



# City of Milpitas

Housing & Neighborhood Preservation Division  
455 E. Calaveras Boulevard, Milpitas CA 95035

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COPY

March 24, 2009

CERTIFIED MAIL  
APN # 8622027

BAY STONE, DEVELOPMENT LLC  
ATTN: LI TANG AND SONNY MA  
1649 S MAIN STREET SUITE 103  
MILPITAS, CA 95035-5315

## Notice to Abate - Violation of Milpitas Municipal Code

Dear LI TANG AND SONNY MA:

Our Office has been notified of a violation to the Milpitas Municipal Code at 1556 S Main Street, and in response, staff inspected your property on March 23, 2009, and observed the Ooh La Lodge is abandoned, partially destroyed and permitting trespassers and/or malicious mischief on the premises (photo attached).

Having the above in public view is a violation of;

NEIGHBORHOOD BEAUTIFICATION ORDINANCE, V-500-2.01 Unlawful Property Nuisance-Private Property (c) Buildings and Structures (1) Buildings or parts thereof which are (i) abandoned, ... and/or partially destroyed. A suggested method of abatement would be to demolish all existing structures and/or renovation or remodeling all existing buildings and structures pursuant to current Building and Fire Codes.

NEIGHBORHOOD BEAUTIFICATION ORDINANCE, V-500-2.01 Unlawful Property Nuisance-Private Property (c) Buildings and Structures (2) Unsecured buildings constituting a hazardous condition or inviting or permitting trespassers or malicious mischief. A suggested method of abatement would be to secure the perimeter of the property and remedy all code violations.

It is the responsibility of the property owner/occupant to abate (V-500-1.01) violations. Pursuant to Section V-500-1.15, we hereby notify you that you have **fifteen (15) calendar days from the date of this notice to abate this condition. An inspection to verify compliance will be conducted on or after April 08, 2009.**

If you cannot comply with this Notice by the due date because doing so will be an undue hardship, *and you are not acting as a landlord of rental property*, you may request an extension by stating your reason(s) in enclosed extension form. Your request must be received within seven (7) calendar days of the date of this Notice, by March 31, 2009.

We are confident that this violation will be abated as requested. In the event you fail to comply with this Abatement Notice, the City may conduct an administrative hearing to declare your property a public nuisance and proceed to abate the nuisance. If the City abates the nuisance on your property, it will seek to recover all administrative and abatement costs pursuant to section V-500-4 of the Municipal Code. The City may lien the property to recover the cost if you fail to pay the costs. If you have any questions, please contact me at (408) 586-3075.

Thank you for your interest in keeping Milpitas beautiful,



Gloria Anaya  
Sr. Housing and Neighborhood Preservation Specialist

Enclosures and/or Carbon Copies: Extension Request, Ordinance and Photo(s)

CC:City Manager  
Deputy City Attorney  
Planning and Neighborhood Services Director  
Fire Marshall  
Building Official

7006 3450 0003 7794 2663

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
CDH CA LODGE Postmark Here 1556 S MAIN ST	
Sent To <b>BAUSTONE DEVELOPMENT LLC</b>	
Street, Apt. No., or PO Box No. <b>1649 S MAIN ST, STE #103</b>	
City, State, ZIP+4 <b>MILPITAS 95035</b>	
PS Form 3800, August 2005 See Reverse for Instructions	

City of Milpitas  
Attn: Gloria Anaya, Neighborhood Preservation Division  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

**Notice to Abate- Extension request for 1556 S Main Street**

Name BAY STONE DEVELOPMENT LLC. Attn: Li Tang and Sonny Ma

Address \_\_\_\_\_

Day phone number \_\_\_\_\_

Evening phone number \_\_\_\_\_

I received a Notice to Abate, dated March 24, 2009, for the following Milpitas Municipal Code Section(s);

NEIGHBORHOOD BEAUTIFICATION ORDINANCE, V-500-2.01 Unlawful Property Nuisance- Private Property (c) Buildings and Structures (1) Buildings or parts thereof which are (i) abandoned, ... and/or partially destroyed. A suggested method of abatement would be to bring to demolish all existing structures and/or renovation or remodeling all existing buildings and structures pursuant to current Building and Fire Codes.

NEIGHBORHOOD BEAUTIFICATION ORDINANCE, V-500-2.01 Unlawful Property Nuisance- Private Property (c) Buildings and Structures (2) Unsecured buildings constituting a hazardous condition or inviting or permitting trespassers or malicious mischief. A suggested method of abatement would be to secure the perimeter of the property and remedy all code violations.

