R1 Single-Family Residence District” is hereby amended in its entirety to read as follows:

--Begin Section--

SECTION 4 RESIDENTIAL ZONES AND STANDARDS

10-4.01 Purpose and Intent

10-4.02 Residential Use Regulations

10-4.03 Residential Zone Special Uses

10-4.04 Residential Zone General Development Standards

10-4.05 Residential Zone Special Development Standards

10-4.06 Residential Zone Off Street Parking Regulations

10-4.07 Conformance with Specific Plans

10-4.01 Purpose and Intent

- A. Single Family Residential (R1) Zone.** The purpose and intent of this zone is 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.
- B. One and Two-Family Residential (R2) Zone.** The purpose and intent of this zone is 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.
- C. Multi-Family High Density Residential (R3) Zone.** The purpose and intent of this zone is 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.
- D. Multi-Family Very High Density Residential (R4) Zone.** The purpose and intent of this zone is 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.
- E. Urban Residential (R5) Zone.** The purpose and intent of this zone is to provide for high-density residential development structured around transit stations.

10-4.02 Residential Use Regulations

A. Permitted and Conditionally Permitted Uses.

1. General Requirements. The uses identified in Table 4.02-1, Residential Zone Uses, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted entirely within enclosed structures. The primary uses identified in Table 6.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol "P" appears, the use shall be permitted.
P/C	Where the symbol "P/C" appears the use may be permitted if certain criteria is met or otherwise a Conditional Use Permit shall be required, in accordance with Section 57, Conditional Uses Permitted, of this chapter.
C	Where the symbol "C" appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Section 57, Conditional Uses Permitted By Commission, of this title.
O	Where the symbol "O" appears, the use is subject to an alternative review process

described in a subsequent footnote.

2. Accessory Uses. The following are the accessory uses permitted in all residential zoning districts:
 - a. Home occupations and professional offices in home, as provided in subsection 54.08.
 - b. 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.
 - c. Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in subsection 54.09.
 - d. Small family child care home.
 - e. Large family child care home, as provided for in Subsections 53.23-6 through 53.23-8 and 54.16.

B. Prohibited Uses. The following uses are prohibited:

1. Uses where the symbol “NP” appears within Table 4.02-1.
2. Adult Businesses as defined in Subsection 54.18, Adult Business Location Requirements, of this chapter.
3. Uses that have been excluded from Table 4.02-1, unless they are found by the City to be similar to permitted or conditionally permitted uses in accordance with C below.

C. Other Uses. Any other uses, may be considered by the Planning Commission that are similar in accordance with the procedure, prescribed in Subsection 10-54.02, Other Uses Permitted by Commission, of this chapter.

**Table 4.02-1
Residential Zone Uses**

Use	R1	R2	R3	R4	R5
1. Commercial					
Commercial Services ¹	NP	NP	C	NP	NP
2. Professional Offices and related uses					
Offices ²	NP	NP	NP	NP	NP
3. Public/Quasi-Public and Institutional Uses					
Child Care Center	C	C	C	C	P
Hospital ³	NP	NP	C	NP	NP
Nursing home ⁴	NP	C	C	NP	NP
Park, Playground or Community	C	C	C	C	C

Center (Non-Profit)					
Parking Lots	C	C		NP	NP
Public Service structure	C	C	C	C	C
Religious facility	C	C	C	C	C
Sanitarium ⁵	NP	NP	C	NP	NP
School	C	C	C	C	NP
Social Halls, Lodges, Fraternal Organizations and Clubs (Non-Profit)	NP	NP	C	NP	NP
4. Residential Uses					
Condominiums and Condo Conversions	NP	SFR: C Duplex: C	C	C	C
Duplex (Two dwellings)	NP	P	NP	NP	NP
Group Dwelling	NP	NP	NP	C	C
Guest House	C	NP	NP	NP	NP
Mobile Homes ⁶	P	NP	NP	NP	NP
Multi-Family Dwellings (Three or more units)	NP	NP	P	P	P
Planned Unit Development ⁷	P	P	P	P	P
Second Residential Dwelling Units ⁸	P	SFR: P Duplex: NP	NP	NP	NP
Single Family Dwelling	P	P	NP	NP	NP
5. Restaurants					
Restaurants ⁹	NP	NP	C	NP	P/C
6. Unclassified Uses					
Agriculture ¹⁰	P	P	P	NP	NP
Boarding House (Three or more persons)	NP	C	C	C	C
Golf Course ¹¹	C	C	C	NP	NP
Live Work Units ¹²	NP	NP	NP	C	P
Temp. Tract Office ¹³	P	P	P	P	P

- 1 Refer to Subsection 4.02-1, Residential Zone Special Uses, of this chapter, for standards.
- 2 Refer to Subsection 4.02-1, Residential Zone Special Uses, of this chapter, for standards.
- 3 Includes 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 sickness, mental or drug or alcohol addict cases.
- 4 Licensed nursing home serving more than six (6) persons.
- 5 See footnote 3 above.
- 6 Refer to Subsection 54.14, Mobile Home Development Standards, of this chapter, for standards.
- 7 Refer to Subsection 54.07, Planned Unit Developments, of this title, for standards.
- 8 In conjunction with an existing legal single-family dwelling. Refer to Subsection 54.22, Second Family Unit, of this chapter, for standards.
- 9 Refer to Subsection 4.02-1, Residential Zone Special Uses, of this chapter, for standards.
- 10 Except the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.
- 11 Except driving tee or range, miniature course and similar uses operated for commercial purposes.
- 12 Allowed commercial uses to be specified through the Conditional Use Permit process within R3 Zone.
- 13 Refer to Section 54.26, Model Home Complexes and Sales Offices for temporary tract office and signs with the exception that no tract sign shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.

10-4.03 Residential Zone Special Uses.

A. Incidental services within R3 zones. Incidental services such as restaurants and retail sales to serve residents may be allowed through the approval of a Conditional Use Permit in accordance with the provisions in Section 57, of this chapter, provided there is no exterior display or advertising and such activities are conducted in spaces which are integral parts of a main building.

B. Commercial Services, Retail and Offices within R5 zones.

Commercial services, retail and offices may be permitted provided they are:

1. Less than or equal to ten thousand (10,000) square feet in gross floor area;
2. Not open past 10:00 p.m.;
3. Not specifically noted in Table 4.02-1, Residential Zone Uses, of this chapter, requiring Conditional Use Permit approval or listed as a prohibited use; and
4. Not listed as a prohibited use in Section 10-4.02 (B), Prohibited Uses, of this chapter.

If items 1 through 2 above are not met, then approval of a Conditional Use Permit is required in accordance with Section 57, of this chapter.

C. 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.

10-4.04 Residential Zone General Development Standards

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. (Ord. 38.19, 1/17/61)

**Table 4.04-1
Residential Zone Development Standards**

Standards	R1	R2	R3	R4	R5
Lot Area, minimum (s.f.) ¹	R1-2.5: 2,500 R1-3: 3,000 R1-4: 4,000 R1-5: 5,000 R1-6: 6,000 R1-8: 8,000 R1-10: 10,000	Single-Family: 6,000 Two-Family: 8,000	8,000 2,000 per dwelling unit	None	None.
Lot width, minimum (ft.) ²	R1-2.5: 30 R1-3: 30 R1-4: 40 R1-5: 50 R1-6: 55 R1-8: 70 R1-10: 80	Single-Family: 55 Two-Family: 70	70	None	None.
Density, (Min-Max)	1 Dwelling Unit/Lot (3-15 units per gross acre)	7-11 units per gross acre	12-20 units per gross acre	31-40 units per gross acre	41-60 units per gross acre
Front yard Setback, minimum (ft.) ³	R1-2.5: 20 R1-3: 20 R1-4: 20 R1-5: 20 R1-6: 20 R1-8: 25 R1-10: 25	Single-Family: 20 Two-Family: 20	20	8 min/15 max from back of sidewalk.	Min: 12 Min: 20
Side yard setback (Interior), minimum (ft.) ⁴	R1-2.5: One side 5 R1-3: One side 5 R1-4: One side 6 R1-5: Adj to garage 6, total ten feet. R1-6: Adj to garage 6, total 13. R1-8: One side 7, total both sides 17 R1-10: One side 8, total	Single-Family: Single Story: One side 4, total both sides 12. Two story: One side 6, total both sides 15. Two-Family: Single Story: One side 7, total both sides 12. Two Story: One side 8, total both sides 20.	Single Story: One side 5 ft., total both sides 12 ft. Two-2.5 story: One side 10 ft., total both sides 25 ft. Three-3.5 story: One side 12 ft, total both sides 30 ft.	10	15 20 for buildings over 3 stories which abut residential uses

Standards	R1	R2	R3	R4	R5
	both sides 20				
Street side yard Setback, minimum (ft.) ⁵	10	10	10	Same as Front yard setback. See footnote 2.	Min: 12 Max: 20
Rear yard setback, minimum (ft.) (single story/two stories or greater) ⁶	R1-2.5: 15/20 R1-3: 15/20 R1-4: 15/20 R1-5: 20/20 R1-6: 25/25 R1-8: 25/30 R1-10: 30/35	Single-Family: 25/25 Two-Family: 25/30	Single Story: 30 ft. Two/2.5 story: 35 ft. Three/3.5 story: 40 ft.	10	15 20 for buildings over 3 stories which abut residential uses
Other Setbacks					Refer to Subsection 10-4.04, Special Development Standards.
Building Height, maximum (ft.) ⁷	Principal building: 30 Accessory building: 15 Guest house/ Caretaker building: 17	Principal building: 2.5 stories (30 ft.) Accessory building: 1.5 stories (15 ft.)	Principal building: 3.5 stories (35 ft.) Accessory building: 2.5 stories (25 ft.)	Four stories and 60 ft. Including architectural elements.	Six stories and 75 ft.
Parking	Refer to Subsection 10-4.06, Residential Zone Off Street Parking Regulations, of this chapter.	Refer to Subsection 10-4.06, Residential Zone Off Street Parking Regulations, of this chapter.	Refer to Subsection 10-4.06, Residential Zone Off Street Parking Regulations, of this chapter.	Refer to Subsection 10-4.06, Residential Zone Off Street Parking Regulations, of this chapter.	Refer to Subsection 10-4.06, Residential Zone Off Street Parking Regulations, of this chapter.
Lot Coverage	Refer to Subsection 10-4.05, Special Development Standards, of this chapter.	NA	Refer to Subsection 10-4.05, Special Development Standards, of this chapter.		

