

REGULAR

NUMBER: 38.788

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS REPEALING TITLE XI CHAPTER 30 "SIGNS" AND AMENDING TITLE XI, CHAPTER 10 FOR THE PURPOSE OF INTEGRATING PROVISIONS REVIEWING SIGNS AND INCLUDING NEW PROVISIONS FOR OFF-SITE ADVERTISING STRUCTURES

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of August 17, 2010, upon motion by Councilmember Giordano and was adopted (second reading) by the City Council at its meeting of _____ upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the Planning Division completed an environmental assessment for the project, an amendment and reorganization of the existing municipal code provisions pertaining to sign regulations, in accordance with the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission held a duly-noticed public hearing on June 9, 2010, and heard evidence prepared by staff and comments by the public; and

WHEREAS, the City Council determines that the component of this project that focused on integrating, reformatting, and streamlining existing sign review and approval procedures and requirements is exempt from CEQA pursuant to Section 15061(b)(3), which states that: “CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” It can be seen with certainty that the reformatting and reorganizational amendments to the zoning code text merely restate or streamline existing procedures and do not substantively change existing substantive requirements for signage and will not have a significant effect on the environment; and

WHEREAS, the City Council also determines that the component of the project focused on off-site advertising displays adjacent to interstate highways and state routes is exempt pursuant to Section 15162 in that the project is consistent with the findings within the prior certified Supplemental EIR (SCH#2006082087). The Supplemental EIR identified the locations of the freeway signs and their potential impacts on the environment. No new information or changes in the scope of the proposal necessitates further environmental analysis. The certified Supplemental EIR is adequate to address the freeway signs; and

WHEREAS, the City Council finds that the proposed amendments are consistent with the General Plan in that:

- a. The Ordinance promotes and balances economic development by establishing and facilitating a process that ensures quality identification;
- b. The Ordinance allows for provisions that ensure that entities identified by signage within the City project a positive quality image for Milpitas; and
- c. The Ordinance provides a streamlined review for entities wanting to advertise, identify or market themselves through signs; and

WHEREAS, the proposed amendment will not adversely affect the public health, safety and welfare in that the provisions are consistent with applicable state and federal law and consider reasonable effects that signs have on the public; and

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

NOW THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. REPEALING OF MILPITAS MUNICIPAL CODE TITLE IX, CHAPTER 30

Title IX, Chapter 14 (“Advertising on Freeways”) of the Milpitas Municipal Code is hereby repealed and renamed “Reserved.”

SECTION 3. REPEALING OF MILPITAS MUNICIPAL CODE TITLE IX, CHAPTER 30

Title IX, Chapter 30 (“Signs”) of the Milpitas Municipal Code is hereby repealed and renamed “Reserved.”

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 (“Definitions”) of the Milpitas Municipal Code is hereby amended with the addition of a new definitional entry, to be placed before the term “Cemetery,” to read as follows:

“**Candidate**” means any person, party, referendum, initiative or other ballot measure.

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 (“Definitions”) of the Milpitas Municipal Code is hereby amended with the addition of a new definitional entry, to be placed before the term “Single Household Unit,” to read as follows:

Signs. For purposes of Section XI-10-24, Sign Regulations, of this Chapter, the following definitions shall apply:

1. “**Abandoned Signs**” means any sign used for advertising or other purposes where the business it advertised or the use or event it supported has ceased operation for or occurred more than ninety (90) days prior to the sign’s posting.
2. “**Abate**” means to repair, replace, remove, destroy, or otherwise remedy the condition in violation of this Chapter.
3. “**A-Frame Sign**” means and includes a sign that is portable, is capable of standing without support or attachment, and folds open in the form of an “A” or “sandwich-board”.
4. “**Ancillary services sign**” means a sign displaying ancillary services such as smog services, lotto, or that represent trade affiliations, such as credit card services, or other similar services and not for the purpose of displaying products being sold.
5. “**Approved Plastics**” means those materials specified in the U.B.C. Standard No. 52-1 which have a flame spread rating of 225 or less and a smoke density not greater than that obtained from the burning of untreated wood under similar conditions when tested in accordance with U.B.C. Standard No. 42-1 in the way intended for use. The products of combustion shall be no more toxic than the burning of untreated wood under similar conditions.
6. “**Architectural Sign**” means and includes a sign used for advertising purposes which constitutes an integral part of a roof or marquee and is designed with an intent and purpose to relate to the architectural style of the main building.
7. “**Area Identification Sign**” means and includes a permanent sign which serves to identify an area.
8. “**Awning sign**” means any sign or graphic attached to, painted on or applied to an awning or canopy.
9. “**Balloon Sign**” means and includes any large [over three (3) cubic feet in size] inflatable hot/cold air or helium balloon that is used as an advertising device for any business or promotional event.
10. “**Banner Sign**” means and includes a temporary sign composed of lightweight, flexible, non-rigid material either enclosed or not enclosed in a rigid frame.
11. “**Blade Sign**” means a pedestrian oriented sign, adjacent to a pedestrian walkway or sidewalk, attached to a building wall, marquee, awning, or arcade with the exposed face of the sign in a plane that is perpendicular to the plane of the building wall.
12. “**Building Perimeter**” means the total exterior wall length for any and all buildings intended for human occupancy, as measured at the ground elevation. No second story or subsequent upper story areas shall be considered as a part of this calculation.
13. “**Canopy Sign**” See awning sign.

14. **“City Identification Sign”** means and includes a sign placed at the point of entry to the City of Milpitas for the purpose of informing a person that they are entering the City of Milpitas.
15. **“Construction Sign”** means and includes a sign placed on the property where site work, building construction and/or a tenant improvement within an existing building is in progress. The sign may denote that a business will be opening soon, the opening date, names of the architect, engineer, contractor, future business and lending agency.
16. **“Directional Sign”** means a sign which guides and directs motorists to a specified destination in the most direct manner possible.
17. **“Display Surface”** means the area made available by the sign structure of building surface for the purpose of displaying the advertising message.
18. **“Electric Sign”** means any sign containing electrical wiring, but not including signs illuminated by an exterior light source.
19. **“Erect”** means to build, construct, attach, hang, place, suspend or affix.
20. **“Exposed raceway”** means an enclosure or conduit that is used to conceal wiring for a lighted sign and is visible from any elevation, typically located between the sign and the building to which the sign is attached.
21. **“Flag”** means a visual device with no commercial copy, usually rectangular in shape and made of a cloth material suspended by, or attached to, a pole or post and may be raised or lowered.
22. **“Flag sign”** means a visual display device with commercial copy, usually rectangular in shape and made of a cloth material suspended by, or attached to, a post, or pole and may be raised and lowered.
23. **“Freestanding Sign”** means a sign which is supported by one or more uprights, poles, or braces in or upon the ground, or partially supported and attached to any building, other structure, or foundation on the ground.
24. **“Garage Sale Sign”** means a sign used primarily for the purpose of advertising a “garage sale” and/or “yard sale” at a residence.
25. **“Grand Opening Sign”** means and includes banners, pennants, flags, balloons, and similar advertising devices when used only for bona fide grand-opening functions, new ownership, name change, or the reopening of a business that has completely closed for remodeling for at least two weeks.
26. **“Graphic Panel, Freestanding”** Freestanding graphic panel means a freestanding sign located within five (5) feet of the main building wall, which relates to the architecture of the building and depends primarily on a graphic image for delivering its advertising message. Graphic panels do not count as freestanding signs. The display area on graphic panels counts towards overall sign area.
27. **“Impact Resistive Plastic”** means any plastic material capable of resisting fifty (50) foot pounds of force as tested in accordance with ANSI/UL 972 Multiple Impact Test or any similar test procedure.
28. **“Information Sign”** means and includes signs providing courtesy information, or direction to the public without advertising the business products, or services such as hours, entrance, exit, self-serve, credit cards, restrooms, telephone drive-up, or which serves to direct motorist and pedestrians on private property.
29. **“Joint Use Sign”** means and includes a freestanding sign for a commercial district under multiple ownerships where freestanding signs for each parcel for which signage is desired is infeasible. The commercial district shall be characterized by close proximity of the businesses and small parcel size. A common parking field and common vehicular circulation are encouraged.
30. **“Logo”** means a trademark, or symbol of an organization which is registered with the federal or State government and consistently used in conducting the business activities of said organization.

31. **“Marquee”** means a permanent roofed structure, attached to, and support by the building and projecting beyond the main building.
32. **“Multi-use Structures”** means any commercial, industrial, quasi-public, or agricultural farm products sales use, containing five (5) or more stores, or businesses on a single parcel of land.
33. **“Mural”** means a display, or illustration painted on a building, or wall within a public view not intended to advertise a product, service, or business, and therefore is not considered a sign.
34. **“Mural sign”** means a display, or illustration painted on a building, or wall intended to advertise a product, service, or business.
35. **“Noncombustible Material”** means any material which will not ignite at, or below a temperature of one thousand two hundred (1,200) degrees during an exposure of five (5) minutes, and which will not continue to burn or glow at that temperature. Tests shall be made as specified in U.B.C. Standard No. 4-1.
36. **“Nonstructural Trim”** means the molding, battens, capping, nailing strips, latticing, cutout, or letters and walkways which are attached to the sign structure.
37. **“Off-site Advertising Display”** means any sign that advertises, or informs about a business organization, event, goods, products, services, or uses not available on the property upon which the sign is located.

The term Off-site Advertising Sign does not include Joint Use Sign, Temporary Tract Advertising Signs for subdivisions under construction in the City, Open House Directional Signs, Garage Sale Signs, Off-site Public Information Signs, off-site directional signs for purposes of identifying regional shopping centers, and Temporary Tract Advertising Signs.

38. **“Off-site Directional Sign”** means any sign that provides direction to retail, community, and cultural events not available on the property upon which the sign is located.

The term Off-site Directional Sign does not include Garage Sale Signs, Joint Use Signs, Official City or City-sponsored signs, Off-site Directional Signs identifying regional shopping centers, Off-site Public Information Signs, Open House Directional Signs, and Temporary Tract Advertising Signs.

39. **“Off-site Public Information Sign”** means a sign that is placed proximate to a major city entry on privately owned property that is used to provide non-advertising information and/or identification symbols or plaques to the public for civic organizations, service clubs or other quasi-public uses and is erected within the public right-of-way.
40. **“Open House Directional Sign”** means a sign, no larger than six (6) square feet in sign area per side, used primarily for the purpose of directing traffic to a house being offered for sale or lease.
41. **“Other Advertising Structure”** means any device erected or used for the same purpose as a sign, whether erected, or used:
 - a. Exclusively for advertising purposes, upon which any poster bill, printing, painting device, or other advertisement or identification of any kind whatsoever may be placed, posted, painted, fastened, or affixed.
 - b. Exclusively for advertising purposes and including any spectacle, display or advertising statuary.
42. **“Permanent Sign”** means every sign except temporary sign as defined herein.
43. **“Political Sign”** means a sign which is designated to influence the action of the voters, and election, or defeat of a candidate for the nomination, or election to any public office, or a measure appearing on the ballot at any national, state, district, or local election.

44. **“Portable”** means an object that is capable of being borne or carried, easily transported, or conveyed without difficulty.
45. **“Portable Sign”** means and includes a sign that is portable and capable of being borne, or carried, easily transported, or conveyed without difficulty, is capable of standing without support or attachment, is unattached to any structure, and is used for advertising purposes.
46. **“Projection”** means the distance by which a sign extends over public property or beyond the building line.
47. **“Projecting Sign”** means a sign other than a wall sign which projects from, and is supported by a wall of a building or structure.
48. **“Public Information Sign”** means a sign erected for the sole purpose of displaying advertising for community activities and/or identification symbols or plaques for civic organizations or service clubs.
49. **“Public Street Frontage”** means a publicly owned street immediately adjacent to the parcel, for purposes of sign area and height calculations. Public streets for which the parcel does not have access rights are not included for purposes of any sign calculations.
50. **Raceway.** See "exposed raceway."
51. **“Regional Shopping Center”** means any commercial development on one (1) or more parcels of land which are contiguous, or across from a right-of-way which contains a gross land area of at least thirty (30) acres or a gross building area of at least 200,000 square feet. Current regional shopping centers are McCarthy Ranch Marketplace, the Town Center shopping center, and the Great Mall and its out-parcels zoned General Commercial.
52. **“Roof Sign”** means a sign erected upon or above a roof or a part of a parapet of a building or structure.
53. **“Scoreboard Sign”** means a sign located on scoreboard structures located in an adult or youth outdoor playing field on public property and shall be for products or businesses available to persons of all ages.
54. **“Shopping Center”** means any commercial development containing five (5) or more stores or businesses on one (1) or more parcels of land operating as an integrated use and having a gross parcel area of five (5) or more acres.
55. **“Shopping Center Identification Sign”** means a sign located on the site of a shopping center or regional shopping center that states the name of the shopping center or regional shopping center.
56. **“Sign”** means every announcement, declaration, demonstration, display, illustration insignia, surface, or space when erected or maintained out of doors in view of the general public for identification, advertisement or promotion of the interests of any person.
57. **“Sign Area”** means the area of a sign to be calculated that includes all lettering, wording, and accompanying designs or symbols, together with any background of a different material or color than the remainder of the wall of the building to which is affixed or upon which it is painted. In the case of a freestanding sign, the supports or uprights on which any sign is supported should not be included in determining the sign area unless such supports or uprights are designed in a manner as to form an integral background of the sign.

Where the sign consists of individual letters or symbols, the area shall be considered to be that of the smallest rectangle, circle, square, or triangle which can be drawn to encompass all of the letters. Provided however, that where such individual type letters or symbols are separated more than thirty-six (36) inches from each other, those letters or symbols shall be calculated separately.

If the sign has more than one (1) advertising surface, the sum of all the areas of all such surfaces shall be the area of the advertising surface of such sign except that, if two (2) surfaces on the same face in opposite directions (i.e., the relative angles between the directions they face is 180 degrees) and the distance between such two (2) surfaces is not more than twenty-four (24) inches, then the area of only one of the two surfaces (the largest if they are not equal) shall be included in the computation.

58. **“Sign Program”** means a specific set of design standards established for the purpose of unifying a variety of signs associated with a multitenant or multiuse project, building or complex of buildings.
59. **“Sign Surface”** means the surface of the sign upon, against or through which the message is displayed or illustrated.
60. **“Snipe sign”** means temporary or portable signs advertising events that are fastened to fences, trees, utility poles, or other structures or fixtures and also including signs on sticks stuck in the ground and usually found off-site. These do not include real estate, political or open house signs.
61. **“Statuary Sign”** means statuary used for advertising purposes or representing the logo of a business.
62. **“Temporary Sign”** means any sign, banner, flag, valance, pennant, streamer, whirligig or advertising display, constructed of cloth, canvas, fabric, cardboard, plywood or other light material with or without a frame, whether attached or portable, and designed or intended to be displayed for a short period of time.
63. **“Temporary Promotional Sign”** means any temporary Balloon Signs, banners, and similar advertising devices when used only for special promotional events.
64. **“Temporary Tract Advertising Sign”** means a uniformly designed sign which advertises a residential development.
65. **“Vehicle-Mounted Sign”** means a sign, used for the purpose of advertising, larger than three (3) feet by three (3) feet mounted on, attached to or capable of being borne or carried, easily transported or conveyed without difficulty by a vehicle, where that vehicle is parked on public or private property. This definition does not include signs on delivery vehicles in the act of making a delivery or signs on vehicles parked on residential driveways or public streets.
66. **“Wall Sign”** means any sign painted on, attached to or erected against the wall of a building or structure.
67. **“Window Sign”** means any sign painted, attached, glued or otherwise affixed to the interior or exterior surfaces of a window or suspended or located within three (3) feet of the window for the primary purpose of being visible from the exterior of the building.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 2.03 (“Definitions”) of the Milpitas Municipal Code is hereby amended with the addition of a new definitional entry, to be placed before the term “Usable Open Space,” to read as follows:

“Unreasonable Period of Time” means not less than thirty (30) calendar days following notification by the City to the owner/occupant pursuant to this Chapter 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 this Chapter.

SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 24 (“Signs”) is hereby added to the Milpitas Municipal Code to read in its entirety as follows:

SECTION 24 SIGNS

- 24.01 Purpose and Intent
- 24.02 Administration
- 24.03 General Regulations
- 24.04 Signs Subject to Review
- 24.05 Special Regulations

24.06 Exempt Signs

24.01 Purpose and Intent

The purpose and intent of this section is to provide for regulation of all signs which are publicly displayed in the City of Milpitas. It is recommended that the safety of pedestrians and vehicles, protection against fire, and the enhancement of the outward appearance of the community are important factors in the general welfare of the people, and that accordingly reasonable control of such signs by ordinances is in the public interest.

24.02 Administration

A. Relationship to Other Applicable Documents including Local and State Regulations. In addition to the provisions discussed in this Chapter, there are other City and State regulations that may also apply depending on the specific sign and/or its location. These other regulations include, but are not limited to, the State Highway Code, Business and Professions Code, and Civil Code, and any applicable specific plan. The applicable specific plan may include additional sign standards and regulations beyond those of this Chapter. If the specific plan is silent regarding certain sign standards, the regulations of this Chapter shall prevail. Uniform Building and National Electrical Codes may also apply, when Building and Electrical Permits are required.

The provisions of this Chapter are in addition to other requirements of the ordinances of the City of Milpitas and Milpitas Municipal Code imposed upon signs including, but not limited to, the requirements of the following (and amendment thereto):

Ordinance No.	Chapter	Title	Common Name
65	I	II	Building Ordinance

B. Sign Violations. Violations of this section shall be subject to the provisions of Section XI-10-63, Enforcement, of this Chapter.

C. Clarification of Ambiguities/Interpretations. If ambiguity arises within the meaning and intent of this Chapter, or if ambiguity exists with respect to any standards, requirements or enforcement as set forth herein, the ambiguity shall be resolved in accordance with Section 61, Interpretations, of this Chapter.

24.03 General Regulations

A. Purpose and Intent. The purpose of these general regulations is to define the parameters for design, size, height and location of signs. The requirements related to the number, design type and size of signs outlined in this Chapter are intended to be maximum standards which do not necessarily ensure compatibility with building architecture, the neighborhood and the community appearance. Consideration shall be given to the sign’s relationship to the overall appearance of the subject property and surrounding area.

B. Maximum Permissible Sign Area. The following prescribes the maximum permissible sign area for projects located within the city. Please refer to Section XI-10.24.04, Special Regulations, of this Chapter for unique circumstances such as shopping centers, regional shopping centers, town center district, sign programs and off site advertising displays.

1. Maximum Sign Area in Non-Residential Zones. The maximum permissible total sign area for commercial, industrial, mixed use, institutional and agricultural zoning districts will conform to the following standard:

a. The total aggregate area of all signs permitted on any building site or property shall not exceed one (1) square foot of sign for each two (2) lineal feet of building perimeter on the subject parcel or not exceed two (2) square feet of sign for each one (1) lineal foot of public street frontage, at the applicant’s discretion.

i. For buildings or uses containing more than one (1) business, the allowable sign area as defined in Section (1) above shall be:

- (1) Distributed to each business proportionately to the floor area of the subject business to the total floor area for all leasable structures on the parcel or site; or
- (2) Distributed to each business proportionately to the building façade of the subject business by one (1) square feet of sign area per one (1) lineal feet of adjacent building façade oriented towards a property line of a site or common parking area.

2. **Maximum Sign Area in Residential Zones.** Sign area in Residential Zones shall comply with the following requirements:

- a. **Single Family Residential Zones:** Permanent signs erected for the purpose of announcements or nameplates shall not exceed one (1) square foot.

Exception: House numbers, street names, and warning signs pursuant to Section XI-10-24.06, of this Chapter.

- b. **Multiple Family Residential Districts:** Permanent signs erected for permitted uses shall not exceed ten (10) square feet.
- c. **Conditional Uses in any Residential Zone** shall be allowed sign area not exceeding one (1) square foot of sign area for each three (3) lineal feet of public street frontage, provided, however, that this sign area shall not, in any case, exceed a maximum of either thirty-two (32) square feet for Valley Floor Residential Zones or twenty-four (24) square feet in the designated Hillside Overlay.

3. **Limitations on Public Street Frontage.** Public street frontage with non-access rights or no immediate direct access, such as flood control channels, but excluding landscaped planter areas, shall not be included in computing public street frontage for purposes of sign area calculations. Refer to Section XI-10-24.05(D), Regional Shopping Centers, of this Chapter for additional information relating to regional shopping centers unless permitted pursuant to a sign program.

4. **Sign area deducted from total per sign.** Any square footage of a sign shall be deducted from the total maximum permissible sign area allowed for the site, unless otherwise specified or exempted in this Chapter.

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

1. **Appropriateness of sign.** The following factors shall be considered in the review of the design of each proposed sign:
 - a. The relationship of the sign to the space on the building where the sign is to be located.
 - b. Relationship of the location of the sign to all facades of all buildings on the site.
 - c. Compatibility of materials, architecture, design, and continuity with other signs on the building.
 - d. Illumination of the sign as it relates to other signs on the subject building, other light sources, competition and interference of light sources and intrusion of light into residential areas.
 - e. Visibility and legibility (letter height and legibility, contrast-background relationship, placement and location).
 - f. Impact on other immediate signs in terms of visibility, legibility, and scale.
 - g. Traffic conditions, including but not limited to, traffic safety and circulation, visibility, road width, curb cuts, or driveway indentations, median, proximity of major intersections, signals or stops, average traveling speed or any other natural physical obstruction.

- h. The proximity of the sign to residential districts.
- i. Relationship of the height of the sign to the height of the building at that location.
- j. Quantity of other signs in the vicinity of the subject sign on or off of the subject parcel.
- k. Impact on visibility of other signs in the vicinity of the subject sign.
- l. Other such factors that the discretionary decision-making body and/or Planning staff shall determine as relating to the impact of the sign to the general environment.

D. Specific Design Guidelines. Each proposed sign shall be reviewed for conformity to the following criteria:

1. The sign shall relate to the architectural design of the building. An attractive scale between the sign, the building and the immediate surrounding buildings and signs shall be maintained.
2. Signs should be an integral part of the design of the storefronts of mixed-use buildings.
3. To the extent feasible, a sign shall be graphic with design emphasis on simplicity, style, trademark, business identification and symbol. Wording shall be an integral part of the overall design.
4. Signage shall not obstruct pedestrian circulation.
5. While bilingual signs are allowed, the size of English lettering should be at least equal to the size of letters of another language.
6. The business name and address shall be displayed on the tenant space if located in a multi-tenant building or on the building or property for a single occupant building.
7. Lighting
 - a. All light sources shall be adequately diffused or shielded.
 - b. Bare lighting sources, such as neon, bare fluorescent tubes, incandescent bulbs, light emitting diodes (LED) and similar devices are not permitted except pursuant to Site Development Permit approval, in accordance with Section XI-10-57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.
8. Construction
 - a. The sign's supporting structure shall be as small in density and as simple as is structurally safe.
 - b. Sign letters and materials should be professionally designed and fabricated.
 - c. Multiple signing on a single-faced building shall be reviewed for coordination of all signs architecturally and aesthetically.
 - d. Exposed transformers are prohibited.
 - e. Exposed conduit and tubing must be mitigated so that they are inconspicuous.
9. Materials
 - a. Sign faces should be constructed of non-brittle, non-yellowing Polycarbonate material or superior.
 - b. Signs should be constructed using high-quality materials such as metal, plastic, stone and wood.
 - c. Impact Resistive Plastic
 - i. Impact Resistive Plastic shall be used on all internally illuminated signs utilizing plastic sign faces.

- ii. Whenever a plastic internally illuminated sign face, advertising copy or message becomes damaged and is to be replaced; said sign face shall be replaced with a sign face constructed of impact resistive plastic, as defined herein.

d. Signs in the Hillside (-H) Overlay District.

- i. Any sign over one (1) square foot in area shall be constructed of either wood or masonry materials. Incised lettering or individual letters, numbers, symbols, etc., of a metallic material mounted on said wood or masonry structure is permitted. Furthermore, all such lettering may only be illuminated by external or indirect means.

E. Prohibited Signs and Elements of Signs. The following signs, or signs which contain the following elements, are prohibited:

1. Abandoned Signs. Abandoned Signs shall be removed within 90 days after the business the sign advertised has ceased as follows: Removal shall involve elimination of all sign copy. In addition, if the sign was mounted on a building, the building facade shall be restored to its original state to the best extent possible.
2. A-Frame Signs. Any A-Frame Sign with the exception of public service signs and open house directional signs.
3. Blinking, Flashing Lights. Any sign having blinking, flashing or fluttering lights, or any other illuminating device which has a changing light intensity, brightness or color.
 - a. Exceptions: The following signs may be allowed with blinking, flashing elements when:
 - i. Approved pursuant to Section XI-10-24.05(G), Off Site Advertising Displays Adjacent to Interstate Highways and State Routes, of this Chapter; or
 - ii. Approved pursuant to a Sign Program, in accordance with Section XI-10-24.05(F), Sign Programs, of this Chapter.
4. Off-Site Advertising Displays. Any sign as regulated by Section XI-10-24.03(F), Prohibited Off-Site Advertising Signs, of this Chapter.
5. On Public Property. Any sign located on public property as regulated by Section XI-10-24.03(G), Advertising on Public Property, of this Chapter.
6. Other Advertising Structure as defined in Section XI-10-2.03, Definitions, of this Chapter.
7. Portable Signs.
 - a. Exceptions: Public service signs and open house directional signs.
8. Privately-owned signs resembling Traffic Signs. Any privately-owned sign resembling any public directional sign or traffic control device.
9. Reflective Signs. Any sign using colors that contain reflective properties.
10. Rotating or Moving Signs. Any sign which revolves, rotates, moves in any manner or creates the illusion of movement or rotation, or has any visible moving, revolving or rotating surfaces or parts, is held and/or moved by a human being or animal.
11. Roof Sign or Signs Extending Above Roof Ridge. Any Roof Sign or sign, which is placed on, above or attached to any building roof (above the gutter line); above or on top of any marquee; or on, above, made a part of or attached to any parapet.
12. Signs that are a Traffic Hazard. Any sign, which creates traffic hazard to operators of motor vehicles or any sign, which obstructs or interferes with a motorist's vision.

13. Sound or Odor Emitting Signs. Any sign designed for emitting sound, odor or visible matter.

14. Statuary Signs. Statuary when used for advertising purposes.

15. Temporary Signs.

- a. Exceptions: Construction signs, Garage Sale signs, Grand-Opening signs, Open House Directional signs, Temporary Promotional and Temporary Tract Advertising Signs.

16. Vehicle-Mounted Signs. Vehicle-Mounted Signs where the vehicle is:

- a. Not legally registered;
- b. Not operable;
- c. Not parked within the confines of a striped parking space approved by the City of Milpitas, a residential driveway or residential street; or
- d. Parked within the confines of a striped parking space approved by the City of Milpitas or a city street for more than 72-hours.

F. Prohibited Off-site Advertising Displays. All signs shall be erected only upon the site occupied by the persons or business sought to be identified or advertised by such signs. It is the intent of this limitation to prohibit the use of exterior signs for the general advertisement of products, services, or other matters having no relation to the site upon which they are placed. Signs shall not extend over street or other rights-of-way except as provided for elsewhere in this Chapter.

1. Exceptions: The following types of off site advertising displays are exempted from this section:

- a. Off site advertising displays adjacent to interstate highways and state routes. Refer to Section XI-10-24.05(G), of this Chapter.
- b. Garage Sale Signs. Refer to Section XI-10-24.04(E), of this Chapter.
- c. Joint Use Signs. Refer to Section XI-10-24.04(C), of this Chapter.
- d. Official City or City-sponsored signs. Refer to Section XI-10-24.04(C), of this Chapter.
- e. Off-site directional signs adjacent to roadways other than interstate highways and state routes. Refer to Section XI-10-24.05(I), of this Chapter.
- f. Off-site Directional Signs identifying regional shopping centers. Refer to Section XI-10-24.05(D), of this Chapter.
- g. Off-site Public Information Signs. Refer to Section XI-10-24.04(C), of this Chapter
- h. Open House Directional Signs. Refer to Section XI-10-24.04(E), of this Chapter.
- i. Temporary Tract Advertising Signs, for subdivisions under construction in the City. Refer to Section XI-10-24.04(E), of this Chapter.

G. Illegal Signs on Public Property or in Public Right of Way

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

2. Violation. Any violation of the above named items erected upon public property in violation of the provisions hereof may be removed and destroyed summarily by any City officer or employee. Signs so confiscated may be redeemed within ten (10) days on payment by the owner of costs of removal. The minimum charge for removal of any sign shall be Ten Dollars (\$10.00) per sign. Any sign not claimed within ten (10) days of removal shall become the property of the City.
3. Exceptions. Provided further, freestanding open house directional signs and garage sale signs may be placed within the public right-of-way pursuant to Section XI-10-24.04(E), Temporary Signs, of this Chapter.

24.04 Signs Subject to Review

A. Purpose and Intent. The purpose of this section is to identify the specific sign standards relating to sign type, sign size, number of signs, height of signs, location of signs, general provisions and the reviews required for permanent and temporary signs.

B. Review and Approval

1. Site Development Permit or Minor Site Development Permit. A proposed sign may require Minor Site Development Permit and/or Site Development Permit in accordance with this Chapter. Review requirements for a Minor Site Development Permit and a Site Development Permit are included in Section XI-10.57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.
2. Permitted signs may be erected or painted upon posts, poles, buildings or structures subject to compliance with the following provisions:
 - a. Hillside (-H) Overlay District and designated historical or cultural resource buildings or sites. The City Council, upon recommendation by the Planning Commission, shall be empowered to approve, conditionally approve or deny any Site Development Permit for any sign(s) proposed in the Hillside district, subject to the provisions of Section XI-10-45.09, Site and Architectural Approval, of this Chapter, and for any signs proposed on designated historical or cultural resource buildings or sites, subject to the provisions of Section XI-4-10.00, Permit Procedure, of this Title.
 - b. Sign Program. The Planning Commission shall be empowered to approve, conditionally approve or deny a Site Development Permit application for a sign program(s) pursuant to Section XI-10-24.05(F), Sign Programs, of this Chapter.
 - c. Freestanding signs exceeding six (6) feet. The Planning Commission shall be empowered to approve, conditionally approve or deny freestanding signs exceeding six (6) feet in height, under the provisions of the Site Development Permit.
 - d. Planning Division staff shall be empowered to approve, conditionally approve or deny the following signs, under the provisions of Section XI-10-57.03 with a Minor Site Development Permit, of this Chapter:
 - i. Signs which conform to an approved sign program.
 - ii. Signs which replace previously approved building signs, provided sign type, size and location are unchanged, on sites which are not in the Hillside (-H) Overlay District or on designated historical or cultural resource buildings or sites.
 - iii. New building signs for single-tenant structures.
 - iv. Freestanding signs up to six (6) feet in height, as measured from the closest public sidewalk or curb, on sites which are not in the Hillside (-H) Overlay District or on designated historical or cultural resource buildings or sites.