I am requesting an extension of the compliance date because:

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

\_\_\_\_\_  
Property owner signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property owner signature

\_\_\_\_\_  
Date



# City of Milpitas

Housing & Neighborhood Preservation Division  
455 E. Calaveras Boulevard, Milpitas CA 95035

# COPY

April 10, 2009

**CERTIFIED MAIL**  
APN # 8622027

Bay Stone Development LLC  
Attn: Li Tang and Sonny Ma  
1649 S Main Street Suite 103  
Milpitas, CA 95035-5315

## NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE

Dear Bay Stone Development LLC:

This is a notice of hearing before the City Manager (or his/her designees) to ascertain whether certain property situated in the City of Milpitas, State of California, known and designated as 1556 S. Main Street, in said City, and more particularly described as Assessor's Parcel Number 8622027 constitutes a public nuisance subject to abatement pursuant to Chapter V-500 of the Milpitas Municipal Code. If said property, in whole or part, is found to constitute a public nuisance as defined in the Milpitas Municipal Code and if the same is not properly abated by the owner/occupant, such nuisance may be abated by municipal authorities, in which case the cost of such rehabilitation, repair, or abatement will be assessed upon such property and such costs, together with interest thereon, may constitute a special assessment or lien upon such property until paid. In addition, you may be cited for violation of the provisions of the Municipal Code and subject to an administrative fine.

Said alleged conditions consist of the following:

The Ooh La Lodge is abandoned, partially destroyed and permitting trespassers and/or malicious mischief on the premises.

The method(s) of abatement are:

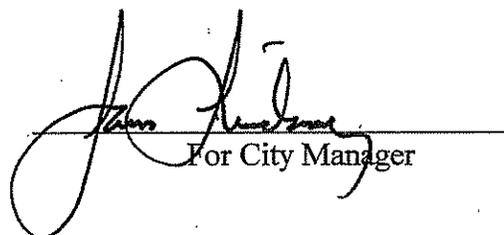
Suggested methods of abatement would be to demolish all existing structures and/or renovation or remodeling all existing buildings and structures pursuant to current Building and Fire Codes.

All persons having an interest in said matters may attend the hearing and their testimony and evidence will be heard.

Dated this 10<sup>th</sup> day of April, 2009.

Time and Date of Hearing: 9:00 a.m. on April 21, 2009

Location of Hearing: City Hall, Fourth Floor Conference Room

  
\_\_\_\_\_  
For City Manager

**LICENSE AND INDEMNIFICATION AGREEMENT  
FOR CITY OF MILPITAS TO ABATE A PUBLIC NUISANCE**

This License and Indemnification Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_ 2009, between the City of Milpitas (“City”) and \_\_\_\_\_ (“Owner”).

**RECITALS**

A. The City and Owner agree that a public nuisance currently exists on that real property located at \_\_\_\_\_ and as described on the attached Exhibit “A” (“Property”).

B. The City and Owner wish to abate the public nuisance on the Property without incurring the additional cost of the administrative hearing process to declare the existing conditions on the Property a public nuisance.

C. The City and Owner wish to establish the terms and conditions of the City’s abatement of the public nuisance at the property listed herein and the liability of Owner for the abatement costs.

**AGREEMENT**

1. **License to Enter and Destroy All Buildings and Structures.** By signing this Agreement, Owner hereby avers and represents that it is the legal owner of the Property. Owner hereby grants to the City and its authorized representatives, contractors, invitees, and guests (collectively referred to herein as “City”) a license to enter the Property for the purpose of abating the public nuisance currently located on the Property by clearing trash and weeds and destroying all buildings and structures.

2. **Term.** This license shall be effective starting from \_\_\_\_[date]\_\_\_\_ at \_\_[time]\_\_ and shall expire on \_\_[date]\_\_\_\_ at \_\_[time]\_\_\_\_, unless extended by the Owner in writing.

3. **Cost Recovery.** Owner agrees that it is liable for all costs incurred by the City in order to abate the public nuisance on the Property, including but not limited to government agency permits, hazardous materials and/or substances (i.e. lead, asbestos, petroleum products, etc.) investigation and removal, demolition and debris removal. The City agrees that Owner need not immediately pay the abatement costs, but Owner agrees to allow the City to place a lien in the amount of all abatement costs on the Property title. The nature, scope and determination of such costs shall be in the sole discretion of the City. Owner agrees that it is subject to the lien procedures set forth in Milpitas Municipal Code V-500-5.02 and California Government Code section 38773.1.

4. **Indemnity.** Owner agrees to indemnify, defend with counsel selected by City, and hold City, its members, officers, directors, affiliates, subsidiaries, agents, employees, and

servants harmless from and against any claims, damages, losses, expenses and attorneys' fees arising out of Owner's failure to disclose any dangerous condition of the Property. This indemnity obligation is unqualified with the single exception that it shall not apply to the portion of any claim, damage or loss that arises out of the City's sole negligence or willful misconduct, but it shall apply without limitation to all other claims, damages or losses including those that arise out of the concurrent negligence, whether passive or active, of the City, its affiliates, subsidiaries, agents, employees, guests and servants. The indemnity herein shall survive the termination of this Agreement and shall continue in effect until any and all claims, actions or causes of action with respect to any of the matters indemnified against are fully and finally barred by the applicable statute of limitations.