1 For R3 properties, the minimum requirement of lot area per dwelling unit may be waived where a Planned Unit Development has been approved at a higher density in accordance with the provisions of 10-54.07-6(c), Planned Unit Development, of this title. For R3 Properties, provided that all other

requirements of this title are met, the required area per dwelling may be reduced to 1,000 square feet for each efficiency apartment, as defined herein, contained in a multiple-family dwelling.

2 For R1 properties with slopes less than sixteen (16) percent. For R1-10 properties with slopes equal to or greater than sixteen (16) percent, but less than twenty-six (26) percent, the minimum lot width shall be two-hundred (200) feet. For R1-10 properties with slopes equal to or greater than twenty-six (26) percent, the minimum lot width shall be three-hundred (300) feet.

3 For R1 properties with slopes less than sixteen (16) percent. For R1-2.5, R1-3, and R1-4 properties, if access is provided to the side of garage via curved driveway, the setback may be 15 feet. For R1-10 properties with slopes equal to or greater than sixteen (16) percent, the minimum setback is forty (40) feet.

For R4 properties, the sidewalk shall be based on either existing sidewalk or an assumed 10-foot wide sidewalk, whichever is wider. Where a public easement prevents a building from being located at its required min or max setback, the building shall be located as close to the back of said easement as possible.

For R4 and R5 properties, 1) 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; 2) stairs and porches may project up to six (6) feet into the min setback; 3) the front yard setback area shall be landscaped; 4) 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.

4 For R1 properties with slopes less than sixteen (16) percent. For R1-10 properties with slopes equal to or greater than sixteen (16) percent but less than twenty-six (26) percent the minimum setback shall be twenty (20) feet on side and a total of forty-five (45) feet for both sides. For R1-10 properties with slopes equal to or greater than twenty-six (26) percent, the minimum setback shall be forty (40) feet.

For R4 and R5 properties, balconies, bay windows and awnings may project up to six (6) feet into the interior side setback. Interior side setback areas shall be landscaped but may also be occupied by accessory buildings and drive aisles.

5 For R5 properties, the street-side yard setback shall be landscaped.

6 For R1 properties with slopes less than sixteen (16) percent. For R1-10 properties with slopes equal to or greater than sixteen (16) percent, the minimum setback is forty (40) feet.

For R4 and R5 properties, balconies, bay windows and awnings may project up to six (6) feet into the rear setback. Interior side setback areas shall be landscaped but may also be occupied by accessory buildings and drive aisles.

For R5 properties, to mitigate the effects of adjacent service commercial or light industrial uses, increased setbacks and other measures, such as a solid six-foot barrier, shall be considered by the Planning Commission during the site and architectural review process.

7 For R3 properties, the 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 10-24.07-6(c), of this chapter.

For R5 properties, except on specified sites with frontage on arterials, including Capitol Avenue, Great Mall Parkway, Montague Expressway, Milpitas Boulevard Extension, and Piper Drive, where heights may extend up to twelve (12) stories.

10.4.05 Residential Zone Special Development Standards

A. All Zones

1. 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)

B. R1 Zones

1. 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 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)

C. R3 Zones

1. Landscape and Open Space Requirements.

- a. 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.
- b. 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)

2. On-Site Utilities Requirements

- a. 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.
- b. 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)

3. Trash and Storage Areas and Areas for Collecting and Loading Recyclable Materials

- a. There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of subsection 54.15 of this Chapter.
- b. 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)

D. R4 Zones

1. Park and Open Space Requirements for Residential Uses.

- a. 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).
- b. 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.
- c. 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.
- d. 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:
 - i. Balconies and porches (above ground level): minimum sixty (60) square feet; or
 - ii. 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)

3. Exceptions to Standards

- a. Exceptions to all but the use, density and park land requirement regulations of this Section may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section 57.
- b. 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:
 - i. 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.

- ii. 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)

E. R5 Zones

1. Building Location and Placement

- a. All buildings shall face the street.
- b. Primary building entrances shall be oriented to the street.

2. Park and Open Space Requirements

- a. All residential projects within the Transit Area Specific Plan area shall provide park land at a ratio of three and one-half (3.5) acres per one thousand (1,000) population.
 - i. Two (2) of the required three and one-half (3.5) acres 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). Land dedication is required if a park is shown on a property on Figure 3-8 of the Transit Area Specific Plan.
 - ii. Up to one and one-half (1.5) of each three and one-half (3.5) total park acres required (43%) may be satisfied by the provision of private recreational areas. Private open space cannot be shared between separate developments.
- b. Each residential project shall provide adequate on-site usable open space or recreational facilities to the approval of the Planning Commission through the Site Development Permit process. (Ord. 38.760 (3), 9/17/02; Ord. 38.759 (part), 4/2/02)
 - i. Balconies, porches, or roof decks, with a minimum dimension of four and one-half (4.5) feet, may be considered usable open space when properly developed for work, play or outdoor living areas.
 - ii. Each dwelling unit shall be provided with private open space as follows:
 - 1. Balconies (above ground level): minimum forty (40) square feet; or
 - 2. Patios or porches (at ground level): minimum fifty (50) square feet. (Ord. 38.767 (part), 2/7/06; Ord. 38.760 (3), 9/17/02; Ord. 38.759 (part), 4/2/02)
- c. All development projects within the Transit Area Specific Plan area shall dedicate and/or improve public trails if a trail is shown on a property on Figure 3-8 of the Transit Area Specific Plan.
- d. Twenty percent (20%) of a landscape buffer area may count towards the public park and open space requirements when it includes trails or wide sidewalks connected to the pedestrian and bicycle network.
- e. Park Sites: Parks must be bordered by public streets, or public right-of-way such as a trail or railroad right-of-way, on at least three sides.

3. Exceptions to Standards

- a. Exceptions to all but the allowable uses, density requirements, and public and private park land requirement regulations may be approved by the Planning Commission through approval of a conditional use permit in accordance with the requirements of Section 57.
- b. 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:
 - i. The exceptions meet the design intent identified within the Transit Area Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
 - ii. 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)
 - iii. The project design in its totality does not adversely impact adjoining properties to a greater degree than a project that complies with all development standards. Impacts to be considered include: access to sunlight, views, shadows on parks and open space, privacy, and noise.

10-4.06 Off Street Parking Regulations

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, Off Street Parking Regulations, of this title. All such parking spaces shall be improved as provided for in Subsection 54.03.

A. R1 and R2 Zones

- 1. A minimum of two (2) permanently maintained parking spaces on the same lot for each dwelling.
- 2. 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.

B. R3 Zones

**Table 10-4.06-1
Number of Parking Spaces Required for R3 Zone**

Use	Min Required
Studio	1 covered per unit
1 + bedrooms	2 per unit, at least one covered
Guest Parking	20% of required total

- 1. All required parking spaces shall be located to the rear of the front setback line.

2. 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. If tandem spaces are allowed by the Planning Commission through a Conditional Use Permit, those spaces shall be a maximum of two (2) parking spaces deep.
3. Two (2) parking space deep tandem parking as surface parking or garage parking may be allowed for each dwelling unit if a Conditional Use Permit, in accordance with Section 57, of this Chapter is approved. All tandem parking spaces shall be assigned and marked for residents only.
4. A maximum of forty (40) percent of parking may be compact parking spaces. No compact parking spaces are allowed for guest parking.

C. R4 Zones

**Table 10-4.06-2
Number of Parking Spaces Required for R4 Zone**

Use	Min Required
Studio	1 covered per unit
1 Bedroom	1.5 covered per unit
2 + Bedrooms	2 covered per unit
Guest Parking	15% of required total, may be uncovered.
Bicycle Parking	5% of total required

1. Parking is prohibited in the front and street side setback areas.
2. Tandem parking may be allowed with the approval of a Conditional Use Permit, in accordance with Section 57, of this Chapter. All tandem parking spaces shall be assigned and marked for residents only.
3. Parking space dimensions. The standards below are for 90 degree parking spaces. Refer to Table 53.22 for dimensions of other angled parking spaces.
 - 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.

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

D. R5 Zones

1. Residential Uses.

**Table 10-4.06-3
Number of Parking Spaces Required for R5 Zone**

Use	Min Required
Studio	1 covered per unit
1 Bedroom	1.5 covered per unit
2 + Bedrooms	2 covered per unit
Guest Parking	15% of required total
Bicycle Parking	5% of total required

- a. Guest parking may be covered or uncovered.
 - b. A maximum of forty percent (40%) of parking may be compact parking spaces. No compact parking spaces are allowed for non-residential uses or guest parking.
 - c. Tandem Parking
 - i. Approval of a Conditional Use Permit, in accordance with Section 57, of this title is required for tandem parking.
 - ii. A maximum of seventy-five percent (75%) of parking required for residential uses may be tandem parking.
 - iii. Tandem parking spaces shall be a maximum of two (2) parking spaces deep.
 - iv. When tandem parking spaces are used in garages with more than two (2) parking spaces, they shall be assigned and marked for resident use.
 - d. Garages attached to individual units may not occupy more than fifty percent (50%) of the ground level frontage facing the street.
2. Parking Location
 - a. No parking spaces are allowed within the front or street side setback areas.
 - b. Parking must be located behind buildings to minimize visibility from public streets.

- c. At least seventy percent (70%) of the street facing perimeter of above-ground parking shall be wrapped with habitable space. Exceptions may be allowed with a conditional use permit, if the design quality of the structure is equivalent to habitable space.
 - d. Parking may be partially above ground along the street, provided that no more than four (4) feet of the structure is above grade. The above grade area must be wrapped with continuous landscaping that screens parking garage openings.
3. Parking Garage Access.
- a. No more than one curb cut per lot per street frontage is allowed.
 - b. Parking garage entrances shall be no greater than twenty-two (22) feet wide.
 - c. Parking garage access points shall be set back from the curb so that a car can pull up to the entry gate or ticket machine without blocking the sidewalk.