C. Permanent Signs.

1. General Notes. The following general notes shall apply to all signs listed in the following matrix, unless otherwise indicated:
 - a. All signs listed, unless exempted will count towards the total allowable sign area for a site.
 - b. Table XI-10-24.04-1, Matrix of Permanent Sign Types, includes the maximum number signs permitted, maximum size, maximum height, permits required. Special considerations by sign type are included in Section XI-10-24.04(D), Standards for Specific types of Permanent Signs, of this Chapter.
 - c. All signs listed in Table XI-10-24.04-1 shall require a Minor Site Development Permit in addition to any discretionary review required per specific sign type.
 - d. Except as expressly permitted or authorized in this section or deemed similar by the Planning Commission to those signs permitted or authorized pursuant to Section 61, Interpretations, of this Chapter, all other signs are prohibited within the City.

**Table XI-10-24.04-1
Matrix of Permanent Sign Types**

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Review Required
Ancillary Service Signs			None	Minor Site Development Permit
Architectural Sign				Minor Site Development Permit
Area Identification Sign		Residential: 25 sq. ft. Commercial/ Industrial: 60 sq. ft.		Minor Site Development Permit
Blade Sign	One per elevation of each tenant space.		15 ft. above walkway surface.	Minor Site Development Permit
City Identification Sign				Minor Site Development Permit & Site Development Permit
Flag Signs	1 per site or building	40 sq. ft. per flag sign		Minor Site Development Permit
Freestanding Sign	1 per each parcel's public street frontage, 1 additional sign for sites with more than 300 ft. of public street frontage		25 ft. max Non-Residential: 1 foot of height for every 8 lineal feet of public street frontage. For any second	Signs 6 ft. or less in height: Minor Site Development Permit Signs over 6 ft. in height: Site Development Permit Hillside (-H)

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Review Required
			sign, only the lineal feet in excess of 300 shall be used to determine height. Residential: 1 foot of height for every 25 lineal feet of public street frontage Hillside (-H) overlay: 4 ft.	overlay: Site Development Permit
Graphic Panel Sign				Minor Site Development Permit
Joint Use Sign	See Freestanding sign.			
Menu Board Sign for Drive Through	2 per site		6 ft.	Site Development Permit
Off-site Public Information Sign Citywide program Quasi-public use	Determined through the Site Development Permit			Site Development Permit Minor Site Development Permit
Project Identification Sign (Permanent subdivision/apartment complex (5 or more units)/mobile home park)	See Freestanding sign.			
Projecting Sign	One per business.	Sixteen (16) sq. ft. per side unless increased pursuant to an approval of a Site Development Permit.		Minor Site Development Permit
Public Information Sign				The location, design and size of the sign will be determined through the approval of a Site

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Review Required
				Development Permit.
Scoreboard Sign		Shall not exceed thirty percent (30%) of the total scoreboard area		The Planning Commission may after notice and hearing, permit advertising signs to be located on the scoreboard subject to a Site Development Permit.
Shopping Center Identification Sign	See Section XI-10-24.05(C)			Site Development Permit
Wall Sign				Minor Site Development Permit
Window Sign		Window Signs shall not exceed twenty-five percent (25%) of the contiguous window area		None

D. Standards for Specific Types of Permanent Signs.

1. Ancillary Service Signs

- a. Must be affixed to building, wall, or window.
- b. Shall be smaller in scale to the tenant signs.
- c. Will not count towards sign area allocated to the site.

2. Architectural Signs

- a. Shall constitute an integral part of a roof or marquee.
- b. Minimum clearance of ten (10) feet from the ground.

3. Area Identification Signs

- a. The materials utilized for sign construction and sign support shall not require extensive maintenance or upkeep.

4. Blade Signs.

- a. The sign shall provide a minimum of eight (8) feet of clearance above the walkway surface below.
- b. Shall be pedestrian oriented only.
- c. The blade sign may project a maximum of four (4) feet from the wall of a building.
- d. Signs shall not be internally illuminated.

- e. Will not count towards sign area allocated to the site.
5. City Identification Signs
- a. Permanent City identification signs erected on private property do not count toward the maximum sign area limits, nor the maximum number of freestanding signs allowed on a site.
6. Flag Signs
- a. Will not count towards sign area allocated to site.
7. Freestanding Signs
- a. Height is measured from grade level of the closest public sidewalk, curb or public street, or in the case of the Hillside (-H) overlay district, from a warped plane parallel to the natural grade.
 - b. Shopping center: Tenants may advertise on any freestanding sign allocated to the center.
 - c. Landscaped planter. Freestanding signs shall be erected in on-site landscaped planter areas and maintained in a neat and healthy manner in perpetuity with vegetation that is appropriate to the site. The planter area shall extend a minimum of three (3) feet from the base of the sign.
 - d. Number of sign panels. A freestanding sign may consist of more than one (1) sign panel provided that all such sign panels are consolidated into one common integrated sign structure.
8. Graphic Panel Signs
- a. Shall be located within five (5) feet of the main building wall.
 - b. Graphic panels do not count as freestanding signs. The display area on graphic panels counts towards overall sign area.
9. Joint Use Signs.
- a. Shall be approved pursuant to a Sign Program by the Planning Commission.
 - b. Shall only be approved for a commercial district under multiple ownerships, where freestanding signs for each parcel for which signage is desired, is infeasible.
 - c. The commercial district shall be characterized by close proximity of the businesses and small parcel size. A common parking field and common vehicular circulation are strongly encouraged.
10. Menu Board Sign for Drive Through.
- a. Menu board and speakers shall be oriented away from residential uses and from public right-of-way.
 - b. Will not count towards sign area allotted to the site.
11. Off-site Public Information Signs.
- a. Citywide program. May be permitted pursuant to a Site Development Permit when said signs are located proximate to a major entry to the City and on privately-owned property.
 - b. Quasi-public use.
 - i. A quasi-public use may request up to two (2) signs to be located by the City within the public right-of-way.
 - ii. These signs shall only include the name of the use in letters not exceeding four (4) inches in height and an arrow specifying the appropriate direction.

iii. Requests for such signs shall be made in writing by an authorized representative of the use and shall include the general location desired for said signs.

iv. The City Manager, or his or her designee, shall determine the precise location and sign design based on good traffic engineering practice, and shall provide for erection of the signs.

12. Projecting Signs.

a. Clearance. Projecting signs shall have a clearance of eight (8) feet above the ground and fourteen (14) feet above a driveway, alley, or other vehicular access way.

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

c. Projection Limit. Projecting signs shall not extend from the front wall to which they are attached more than five (5) feet unless modified by an approval of a Site Development Permit.

d. No such sign shall project into a public right-of-way.

13. Public Information Signs.

a. Public information signs shall be located at a prominent entry to the City of Milpitas or a significant location in the City where it will be visible to large numbers of citizens.

14. Scoreboard Signs.

a. Scoreboard signs may be located on scoreboard structures located in an adult or youth outdoor playing field on public property.

b. Shall be for products or businesses available to persons of all ages.

15. Shopping Center Identification Signs.

a. Shopping Center Identification Sign [see Section XI-10-24.05(D), Regional Shopping Centers], of this Chapter.

16. Wall Signs.

a. The area of wall signs shall be determined by Section XI-10-24.03(B), Maximum Permissible Sign Area, of this Chapter.

b. The exposed face of a wall sign shall be installed in a plane parallel to the plane of the wall.

17. Window Signs.

a. One "open/closed" sign may be placed without counting towards sign area allowed for the business or site.

E. Temporary Signs

1. General Notes. The following general notes shall apply to all signs listed in the following matrix, unless otherwise indicated:

a. All signs listed, unless noted will not count towards the total allowable sign area for a site.

b. Table XI-10-24.04-2, Matrix of Temporary Sign Types, includes the maximum number signs permitted, maximum size, maximum height, permits required. Special considerations by sign type are included in Section XI-10-24.04(F), Standards for Specific types of Temporary Signs, of this Chapter.

c. All signs listed in Table XI-10-24.04-1 shall require a Minor Site Development Permit in addition to any discretionary review required per specific sign type unless specified otherwise.

- d. Except as expressly permitted or authorized in this section or deemed similar by the Planning Commission to those signs permitted or authorized pursuant to Section 61, Interpretations, of this Chapter, all other signs are prohibited within the City.

**Table XI-10-24.04-2
Matrix of Temporary Sign Types**

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Duration	Reviews Required
Balloon Sign	1 per event		50 ft. above grade	Up to 4 times per calendar year. Maximum 30 days per event, 15 days for subsequent displays during year. Minimum 30 days between display occurrences.	Minor Site Development Permit
Banner Sign	1 per elevation	60 sq. ft.		Max 30 consecutive days for 1 st event; max 15 consecutive days for subsequent event Displays shall be interrupted by 30 days. Max 4 permits per calendar year If associated with a remodel, the interruption period may be waived.	Minor Site Development Permit
Construction Sign	2 per street frontage For tenant improvements: 2 max	32 sq. ft.	6 ft. when freestanding	After issuance of building permit and removed upon approval of final occupancy	Minor Site Development Permit Site Development

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Duration	Reviews Required
					Permit if over 6 ft. in height.
Garage Sale Sign	2 per garage sale per intersection	6 sq. ft. per side		Saturdays, Sundays and holidays only	None
Grand Opening Sign	1 per elevation	60 sq. ft.		30 days	Minor Sign Permit
Open House Directional Sign	2 per advertised house per intersection	6 sq. ft. per side		Saturdays, Sundays and holidays only	None
Political Signs		32 sq. ft.	6 ft. from grade		
Temporary Tract Advertising Sign	Major Signs: 6 Minor Signs: 6 Additional signs may be allowed through the Major Sign Permit process, in accordance with Section XI-10-24.04(F)(8)	Major Sign: 32 sq. ft. Minor Sign: 16 sq. ft.	Major Sign: 12 ft. Minor Sign: 6 ft.		Minor Sign Permit & Major Sign Permit for freestanding signs over 6 ft.
Temporary Use Sign	1 per street frontage	32 sq. ft.	8 ft.	To be erected only during the temporary use and taken down upon completion of temporary use.	Minor Site Development Permit & Major Site Development Permit for freestanding signs over 6 ft.

F. Standards for Specific Types of Temporary Signs.

1. Balloon Sign. A balloon sign shall be allowed pursuant to the provisions of a temporary promotional sign for the following:
 - a. Community-wide events (an event that either promotes and/or benefits the entire City and has been approved through the Special Events and Activities process in Section XI-10-13.11(G), of this Chapter (such as Art and Wine Festival, Harvest Festival and the like) or when the City has authorized a public street closure for an event).

- b. Grand openings (when first opened or after significant remodeling) for a business.
 - c. Promotional events for individual businesses or group of businesses on a parcel. Balloon signs shall be subject to the following regulations:
 - i. For community wide events, the balloon may be installed after five o'clock p.m. the day preceding the event, and must be removed prior to ten o'clock a.m. the day after the event.
 - ii. One sign may be attached to the balloon to identify the name of the shopping center, business, activity or event.
 - iii. No other smaller balloons shall be attached to the balloon or its supporting or secure lines.
 - iv. The balloon shall be securely mounted to the ground or a roof.
 - v. The balloon shall not move by any other means than normal wind current.
 - vi. These regulations do not apply to balloons used in residential areas for noncommercial purposes.
2. Banner Sign.
- a. A banner sign shall be securely attached flush to a building and located on the premise of the business or use it advertises.
 - b. The banner sign may be wrapped around a permitted permanent freestanding sign or wall sign when used to announce a change of business name. This banner would be allowed in addition to any other banner for the business.
3. Construction Sign. Construction signs:
- a. May indicate the opening date, architect, engineer, contractor, future business or lending agency.
 - b. Shall only be placed on the site of work under construction with a valid building permit.
4. Garage Sale Sign. Garage sale signs:
- a. Shall not be placed within the vehicular or pedestrian traveled portion of the public right-of-way, except as allowed under (b) below.
 - b. May be placed within the public right-of-way in the following manner:
 - i. First, in the unpaved, park-strip area between the face of the curb and the public sidewalk, however, only in the intersection area between the end of the curb return and that point along the curb-line that is fifteen (15) feet distant from the end of the curb return.
 - ii. If no such park-strip, or other paved or unpaved area in the public right-of-way exists for the alternative placement of the sign so as to minimize intrusion upon the four feet minimum handicap accessible pathway, then said sign may be placed on the sidewalk as above within the public right-of-way, provided that the width of the pedestrian and handicap accessible pathway shall not be reduced by the sign placement to less than four feet.
 - c. Shall not be placed:
 - i. In any curb return.
 - ii. In any bus or light rail stop zone.
 - iii. Within two (2) feet of any driveway or curb-cut access ramp.

- iv. Between light rail tracks and curb.
 - v. Adjacent to or within four (4) feet of any disabled parking zone.
 - vi. On any median strip.
 - vii. If over three feet tall within a “Line of Sight Triangle” which shall mean a triangle of land formed by two intersecting streets, where two sides of the triangle consist of the curb-lines of the intersecting streets and the third side of the triangle is a straight line drawn between points on each curb-line located forty-five (45) feet from the intersection where the prolongation of the curb-lines meet.
- d. Shall not be attached in any manner to any other structure, such as trees, lampposts, streetlights, utility poles, utility cabinets, street or traffic signs, benches, hydrants and mailboxes if said sign is placed in the public right-of-way.
 - e. Said signs shall only be allowed on Saturdays, Sundays and holidays.
5. Grand Opening Sign. Grand-opening signs:
- a. Are permitted when used for bona-fide grand-opening functions after a business’ initial occupancy, new ownership, name change or the reopening of a business that completely closed for remodeling for at least two weeks.
 - b. Shall only be displayed at the business for which the grand opening will occur.
6. Open House Directional Signs. See “Garage Sale Signs” for standards.
7. Political Signs.
- a. Intent. Political signs are a necessary part of our political life before an election. After the election is over, political signs become litter, create a health and safety problem and encourage blight. It is the purpose of these regulations to provide for their prompt removal after election.
 - b. Regulations. Except as otherwise authorized in this Section, political signs and persons posting political signs shall meet the following requirements:
 - i. Scope of Regulations. Nothing contained in this Chapter shall be construed to regulate the content of any political sign.
 - ii. Exemption for Political Signs. Political signs shall not be included in the maximum sign area permitted for any site or use.
 - iii. Notification Procedures. Any person or group erecting political signs as defined in Section XI-10-2.03 of this Chapter, shall provide the Milpitas City Clerk a notice in writing, either by registered mail or in person, including the name, address and telephone number of the person or group responsible for erecting or removing the political sign. The notice shall be provided prior to erecting any political signs.
 - iv. Removal. The responsibility for removal shall be that of the person or group identified in the notice given pursuant to subsection XI-10-24.04(F)(7)(b)(iii) above, of this Chapter. All political signs shall be removed within fifteen (15) days following the election or elections to which the political sign pertains. Any political sign that is not removed within this time period is declared a public nuisance. No notice need be given by the City to that person or group to remove said sign. If the responsible person or group fails to remove any political sign, the owner of the land shall be responsible for its removal provided the owner shall be given fifteen (15) days’ prior notice in writing by the City to remove said sign. Notice hereunder shall be given personally or by certified mail addressed to the owner of the land as shown on the last equalized assessment roll of the County of Santa Clara. In the exercise of the remedies provided by law or by this Chapter, City shall not be required to proceed against the property owner before

proceeding against the person or group nor shall it be required to proceed against the person or group as a condition to proceeding against the landowner.

- v. Allowable Locations. Political signs shall be permitted in any zoning district on private property without permit provided that they shall conform to all the provisions of this Chapter.

- i. In residential zoning districts, no such sign shall project above the height or from the sides of the dwelling or block access to or from any door or window and every such sign shall be placed in a manner to secure it from being blown or falling down.

- ii. No political sign shall be erected on trees, fence posts, or public utility poles or located within any public right-of-way. No political sign erected on private property shall be placed within the traffic safety visibility area at the intersection of any street.