**5. Dispute.** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through direct discussions (between representatives from each party duly authorized to bind the respective party), the parties agree to first endeavor to settle the dispute in an amicable manner by mediation and, if that fails, any action to enforce or interpret this Agreement, or to resolve disputes with respect to this Agreement shall be heard by Judicial Reference pursuant to the provisions of California Code of Civil Procedure Section 638, *et seq.* Both the mediation and the Judicial Reference shall be conducted by a judge of the Judicial Arbitration and Mediation Services, Inc. (JAMS/ENDISPUTE). For Judicial Reference, the parties shall agree upon a single referee who shall then try all issues, whether of fact or law, and report in writing a finding and judgment thereon. If the parties are unable to agree upon a referee, either party may seek to have one appointed, pursuant to Sections 639 and 640 of the California Code of Civil Procedure. Any party may commence a reference by sending a written demand for reference to the other party. Such demand shall set forth the nature of the matter to be resolved by reference. Both parties shall mutually select the place of the reference. The substantive law of the State of California shall be applied by the referee to the resolution of the dispute.

The parties shall share equally all initial costs of reference. However, the prevailing party shall be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the reference. The parties agree that each party shall have the right to cause an appeal to be taken from the referee's decision to a court of competent jurisdiction in the same manner as a judicial appeal arising out of an order or judgment from a California Superior Court in a civil action and all of the same rules, rights and remedies shall be applied to both parties with respect to any such appeal, including matters of fact, matters of law, standards for review and substantive and procedural laws. Judgment may be entered upon any such final decision in accordance with applicable law in any court having jurisdiction thereof. The referee (if permitted under applicable law) or such court may issue a writ of execution to enforce the referee's decision.

**6. Attorneys' Fees.** If any dispute, litigation or arbitration between the parties arises out of this Agreement, the losing party in such dispute, litigation or arbitration shall pay to the prevailing party all costs of such dispute, including without limitation, costs of arbitration or attorneys' fees and expert witness fees.

7. **Termination.** This Agreement may be terminated at any time by either party prior to the abatement, with or without cause, upon written notice to the other party. However, Owner is still liable for any costs incurred by the City for the abatement of the Property up to and including the date of termination. Owner agrees that the City may recover those costs from Owner by any legal means for the abatement of a public nuisance, including but not limited to a civil lawsuit, special assessment, or lien.

8. **Entire Agreement.** This Agreement represents the entire agreement between the City and Owner and supersedes all other negotiations, representations and agreements, either written or oral. This Agreement may be amended in writing, signed by both parties.

9. **Training Exercises**

In an effort to reduce the abatement costs, the City may also conduct firefighting training exercises (“Training Exercises”) before removing the structures. Such Training Exercises shall include such actions as \_\_\_\_\_ and may cause damage to existing physical structures and/or fixtures. Owner shall not be liable for any costs the City incurs to conduct the Training Exercises.

If the City performs such Training Exercises, the City agrees to indemnify, defend with counsel selected by City, and hold Owner, its members, officers, directors, affiliates, subsidiaries, agents, employees, and servants harmless from and against any claims, damages, losses, expenses and attorneys’ fees arising out of the training exercises conducted by the City, its affiliates, subsidiaries, agents, contractors, guests, employees, and servants. This indemnity obligation shall not apply to the portion of any claim, damage or loss that arises out of Owner’s sole negligence or willful misconduct or Owner’s failure to disclose hazardous conditions of the Property to the City prior to the training exercises.

The indemnity herein shall survive the termination of this Agreement and shall continue in effect until any and all claims, actions or causes of action with respect to any of the matters indemnified against are fully and finally barred by the applicable statute of limitations.

10. **Waiver.** Owner acknowledges that the abatement of the public nuisance and training exercises on the Property contemplated herein will result in total destruction to improvements, structures or fixtures now existing on the Property and such improvements, structures or fixtures are intended to be demolished. Therefore, Owner agrees to waive any right or claim to indemnity, reimbursement or compensation from City for damage to the Property as a result of the actions of the City or its affiliates, subsidiaries, agents, contractors, employees, guests and/or servants.

This Agreement entered into as of the day and year first written on Page 1:

**OWNER**

By: \_\_\_\_\_  
[insert typed name and title]

Signature: \_\_\_\_\_

**CITY OF MILPITAS**, A California Corporation

By: Thomas C. Williams  
City Manager

Signature: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael J. Ogaz, City Attorney