10-4.07 Conformance with Specific Plans

A. Midtown Specific Plan

1. 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, 3), 9/17/02; Ord. 38.759 (part), 4/2/02)

2. Whenever an entitlement is required for projects within the Specific Plan, in addition to all of the required findings, the following finding shall also be made:

The proposed use complies and is consistent with the Specific Plan.

B. Transit Area Specific Plan

1. The Transit Area Specific Plan policies, including policies for specific subdistricts in Chapter 4 and the Development Standards and Design Guidelines set forth in Chapter 5 of the Plan, shall apply to all properties within the Transit 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 the adoption of the Specific Plan June 3, 2008 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 Transit Area policies, guidelines and standards applicable to the improvements, without requiring additional Transit Area-related improvements to be imposed.

2. The policies and standards of the Transit Area Specific Plan will supersede the Midtown Specific Plan and the General Plan in the transit area. Should a conflict between the existing plans and codes arise within the Transit Area, the policies and standards of the Transit Area Specific Plan shall govern.
3. Whenever an entitlement is required for projects within the Specific Plan, in addition to all of the required findings, the following finding shall also be made:

The proposed use complies and is consistent with the Specific Plan.

SECTION 7. Chapter 10, Section 5 of Title XI of the Milpitas Municipal Code "R1X Single-Family Estate District" is hereby deleted in its entirety.

SECTION 8. Chapter 10, Section 6 of Title XI of the Milpitas Municipal Code "R2 One and Two-Family Residence District" is hereby amended in its entirety to read as follows:

--Begin Section--

SECTION 6 MIXED USE ZONES AND STANDARDS

- 10-6.01 Purpose and Intent**
- 10-6.02 Mixed Use Regulations**
- 10-6.03 Affordable Housing**
- 10-6.04 Mixed Use Zone General Development Standards**
- 10-6.05 Off-Street Vehicle and Bicycle Parking**
- 10-6.06 Special Development Standards**
- 10-6.07 Exceptions to Standards**
- 10-6.08 Conformance with Specific Plans**

10-6.01 Purpose and Intent

- A. Mixed Use ("MXD") Zoning District.** The purpose of the MXD zoning district is to encourage a compatible mix of residential, retail, entertainment, office and commercial service uses within the framework of a pedestrian-oriented streetscape. It is intended that the residential and commercial use allowed in the "MXD" District combine to provide for an "around-the-clock-environment" with urban open areas (i.e. plazas, squares) that serve multiple purposes and can be used for special events.

- B. High Density Mixed Use (“MXD2”) Zoning District.** The purpose of the MXD2 zoning district is to encourage a mix of retail, restaurant, entertainment, and commercial service uses on the ground floor with residential or office uses on the floors above while maintaining a pedestrian-oriented streetscape. It is intended that the retail or restaurant space required will ensure neighborhood-oriented retail and services are provided within walking distance of high density residential development.
- C. Very High Density Mixed Use (“MXD3”) Zoning District.** The purpose of the MXD3 zoning district is to provide very-high density housing, retail and employment uses.

10-6.02 Mixed Use Regulations

A. Permitted and Conditionally Permitted Uses.

- 1. Primary uses. The uses identified in Table 6.02-1, Mixed Use Zone Uses, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted within enclosed structures. The primary uses identified in Table 6.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol “P” appears, the use shall be permitted.
P/C	Where the symbol “P/C” appears the use may be permitted if certain criteria is met or otherwise a Conditional Use Permit shall be required, in accordance with Section 57, Conditional Uses Permitted, of this chapter.
C	Where the symbol “C” appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Section 57, Conditional Uses Permitted By Commission, of this chapter.
O	Where the symbol “O” appears, the use is subject to an alternative review process described in a subsequent footnote.

- 2. Accessory Uses. 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.

B. Prohibited Uses. The following uses are prohibited:

- 1. Uses where the symbol “NP” appears within Table 6.02-1.
- 2. The following uses are not permitted in any mixed use zone:
 - a. Adult Businesses as defined in Subsection 54.18, Adult Business Location Requirements, of this chapter.
 - b. Disinfecting and extermination business.

- c. Ground level residential in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.
- d. Massage establishments.
- e. Outdoor storage of vehicles.
- f. Private self-storage facilities
- g. Single family detached dwellings
- h. Two family dwelling units
- i. Vehicle oriented window service facilities.

C. Other Uses. Any other uses, may be considered by the Planning Commission that are similar in accordance with the procedure, prescribed in Subsection 10-54.02, Other Uses Permitted by Commission, of this chapter.

**Table 6.02-1
Mixed Use Zone Uses**

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
1. Commercial Uses				
Blueprinting	C	NP	NP	NP
Catering establishments	C	C	C	C
Commercial Laboratories (Including medical and dental)	C	C	C	P
Commercial Services ¹	P/C	P/C	P/C	P/C
Grocery Stores (Supermarkets)	C	C	C	C
Laundries and Dry cleaners	C	NP	NP	NP
Liquor Stores	C	C	C	C
Pawn Shops ²	C	C	C	C
Pet shops	C	NP	NP	NP
Retail ³	P/C	P/C	P/C	P/C
Tanning salons	C	C	C	C
Thrift shops (used merchandise)	C	C	C	C
2. Lodging				
Bed and Breakfast	NP	P	NP	NP
Boarding houses (3 or more persons)	C	C	C	C
Group dwellings	C	C	C	C
Hotels	C	P	P	P
Motels	C	C	C	C
3. Professional Offices, Financial Institutions and Related Uses				
Medical or dental offices and clinics	P	NP	P	P

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
Offices ⁴	P/C	NP	P/C	P
4. Public/Quasi Public and Institutional Uses				
Child Care centers ⁵	C	P	C	P
Dance and Music instruction	C	NP	NP	NP
Hospitals or sanitariums ⁶	C	C	C	C
Large family child care home ⁷	P	P	C	P
Park, playground or community center ⁸	NP	NP	P	P
Pet hospitals and Veterinarians	C	C	C	C
Places of assembly ⁹	C	C	C	C
Schools, Private (Elementary, Middle and High) ¹⁰	C	C	C	C
Small family child care home	P	P	P	P
Theaters (Indoor)	C	C	C	C
Transportation facilities ¹¹	C	C	C	C
Vocational Schools ¹²	C	C	C	C
5. Residential Uses				
Multi-family housing ¹³	P	NP	P	P
6. Restaurants				
Restaurants ¹⁴	P/C	P/C	NP	P/C
With Dancing and Entertainment	C	C	C	
With Internet Usage	P	P	P	
With ancillary on-premise beer & wine with no separate bar	P	P	P	
Bars, Cocktail lounges	C	C	C	
7. Unclassified Uses				
Arcades	C	C	C	C
Billiard centers	C	C	C	C
Bowling alleys	C	C	C	NP
Cabinet or carpenter shop ¹⁵	C	NP	NP	NP
Indoor recreation (Health/Fitness/Sports Clubs Facilities)	C	C	C	C
Janitorial and window cleaning services ¹⁶	C	NP	NP	NP
Live-work units	P	P	P	P
Lobbies and entries for upper floor uses	NP	P	NP	NP
Mixed use developments ¹⁷	P	P	P	P
Planned Unit Development ¹⁸	P	NP	NP	NP
Plumbing or sheet metal shops ¹⁹	C	NP	NP	NP
Sign Shops ²⁰	C	NP	NP	NP
Temporary tract signs ²¹	C	NP	NP	NP
8. Vehicle-Related Repair , Sales and Services				

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
Vehicle Dealership (Sales, Leasing, New and Used) ²²	C	C	C	C
Vehicle service uses ²³	C	NP	NP	C

1 Refer to Subsection 6.02-1, Commercial Services, of this chapter, for standards.

2 Refer to Subsection 6.02-2, Special Uses, of this chapter, for standards.

3 Refer to Subsection 6.02-3, Retail and Offices, of this chapter, for standards.

4 Refer to Subsection 6.02-3, Retail and Offices, of this chapter, for standards.

5 Refer to Subsections 53.23-6 through 53.23-8 and 54.16 for standards.

6 Refer to Subsection 6.02-4, Quasi-Public Uses, of this chapter, for standards.

7 Refer to Subsections 53.23-6 through 53.23-8 and 54.16 for standards.

8 Owned and operated by a government agency or a non-profit community organization.

9 Refer to Subsection 6.02-4, Quasi-Public Uses, of this chapter, for standards.

10 Refer to Subsection 6.02-4, Quasi-Public Uses, of this chapter, for standards.

11 Refer to Subsection 6.02-2, Special Uses, of this chapter, for standards.

12 Refer to Subsection 6.02-4, Quasi-Public Uses, of this chapter, for standards.

13 Ground level residential is prohibited in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.

14 Refer to Subsection 6.02-5, Restaurant Uses, of this chapter, for standards.

15 Refer to Subsection 6.02-2, Special Uses, of this chapter, for standards.

16 Refer to Subsection 6.02-2, Special Uses, of this chapter, for standards.

17 Which include only permitted uses.

18 Refer to Subsection 54.07, Planned Unit Developments, of this chapter, for standards.

19 Refer to Subsection 6.02-2, Special Uses, of this chapter, for standards.

20 Refer to Subsection 6.02-2, Special Uses, of this chapter, for standards.

21 No tract signs shall be permitted within 600 feet of a Santa Clara County expressway.

22 New and used auto, recreational vehicle and boat sales, excluding commercial vehicles, trucks, buses, vans, and farm equipment, with accessory repairs and services, only allowed if fully enclosed within a building. Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals, only if fully enclosed within a building.

23 Refer to Subsection 6.02-2, Special Uses, of this chapter, for standards.

6.02-1 Commercial Services within Mixed Use Zones

A. Commercial services as defined in Section 2.26-5, of this chapter may be permitted provided:

1. When located within the MXD zone they are less than or equal to ten thousand (10,000) square feet in gross floor area;
2. When located within the MXD2 and MXD3 zones they are less than or equal to fifty thousand (50,000) square feet in gross floor area;
3. They are not open past 10:00 p.m.;
4. They are not specifically noted in Table 6.02-1, Mixed Use Zone Uses, of this chapter, requiring Conditional Use Permit approval or listed as a prohibited use;
5. They are not listed as a prohibited use in Section 10-6.02 (B), Prohibited Uses, of this chapter.