- iii. No political sign shall be erected in such a manner that will, or reasonably may be expected to, interfere with, obstruct, confuse or mislead traffic. No political sign shall be erected in a manner that will interfere with pedestrians so as to constitute a hazardous condition. No political sign shall be erected which has less horizontal or vertical clearance from any public utility lines than is prescribed by the State of California, or rules and regulations duly promulgated by agencies thereof.

- c. Remedies. Without limitation to the remedies authorized by law or by this Chapter for the enforcement of this Chapter, City may exercise one or more of the following remedies which shall be cumulative to all other remedies:

- i. Enter on vacant property and abate the nuisance.

- ii. Enter on occupied property with the consent of the owner and occupant thereof and abate the nuisance.

- iii. After sending each candidate or landowner a 15-day prior notice, the City may remove any sign in violation of this Section and shall charge a fee of \$25.00 per sign for the reasonable cost of abatement. The \$25.00 fee shall also be assessed against the candidate for all signs removed by City staff which are installed or posted contrary to the provisions set forth in subsection XI-10-24.04(F)(7)(b)(v) above. The City shall demand payment for the cost of abatement from the candidate or the owner of land or both and institute legal proceedings for the collection thereof.

- iv. Abate the nuisance and impose a charge therefore on the land pursuant to the provisions of Chapter 2, Title II of the Milpitas Municipal Code.

- v. Institute a civil action for abatement of the nuisance.

- vi. Institute a criminal proceeding against candidate or landowner, or both, for violation of the provisions of this Chapter.

- vii. Abated Sign Materials. Materials from signs abated under this Chapter shall be disposed of as rubbish by the official abating said signs.

8. Temporary Tract Advertising Sign.

- a. Additional Number of Signs Allowed. The Planning Commission in its discretion may grant additional Major and Minor signs with the approval of a Site Development Permit, upon the following condition:

- i. Granting additional signs will not be contrary to or materially detrimental to public interest and welfare.

- b. Restrictions. The “major signs” shall:

- i. Not be closer than one hundred fifty (150) feet from any residential building.

- ii. Not be closer than one hundred (100) feet from any existing and authorized sign or billboard.

- c. Removal of Temporary Tract Signs. No sign permit for a temporary tract sign shall be issued unless and until the applicant therefore has signed an agreement that upon cessation of the use under the permit, the sign involved will promptly be removed within fifteen (15) days after the expiration of the permit. Said agreement shall be accompanied by a refundable cash deposit of fifty (\$50) dollars per sign, which deposit may be used to defray the costs of the sign removal in the event the permit holder defaults upon the agreement, as aforesaid. If necessary, the City's agents may, after five (5) days' written notice to the original applicant and to the property owner of record, enter private property to remove such signs which shall then become the property of the City.

G. Nonconforming Signs and Signs for Nonconforming Uses

1. Signs for Nonconforming Uses. Signs for nonconforming uses and businesses may be permitted subject to the following:
 - a. All signs shall require the review and approval of the Planning Commission under the provisions of a Conditional Use Permit, pursuant to Section XI-10-57.04 and a Site Development Permit, pursuant to Section XI-10-57.03, respectively of this Chapter.
 - b. The total sign area allowed for any nonconforming use or parcel of land shall be calculated as specified in subsection XI-10-24.03(B), Maximum Permissible Sign Area, of this Chapter but in no event shall the total sign area exceed sixty (60) square feet.
 - c. The maximum height for any freestanding sign shall not exceed ten (10) feet.
 - d. Any approved signs shall be removed once the nonconforming use ceases operation in accordance with the Nonconforming regulations, of this Chapter.
2. Nonconforming Signs
 - a. Notwithstanding any other provision of this Chapter:
 - i. All signs presently existing and not in conformity with the provisions of this Chapter shall conform to the provisions of this Chapter.
 - ii. Any sign which shall become nonconforming because of an amendment to this Chapter shall be made to conform to the provisions of this Chapter as amended or be removed no later than ten (10) years from the date of said amendment.
 - iii. Without limitation to any other provision of this Chapter or any other provision of the Milpitas Municipal Code, a nonconforming sign shall not be added to or enlarged unless such sign, including such addition and enlargement, is made to conform to all of the regulations applicable to said sign at the time of said addition or enlargement. Repairs and alterations may be made to a nonconforming sign provided that any structural alteration (other than those required by law) shall not be made unless such sign, including such alteration, is made to conform to all the regulations applicable to said sign at the time of said addition or enlargement. Replacement of the face of a sign shall not be considered to be a structural alteration. No nonconforming sign shall be moved in whole or in part to any other location on the parcel of its location unless said sign is made to conform to all of the regulations applicable to said sign at the time of said moving.
 - b. Maintenance of Signs. Nothing herein contained shall be construed to vary the provisions of this Chapter relating to the maintenance of signs in good condition. It is the intent of this Chapter that nonconforming signs shall be maintained in good condition until amortized by the provisions of this section. Signs which are not maintained in good condition (whether conforming or nonconforming) shall be subject to abatement in accordance with the other provisions of this Chapter and this section shall not be construed to be a bar thereto.

24.05 SPECIAL REGULATIONS

- A. Purpose and Intent.** The purpose of this section is to establish requirements for unique settings that require special provisions.
- B. Applicability.** The following regulations pertain to signage requirements in special districts, and take precedence over other regulations in this Chapter, unless otherwise specified.
- C. Shopping Centers.** For shopping centers, the Planning Commission may permit the following, subject to approval of a Sign Program in accordance with Section XI-10-24.05(F), Sign Programs, of this Chapter:
 1. One (1) double-faced freestanding shopping center identification sign, which may advertise its principle tenants.
 - a. Maximum sign area. Three hundred (300) square feet on any one face.
 - b. Maximum height. Forty-five (45) feet.
 2. The shopping center identification sign may be in addition to those signs allowed under the provisions of Table XI-10-24.04-1, Matrix of Permanent Signs, of this Chapter. Furthermore, the sign area on the shopping center identification sign shall be in addition to the total sign area allowed under the provisions of Section XI-10-24.03(B), Maximum Permissible Sign Area, of this Chapter. Refer to Section XI-10-24.05(D), Regional Shopping Centers, of this Chapter for additional information relating to regional shopping centers.

D. Regional Shopping Centers

1. Regional Shopping Centers less than one (1) million square feet. For regional shopping centers, the Planning Commission may permit the following, subject to approval of a Sign Program, in accordance with Section XI-10-24.05(F), Sign Programs, of this Chapter.
 - a. An increase to the maximum site sign area not more than twenty-five percent (25%) greater than that otherwise allowed in this Chapter.
 - b. An increase to the maximum shopping center identification sign area allowing up to four hundred fifty (450) square feet of sign area on such sign on any one face.
 - c. An increase to the maximum height of shopping center identification sign allowing up to a sixty (60) foot height.
 - d. On-site directional sign(s). The request shall indicate the proposed number, locations and design of the proposed on-site directional signs.
 - e. One (1) off-site sign, for the purpose of identifying a regional shopping center. The request shall indicate the proposed location and design of the proposed directional sign, along with any agreement with private property owners for erection of such sign.

Prior to the installation of any off-site sign within the public right-of-way, the sign applicant must obtain an encroachment permit from the Public Works Department. As a part of the Site Development Permit, the Public Works Director or his or her designee, shall recommend any necessary modifications of the proposed location and sign design to assure traffic safety is maintained.

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

- b. The Planning Commission may permit the following, subject to the approval of a Sign Program, in accordance with Section XI-10-24.05(F), Sign Programs, of this Chapter.
 - i. Two (2) off-site signs for the purpose of identifying a regional shopping center. The request shall indicate the proposed location and design of the proposed directional sign, along with any agreement with private property owners for erection of such sign.
 - ii. Prior to the installation of any off-site sign within the public right-of-way, the sign applicant must obtain an encroachment permit from the Public Works Department. As a part of the Sign Program, the Public Works Director or his or her designee, shall recommend any necessary modifications of the proposed location and sign design to assure traffic safety is maintained.
 - iii. Graphic panel(s) (freestanding).
 - iv. For major tenants (those with a minimum 40,000 square feet of leasable floor area), signs that move or have the illusion of movement.

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

- 1. Beresford Square.
- 2. Shapell Office Building.
- 3. Main Town Center shopping area, east of Milpitas Boulevard to Hillview Drive.
- 4. Hotel and offices east of Berryessa Creek.

F. Sign Programs

- 1. Purpose and Intent. The purpose of this section is to establish a procedure to ensure coordination of the design of new signs concurrent with the design of the project. The intent is to improve the architecture, streetscape, signs and overall aesthetics of the site. A Sign Program provides a clear understanding of what the standards are for new and existing signs on the site. A Sign Program will also provide for consistent and streamlined review, approval and administration of existing and new signs for the site. A Sign Program requires a Site Development Permit, in accordance with Section XI-10-57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.
- 2. Applicability. A Sign Program shall be required for the following:
 - a. Any new retail, office or industrial complex:
 - i. On four (4) or more acres; or
 - ii. With a gross floor area of 40,000 square feet or larger; or
 - iii. With a multi-tenant building; or
 - iv. With a building more than two (2) stories high
 - b. A new automobile dealership
 - c. At the owner’s request, a Sign Program may be reviewed by the Planning Commission for the following:
 - i. Any existing retail, office or industrial complex; or
 - ii. With a multi-tenant building; or
 - iii. With an automobile dealership; or

- iv. With a building more than two (2) stories high.
- d. For any sign having blinking, flashing or fluttering lights, or any other illuminating device which has a changing light intensity, brightness or color, subject to the following:
 - i. Video or similar displays shall be internally facing towards the property as not to project images or light towards neighboring properties. The display shall only advertise on-site businesses.

G. Off-Site Advertising Displays Adjacent to Interstate Highways and State Routes

- 1. Purpose and Intent.** The purpose of this section is to establish both a procedure for the review and approval of permit applications for off-site advertising displays adjacent to interstate highways and state routes and specific development criteria for such off-site advertising displays to ensure that the erection of such off-site advertising displays in the City does not create visual clutter or create other operational impacts on surrounding uses, and to promote the public health, safety and general welfare. It is the intent of this section to promote the co-existence of off-site advertising displays within the City, to coordinate the locations of such off-site advertising displays, and to regulate the number, type, size, and other physical characteristics of such off-site advertising displays in order to minimize the visual impact of such displays.
- 2. Applicability.** Notwithstanding any other provision of the Code, off-site advertising displays, including digital billboards, shall be allowed along the Interstates and State Routes rights-of-way, on any size parcel, whether public or private property.
- 3. Required Review.**
 - a. The operator of the off-site advertising display adjacent to an interstate highway or state route shall enter into a development agreement, lease agreement, contract, license or other accord ("City Agreement") with the City, whereby the operator provides performance, one time fee, or ongoing revenue provisions that allow the City to undertake projects, programs, or other activities for the benefit of the City that offset or mitigate the impacts of the proposed advertising displays.
 - b. In addition, the approval of off-site advertising displays adjacent to interstate highways and state routes shall be regulated through a Site Development Permit pursuant to Section XI-10-57.03, Site Development Permits and Minor Site Development Permits, of this Chapter. The Planning Commission shall make recommendations to the City Council, which shall have final Site Development Permit approval authority, based upon the objective criteria set forth herein for off-site advertising displays. Site Development Permit review shall ensure that the erection of off-site advertising displays does not create visual clutter or other operational impacts on surrounding uses, with the intent of promoting the co-existence of off-site advertising displays and coordinating their locations, while regulating the type, location, size, number of such off-site advertising displays in accordance with the criteria set forth in this Chapter.
- 4. Review Process.** The Planning Commission shall make recommendations to the City Council, which shall have final Site Development Permit and City Agreement approval authority, subject to the requirements set forth below.
- 5. Minimum Standards.** All off-site advertising displays permitted under this provision shall be subject to the following minimum standards and regulations:
 - a. Consistency with State and Federal Law. In addition to the other requirements set forth herein, the off-site advertising display shall comply with the requirements of the Outdoor Advertising Act and Regulations, California Business and Professions Code Secs. 5200 et seq., and other state and federal statutes. To the extent of any conflict between the provisions of this Section and state and federal law, state and federal law shall prevail.
 - b. Maximum height. The overall height of the sign shall not exceed seventy (70) feet.

- c. Reserved.
- d. Distance between other off-site advertising displays. No off-site advertising display shall be placed within one-thousand (1,000) feet from another advertising display on the same side of any portion of the interstate.
- e. Maximum sign area. The maximum sign area shall not exceed one-thousand, two-hundred (1,200) square feet on each side. Ancillary fixed signs or logos may be permitted on the sign's supporting structure, which will not count towards the maximum sign area.
- f. Angle to freeway. To the extent possible, the off-site advertising display shall be located and oriented in a manner that avoids or minimizes the direct exposure of the display to view from adjacent or nearby residential or hotel uses.
- g. Illumination standards.
 - i. Light intensity. The intensity of each lighting element or lamp in the message center portion of the off-site advertising structure shall not impair the vision of travelers on any adjacent freeway. Illumination shall be considered vision impairing when its brilliance exceeds the values set forth in section 21466 of the California Vehicle Code, or any successor statute or California Department of Transportation regulations.
 - ii. Recessed illumination. With respect to a static display, the actual lamps/light sources shall be recessed back into the cabinet or enclosure so that no part of the lamp/light source protrudes out past the face of the display so that the angle of the light towards the freeway might be altered. Signs may be internally or externally illuminated.
 - iii. Automatic dimming device. Dimming circuitry shall be incorporated in the electronic portion of the off-site advertising display automatically dimming the off-site advertising display to reduce halo effects and glare as ambient light conditions change.
 - iv. Illumination orientation. The off-site advertising display shall aim, focus and shield any illumination sufficiently to prevent glare or overcast of illumination into adjacent residential or hotel vantage points.
- h. Landscaped Planters. The off-site advertising display shall be located within a landscaped planter to be maintained by the operator of the off-site advertising display.
 - i. Noise reduction. The off-site advertising display shall incorporate noise reduction and attenuation remedies sufficient to limit any exterior intermittent noise level effects at the nearest residential and hotel uses (intensity and frequency) in accordance with the standards of the City's General Plan.
- j. Any off-site advertising display shall include the words "City of Milpitas" and/or the City insignia somewhere on the structure.
- k. Digital Billboard (changeable copy signs) Limitations.
 - i. Digital billboards shall contain static messages only, and shall not have movement, or the appearance or optical illusion of movement, of any part of the sign structure, design, or pictorial segment of the sign, including the movement or appearance of movement of any illumination or flashing or scintillating light.
 - ii. Minimum display time. In compliance with State standards, each message on the sign must be displayed for a minimum of four (4) seconds.
 - iii. Notwithstanding anything to the contrary in the Code, digital billboards shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter at a pre-set distance consistent with acceptable practices.
- l. Permission of Property Owner. No person shall erect, construct or maintain any off-site advertising display upon any property or building without the consent of the property owner, person entitled to possession of the

property or building, if any, or their authorized representatives. To the extent the applicant is not the owner of the real property on which the proposed off-site advertising display will be located, the applicant shall, at the time of application, provide documentation of the consent of the real property owner(s) to the application and agree to indemnify the City against any and all claims from the real property owner(s) concerning the processing of the permit application and, should approval occur, the approval of the permit application.

6. Required Findings. In order to grant a Site Development Permit for the proposed off-site advertising display, the Planning Commission and the City Council must determine that the following objective requirements have been met:

- a. The proposed off-site advertising display will not create a hazard to vehicular or pedestrian traffic, and measures have been taken to reduce potential impacts upon the existing visual character of the site and its surroundings.
- b. All advertising on the off-site advertising display will conform with the Outdoor Advertising Act in the California Business and Professions Code and other applicable state and federal rules and regulations.
- c. The development of the off-site advertising display will result in a public benefit to the City outweighing any adverse impacts that might be caused by the advertising display.
- d. The development of the off-site advertising display will promote economic development within the City.
- e. The design, including lighting, scale, size and materials, of the off-site advertising display is consistent with the intent of the design criteria of the off-site advertising display provisions.
- f. The development and location of the proposed off-site advertising display is consistent with the goals of the Milpitas General Plan.

