

REGULAR

NUMBER: 38.780

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, AMENDING TITLE XI CHAPTER 10 FOR THE PURPOSE OF STREAMLINING THE ZONING ORDINANCE

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of August 5, 2008, upon motion by Vice Mayor Livengood and was adopted (second reading) by the City Council at its meeting of _____, 2008 upon motion by Councilmember _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

ORDAINING CLAUSE:

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

SECTION 1. RECITALS AND FINDINGS

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

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

WHEREAS, the Planning Commission held a duly noticed public hearing on July 9, 2008 and heard evidence prepared by staff and comments by the public and recommends approval of the amendments unanimously; and

WHEREAS, the City Council finds that the amendments are consistent with the General Plan in that the in that the changes ensure consistent and clear implementation of the stated goals and policies of the General 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 clarifying the zoning ordinance; and

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

SECTION 2. Chapter 10, Section 2 of Title XI of the Milpitas Municipal Code “Definitions” is hereby amended in its entirety to read as follows:

--Begin Section--

SECTION 2 DEFINITIONS

10-2.01 Purpose and Intent

10-2.02 General Definitions

10-2.03 Definitions

10-2.01 Purpose and Intent

The purpose of this chapter is to ensure precision in interpretation of this title. This section provides definitions of terms and phrases used in this Zoning Code that are technical or specialized, or that may not reflect common usage. If any of the definitions in this chapter conflict with definitions in other provisions of the Municipal Code, these definitions shall control for the purposes of this Zoning Code. If a word is not defined in this chapter, or other provisions of the Municipal Code, the most common dictionary definition is presumed to be correct.

10-2.02 General Definitions

A. The word “shall” is mandatory and not discretionary. The word “may” is permissive and discretionary.

- B.** The word “should” indicates a guideline that must be followed in the absence of compelling considerations to the contrary.
- C.** In the case of any difference of meaning or implication between the text of any provision and any caption or illustration, the text shall control.
- D.** Unless the context clearly indicates to the contrary, words in the present and the future tense are interchangeable, and words in the singular and plural are interchangeable.
- E.** Unless the context clearly indicates to the contrary, the following conjunctions shall be interpreted as follows:
 - 1. “And” indicates that all connected items or provisions shall apply;
 - 2. “Or” indicates the connected items or provisions apply singly; and
 - 3. “And/or” indicates the connected items or provisions may apply singly or in any combination; and
 - 4. “Either...or” indicates that the connected items or provisions shall apply singly but not in combination.
- F.** The word “used” shall include arranged, designed, constructed, altered, converted, rented, leased, occupied, or intended to be utilized.
- G.** The words “Planning Director” shall mean the Planning Director of the City or designee.
- H.** The words “Planning Division” shall mean staff representing the City in implementing this chapter, the General Plan, and other regulations affecting land use.
- I.** The words “City Engineer” shall mean the City Engineer of the City or designee.
- J.** The words “Building Official” shall mean the Building Official of the City or designee charged with the administration and enforcement of the Building Code of the City of Milpitas.
- K.** The words “City Manager” shall mean the City Manager of the City or designee.
- L.** The words “Planning Commission” or “Commission” shall mean the City Planning Commission.
- M.** The words “Planning Commission Subcommittee” or “PC Subcommittee” shall mean the City Planning Commission Subcommittee.
- N.** The word “Council” shall mean the City Council, the governing body of the City.
- O.** The word “City” shall mean the City of Milpitas.
- P.** The word “County” shall mean the County of Santa Clara.
- Q.** The word “State” shall mean the State of California.

- R. The words “Zoning Ordinance” or “this chapter” or “Zoning Code” shall mean Title XI, Chapter 10 of the municipal code of the City.
- S. The words “General Plan” shall mean the General Plan of the City.
- T. The word “code” shall mean the municipal code of the City.
- U. Unless otherwise indicated, reference in this Chapter to whole numbers of sections includes all of the decimal-numbered paragraphs listed under such whole number section; i.e., a reference to Section 1.00 includes Subsections 1.01, 1.01-1 where the same are applicable.
- V. The word “lot” includes “plot”.
- W. The word “building” includes “structure” except as specified.
- X. The words “Enforcement Officer” means that person or persons specifically designated by the City Manager to enforce the provisions of this Chapter.

10-2.03 Definitions

A

“**Abate**” shall mean to repair, replace, remove, destroy or otherwise remedy the condition in violation of this Chapter.

“**Accessory Building or Use**” means a subordinate building or use, whose purpose is clearly incidental to that of the main building or the use of the land, and which shall not contain living or sleeping quarters or storage for commercial vehicles in excess of three-quarter (3/4) ton size. Second family units, as defined in this subsection are exempted from the prohibition against living and sleeping quarters. An accessory building shall be considered attached to the main building if:

1. It shares a common wall with the main building, or
2. It shares an integral roof structure having the same framing system and roof covering as the main building and is separated from the main structure by no more than ten (10) feet at any given point.

“**Accessory Structure**” means a structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. An accessory structure is that which an accessory building is not, by definition. Examples include, but are not limited to fences, trellises, covered patios, and porte cocheres.

“**Adjacent**” means having a common border with, or being separated from such a common border by a right-of-way, alley or easement. Properties separated by a street, alley, intersection, or other public right-of-way (other than an elevated interstate freeway), shall be considered abutting when their property lines would touch in any way if drawn to the center line of such street, alleyway, intersection, or other public right-of-way.

“**Airport**” means any area of land or water designed, used, or intended to be used or set aside for the landing and taking off of aircraft. The term "Airport" includes all necessary taxi-ways, aircraft storage and tie-down area, hangars and other necessary buildings and open spaces.

“Alley” means any public thoroughfare which affords only a secondary means of access to abutting property.

“Alteration, Structural” means any change which would tend to prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams or girders.

“Amateur Radio Facility” means a wireless communication facility operated by an FCC licensed amateur radio operator within the Amateur Radio Service (USC Title 47, Part 97).

“Amateur Radio Operator” means a person holding written authorization to be the control operator of an Amateur Radio facility. This authorization may be in the form of a license or permit issued by the Federal Communications Commission or a foreign national or multi-national license or permit recognized by treaty as valid in the United States. (Ord. 38.761 (part), 5/20/03)

“Antenna” means any system of towers, poles, panels, rods, wires, drums, reflecting discs or similar devices used for the transmission or reception of electromagnetic waves. See also “Satellite dish or satellite antenna”. (Ord. 38.761 (part), 5/20/03)

Apartment House. See “Dwelling Multiple-Family.” (Ord. 38 (part), 3/15/55)

Apartment, Efficiency. Efficiency apartment means a dwelling unit in a multi-family building consisting of not more than one (1) habitable room, together with kitchen or kitchenette and sanitary facilities. (Ord. 38.22, 2/1/62; Ord. 38 (part), 3/15/55)

“Arcade” means any business establishment or premises containing seven (7) or more mechanical or electronic game type machines. (Ord. 38.551, 9/7/82; Ord. 38 (part), 3/15/55)

“Auto” means any motor vehicle requiring a license pursuant to the California Vehicle Code. (Ord. 38.760 (2), 9/17/02)

“Automobile Service Station” means any premises used for supplying gasoline and oil at retail, direct to the customer, including minor accessories and services for automobiles, but not including automobile repairs. (Ord. 38 (part), 3/15/55)

“Automobile and Trailer Sales Area” means an open area, other than a street, used for the display, sale or rental of new or used automobiles or trailers, and where no repair work is done except minor incidental repair of automobiles or trailers to be displayed or sold on the premises. (Ord. 38 (part), 3/15/55)

“Automobile Wrecking” means the dismantling or wrecking of used motor vehicles or trailers, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts. (Ord. 38 (part), 3/15/55)

B

“Basement” means a story, partly or wholly, underground. For purposes of height measurements, a basement shall be counted as a story where more than one-half (1/2) of its height is above the average level of the adjoining ground. (Ord. 38 (part), 3/15/55)

“Bay Window” means a window or set of windows jutting out from the wall of a building, rising from the ground and forming an alcove which may or may not add additional floor area or a sitting area within. (Ord. 38.667 (part), 1/21/92)

“Billiard Center” means a place for the public to view and participate in cuesports, such as but not limited to billiards, pocket billiards (e.g., pool), snooker, and the various forms of carom billiards. (Ord. 38.688 (part), 3/15/94)

“Block” means that property so designated on an official map of the City, or part of the City, or bounded by streets, or by a street or streets, and railroad right-of-way, canal right-of-way, or unsubdivided acreage. (Ord. 38 (part), 3/15/55)

“Boarding House” means a building or portion thereof other than a hotel, where meals and lodging for compensation including a bed and breakfast. (Ord. 38.763 (3), 4/20/04; Ord. 38 (part), 3/15/55)

“Breezeway” means a covered passageway between buildings which does not exceed ten (10) feet in width and which has at least one side open, except for necessary supporting columns. (Ord. 38 (part), 3/15/55)

“Building” means a structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, or chattels. Where a dwelling is separated by a division wall without openings, each portion of such dwelling shall be deemed a separate building. (Ord. 38 (part), 3/15/55)

Building, Height of. “Height of building” means the vertical distance measured from the adjoining curb grade to the highest point of the roof surface, if a flat roof; and to the mean height level between eaves and ridge for a gable, hip or gambrel roof; provided, however, that where buildings are set back from the street line, then the height may be measured from the average elevation of the finished grade along the front of the building. (Ord. 38 (part), 3/15/55)

Building, Main. “Main building” means a building in which is conducted the principal use of the lot on which it is situated. The main building shall contain all area within the interior faces of the building, including enclosed areas that are attached. In any “M” district any dwelling shall be deemed to be the main building on the lot on which the same is situated. (Ord. 38.760 (3), 9/17/02; Ord. 38 (part), 3/15/55)

Building, Unit Group. “Unit group building” means two (2) or more buildings (other than dwellings) grouped upon a lot and held under single ownership such as universities, hospitals, institutions and industrial plants. (Ord. 38 (part), 3/15/55)

Business, Retail. “Retail business” means retail sale of any article, substance, or commodity for profit or livelihood conducted within a building, but not including the sale of lumber or other building materials or the sale of used or second-hand goods or materials of any kind. (Ord. 38 (part), 3/15/55)

Business, Wholesale. “Wholesale business” means the wholesale handling of any article, substance or commodity for profit or livelihood, but not including the handling of lumber or other building material or the open storage or sale of material or commodity, and not including the processing or manufacture of any product or substance. (Ord. 38 (part), 3/15/55)

C

Camp, Trailer. “Trailer camp” means an area or tract of land used or designed to accommodate two (2) or more automobile or house trailers. (Ord. 38 (part), 3/15/55)

“Cemetery” means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundary of such cemetery. (Ord. 38 (part), 3/15/55)

“Child Care Center” means any child care facility other than a family child care home, in which less than twenty-four (24)-hour per day non-medical care and supervision are provided to children in a group setting. It includes infant centers, preschools, and extended child day care facilities. (Ord. 38.761 (part), 5/20/03)

“Class A Office Space” means a high quality, modern building with large floor plates and amenities that typically attracts rents in the top twenty-five percent (25%) bracket. (Ord. 124.27 (14) (part), 8/2/05; Ord. 38.761 (part), 5/20/03; Ord. 38.759 (part), 4/2/02)

“Commercial Athletic Facility” means a building or site equipped for physical training or athletic type games and sports, such as but not limited to, health spas, tennis, gymnasiums, handball courts, racquetball courts; also including ancillary uses when incidental to the primary use, such as but not limited to, steam baths, weight training, aerobic classes, massage, saunas, and the retailing of athletic supplies to be used in the facility. (Ord. 124.27 (14) (part), 8/2/05; Ord. 38.761 (part), 5/20/03; Ord. 38.694 (1) (part), 10/4/94)

“Commercial Fueling Facility” means a fueling facility designed for commercial customers which dispenses gasoline, diesel, or similar vehicle fuels, and which is not open to the general public, has no cash sales and provides no personal services on-site, provided that said facility is located not closer than five hundred (500) feet from any residentially zoned district or any area designated on the General Plan as being “residential” or any mobile home park. (Ord. 124.27 (14) (part), 8/2/05; Ord. 38.761 (part), 5/20/03; Ord. 38.654 (A) (part), 3/20/90)

“Commercial Service” means establishments which provide non-medical services of a retail character to patrons which may involve the sale of goods associated with the service being provided. These establishments include businesses that provide both personal and business services, but not industrial services. Any assembly, processing or customization of products on the premises must be incidental and integral to the retail sale of the product. All such completed products must be sold on the premises and may not be distributed to another location for future retail sale or wholesale or for storage to be shipped to another location where the product is sold. This restriction shall not preclude the sale of completed products that are delivered or shipped to the retail customer. The total floor area devoted to assembly, processing, customization and packaging of products sold on the premises shall be less than half the area devoted to sales and display of the completed product.

Examples of establishments covered by this designation include floral shops, barber and beauty shops, shoe repair shops, self-service laundries, tuxedo rental shops, dry-cleaners, tailors, interior decorators, accountants, architects, photocopy shops, and mail box rentals. Examples of establishments not covered by this designation include any dry cleaning plants, metal shops, machine shops, welding shops, and any customer fabrication or machinery repair shops. (Ord. 124.27 (14) (part), 8/2/05; Ord. 38.761 (part), 5/20/03; Ord. 38.760 (3), 9/17/02; Ord. 38.759 (part), 4/2/02)

“Condominium” means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building on such real property, such as an apartment, office, or store. A condominium may include in addition a separate interest in other portions of such real property. Such estate may, with respect to the duration of its enjoyment, be either of the following:

1. An estate of inheritance or perpetual estate.
2. An estate of life.
3. An estate for years, such as leasehold or sub-leasehold. (Ord. 124.27 (14) (part), 8/2/05; Ord. 38.761 (part), 5/20/03; Ord. 38 (part), 3/15/55)

“Condominium Conversion” means a change in the type of ownership of a parcel or parcels of land, together with the existing attached structures, to that defined for a condominium project or a community apartment project regardless of the present or prior use of such land and structures and whether substantial improvements have been made or are to be made to such structures. (Ord. 124.27 (14) (part), 8/2/05; Ord. 38.761 (part), 5/20/03; Ord. 38.485, 7/3/79; Ord. 38 (part), 3/15/55)

“Conference Center” means a facility used for holding conventions, seminars, workshops or similar activities, including dining facilities and lounges for use by participants, as well as compatible accessory facilities such as offices and business centers. (Ord. 38.761 (part), 5/20/03)

“Continuing Violation” means a violation, infringement or breach of a provision of this chapter that is uninterrupted and lasts for a continuous period in excess of 24 hours. (Ord. 124.27 (9), 8/2/05)

“Court” means an open unoccupied space, other than a yard, on the same lot with a building or buildings, and bounded on two (2) or more sides by a building, or buildings, including the open space in a dwelling group providing access to the units thereof. (Ord. 38 (part), 3/15/55)

“Court Apartment” means one (1), two (2) or three (3) multiple dwellings arranged around two (2) or three (3) sides of a court which opens onto a street, or a place approved by the Commission. (Ord. 38 (part), 3/15/55)

“Curb Grade” means the elevation of the established curb in front of the building measured at the center of such front. Where no curb grade has been established, the City Engineer shall establish such curb grade or its equivalent for the purpose of this Chapter. (Ord. 38 (part), 3/15/55)

D

“District” means a portion of the City within which certain uses of land and buildings are permitted or prohibited and within which certain yards and other open spaces are required and certain height limits are established for buildings, all as set forth and specified in this Chapter. (Ord. 38 (part), 3/15/55)

“Dwelling” means a building or portion thereof designed exclusively for residential occupancy, including single-family, two-family and multiple-family dwellings, but not including hotels. (Ord. 38.763 (4), 4/20/04; Ord. 38 (part), 3/15/55)

Dwelling, Group. “Group dwelling” means one (1) or more dwellings, other than a tourist court, arranged around two (2) or three (3) sides of a court, which opens onto a street, or a place approved by the commission, including single-family, two-family or multiple-family dwellings and court apartments. Group dwelling include homeless shelters and transitional housing. (Ord. 38.761 (part), 5/20/03; Ord. 38 (part), 3/15/55)

Dwelling, Multiple-Family. “Multiple-family dwelling” means a building or portion thereof, designed for occupancy by three (3) or more families living independently of each other. (Ord. 38 (part), 3/15/55)

Dwelling, Single-Family. “Single-family dwelling” means a detached building designed exclusively for occupancy by one (1) family for living purposes and having only one (1) kitchen. (Ord. 38.763 (5), 4/20/04: Ord. 38 (part), 3/15/55)

Dwelling, Two-Family. “Two-family dwelling” means a building designed exclusively for occupancy by two (2) families living independently of each other. (Ord. 38 (part), 3/15/55)

“Dwelling Unit” means a habitable room or group of habitable rooms (e.g., living room, bedroom, den, library, recreation, studio, etc.) designed for occupancy by one (1) or more persons living as a family or single household unit with common interior access to all living, kitchen and bathroom areas. No dwelling unit may have more than one (1) kitchen.

E

“EcoPass” means a program offered by the Valley Transportation Agency (VTA) in which employers or property owners purchase annual EcoPass stickers that allow their employees, tenants or residents to ride all VTA bus and light rail vehicles at no cost. (Ord. 38.759 (part), 4/2/02)

“Educational Institution” means a college or university giving general academic instruction equivalent to the standards prescribed by the State Board of Education. (Ord. 38 (part), 3/15/55)

“Elevation” means:

1. A scale drawing of the front, rear or side of a building or structure; or
2. A vertical distance above or below a fixed reference level.

Emergency Cache, Community: “Community emergency cache” means a collection of disaster response supplies approved by the City’s Office of Emergency Services that would benefit the surrounding community.

“Erosion” means the wear and removal of the material in the earth’s crust from one site and the deposition at another. (Ord. 38.355, 9/16/75: Ord. 38 (part), 3/15/55)

F

“Family” means an individual, or two (2) or more persons related by blood or marriage or legal adoption or joined through a judicial or administrative order of placement or guardianship, or unrelated persons who function together as a single household unit. (Ord. 38.763 (6), 4/20/04: Ord. 38 (part), 3/15/55)

“Family Child Care Homes” means a home in which care, protection, and supervision of fourteen (14) or fewer children is regularly provided, in the care giver’s own home, for periods of less than twenty-four (24) hours per day, while the parents or guardians are away. Such homes are licensed by the State of California and include the following:

1. **“Large family child care home”** means a home in which family child care is provided to nine (9) to fourteen (14) children, including children under the age of ten (10) who reside at the home.
2. **“Small family child care home”** means a home in which family day care is provided to eight (8) or fewer children, including children under the age of ten (10) who reside at the home. (Ord.