If items 1 through 3 above are not met, then approval of a Conditional Use Permit is required in accordance with Section 57, of this chapter.

6.02-2 Mixed Use Zone Special Uses

A. Special Uses within MXD zones. Certain uses noted in Table 6.02-1, Mixed Use Zone Uses may be allowed through the approval of a Conditional Use Permit, in accordance with Section 57, Conditional Uses Permitted by Commission, of this chapter, if they are not located within one thousand (1,000) feet of another commercial service use listed below. This distance shall be measured from the property line of the parcel where such use is located.

1. Auto service uses, including but not limited to: gasoline service stations, car washes, tire shops, towing without vehicle storage and 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. Entrances to the service bays shall not be open to the street but shall be designed to face the rear or interior side property line.
2. Cabinet or carpenter shops if conducted in a completely enclosed building.
3. Janitorial services and window cleaning services.
4. Local transportation service facilities (e.g. taxi, parcel service, ambulance, armored car, and van storage) without outdoor storage of vehicles.
5. Pawnshops.
6. Plumbing or sheet metal shops.
7. Sign shops, if conducted wholly within completely enclosed buildings.

B. Special Uses within MXD2 zones. Certain uses noted in Table 6.02-1, Mixed Use Zone Uses may be allowed through the approval of a Conditional Use Permit, in accordance with Section 57, Conditional Uses Permitted by Commission, of this chapter, if they are not located within one thousand (1,000) feet of another commercial service use listed below. This distance shall be measured from the property line of the parcel where such use is located.

1. Local transportation service facilities (e.g. taxi, parcel service, ambulance, armored car, and van storage) without outdoor storage of vehicles.
2. Pawnshops.

C. Special Uses within MXD3 zones. Certain uses noted in Table 6.02-1, Mixed Use Zone Uses may be allowed through the approval of a Conditional Use Permit, in accordance with Section 57, Conditional Uses Permitted by Commission, of this chapter, if they are not located within one thousand (1,000) feet of another commercial service use listed below. This distance shall be measured from the property line of the parcel where such use is located.

1. Local transportation service facilities (e.g. taxi, parcel service, ambulance, armored car, and van storage) without outdoor storage of vehicles.

2. Pawnshops.
3. Auto service uses, limited to gasoline service stations and car washes.

6.02-3 Retail and Offices within Mixed Use Zones

Retail and offices may be permitted provided:

1. When located within the MXD zone they are less than or equal to ten thousand (10,000) square feet in gross floor area;
2. When located within the MXD2 and MXD3 zones they are less than or equal to fifty thousand (50,000) square feet in gross floor area;
3. They are not open past 10:00 p.m.;
4. They are not specifically noted in Table 6.02-1, Mixed Use Zone Uses, of this chapter, requiring Conditional Use Permit approval or listed as a prohibited use; and
5. They are not listed as a prohibited use in Section 10-6.02 (B), Prohibited Uses, of this chapter.

If items 1 through 3 above are not met, then approval of a Conditional Use Permit is required in accordance with Section 57, of this chapter.

6.02-4 Quasi-Public Uses within MXD Zone

- A.** The following quasi-public uses may be permitted within the MXD zones provided their location is first approved by the Planning Commission, in accordance with Section 57, Conditional Uses Permitted by Commission, of this chapter, and they are not located within one thousand (1,000) feet of the parcel boundary of another quasi-public use listed below. This distance shall be measured from the property line of the parcel where such use is located.
1. Places of meeting or assembly, such as auditoriums, banquet halls, fraternal or union hall, churches and other religious institutions.
 2. Hospitals or sanitariums.
 3. Private elementary, middle or high school.
 4. Vocational schools, if not found objectionable due to noise, odor, vibration or other similar health, safety and welfare basis.

6.02-5 Restaurant Uses within Mixed Use Zones

- A.** Restaurant or restaurants which include internet usage for customers may be permitted provided:
1. They provide no dancing or live entertainment;
 2. They have only ancillary on-premise consumption of beer and wine associated with food sales;
 3. They have no separate bar area;

4. When located within the MXD2 and MXD3 zones they are located on the ground floor facing a public street designated as a retail mixed use street; and
5. They conform to the performance standards listed in subsection 6.02-5 (B) below.

If items 1 through 4 above are not met, then approval of a Conditional Use Permit is required in accordance with Section 57, of this chapter.

B. Restaurant Performance Standards. Restaurants shall comply with the following performance standards:

1. Seating shall not exceed that which the amount of parking allocated for the restaurant space would allow. A sign measuring at least one (1) foot by one (1) foot, with a lettering height of at least three (3) inches, shall be placed in a conspicuous location near the restaurant front entrance stating the maximum total seating allowed. Outdoor seating is allowed if it has been approved as part of the facility's Site and Architectural application and is operated in conformance with any conditions of that approval.
2. The restaurant shall comply with the City Council's Guidelines for Recycling Enclosures (Resolution No. 6296).
3. The restaurant shall incorporate measures to reduce odors to acceptable levels, including, but not limited to, installation of a scrubber, carbon filter or similar equipment, on the roof vent to control odors.
4. All the facility's floor drains, trash compactors and indoor mat and equipment washing areas shall be drained to the sanitary sewer.
5. Where applicable, the restaurant shall maintain an active account with a tallow hauling company.
6. The restaurant shall prepare and implement a program assigning restaurant staff responsibility for complying with the following guidelines which shall be adhered to while the restaurant is in operation:
 - a. Wash all containers and equipment in the kitchen areas so that wash water may drain into the sanitary sewer.
 - b. Keep garbage dumpsters clean inside and out; replace very dirty dumpsters with new, clean ones.
 - c. Double bag waste to prevent leaking.
 - d. Place, do not drop or throw, waste-filled bags, to prevent leaking.
 - e. Keep the ground under and around the garbage dumpsters swept.
 - f. Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.
 - g. Hold training sessions to instruct employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other

procedures that would assist the business in complying with all State and local health and sanitation standards. A record of such training must be kept to prove compliance with this requirement.

- h. Post signs (in English and multi-lingual) inside the premises for all employees identifying procedures for food delivery and garbage disposal.
- i. All garbage bins shall be stored in the garbage enclosure except for the twelve (12) hours immediately before and after garbage collection.

10-6.03 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)

10-6.04 Mixed Use Zone General Development Standards

A. Standards within Specific Plan Areas.

For properties located within a Specific Plan, refer to the specific plan for development standards. When a standard is not listed within the specific plan, the standards listed within the zoning ordinance shall govern.

B. General Standards. The following minimum requirements shall be observed. The minimum requirement shall be one of the following for the district classification as designated on the zoning map.

**Table 6.04-1
Mixed Use Zone Development Standards**

Standards	MXD	MXD2	MXD3
Non-residential lot area minimum	Individual sites shall be of such size that all space requirements provided in this section are satisfied.	Individual sites shall be of such size that all space requirements provided in this section are satisfied.	Individual sites shall be of such size that all space requirements provided in this section are satisfied.
Density, Minimum-Maximum Residential (Dwellings) ¹	21 min. 30 max. per gross acre	31 min. 40 max. per gross acre. For additional standards refer to Section 6.04(C), Multi-Family Residential Density within the MXD2 and MXD3 zones.	41 min. 60 max. per gross. For additional standards refer to Section 6.04(C), Multi-Family Residential Density within the MXD2 and MXD3 zones.
Front and Street-Side Yard Setback, Minimum	Refer to Section 6.04(D), Front and Street-Side Yard Setbacks.	Refer to Section 6.04(D), Front and Street-Side Yard Setbacks.	12 ft. min--20 ft. max For additional standards refer to Section 6.04(D), Front and Street-Side Yard Setbacks, of this chapter.

Standards	MXD	MXD2	MXD3
Interior-Side Yard Setback, Minimum ²	Ground Level Commercial Area: 0 ft. All other areas: 10 ft.	0 ft. Except when abutting residential use and for portions of buildings over 60 ft or four stories tall, where the interior side yards shall be a minimum of 10 ft.	10 ft. 15 ft. when abutting residential. 20 ft. for portions of buildings over 60 ft. or four stories tall.
Rear Yard Setback, Minimum ³	10 ft.	10 ft 15 ft. when abutting residential 20 ft. for portions of buildings over 60 ft or four stories tall.	15 ft. 20 ft. when abutting residential 30 ft. for portions of buildings over 60 ft. or four stories tall.
Floor Area Ratio, Non-Residential and Mixed Use projects	For buildings and portions thereof: .75 max.	1.5 max. Refer to Section 6.04(F), Floor Area Ratio, Non-Residential.	2.0 max. Refer to Section 6.04(F), Floor Area Ratio, Non-Residential.
Commercial Area, Minimum	Not Applicable	200 sq. ft. of retail, restaurant, or pedestrian-oriented commercial service uses, allowed in Table 6-02-1, Mixed Use Zone Uses, must be provided for every unit, using the minimum density.	Not Applicable
Building Height ⁴	Principal building: 3 stories and 45 ft.	Principal building: 6 stories or 75 ft. Principal buildings with frontage along Great Mall Parkway: 12 Stories or 150 ft. Greater height, up to 20 stories may be allowed through the approval of a Conditional Use Permit.	Principal buildings: 12 stories or 150 ft. Greater height, up to 20 stories may be allowed through the approval of a Conditional Use Permit.
Landscaping	Refer to Section 6.04(G), Landscaping.	Refer to Section 6.04(G), Landscaping.	Refer to Section 6.04(G), Landscaping.
Parking	Refer to Section 6.05, Off-Street Vehicle and Bicycle Parking.	Refer to Section 6.05, Off-Street Vehicle and Bicycle Parking.	Refer to Section 6.05, Off-Street Vehicle and Bicycle Parking.

1 For MXD3 properties, density may be averaged over contiguous parcels.

2 To mitigate the effects of adjacent service commercial or light industrial uses, increased setbacks and other measures, such as solid six-foot fence or masonry wall, shall be considered on a case by case basis by the Planning Commission during the Site Development Permit process, taking into consideration the nature of adjacent uses.