H. Advertisements Near Freeways

1. Outdoor Advertising Structures Prohibited. With the exception of Off-site Advertising Displays, no billboard, advertising sign or display shall be placed, constructed or maintained on property adjacent to any landscaped freeway within the City of Milpitas if the advertising thereon is designed to be viewed primarily by persons traveling along such landscaped freeway or any section thereof, or if such billboard, advertising sign or display is located within 500 feet of the outer limits of such landscaped freeway, or if such billboard, advertising sign or display, because of its location, size, nature or type, constitutes or tends to constitute a hazard to the safe and efficient operation of vehicles upon the landscaped freeway, or creates a condition which endangers the safety of persons or property thereon.

2. Removal of Illegal Advertising Structures. Any billboard, advertising sign or display which is now, thereafter shall be, in violation of the provisions of this Ordinance shall be removed within one (1) year from the effective date hereof, or within one (1) year from the date when the project for the landscaping of a freeway or any section thereof shall have been completed or accepted, and the character of said sections shall have been changed from a freeway to a landscaped freeway, whichever is later.

3. Exceptions. The provisions of this section shall not apply to any advertising structure or sign if the advertising, displayed thereon is used exclusively:

- a. To advertise the sale or lease of the property upon which such advertising display is placed.
- b. To designate the name of the owner or occupant of the premises upon which such advertising display is placed, or to identify such premises.
- c. To advertise goods manufactured or produced, or services rendered on the property upon which such advertising display is placed.

I. Off-Site Directional Signs adjacent to roadways other than Interstate Highways and State Routes

1. Purpose and Intent. The purpose of this section is to establish both a procedure for the review and approval of permit applications for off-site directional signs adjacent to roadways other than interstate highways and state routes and specific development criteria for such outdoor signs to ensure that the erection of such signs in the City does not create visual clutter or create other operational impacts on surrounding uses, and to promote the public health, safety and general welfare. It is the intent of this section to promote the co-existence of such signs within the City, to coordinate the locations of such signs, and to regulate the number, type, size, and other physical characteristics of such signs in order to minimize the visual impact of such signs.

2. Applicability. Notwithstanding any other provision of the Code, off-site directional signs, shall be allowed along certain roadway rights-of-way, on any size parcel, whether public or private property subject to subsection 3 below.

a. Exceptions. The following signs are exempted from this section:

i. Garage Sale Signs. Refer to Section 30-3.05(E)(4), of this Chapter.

ii. Joint Use Signs. Refer to Section 30-3.05(C)(6), of this Chapter.

iii. Official City or City-sponsored signs. Refer to Section 30-3.05(C)(3), of this Chapter.

iv. Off-site Directional Signs identifying regional shopping centers. Refer to Section 30-4.04, of this Chapter.

v. Off-site Public Information Signs. Refer to Section 30-3.05(C)(8), of this Chapter

vi. Open House Directional Signs. Refer to Section 30-3.05(E)(6), of this Chapter.

vii. Temporary Tract Advertising Signs, for subdivisions under construction in the City. Refer to Section 30-3.05(E)(8), of this Chapter.

3. Review Required.

1. The operator of the off-site directional sign shall enter into a development agreement, lease agreement, contract, license or other accord (“City Agreement”) with the City, whereby the operator provides performance, one time fee, or ongoing revenue provisions that allow the City to undertake projects, programs, or other activities for the benefit of the City that offset or mitigate the impacts of proposed directional signs.

2. The approval of the off-site directional sign shall be regulated through a Site Development Permit pursuant to Section XI-10.57.03, Site Development Permits and Minor Site Development Permits, of this Chapter. The Planning Commission shall make recommendations to the City Council, which shall have the final Site Development Permit approval authority, based upon the objective criteria set forth herein for off-site directional signs. Site Development Permit review shall ensure that the erection of off-site directional signs does not create visual clutter or other operational impacts on surrounding uses, with the intent of promoting co-existence of off-site directional signs and coordinating their locations, while regulating the type, location, size, number of such off-site directional signs in accordance with the criteria set forth in this Chapter.

4. Review Process. The Planning Commission shall make recommendations to the City Council, which shall have final Site Development Permit and City Agreement approval authority, subject to the requirements set forth below in this subsection.

5. Minimum Standards. All off-site directional signs permitted under this provision shall be subject to the following minimum standards and regulations:

a. Maximum height. The height of any sign shall not exceed ten (10) feet.

b. Location. Signs shall only be located in the City’s right-of-way placed in accordance with the approved through the City Agreement.

- c. Maximum sign area. The maximum sign area shall not exceed twenty four (24) square feet.
- d. Design. All signs shall have a consistent design theme.
- e. The sign shall include the words “City of Milpitas” and/or City insignia.

6. Required Findings. In order to grant a Site Development Permit for the proposed off-site directional signs, the Planning Commission and the City Council must determine that the following objective requirements have been met:

- a. That the proposed off site directional sign will not create a hazard to vehicular or pedestrian traffic, and measures have been taken to reduce potential impacts upon the existing visual character of the site and its surroundings.
- b. That the development of the off-site directional sign will result in a public benefit to the City outweighing any adverse impacts that might be caused by the outdoor advertising display.
- c. That the development of the off site sign will promote economic development within the City.
- d. The design, including lighting, scale, size and materials, of the off site directional sign is consistent with the intent of the design criteria of the off-site outdoor advertising display provisions.
- e. That the development and location of the proposed off site directional sign is consistent with the goals of the Milpitas General Plan.

24.06 Exempt Signs.

A. A Minor Site Development Permit shall not be required for the following types of signs:

- 1. Bus shelter/transit signs. Signs installed in Santa Clara Valley Transit Authority or other transit authority bus shelters or facilities.
- 2. Civic event signs. Civic and/or City sponsored events signs on City property.
- 3. Traffic or other municipal signs, legal notices, railroad crossings signs, danger and emergency signs.
- 4. Repainting or cleaning (or changing of the advertising copy thereon) of an advertising structure shall not be considered an erection or alteration which requires a sign permit unless a structural change is made.
- 5. Memorial sign or tablets erected by recognized historical agencies, or names of buildings and date of erection when cut into masonry surface or when constructed of bronze or other incombustible letters and affixed flat against the wall of such building.
- 6. Signs regulating on-premises traffic and parking when less than twelve (12) square feet in area.
- 7. Window signs. Unless intended to be permanent.
- 8. Signs used by public utilities for the safety, welfare or convenience of the public shall be exempt from the provisions of the Ordinance codified in this Chapter.
- 9. Poles, structures or other housings intended for the purpose of flying or otherwise displaying of the United States flag, California State flag, City or County flag or flag of any similar public agency are exempt from the approval provisions of this section, except height of flag pole. The flags specified herein are exempt from all other permit requirements.
- 10. House numbers, name plate or identification of house occupants [provided sign does not exceed two (2) square feet maximum area], mail box identification, street names, “no-trespass” signs, and other warning signs.

11. Signs for the California State Lottery approved by the Lottery Commission for display by Lottery Game Retailers.
12. Murals or other artistic paintings on walls, provided no logos, emblems or other similar devices, sign copy or illustrations of activities associated with uses on the premises or in the vicinity are included in the mural or painting.
13. On-Site Temporary For Sale or Lease Signs, which shall:
 - a. Not exceed a maximum area of thirty-two (32) square feet per sign face;
 - b. Be limited to one (1) such sign. However, if the property has over one-hundred (100) feet of street frontage, a maximum of two (2) signs per parcel is allowed;
 - c. Be constructed pursuant to an approved building permit if over six (6) feet in height;
 - d. A sign over six (6) feet in height shall require approval of a Site Development Permit, in accordance with Section XI-10-57.03, Site Development Permits and Minor Site Development Permits, of this Chapter;
 - e. State that the property is for sale, lease or exchange by the owner or his or her agent and the name, address and phone number of the owner or agent and/or agency and directions;
 - f. Be painted a light color;
 - g. Be constructed of wood, plywood, metal or other rigid material;
 - h. Not be placed on a private or public right-of-way;
 - i. If advertising a tenant space, the sign shall be located on the tenant space;
 - j. Not be allowed unless the property is on the market or there is a tenant space on the property that is vacant or will be vacated; and
 - k. Be professionally constructed and well maintained.
14. Information Sign. An Information Sign:
 - a. Shall provide courtesy information or direction to the public without advertising the business products or services such as hours, entrance, exit, self-serve, credit cards, restrooms, telephone drive-up;
 - b. Or shall serve to direct motorist and pedestrians on private property;
 - c. Shall not be larger than twelve (12) square feet in size; and
 - d. Shall not be a traffic hazard.
15. Signs regulating the use of enumerated public facilities as provided for in Chapter 18 of Title V of the Milpitas Municipal Code.
16. Other signs similar to the above as deemed by the Planning Commission.

SECTION 8. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 57.03 (“Site Development Permits and Minor Site Development Permits”) of the Milpitas Municipal Code is hereby amended to read in its entirety as follows:

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 XI-10-12.05, Site and Architectural Overlay District, of this Chapter. Signs are discussed in Section XI-10-24, Signs, 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.
 - a. Review by Planning Commission. The Planning Commission has the authority to review Site Development Permits, subject to the concurrent review and appeal provisions of Section XI-10-64.03, Consideration of Concurrent Applications, and Section XI-10-64.05, Appeals, of this Chapter.
 - b. Review by City Council. In addition to the provisions of Section XI-10-64.03, Consideration of Concurrent Applications, and Section XI-10-64.05, Appeals, of this Chapter, the City Council has the authority to review the following projects:
 - i. Projects within the Hillside (-H) Overlay District, in accordance with Section XI-10-45, “H” Hillside Combining Districts, of this Chapter.
 - ii. Any Off site advertising structures adjacent to interstate freeway and state highways, and off site advertising directional signs, in accordance with Section XI-10-24.05(G) and (H), of this Chapter.
2. Minor Site Development Permits. Either Planning staff or 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 [Section XI-10-57.07(B)(1)] and Section XI-10-57.07(C)(2), Applicability, or when another Section of this Title requires such review. 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 XI-10-57.03(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.
 - h. Certain signs, in accordance with Section XI-10-24.04, Signs Subject to Review, of this Chapter.
 - i. Sign programs, in accordance with Section XI-10-24.05(F), Sign Programs, of this Chapter.
 - j. Any Off-site Advertising Displays Adjacent to Interstate Highways and State Routes, in accordance with Section XI-10-24.05(G).
 - k. Any Off-Site Directional Signs adjacent to roadways other than Interstate Highways and State Routes, in accordance with Section XI-10-24.05(I).
- 2 Minor Site Development Permits.
- a. Review by Planning Commission Subcommittee:
 - i. Any deletion or amendment of a previously imposed condition of approval for a Minor Site Development Permit approved by the Planning Commission Subcommittee.
 - ii. Review for certain alterations or additions to residential, nonresidential and mixed-use sites/buildings, as indicated in Table XI-10-57-03-1, Additions or Alterations Requiring Minor Site Development Permits. Projects that exceed the threshold for planning staff review, as indicated in Table XI-10-57.03-1, Additions or Alterations Requiring Minor Site Development Permits.
 - b. Review by Planning staff:
 - i. Certain signs, in accordance with Section XI-10-24.04, Signs Subject to Review, of this Chapter.
 - c. Review for certain alterations or additions to residential, nonresidential and mixed-use sites/buildings, as indicated in Table XI-10-57-03-1, Additions or Alterations Requiring Minor Site Development Permits. Please refer to Section XI-10-54, General Provisions, of this Chapter, for development standards and review procedures for types of projects not listed in Table XI-10-57.03-1.
 - d. Planning Division staff may require review by the Planning Commission Subcommittee at their discretion.

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

Project Type	Planning Commission Subcommittee	Staff review
Accessory Buildings	A. Non-Residential and Mixed Use Districts: 1. Accessory buildings up to 2,500	A. Residential Only 1. Accessory buildings in residential

Project Type	Planning Commission Subcommittee	Staff review
	<p>square feet in area, provided that the proposed structure is not adjacent to a residential or Mobile Home Park Overlay (-MHP) 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. 	<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. 2. Accessory building in residential and mixed use districts in order to accommodate a second family unit, as defined in Subsection XI-10-2.03, Definitions, of this Chapter. The development standards listed in Subsection XI-10-18.08, Second Family Unit, of this Chapter shall apply. <p>B. All zones</p> <ol style="list-style-type: none"> 1. Community emergency caches as defined in Subsection XI-10-2.03, Definitions, of this Chapter are exempt. Refer to Subsection XI-10-54.08(B)(12) for performance standards.
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 	<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 (-H) Overlay PUDs which specifically allow for staff approval. (refer to Section XI-10-56, Non-conforming Buildings and Uses, of this Chapter regarding non-

Project Type	Planning Commission Subcommittee	Staff review
	<p>building gross floor area, whichever is less. Calculation shall cumulatively count all additions or enlargements completed since June 20, 2003.</p> <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 (-H) PUDs which are specifically conditioned not to require Planning Commission or City Council review for building additions (refer to Section XI-10-56, 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. Existing front yard paving shall be brought into conformance.</p> <p>b. The addition shall comprise building materials, colors and style which complement the existing structure.</p>	<p>conforming buildings). In addition to other development standards, the following shall also apply:</p> <p>a. Existing front yard paving shall be brought into conformance.</p> <p>b. 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 XI-10-2.03, Definitions, of this Chapter. The development standards listed in Subsection XI-10-18.08, Second Family Unit, of this Chapter shall apply.</p>
Building Color		<p>A. Outside Hillside Combining District:</p> <p>1. Color changes for all buildings so long as the proposed colors are earth</p>

Project Type	Planning Commission Subcommittee	Staff review
		<p>tone, muted and/or compatible with the surrounding area and development.</p> <p>2. Color changes for buildings within a PUD, if proposal complies with PUD.</p> <p>B. Within Hillside Combining District:</p> <p>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.</p>
Equipment & Service Enclosures (Trash, recycling, equipment or storage)	<ol style="list-style-type: none"> 1. Enclosures up to 200 square feet proposed in the front half of the lot for non-residential districts. 2. Enclosures exceeding 200 square feet in size in commercial, industrial and mixed use districts and enclosures for conditional uses in residential districts. 3. Any trash enclosure adjacent to residential or Mobile Home Park Overlay (-MHP) district or use. In addition to the standards listed in Subsection, 54.16(B), Trash Enclosures, of this Chapter. 4. Enclosures for noise-generating equipment (i.e. generators) may not be approved near Residential or Mobile Home Park (-MHP) overlay districts or uses. 	<ol style="list-style-type: none"> 1. Enclosures up to 200 square feet in size in commercial, industrial and mixed use districts, proposed at the rear of the building or lot and where least visible from public rights-of-way. <ul style="list-style-type: none"> a. Refer to Subsection XI-10-54.16(B), Trash Enclosures, of this Chapter, for standards.
Exterior Lighting	Additional light standards on-site, adjacent to residential development.	<p>Additional light standards that complement existing development.</p> <p>Bollards with lights.</p> <p>Refer to Subsection XI-10-54.17, Lighting, of this Chapter for standards.</p>
Fences/Walls	Chain link fencing 1. Chain link fencing in	All fence and wall materials, except