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

“Farmers’ Market” means an event offering for sale produce, food items, and related goods and merchandise by certified growers authorized to sell, directly to consumers, products that are produced on land the producer controls or taken in consignment from other producers. (Ord. 38.770 (4) (part), 1/2/07)

“Floor Area Ratio” (FAR) is defined for non-residential Zoning Districts as the maximum permitted ratio of gross floor area to site area and is calculated as follows:

$$\text{FAR} = \frac{\text{Total of Gross Floor Area for All Structures on Site}}{\text{Site Area}}$$

Increases above the maximum permitted FAR for any district can be allowed with approval of a Use Permit by the Planning Commission. This can be considered when the applicant can demonstrate that the proposed development will (1) generate low peak-hour traffic; (2) will not create a dominating visual prominence. Examples of such uses include wholesaling, distribution and hospitals. In each case where an increase in the maximum permitted FAR has been allowed, all other development standards for the site must be met. (Ord. 38.761 (part), 5/20/03: Ord. 38.713 (1) (part), 12/3/96)

“Frontage” means all the property fronting on one side of a street between intersecting or intercepting streets, or between a street and a right-of-way, waterway, end of dead-end street, or city boundary, measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts. (Ord. 38 (part), 3/15/55)

G

Garage, Private. “Private garage” means a detached accessory building or portion of a main building for the parking or temporary storage of automobiles of the occupants of the premises. (Ord. 38 (part), 3/15/55)

Garage, Public. “Public garage” means a building, other than a private garage, used for the care, repair, or equipment of automobiles, or where such vehicles are parked or stored for remuneration, hire or sale. (Ord. 38 (part), 3/15/55)

Game Machine, Mechanical or Electronic. “Mechanical or electronic game machine” means any machine, apparatus, contrivance, appliance, or device which may be operated or played upon the placing or depositing therein of any coin, check, slug, ball, token, or any other article or device, or by paying therefore either in advance or after use, involving in its use either skill or chance, including, but not limited to tape machine, card machine, pinball machine, bowling game machine, shuffleboard machine, marble game machine, horse racing machine, basketball game machine, baseball game machine, football game machine, electronic video game or any other similar machine or device, exclusive of food, beverage and tobacco vending machine. (Ord. 38.551, 9/7/82: Ord. 38 (part), 3/15/55)

Grade, Finished. “Finished grade” means the final elevation of the ground surface after development, as shown on a precise Grading Plan.

“Gross Acreage” means the total area within the boundaries of a legal lot or parcel, including any area proposed to be dedicated or reserved for public right-of-way. Adjacent lands already dedicated for public

right-of-way, including public roadways, easements or other areas, shall not be included as part of the gross acreage. (Ord. 38.767 (part), 2/7/06: Ord. 38.759 (part), 4/2/02)

“Gross Floor Area” means the total of all floors measured from the interior faces of the building, but not including areas for parking, basements, shaft enclosures, or unroofed inner courts unless any outdoor areas are used for retail purposes. (Ord. 38.761 (part), 5/20/03: Ord. 38.760 (2), 9/17/02)

“Guest House Accessory Building” means a one accessory structure, used for the accommodation of guests. Said guest house shall not contain any kitchen or cooking facilities but may contain one (1) bedroom, one (1) living area and one (1) bathroom, and shall be limited in floor area to a maximum of twenty (20%) percent of the total floor area of the main residence. (Ord. 38.646 (A) (part), 8/1/89: Ord. 38 (part), 3/15/55)

H

“Habitable Space” means a room designed for living, sleeping, eating or food preparation, including but not limited to a den, study, library, home office, sewing room or recreational room and excluding such areas as garages. (Ord. 38.760 (2), 9/17/02)

“Home Occupation” means a business enterprise conducted within a dwelling by the residents of the dwelling and which is incidental and secondary to the use the dwelling for residential purposes.

“Hospital” means an institution that maintains and operates facilities for primarily inpatient medical care, including x-ray, laboratory and surgical, for the diagnosis, care and treatment of human illness, injury and disease (physical or mental).

“Hotel or Motel” means a building or group of buildings containing individual sleeping or living units, provided with or without individual kitchen facilities, designed and intended for use by paying automobile tourists or paying temporary guests. The term also includes ancillary uses when incidental to the primary use, including but not limited to manager’s living unit and accessory guest facilities such as swimming pools, tennis courts, indoor athletic facilities, incidental merchandise sales, meeting rooms, maid service and laundry facilities. (Ord. 38.708 (2) (part), 8/6/096: Ord. 38.603 (A) (part), 7/15/86: Ord. 38.591 (part), 11/5/85: Ord. 38 (part), 3/15/55)

I

“Individual Violation” means a non-continuous condition or occurrence in violation, infringement or breach of a provision of this chapter that does not exceed twenty four (24) hours in duration. An Individual Violation may be recurrent. Examples of “Individual Violations” for the purposes of this Chapter include, but are not limited to, the illegal outdoor storage of materials, entertainment events, or outdoor seating in violation of a use permit. (Ord. 124.27 (10), 8/2/05)

J

“Junk Yard” means the use of more than one hundred (100) square feet of the area of any lot for the storage of junk, including scrap materials and metals, or wrecked vehicles and machinery, whether or not sale of such junk is made or proposed. (Ord. 38 (part), 3/15/55)

K

“Kennel” means any lot or premises on which four (4) or more dogs, more than four (4) months of age, are kept. (Ord. 38 (part), 3/15/55)

“Kitchen (for residential uses)” means a residential kitchen shall be enclosed and interior to the dwelling unit utilized for the preparation of food and include two (2) or more of each of the following:

1. A sink (typically larger than 14” x 17”);
2. A full size refrigerator (typically larger than 24” x 64”);
3. A 220-V electrical service outlet (typically used for major cooking appliances such as a stove, oven or cooking range). (Ord. 38.763 (7), 4/20/04: Ord. 38.760 (2), 9/17/02)

L

“Live Work Unit” means a dwelling unit with a separate living space attached to a work space within the same unit. The work space and the living space must be occupied by the same tenant. (Ord. 38.759 (part), 4/2/02)

“Loading Area” means an open area, other than a street or alley, used for the loading or unloading of vehicles. (Ord. 38 (part), 3/15/55)

“Loading Space” means an off-street space or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading and unloading merchandise or materials, and which abuts upon a street or other appropriate means of access. (Ord. 38 (part), 3/15/55)

“Lot” means land occupied or to be occupied by a building, or unit group of buildings, and accessory buildings, together with such yards and lot area as are required by this Chapter and having its principal frontage upon a street or a place approved by the Commission. (Ord. 38 (part), 3/15/55)

1. **“Corner lot”** means a lot, or portion thereof, not greater than seventy-five (75) feet in width and situated at the intersection of two (2) or more streets. (Ord. 38 (part), 3/15/55)
2. **“Flag lot”** means a lot having access or an easement to a public or private street by a narrow, private right-of-way.
3. **“Interior lot”** means a lot other than a corner lot. (Ord. 38 (part), 3/15/55)
4. **“Key lot”** means a lot with a side line that abuts the rear line of any one (1) or more adjoining lots.
5. **“Reversed corner lot”** means a corner lot the street line of which is substantially a continuation of the front line of the lot to its rear. (Ord. 38 (part), 3/15/55)
6. **“Through lot”** means a lot having frontage on two (2) paralleled or approximately paralleled streets. (Ord. 38 (part), 3/15/55)

Lot Dimensions.

1. **“Lot Area”** means the total horizontal area within the lot lines of a lot. (Ord. 38 (part), 3/15/55)

2. **“Lot Depth”** means the horizontal distance between the front and rear lot lines, measured along the median between the two (2) side lot lines. (Ord. 38 (part), 3/15/55)
3. **“Lot Lines”** means the lines bounding a lot as defined herein. (Ord. 38 (part), 3/15/55)
4. **“Lot Width”** means the horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines. (Ord. 38 (part), 3/15/55)

M

“Manufacture” means preparation, making treatment or processing of articles as merchandise. (Ord. 38 (part), 3/15/55)

“Massage Establishment” means an establishment having a fixed place of business, including but not limited to any establishment in which massage, acupressure or similar services are made available (except those which are exempt by Government Code Section 51033 as amended from time to time), in which the teaching, practice, or the giving of massage, acupressure or similar procedure is conducted. (Ord. 38.694 (1) (part), 10/4/94)

“Medical and Dental Offices” means a building or place where (a) member(s) of the medical profession, dentists, chiropractors, osteopaths, acupuncturists, and physicians or occupational therapists provide diagnosis and treatment to the general public without overnight accommodation and shall include such uses as reception areas, offices, consultation rooms, pharmacy and x-ray providing that all such uses have access only from the interior of the building or structure. (Ord. 38.761 (part), 5/20/03)

“Medical and Dental Clinics” means the same as Medical and Dental Offices, except they also include minor operating rooms and out-patient surgery with no overnight stay.

“Medical Laboratory” means a building or place for the purposes of scientific work or research related to the medical sciences. (Ord. 38.761 (part), 5/20/03)

“Mixed Use Development” means a development that consists of vertical or horizontal combination of residential and commercial uses within a single building or site. (Ord. 38.759 (part), 4/2/02)

“Mobile Home” means a transportable structure designed to be used as a dwelling unit when connected to required utilities. (Ord. 38.761 (part), 5/20/03; Ord. 38.541, 4/20/82; Ord. 38.227 (part), 6/20/72)

“Mobile Home Accessory Building or Structure” means any awning, portable, demountable or permanent cabana, ramada, storage cabinet, carport, fence, windbreak or porch established for the use of the occupant of the mobile home. (Ord. 38.227 (part), 6/20/72)

“Mobile Home Lot” means a portion of mobile home park designated or used for the occupancy of one mobile home. (Ord. 38.227 (part), 6/20/72)

“Mobile Home Park” means any areas or tract of land where mobile home lots are rented or leased or held out for rent or lease to accommodate mobile homes used for human habitation. (Ord. 38.227 (part), 6/20/72)

“Mobile Home Stand” means the area on which the mobile home is placed when it is stationed on the lot, including the land lying under the mobile home. (Ord. 38.227 (part), 6/20/72)

“Mobile Recycling Unit” means an automobile, truck, trailer or van, licensed by the Department of Motor Vehicles or bins, boxes or containers transported by a truck, van or trailer, and used for the collection of recyclable materials. (Ord. 38.629 (A) (part), 10/27/87)

N

“Natural Land Slope” means the average slope of the lot in percent, determined by observation on simple slopes, or more precisely by the formula:

$$S = 100 \frac{I}{L} \sqrt{A}$$

Where “I” is the contour interval in feet;

“L” is the combined length of the contour lines in scale feet; and

“A” is the net area of the lot in square feet.

(Ord. 38.355, 9/16/75; Ord. 38 (part), 3/15/55)

“Non-Conforming Building” means a building or structure or portion thereof lawfully existing at the time this Chapter became effective, which was designed, erected or structurally altered, for a use that does not conform to the use regulations of the district in which it is located. A non-conforming building shall also mean any building or structure built in compliance with all city land use and zoning laws in existence at the time and which does not comply with current development standards, including but not limited to height, setbacks, floor area ratio, maximum lot coverage, maximum size of residence, front yard paving and impervious surface coverage. (Ord. 38.760 (3), 9/17/02; Ord. 38 (part), 3/15/55)

“Non-Conforming Use” means a use which lawfully occupied a building or land at the time this Chapter became effective and which does not conform to the use regulations of the district in which it is located. (Ord. 38 (part), 3/15/55)

O

“Occupation” means a principal business, profession or vocation in which one is regularly and habitually engaged for the purpose of compensation for a livelihood. (Ord. 38.39, 8/15/63; Ord. 38 (part), 3/15/55)

“Open-Air Business” means drive-in business where persons are served in automobiles. (Ord. 38 (part), 3/15/55)

“Owner/Occupant” means any person owning property, as shown on the last equalized assessment roll for City taxes, or the lessee tenant, or other person having control or possession of the property. (Ord. 124.27 (16), 8/2/05)

P

“Parcel” means a “parcel” shall mean a legal lot of record. (Ord. 38.761 (part), 5/20/03)

Parking Area, Private. “Private parking area means an open area, other than a street or alley, used for the parking of the automobiles of occupants of a building. (Ord. 38 (part), 3/15/55)

Parking Area, Public. “Public parking area means an open area, other than a private parking area, street or alley, used for the parking of automobiles and available for public or quasi-public use. (Ord. 38 (part), 3/15/55)

Parking Space, Automobile. “Automobile parking space” means a space within a building or a private or public parking area for the parking of one (1) automobile. (Ord. 38 (part), 3/15/55)

“Patio Cover” means a one-story structure, not exceeding twelve (12) feet in height and open on one (1) or more sides (provided, however, that the open sides may be closed with insect or plastic screening that is permeable material and not in any manner that would obstruct the free passage of light or air) used for recreational, outdoor living purposes only and not as carports, storage rooms or habitable rooms. (Ord. 38.760 (3), 9/17/02; Ord. 38.342, 7/2/74)

“Person” means a natural person, his heirs, executors, administrators, or assigns, and also includes a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid. (Ord. 38 (part), 3/15/55)

“Place” means an open, unoccupied space, other than a street or alley, permanently reserved as the principal means of access to abutting property. (Ord. 38 (part), 3/15/55)

“Private Recreational Areas” means any usable open space or recreational facility available for use by all of the site’s residents. (Ord. 38.759 (part), 4/2/02)

“Property” means all real property and fixtures, including, but not limited to, parking lots, sidewalks, gutters, driveways, walkways and any building and structure located on such property. (Ord. 124.27 (17) (part), 8/2/05)

“Public Right-of-Way” as defined in Chapter V-500-1.3 of the Milpitas Municipal Code, “public right-of-way” shall mean the full width of the right-of-way of any street, as defined in the California Vehicle Code used by the general public, whether or not such street has been accepted as and declared to be part of the City system of streets, including streets forming a part of the State Highway System. “Public right-of-way” also includes easements where the City is the grantee of the easement and property owned by the City of Milpitas or the Milpitas Redevelopment Agency and any public park, trail, or right-of-way within the City of Milpitas. (Ord. 124.27 (17) (part), 8/2/05; Ord. 38.761 (part), 5/20/03)

“Public Use” means a use intended to serve the whole city and/or region and operated by a public institution or entity. Such uses have the purpose primarily of serving the general public and include public schools, recreational facilities, government housing, government clinics, and the like. (Ord. 124.27 (17) (part), 8/2/05; Ord. 38.761 (part), 5/20/03)

Q

“Quasi-Public Use” means a use intended to serve the whole city and/or region and are operated by a private, non-profit, educational, religious, recreational, or charitable, and having the purpose primarily of serving the general public. Such uses include religious facilities, private schools, community theaters, community and club organizations, private hospitals, places of assembly and the like. (Ord. 124.27 (17) (part), 8/2/05; Ord. 38.761 (part), 5/20/03; Ord. 38.760 (2), 9/17/02)

R

“Recyclable Material” means reusable material including but not limited to metals, glass, plastic and paper, which are intended for reuse, remanufacture, or reconstitution for the purpose of using the altered form. Recyclable material does not include refuse or hazardous materials. Recyclable material may

include used motor oil collected and transported in accordance with the California Health and Safety Code. (Ord. 38.761 (part), 5/20/03; Ord. 38.629 (A) (part), 10/27/87)

“Recyclable Processing Facility” means a building or space used for the collection and processing of recyclable materials. Processing means the preparation of material for shipment by such means as baling, briquetting, compacting, flattening, grinding, crushing, sorting, shredding, cleaning and remanufacturing. (Ord. 38.629 (A) (part), 10/27/87)

“Research and Development (R and D) Uses” means one or more buildings which feature a combination of offices, manufacturing, assembly, warehousing, distribution, laboratories and clean rooms, and ancillary uses such as cafeterias and employee fitness facilities. (Ord. 38.708 (1), 8/6/96)

“Restaurants” means an establishment in which the principal use is the preparation and sale of food and beverages.

1. **“Drive-in”** means a restaurant that delivers prepared food and/or beverages to customers in motor vehicles, regardless of whether or not it also serves prepared food and/or beverages to customers who are not in motor vehicles, for consumption either on or off the premises.
2. **“Drive-thru”** means a restaurant which includes one (1) or more drive-through lanes for the ordering and receipt of foods and/or beverages by patrons remaining in their vehicles.
3. **“Fast-food”** means a restaurant that offers quick food service, which is accomplished through a limited menu of items already prepared and held for service, or prepared. Orders are generally not taken at the customer’s table, and food is generally served for consumption either on or off the premises. For the purposes of parking requirements, the ordering or take out area is defined as the counter and the area between the counter and the main entry to the establishment.
4. **“Take-out”** means a restaurant where foods and/or beverages are sold directly to the customer in a ready-to-consume state for consumption off site with no seats onsite. For the purposes of parking requirements, the ordering or take out area is defined as the counter and the area between the counter and the main entry to the establishment.

“Reverse Vending Machine” means an automated mechanical device which accepts at least one or more types of empty beverage containers including, but not limited to aluminum cans, glass and plastic containers, and issues a cash refund or a redeemable credit slip. A reverse vending machine sorts, and processes containers mechanically provided that the entire process is enclosed within the machine. In order to accept and temporarily store all three container types in a proportion commensurate with their relative redemption rates, and to meet the requirements of certification as a recycling facility, multiple grouping of reverse vending machines may be necessary.

A bulk reverse vending machine is a reserve vending machine that is larger than fifty (50) square feet; is designed to accept more than one container at a time; and will pay by weight instead of by container. (Ord. 38.629 (A) (part), 10/27/87)

S

“Satellite Dish Antenna or Satellite Antenna” means any device incorporating a reflective surface that is solid, open mesh or bar configured to form a shallow dish, cone, horn or cornucopia used to transmit and/or receive electromagnetic signals. This definition includes antennas that are sometimes called “SES,” “TVRO,” “TVBS,” and “DBS.” (Ord. 38.761 (part), 5/20/03)

“School: Elementary, Middle, or High” means an institution which offers instruction in the several branches of learning and study required to be taught in the public schools by the Education Code of the State of California. (Ord. 38.710 (part), 8/6/96: Ord. 38 (part), 3/15/55)

Setback. See “Yard.” (Ord. 38.761 (part), 5/20/03)

“Single Household Unit” means the functional equivalent of a traditional family, whose members are a non-transient interactive group of persons jointly occupying a single dwelling unit, including the joint use of common areas which are not compartmentalized, such locked cabinets or doors. A single housekeeping unit shall be limited to one (1) kitchen and shall have permanent internal access to all rooms within the dwelling unit, except as provided for Second Family Units. (Ord. 38.763 (2), 4/20/04)

Slope. Same as "Natural Land Slope." (Ord. 38.355, 9/16/75)

“Specific plan” means a detailed plan for the development of a specific area. Specific plans are a significant tool to implement the General Plan. A specific plan documents the proposed distribution, location, extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, parks and other essential facilities proposed to be located within or needed to support the land uses described in the plan, as well as implementation and financing methods and added benefits to the City as a whole.