3 See Note 2 above.

4 Within the MXD zone, special architectural features, such as towers or corner elements may be up to 55 ft.

C. Multi-Family Residential Density within the MXD2 and MXD3 zones.

1. MXD2 Standards.

- a. The minimum number of multi-family residential units may be reduced for parcels less than twenty thousand (20,000) square feet.
- b. Units with four bedrooms shall be counted as one and one-half (1.5) units when calculating density.
- c. In buildings which have ground floor retail, restaurant, child care, or commercial service uses as allowed in Table 6.02-1, Mixed Use Zone Uses, the square footage of said uses does not contribute to the density limits.

2. MXD3 Standards.

- a. Units with four bedrooms shall be counted as one and one-half (1.5) units when calculating density.
- b. In buildings which have ground floor retail, restaurant, child care, or commercial service uses as allowed in Table 6.02-1, Mixed Use Zone Uses, the square footage of said uses does not contribute to the density limits.

D. Front and Street-Side Yard Setbacks. The front and street-side yard setbacks shall be as follows:

1. All zones.

- a. Where a public easement prevents a building from being located in at its required minimum or maximum setbacks, the building shall be located as close to the back of said easement as possible.
- b. Trellises, canopies and fabric awnings may project up to five (5) into minimum front and street side setback areas and public right of ways, provided they are not less than eight (8) feet above the sidewalk.
- c. All buildings shall be oriented towards the street. Primary building entrances shall be oriented toward the street.

2. MXD zones:

- a. All areas.

- i. Balconies, bay windows, porches, stoops, trellises, canopies and awnings may project into the minimum setback areas provided at least sixty percent (60%) of the required setback area is landscaping.
- ii. A building's first floor may be recessed from either the maximum front and street side building setback line or the specified build-to-line for the purposes of an arcade, or a small gathering/dining or special entry area.

The arcade shall have a minimum height of (8) feet, a minimum width of eight (8) feet. Other recessed areas may have maximum depth of ten (10) feet, and may not exceed forty percent (40%) of the building's street facing elevation. An entry door area up to nine (9) feet wide may be recessed up to four (4) feet from the back of the sidewalk.

b. Within the Midtown Specific Plan

- i. The Ground Level Commercial Area (as shown on the Specific Plan Land Use Map, Figure 3.1), shall have a build-to line that is fifteen (15) feet behind the curb. The fifteen (15) feet between the curb and the building build-to-line shall be developed with sidewalk and street trees.

c. Outside the Midtown Specific Plan

- i. Minimum of eight (8) feet and a maximum of fifteen (15) feet from back of sidewalk. The sidewalk shall be based on either the existing sidewalk or assumed ten (10) foot wide sidewalk, whichever is wider.

3. MXD2 zones:

a. All areas.

- i. Balconies, bay windows, porches, stoops, trellises, canopies and awnings may project into the setback areas up to the property line.
- ii. A building's first floor may be recessed from the front and street side building setback line for the purposes of an arcade, outdoor dining area, or special entry area.

The arcade shall have a minimum height of (8) feet, and a minimum width of eight (8) feet. Other recessed areas may have a maximum depth of ten (10) feet, and may not exceed twenty percent (20%) of the building's street facing elevation. An entry door area up to nine (9) feet wide may be recessed up to four (4) feet from the front and street-side building setback.

b. Within the Transit Area Specific Plan. Setbacks are defined and illustrated in the street sections of Chapter 5 of the Transit Area Specific Plan.

c. Outside the Transit Area Specific Plan

- i. Minimum eight (8) feet and a maximum of fifteen (15) feet from back of sidewalk.

E. Floor Area Ratio, Non-Residential.

In addition to the standards listed in Table 6.04-1 Mixed Use Zone Development Standards for MXD2 and MXD3 zoned properties, the following shall apply:

1. A Floor Area Ratio of two and a half (2.5) for non-residential buildings may be considered for individual sites with a Conditional Use Permit, in accordance with Section 57, Conditional Uses Permitted by Commission, of this chapter.
2. There are no FAR or density limits for hotels.
3. In buildings which have ground floor retail, restaurant, child care, or commercial service uses as provided for in Table 6.02-1, Mixed Use Zone Uses, the square footage of said uses does not contribute to the FAR calculation.
4. Buildings which include both non-residential uses and residential uses on the upper floors shall be considered “non-residential,” and Floor Area Ratio standards shall apply.

F. Landscaping

All required front and street setback areas shall be landscaped or paved to allow for outdoor seating, display of goods, or street furniture.

G. Park and Open Space Requirements for Residential Uses

1. Areas within Midtown Specific Plan
 - a. 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).
 - b. 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.
 - c. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas. 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 useable open space dimension standards above and within 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:
 - i. Balconies and porches (above ground level): minimum sixty (60) square feet; or
 - ii. 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)
2. Areas within Transit Area Specific Plan

- a. All residential projects shall provide park land at a ratio of three and one-half (3.5) acres per one thousand (1,000) population.
 - i. Two (2) of the required three and one-half (3.5) acres 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). Land dedication is required if a park is shown on a property on Figure 3-8 of the Transit Area Specific Plan.
 - ii. Up to one and one-half (1.5) of each three and one-half (3.5) total park acres required (43%) may be satisfied by the provision of private recreational areas. Private open space cannot be shared between separate developments.
 - b. Each residential project shall provide adequate on-site usable open space or recreational facilities to the approval of the Planning Commission through the Site Development Permit process. (Ord. 38.760 (3), 9/17/02; Ord. 38.759 (part), 4/2/02) Each dwelling unit shall be provided with private open space as follows:
 - i. Balconies (above ground level): minimum forty (40) square feet; or
 - ii. Patios and porches (at ground level): minimum fifty (50) square feet.
 - c. All development projects shall dedicate land for parks if a park is shown on a property on Figure 3-8 of the Transit Area Specific Plan.
 - d. All commercial development projects shall dedicate and/or improve public trails if a trail is shown on a property on Figure 3-8 of the Transit Area Specific Plan.
 - e. Twenty percent (20%) of a landscape buffer area may count towards the public park and open space requirements when it includes trails or wide sidewalks connected to the pedestrian and bicycle network.
 - f. Park Sites: Parks must be bordered by public streets, or public right-of-way such as a trail or railroad right-of-way, on at least three sides.
3. Areas outside Specific Plans
- a. All residential projects outside a 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.

10-6.05 Off-Street Vehicle and Bicycle Parking

**Table 6-05-1
Number of Parking Spaces Required for Mixed Use Zones**

Use	MXD/MXD2/MXD3
	Min Required
1. Residential	
Studio	1.0 covered per unit

1 Bedroom	1.5 covered per unit
2 + Bedrooms	2.0 covered per unit
Guest Parking	15% of required total
Bicycle Parking	5% of total parking required.
2. Commercial¹	
Retail	1 per 250 sq. ft.
Office	If building is 1,000 sq. ft. or smaller: 1 per 250 sq. ft. If building is larger than 1,000 sq. ft.: 3.3 per 1,000 sq. ft.
Other Uses	Refer to Table 53.23, Parking Schedule, of this chapter.
Bicycle Parking	1 per every 20 parking spaces required (5%)

¹Per gross floor area.

A. Additional Parking Standards within MXD Zone

1. All Uses.

- a. No parking spaces are allowed within the front or street side setback areas.
- b. On-street parking along the building's street frontage can be counted toward a development's overall parking requirements.
- c. 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.

2. Residential Uses.

- a. Parking space dimensions. The standards below are for 90 degree parking spaces. Refer to Table 53.22 for dimensions of other angled parking spaces.
 - i. Standard parking spaces shall be a minimum of nine (9) feet wide by eighteen (18) feet long.
 - ii. Compact parking spaces shall be a minimum of 7.5 feet wide by 15 feet long.
- b. Tandem Parking
 - i. Approval of a Conditional Use Permit, in accordance with Section 57, of this chapter is required for tandem parking.
 - ii. Tandem parking spaces shall be a maximum of two (2) parking spaces deep.
 - iii. Tandem parking is not allowed for non-residential uses or guest parking. When tandem parking spaces are used in garages with more than two (2) parking spaces, they shall be assigned and marked for resident.

c. Compact Parking

- i. A maximum of forty (40) percent of parking may be compact parking spaces. No compact parking spaces are allowed for non-residential uses or guest parking. (Ord. 38.761 (part), 5/20/03; Ord. 38.760 (2, 3), 9/17/02; Ord. 38.759 (part), 4/2/02)
- ii. When compact parking spaces are used in garages with more than two spaces, each space shall be marked as compact and shall be assigned and marked for resident use.

B. Additional Parking Standards within MXD2 and MXD3 Zones

- 1. All Uses.
 - a. Parking Location
 - i. No parking spaces are allowed within the front or street side setback areas.
 - ii. Parking must be located behind buildings to minimize visibility from public streets.
 - iii. At least seventy percent (70%) of the street facing perimeter of above-ground parking shall be wrapped with habitable space. Exceptions may be allowed with a conditional use permit, if the design quality of the structure is equivalent to habitable space.
 - b. Parking may be partially above ground along the street, provided that no more than four (4) feet of the structure is above grade. The above grade area must be wrapped with continuous landscaping that screens parking garage openings.
 - c. Parking Garage Access.
 - i. No more than one curb cut per lot per street frontage is allowed.
 - ii. Parking garage entrances shall be no greater than twenty-two (22) feet wide.
 - iii. Parking garage access points shall be set back from the curb so that a car can pull up to the entry gate or ticket machine without blocking the sidewalk.
- 2. Non-Residential Uses. Bicycle parking must be provided on the same site as the use it serves.
 - a. Thirty percent (30%) of the bicycle parking shall be long-term and be located in a lighted, high visibility, covered area protected from the elements.
 - b. Thirty percent (30%) of the bicycle parking must be short-term, and be located within fifty (50) feet from the entrance to the commercial building it serves with good visibility.
 - c. Office and employment developments larger than 50,000 square feet shall provide showers and lockers for bicycle riders. The showers and lockers must be available to all on-site employees and maintained in a sanitary and safe condition.
- 3. Residential Uses.
 - a. Guest parking may be covered or uncovered.
 - b. Compact Parking

- i. A maximum of forty percent (40%) of parking may be compact parking spaces. No compact parking spaces are allowed for non-residential uses or guest parking.
 - ii. Compact parking spaces shall be a minimum of 7.5 feet wide by 15 feet long when using 90 degree angle parking space. For other dimensions for angled parking spaces refer to Table 53.22. When parking spaces are used in garages within more than two spaces, each space shall be marked as compact and shall be assigned and marked for resident use.
- c. Tandem Parking
- i. Tandem parking is not allowed for non-residential uses or guest parking.
 - ii. A conditional use permit is required for tandem parking.
 - iii. A maximum of seventy-five percent (75%) of parking required for residential uses may be tandem parking.
 - iv. Tandem parking spaces shall be a maximum of two (2) parking spaces deep.
 - v. When tandem parking spaces are used in garages with more than two (2) parking spaces, they shall be assigned and marked for resident use.
- d. Garages attached to individual units may not occupy more than fifty percent (50%) of the ground level frontage facing the street.