Project Type	Planning Commission Subcommittee	Staff review
	<p>commercial and industrial districts. The following standards shall apply:</p> <ul style="list-style-type: none"> a. Fencing shall be at the rear or interior side of the site. b. The fencing shall consist of vinyl clad chain link with or without vinyl slats. Type of chain link fencing (i.e. deletion of vinyl clad requirement, use of slats) shall be to the discretion of the Planning Commission Subcommittee (i.e., in circumstances where the proposed fencing is to continue a line of existing chain link fencing). c. Fencing material and color shall be compatible with surrounding development. d. Parking lot fencing/gates shall be approved by the City's Fire Department. 	<p>chain link in commercial and industrial districts.</p> <p>Refer to Subsection XI-10-54.10, Fences and Walls, of this Chapter for standards.</p>
Landscaping	<p>Deletion. Deletion of landscaping not otherwise required by the Milpitas Municipal Code or by condition of approval exceeding 200 square feet. Requests may include the loss of any protected trees, as defined in Title X-2.00 of the Milpitas Municipal Code, and the net reduction of on-site trees.</p>	<ul style="list-style-type: none"> 1. Replacement. Replacement planting of similar landscape materials and addition of landscaping. Landscaping shall comply with Ordinance 238 (water efficient landscape regulations). Landscaping within the –H overlay district shall comply with City Council Resolution No. 6066. 2. Deletion. Deletion of landscaping not otherwise required by Milpitas Municipal Code or by condition of approval up to 200 square feet. <p>However, in non-residential and mixed uses within residential districts (excluding –H overlay district), there shall be no net reduction in the number of on-site trees, and no loss of any protected trees, as defined in Title X-2.00 of the Milpitas Municipal Code, may be approved.</p>

Project Type	Planning Commission Subcommittee	Staff review
		Exemption. Deletions permitted for groundcover and shrubs to accommodate new walkways which are required for building exiting purposes or handicap accessibility.
Minor Exterior Building Changes, Including But Not Limited to, Doors, Entryways, Patios and Patio Covers, Walkways, ATM's, Awnings, Loading Areas	<p>A. Non-Residential and Mixed Use Districts:</p> <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> a. Significant decorative amenities within public view such as fountains, artwork or murals. b. Stand alone ATMs or ATM kiosks. c. If applicable, refer to "Landscaping" Section in this table. <p>B. Hillside (-H) Combining District:</p> <ol style="list-style-type: none"> 1. Minor exterior building changes as described below, provided that the project complements the colors, materials and design of the building. <ol style="list-style-type: none"> a. Minor changes to architectural elements which do not change the overall design of a building. b. Windows, window awnings and person doors which match existing or which complement the building facade. 	<p>A. Non-Residential and Mixed Use Districts:</p> <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> a. New main entryways to the building which feature architectural projections (i.e., porticos, entryway roof covers, trellises, etc.). b. Windows and doors which match existing or which complement the building facade. c. New or expanded patios, patio covers, awnings and canopies. d. Landscape deletion (i.e., shrubs and groundcovers) to accommodate new walkways which are required for building exiting purposes or handicap accessibility. e. ATM's proposed integrated into an exterior wall. f. Minor changes to architectural elements which do not change the overall design of a building. g. Replacement of windows with roll-up doors (and vice versa) when located toward the interior side or rear of a site. h. Metal canopies over equipment storage yards at the rear of

Project Type	Planning Commission Subcommittee	Staff review
		<p>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>i. 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.</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 PUDs, which are specifically conditioned to allow a staff approval process for alterations subsequent to initial construction of the home.</p>
Re-Roof	Change to wood shake, non tri-laminate or metal roofing material.	Change to any other roofing material, except wood shake, non tri-laminate or standing seam metal.

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, type of sign, types of materials and colors, 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. The Planning Commission shall hold a public hearing on said application upon such notice as is required in Section XI-10-64, Development Review Process, of this Chapter.
 - b. After 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.

For applications requiring City Council approval, the Planning Commission shall forward their recommendation to the City Council.

 - i. 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.
2. Minor Site Development Permit.
 - a. Review by Planning Commission Subcommittee. 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 placed on the agenda for Planning Commission review, with no additional fees required.
 - b. Review by Planning Division. The 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 Zoning and Sign Ordinances.

If the project does not comply, a notice of corrections shall be prepared and returned to the applicant. If the applicant resubmits for review and the project still does not comply with the required regulations or is not in accordance with the approved conditions of approval, the Planning Division shall deny the application.

F. Required Findings.

1. General Findings (except signs). Approval may be granted by the Planning Commission or the City Council if all of the following findings are made, based on evidence in the public record:
 - a. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.
 - b. The project is consistent with the Milpitas Zoning Ordinance.
 - c. The project is consistent with the Milpitas General Plan.
 - d. In the case of a project located within a Specific Plan, the following additional finding shall be made:
 - i. The project is consistent with the Specific Plan.
2. Signs. Approval may be granted by the Planning Commission or the City Council if all of the following findings are made, based on evidence in the public record:
 - a. All elements of the sign, including design, lighting, scale, length and materials, is consistent with the intent of the General Plan, the Sign Ordinance and any applicable Specific Plan;
 - b. The design, scale and materials of the sign harmonize with the architectural design and details of the building or site it serves;
 - c. The design and scale of the sign is appropriate to the distance from which the sign is normally viewed;
 - d. The design and materials of the sign provide a contrast between the background and letters;
 - e. If a freestanding sign is included in the sign application, the design, scale or location of the building dictates the use of freestanding signs, rather than building-mounted signs;
 - f. For Sign Programs, in addition to the findings for signs, the following additional findings shall be made, based on evidence in the public record:
 - i. The provisions of the Sign Program ensure consistency in design and style of all new signs,
 - ii. The provisions of the Sign Program address compatibility of the design and style of any existing signs on the building or site, and
 - iii. All new signs within the Sign Program are in compliance with the design guidelines of this chapter.

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.

4. For projects including signs, only the following findings shall be made:
 - a. The design, including lighting, scale, length and materials, of the sign is consistent with the intent of the design elements of the General Plan, any applicable Design Guidelines, respective specific plan or Site and Architectural Overlay District in which the sign is to be located;
 - b. The design, scale and materials of the sign harmonize with the architectural design and details of the building or site it serves;
 - c. The design and scale of the sign is appropriate to the distance from which the sign is normally viewed;
 - d. The design and materials of the sign provide a contrast between the background and letters;
 - e. If a freestanding sign is included in the sign application, the design, scale or location of the building dictates the use of freestanding signs, rather than building-mounted signs;
5. For projects including signs within sign programs, only the following finding shall be made:
 - . The sign conforms to the approved sign program.

H. 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 XI-10-64.05, Appeals, of this Chapter.

I. 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 XI-10-57.03(I), Applications for Modification of or Amendment, of this Chapter. Lack of compliance shall constitute a violation of Chapter 10 (Zoning, Planning and Annexation) and the Site Development Permit.

J. 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 XI-10-64, Development Review Process, of this Chapter.

K. Modifications, Suspensions and/or Revocations Initiated by the City. Refer to Section XI-10-63.06, Revocation, Suspension, Modification, of this Chapter.

SECTION 9. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 57.06 (“Variances”) of the Milpitas Municipal Code is hereby amended to read in its entirety as follows:

XI-10-57.06 - Variances

A. Purpose and Intent.

1. Zoning variances. 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.

2. Sign variances. The intent of this section is to establish a procedure for granting exceptions to the strict application of the size, number, height, length and location requirements for signs within Chapter 30 (Sign Ordinance) of this title. The granting of a variance requires findings to be met based on the site’s or business’ unique location or orientation in order to achieve adequate sign visibility.

B. Authority.

1. The Planning Commission shall have approval authority of Variances relating to development within all districts other than the Hillside (-H) Overlay district.
2. The City Council shall have approval authority, upon recommendation by the Planning Commission, of Variances relating to developments within the Hillside (-H) Overlay district.

C. Applicability.

1. Zoning variances. Unless indicated otherwise by this title, a variance is required to deviate from any of the standards contained within the Zoning Ordinance.
2. Sign variances. Unless indicated otherwise by Section XI-24, Signs, of this Chapter, a sign variance is required for the following:
 - a. Any sign that exceeds the maximum standards;
 - b. Any sign that exceeds the individual sign area allowed;
 - c. Any business or site that exceeds the maximum sign area allowed;
 - d. Any sign that exceeds the permitted sign height.

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 XI-10-64, Development Review Process, of this Chapter.
3. For Variances not involving the Hillside (-H) Overlay district, the Planning Commission shall review the application and render its decision.
4. For Variances involving the Hillside (-H) Overlay, 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 XI-10-64, Development Review Process, of this Chapter, review the application and the Commission's recommendation, and render its decision.

F. Required Findings.

1. Zoning variances. Prior to the approval of an application for a variance, all of the following findings shall be made:
 - a. Due to special circumstances applicable to the subject property including size, shape, topography, location or surroundings, the strict application of the Zoning Ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity under identical zone classifications.
 - b. The granting of the variance is necessary for the preservation of a substantial property right possessed by other property in the same vicinity and zone and otherwise denied the subject property.
 - c. The required conditions of approval assure that the adjustment authorized will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity subject to the same zoning regulations.
 - d. The granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
 - e. The granting of a variance is consistent with the General Plan and the intent of this title.
2. Sign variances. Prior to the approval of an application for a sign variance, all of the following findings shall be made:
 - a. Special conditions and extraordinary circumstances applicable to the property involved or its intended uses, which were not created by the owner or tenant, and which do not apply generally to other properties with the same land use exist that do not allow the site or business to achieve the goals and objectives of this Chapter for adequate business identification.
 - b. Literal enforcement of the provisions of the City of Milpitas the Sign Ordinance will result in unnecessary hardship inconsistent with the spirit and intent of the Sign Ordinance.
 - c. The granting of the variance is not contrary to the intent of the General Plan, Zoning or Sign Ordinance, or any applicable Specific Plan and will not be contrary to, nor materially detrimental to public interest and welfare, or injurious to conforming signs in the City.
 - d. The variance to be granted is one that will require the least modification of the prescribed regulation, and the minimum variance that will accomplish that purpose.
 - e. The granting of a variance is not considered a grant of special privileges inconsistent with the limitations of other similarly situated properties.

G. Appeals. An appeal of the action on any variance shall be reviewed in accordance with Section XI-10-64, Development Review Process, of this Chapter.

H. 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 XI-10-64, Development Review Process, of this Chapter.

I. Modifications and/or Revocations Initiated by the City. Refer to Section XI-10-63.06, Revocation, Suspension, Modification, of this Chapter.

J. Other Review Requirements. For other general requirements related to the review of applications, such as time limits on approvals and requests for extensions of approvals, please refer to Section XI-10-64, Development Review Process, of this Chapter.

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

SECTION 10. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Title XI, Chapter 10, Section 63 (“Enforcement and Penalty”) of the Milpitas Municipal Code is hereby amended to read in its entirety as follows:

SECTION 63 ENFORCEMENT AND PENALTY

XI-10-63.01 Enforcement

All departments, officials and public employees of the City of Milpitas vested with the duty or authority to issue permits shall conform to the provisions of this Chapter and shall issue no permit or license for uses, buildings, or purposes in conflict with the provisions of this Chapter; and any permit or any business license issued in conflict with the provisions of this Chapter shall be null and void.

XI-10-63.02 Penalty

It shall be unlawful for any person to violate any of the provisions of this Chapter. Any person convicted of violating any of the provisions of this Chapter shall, upon conviction, be punished by a fine not-to-exceed the sum of FIVE HUNDRED DOLLARS (\$500) or by imprisonment in the County Jail not to exceed six (6) months or by both such fine and imprisonment. Each day that a violation of this Chapter continues shall be considered a separate offense.

Any use of a premises or a building which deviates from or violates any of the provisions of this Chapter shall be termed an illegal occupancy and the person or persons responsible therefore, shall be subject to the penalties herein provided.

XI-10-63.03 Declaration of Public Nuisance

1. General. The use of any land, building or other structure hereafter established or conducted or the present use of any land, building or other structure hereafter extended or enlarged or the erection, construction, moving, conversion, remodeling or alteration of any building or other structure contrary to the provisions of this Chapter shall be and the same is hereby declared to be a public nuisance, and the Attorney for the City of Milpitas shall, upon order of the City Council, immediately commence action or proceedings for the abatement or removal or enjoinder thereof in the manner provided by law.
2. Signs. Any sign or structure erected, constructed, maintained, marked, posted, pasted, painted, printed, altered or repaired in violation of the provisions of the Chapter or after a permit or variance therefore has been revoked or

expired is hereby found and declared to be a public nuisance subject to abatement and lien for recovery of abatement costs.

- a. Without limitation to the generality of the foregoing, any sign or structure erected, constructed, maintained, marked, posted, pasted, painted, altered or repaired:
 - i. So as to be unsafe and so as to constitute an immediate peril to persons or property; or
 - ii. Upon public property without written permission of the Planning Division or City Manager of the City of Milpitas.

XI-10-63.04 Order to Stop Work

Whenever any work is being done contrary to the provisions of this Chapter, the Building Official may order the work stopped by notice in writing served on any person engaged in the doing of such work or in the causing of such work to be done, and any such person shall forthwith stop such work until authorized in writing by the Building Official to proceed with such work.

XI-10-63.05 Remedies Cumulative

The remedies herein contained shall be cumulative and in addition to such other remedies as provided by law. Resort to one remedy shall not preclude resort to any other remedy as may be allowed by law.

XI-10-63.06 Revocation, Suspension, Modification

1. Modifications.
 - a. Initiation and review. The Planning Commission or City Council may initiate review of a permit (including, but not limited to Conditional Use Permit, Variances, or Site Development Permits) for the purpose of deciding whether modification is needed, only after written notice of a violation or public nuisance is mailed to the holder of the permit.
 - i. After initiation, a public hearing before the Planning Commission shall be noticed and held in compliance with Section XI-10-64, Development Review Process, of this Chapter.
 - ii. After completion of the public hearing, the Planning Commission may modify the Permit.
 - iii. An aggrieved party may appeal this decision to the City Council in accordance with Section XI-10-64, Development Review Process, of this Chapter.
2. Revocations or Suspensions
 - a. Initiation and Review. The City Council may initiate review of a Permit (including, but not limited to Conditional Use Permit, Variance or Site Development Permit) or receive a recommendation from the Planning Commission for the purpose of deciding whether modification and/or suspension or revocation are needed.
 - i. If the City Council does request review, a public hearing before the Planning Commission shall be noticed and held in compliance with Section XI-10-64, Development Review Process, of this Chapter.
 - ii. After completion of the Planning Commission hearing, the Planning Commission shall recommend to the City Council, by resolution, whether the Permit shall be modified or revoked.
 - iii. Following receipt of a recommendation on the Permit from the Planning Commission (when requested) or following City Council initiation, the City Council shall conduct a public hearing in compliance with Section XI-10-64, Development Review Process, of this Chapter.
 - iv. After completion of the public hearing, the City Council may modify or revoke the Permit.

3. Required Findings.

- a. General Findings for Modifications/Revocation. A Permit may be modified or revoked if any of the following conditions exist:
 - i. Conditions of approval of the Permit are being violated or are not being satisfied; or
 - ii. The Permit or approval is being exercised in a manner that constitutes a public nuisance; or
 - iii. The application contained incorrect, false or misleading information; or
 - iv. The permit or approval is being exercised in a manner which is contrary to the public health, safety and welfare.

XI-10-63.07 Administrative Citation Procedure

A. General. When he or she determines that one or more violations of this Chapter have occurred, the City Manager and his or her designee may issue administrative citations pursuant to the procedures set forth in Sections XI-10-63.07(B), Administrative Citation, of this Chapter.