Stable, Private. “Private stable” means a detached accessory building for the keeping of horses owned by the occupants of the premises and not kept for remuneration, hire or sale. (Ord. 38 (part), 3/15/55)

Stable, Public. “Public stable” means a stable other than a private stable. (Ord. 38 (part), 3/15/55)

“Story” means that portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between such floor and ceiling next above it. (Ord. 38 (part), 3/15/55)

Story, Half. “Half story” means a story under a gable, hip or gambrel roof, the wall plates on which on at least two (2) opposite exterior walls are not more than four (4) feet above the floor of such story. (Ord. 38 (part), 3/15/55)

“Street” means a permanently reserved thoroughfare which affords principal means of access to abutting property. (Ord. 38 (part), 3/15/55)

“Structure” means anything constructed or erected, which requires location on the ground or is attached to something having a location on the ground. (Ord. 38 (part), 3/15/55)

T

“Townhouses” mean dwelling units that are attached at their sides in groups of three or more and are sited on individual lots with vehicular access from driveways. Private rear yards or patios and common open space may be part of a townhouse development. (Ord. 38.759 (part), 4/2/02)

Trailer, Automobile. “Automobile trailer” means a vehicle without motive power designed to be drawn by a motor vehicle and to be used for human habitation or for carrying persons and property, including a trailer coach or house trailer. (Ord. 38 (part), 3/15/55)

“Tri-laminate Asphalt Composition” means an asphalt composition roof material that is comprised of three layers of tile adhered together to create one shingle and when installed overlap with another row of three-layered tile for a total minimum thickness of 7/8 inches. (Ord. 38.761 (part), 5/20/03)

“Tutoring Centers” means facilities offering academic instruction to individuals or groups in a classroom setting. (Ord. 38.761 (part), 5/20/03)

U

“Unreasonable Period of Time” means not less than thirty (30) calendar days following notification by the City to the owner/occupant pursuant to Section XI-10-63.09(a) that the property is in violation of this Chapter. The City Manager, upon a finding that the violation in question constitutes a threat to the health and safety of any person may designate a time period of thirty (30) calendar days or less upon notice to the owner/occupant to abate the nuisance. Prior notice shall not be required for summary abatement pursuant to Section XI-30.63.10(h). (Ord. 124.27 (18), 8/2/05)

“Usable Open Space” means any open space, the smallest dimension of which is at least six (6) feet and which is not used as storage or for movement of motor vehicles. 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. (Ord. 38.759 (part), 4/2/02)

“Use” means the purpose for which land or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained. (Ord. 38 (part), 3/15/55)

V

“Vehicle Oriented Window Service Facility” means any component or part of a building or structure which attracts or invites persons in motor vehicles to drive their vehicles upon the premises, and which is used to conduct business or used for the purpose of selling merchandise from the inside of said building to the occupants of motor vehicles. (Ord. 38.395, 9/20/77: Ord. 38 (part), 3/15/55)

“Video Sales and Rental Store” means any place of business which includes the sale or rental of prerecorded video tapes, laser discs, compact discs, or any other medium which projects pictures on a screen. (Ord. 38.697 (1) (part), 12/20/94)

W

Wireless Communications Facilities Definitions. For the purposes of wireless communications facilities, the following definitions shall apply:

1. **“Commercial Wireless Communication Facility”** means a wireless communication facility operated by a for-profit business or for-profit purposes. See by contrast, “Noncommercial wireless communication facility”.
2. **“Noncommercial Wireless Communication Facility”** means a wireless communication facility operated by a government agency, a nonprofit organization, a for-profit business for non-profit purposes or a private citizen for personal use. It includes all amateur radio facilities. See by contrast, “Commercial wireless communication facility.”
3. **“Stealth Wireless Communications Facility”** means any antenna designed to be architecturally integrated into a building that is architecturally consistent with the building design. Examples include a steeple, cupola or tower element on a building and do not include flag poles, monopoles or other structures designed to house antennae and resemble natural features.
4. **“Wireless Communication Facility”** means the equipment and associated structures needed to transmit and/or receive electromagnetic signals. A wireless communication facility typically includes antennas, supporting structures (including, but not limited to, monopoles, utility structures, buildings and accessory structures), enclosures and/or cabinets housing associated equipment, cable, access roads and other accessory development.

Y

“Yard” means an open space, other than a court, on a lot, unoccupied and unobstructed, except by eaves, from the ground upward, except as otherwise provided in this Chapter. Where applicable, yards shall be measured perpendicularly from the property line to the face of the nearest exterior wall of any main building, except as otherwise provided in this Chapter (See Section 55.04.11). Setback shall be synonymous with yard. (Ord. 38.761 (part), 5/20/03: Ord. 38 (part), 3/15/55)

Yard, Front. “Front yard” means a yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto on the lot. (Ord. 38 (part), 3/15/55)

Yard, Rear. “Rear yard” means a yard extending across the full width of the lot between the most rear main building and the rear lot line; the depth of the required rear yard shall be measured horizontally from the nearest point of the rear lot line toward the nearest exterior wall of the main building. (Ord. 38.761 (part), 5/20/03: Ord. 38 (part), 3/15/55)

Yard, Side. “Side yard” means a yard between the main building and the side lot line extending from the front yard, or front lot line where no front yard is required, to the rear yard; the width of the required side yard shall be measured horizontally from the nearest point of the side lot line toward the nearest exterior wall of the main building. (Ord. 38.761 (part), 5/20/03: Ord. 38 (part), 3/15/55)

Z

Zone. See “district.”

SECTION 3. Chapter 10, Section 4.02(A)(1) of Title XI of the Milpitas Municipal Code, “Permitted and Conditionally Permitted Uses, General Requirements” is hereby amended to read as follows:

Primary Uses. 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 4.02-1 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 subsection 57.04, Conditional Use Permits, 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 subsection 57.04, Conditional Use Permits, of this chapter.
O	Where the symbol “O” appears, the use is subject to an alternative review process described in a subsequent footnote.

SECTION 4. Chapter 10, Section 4.02(A)(2) of Title XI of the Milpitas Municipal Code, “Permitted and Conditionally Permitted Uses, Accessory Uses” is hereby amended to read as follows:

Accessory Uses. The following are the accessory uses permitted in all residential zoning districts:

- a. Boarding houses of not more than two (2) persons.
- b. Home occupations and professional offices in home, as provided in Subsection 13.05, Home Occupation, of this chapter.
- c. 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.
- d. Other accessory uses, accessory buildings and structures customarily appurtenant to a permitted use, as provided for in Subsections 13.05, Home Occupation and 54.08, Accessory Buildings and Structures, of this chapter.
- e. Small family child care home.
- f. Large family child care home, as provided for in Subsections 53.23-6 through 53.23-8, Parking Schedule, and 13.06, Large Family Child Care and Child Care Centers, of this chapter.

SECTION 4. Chapter 10, Section 4.02(B) of Title XI of the Milpitas Municipal Code, “Prohibited Uses” is hereby amended to read as follows:

1. Uses where the symbol “NP” appears within Table 4.02-1.
2. Adult Businesses as defined in Subsection 13.04, Adult Businesses, 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.

SECTION 5. Chapter 10, Footnote 6 of Table 4.02-1 of Title XI of the Milpitas Municipal Code, “Residential Zone Uses” is hereby amended to read as follows:

Refer to Subsection 13.07, Mobile Homes, of this chapter, for standards.

SECTION 6. Chapter 10, Footnote 8 of Table 4.02-1 of Title XI of the Milpitas Municipal Code, “Residential Zone Uses” is hereby amended to read as follows:

In conjunction with an existing legal single-family dwelling. Refer to Subsection 13.08, Second Family Unit, of this chapter, for standards.

SECTION 7. Chapter 10, Footnote 13 of Table 4.02-1 of Title XI of the Milpitas Municipal Code, “Residential Zone Uses” is hereby amended to read as follows:

Refer to Subsection 54.19, Model Home Complexes and Sales Offices, of this chapter 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.

SECTION 8. Chapter 10, Section 4.05(A)(1) of Title XI of the Milpitas Municipal Code, “Residential Zone Special Development Standards, All Zones” hereby amended to read as follows:

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 54.12 of this Chapter.

SECTION 9. Chapter 10, Section 4.05(E)(3) of Title XI of the Milpitas Municipal Code, “Residential Zone Special Development Standards, All Zones” hereby amended to read as follows:

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 Subsection 57.04, Conditional Use Permits, of this chapter.
- b. In addition to the required findings for a Conditional Use Permit, 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.
 - 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.

SECTION 10. Chapter 10, Section 6.02(A)(1) of Title XI of the Milpitas Municipal Code, “Permitted and Conditionally Permitted Uses, Primary Uses” is hereby amended to read as follows:

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 57.04, Conditional Use Permits, 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 57.04, Conditional Use Permits, of this chapter.
O	Where the symbol “O” appears, the use is subject to an alternative review process described in a subsequent footnote.

SECTION 11. Chapter 10, Section 6.02(B) of Title XI of the Milpitas Municipal Code, “Permitted and Conditionally Permitted Uses, Prohibited Uses” is hereby amended to read as follows:

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 13.04, Adult Businesses, 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, except as an Accessory Use, as provided for in Subsection 6.02(A)(2), Accessory Uses, of this Section.
 - 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.

SECTION 12. Chapter 10, Footnote 5 of Table 6.02-1 of Title XI of the Milpitas Municipal Code, “Mixed Use Zone Uses” is hereby amended to read as follows:

As provided for in Subsections 53.23-6 through 53.23-8, Parking Schedule, and 13.06, Large Family Child Care and Child Care Centers, of this chapter.

SECTION 13. Chapter 10, Footnote 5 of Table 6.02-1 of Title XI of the Milpitas Municipal Code, “Mixed Use Zone Uses” is hereby amended to read as follows:

As provided for in Subsections 53.23-6 through 53.23-8, Parking Schedule, and 13.06, Large Family Child Care and Child Care Centers, of this chapter.

SECTION 14. Chapter 10, Section 6.02-1(A) of Title XI of the Milpitas Municipal Code, “Commercial Services within Mixed Use Zones” is hereby amended to read as follows:

Commercial services as defined in Subsection 2.03, Definitions, 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 Subsection 57.04, Conditional Use Permits, of this chapter.

SECTION 15. Chapter 10, Section 6.02-2 of Title XI of the Milpitas Municipal Code, “Special Uses within MXD zones” is hereby amended to read as follows:

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 Subsection 57.04, Conditional Use Permits, 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 Subsection 57.04, Conditional Use Permits, 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 Subsection 57.04, Conditional Use Permits, 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.

SECTION 16. Chapter 10, Section 6.02-4 of Title XI of the Milpitas Municipal Code, “Quasi-Public Uses within MXD zones” is hereby amended to read as follows:

6.02-4 Quasi-Public Uses within MXD Zones

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 Subsection 57.04, Conditional Use Permits, 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.

SECTION 17. Chapter 10, Section 6.02-5(B)(1) of Title XI of the Milpitas Municipal Code, is hereby amended to read as follows:

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 Minor Site Development Permit or Site Development Permit and is operated in conformance with any conditions of that approval.

SECTION 18. Chapter 10, Table 11.05-1 of Title XI of the Milpitas Municipal Code “Adopted Specific Plan” is hereby amended in its entirety to read as follows:

Specific Plan Name/Abbreviation	City Council Resolution #	Development Agreement
Midtown/ MTSP	7151 and 7152	
Transit Area/TASP	7760	

SECTION 19. Chapter 10, Section 12 of Title XI of the Milpitas Municipal Code “Overlay Districts and Standards” is hereby added in its entirety to read as follows:

--Begin Section--

SECTION 12 OVERLAY DISTRICTS AND STANDARDS

10-12.01 Purpose and Intent

10-12.02 Gateway Office (-OO) Overlay District

10-12.03 Reserved

10-12.04 Mobile Home Park (-MHP) Overlay District

10-12.05 Site and Architectural (-S) Overlay District

10-12.06 Transit Oriented Development (-TOD) Overlay District

10-12.01 Purpose and Intent.

The General Plan establishes a number of overlay designations for the City. These designations are to be used along with underlying land-use designations, such as residential, commercial, mixed-use, and open-space designations, also established in the General Plan. Overlay districts signify that an area or site has been identified to have distinct characteristics, requiring special development standards or guidelines beyond those for the underlying zoning designation. The General Plan details the goals, objectives and policies for areas with the overlay designations, which are meant to be used along with the goals, objectives and policies for the underlying zoning designation for an area. It is the purpose of this section to implement the General Plan’s vision for the overlay districts through development regulations and guidelines specific to each overlay. The goals for each of the overlay districts are provided with a description of the district, in the following sections.

10-12.02 Gateway Office (-OO) Overlay District

A. Purpose and Intent.

The purpose of the Gateway Office Overlay District ("-OO") is to provide for higher intensity, Class A office development at gateways to the City of Milpitas. Uses other than Class A offices, shall be permitted or shall require use permit approval as applicable for the underlying zoning district. (Ord. 38.759 (part), 4/2/02)

B. Applicability

The "-OO" overlay may be combined with the "C2" or the "CO" districts. However, if any of the regulations specified in the "-OO" overlay district differ from any corresponding regulations of any district with which the "-OO" District is combined, then the provisions of the "-OO" overlay district shall govern. (Ord. 38.759 (part), 4/2/02)

C. Permitted and Conditionally Permitted Uses. Permitted and conditional uses within the -OO overlay are the same uses as those allowed within the underlying base zones.

D. Development Standards

The following standards apply on to Class A offices: all other permitted or conditional uses shall conform to the development standards of the underlying zoning district.

1. Building Height.
 - a. Buildings shall not exceed six (6) stories and eighty-five (85) feet in height.
 - b. A Conditional Use Permit may be approved by the Planning Commission for buildings that exceed this standard up to a total height of eight (8) stories and one hundred fifteen (115) feet in height for exceptional architecture and aesthetic merit. Refer to Subsection 57.04(C)(2)(b), Conditional Use Permits, of this chapter.
2. Floor Area Ratio. The maximum Floor Area Ratio (FAR) is one hundred fifty percent (150% or 1.5).
3. Front and Street Side Setbacks.
 - a. The maximum front and street side setback shall be ten (10) feet from back of sidewalk. There is no minimum building setback.
 - b. Where a public easement prevents a building from being located in at its required maximum setback, the building shall be located as close to the back of said easement as is possible.
 - c. The building shall be parallel to the street and its main entrance shall face the street. (Ord. 38.759 (part), 4/2/02)

4. Off-Street Parking Requirements.

For Class A office buildings there shall be at least three and three tenths (3.3) parking stalls per one thousand (1,000) square feet of gross floor area (1 parking space per 303 square feet). (Ord. 38.759 (part), 4/2/02)

5. Landscape and Open Space

- a. Each Class A office building within the "-OO" overlay district shall provide an outdoor open space or plaza that is designed in accordance with the Guidelines set forth in the Midtown Specific Plan.
- b. An area no less than ten percent (10%) of the Class A office site area shall be developed as useable open space. This can include plazas, courtyards, pedestrian promenades, balconies, roof decks, and landscaped open space. (Ord. 38.759 (part), 4/2/02)

E. Additional Development Requirements

Development within the "-OO" overlay district must incorporate the following measures to ensure an attractive, landmark quality entry image to Milpitas, and encourage the use of alternative modes of transportation.

1. Adherence to the design guidelines of the Midtown Specific Plan (if located within said plan), which provide for an attractive street presence of the building, stepped buildings to orient the building mass to the Main street frontage.
2. Participation in the Valley Transportation Agency's EcoPass or similar programs that support mass transit.
3. Initiation or participation in a transportation management program.
4. Provision of secure and weather protected bicycle parking and showers for employees. (Ord. 38.759 (part), 4/2/02)

F. Exception to Standards

1. Exceptions to all but the floor area ratio standards may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Subsection 57.04, Conditional Use Permits, of this chapter.
2. In addition to the required findings under Subsection 57.04(F), Required Findings, of this chapter, the Planning Commission must be able to make the following two additional findings for such exceptions:
 - a. The exceptions meet the design intent identified within the Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
 - b. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard. (Ord. 38.759 (part), 4/2/02)

10-12.03 Reserved

10-12.04 Mobile Home Park (-MHP) Overlay District

A. Purpose and Intent.

The purpose of the Mobile Home Park Overlay District is to promote the expansion and diversification of the available housing opportunities within the City of Milpitas by the establishment of standards for the creation of planned mobile home parks.

These provisions will further encourage the creations of stable, attractive residential environments within the individual mobile home parks themselves and provide for a desirable transition to the surrounding conventional residential area.

B. Applicability.

The following regulations shall apply in the “R1-6”, “R2”, “R3-20”, and “HS”, which may be combined with the MHP overlay district in addition to the regulations of the underlying zoning district, provided, however, that if any of the regulations specified in this Section differ from any corresponding regulations specified in this Chapter for the underlying District which is combined with an “MHP” overlay district, then the provisions of this Section shall govern. (Ord. 38.227 (part), 6/20/72; Ord. 38 (part), 3/15/55)

C. Principal Permitted Uses

The following are the principal permitted uses in the “MHP” overlay district:

1. Mobile Home Parks for single-family dwelling uses.
2. Common recreational facilities and structures.
3. Administrative offices for Mobile Home Park use.
4. Residential quarters for use by manager or other Park employees.
5. Accessory uses normally incidental to a mobile home park, such as but not limited to coin-operated laundry and car washing facilities which are accessible only through the internal park circulation system. (Ord. 38.634(A) (part), 3/15/88; Ord. 38.227 (part), 6/20/72; Ord. 38 (part), 3/15/55)

D. Conditionally Permitted Uses

The following uses and facilities may also be permitted if a Conditional Use Permit is granted by the Planning Commission provided they are found to be subordinate to the primary mobile home residential function and which are provided for the exclusive use and convenience of residents, residents' family, and guests of the park:

1. Mobile home and mobile home accessory equipment sales provided such area has direct access from a public street and not through the internal street system of the park.
2. Personal service establishments such as but not limited to beauty parlors and barbershops.
3. Other uses which are in accord with the intent of this Section. (Ord. 38.634(A) (part), 3/15/88; Ord. 38.227 (part), 6/20/72; Ord. 38 (part), 3/15/55)

E. Development Standards

1. Site Location Criteria. Mobile Home Parks must be located abutting a major street so as to provide for direct access to and from said major street. “Major Street” shall mean a public street having a minimum of four (4) moving lanes in addition to area on both sides to accommodate on-street parking or six (6) moving lanes regardless of allowance for on-street parking. (Ord. 38.353, 4/1/75; Ord. 38.227 (part), 6/20/72; Ord. 38 (part), 3/15/55)
2. Yard Area and Dwelling Unit Density Requirements.

The following minimum requirements shall be observed except where increased for Conditional Uses:

- a. Park Area: Mobile Home Park sites shall not be less than twenty-five (25) contiguous gross acres.
- b. Mobile Home Park dwelling unit density per gross acre: Areas zoned single-family residential 6000 square feet per dwelling unit (“R1-6”) or two-family residential (“R2”) shall not exceed six (6) mobile home dwelling units per gross acre. Areas zoned multiple-family residential 2000 square feet per dwelling unit (“R3-20”) shall not exceed seven (7) mobile home dwelling units per gross acre. Areas zoned Highway Service (“HS”) shall not exceed seven (7) mobile home dwelling units per gross acre.

Provided, however, that all of the above-listed mobile home dwelling units densities may be increased up to a maximum of one (1) additional dwelling unit per gross acre upon the finding by the Planning Commission that the proposed development will consist of a superior functional and aesthetic design which exceeds all or a portion of those standards contained within the adopted Development Standards No. 2 -- Mobile Home Parks.

- c. Building setbacks from parcel boundaries:
 - i. Abutting a public street thirty-five (35) feet.
 - ii. Where the rear or side of an “MHP” zone abuts a residential district, there shall be a rear or side yard or both of twenty five (25) feet.
 - iii. Abutting all other zoning districts -- fifteen (15) feet.
 - iv. Mobile Home Individual Yard Regulations: Minimum yard requirements around individual mobile homes, accessory buildings, carports and awnings shall be determined by California Administrative Code, Title 25, Chapter 5. The Commission or Council may vary this requirement to accommodate innovative design arrangements (see General Development Policy: Mobile Home Parks).
- d. Height Regulation: No recreational and administrative building approved as a part of the mobile home park shall exceed those height regulations pertaining to the base District with which the “MHP” is combined. (Ord. 38.634(A) (part), 3/15/88; Ord. 38 (part), 3/15/55)

3. Landscaping and Open Space Requirements:

- a. A minimum of twenty-five (25) percent of the total park area (not including vehicular accessways and other nonrecreational areas plus permanent buildings) shall be landscaped for recreational open space and this shall be shown on the Site Plan in detail for Planning Commission approval.
- b. A community recreation center which possesses a floor area of twenty-five (25) square feet per mobile home unit but in no case less than a minimum of three thousand seven hundred fifty (3,750) square feet shall be provided and be centrally located within the Park. Space devoted to administrative offices, laundry or other non-recreational uses which may be developed in conjunction with the community center shall be in addition to the above

minimum recreational floor space.