10-6.06 Special Development Standards

A. Utilities

1. Utilities shall be placed in underground or subsurface conduits.
2. All mechanical equipment, ground transformers and meters shall be located and screened to minimize visual impacts.
3. Rooftop mechanical equipment shall be concealed from street level views through roof designs that is architecturally integrated with the building, such as equipment wells and parapets.
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.
5. Backflow preventors shall be located within 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.
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 this section.

7. Trash enclosure walls shall incorporate building materials and colors that match the architecture of the building, and be well landscaped.
8. All telecommunications antennas shall be building facade or roof mounted and screened appropriately.
9. On Main Street only telecommunication facilities that are disguised to appear as a part of the building architecture (i.e. “stealth” antennas) may be used. (Ord. 38.760 (2, 3), 9/17/02; Ord. 38.759 (part), 4/2/02)

10-6.07 Exceptions to Standards

1. Exceptions to all but the use, floor area ratio, density, and park land requirement regulations of this Section may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section 57, Conditional Uses Permitted by Commission, of this chapter.
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 Zoning District and/or 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)

10-6.08 Conformance with Specific Plans

A. Midtown Specific Plan

1. 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, 3), 9/17/02; Ord. 38.759 (part), 4/2/02)

2. Whenever an entitlement is required for projects within the Specific Plan, in addition to all of the required findings, the following finding shall also be made:

The proposed use complies and is consistent with the Specific Plan.

B. Transit Area Specific Plan

1. The Transit Area Specific Plan policies, including policies for specific subdistricts in Chapter 4 and the Development Standards and Design Guidelines set forth in Chapter 5 of the Plan, shall apply to all properties within the Transit 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 the adoption of the Specific Plan June 3, 2008 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 Transit Area policies, guidelines and standards applicable to the improvements, without requiring additional Transit Area-related improvements to be imposed.

2. The policies and standards of the Transit Area Specific Plan will supersede the Midtown Specific Plan and the General Plan in the transit area. Should a conflict between the existing plans and codes arise within the Transit Area, the policies and standards of the Transit Area Specific Plan shall govern.
3. Whenever an entitlement is required for projects within the Specific Plan, in addition to all of the required findings, the following finding shall also be made:

The proposed use complies and is consistent with the Specific Plan.

SECTION 9. Chapter 10, Section 7 of Title XI of the Milpitas Municipal Code "R3 Multiple-Family Residence District" is hereby deleted in its entirety.

SECTION 10. Chapter 10, Section 8 of Title XI of the Milpitas Municipal Code "R4 Multi-Family Very High Density District" is hereby deleted in its entirety.

SECTION 11. Chapter 10, Section 11 of Title XI of the Milpitas Municipal Code "Specific Plan Areas" is hereby added in its entirety to read as follows:

-- Begin Section --

SECTION 11 SPECIFIC PLAN AREAS

10-11.01 Purpose and Intent

10-11.02 Applicability

10-11.03 Adoption and Amendment of Specific Plans

10-11.04 Relationship between Specific Plans and Zoning Ordinance

10-11.05 Adopted Specific Plans.

10-11.01 Purpose and Intent

The purpose of this chapter is to explain the relationship between the Zoning Ordinance and any adopted Specific Plans. A specific plan is a document designed to implement the goals and policies of the General Plan. A specific plan is intended to establish the nature, character, and location of activities and development; to guide the orderly growth; to more specifically define the nature of development and the physical framework; and to provide a basis for future implantation actions within a specific geographic area.

10-11.02 Applicability

The provisions in this section shall apply to all areas for which a specific plan has been prepared and adopted by the City Council.

10-11.03 Adoption and Amendment of Specific Plans

Adoption and/or amendment of a specific plan shall occur in accordance with the provision for specific plans and specific plan amendments described in Section 62.

10-11.04 Relationship between Specific Plans and Zoning Ordinance

The adopted specific plan shall operate as the zoning regulations for the subject property. Where standards are not listed within the specific plan, the Zoning Ordinance shall regulate.

10-11.05 Adopted Specific Plans

As of the date of the adoption of this Zoning Ordinance, the following specific plans have been adopted by the City. Complete specific plans are provided as a separate appendix to this chapter.

**Table 11.05-1
Adopted Specific Plans**

Specific Plan Name/Abbreviation	City Council Resolution #	Development Agreement
Midtown/ MTSP		
Transit Area/TASP		

SECTION 12. Chapter 10, Section 38 of Title XI of the Milpitas Municipal Code “MXD Mixed Use District” is hereby deleted in its entirety.

SECTION 13. Chapter 10, Section 43 of Title XI of the Milpitas Municipal Code “TOD Transit Oriented Development Combining District” is hereby amended in its entirety to read as follows:

--Begin Section--

SECTION 43 TRANSIT ORIENTED DEVELOPMENT (-TOD) OVERLAY DISTRICT

10-43.01 Purpose and Intent

10-43.02 Applicability

10-43.03 Permitted, Accessory and Conditional Permitted Uses

10-43.04 Development Standards

10-43.05 Conformance with Specific Plans

10-43.01 Purpose and Intent

The purpose of the Transit Oriented Development Overlay District ("TOD") is to provide for land uses, land use densities and intensities and development standards that act to enhance and support transit and to locate such uses near rail transit stations. These provisions allow for a mix of goods and services within a convenient walk of the transit stations, encourage the creation of stable, attractive residential, commercial and industrial environments within the District and provide for a *desirable* transition to the surrounding conventional areas. (Ord. 38.759 (part), 4/2/02)

10-43.02 Applicability

The "-TOD" overlay can be combined with any zoning district on lands that are generally within a 2,000 foot walk from a rail transit station. If any of the regulations specified in the "-TOD" overlay district differ from any corresponding regulations of any district with the "-TOD" Overlay district is combined, then the provisions of the "-TOD" Overlay district shall govern. (Ord. 38.759 (part), 4/2/02)

TOD developments within a 2,000 foot radius of the Northern BART station may only apply the twenty percent (20%) reduction once a decision on the location and viability of the Northern BART station has been made by the City Council. (Ord. 38.761 (part), 5/20/03; Ord. 38.759 (part), 4/2/02)

10-43.03 Permitted, Accessory and Conditionally Permitted Uses

A. Permitted and conditional uses within the -TOD Overlay are the same uses as those allowed within the underlying base zones except as noted below. Refer to the use tables in Sections 10-4, Residential Zones and Standards, through 10-6, Mixed Use Zones and Standards, of this title.

1. Accessory Uses in R3-TOD/R4-TOD/R5-TOD Zones

- a. Retail stores, offices, and commercial service establishments as defined in Subsection 2.26-7, provided they are:
 - i. On the ground floor level;
 - ii. Located on or within three hundred (300) feet of arterials or collectors including Great Mall Parkway, Montague Expressway, Milpitas Boulevard, Trade Zone Boulevard, and Piper Drive;
 - iii. Less than or equal to ten thousand (10,000) square feet in gross floor areas;
 - iv. Not open past 10:00 p.m.;
 - v. Conducted wholly within a building, except for approved outdoor seating areas,;

- vi. Not Adult Businesses as defined in Subsection 54.18;
- vii. Not specifically noted in Subsection 6.04 as requiring Conditional Use Permit approval; and
- viii. Not specifically noted in Subsection 6.04, as a use not permitted in a mixed-use district.

If items a through d are not met, then approval of a Conditional Use Permit is required in accordance with Section 57, of this chapter.

- b. Restaurants, or restaurants which include internet usage for customers, provided they:
 - i. Are located on or within three hundred (300) feet of arterials or collectors including Great Mall Parkway, Montague Expressway, Milpitas Boulevard, Trade Zone Boulevard, and Piper Drive;
 - ii. Are located on the ground floor;
 - iii. Provide no dancing or live entertainment;
 - iv. Have only ancillary on-premise consumption of beer and wine associated with food sales;
 - v. Conform to the performance standards as listed in Subsection 6.02-5.

If items a through d are not met, then approval of a Conditional Use Permit is required in accordance with Section 57, of this chapter.

- c. Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in Subsection 54.09.

2. Conditionally Permitted Uses

The following require the approval of a Conditional Use Permit in accordance with Section 57.

- a. Retail stores, offices and commercial service establishments, as defined in Subsection 2.26-8, which do not meet the criteria in 10-43.03(A)(1)(a-d), Accessory Uses in R3-TOD/R4-TOD/R5-TOD Zones.
- b. Restaurants, or restaurants which include internet usage for customers, which do not meet the criteria in 10-43.03(A)(2)(a-d) Accessory Uses in R3-TOD/R4-TOD/R5-TOD Zones.
- c. The following uses may be allowed on the ground floor of a mixed use or residential building if a Conditional Use Permit is granted by the Planning Commission:
 - i. Transit stations and parking.
 - ii. Small-scale commercial uses to serve residents and local pedestrian traffic and to transit users, such as dry cleaners, video rentals, day care centers and cafes. (Ord. 38.759 (part), 4/2/02)

B. Prohibited Uses

1. Vehicle oriented window service facilities, including drive-up or drive-in services.
2. Adult Businesses, as defined in Subsection 54.18

10-43.04 Development Standards

A. The development standards for the underlying base zoning district shall apply, except any deviations noted below:

1. MXD-TOD Areas.
 - a. Residential developments shall be a minimum of thirty-one (31) dwelling units per gross acre and shall not exceed forty (40) dwelling units per gross acre. The minimum number of residential units may be reduced for parcels that are less than twenty thousand (20,000) square feet.
 - b. Residential building height shall not exceed four (4) stories and sixty (60) feet, including special architectural elements such as towers and spires.
 - c. The maximum FAR for non-residential buildings in the “MXD” District is one hundred percent (100% or 1.0).
2. MXD2-TOD Areas.
 - a. Residential developments shall be a minimum of thirty-one (31) dwelling units per gross acre and shall not exceed fifty (50) dwelling units per gross acre. The minimum number of residential units may be reduced for parcels that are less than twenty thousand (20,000) square feet.
 - b. Childcare Centers.
 - i. Childcare centers are exempt from the FAR limits.
 - ii. Square footage dedicated to childcare centers may be counted towards the commercial space requirement.
3. MXD3-TOD Areas
 - a. Residential developments shall be a minimum of forty-one (41) dwelling units per gross acre and shall not exceed seventy-five (75) dwelling units per gross acre. The minimum number of residential units may be reduced for parcels that are less than twenty thousand (20,000) square feet.
 - b. Building Height. Greater height up to twenty-four (24) stories may be allowed with Planning Commission review.
 - c. Childcare Centers.
 - i. Childcare centers are exempt from the FAR limits.