- 1. Continuing Violation that does not create an immediate danger to public health and safety. Where the violation is a Continuing Violation that does not create an immediate danger to public health and safety, the citation shall set forth a reasonable period of time, which shall not be less than 30 days, for the person responsible for the continuing violation to correct or otherwise remedy the violation prior to the imposition of the administrative fine.
- 2. Continuing violation that creates an immediate danger to public health and safety. Where a violation is a Continuing Violation that constitutes an immediate danger to public health and safety, the property owner shall be provided notice to correct the violation within a maximum of two (2) hours from when the verbal or written notice was received. Depending upon the severity of the violation, if the violation is not corrected within the two hour time period, the City shall have the option to initiate summary abatement procedures under Section XI-10-63.09 Abatement Procedure, of this chapter, or impose the administrative fine below and administrative citation provisions under Section XI-10-63.07(B), Administrative Citation, of this Chapter.
- 3. Individual Violation that does not create an immediate danger to public health and safety. Where a violation is an Individual Violation that does not create an immediate danger to public health and safety, a written notice to correct the violation shall be issued for the first offense. For second and subsequent violations of the same code provision, the person responsible for the violation shall not have an opportunity to correct or otherwise remedy the violation prior to the administrative fine being imposed. Each person, firm or corporation shall be guilty of a separate offense for each day and everyday during any portion of which any violation of any provision is committed.
- 4. Individual Violation that creates an immediate danger to the public health and safety. Where a violation is an Individual Violation that constitutes an immediate danger to the public health and safety, the property owner shall be provided notice to correct the violation within a maximum of two (2) hours from when the verbal or written notice was received. Depending upon the severity of the violation, if the violation is not corrected within the two hour time period, the City shall have the option to initiate summary abatement procedures under Section XI-10-63.09, Abatement Procedure, of this Chapter, or impose the administrative fine below and administrative citation provisions under Section XI-10-63.07(B), Administrative Citation, of this Chapter. Each person, firm or corporation shall be guilty of a separate offense for each day and everyday during any portion of which any violation of any provision is committed.
 - a. The schedule of fines for administrative citations issued for violations of this Chapter is as follows:
 - i. Not to exceed one-hundred dollars (\$100) for the first violation;
 - ii. Not to exceed two-hundred dollars (\$200) for the second violation of the same code provision within twelve (12) months; and

- iii. Not to exceed five-hundred dollars (\$500) for the third and subsequent violation of the same code provision within twelve (12) months.
- b. Each person that fails to pay any fine set out in an administrative citation issued pursuant to this section shall be liable for a late payment charge of 10%.

B. Administrative Citation

1. Whenever an enforcement officer charged with the enforcement of any provision of this Chapter determines that a violation of that provision has occurred, the enforcement officer shall have the authority to issue an administrative citation to any person responsible for the violation.
2. Each administrative citation shall contain the following information:
 - a. The date of the violation;
 - b. The address or a definite description of the location where the violation occurred;
 - c. The section of this Chapter violated and a description of the violation;
 - d. The amount of the fine for the code violation;
 - e. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
 - f. An order prohibiting the continuation or repeated occurrence of the violation described in the administrative citation;
 - g. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and
 - h. The name and signature of the citing enforcement officer.
3. Amount of Fines.
 - a. The amounts of the fines for code violations imposed pursuant to this Chapter shall be set forth in the schedule of fines established by resolution of the City Council.
 - b. The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person within twelve months from the date of an administrative citation.
 - c. The schedule of fines shall specify the amount of any late payment charge imposed for the payment of a fine after its due date.
4. Payment of the Fine.
 - a. The fine shall be paid to the City within thirty days from the date of the administrative citation.
 - b. Any administrative citation fine paid pursuant to Section XI-10-63.07(B)(4)(a) shall be refunded, with interest, if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.
 - c. Payment of a fine under this Chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.
5. Hearing Request.

- a. Any recipient of an administrative citation may contest that there was a violation of the Code or that he or she is the responsible party by completing a request for hearing form and returning it to the City within fifteen (15) days from the date of the administrative citation, together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed.
 - b. A request for hearing form may be obtained from the City Clerk.
 - c. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.
 - d. If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing.
6. Advance Deposit Hardship Waiver. Any person who intends to request a hearing to contest that there was a violation of the Code or that he or she is the responsible party and who is financially unable to make the advance deposit of the fine as required, may file a request for an advance deposit hardship waiver at the time of filing the hearing request.

XI-10-63.09 Abatement Procedure

A. Notification of Nuisance

Whenever the City Manager determines that any property within the City is being maintained contrary to one or more of the provisions of this Chapter, he or she will give written notice (“Notice to Abate”) to the owner/occupant(s) of said property stating the section(s) being violated. Such notice shall set forth a reasonable time limit, in no event less than or equal to thirty (30) calendar days, for correcting the violation(s) of Chapter XI-10, Zoning, for correcting the violation(s) and may also set forth suggested methods of correcting the same unless the City Manager determines that the condition constitutes a threat to the health and safety of any person, in which event, the City Manager may designate a shorter time limit for correcting the violation. Such notice shall be served upon the owner/occupant in accordance with provisions of Section XI-10-63.09(D), Notice of Hearing, of this Chapter, covering service in person or by mail.

B. Exception for Undue Hardship

The notice shall also inform the owner/occupant (excluding an owner acting in a capacity of landlord of rental property) that, upon written request of the owner/occupant submitted within seven (7) calendar days of the “Notice to Abate,” the City Manager, in his or her sole discretion, may allow for a time limit in excess of thirty (30) days for correcting the violation in cases where strict enforcement of the time limit would result in an undue hardship on the owner/occupant. In the written request, the owner/occupant shall state the reasons why strict enforcement of the time limit would result in an undue hardship.

C. Administrative Hearing to Abate Nuisance

In the event said owner/occupant shall fail, neglect or refuse to comply with the “Notice to Abate,” the City Manager shall conduct an administrative hearing to ascertain whether said violation constitutes a public nuisance.

D. Notice of Hearing

Notice of said administrative hearing shall be served upon the owner/occupant not less than seven (7) calendar days before the time fixed for hearing. Notice of the hearing shall be served in person or by certified mail to the owner/occupant’s last known address. Service shall be deemed complete at the time notice is personally served or deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder. Notice shall be substantially in the format set forth below:

NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE

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 (public right-of-way address) _____, in

said City, and more particularly described as (Assessor's Parcel Number) _____ constitutes a violation or public nuisance subject to abatement pursuant to Section XI-10-63.09, Abatement Procedure, 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 method(s) of abatement are:

All persons having an interest in said matters may attend the hearing and their testimony and evidence will be Dated this _____ day of _____, 20 __.

City Manager

Time and Date of Hearing: _____

Location of Hearing: _____

E. Administrative Hearing by City Manager or His/Her Designees

At the time stated in the notice, the City Manager shall hear and consider all relevant evidence, objections or protests, and shall receive testimony relative to such alleged public nuisance and to proposed rehabilitation, repair, removal or abatement of such property. Said hearing may be continued from time to time.

If the City Manager finds that such public nuisance does exist and that there is sufficient cause to rehabilitate, abate, remove or repair the same, the City Manager shall prepare findings and an order, which shall specify the nature of the nuisance, the method(s) of abatement and the time within which the work shall be commenced and completed. A copy of the findings and order shall be served on all owner/occupants of the subject property in accordance with the provisions of Section XI-10-63.09(D), Notice of Hearing, of this Chapter. In addition, a copy of the findings and order shall be forthwith conspicuously posted on the property. The order shall set forth the time within which such work shall be completed by the owner/occupant, in no event less than fifteen (15) calendar days.

In the event the owner/occupant fails to abate the nuisance as ordered, the City Manager shall cause the same to be abated by City employees or private contract. The costs shall be billed to the owner/occupant, as specified in Sections XI-10-63.10(A) through XI-10-63.10(E), Cost Recovery, of this Chapter. In appropriate circumstances, the City Manager shall request the City Attorney to obtain all necessary judicial approval for entry onto the subject premises for abatement purposes.

F. Hearing Procedure Before City Manager and His/Her Designees

All hearings shall be tape recorded.

Hearings need not be conducted according to the technical rules of evidence.

Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

Irrelevant and unduly repetitious evidence shall be excluded.

G. Appeal of Decision by City Manager and His/Her Designees to the City Council

The decision of the City Manager and His/Her Designees may be appealed to the City Council in conformance with the provisions of Milpitas Municipal Code Section I-20-5.

H. Limitation on Filing Judicial Action

Any judicial action appealing the City Council's decision and order shall be commenced within thirty (30) calendar days of the date of service of the decision.

I. Summary Abatement of Immediate Hazard or Obstruction

In the event of:

1. A nuisance defined by statute, ordinance or resolution as a public nuisance which constitutes an immediate danger to persons or property;
2. A nuisance defined by statute, ordinance or resolution as a public nuisance which is located or maintained on public property including, but not limited to, any public right-of-way, highway, sidewalk, easement, park or building; or
3. Any obstruction or encroachment to free passage upon any public property (which is hereby declared to be a public nuisance) including, but not limited to, any public right-of-way, highway, easement, sidewalk, park or building, the City Manager may, forthwith and without notice, abate said nuisance and recover the cost of abatement as provided for in Section XI-10-63.10, Cost Recovery, of this Chapter. Summary abatement may include the temporary removal to a safe location of persons placed in immediate danger from a public nuisance. In such event, the City shall be entitled to recover all costs related to the removal, including but not limited to, storage of possessions and rental of living accommodations, as well as any other recoverable cost provided for in Section XI-10-63.10, Cost Recovery, of this Chapter.

XI-10-63.10 Cost Recovery

A. Recovery of Costs

This section establishes procedures for the recovery of administrative costs, as well as attorneys' fees and costs, incurred by the City in the enforcement process, for the abatement of conditions defined as a nuisance or violation by Section XI-10-63.07, Administrative Citation Procedure, of this Chapter.

B. Definition of Costs

For the purposes of this Chapter, "costs" shall mean administrative costs, including staff time expended and reasonably related to nuisance abatement cases, for items including, but not limited to, investigation, site inspection and monitoring, testing, reports, telephone contacts, correspondence and meetings with affected parties, as well as all attorneys' fees incurred pursuant to any action, administrative proceeding, or special proceeding to abate the nuisance including, but not limited to, filing fees and fees for witnesses. Pursuant to Government Code Section 38773.5(a), where the City seeks to recover attorneys' fees at the initiation of any action or proceeding, a prevailing opposing party may recover its reasonable attorneys' fees to the extent that the amount of said fees does not exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

C. Cost Accounting and Recovery Required

The City shall maintain records of all costs incurred by responsible City departments associated with the enforcement process pursuant to this Chapter and shall recover the costs from the property owner/occupant as provided by this section.

D. Notice of Cost Recovery Requirements

The City Manager shall include in the “Notice to Abate” a statement of the intent of the City to charge the property owner/occupant for all costs incurred by the City if the violation is not corrected as required. The notice shall state that the property owner/occupant will receive at the conclusion of the enforcement case a summary of enforcement costs associated with the processing of the case.

E. Collection of Charges

Such costs shall be recoverable as provided for in Sections XI-10-63.11(A) through XI-10-63.11(B), Record of Cost Abatement and Assessment and Lien, of this Chapter.

XI-10-63.11 Lien Procedure

A. Record of Cost of Abatement

The City Manager shall keep an account of the costs, as defined in Section XI-10-63.10(B), Definition of Costs, of this Chapter, for abating such nuisance on each separate lot or parcel of land where the work is done by the City and shall render an itemized report in writing showing the cost of abatement, including the rehabilitation or repair of said property, including any salvage value relating thereto. A copy of the same shall be posted for at least five (5) calendar days upon such property, together with a notice of the right to appeal to the City Manager. A copy of said report and notice shall be served upon the owner/occupants of said property, based on the last equalized assessment roll or the supplemental roll, whichever is more current. If the owner/occupant of record, after diligent search, cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in the county in which the property is located. Proof of said posting and service shall be made by affidavit filed with the City Clerk. The owner/occupant shall have thirty (30) calendar days from the date upon which the notice is served to reimburse the City for its costs or to otherwise make arrangements for repayment as to which the City, in its sole discretion, may agree.

B. Assessment and Lien

The total cost for abating such nuisance, as so confirmed by the City Manager, shall, upon failure to pay the costs as specified in Section XI-10-63.11(A), Record of Cost Abatement, of this Chapter, constitute a lien or special assessment pursuant to Government Code Sections 38773.1 (nuisance abatement lien), 38773.2 (graffiti nuisance abatement lien) or 38773.5 (special assessment), or 38773.6 (graffiti special assessment) against the respective lot or parcel of land to which it relates. After confirmation and recordation of a Notice of Special Assessment, a certified copy of the City Manager’s decision shall be filed with the Santa Clara County Assessor’s Office on or before August 1 of each year, whereupon it shall be the duty of said Assessor to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes and thereafter said amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided of ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessments. Upon recordation in the Office of the County Recorder, a Notice of Lien, as so made and confirmed, shall constitute a lien on said property and from the date of recording shall have the force, effect, and priority of a judgment lien.

In the alternative, after such recordation, such lien may be foreclosed by an action brought by the City for a money judgment or by any other means provided by law.

A Notice of Lien for recordation shall be in form substantially as follows:

NOTICE OF LIEN

(Claim of City of Milpitas)

Pursuant to the authority vested by the provisions of Section XI-10-63.03, Declaration of Public Nuisance, of the Milpitas Municipal Code, the City Manager of the City of Milpitas did on or about the _____ day of _____, 20__, cause the property hereinafter described to be rehabilitated or the building or structure on the property hereinafter described, to be repaired or demolished in order to abate a public nuisance on said real property, pursuant to an order to abate issued by on; and the City Manager of the City of Milpitas did on the _____ day of _____, 20__, assess the cost of such rehabilitation, repair, demolition, or abatement upon the real property hereinafter described; and the same has not been paid nor any part thereof; and that said City of Milpitas does hereby claim a lien on such rehabilitation, repair, or abatement in the amount of said assessment, to wit; the sum of \$_____: and the same, shall be a lien upon said real property until the same has been paid in full and discharged of record.

The real property hereinabove mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Milpitas, County of Santa Clara, State of California, owned by and more particularly described as follows (legal description):
(description)

Dated this _____ day of _____, 20__.

City Manager

In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the amount of the lien, the name of the agency on whose behalf the lien was imposed, the date of the abatement order, the public right-of-way address, legal description, and the name and address of the recorded owner/occupant of the property shall be recorded by the governmental agency. A nuisance abatement and the release of the lien shall be indexed in the grantor-grantee index.

XI-10-63.12 Interest on Liens

A. Amount of Interest on City Liens and Assessments—Findings

The City Council finds and declares that the establishment of an interest accrual requirement as to unpaid City liens and assessments upon real property which are of record with the County Recorder for Santa Clara County is a necessary and appropriate exercise of the City Council’s police power.

B. Accrual of Interest on Liens and Assessments

Unless otherwise prohibited by law or regulation, all liens and assessments which are imposed by the City against any real property located in the City of Milpitas that are recorded on and after the effective date of this regulation shall accrue interest at the rate of eight (8) percent annually until the lien or assessment, including interest thereon, is paid in full.

XI-10-63.13 Miscellaneous

A. Alternative Actions Available; Violation an Infraction

Nothing in this Chapter shall be deemed to prevent the Council from ordering the commencement of a civil proceeding to abate a public nuisance pursuant to applicable law or from pursuing any other remedy available under applicable law. Violation of the provisions of this Chapter constitutes an infraction, as set forth in Section I-1-4.09 of the Municipal Code. The City Manager is designated as the enforcement authority.

B. Additional Costs of Abatement

The City Council provides that a court may order the owner/occupant of property responsible for a condition that may be abated in accordance with this Chapter to pay three times the costs of abatement pursuant to Government Code 38773.7 upon the entry of a second civil court judgment for violation of this Chapter within a two-year period.