- c. Whenever an entire park or portion of a park is proposed to be used as “family” occupancy the park must provide, subject to Planning Commission approval, additional play areas for children that are of a convenient size and separated from adult recreation areas.
- d. Each unit shall be provided with a contiguous and permanently surfaced patio area exclusive of the mobile home pad of not less than two hundred (200) square feet.
- e. Each mobile home shall be maintained weed free. (Ord. 38 (part), 3/15/55)

4. Automobile Parking and Circulation:

- a. The main access to a Mobile Home Park shall be from an abutting major or collector street. (See Site Location Criteria for definition).
- b. The main entrance of a Mobile Home Park shall consist of two (2) ten foot travel lanes for ingress and an additional two lanes for egress, separated by a landscaped median, a minimum of ten (10) feet in width and one hundred (100) feet in length.
- c. An illuminated directory map shall be provided at all entrances out of the main travel way to the Park in such a manner as to be read by the driver of an entering vehicle without leaving his vehicle. Size and location shall be approved by the Planning Commission.
- d. Additional access points may be allowed after review of specific location by the Planning Commission subject to minimum driveway width of thirty (30) feet at the property line.
- e. All private roadways within the Park shall provide for twenty-five (25) feet in travel lane width and an additional ten (10) feet for each parking lane located along said roadway.
- f. All private roadways shall be structurally designed for a minimum traffic index of five (5) and shall include concrete curbs and gutters.
- g. Residential off-street parking shall be provided at a minimum ratio of two and one-half (2.50) spaces per dwelling unit. One space shall be contiguous to the individual mobile home site and the additional space may be grouped into a centralized parking area if located within one hundred-fifty (150) feet of the dwelling unit to be served.

The remaining portion of the parking requirement is for boats, campers, travel trailers, Park maintenance equipment and similar large items providing for centralized areas to accommodate their storage.

The location of said areas shall be to the approval of the Planning Commission through a Site Development Permit, in accordance with Subsection 57.03, Site Development Permits and Minor Site Development Permits.

- h. A parking space shall be a minimum of nine (9) feet in width.
- i. Parking contiguous to the mobile home site shall be so designed as to assure that a parked automobile will not encroach into an access street and in no case be closer than fifteen (15)

feet from a pedestrian walkway.

- j. Parking contiguous to the community center will be provided at a ratio of one space for each fifteen (15) mobile home dwelling units within the Park in addition to the above. (Ord. 38.227 (part), 6/20/72; Ord. 38 (part), 3/15/55)

F. Other Required Conditions:

The following additional conditions shall apply in an “MHP” overlay district:

1. All permitted and conditional uses proposed shall be required to submit Site and Exterior Architectural Plans to be reviewed for approval in conjunction with Planning Commission consideration of zone change application for “MHP” Overlay District.
2. Site and architectural approval shall be subject to consideration of those policies contained in General Policy -- Mobile Home Parks.
3. Mobile home park development within the City shall comply with applicable provisions of the California Health and Safety Code, relating to the maintenance, use and occupancy of mobile homes and the construction and operation of mobile home parks, as well as the regulations set forth in Title 25, Chapter 5 of the California Administrative Code except when provisions of this Title call for more restrictive regulations.
4. The park operator shall be responsible for the maintenance of all park and lot landscaping.
5. Plants, shrubs and trees which die or otherwise become deteriorated shall be replaced with units of equivalent size to the then existing vegetation.
6. Approval of each Mobile Home Park overlay district zone change is subject to the owner entering into a Maintenance Agreement to the approval of the City Attorney prior to issuance of any City permit.
7. Each mobile home park operator shall notify the Building department at least 48 hours prior to hauling to or storage on or placement of a mobile home on a lot in a mobile home park for the purpose of enabling the Building Department to assure compliance with Section 18404 of the California Health and Safety Code. (Ord. 38.227 (part), 6/20/72; Ord. 38 (part), 3/15/55)

10-12.05 Site and Architectural (-S) Overlay District

A. Purpose and Intent.

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

B. Applicability.

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

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

C. Development Review for the Site and Architectural (-S) Overlay District. Development in areas designated by -S are subject to Site Development Permits or Minor Site Development Permits, in accordance with Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this chapter. Depending on the scale of development proposed, other Discretionary Permits may be required, as well. Please refer to Section 57, Applications, of this Chapter, for the requirements for other Discretionary Permits.

10-12.06 Transit Oriented Development (-TOD) Overlay District

A. 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)

B. 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)

C. Permitted, Accessory and Conditionally Permitted Uses

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 for Residential and Mixed Use Zones, within this chapter.

- 1. Accessory Uses in R3-TOD/R4-TOD/R5-TOD Zones
 - a. Retail stores, offices, and commercial service establishments as defined in Section 2.03, Definitions, 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 18.04, Adult Businesses, of this chapter;
- vii. Not specifically noted in Subsection 6.04, Mixed Use Zone General Development Standards, of this chapter, as requiring Conditional Use Permit approval; and
- viii. Not specifically noted in Subsection 6.04, Mixed Use Zone General Development Standards, of this chapter, 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 Subsection 57.04, 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, Restaurant Uses within Mixed Use Zones, of this chapter.

If items a through d are not met, then approval of a Conditional Use Permit is required in accordance with Subsection 57.04, Conditional Use Permits, of this chapter.

- c. Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in Subsection 54.08, Accessory Buildings and Structures, of this chapter.

2. Conditionally Permitted Uses

The following require the approval of a Conditional Use Permit in accordance with Subsection 57.04, Conditional Use Permits, of this chapter.

- a. Retail stores, offices and commercial service establishments, as defined in Subsection 2.03, Definitions, of this chapter, which do not meet the criteria in subsection 12.03(C)(1)(a), Accessory Uses in R3-TOD/R4-TOD/R5-TOD Zones, of this section.

- b. Restaurants, or restaurants which include internet usage for customers, which do not meet the criteria in subsection 12.03(B)(1)(b) Accessory Uses in R3-TOD/R4-TOD/R5-TOD Zones, of this chapter.
- 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)

D. Prohibited Uses

- 1. Vehicle oriented window service facilities, including drive-up or drive-in services.
- 2. Adult Businesses, as defined in Section 18.04, Adult Businesses, of this chapter.

E. Development Standards

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).
8. “MP-TOD” Areas
- a. Side yard setbacks.
 - i. Minimum ten (10) feet.
 - ii. Minimum thirty-five (35) feet when abutting residential uses.
 - b. Rear yard setbacks.
 - i. Minimum twenty (20) feet.
 - ii. 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)

F. 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 12.06
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.

Use	MXD/MXD2/MXD3	
	Min Required	Max Allowed
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	

G. Bicycle Parking.

1. Long-term bicycle parking shall be one space per every four housing units.
2. Short-term bicycle parking shall be one space per every 20 parking spaces required.

H. 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 Development Permit 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.

I. 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.

J. 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 Subsection 57.04, Conditional Use Permits, of this Chapter.
2. In addition to the required findings under Subsection 57.07(F), Required Findings, of this chapter, 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.)

K. 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 20. Chapter 10, Section 13 of Title XI of the Milpitas Municipal Code "Special Uses" is hereby added in its entirety to read as follows:

--Begin Section--

SECTION 13 SPECIAL USES

10-13.01 Purpose and Intent

10-13.02 Applicability

10-13.03 Accessory Uses

10-13.04 Adult Businesses

10-13.05 Home Occupation

10-13.06 Large Family Child Care and Child Care Centers

10-13.07 Mobile Homes

10-13.08 Second Family Unit

10-13.09 Wireless Communications Facilities

10-13.01 Purpose and Intent

Given their unique nature, certain activities and uses have special impacts upon the community, giving rise to a need for special review procedures or standards. The purpose of this chapter is to identify and regulate such uses in order to ensure the maintenance of the public health, safety and welfare in accordance with the goals, objectives, policies, and implementation programs of the General Plan.

10-13.02 Applicability

The activities and uses covered or described in this chapter, when permitted within the zone in which they are to be located, shall comply with the provisions described here, as well as all other standards and provisions of this title.

10-13.03 Accessory Uses

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

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

10-13.04 Adult Businesses.

A. Purpose and Intent. The purpose of this Subsection is to establish reasonable and uniform regulations regarding the location of Adult Businesses, which will permit the location of Adult Businesses in certain areas but which will also reduce or prevent neighborhood blight, maintain property values; and reduce the incidence of unlawful activity by preventing the concentration of Adult Businesses or their close proximity to incompatible uses.

B. Definitions.

1. "Adult Businesses" means any of the following:
 - a. Adult Arcade. The term "adult arcade" as used in this Subsection, means any place to which the public is permitted or invited, wherein coin-operated, currency-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, television sets, monitors, receivers, transmitters, video cassette players or other images producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting, describing or relating to specified sexual activities or specified anatomical areas.

- b. Adult Bookstore. The term "adult bookstore" as used in this subsection means an establishment that has thirty (30) percent or more of its stock in books, visual or audio representations which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities and/or specified anatomical areas.
- c. Adult Cabaret. The term "adult cabaret" as used in this subsection, means a nightclub, restaurant, or similar business establishment which: (1) regularly features live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities; and/or (2) which regularly features persons who appear seminude; and/or (3) shows films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
- d. Adult Hotel/Motel. The term "hotel/motel" as use in this subsection means a hotel or motel or similar commercial establishment which:
 - i. Offers public accommodations, for any form of consideration, which provide patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and which advertises the availability of this sexually oriented type of material by means of any off-premises advertising including but not limited to newspapers, magazines, pamphlets or leaflets, radio or television; and
 - ii. Offers a sleeping room for rent for a period of time that is less than ten (10) hours or allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours, or rents any single room more than twice in a 24-hour period.
- e. Adult Motion Picture Theater. The term "adult motion picture theater" as used in this subsection, means a business establishment in which for any form of consideration, films, motion pictures, video cassettes, video tapes, laser discs, slides or similar photographic or electronic reproductions are regularly shown and thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
- f. Adult Theater. The term "adult theater," as used in this Subsection, means a theater, concert hall, auditorium or similar establishment which, for any form of consideration, regularly features live performances which are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities.
- g. Escort. The term "escort" as used in this subsection, means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- h. Escort Agency. The term "escort agency" as used in this subsection means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

- i. **Modeling Studio.** The term "modeling studio" as used in this subsection, means a business which provides, for pecuniary compensation, monetary or other consideration, hire or reward, figure models who, for the purposes of sexual stimulation of patrons, display specified anatomical areas to be observed, sketched, photographed, painted, sculpted or otherwise depicted by persons paying such consideration. Modeling studio does not include schools maintained pursuant to standards set by the State Board of Education. Modeling studio further does not include a studio or similar facility owned, operated, or maintained by an individual artist or group of artists, and which does not provide, permit, or make available specified sexual activities.
2. **Distinguished or Characterized by an Emphasis Upon.** As used in this subsection, the term "distinguished or characterized by an emphasis upon" shall mean and refer to the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or predominant character and theme are the depiction of the enumerated sexual activities or anatomical areas.
3. **Nudity or a State of Nudity.** The term "nudity or a state of nudity" as used in this subsection, means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the areola or nipple, or the showing of the covered male genitals in a discernible turgid state.
4. **Regularly Features.** The term "regularly features" with respect to an adult motion picture theater, theater or adult cabaret means a regular and substantial course of conduct. The fact that live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities occurs on two (2) or more occasions within a thirty (30) day period, three (3) or more occasions within a sixty (60) day period, or four (4) or more occasions within a one hundred and eighty (180) day period, shall to the extent permitted by law be deemed to be a regular and substantial course of conduct.
5. **School.** The term "school" as used in this subsection is an institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This definition includes kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college, or university. The term "school" as used in this subsection also means day care center or facilities.
6. **Seminude.** The term "seminude" as used in this subsection, means a state of dress in which clothing covers no more than the genitals, pubic region, and areolas of the female breast, as well as portions of the body covered by supporting straps or devices.
7. **Specified Anatomical Areas.** The term "specified Anatomical Areas" as used in this subsection, means and includes any of the following:
 - a. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breast below a point immediately above the top of the areola; or

- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered;
or
 - c. Any device, costume or covering that simulates any of the body parts included in subdivisions (a) or (b) above.
8. Specified Sexual Activities means and includes any of the following:
- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
 - b. Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
 - c. Masturbation, actual or simulated;
 - d. Human genitals in a state of sexual stimulation, arousal or tumescence; or
 - e. Excretory functions as part of or in connection with any of the activities set forth in (a) through (d) of this subsection.
9. Establishment of an Adult Business. As used in this subsection, to "establish" an Adult Business shall mean and include any of the following:
- a. The opening or commencement of any Adult Business as a new business;
 - b. The conversion of an existing business, whether or not an Adult Business, to any Adult Business defined herein;
 - c. The addition of any of the Adult Businesses defined herein to any other existing Adult Business; or
 - d. The relocation of any such Adult Business.

C. Location and Distance Regulations.

- 1. Adult Businesses shall only be allowed in H-S (Highway Service), M1 (Light Manufacturing) and M-2 (Manufacturing) districts.
- 2. No Adult Business shall be allowed:
 - a. Within 1,000 feet of any school, public park or recreation area, residential district, mobile home park or MHP District, church or religious institution;
 - b. Within 500 feet of any other Adult Business premises.
- 3. Any Adult Business lawfully established and lawfully operating under the Milpitas Municipal Code is not in violation of these regulations by the subsequent establishment of a school, public park or recreation area, residential district, or church or religious institution within the respective distances specified above for each type of use. This provision applies only to the renewal of an Adult Business permit and does not apply when an application for an Adult Business permit is submitted after such permit has been revoked.

4. Distance between any two (2) Adult Business premises shall be measured in a straight line, without regard to intervening structures or objects, from the nearest entrance of an adult business premises to the nearest entrance of the second adult business premises. The distance between any Adult Business premises and any school, public park or recreation area, residential district, church or religious institution shall also be measured in a straight line, without regard to intervening structures or objects, from the nearest entrance of the Adult Business premises to the nearest property line of a school, public park or recreation area, residential zone, or church or religious institution. (Ord. 38.711 (part), 8/20/96)

10-13.05 Home Occupation

A. Purpose. The purpose of this Section is to provide residents with the ability to work at home yet ensure that the business does not interfere with, detract from, or otherwise adversely affect the character of the neighborhood.

B. Regulations:

1. All persons operating a home occupation must obtain a home occupation permit from the City prior to commencing any business. It is unlawful to operate a home occupation without a permit.
2. Only the residents of the dwelling may operate the home occupation. No employees associated with the home occupation shall report to work on the premises.
3. The home occupation shall not involve more than one client visitation on the premises at any time.
4. The home occupation shall not be operated in a manner which creates noise, vibrations, dust, odor, smoke or television and radio interference affecting adjoining properties.
5. No signs are permitted either on or off the premises in connection with the home occupation. Products or equipment produced or used by home occupation shall not be displayed in a manner which is visible from the exterior of the dwelling.
6. There shall be no storage of materials or supplies outdoors in a manner which is visible from adjacent properties or public ways.
7. The home occupation shall not require modification or exterior alterations of the dwelling in which a home occupation is conducted.
8. The home occupation shall be conducted entirely within the dwelling except for those types of occupations which are conducted entirely off-site and away from the dwelling.
9. The occupations listed below shall not be considered incidental and secondary to the residence because they will change the residential character of the dwelling and because they change the character of the neighborhood:
 - a. Barber and beauty shops or similar cosmetology establishments;
 - b. Kennels and other boarding for pets;

- c. Mechanical and auto repairs;
- d. Medical and dental offices;
- e. Retail sales (excluding retail sales in which all products are sold over the phone or internet and shipped to the customer).

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

10-13.06 Large Family Child Care and Child Care Centers

A. Purpose. The purpose of provisions dealing with childcare facilities is to allow regulation of such facilities to the extent provided herein. However, nothing is intended to allow regulation to a greater extent than allowed by State law.

B. Required Review.

1. Large family child care homes may be approved administratively by the Planning Division, provided that the applicant submits information to the Planning Division demonstrating compliance with applicable development standards listed in Subsection 18.06(C), Development Standards, below, and the applicant obtains approval from the Fire Department.
2. Child care centers shall require approval of a Conditional Use Permit by the Planning Commission, as per Subsection 57.07, Conditional Use Permits, of this Chapter. The applicable development standards listed in Subsection 18.06(C), below, shall be addressed in the Conditional Use Permit process.

C. Development Standards.

1. Density. Large family child care homes shall be spaced at least three hundred (300) feet apart from each other. This spacing requirement does not apply to small family childcare homes.
2. Off-Street Parking Requirements. There shall be provided off-street parking spaces for automobiles in accordance with the requirements of Section 53, Off Street Parking Regulations, of this Chapter. All such parking spaces shall be improved as provided for in Subsection 54.03, Improvement of Parking Areas, Auto Sales Areas, and Loading Areas, of this Chapter.
3. Hours of operation. For large family child care homes, hours of operation shall not occur before 6:30 A.M or after 7:30 P.M., in order to maintain compatibility with neighboring properties and limit noise during night-time hours. Hours of operation shall be determined through the Conditional Use Permit process and shall be based on compatibility with neighboring properties and other planning principles as set forth in Subsection 57.04, Conditional Use Permits, of this Chapter.
4. Fence Height. Outdoor play areas for childcare centers shall be enclosed with a six-foot high fence. The fence type shall be compatible with neighboring properties and other planning principles as set forth in Subsection 57.04, Conditional Use Permits, of this Chapter.

5. Code Enforcement Procedures. If any large family child care home is operating in a manner that constitutes a nuisance, the child care facility operator shall work with the Planning Division to address the nuisance, through such actions as adjusting hours of operation, adjusting hours of outdoor play, staggering times for child drop-off and pick-up, and the like. If any childcare center is operating in a manner which constitutes a nuisance, the Planning Commission shall reopen the Conditional Use Permit to add or change conditions of approval addressing the issue(s). If the nuisance continues, the Planning Commission may review the Conditional Use Permit with a recommendation to the City Council pursuant to Section 63.06 (Revocation, Suspension and Modification). (Ord. 38.761 (part), 5/20/03; Ord. 38.702 (1) (part), 8/15/95)

10-13.07 Mobile Homes

A. Purpose and Intent. This section provides standards and procedures for individual mobile homes on individual lots in residential zones. These standards are provided to ensure the compatibility of mobile homes with other surrounding permitted uses, create a safe and desirable living environment for mobile home residences, and address land use compatibility.

B. Applicability and Review Requirements. A single mobile home may be permitted on lots zoned for single-family dwellings where it has been determined the lot and structure are compatible:

1. In districts where site plan and architectural review is not generally required for single-family dwellings, the site plan and architectural review process shall be utilized to initially determine if a lot and structure is compatible for a mobile home. Compatibility of a lot and structure shall be determined by such factors as height, bulk and character of other structures in the neighborhood. If a lot and structure is determined to be compatible, site plan and architectural review is limited only to specifying roof overhang, roofing material and siding material based on the following standards.

C. Development Standards. The following development standards shall be applicable to the establishment of mobile homes as single-family dwellings in the R1, and AR Districts:

1. Mobile homes and any garages, carports, and other structures attached thereto, must conform to all regulations for single-family dwellings applicable to the zone.
2. Mobile homes must be certified under the National Manufactured Housing Construction and Safety Standards Act of 1974.
3. Mobile homes must be attached to a permanent engineered perimeter foundation system approved by the Chief Building Official and pursuant to Section 18551 of the State Health and Safety Code.
4. Mobile homes must be covered with stucco and/or wood siding or an exterior material commonly found on new conventionally erected single-family dwellings in the surrounding area.
5. The roofing material must be wood or composition shingles or other materials commonly found on conventionally erected single-family dwellings in the surrounding area. The roof must have a minimum pitch with respect to roofing material in accordance with the City of Milpitas Building Code.
6. The roof must have eave and gable overhangs of not less than eighteen (18) inches measured horizontally from the vertical side of the mobile home. The overhang must be constructed with

materials commonly found on conventionally erected single-family dwellings in the surrounding area and must be at the same slope and be covered with the same roofing material as the roof itself.