- ii. Square footage dedicated to childcare centers may be counted towards the commercial space requirement.
- 4. R3-TOD Areas.
 - a. Building Height. Residential building height shall not exceed four (4) stories and sixty (60) feet.
 - b. Residential Density. Residential density shall be a minimum of twenty-one (21) dwelling units per gross acre and shall not exceed forty (40) dwelling units per gross acre.
 - c. Non-Residential Intensity. Ground floor retail, restaurant, and commercial service uses are permitted up to a maximum Floor Area Ratio of thirty percent (0.30 or 30%).
 - d. Front and Street Side Setbacks
 - i. There shall be a minimum setback of eight (8) feet and a maximum building setback of fifteen (15) feet from the property line.
 - iii. 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.
- 5. R4-TOD Areas.
 - a. Building Height. Residential building height shall not exceed six (6) stories and seventy-five (75) feet.
 - b. Residential Density. Residential developments shall be a minimum of forty-one (41) dwelling units per gross acre and shall not exceed sixty (60) dwellings units per gross acre.
 - c. Non-Residential intensity. Ground floor retail, restaurant, and commercial service uses are permitted up to a maximum Floor Area Ratio of fifty percent (0.50 or 50%).
 - d. Front and Street Side Setbacks
 - i. There shall be a minimum setback of twelve (12) feet and a maximum building setback of twenty (20) feet from the property line.
 - iii. 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.
- 6. R5-TOD Areas.
 - a. Residential developments shall be a minimum of forty-one (41) dwelling units per gross acre and shall not exceed seventy-five (75) dwelling units per gross acre.
 - b. Ground floor retail, restaurant, and commercial service uses are permitted, up to a maximum Floor Area Ratio of fifty percent (50% or 0.50).

- c. Ground Floor Commercial Design Standards. On retail mixed use streets, and in any other areas with ground floor retail, restaurant, and commercial service uses, the following standards apply:
 - i. Ground Floor Commercial Depth. Ground floor commercial tenant spaces shall be at least sixty (60) feet deep. Exceptions may be allowed for small tenant spaces less than two thousand five hundred (2,500) square feet.
 - ii. Floor to Ceiling Height
 - 1. Retail: minimum eighteen (18) feet.
 - 2. Office: minimum fifteen (15) feet.
 - iii. Windows. At least sixty (60) percent of the ground floor wall area between three (3) and eight (8) feet above the sidewalk shall be glass or other transparent material.
 - iv. Blank Walls. No more than thirty (30) percent of the linear frontage per street may be blank. No more than twenty-five (25) contiguous feet in length may be blank.
 - v. Building entrances. There shall be at least one entrance per one hundred (100) feet of building frontage.
 - vi. Exterior Materials. All ground floor exterior materials shall be durable, quality materials, such as tile, stone, brick or glass.
 - vii. Wall Plane Articulation. Windows, doors, columns, and other features shall be recessed or project forward, such that there is a six-inch difference between wall and window surfaces and a total of at least eighteen inches from the window to the outermost plane of a wall or column.
 - viii. Floor Elevation. Ground floor elevation shall be no more than two feet above or below the sidewalk level.

7. C2-TOD Areas.

- a. Floor Area Ratio. The maximum FAR in the “C2-TOD” District is one hundred percent (100%, or 1.0).

9. “MP-TOD” Areas

- a. Side yard setbacks.
 - i. Minimum thirty-five (35) feet when abutting residential uses.
- b. Rear yard setbacks.
 - i. Minimum one hundred (100) feet when abutting residential uses.

10. I-TOD Areas.

- a. Floor Area Ratio. There will be no maximum FAR in the “I-TOD” district. (Ord. 38.770 (4) (part), 1/2/07; Ord. 38.761 (part), 5/20/03; Ord. 38.759 (part), 4/2/02)

B. Off-Street Parking and Bicycle Parking

1. Off-Street Parking. Total off-street parking required in the Parking Schedule (refer to Section 53.23) and elsewhere in this Chapter may be reduced up to twenty percent (20%) for all “-TOD” overlay districts.
2. Development projects in the Transit Area Specific Plan area shall have maximum off-street parking requirements which are equal to the minimum off-street parking requirements of the base zoning district. Refer to the Parking Schedule in Section 53.23.
3. For locations within the Transit Area Specific Plan, preferential parking for carpools shall be one percent of the total amount of parking spaces required and appropriately signed.

**Table 43.04-1
Number of Parking Spaces Required for MXD-TOD Zones**

Use	MXD/MXD2/MXD3	
	Min Required	Max Allowed
Studio	0.8 covered	1.0 covered
1 Bedroom	1.2 covered	1.5 covered
2 + Bedrooms	1.6 covered	2.0 covered
Guest Parking	15% of required total	
Bicycle Parking	Long-term Bicycle Parking: 1 per every 4 housing units (25%) Short-term Bicycle Parking: 1 per every 20 parking spaces required (5%)	
Retail	0.8 per 250 sq. ft.	1.0 per 250 sq. ft.
Office	0.8 per 303 sq. ft.	1.0 per 303 sq. ft.
Other Uses	Refer to Table 53.23, Parking Schedule, of this title.	
Preferential Parking for Carpools	1% of required total	

4. Bicycle Parking.
 - a. Long-term bicycle parking shall be one space per every four housing units.
 - b. Short-term bicycle parking shall be one space per every 20 parking spaces required.

C. Landscape and Open Space Requirements for Residential Uses

1. When combined with "-TOD" there shall be no minimum on-site open space requirements other than those specified in the base zoning district; however, adequate open space shall be provided to the approval of the Planning Commission through the Site and Architectural Review ("-S" Zone) process. (Ord. 38.759 (part), 4/2/02)

2. All residential projects within the Transit Area Specific Plan area shall provide park land at a ratio of three and one-half (3.5) acres per one thousand (1,000) population.
 - a. Two (2) of the required three and one-half (3.5) acres 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). Land dedication is required if a park is shown on a property on Figure 3-8 of the Transit Area Specific Plan.
 - b. Up to one and one-half (1.5) of each three and one-half (3.5) total park acres required (43%) may be satisfied by the provision of private recreational areas. Private open space cannot be shared between separate developments.

D. Additional Development Requirements

1. All developments within the "-TOD" Combining District shall, through the Site Development Permit review process, incorporate measures that would encourage the use of transit, foot and bicycles, including, but not limited to:
 - a. Retail shops and services that residents and employees use on a frequent basis, such as restaurants, cafes, exercise facilities, dry cleaners, day care, video rental and automated teller machines.
 - b. Participation in the Valley Transportation Agency's EcoPass or similar programs that support mass transit.
 - c. Provision of bicycle facilities and showers in new office and employment uses larger than 50,000 square feet only.
2. For locations within a Specific Plan, all improvements shall conform to the Midtown Specific Plan, including the Design Guidelines and Standards set forth in Chapter 8 (Ord. 38.759 (part), 4/2/02), or the Transit Area Specific Plan, including Design Guidelines and Standards set forth in Chapter 5.

E. Exceptions to Standards

1. Exceptions to all but the density and floor area ratio standards may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section 57, Conditional Uses Permitted by Commission, of this Chapter.
2. In addition to the required findings under Chapter 57, the Planning Commission must be able to make the following three additional findings for such exceptions:
 - a. The exceptions meet the design intent identified within the Zoning District and/or 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)

- c. The project design in its totality does not adversely impact adjoining properties to a greater degree than a project that complies with all development standards. (Impacts to be considered include: access to sunlight, views, shadows on parks and open space, privacy, and noise.)

10-43.05 Conformance with Specific Plans

1. Midtown Specific Plan

- a. 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:
 - i. Whenever a new building is constructed, regardless of size;
 - ii. 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
 - iii. 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, 3), 9/17/02; Ord. 38.759 (part), 4/2/02)

- b. Whenever an entitlement is required for projects within the Specific Plan, in addition to all of the required findings, the following finding shall also be made:

The proposed use complies and is consistent with the Specific Plan.

2. Transit Area Specific Plan

- a. The Transit Area Specific Plan policies, including policies for specific subdistricts in Chapter 4 and the Development Standards and Design Guidelines set forth in Chapter 5 of the Plan, shall apply to all properties within the Transit Area if any one or more of the following occurs:
 - i. Whenever a new building is constructed, regardless of size;
 - ii. 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
 - iii. 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 the adoption of the Specific Plan June 3, 2008 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 Transit Area policies, guidelines and standards applicable to the improvements, without requiring additional Transit Area-related improvements to be imposed.

- b. The policies and standards of the Transit Area Specific Plan will supersede the Midtown Specific Plan and the General Plan in the transit area. Should a conflict between the existing plans and codes arise within the Transit Area, the policies and standards of the Transit Area Specific Plan shall govern.
- c. Whenever an entitlement is required for projects within the Specific Plan, in addition to all of the required findings, the following finding shall also be made:

The proposed use complies and is consistent with the Specific Plan.