7. The exterior covering and roofing materials of the garage, carport, or any other structure attached to the mobile home must be the same as for the mobile home.
8. As used in this Section, "commonly found" means an architectural feature or construction material that occurs or appears frequently on conventionally erected single-family dwellings within five hundred (500) feet of the boundaries of the lot or parcel on which a mobile home is proposed as determined by the Planning Commission. (Ord. 38.541, 4/20/82: Ord. 38 (part), 3/15/55)

10-13.08 Second Family Unit

A. Purpose and Intent. The purpose of these standards is to ensure that second residential dwelling units located in single-family residential zones do not adversely impact either adjacent residential parcels or the surrounding neighborhood, and are developed in a manner which protects the integrity of the residential zone, while providing for needed housing opportunities for owners of eligible parcels. This section is also intended to comply with State law, Government Code Section 65852.2.

B. Review Requirements. Any application for second family unit that meets the following standards in subsection 13.08(C), Minimum Standards, below shall be approved ministerially without discretionary review or public hearing. One second family unit may be allowed per lot, subject to all of the following criteria:

C. Minimum Standards.

1. Existing Use. The lot is residentially zoned and contains only one (1) existing, legal single-family dwelling unit.
2. Number. A maximum of one (1) second family unit shall be permitted on any lot.
3. Applicant and Ownership.
 - a. One (1) of the two (2) units shall be occupied by the owner of the property at the time of application submittal.
 - b. The second family unit shall not be sold to a different owner than the main residence, and may be rented.
4. Attached Second Family Unit.
 - a. If attached to the main dwelling, the second family unit shall comply with the same building height, setback, rear yard coverage and lot coverage requirements and limitations as the main dwelling.
 - b. An attached second family unit shall be located within the living area of the existing dwelling. "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage.

- c. The increased floor area of an attached second family unit in a non-Hillside combining district shall not exceed thirty (30%) percent of the existing living area, not to exceed four hundred seventy-five (475) square feet in size.
 - d. The increased floor area of an attached second family unit in the Hillside combining district shall not exceed thirty (30%) percent of the existing living area, not to exceed one thousand two hundred (1,200) square feet in size. However, in no case shall the overall building size exceed that allowed in Section 45, Hillside Combining District, of this Chapter.
5. Detached Second Family Unit.
- a. A detached second family unit in a non-Hillside combining district shall be located on the rear half of the lot, shall not exceed fifteen (15) feet in height, and shall be no closer than six (6) feet, and no farther than one hundred (100) feet, from the main dwelling. It shall conform to the same yard setback and rear yard coverage regulations applicable to accessory buildings and structures, as per Subsection 54.08, Accessory Buildings and Structures, of this Chapter.
 - b. A detached second family unit in the Hillside combining district shall not exceed seventeen (17) feet and one (1) story from finished grade to the highest ridgeline of the building, and it shall not exceed one thousand two hundred (1,200) square feet in size. It shall be located on the rear half of the lot, and shall be no closer than six (6) feet, and no farther than one hundred (100) feet, from the main dwelling, shall not cover more than thirty (30%) percent of the required rear yard, shall conform to the side yard setback requirements as the main dwelling, and shall count towards the maximum allowed impervious surface coverage for the parcel on which it is located.
6. Parking. The second family unit shall provide one (1) more off-street parking space than required for a single-family dwelling. This additional parking space may be tandem and within the required front yard so long as it is located on the driveway serving the main dwelling. Front yard coverage requirements in the R1 zoning district shall apply. No parking shall be permitted on the street side yard of a corner lot. Covered parking shall comply with the requirements in Subsection 54.08, Accessory Buildings and Structures, of this Chapter. Parking space shall measure ten (10) feet by twenty (20) feet, and be improved as provided in Subsection 54.03, Improvement of Parking Areas, Auto Sales Areas and Loading Areas, of this Chapter.
7. Other Standards
- a. A second family unit which is an efficiency unit, as defined Section 17958.1 of the State Health and Safety Code, shall not contain less than one hundred fifty (150) square feet.
 - b. The second family unit shall not have more than one (1) bedroom or more than one (1) kitchen.
 - c. Local building codes shall apply to additions to existing single-family dwellings, as well as to detached second family units, as appropriate.
 - d. A permanent foundation shall be required for all second family units.
 - e. Any construction shall conform to site and architectural plan review, fees, charges and other zoning requirements applicable to residential construction in the zone in which the property is located.

- f. Aesthetics. The second family unit shall be designed to be architecturally compatible and visually integrated with the main dwelling. It shall employ design, materials and colors matching those of the main dwelling.
- g. Second family units shall not be allowed where roadways, public utilities and services are inadequate, as determined by City staff, based on the City's adopted sewer and water master plans. If City staff believe that an additional residential unit will impact traffic flow along the residential street on which the unit is proposed, the applicant shall provide a traffic impact analysis for staff review. The applicant shall comply with the recommendations contained in the traffic impact analysis.

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

10-13.09 Wireless Communications Facilities

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

B. Review Requirements.

1. Unless identified as exempt below, wireless communications facilities shall require the approval of a Conditional Use Permit, in accordance with Subsection 57.04, Conditional Use Permits, of this Chapter.
2. Any facility exempt from local regulation per the FCC and those wireless communications facilities listed below shall be exempt from obtaining a Conditional Use Permit and shall be permitted provided that the following standards are met:
 - a. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:
 - i. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Subsection 54.08, Accessory Buildings and Structures, of this Chapter; and

- ii. All required building permits are obtained.
- b. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:
 - i. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Subsection 54.08, Accessory Buildings and Structures, of this Chapter; and
 - ii. All required building permits shall be obtained.
- c. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.
- d. Stealth wireless communications facilities. The Planning Division shall review a stealth antenna installation if the project meets the definition of a stealth wireless communications facility within Subsection 2.03, Definitions, of this Chapter.

C. Development Standards for Exempt Facilities

Wireless Communication Facilities exempt from obtaining a Conditional Use Permit in accordance with Subsection 57.04, Conditional Use Permits, of this Chapter, shall meet the following:

1. No vertical structure associated with an Antenna (hereinafter “Tower or Mast”) shall exceed the maximum height of a structure permitted in the zoning district in which the structure is located by more than twenty-five (25) feet (hereinafter “Maximum Height”) except as provided in this Section. The Maximum Height shall be measured to the highest point of the Tower or Mast or Antenna(s) mounted thereon.
2. All Towers or Masts must be attached to the main structure or to a foundation. In any event, the design of the attachment must meet or exceed the Tower or Mast manufacturer’s recommended design for such structural attachment or foundation. Guy wires may only be used as a means of support for Towers or Masts only if such Tower or Mast does not exceed 20 feet in height. Wire antennas suspended from Towers or Masts shall not be considered guy wires. Such manufacturer’s recommended design shall be submitted with the building permit application and shall form the basis for permitting and subsequent inspection.
3. The sum of equivalent flat plate wind load(s) in square feet of all equipment needed for the communication facility to function and that are mounted on the Tower or Mast shall not exceed 100% of the Tower or Mast manufacturer’s maximum wind loading specification for a minimum 70 mph wind if located on the valley floor and 80 mph wind if located within the hillside area.
4. No part of any Antenna mounted on a Tower or Mast may extend closer than 3 feet to a property line whether fixed or movable, or forward of the front of the building. However, in no case shall any such antenna encroach into a utility easement within which overhead power lines are located. If such antenna serves a multi-family unit that is within a multi-family building where the unit does not adjoin a side or rear yard of the building, such antenna attached to the unit or attached to a structure attached to the unit may extend forward of the front of the building by no more than 3 feet. However, in no case shall any such encroachment forward of the front of the building extend

into a public right-of-way or private accessway.

5. All Towers and Masts attached to a foundation must be located within the side or rear yard and no closer than 10 feet from a property line. However, in no case shall a Tower and/or Mast encroach into a utility easement.
6. Receive-only radio and television antennas, citizens band facilities and data communications facilities and satellite dishes one meter or less in diameter in residential zones, or two meters or less in diameter in commercial and industrial zones shall not be installed between a public right-of-way and a structure. Any of the aforementioned wireless communication facilities that are preempted by federal law that are proposed to be located in the area between a public right-of-way and a structure, shall be allowed without a use permit if such facility is attached to said structure and if such location provides the only unobstructed view required for the facility to function.
7. There shall be no more than two antenna support structures that exceed 20 feet in height per parcel.
8. A Tower or Mast may exceed the Maximum Height referenced in subsection a) above only by an extendable Tower or Mast provided that (a) the collapsed height of the Tower or Mast and Antenna(s) does not exceed the Maximum Height and (b) the extendable Tower or Mast shall be permitted to exceed the Maximum Height only during communications operations and shall be lowered to the Maximum Height upon termination of each operating session.
9. Masts, Towers and Antennas shall not be painted and shall be limited to gray, black, white, brown, tan, silver, gold, pale blue, dark green or any other color compatible with surrounding structures or vegetation.
10. If an Antenna, Tower or Mast is no longer used for its intended purpose, it shall be removed.
11. All operations of Tower or Mast mounted Antenna(s) must meet applicable FAA and FCC rules and regulations and any emissions must meet applicable FCC and ANSI radiation safety guidelines.

SECTION 21. Chapter 10, Section 42 of Title XI of the Milpitas Municipal Code “Site and Architectural (-S) Overlay District (Site Development Permits and Minor Site Development Permits” is hereby deleted in its entirety.

SECTION 22. Chapter 10, Section 43 of Title XI of the Milpitas Municipal Code “Transit Oriented Development (-TOD) Overlay District” is hereby deleted in its entirety.

SECTION 23. Chapter 10, Section 44 of Title XI of the Milpitas Municipal Code “MHP Mobile Home Park Combining District” is hereby deleted in its entirety.

SECTION 24. Chapter 10, Section 46 of Title XI of the Milpitas Municipal Code “OO Gateway Office Overlay Combining District” is hereby deleted in its entirety.

SECTION 25. Chapter 10, Section 54 of Title XI of the Milpitas Municipal Code “General Provisions” is hereby amended in its entirety to read as follows:

--Begin Section--

SECTION 54 GENERAL PROVISIONS

- 10-54.01 Purpose and Intent
- 10-54.02 Other Uses Permitted by Commission
- 10-54.03 Improvement of Parking Areas, Auto Sales Areas and Loading Areas
- 10-54.04 Zoning of Annexed Areas
- 10-54.05 Height: Height Conformance
- 10-54.06 Area: Area Requirements
- 10-54.07 Planned Unit Development
- 10-54.08 Accessory Buildings and Structures
- 10-54.09 Geologic Hazard Zones
- 10-54.10 Fences and Walls
- 10-54.11 Homebuyer Awareness of General Plan
- 10-54.12 Areas for Collecting and Loading Recyclable Materials
- 10-54.13 Reserved
- 10-54.14 Condominium Conversions
- 10-54.15 Density Bonus for Affordable Housing Developments (entire section)
- 10-54.16 Trash Enclosures, Equipment and their Screening
- 10-54.17 Lighting
- 10-54.18 Temporary Contractor's Office
- 10-54.19 Model Home Complexes and Sales Offices

10-54.01 Purpose and Intent

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

A. Conformance with All Sections of This Code

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

10-54.02 Other Uses Permitted by Commission

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

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

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

10-54.04 Zoning of Annexed Areas

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

10-54.05 Height: Height Conformance

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

10-54.06 Area: Area Requirements

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

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

5. No parking area, parking space or loading space which existed at the time the ordinance codified in this Section became effective, or which subsequent thereto is provided for the purpose of complying with the provisions of this Chapter, shall thereafter be relinquished or reduced in any manner below the requirements established in this Section, unless equivalent facilities are provided elsewhere.
6. No building permit shall be issued for a building or structure on a lot which abuts a street dedicated to a portion of its required width and which lot is located on that side thereof from which no dedication was secured, unless the yards provided on such lot include both that portion of the lot lying within the future street and the required yards.
7. No building permit shall be issued for a building or structure on a corner lot when such building or structure is to be oriented in such a manner as to reduce the front yard requirement on the street on which such corner lot had its frontage at the time this Ordinance became effective.
8. Every required front, side and rear yard shall be open unobstructed from the ground to the sky.
9. At each end of a through lot there shall be a front yard of the depth required by this Chapter for the district in which each street frontage is located; provided, however, that one of such front yards may serve as a required rear yard.
10. Any lot of record, whether developed or undeveloped, existing in accordance with law at the time of reclassification by the City of Milpitas, which after said reclassification is less than the minimum lot area required by the zoning district to which it is reclassified shall notwithstanding have all the rights and privileges of said zoning district.
 - a. Said rights and privileges shall only remain valid where said lot of record is not modified as to size, shape or area subsequent to said reclassification.
 - b. Where the yard regulations, as required by the zoning district to which said lot of record is reclassified, cannot reasonably be complied with because of insufficient minimum lot area by virtue of said reclassification, said regulations may be modified or determined by the Commission as provided for in Subsection 57.06, Variances, of this Chapter. (Ord. 38.367, 12/16/75; Ord. 38 (part), 3/15/55)

10-54.07 Planned Unit Development

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

B. Review Requirements.

1. Application for Planned Unit Developments shall be made on a form prescribed for this purpose by the City of Milpitas.

No application shall be accepted for a use which will require change of zoning district, unless said application is accompanied for an application for a zoning amendment, as provided in 57.02, General Plan/Specific Plan/Zoning Amendments, of this Chapter.

2. Application shall be accompanied by a general development plan showing the use or uses, dimensions and locations of proposed structures and of acres to be reserved for vehicular and pedestrian circulation, parking, public uses such as schools and playgrounds, landscaping, and other open spaces, and architectural drawings and sketches demonstrating the design and character of the proposed uses and the physical relationship of the uses. Such other pertinent information shall be included as may be required by the Commission.
3. Application shall be accompanied by a fee which shall be established by City Council Resolution.
4. The Planning Commission shall hold at least one public hearing, prior to making its recommendations to the City Council. Upon receipt of the recommendation of the Planning Commission, the City Council shall hold at least one public hearing, prior to any final action on an application.
5. Notice of hearing shall be given in accordance with the provisions of Section 64, Development Review Process, of this Chapter.
6. In order to grant a Planned Unit Development permit the Planning Commission and City Council shall determine that the following standard requirements have been met:
 - a. The proposed development will result in an intensity of land utilization no higher than and standards of open spaces at least as high as permitted or specified otherwise for such development in the General Plan, Zoning Ordinance and Subdivision Ordinance.
 - b. The development will not create traffic congestion pursuant to the California Environment Quality Act (CEQA). However, if traffic congestion is created by the proposed development, the traffic impacts will be mitigated by traffic improvements proposed by the developer or by funding capital projects and by on-site provisions for traffic circulation and parking or, if it cannot be mitigated, the Planning Commission and City Council shall issue any necessary findings pursuant to CEQA.
 - c. For residential development in the Valley Floor Planning Area, as defined in the Milpitas General Plan Land Use Element, the maximum dwelling unit density per gross acre shall be the upper limit of the corresponding General Plan density range within each zoning designation. In the case of the Valley Floor Planning Area residential developments proposed on land zoned "R3" (Multiple Family Residential) an overall density of up to forty (40) units per gross acre can be approved if the following criteria are found by the City Council to be met.
 - i. Sewer capacity and water availability will be sufficient to accommodate the proposed project density as well as other future planned unit development downstream from the project site. Any improvements to the sewer or water system that would be required to accommodate any higher density proposals may be made conditions of project approval;
 - d. Required Findings. In addition to the finding that standard requirements in this section have been met, the Planning Commission and City Council must also make the following findings based on evidence in the record in order to approve the Planned Unit Development application:

- i. Development of the site under the provisions of the Planned Unit Development will result in public benefit not otherwise attainable by application of the regulations of general zoning districts.
 - ii. The proposed Planned Unit Development is consistent with the Milpitas General Plan; and
 - iii. The proposed development will be in harmony with the character of the surrounding neighborhood and will have no adverse effects upon the adjacent or surrounding development, such as shadows, view obstruction, or loss of privacy that are not mitigated to acceptable levels.
7. The Planning Commission shall make its recommendation to the City Council within 45 days of the date of the filing of said application (pending any necessary zoning amendment). The Commission may recommend to the City Council that the permit be denied, that permit be approved as submitted, or that the permit be approved, subject to various conditions. Within 30 days of the receipt of the recommendation from the Planning Commission, the City Council shall hold a hearing, as required by paragraphs 54.07(B)(3) and 54.07(B)(4) of this subsection. The City Council shall consider the report of the Planning Commission but shall not be bound thereby. Upon the close of the hearing, the City Council may deny the permit, approve the permit as submitted, or approve the permit subject to such conditions as it deems necessary (in addition to or other than those recommended by the Planning Commission).

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

8. Following the issuance of a planned unit development by the City Council, the Building Inspector shall issue a building permit and shall insure the development is undertaken and completed in conformance with the approved plans.
9. A Planned Unit Development permit may be revoked after notice to the permittee and hearing in any case where the conditions of such permit have not been complied with. The revocation of the permit shall only be made after written notice of violation is mailed to the holder of the permit. The permit holder shall be given the opportunity to explain why the permit should not be revoked. The Planning Commission and City Council shall hold a public hearing regarding the permit. After receiving the Planning Commission's recommendations on permit, the City Council at its discretion may revoke the permit issued if they determine that the previous conditions of approval have not been complied with. The public hearing shall be held in accordance with Section 64, Development Review Process, of this Chapter.

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

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

10. No area designated for use as a "Common Green" or "Park" upon any map or plat or plan which has been approved as part of a Planned Unit Development may be used for any purpose other than a common green or park or playground, including but not limited to a school playground as approved

by the City Planning Commission. (Ord. 38.706 (part), 7/16/96; amended during 2-92 supplement; Ord. 38.610, 9/2/86; Ord. 38.526, 1/20/81; Ord. 38.377, 9/7/76; Ord. 38.92, 12/6/66; Ord. 38.89, 7/7/66; Ord. 38.68, 4/15/65; Ord. 38 (part), 3/15/55)

10-54.08 Accessory Buildings and Structures

A. General Requirements.

1. Exempted. Fences, walls, latticework screen and guard railings are exempt from the accessory building and structure provisions.
2. All accessory buildings and structures, as well as building additions as described in Subsection 55.04-11, Projections Allowed Into Required Yards/Setbacks, of this Chapter, in the rear yard are limited cumulatively to a total area not exceeding thirty percent (30%) of the area of the required rear yard, except where noted below. Projection of eaves of accessory buildings and structures shall not be closer than three (3) feet to any side or rear lot line.
3. Attached or detached. An accessory building may be erected detached from the principal building, or erected as an integral part of the principal building, or it may be connected by a breezeway or similar structure.
 - a. Attached accessory building. An accessory building attached to the main building shall be made structurally a part and have a common wall with the main building and shall comply in all respects with the requirements of this Chapter applicable to the main building.
 - b. Detached accessory building. A detached accessory building in an "R" District shall be located on the rear one-half (1/2) of the lot and at least six (6) feet from any dwelling building existing or under construction on the same lot and at least fourteen (14) feet from a residential structure existing or under construction on any adjacent lot.

Any detached accessory building shall not be located within three (3) feet of any rear lot line or side line of the rear half of an adjacent lot or within seven (7) feet of the side line of the front half (1/2) of any adjacent lot; and, in the case of a corner lot, shall not project beyond the front line required or existing on the adjacent lot.

B. Standards by Type of Building or Structure.

1. Recreation shelters and storage shelters shall be permitted as accessory buildings provided that these uses are not equipped for use as living quarters.
2. Guest house accessory buildings shall not be closer than six (6) feet from the nearest point of the main building. There shall be not more than one (1) guest house on any one (1) building site.
3. A porte-cochere may be permitted over a driveway in a side yard provided such structure is not more than fifteen (15) feet in height, twenty-four (24) feet in length, not closer than three (3) feet from the side lot line, and is entirely open on at least three (3) sides, except for the necessary supporting columns.
4. Open, unenclosed stairways, or balconies, not covered by a roof or canopy, may extend or project into a required rear yard not more than four (4) feet, and such balconies may extend into a required front yard not more than thirty (30) inches. Openwork type railing not more than three and one-half (3-1/2)

feet in height may be installed or constructed on any open, unenclosed stairways, or balconies, not covered by a roof or canopy.

5. Open, unenclosed porches, and decks, not covered by a roof or canopy, which do not extend above the finished floor level of the first floor of the building, may extend or project into any rear or side yard, but in no event shall the structure come closer than three (3) feet to any adjoining property line. Openwork type railing not more than three and one-half (3-1/2) feet in height may be installed or constructed on any porch or deck.
6. Platforms, landing places, concrete slabs, walkways and paved areas not covered by a roof or canopy and up to eighteen (18) inches above the ground may extend or project into any rear or side yard but in no event shall the projection come closer than three (3) feet to any adjoining property line with the exception of walkways four (4) feet in width or less which may extend to the property line. These projections are excluded from the 30% maximum required rear yard coverage.
7. Patio covers, including but not limited to gazebos and pergolas shall not exceed twelve (12) feet in height. Built-in barbecue pits and fountains shall not exceed six (6) feet in height. None of these structures shall come closer than three (3) feet to any side or rear property line. Patio covers are as defined in Subsection 2.03, Definitions, of this chapter.
8. In-ground pools, in-ground spas, and associated decking no more than eighteen (18) inches above ground shall not come closer than three (3) feet to any side or rear property line. These accessory structures are excluded from the 30% maximum allowed rear yard coverage.
9. Depressed ramps and handicap ramps, may be located in any front, side or rear yard but in no case shall come closer than three (3) feet to any adjoining property line. Openwork type railing and guard railing for safety protection around depressed ramps not more than three and one-half (3-1/2) feet in height above ground level adjacent thereto may be installed or constructed on any ramp.
10. Open, unenclosed fire escapes may extend or project into any front, side or rear yard not more than four (4) feet.
11. Utility or mechanical equipment structures, such as pool equipment units and air conditioning units shall not come closer than three (3) feet to any side or rear property line.
12. Community Emergency Caches. Shall be exempt from discretionary review when they meet the definition in Subsection 2.03, Definitions, of this Chapter and do not displace required parking for the site and are located in the rear half of the property.

10-54.09 Geologic Hazard Zones

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

10-54.10 Fences and Walls

A. Purpose and Intent. The purpose and intent of this section is to establish standards for fences and walls and similar screening that limit their visual and traffic impacts, but allow for the privacy and

architectural interest afforded by such structures. The purpose of a stricter fence or wall height limit in the front yard is to provide for an open street scene, to allow the primary structures on a street to be visible and to contribute to the visual character of the neighborhood, and to allow for unobstructed views of traffic to and from driveways.

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

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

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

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

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

subject to the provisions of Subsection 54.16, Trash Enclosures, Equipment and their Screening of this Chapter.

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

1. Height Limitations. Fences or walls shall not exceed fifty-four (54) inches in height, and be an openwork design, and may be located anywhere on the parcel. No city review of this type fence is required.
2. Construction Materials. All fence post and supporting framework material shall be wood in order to maintain the rural character of the hills. The Planning Commission, under the "H" Combining District review process (Subsection 45.09, Site and Architectural Review, of this Chapter), may approve any other type material for the posts with a Site Development Permit (Subsection 57.03, Site Development Permits, of this Chapter).
3. Openwork Design. Openwork type fences shall be comprised of materials which results in a minimum of seventy-five percent (75%) visual transparency within every square foot area, posts excluded. Chain link fences and cyclone type fences are not considered an approved material in the area.
4. Exceptions:
 - a. In any zoning district combined with the "H" Combining District fences at the rear and side yards which exceed fifty-four (54) inches in height and those fences other than an openwork design may be constructed on a parcel or lot, if and when their location and design have first been approved by the Planning Commission under the "H" Combining District review process (Subsection 45.09, Site and Architectural Review, of this Chapter) with a Site Development Permit (Subsection 57.03, Site Development Permits, of this Chapter).
 - b. In any zoning district combined with the "H" Combining District fences around tennis courts, and the like as determined by the Planning Commission, under the "H" Combining District review process (Subsection 45.09, Site and Architectural Review, of this Chapter) with a Site Development Permit, (Subsection 57.03, Site Development Permits, of this Chapter), may be eight (8) feet maximum height provided that the portion of the fence higher than six (6) feet is an approved openwork design. Chain link fencing may be used, in this case, as an approved openwork design. The Planning Commission, under the "H" Combining District review process, may approve fences over eight (8) feet in height with a Site Development Permit.

All tennis courts and the like shall be screened from view from the valley floor with landscape materials, as outlined in the City Council Hillside Landscape Policy, with said landscaping to the approval of the Planning Commission under the "H" Combining District review process (Subsection 45.09, Site and Architectural Review, of this Chapter) with a Site Development Permit, (Subsection 57.03, Site Development Permits, of this Chapter),
 - c. Barbed wire fences, using a post material other than wood, may be erected on any parcel two (2) acres or more without Planning Commission review or approval.

10-54.11 Homebuyer Awareness of General Plan

At the time of initial sale of a newly constructed R1 home, the residential builder's sales staff shall be required to obtain the signatures of the buyers that they have been made aware of the adopted General

Plan proposed land uses for the area within the general neighborhood of the proposed purchase site, and received a copy of said General Plan map.

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

10-54.12 Areas for Collecting and Loading Recyclable Materials

A. Recycling Areas at New Developments. Areas for collecting and loading recyclable materials are required for:

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

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

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

C. Waiver of parking spaces, encroachment into landscaping or open space areas for voluntary participation.

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

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

10-54.13 Reserved

10-54.14 Condominium Conversions

A. Purpose and Intent. The City of Milpitas is concerned with maintaining an adequate supply of housing for its citizens including rental housing. The adopted Housing Element of the Milpitas General Plan contains the following goal statements, pertinent to this matter:

1. To encourage the provision of a variety of individual choice of tenure, housing type, and location.
2. To provide within our ability, opportunities for Milpitas citizens to meet their housing needs in the housing market.
3. To encourage the cooperation within the housing market so that suppliers and consumers can function more effectively, consistent with community growth goals.
4. To use zoning in ways which will encourage variety and mix in housing types and provide adequate sites for housing persons of all races, ages, ethnic groups, and income levels in Milpitas. Housing is considered a basic necessity and any scarcity within the community area has both a direct and indirect adverse impact on public safety, health and welfare (including but not limited to, health and safety problems relating to the quality of housing). In times of low vacancy rate and high housing cost many people cannot afford to buy homes within the community or its nearby market area and are forced to rent housing in apartments or other multiple dwellings. The unregulated conversion of rental apartment units to condominiums ownership may aggravate such a serious situation and force citizens to move out of the community.

B. Determination--Allowance of Converting Apartment Units.

1. Declaration of Housing Shortage. When the number of vacant apartments being offered for rent or lease in the City is equal to or less than six (6) percent of the total number of such dwelling units offered for and under rental or lease agreement in the City, a housing shortage exists which is inconsistent with the purposes of this chapter and with the declared goals of the City relating to its Housing Element of its adopted General Plan.
2. Determination of Vacancy Rate and Surplus. Whenever an application for a condominium conversion is filed, the Planning Division shall conduct a vacancy rate survey of the existing rental apartment dwelling units in the City. This survey shall be completed within forty-five (45) days from the date the application for condominium conversion is deemed complete.
3. Surplus Required for Conversion Application. An application for condominium conversion of existing multiple family rental housing units to residential condominium ownership shall not be approved unless there is a vacancy surplus of existing apartments which equals six (6%) percent or greater of the total number of such units, within the City, and if all of the adult tenants lawfully in possession of two-thirds of the units indicate their desire to convert such project to condominium ownership, in writing, to the City. In no event shall a number of lots, parcels, units, or rights of exclusive occupancy proposed exceed the vacancy surplus by forty (40%) percent. Nothing herein contained shall be construed to prevent the payment of any consideration by landlord to tenant, provided however, consent obtained by payment to a tenant shall not be considered by the Council to be a free and willing consent unless payment of the same consideration is made to all tenants regardless of consent.

C. Development Standards. The following standards are required for any Residential Condominium Conversion development.

1. Off-Street Parking: Conformance to the current off-street parking standards.
2. Landscape and Open Space: Conformance to the current landscape and open space requirements.
3. Housing and Fire: Conformance to the current Housing codes and Fire Regulations of the City of Milpitas.
4. Meters and Control Valves: The consumption of gas and electricity within each unit shall be separately metered so that the unit owner can be separately billed for each utility. A water shut-off valve shall be provided for each unit or for each plumbing fixture.
5. Overcurrent Protection: Each unit shall have its own panel board for all electrical circuits which serve the unit.
6. Impact Sound Insulation: Wall and floor-ceiling assemblies shall conform to the sound installation performance criteria promulgated in Title 25, California Administrative Code, Section 1092, or its successor, and may be only replaced by another floor covering that provides the same or greater insulation.
7. Prohibition of Discrimination Against Prospective Buyers with Children. In no case shall a project which can reasonably accommodate children, as determined by the Planning Commission, limit initial sales to households or individuals without children.

D. Review Requirements. Condominium conversions are subject to a Conditional Use Permit in accordance to Subsection 57.04, Conditional Use Permits, of this Chapter and the filing of a Tentative Map in accordance with Chapter 1, Subdivisions of Title XI.

1. Protection of Tenant Rights. In addition to the general findings required for approval of a Conditional Use Permit, approval of a Conditional Use Permit for a condominium conversion is subject to the City Council finding that the requirements of Section 66427.1(a) and (b) of the California Subdivision Map Act have been completed in accordance with State Law. Said Sections deal with:
 - a. Notice to tenant(s) of intention to convert; and
 - b. Tenant(s) exclusive right to purchase their unit(s) upon the same terms and conditions that such unit(s) will be initially offered to the general public or terms more favorable to the tenant(s). (Ord. 38.761 (part), 5/20/03)

10-54.15 Density Bonus for Affordable Housing Developments (entire section)

A. Purpose and Intent. The Density Bonus regulations are intended to encourage the provision of affordable housing in the community by granting density bonuses and other incentives to developers of residential projects that construct or otherwise provide for housing units that will be available for purchase or rent by senior citizens and lower income persons and households. This Ordinance is adopted in conformance with Chapter 4.3 of Title 7 of the Government Code, Section 65915, et seq.

B. Applicability. The Density Bonus provisions are applicable in all zoning districts that allow residential development. The density bonus referred to in this Section shall apply to housing

developments consisting of five or more dwelling units.

C. Review Requirements.

1. Submittal requirements. Requests for a density bonus shall require the submittal of a Density Bonus application. The applicant shall submit site and architectural plans for the project (per Section 57.05(D), Submittal Requirements, of this Chapter) for review and approval in conjunction with the Planning Commission and City Council consideration of the Density Bonus application.
2. Public Hearings. The Planning Commission shall hold at least one public hearing, prior to making its recommendation to the City Council. Notice of hearing shall be given in accordance with the provisions of Section 64, Development Review Process, of this Chapter.

Upon receipt of the recommendation of the Planning Commission, the City Council and/or Redevelopment Agency shall hold at least one public hearing, prior to any final action on an application. Notice of hearing shall be given in accordance with the provisions of Section 64, Development Review Process, of this Chapter.

The City Council and/or Redevelopment Agency, after recommendation by the Planning Commission, may authorize an increase in allowable dwelling unit density for those residential projects that assist in meeting the lower income or senior housing needs of the community. When the Planning Commission and Council make a finding that a developer has complied with the requirements of Subsections 54.15(D)(4), Standards, and 54.15(E), Density Bonus Conditions, of this Chapter, the City Council may award a density increase, with the approval of the project.

D. Standards

1. Determination of Maximum Allowable Densities. The maximum allowable base density specified in the General Plan, including any other permitted increases to density.
2. Unit Type and Location. All affordable units shall be reasonably dispersed throughout the project, shall contain on average the same number of bedrooms as the non-affordable units in the project, and shall be comparable with the non-affordable units in terms of appearance, materials and finished quality. The Planning Commission may recommend to the City Council and/or Redevelopment Agency modifying the requirements as to unit size or type, if it is found that such a modification would better serve the affordable housing need of Milpitas.
3. Agreement. Prior to final building inspection and occupancy for a project containing affordable units, the applicant shall execute and record at the Santa Clara County Recorder's Office the City's Agreement Imposing Restrictions on Real Property, which Agreement shall explain the affordability requirements. The agreement shall be approved by the Milpitas City Attorney prior to recordation.
4. Retaining Affordability. A developer shall agree to, and the City shall insure continued affordability of, all lower- or very low-income density bonus units for thirty (30) years or a longer period of time, if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. If the City does not grant at least one (1) additional concession or incentive, in addition to a density bonus as specified in Subsection 54.15(E), Density Bonus Conditions, of this Chapter, the developer shall agree to, and the City shall ensure continued affordability for a minimum of ten (10) years of all lower or very low-income housing units receiving a density bonus.

5. Affordable Rents. Those units targeted for lower-income households, as defined in Section 50079.5 of the Health and Safety Code shall be affordable at a rent that does not exceed thirty (30%) of sixty (60%) percent of the Santa Clara County median income. Those units targeted for very low-income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty (30%) of fifty (50%) percent of County median income.

6. Relation to statute. Density bonus requirements not specified in these regulations shall be governed by the State Density Bonus Law, Government Code section 65915, et seq. (Ord. 38.767 (part), 2/7/06; Ord. 38.761 (part), 5/20/03)

E. Density Bonus Conditions.

1. When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the city shall provide the applicant incentives or concessions for the production of housing units and childcare facilities as prescribed in this section.
2. The city shall grant a density bonus and incentives or concessions described in Subsection 54.14(F), Concessions and Incentives, of this Chapter, when the applicant for the housing development seeks and agrees to construct at least any one of the following criteria:
 - a. Ten percent (10%) of the total units in a housing development for lower income households as defined in Section 50079.5 of the State Health and Safety Code.
 - b. Five percent (5%) of the total units in a housing development for very low-income households as defined in Section 5015 of the State Health and Safety Code.
 - c. A senior citizen housing development as defined in Sections 51.3 and 51.12 of the State Civil Code.
 - d. Ten percent (10%) of the total dwelling units in a condominium project as defined in subdivision (f) or in a planned development project as defined in subdivision (k) of Section 1351 of the State Civil Code for persons and families of moderate income, as defined in Section 50093 of the State Health and Safety Code.
3. If the housing development meets criteria (a), (b), or (c) above, the density bonus shall be an increase of 20% over the maximum allowable residential density under the general plan and zoning ordinance. If the housing development meets criterion (d) above, the density bonus shall be an increase of five (5%) percent over the maximum allowable residential density under the general plan and zoning ordinance.
4. If at least one of the above criteria is met, an additional density bonus shall be granted as per the following sliding scale:
 - a. An additional two and one-half (2.5%) percent density bonus for each increase of one (1%) percent Very Low-Income units above the initial 5% threshold;
 - b. A density increase of one and one-half (1.5%) percent for each one (1%) percent increase in Lower-Income units above the initial 10% threshold; and

- c. A one (1%) percent density increase for each one (1%) percent increase in Moderate-Income condominium or planned development units above the initial 10% threshold.
5. The total of the density bonuses pursuant to paragraphs (3) and (4) above shall not exceed 35% for the proposed housing development.

F. Concessions and Incentives. Any project that meets the minimum criteria specified in Subsection 54.15(E)(2), Density Bonus Conditions, of this Chapter, for a density bonus is entitled to concessions depending upon the amount of affordable housing provided as follows:

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

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

- a. The concession is not required in order to provide for affordable housing costs as defined in State Health and Safety § 50052.2, or for rents for the affordable units pursuant to Subsection 54.15(D)(5), Standards, of this Chapter.
 - b. The concession would have a specific adverse impact as defined in State Government Code § 65589.5(d)(2) upon the public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.
4. Land Donation. A density bonus of 15% over the maximum allowable residential density under the general plan and zoning ordinance is available to projects that donate land for residential use. The land must satisfy all of the following requirements prior to granting the density bonus:
- a. Have the appropriate general plan designation and zoning to permit construction of units affordable to Very Low-Income households in an amount not less than 10% of the units in the residential development;
 - b. Be at least one (1) acre in size or of sufficient size to permit development of at least 40 units; and
 - c. Be served by adequate public facilities and infrastructure.

A density bonus based on land donation may be combined with the density bonus in Subsection 54.15(E), Density Bonus Conditions, of this Chapter; however, the maximum combined density bonus that can be granted is 35%. When the land is transferred, it must have all the permits and approvals necessary for the development of the Very Low-Income housing units. The land

transfer shall occur prior to or concurrent with approval of the final subdivision map, parcel map, or residential development application. The land and affordable units must be subject to deed restrictions ensuring continued affordability. The city may require that the land be transferred to a developer instead of the city.

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

- a. Zero to one (0-1) bedroom—one (1) on-site parking space;
- b. Two to three (2-3) bedrooms—two (2) on-site parking spaces;
- c. Four and more (4+) bedrooms—two and one-half (2.5) on-site parking spaces.

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

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

For the purpose of this section, development standards are defined as site or construction conditions that apply to a residential development pursuant to any local policy, resolution or regulation. The requested waiver shall be approved unless the City makes either of the findings set forth in Subsection 54.15(F)(3), Concessions and Incentives, of this Chapter.

10-54.16 Trash Enclosures, Equipment and their Screening

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

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

1. When located on the street side of corner lots, the enclosure must be set back at least as far as the main building.
2. Colors and materials of the enclosure shall complement the building and shall consist of masonry wall such as split face block or masonry finished to match the building or other solid screening material utilizing colors and materials which complement the building.
3. Gates shall be solid metal painted to match the enclosure.

4. The enclosure shall screen the dumpsters, trash compactors or equipment.
5. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Title X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an enclosure.
6. When feasible, sides and rear of the enclosure shall be landscaped.
7. On-site parking shall meet ordinance requirements, except as provided in Subsection 54.12(C), Areas for Collecting and Loading Recyclable Materials, of this Chapter.
8. Trash enclosures shall be located as far away as possible from Residential or Mobile Home Park combining districts or uses.
9. Follow the City's Engineering standards for trash enclosures.

C. Ground and roof mounted equipment.

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

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

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

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

- c. On-site parking shall meet minimum standards.

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

- e. Height of equipment.

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

- ii. In the Mixed Use district, the installed height shall not exceed six (6) feet.
 - iii. If adjacent to a Residential or Mobile Home Park combining district or use, installed height of the equipment shall not exceed six (6) feet.
- f. Generators may not be approved if located adjacent to a Residential or Mobile Home Park combining district or use.

D. Roof top equipment.

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

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

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

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

10-54.17 Lighting

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

10-54.18 Temporary Contractor’s Office

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

1. Location. Trailers shall not obstruct driveways or traffic access aisles.
2. Other standards.
 - a. The applicant shall demonstrate that parking will not be negatively impacted.
 - b. The colors and materials shall complement the main building, if one exists.

- c. Any exterior noise-generating equipment associated with trailers shall not be within 300 feet of a residential or mobile home park overlay district or use.
- d. Trailers shall be removed upon cessation of permitted construction activity.