SECTION 14. Chapter 10, Section 56 of Title XI of the Milpitas Municipal Code, “Non-Conforming Buildings and Uses” is hereby amended in its entirety to read as follows:

--Begin Section--

SECTION 56 NON-CONFORMING BUILDINGS AND USES

10-56.01 Purpose and Intent

10-56.02 Repair, maintenance and improvements to nonconforming buildings and structures

10-56.03 Nonconforming use of buildings and structures

10-56.04 Nonconforming use of land

10-56.01 Purpose and Intent

The purpose of this chapter is to establish regulations for nonconforming buildings, structures and uses. It is the intent of these regulations to result in the conversion of nonconforming buildings, structures, and uses to conforming buildings, structures and uses. However, the City recognizes that until nonconforming buildings, structures, and uses are converted, improvements to them which promote their compatibility with their neighborhoods, enhance the quality of development, and do not increase nonconformity should be encouraged and allowed.

10-56.02 Repair, maintenance and improvements to nonconforming buildings and structures

A nonconforming building or structure may be maintained, except as otherwise provided in this section.

A. Repair, maintenance, aesthetic improvements. Repairs and alterations may be made to a nonconforming building or structure, provided that no structural alterations shall be made except those required by law or ordinance. (Ord. 38 (part), 3/15/55)

B. Restoration of Damaged Buildings. A nonconforming building or structure which is damaged or partially destroyed by fire, flood, wind, earthquake, or other calamity or act of God or the public enemy, to the extent of not more than seventy-five (75%) percent of its true value at that time, may be restored and the occupancy or use of such building, structure or part thereof, which existed at the time of such partial destruction, may be continued or resumed, provided the total cost of such restoration does not exceed seventy-five (75%) percent of the true value of the building or structure at the time of such

damage and that such restoration is started within a period of one (1) year and is diligently prosecuted to completion.

In the event such damage or destruction exceeds seventy-five (75%) percent of the true value of such nonconforming building or structure, no repairs or reconstruction shall be made unless every portion of such building or structure is made to conform to all regulations for new buildings in the district in which it is located.

Provided, however, that any multistory single-family residence, which is subject to the provisions of the hillside section of this Title (Section 45), may be rebuilt to its approved height and setbacks and is not subject to the single-story height restrictions or other restrictions in the Zoning Title currently in effect, but shall conform to those regulations in effect at the time the structure was built. (Ord. 38.681, 8/3/93: Ord. 38 (part), 3/15/55)

C. Additions to,--Enlargements and --Moving of nonconforming buildings and structures.

1. In the R1, R2 and R1-H Districts, a legal non-conforming building or structure shall not be added to or enlarged in any manner unless the addition or enlargement conforms to all development standards and regulations of the district in which it resides, including, but not limited to height, yard setbacks, maximum lot coverage, impervious surface coverage, and maximum size of residence regulations of said district. In addition, a legal non-conforming building or structure shall not be added to or enlarged unless existing front yard paving is brought into conformance.
2. In all districts other than the R1, R2, and R1-H, a legal non-conforming building or structure may be added to or enlarged in a manner consistent with the criteria established in Section 57.02-19 and a Conditional Use Permit is obtained.
3. A building or structure lacking adequate automobile parking space in connection therewith may be altered or enlarged provided the required additional automobile parking space is supplied as per Section 53 for the entire building or use, including the addition or enlargement.
4. A nonconforming building or structure shall not be moved in whole or in part to any other location on the lot unless every portion of such building or structure is made to conform to all regulations of the district in which it is located. (Ord. 38.760 (3), 9/17/02; Ord. 38 (part), 3/15/55)

10-56.03 Nonconforming Use of Buildings and structures

A. Continuation, expansion and change of use. Except as otherwise provided in this section:

1. The nonconforming use of a building or structure, existing at the time the Ordinance codified in this section became effective, may be continued; and
2. The nonconforming use of a building or structure may be changed to a use of the same classification. The Planning Commission may allow a more restricted classification with the approval of a Conditional Use Permit; and

3. A nonconforming use of a building, structure or portion thereof, which is or hereafter becomes vacant and remains unoccupied for a continuous period of one (1) year shall not thereafter be occupied except by the use which conforms to the use regulation of the district in which it is located.
4. The nonconforming use of a building or structure (i.e., commercial use in a dwelling, etc.) shall not be expanded or extended into any other portion of such building or structure nor changed except to a conforming use.

B. Exemptions for Certain Nonconforming Uses

1. The provisions amending Sections 30, 31 and 35 (M1, M2, MP Districts) 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.
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)

10-56.04 Nonconforming Use of Land

1. Continuation of Use. The nonconforming use of land (where no main building is involved), existing at the time the Ordinance codified in this section became effective, may be continued for a period of not more than five (5) years therefrom, provided:
 - a. That no such nonconforming use of land shall, in any way, be expanded or extended either on the same or adjoining property.
 - b. That, if such nonconforming use of land, or any portion thereof, is discontinued or changed, any future use of land shall be in conformity with the provisions of this Chapter.
 - c. That any sign, billboard, commercial advertising structure or statuary, which is lawfully existing and maintained prior to January 26, 1954, may be continued, although such use does not conform with the provisions hereof; provided, however, that no structural alterations are made thereto and provided, further, that all such nonconforming signs, billboards, commercial advertising structures and statuary, and their supporting members, shall be completely removed from the premises not later than five (5) years from the effective date of the Ordinance codified in this section.
2. Nonconforming Due to Reclassification. The foregoing provisions of this section shall also apply to buildings, structures, land, or uses which hereafter become nonconforming due to any reclassification of districts under this Chapter or any subsequent change in the regulations of this Chapter; provided, however, that where a period of years is specified in this section for

the removal of nonconforming buildings, structures, or uses, said period shall be computed from the date of such reclassification or change. (Ord. 38 (part), 3/15/55)

SECTION 15. 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.

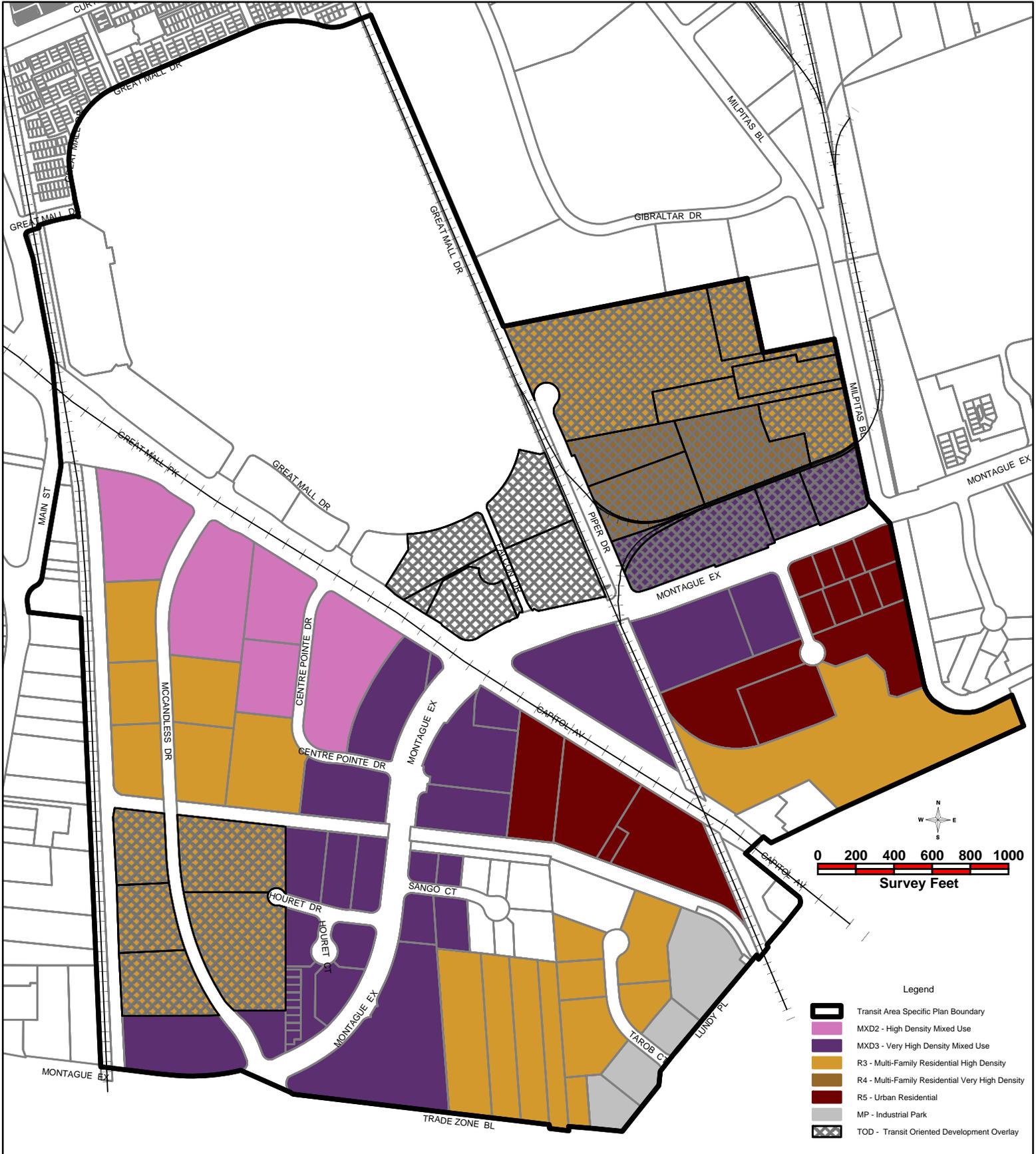
SECTION 16. PUBLICATION AND EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after adoption, and thereafter the same shall be in full force and effect. Prior to the expiration of 15 days from the passage thereof, this Ordinance shall be published at least once in a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara. At the election of the City, this Ordinance may be published in summary form if prior to adoption the complete text is posted in the City Clerk's Office pursuant to Government Code Section 36933(c).



City of Milpitas
Milpitas Transit Area Specific Plan
New Zoning Designations
Sectional District Map No. 570
Zoning Amendment No. ZA08-002

Map Exhibit



Legend

- Transit Area Specific Plan Boundary
- MXD2 - High Density Mixed Use
- MXD3 - Very High Density Mixed Use
- R3 - Multi-Family Residential High Density
- R4 - Multi-Family Residential Very High Density
- R5 - Urban Residential
- MP - Industrial Park
- TOD - Transit Oriented Development Overlay