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

10-54.19 Model Home Complexes and Sales Offices

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

1. Location. The model home complex and/or sales office shall be located on the same or adjacent premises as the subdivision or building project.
2. Duration. The model home complex and/or sales office shall be removed within three months of closing the sale of the final unit in the project.
3. Review Requirements. Model home complexes and/or sales offices for the sale of homes in any subdivision containing five (5) or more units require review by the Planning Division.
4. Use. The sales office shall be used only for transactions involving the sale, rent or lease of lots or units within the tract or condominium subdivision.
5. Other Issues for Consideration. The Planning Division shall consider the hours of operation, lighting, landscaping, signage, and any other factors that may affect the model home complexes maintenance and impacts on the surrounding area and shall condition the project accordingly. Please refer to subsection 5(a), Conditions, of this subsection.
 - a. Conditions. In approving the model home complex or sales office, the Planning Division may impose conditions deemed necessary to ensure that the permit will be in accordance with the standards prescribed in this section. These conditions may include, but are not limited to:
 - i. Regulation of operating hours and days;
 - ii. Provision for temporary parking facilities, including vehicular ingress and egress;
 - iii. Regulation of nuisance factors such as, but not limited to, prevention of glare or direct illumination on adjacent properties, noise, vibration, smoke, dust, dirt, odors, gases and heat;
 - iv. Regulation of temporary structures and facilities, including placement, height and size, location of equipment and open spaces, including buffer areas and other yards;
 - v. Provision for sanitary and medical facilities;
 - vi. Provision for solid, hazardous and toxic waste collection and disposal;

- vii. Provision for security and safety measures;
 - viii. Regulation of signs. In addition no sales sign shall be permitted within six hundred (600) feet of a Santa Clara County Expressway;
 - ix. Submission of a performance bond or other surety devices, satisfactory to the Planning Division, to ensure that any temporary facilities or structures used will be removed from the site within a reasonable time following the event and that the property will be restored to its former condition;
 - x. Any other conditions which will ensure the operation of the proposed temporary use in an orderly and efficient manner and in accordance with the intent and purpose of this section.
6. Other Requirements. Each site occupied by a temporary use shall be left free of debris, litter, or any other evidence of the temporary use upon completion or removal of the use, and shall thereafter be used, pursuant to the provisions of this Zoning Ordinance.

SECTION 26. Chapter 10, Section 57 of Title XI of the Milpitas Municipal Code “Conditional Uses Permitted by Commission” is hereby amended in its entirety to read as follows:

--Begin Section--

SECTION 57 APPLICATIONS

10-57.01 Purpose and Intent

10-57.02 General Plan/Specific Plan/Zoning Amendments

10-57.03 Site Development Permits and Minor Site Development Permits

10-57.04 Conditional Use Permits

10-57.05 Density Bonus Permits

10-57.06 Variances

10-57.01 Purpose and Intent

These provisions are intended to prescribe the procedures for filing and processing specific applications when required or permitted by this chapter.

10-57.02 General Plan/Specific Plan/Zoning Amendments

A. Purpose and Intent. The purpose of this section is the establishment of procedures for amending the General Plan, Specific Plans and Zoning Ordinance.

1. This section provides a method for amending the General Plan, as it may become necessary, or desirable from time to time, or as required by State law. It is intended that this section be consistent and in compliance with Section 65350 et seq. of the Government Code.
2. This section provides a method for the adoption of specific plans. In addition, it is the purpose of this section to provide a method for amending specific plans to ensure their continued effectiveness and responsiveness to community concerns and market demands over time. It is

intended that the provisions of this section shall be consistent with Section 65450 et seq. of the Government Code.

3. Amendments to the Zoning Ordinance are necessary to maintain its effectiveness as a regulatory and informational document and to ensure its consistency with the General Plan, adopted specific plans and State law. Zoning amendments are also necessary to provide for the implementation of the City's General Plan.

B. Authority. The City Council is the final authority on General Plan, Specific Plan and, Zoning amendments, including amendments to the Zoning Map. The Planning Commission shall provide recommendations to the City Council regarding zoning amendments.

Amendments to zone boundaries or text of this title that are not consistent with the General Plan must be accompanied by a General Plan amendment application.

C. Applicability. A General Plan, Specific Plan and/or Zoning Amendment may be initiated for the following:

1. In accordance with the provisions of the Government Code of the State of California, any amendment to this Chapter which changes any property from one zone to another or imposes any regulation or removes or modifies any regulation relating to land, buildings, structures, signs, billboards, lots, yards, courts, and open spaces, off-street parking and loading, building setback lines or civic districts or which prezones unincorporated land.
2. Any other amendment to this Chapter, General Plan or Specific Plan may be adopted by the City Council as other ordinances are adopted.
3. Nothing contained in this Chapter, however, shall be construed to be a limitation on the power of the City Council to adopt an interim zoning ordinance as an urgency measure in accordance with the procedures and relating to the subject matter set forth in the Government Code of the State of California. (Ordinance 38.02, 12/6/66)

D. Initiation of Amendments to the General Plan, a Specific Plan, Zoning Ordinance or Zoning Map.

An amendment to this Chapter under Subsection 57.02(C) may be initiated in any of the following ways:

1. By a majority vote of the Planning Commission or the City Council.
2. By a property owner who seeks to have his parcel rezoned.
3. By the owners of fifty percent or more of the area of all the property sought to be rezoned.

E. Submittal Requirements. Refer to the most recent submittal requirements required by the Planning Division.

F. Review Procedures.

1. Initiation by City Council or Planning Commission

- a. Any amendment initiated by the Planning Commission or City Council shall be first referred to the Planning Commission.
 - b. The Planning Commission shall hold a public hearing on any said proposed amendment (whether initiated by Council or Planning Commission) after notice given in accordance with the provisions of Section 64, Development Review Process, of this Chapter.
 - c. At the conclusion of the hearing, the Planning Commission shall make a recommendation to the City Council, including the reasons for its recommendation. A recommendation shall be made within forty days after the reference from the City Council on any said proposed amendment, unless the City Council consents to an extension of time. Failure of the Planning Commission to report to the City Council within forty days after the reference (unless the City Council shall have consented to an extension of time) shall be deemed to be an approval of the proposed amendment. (Ord. 38.480, 6/5/79)
 - d. On receipt of the Planning Commission recommendation, the City Council shall hold a public hearing thereon after notice (given in accordance with the provisions of Section 64, Development Review Process, of this Chapter).
 - i. Provided, however, if the matter under consideration is an amendment to change property from one zone to another, and the Planning Commission has recommended against said amendment, the City Council shall not be required to hold a public hearing or take any further action unless an interested party shall request a hearing in writing filed (with the City Clerk) within ten days after the Planning Commission files its recommendation with the City Council. Such a written request for a hearing shall be in lieu of appeal rights provided for in Subsection 64.05, Appeals, of this Chapter.
 - e. After the conclusion of the hearing, the City Council may approve, modify or disapprove the recommendation of the Planning Commission.
 - i. Provided, however, that any modification of the proposed amendment by the City Council shall be referred back to the Planning Commission for a report and recommendation; the Planning Commission shall not hold a public hearing thereon unless requested to do so by the City Council. Failure of the Planning Commission to report to the Council within forty days after the reference shall be deemed to be an approval of the proposed modification. (Ord. 38.92, 12/6/66)
2. Initiation by property owner.
- a. The Planning Commission shall hold a public hearing on any said proposed amendment (whether initiated by Council or Planning Commission) after notice given in accordance with the provisions of Section 64, Development Review Process, of this Chapter.
 - b. At the conclusion of the hearing, the Planning Commission shall make a recommendation to the City Council, including the reasons for its recommendation.
 - c. On receipt of the Planning Commission recommendation, the City Council shall hold a public hearing thereon after notice (given in accordance with the provisions of Section 64, Development Review Process, of this Chapter).

G. Required Findings.

1. Prior to the approval of a General Plan amendment, all of the following findings shall be made:
 - a. The proposed amendment is internally consistent with those portions of the General Plan which are not being amended.
 - b. The proposed amendment will not adversely affect the public health, safety, and welfare.
2. Prior to the approval of a new specific plan or a specific plan amendment, the following findings shall be made:
 - a. The proposed specific plan or specific plan amendment is consistent with the goals, objectives, policies, and programs of the General Plan, and is necessary and desirable to implement the provisions of the General Plan.
 - b. The uses proposed in the specific plan or specific plan amendment are compatible with adjacent uses and properties.
 - c. The proposed specific plan or specific plan amendment will not adversely affect the public health, safety and welfare.

In the case of a specific plan amendment, the following additional finding shall be made prior to its adoption:

- d. The proposed specific plan amendment will not create internal inconsistencies within the specific plan.
3. Prior to approval of a zoning amendment or amendment to the zoning maps, the following findings shall be made:
 - a. The proposed amendment is consistent with the General Plan.
 - b. The proposed amendment will not adversely affect the public health, safety and welfare.

H. Approval Runs with the Land. The approval of a General Plan, Specific Plan and/or Zoning amendment shall run with the land, and shall continue to be valid upon a change of ownership of the site to which it applies.

I. Expiration of Application and Time Extension

If an ordinance proposing to change the zoning of certain land (by amendment to the Zoning Ordinance of the City of Milpitas) is not adopted (by a second reading) within 12 months of the date of its introduction (by first reading), then the application giving rise to said ordinance shall be deemed to have expired (without notice to the applicant) and the unadopted ordinance shall not then be capable of adoption by second reading. Provided, however:

1. Upon recommendation of the Planning Commission, the City Council may grant an extension of time for second reading and adoption not to exceed 12 months subject to the following requirements:

- a. no more than one such extension may be granted, and
 - b. the extension must be granted by the Council within 12 months of the date of introduction of the ordinance, and
 - c. new conditions may be imposed upon the zone change.
2. Nothing herein contained shall be construed to prevent a subsequent application for a change of zone of the same land or the subsequent introduction of a new ordinance changing the zone of said land. (Ord. 38.559, 4/21/83)

10-57.03 Site Development Permits and Minor Site Development Permits

A. Purpose and Intent. Development in areas designated by the Site and Architectural Overlay District (-S) or other development that is otherwise specified in this Chapter as requiring review is subject to either Site Development Permits or Minor Site Development Permits. The (-S) Overlay District is described in Subsection 12.05, Site and Architectural Overlay District, of this Chapter. Depending on the scale of development proposed, other review may be required, as well. The purpose of architectural review shall vary, according to the following criteria:

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

B. Authority.

1. Site Development Permits. The Planning Commission has the authority to review Site Development Permits, subject to the concurrent review and appeal provisions of Subsection 64.03, Consideration of Concurrent Applications, and Section 64.05, Appeals, of this Chapter. (Please refer to Section 45, “H” Hillside Combining Districts, of this Chapter for projects within the “H” District requiring review of a Site Development Permit by the Planning Commission and the City Council.)
2. Minor Site Development Permits. The Planning Commission Subcommittee consisting of two (2) Planning Commissioners has the authority to review Minor Site Development Permits, subject to the concurrent review and appeal provisions listed above. When the Planning Subcommittee determines that it is in the public interest for the Minor Site Development Permit application to be considered by the Planning Commission, the Planning Subcommittee shall forward the application to the Planning Commission for review in the same manner as Site Development Permits, as described in subsection 57.03(E)(1), Review Procedures, Site Development Permits,

below. No public hearing is necessary for a Minor Site Development Permit when heard by the Planning Commission Subcommittee.

C. Applicability.

1. Site Development Permits. A Site Development Permit is required for:
 - a. New main buildings
 - b. New accessory buildings over 2,500 square feet
 - c. New parking lots
 - d. Roof top equipment which exceeds the height of existing roof screens, if line-of-sight drawings demonstrate that the equipment will be visible from surrounding “worst case” view points from on-site parking areas, adjacent public streets and adjacent residentially zoned property.
 - e. Additions or alterations to multi-family residential, nonresidential and mixed-use buildings that include:
 - i. Additions of 10,000 square feet or greater for non-residential and mixed-use buildings.
 - ii. Additions of 5,000 square feet or greater or ten percent (10%) of the existing building gross floor area, whichever is less, to non-residential and mixed use buildings adjacent to residential or MHP Overlay Districts or uses.
 - iii. Additions 200 square feet or greater for multi-family residential buildings.
 - f. Any deletion or amendment of a previously imposed condition of approval for a Site Development Permit.
 - g. Any building color changes to designated cultural resources. Refer to Chapter 4, Cultural Resources Preservation Program, of this Title.
2. Minor Site Development Permits. A Minor Site Development Permit is required for:
 - a. Any deletion or amendment of a previously imposed condition of approval for a Minor Site Development Permit.
 - b. Alterations or additions to residential, nonresidential and mixed-use buildings, as indicated in Table 57-03-1, Additions or Alterations Requiring Minor Site Development Permits. Please refer to Section 54, General Provisions, of this Chapter, for development standards and review procedures for types of projects not listed in Table 57.03-1.
 - c. Planning Division staff may require review by the Planning Commission Subcommittee at their discretion.

**Table 10-57.03-1
Additions or Alterations Requiring Minor Site Development Permits.**

Project Type	Minor Site Development Permit	Other/Exempt Projects
Building Color		<p><i>Staff may approve:</i></p> <p>A. Outside Hillside Combining District:</p> <ol style="list-style-type: none"> 1. Color changes for all buildings so long as the proposed colors are earth tone, muted and/or compatible with the surrounding area and development. 2. Color changes for buildings within a PUD, if proposal complies with PUD. <p>B. Within Hillside Combining District:</p> <ol style="list-style-type: none"> 1. Color changes for residences including homes within a PUD which does not specify color choices, so long as the proposed colors are earth tone, muted and compatible with the surrounding development. Applicant shall submit letter of support from applicable homeowners association.
Re-Roof	Change to wood shake, non tri-laminate or metal roofing material.	<p><i>Staff may approve:</i></p> <p>Change to any other roofing material.</p>
Exterior Lighting	Additional light standards on-site, adjacent to residential development.	Refer to Subsection 54.17, Lighting, of this Chapter for standards.
Fences/Walls	<p>Chain link fencing</p> <ol style="list-style-type: none"> 1. Chain link fencing in commercial and industrial districts. The following standards shall apply: <ol style="list-style-type: none"> a. Fencing shall be at the rear or interior side of the site. b. The fencing shall consist of vinyl clad chain link with or without vinyl slats. Type of chain link fencing (i.e. deletion of vinyl clad requirement, use of slats) shall be to the discretion of the Planning Commission Subcommittee (i.e., in 	Refer to Subsection 54.10, Fences and Walls, of this Chapter for standards.

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

Project Type	Minor Site Development Permit	Other/Exempt Projects
	<p>b. Windows, window awnings and person doors which match existing or which complement the building facade.</p>	<p>e. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>f. Replacement of windows with roll-up doors (and vice versa) when located toward the interior side or rear of a site.</p> <p>g. Metal canopies over equipment storage yards at the rear of commercial or industrial sites, provided they are not visible from public streets or abutting a Residential or Mobile Home Park combining district or use.</p> <p>h. New loading areas and revisions to existing loading areas.</p> <p>B. Residential Districts</p> <p>1. In all residential districts (excluding – H Combining), minor exterior building changes as described below, provided that the project complements the colors, materials, and design of the building.</p> <p>a. Awnings, patio covers, and gazebos which comply with height, setback, and yard coverage requirements. The applicant shall provide the Planning Division with written, signed consent of applicable homeowners association.</p> <p>b. Minor changes to architectural elements which do not change the overall design of a building.</p> <p>c. Windows and person doors which match existing or which complement the building facade.</p> <p>2. Minor exterior building changes for residences within Hillside Overlay District PUD’s which are specifically conditioned to allow a staff approval</p>

Project Type	Minor Site Development Permit	Other/Exempt Projects
		process for alterations subsequent to initial construction of the home.
Landscaping	<p>(1) Deletion of non-required landscaping exceeding 200 square feet in area, to accommodate modifications to existing developed sites.</p> <p>However, in non-residential and mixed use districts, and for conditional uses within Residential districts (excluding -H Overlay district), no net reduction in the number of on-site trees and no loss of protected trees, as defined in Title X-2.00 of the Milpitas Municipal Code, may be approved.</p>	<p><i>Staff may approve:</i></p> <ol style="list-style-type: none"> 1. Replacement planting of similar landscape materials and addition of landscaping. Landscaping shall comply with Ordinance No. 238 (water efficient landscape regulations). Landscaping within the -H Overlay district shall comply with City Council Resolution No. 6066. 2. Deletion of non-required landscaping up to 200 square feet in area to accommodate modifications to existing developed sites. However, in non-residential and mixed use districts, and for conditional uses within residential districts (excluding -H Overlay District), no net reduction in the number of on-site trees and no loss of protected trees, as defined in Title X-2.00 of the Milpitas Municipal Code, may be approved.
Building Additions	<p>A. Non-residential and Mixed Use Districts:</p> <ol style="list-style-type: none"> 1. All non-residential and mixed use building additions for legal, conforming buildings not adjacent to residential or Mobile Home Park Overlay District or use. <ol style="list-style-type: none"> a. Size of building addition shall not exceed 10,000 square feet or ten percent (10%) of the existing building gross floor area, whichever is less. Calculation shall cumulatively count all additions or enlargements completed since June 20, 2003. 	<p><i>Staff may approve:</i></p> <ol style="list-style-type: none"> 1. Residential building additions in R1 and R2 districts. 2. Residential building additions in multi-family districts up to 200 square feet. 3. All single-family dwellings in Hillside Overlay PUD's which specifically allow for staff approval. (refer to Section 56, Non-conforming Buildings and Uses, of this Chapter regarding non-conforming buildings). In addition to other development standards, the following shall also apply: <ol style="list-style-type: none"> a. The applicant shall provide the Planning Division with written, signed consent of applicable homeowners association.

Project Type	Minor Site Development Permit	Other/Exempt Projects
	<p>b. In addition to other development standards, the following shall also apply:</p> <p>i. Architecture shall match that of existing building in terms of material, colors, style, etc.</p> <p>ii. The height of the addition shall not exceed the height of the adjacent portion of the existing building.</p> <p>B. Residential Districts</p> <p>1. All single-family dwellings in Hillside PUD's which are specifically conditioned not to require Planning Commission or City Council review for building additions (refer to Section 56, Non-Conforming Buildings and Uses, of this Chapter regarding non-conforming buildings). In addition to other development standards, the following shall also apply:</p> <p>a. The applicant shall provide the Planning Commission Subcommittee with written, signed consent of applicable homeowners association.</p> <p>b. Existing front yard paving shall be brought into conformance.</p> <p>c. The addition shall comprise building materials, colors and style which complement the existing structure.</p>	<p>b. Existing front yard paving shall be brought into conformance.</p> <p>c. The addition shall comprise building materials, colors and style which complement the existing structure.</p> <p>4. Building addition to an existing single-family dwelling in residential and mixed use zones, in order to accommodate a second family unit, as defined in Subsection 2.03, Definitions, of this Chapter. The development standards listed in Subsection 18.08, Second Family Unit, of this Chapter shall apply.</p>
Accessory Buildings	<p>A. Non-Residential and Mixed Use Districts:</p> <p>1. Accessory buildings up to 2,500 square feet in area, provided that</p>	<p><i>Staff may approve:</i></p> <p>A. Residential Only</p> <p>1. Accessory buildings in residential</p>

Project Type	Minor Site Development Permit	Other/Exempt Projects
	<p>the proposed structure is not adjacent to a residential or Mobile Home Park Overlay district or use, and provided that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. The following shall also apply:</p> <ol style="list-style-type: none"> a. Accessory buildings must be located on the rear half of the lot. On corner lots, the accessory building must be set back from the adjacent street as least as far as the main building. b. Accessory buildings must be of permanent construction (no modular buildings or metal buildings) with the exception of small pre-fabricated structures for chemical storage and the like, so long as such structures are adequately screened from public rights-of-way. c. Architecture shall match that of the existing building in terms of material, colors, style, etc. d. No net reduction in the number of on-site trees and no loss of protected trees, as defined in Title X-2-7.01 of the Milpitas Municipal Code, may be approved to accommodate an accessory building. 	<p>districts (excluding -H Combining District), provided building height, parking, setback, yard coverage and other ordinance requirements are met. The following shall also apply:</p> <ol style="list-style-type: none"> a. Accessory buildings for conditional uses in Residential R1 and R2 districts and for permitted and conditional uses in R3 and R4 districts shall comprise building materials, colors and style which complement the existing main structure. b. The applicant shall provide the Planning Division with written, signed consent of adjoining residential property owners and applicable homeowners association. <p>2. Accessory building in residential and mixed use districts in order to accommodate a second family unit, as defined in Subsection 2.03, Definitions, of this Chapter. The development standards listed in Subsection 18.08, Second Family Unit, of this Chapter shall apply.</p> <p>B. All zones</p> <ol style="list-style-type: none"> 1. Community emergency caches as defined in Subsection 2.03, Definitions, of this Chapter are exempt. Refer to subsection 54.08(B)(12) for performance standards.
<p>Trash/Recycling Enclosures</p>	<ol style="list-style-type: none"> 1. Trash/recycling, equipment or storage enclosures up to 200 square feet proposed in the front half of the lot for non-residential districts. 	<p><i>Staff may approve:</i></p> <ol style="list-style-type: none"> 1. Trash/recycling, equipment or storage enclosures up to 200 square feet in size in commercial, industrial and

Project Type	Minor Site Development Permit	Other/Exempt Projects
	<p>Enclosures exceeding 200 square feet in size in commercial, industrial and mixed use districts and enclosures for conditional uses in residential districts.</p> <p>Any trash enclosure adjacent to residential or Mobile Home Park Overlay district or use. In addition to the standards listed in Subsection, 54.16(B), Trash Enclosures, of this Chapter.</p> <p>b. Enclosures for noise-generating equipment (i.e. generators) may not be approved near Residential or Mobile Home Park combining districts or uses.</p>	<p>mixed use districts, proposed at the rear of the building or lot and where least visible from public rights-of-way.</p> <p>Refer to Subsection 54.16(B), Trash Enclosures, of this Chapter, for standards.</p>

D. Submittal Requirements.

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

1. Site plan -- parcel dimensions in distance.
2. Buildings and structures -- their location, size, height, colors and materials.
3. Dimensions of yards and open spaces between buildings.
4. Fences and walls -- their architectural design, location, height, colors and materials.
5. Parking spaces -- their location, number and dimensions.
6. Access -- vehicular, pedestrian and service, with points of ingress and egress and the internal circulation pattern of the parking lot area.
7. Street dedications and improvements -- existing and proposed, if any.
8. Signs -- their location, size, types of materials, and lighting method.
9. Loading or service areas -- their location and dimensions.

10. Lighting -- its architectural design, location and light patterns.
11. Landscaping -- its location, size, quantity and type of plant material.
12. Shadow studies -- drawings showing shadows of the building or structures (taken on December 22nd, between the hours of 10:00 a.m. and 2:00 p.m.).
13. Such other data as may be required under the circumstances of the case to permit the City Council, Planning Commission, Planning Commission Subcommittee, or Planning Division staff to make the required approvals.

E. Review Procedures.

1. Site Development Permit.
 - a. Following receipt of a completed application and required environmental documentation, a public hearing before the Planning Commission shall be noticed and held in compliance with Section 64, Development Review Process, of this Chapter.
 - b. The Planning Division shall prepare a written report which shall be presented to the Planning Commission and/or City Council, based on investigations as necessary to determine whether the project conforms or may be conditioned to conform fully to the intent of the underlying district.
 - c. After completion of the Planning Commission hearing, the Planning Commission shall determine if the proposed project shall be approved, approved with modifications and/or conditions, or denied.
2. Minor Site Development Permit.
 - a. Following receipt of an application, Planning Division staff shall make investigations as necessary to determine whether or not the proposed project conforms or may be conditioned to conform fully to the intent of the underlying district. After the application is deemed complete and required environmental documentation is completed, a review before the Planning Commission Subcommittee shall be held.
 - b. The Planning Commission Subcommittee shall indicate by action minutes whether the proposed site plan for a project shall be approved, approved with modifications and/or conditions, or denied.
 - i. Planning Commission Subcommittee may require review by the Planning Commission at their discretion.
 - ii. If the Planning Commission Subcommittee members disagree on a decision for a project, then the project will be agendized for Planning Commission review, with no additional fees required.

F. Required Findings.

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

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

G. Planning Commission Subcommittee or Staff Approvals.

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

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

G. Appeals.

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

H. Compliance With Conditions.

Whenever a plan for the development of a building site has been the subject of a Site Development and Permit process as herein above specified and has been given final approval, the building and site thereafter shall be constructed and perpetually maintained in compliance with the plan in conformance to all details specified thereon and subject to all the conditions set forth in the action of approval, unless modified or amended pursuant to Section 57.03(I), below. Lack of compliance shall constitute a violation of Chapter 10 (Zoning, Planning and Annexation) and the Site Development Permit

I. Applications for Modification of or Amendment

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

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

10-57.04 Conditional Use Permits

- A. Purpose and Intent.** The purpose and intent of the Conditional Use Permit process is to provide a review of land uses which would not otherwise be permitted as a matter of right in a zoning district because of their nature, have an impact on the surrounding environment and for the determination of whether or not the proposed use is appropriate for its proposed location.

The Conditional Use Permit process is intended to encourage uses to be located in a manner that is:

1. Consistent with the City's zones;
2. Sensitive to community and neighborhood identity; and
3. Minimizes impacts to adjacent uses, including traffic flow; circulation; safety for vehicular and pedestrian traffic; imposition of noises, odors and health and safety hazards upon nearby residential area; provision of adequate light, air and reasonable access; securing safety from fire and other dangers; prevent overcrowding of land; facilitating adequate provision for transportation and in general, to promote the public health, safety, peace, morals, comfort and welfare; prevention of neighborhood deterioration and blight; the objectives of zoning and planning in the community and the effect upon the City's general welfare of this proposed use in relation to surrounding uses and the community. Review of a use may require the consideration of site plan issues related to the use, as well.

- B. Authority.** The Planning Commission has the authority to approve Conditional Use Permits, subject to concurrent review and appeal provisions of Section 64, Development Review Process, of this Chapter.
- C. Applicability.** Conditional Use Permits are required as indicated by the use tables in Residential, Mixed Use, Commercial, Industrial, Institutional, Park and Open Space, and other land use districts of this Chapter.

Conditional Use Permits are also required for the following requests:

1. Parking

- a. Tandem parking.
- b. Permit in the R Districts, public parking areas or storage garages adjacent to any existing or proposed use in the multiple dwelling, commercial or industrial district.
- c. Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building.

2. Height

- a. For buildings that exceed three (3) stories or thirty-five (35) feet within the MP district. In addition to the general required findings for a Conditional Use Permit, the following finding shall be made:
 - i. The excess height will not be detrimental to the light, air or privacy of any other structure or use currently existing or anticipated.
- b. For buildings that exceed six (6) stories or eight-five (85) feet within the -OO overlay district. Buildings may be allowed to not exceed eight (8) stories or one hundred fifteen (115) feet in height. In addition to the general required findings for a Conditional Use Permit, the following finding shall be made:
 - i. The project exhibits exceptional architecture and aesthetic merit to warrant the excess height.
- c. Permit in districts limiting the height to two and one-half (2 1/2) stories, thirty-five (35) feet, or three (3) stories, forty-five (45) feet, schools, hospitals, sanitariums, institutions, churches and other similar uses allowed under the use regulations of this Chapter, to be erected to a height not exceeding six (6) stories or seventy-five (75) feet, provided, that the front and side yard requirements for such buildings in the "R3" District are complied with.

3. Wireless Telecommunications facilities. Refer to Subsection 13.09, Wireless Telecommunications Facilities, of this Chapter, for specific standards and exempted facilities.

4. Nonconforming buildings and structures

- a. Permit the addition or enlargement of a non-conforming building or structure in any district other than R1, R2 and R1-H, provided such addition or enlargement complies with all development standards, including but not limited to height, setbacks, maximum lot coverage, and floor area ratio regulations of the district in which it is located.

In addition, the cumulative floor area included in all such additions or enlargements since the adoption of Ord. No. 38.760 (September 17, 2002) shall not exceed thirty (30%) percent of the floor area contained in said building or structure. Floor area, for the purposes of this subsection, shall include all habitable space associated with a residential use and shall mean

gross floor area associated with any non-residential use. These criteria are established so as not to prolong the life of the original building or structure.

- b. The Planning Commission may allow a more restricted classification within a building or on a site.

5. Temporary buildings

- a. Permit temporary buildings and uses for periods not to exceed two (2) years in undeveloped sections of the City, and for periods not to exceed six (6) months in developed sections, with the exception of contractor's office trailers and construction-related storage trailers so long as they are not used as a residence for overnight stays for security purposes and are associated with construction activity pursuant to a valid building permit. Trailers shall be removed upon cessation of permitted construction activity.

6. Less restrictive uses in more restrictive districts.

- a. Permit a less restricted use in a more restricted district as follows: any "C" District use in any other "C" District and "M1" use in the "C2" Districts; any "M2" use in an "M1" District; provided such use, due to its limited nature, modern devices, or building design, will be no more objectionable than the uses permitted in such district.

7. Lot width.

- a. Permit the reduction in the lot width requirements.

8. Other Uses. The Planning Commission may, after a public hearing, permit the following uses in districts from which they are prohibited by this Chapter where such uses are deemed essential or desirable to the public convenience or welfare and are in harmony with the various elements or objectives of the Comprehensive Master Plan.

However, any of the following uses which are marked with an asterisk shall not be allowed in the designated Hillside Area.

- a. Helicopter pads for medical evacuation purposes.
- b. Development of natural resources (excluding the drilling for or producing of oil, gas or other hydrocarbon substances) together with the necessary buildings, apparatus, or appurtenances incident thereto*.
- c. Hospital or sanitarium.
- d. Library or museum, public.
- e. Nursery or greenhouse.
- f. Park, playground, or recreational or community center.
- g. Public utility and public service use or structure.

- h. Radio or television transmitter.
- i. Reverse vending machines or mobile recycling units except where the lot is being used for residential purposes.

D. Submittal Requirements. Refer to the most recent submittal requirements required by the Planning Division.

E. Review Procedures.

1. The Planning Commission shall hold a public hearing on said application upon such notice as is required in Section 64, Development Review Process, of this Chapter.
2. After the conclusion of the hearing, the Planning Commission may approve the application, approve it subject to such conditions as the Planning Commission may impose or disapprove the application.
 - a. The Planning Commission may impose such conditions as it deems necessary to protect the best interests of the surrounding property, of the neighborhood, and as it deems in conformity with the requirements of the General Plan.

F. Required Findings. Approval may be granted by the Planning Commission, or by the City Council upon appeal or within the Hillside District, of a Conditional Use Permit application in accordance with this chapter if all of the following findings are made, based on the evidence in the public record:

1. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare;
2. The proposed use is consistent with the Milpitas General Plan; and
3. The proposed use is consistent with the Milpitas Zoning Ordinance.

In the case of a project located within a Specific Plan, the following additional finding shall be made:

4. The proposed use is consistent with the specific plan.

G. Consideration of Conditional Use Permit Pending Zoning Amendment

Upon the close of a public hearing before the Planning Commission on the question of a Zoning Amendment to change property from one zone to another, and upon favorable report thereon by the Commission, the Commission may consider such matters and regulations as are set forth in Subsection 57.04, Conditional Use Permits, of this Chapter.

The Commission may conditionally impose such requirements and regulations upon the subject property and use as the Commission is authorized to impose by Subsection 57.04, Conditional Use Permits, of this Chapter and may conditionally approve Conditional Use Permits; said requirements and regulations shall be imposed and said approval shall be granted upon the express condition that said property shall be rezoned in accordance with the specific recommendation of the Planning Commission relating to zoning and shall not take effect unless and until said property is rezoned in accordance with specific recommendation of the Planning Commission and until the Ordinance

amending this Chapter in accordance with the specific recommendation of the Planning Commission shall take effect. (Ord. 38.205, 10/20/70; Ord. 38 (part), 3/15/55)

H. Appeals. An appeal of the action on a Conditional Use Permit shall be reviewed in accordance with Section 64, Development Review Process, of this Chapter.

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

1. Insignificant Modifications. If the Planning Division determines that the modifications are minor, the modifications may be approved administratively.
2. Significant Modifications with or without Public Impact or Concern. If the Planning Division determines that the modifications are significant enough to warrant discretionary review and have the potential for public impact or concern, then the modifications shall be referred to the final decision-making authority for the original project. If the original application for a project required a public hearing, then the final decision-making authority's review of modifications shall require a public hearing, in accordance with Section 64, Development Review Process, of this Chapter.

J. Modifications and/or Revocations Initiated by the City.

1. Initiation and Review.
 - a. At the City Council's direction, the Planning Commission may review a Conditional Use Permit for modification or revocation. If the City Council does request the Planning Commission's review, a public hearing before the Planning Commission shall be noticed and held in compliance with Section 64, Development Review Process, of this Chapter.
 - b. After completion of the Planning Commission hearing, the Planning Commission shall recommend to the City Council, by resolution, whether the Conditional Use Permit shall be modified or revoked.
 - c. Following receipt of a recommendation on the Conditional Use Permit from the Planning Commission (when requested) or following City Council initiation, the City Council shall conduct a public hearing in compliance with Section 64, Development Review Process, of this Chapter.
 - d. After completion of the public hearing, the City Council may modify or revoke the Conditional Use Permit.
2. Required Findings.
 - a. General Findings for Modifications/Revocation. A Conditional Use Permit may be modified or revoked if any of the following conditions exist:
 - i. Conditions of approval of the Conditional Use Permit are being violated or are not being satisfied; or

- ii. The use is being conducted in a manner that constitutes a nuisance; or
- iii. The application contained incorrect, false or misleading information.

L. Approval Runs with the Land. The approval of a Conditional Use Permit shall run with the land, and shall continue to be valid upon a change of ownership of the site to which it applies.

10-57.05 Density Bonus Permits

A. Purpose and Intent. The purpose and intent of the density bonus process is to ensure compliance with state regulations and regulations set forth in Subsection 54.15, Density Bonus for Affordable Housing Developments, of this Chapter.

B. Review Procedures. Refer to Subsection 54.15(C), Review Requirements, of this Chapter.

10-57.06 Variances

A. Purpose and Intent. The purpose and intent of the variance process is to provide relief from the substantive provisions of this Chapter when the strict application of these provisions deprives the property for which the Variance is sought of privileges enjoyed by other property in the vicinity and under identical zoning classification because of special circumstances applicable to the property (including, but not limited to size, shape, topography, location or surroundings).

A Variance is a permit issued by the City that sanctions deviations from the adopted Zoning Ordinance regulations related to physical standards of development, such as lot size, building setback, and height limits. A Variance may not be granted to allow a use or density not otherwise allowed within the zoning district.

B. Authority.

1. The Planning Commission shall have approval authority of Variances relating to development within all districts other than the “H” Combining district.
2. The City Council shall have approval authority, upon recommendation by the Planning Commission, of Variances relating to developments within the “H” Combining district.

C. Applicability. Unless indicated otherwise by this title, a variance is required to deviate from any of the standards contained within the Zoning Ordinance.

D. Submittal Requirements. Refer to the most recent submittal requirements required by the Planning Division.

E. Review Procedures.

1. General Procedures. The Planning Commission, or where applicable, the City Council shall be empowered to impose such conditions upon the grant of a Variance as it deems desirable and shall impose such conditions as will assure that the Variance does not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and zone in which said property is located.

2. The Planning Commission shall hold a public hearing on each application for a Variance upon such notice as is required in Section 64, Development Review Process, of this Chapter.
3. For Variances not involving the “H” Combining district, the Planning Commission shall review the application and render its decision.
4. For Variances involving the “H” Combining district, the Planning Commission shall make a recommendation to the City Council. The City Council shall hold a public hearing, with notice as required in Section 64, Development Review Process, of this Chapter, review the application and the Commission’s recommendation, and render its decision.

SECTION 27. Chapter 10, Section 58 of Title XI of the Milpitas Municipal Code “Variances” is hereby deleted in its entirety.

SECTION 28. Chapter 10, Section 62 of Title XI of the Milpitas Municipal Code “Amendments” is hereby deleted in its entirety.

SECTION 29. Chapter 10, Table 64.02 of Title XI of the Milpitas Municipal Code “Decision-Making Body and Role” is hereby amended in its entirety to read as follows:

Type of Permit or Decision	Procedures are found in:	Planning Division	Planning Commission Subcommittee	Planning Commission	City Council
Land Use Permits and other Development Entitlements					
Staff Review ²		Issuance		Appeal ³	Appeal
Conditional Use Permits	10-57.04			Decision	Appeal
Development Agreements				Recommend	Decision
Minor Site Development Permits	10-57.03		Decision	Appeal ³	Appeal
Planned Unit Development	10-54.07			Recommend	Decision
Site Development Permits	10-57.03			Decision Recommend ⁴	Appeal Decision ⁴
Variances	10-57.06			Decision	Appeal
Zoning Ordinance Administration and Amendments					
General Plan Amendments	10-57.02			Recommend	Decision
Specific Plan Amendments	10-57.02			Recommend	Decision
Zoning Amendments	10-57.02			Recommend	Decision

SECTION 29. Chapter 10, footnote 2 of Table 64.02 of Title XI of the Milpitas Municipal Code “Decision-Making Body and Role” is hereby amended in its entirety to read as follows:

Includes Home Occupation Permits (Subsection 10-18.05), reviews requiring building permits and other reviews by Planning Division staff not requiring a building permit or review by other decision-making bodies.

SECTION 30. Chapter 10, Section 64.05 of Title XI of the Milpitas Municipal Code “Appeals” is hereby amended in its entirety to read as follows:

1. Except as otherwise provided in Subsection 57.02(F)(1)(d) of this Chapter, any person aggrieved by any decision of any officer, board, commission or department of the City of Milpitas under the provisions of this Chapter may appeal said decision in accordance with the provisions of Section 5, Chapter 20, Title I of the Milpitas Municipal Code, and Table 10-64.02, Decision-Making Body and Role, of this Section.
2. While appeals hereunder shall be heard at general or special meetings of the City Council, no notice thereof need be given (other than as required by said Section 5, Chapter 20, Title I of the Milpitas Municipal Code). Provided, however, that if the appeal is taken from action on an application for a Variance, Conditional Use Permit or other permit, notice of the hearing of the appeal shall also be given in accordance with the provisions of Subsection 64.04, Public Hearing, of this Chapter.
3. Exception to Appeal Procedure: Provided, however, that the time for any appeal from action of the Planning Commission in granting, granting subject to condition or denying a Site Development Permit pending a Zoning Amendment or in granting, granting subject to condition or denying a Conditional Use Permit pending a zoning amendment shall be extended so that said appeal may be taken at any time within ten (10) days from the date that said City Council shall give second reading to the Zoning Ordinance amendment. (Ord. 38.205, 10/20/70; Ord. 38 (part), 3/15/55)

SECTION 31. Chapter 10, Section 64.06 of Title XI of the Milpitas Municipal Code “Expiration of Permit or Approvals” is hereby amended in its entirety to read as follows:

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

1. Time Extension. An extension of time not exceeding eighteen (18) months may be granted by the Planning Commission and no more than one (1) extension shall be granted. An extension is valid only if approved before the pending expiration date. New conditions may be imposed on an extension of time for any permit.
2. Use of Approvals. For the purposes of this section an approval is “used” or “exercised” if the applicant:
 - a. Obtains a building permit and completes a foundation, or
 - b. Dedicates any land or easement as required from the zoning action, or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
3. Date of Approval. Unless there is an appeal the date of approval is the date on which the decision-making body votes on the motion of approval. When there is an appeal, the date of approval is the

date of the administrative vote on the motion finally determining the appeal. (Ord. 38.542, 4/6/82;
Ord. 38 (part), 3/15/55)

SECTION 32. 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 33. 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).