C. Residential Rental Housing

The notice sent to the owner/occupant of residential rental housing pursuant to Section XI-10-63.09(A), Notification of Nuisance, of this Chapter, shall contain the statement required by Health and Safety Code Section 17980 regarding the application of Revenue and Taxation Code Sections 17274 and 24436.5, which allow the Franchise Tax Board to deny state income tax deductions to taxpayers who fail to bring substandard residential rental property into compliance with this Chapter.

SECTION 11. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

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

**Table XI-10-64.02
Decision-Making Body and Role¹**

Type of Permit or Decision	Procedures are found in:	Planning Division	Planning Commission Subcommittee	Planning Commission	City Council
Land Use Permits and other Development Entitlements					
Staff Review ²		Issuance		Appeal ³	Appeal
Conditional Use Permits	XI-10-57.04			Decision	Appeal
Development Agreements				Recommend	Decision
Minor Site Development Permits	XI-10-57.03	Decision	Decision	Appeal ³	Appeal
Mobile Home Park Conversion Permit	Title XI, Chapter 20			Recommend	Decision
Planned Unit Development	XI-10-54.07			Recommend	Decision
Site Development Permits	XI-10-57.03			Decision Recommend ⁴	Appeal Decision ⁴
Variances	XI-10-57.06			Decision	Appeal
Zoning Ordinance Administration and Amendments					
General Plan Amendments	XI-10-57.02			Recommend	Decision
Specific Plan Amendments	XI-10-57.02			Recommend	Decision
Zoning Amendments	XI-10-57.02			Recommend	Decision

¹ "Recommend" means that the decision-making body makes a recommendation to a higher decision-making body; "issuance" means that the permit is a ministerial action that is issued by the decision-making body; "decision" means that the decision-making body makes the final decision on the matter; "appeal" means that the decision-making body may consider and decide upon appeals to the decision of an earlier decision-making body. Any decision by the Planning Commission may be appealed to the City Council as specified in Section XI-10-64.05, Appeals.

² Includes Home Occupation Permits (Section XI-10-13.05), Minor Site Development Permits (Section XI-10-57.03) reviews requiring building permits and other reviews by Planning Division staff not requiring a building permit or review by other decision-making bodies. Any appeal shall first be to the Planning Commission. The Planning Commission's decision, in turn, may be appealed to the City Council, whose decision shall be final.

³ The Planning Commission's decision may be appealed to City Council, whose decision shall be final.

⁴ Refer to Section XI-10-45.09 regarding the process for projects within the "H" Hillside Overlay District.

SECTION 12. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 13. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

REGULAR

NUMBER: 38.796

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MILPITAS AND MILPITAS AUTO PROPERTIES, LLC

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of August 17, 2010, upon motion by Vice Mayor McHugh and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, on April 11, 2008, an application was submitted by CBS Outdoor, Inc., 1695 Eastshore Highway, Berkeley, CA, 94710, for the construction and operation of a freestanding off-site advertising display (“Project”) to be located at 950 Thompson Street in Milpitas, California (APN: 086-05-026). The property is located within the General Commercial Zoning District; and

WHEREAS, the City and the applicant wish to memorialize the rights to design, construct, install, operate, maintain, manage and market advertising opportunities on said advertising display in the document entitled “Development Agreement By and Between the City of Milpitas and Milpitas Auto Properties, LLC,” (hereinafter referred to herein as the “Development Agreement”), a draft of which is attached hereto as Exhibit A; and

WHEREAS, the environmental effects of the Project were previously considered in the final Supplemental Environmental Impact Report, State Clearinghouse No. 2006082087 (“SEIR”) prepared pursuant to the California Environmental Quality Act (“CEQA”) and certified by the Redevelopment Agency of the City of Milpitas City on November 21, 2006 in connection with the Merger of the Milpitas Redevelopment Project Area No. 1 and the Great Mall Redevelopment Project Area. The terms and conditions of this Development Agreement are consistent with and within the scope of the earlier SEIR. Accordingly, no further environmental analysis is necessary or required under CEQA to enter into the Development Agreement and undertake its terms and conditions; and

WHEREAS, on June 9, 2010, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties, and unanimously recommended to the City Council execution of the Development Agreement and approval of the environmental assessment performed by City staff; and

WHEREAS, on March 3, 2009, the City Council held a duly noticed public hearing and considered the proposed Development Agreement for compliance with City of Milpitas Resolution No. 6642 and Government Code Section 65864 *et seq.*

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. FINDINGS

- A. The City Council finds that the proposed Development Agreement is consistent with the City's General Plan and other applicable plans, policies and regulations of the City currently in effect, is not detrimental to the health, safety and general welfare of the citizens of the City, is entered into and constitutes an appropriate exercise of the City's police power, and is entered into in compliance with applicable state law and City Resolution No. 6642, as amended.
- B. The City Council finds that the proposed Development Agreement complies with all the applicable procedural and eligibility requirements for the approval and execution of development agreements set forth in City of Milpitas Resolution No. 6642 and Government Code Section 65864 *et seq.* A valid

application was submitted to the Planning & Neighborhood Services Director by an applicant with proper legal standing. The proposed Development Agreement would eliminate uncertainty in land use planning and help ensure the orderly development of an advertising display in an appropriate zoning district and location. The proposed Development Agreement would also result in a project which would be significantly superior in terms of its overall effect on the environment and the community than would otherwise result without such a development agreement. The proposed Development Agreement would also be beneficial to the health, safety, and general welfare of the community.

- C. The Development Agreement is consistent with the General Plan in that the advertising display would promote business development, appropriately identify local commercial activity and project a positive image of the City and the community.

SECTION 3. APPROVAL AND AUTHORIZATION

The City Council hereby approves and authorizes the City Manager or his or her designee to execute the Development Agreement between the City of Milpitas and Milpitas Auto Properties, LLC, attached hereto as Exhibit A. Within ten (10) days of the effective date of this Ordinance, the City Clerk shall have the Development Agreement recorded with the Santa Clara County Recorder.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

EXHIBIT A

This document is recorded for the benefit of the City of Milpitas and is entitled to be recorded free of charge in accordance with Section 6103 of the Government Code.

After recordation, mail to:

OFFICE OF THE CITY ATTORNEY
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

DEVELOPMENT AGREEMENT

By and Between

**THE CITY OF MILPITAS,
a municipal corporation,**

and

**MILPITAS AUTO PROPERTIES, LLC,
a California Limited Liability Company**

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 17th day of August, 2010 (the "Effective Date"), by and among Milpitas Auto Properties, LLC, a California Limited Liability Company ("Developer"), and the City of Milpitas, a municipal corporation ("City") pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of the State of California and Ordinance No. 38.796 of the City of Milpitas.

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted Government Code Section 65864 - 65869.5, authorizing municipalities to enter into property development agreements with persons having a legal or equitable interest in real property.

B. The purpose of Government Code Sections 65864 & 65869.5 is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations.

C. Developer is the holder of a long-term Ground Lease in certain real property where the Piercey Toyota dealership is presently located in the City of Milpitas.

D. After issuing a request for proposals, the City at its May 5, 2009 City Council meeting gave approval to Developer to develop, erect and operate up to three (3) electronic advertising display signs along certain freeway locations, as well as at the Developer's auto dealership site in the City of Milpitas, subject to further permitting, licensing, and development applications and land use approvals.

E. In accordance with this Agreement, the Developer wishes to memorialize its rights to design, construct, install, operate, maintain, manage and market advertising opportunities on an electronic advertising display sign ("Project") at the Piercey Toyota dealership site, located at 950 Thompson Street in the City of Milpitas ("Property").

F. The City understands and expects that the Developer will enter into other agreements with the City or, as appropriate, an amendment of this Agreement, for the design, construction, installation, operation, maintenance, management and marketing of signs at two other sign locations. The Developer understands and expects that with regard to other agreements with the City for the design, construction, installation, operation, maintenance, management and marketing of signs at the other two (2) sign locations, such agreements will be on the same or similar terms as this Agreement.

G. Developer desires this Agreement with the City to assure that the Developer will, at the time of application, be issued a building permit and may, except as expressly provided

herein, proceed to construct and complete the Project at any time within the term of this Agreement in accordance with all applicable laws and regulations in effect at the Effective Date.

H. The environmental effects of the Project were previously considered in the final Supplemental Environmental Impact Report, State Clearinghouse No. 2006082087 ("SEIR"), prepared pursuant to the California Environmental Quality Act ("CEQA") and certified by the Redevelopment Agency of the City of Milpitas on November 21, 2006 in connection with the Merger of the Milpitas Redevelopment Project Area No. 1 and the Great Mall Redevelopment Project Area. The terms and conditions of this Agreement are consistent with and within the scope of the earlier SEIR. Accordingly, no further environmental analysis is necessary or required under CEQA to enter into this Agreement and undertake its terms and conditions.

I. After conducting a duly noticed public hearing on June 9, 2010, the Planning Commission for the City considered this Agreement and recommended its approval.

J. In conjunction with the consideration of this Agreement and after conducting a duly noticed public hearing on August 17, 2010, the City Council for the City approved this Agreement by ordinance, authorizing its execution and finding that the provisions of the Agreement are consistent with the City's General Plan, are compatible with the requirements of the Zoning Ordinance, comply with applicable state law and City Resolution No. 6642, as amended, and provide substantial public benefit to persons residing outside the boundaries of the Project, beyond the normal exactions for public benefit imposed in the development review process. The City Council also approved a Project Site Plan (attached hereto as Exhibit B) and a Site Development Permit for the Project.

K. The Developer and the City both understand and acknowledge that the City shall not have physical possession of the Sign or the real property surrounding and underlying it, shall not be responsible for performing any of the obligations nor bear any costs whatsoever that the Developer may have for development, construction, permitting, use, maintenance and marketing of the Sign under this Agreement and shall not be liable for any breach under any other related agreement or arrangement regarding development of the Property.

L. For the reasons recited herein, Developer and City have determined that the Project is a development for which this Agreement is appropriate. City finds and Developer represents that a substantial economic benefit to the City will result in accordance with the public benefit under which the Project has been undertaken and which adds value to the community by the generation of revenue that has been projected by the Developer from the sign advertising and which is to be shared in by the City. In exchange for providing these public benefits, Developer receives assurance that it may proceed with the Project in accordance with ordinances, resolutions and regulations existing as of the date of this Agreement, subject only to the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which is hereby acknowledged, the parties agree as follows:

SECTION 1

DEFINITIONS

A. Definitions

The following definitions apply to this Agreement:

- (1) Agreement. The term “Agreement” shall mean this entire Development Agreement, including all appendices, exhibits and other documents attached hereto or incorporated herein by reference.
- (2) City. The term “City” shall mean the City of Milpitas, a municipal corporation, having its offices at 455 E. Calaveras Blvd., Milpitas, California 95035.
- (3) Developer. The term “Developer” shall mean Milpitas Auto Properties, LLC, a California Limited Liability Company holding a long-term ground lease on the real property located at 950 Thompson Street, Milpitas, California 95035.
- (4) Adjusted Gross Revenue. The term “Adjusted Gross Revenue” shall mean gross receipts from the sale of advertising time by the Developer and/or its sublessee, CBS Outdoor, Inc. (“CBS”), on the Sign, less advertising agency commissions, which shall not exceed 16.667% on any given advertising sale, and electricity costs related solely to Sign operations.
- (5) Project. The term “Project” shall mean the design, construction, installation, operation, maintenance, management, and marketing of the Sign to be located on the Project Site.
- (6) Project Site. The term “Project Site” shall mean that certain part of the Property more particularly described in Exhibit B attached hereto and as otherwise referred to in Recital E above.
- (7) Sign. The term “Sign” shall mean that one (1) off-site advertising signboard which shall have an electronic screen displaying advertisements and operating on an ongoing basis pursuant to the terms of this Agreement.

SECTION 2

GENERAL PROVISIONS

A. City and State Laws

This Agreement is subject to applicable law pertaining to development agreements, specifically City Resolution No. 6642, and any of its amendments, and Government Code Sections 65864 *et seq.*

B. Term

The term of this Agreement (“Term”) shall commence upon the Effective Date and shall expire on August 17, 2020, unless terminated, modified or extended as provided herein or under City Resolution No. 6642 or Government Code Sections 65864 - 65869.5 or by mutual consent of the parties hereto. Developer shall have the option to extend the initial term for three (3) additional ten (10) year periods at the expiration of the initial term, if not in default, after giving written notice of intent to extend not later than 180 days before, and no sooner than 360 days before the expiration of the initial term.

C. Assignment

Except as to a contemplated sublease agreement with CBS, the rights of the Developer under this Agreement may not be transferred or assigned without the written consent of City which consent will not be unreasonably withheld, delayed or conditioned.

D. Recitals

The recitals set forth above are true and correct and incorporated herein by this reference, and constitute an integral part of this Agreement.

E. Adequacy of Consideration

The City and Developer have determined that the Developer’s performance of its covenants and other obligations, as well as the agreed-upon percentage of Adjusted Gross Revenue that the City will share in as set forth in Section 3.D (1) below that will be generated by the Sign, represents fair and adequate consideration to the City for entering into this Agreement.

SECTION 3

DEVELOPMENT

A. Development of Project Site

City specifically consents to the development of the Property with a Sign at the Project Site, subject to the Developer's compliance with all conditions of approval of the City and the terms and conditions set forth in this Agreement. Development of the Sign at the Project Site and construction of the Sign shall be in accordance with the City Council Economic Development Subcommittee's recommendations of May 17, 2010, the City Council's May 5, 2010 conceptual development approval, the terms of this Agreement and City Laws (as that term is defined herein) in effect on the Effective Date. The design, construction and location of the Project Site (including signage materials and landscaping) shall conform to the conceptual drawings attached hereto as Exhibit C (the "Conceptual Drawings").

B. City Laws

Except as provided herein, City's laws, ordinances, rules, regulations and official policies applicable to the Project shall be those City laws, ordinances, rules, regulations and official policies or amendments thereto in force at the Effective Date or adopted coterminously with this Agreement (herein collectively referred to as "City Laws"). Such City Laws generally govern the allowable maximum height, bulk, size, design and location of the Project. City agrees that under City Laws, the Project can be developed, built, used, maintained, and located on the subject Project Site.

C. Applicable City Laws and Regulations

Notwithstanding Paragraph B. above, City may apply the following City laws that are Project specific to the Project Site as regards the development, design, construction, use, improvement, maintenance, management and marketing of the Sign Parcels:

(1) New City Laws which do not conflict with the existing City Laws or with the General Plan land use designations, permitted uses, density and intensity of use, height, bulk, size or location of the Project, or which do not diminish any of Developer's rights granted herein, or which are not in conflict with any of the terms and conditions hereof;

(2) New City Laws which are specifically mandated and required by changes in state or federal laws and regulations; and

(3) City Laws that are applicable to the following and are in effect at the time Developer submits an application for a building permit for the Project:

(a) Procedural requirements for building permit application submittal and issuance;

(b) Construction standards pursuant to all Uniform Building Codes incorporated by the Milpitas Municipal Code;

(c) Engineering specifications for construction of any public improvements such as curbs, gutters and sidewalks;

(d) Standard Permit Fees;

(e) Impact or linkage fees adopted by ordinance or resolution, applicable to sign projects on a City- or area-wide basis, and payable upon issuance of a building permit;

(f) Any Standard fees payable upon issuance of a building permit for which City acts as a collecting agent for another governing agency; and

(g) Any Standard requirements applicable upon issuance of a building permit for which City acts as an administering agent for another governing agency.

(4) Moratoria adopted by City as an emergency ordinance on the basis of its finding that such action is a health or safety necessity.

D. Developer Obligations

(1) Developer shall pay to the City ten percent (10%) of the Adjusted Gross Revenue generated by the Sign. Payments shall be made on a quarterly basis by the Developer. Along with each quarterly payment, Developer shall provide an accounting demonstrating the breakdown of Adjusted Gross Revenue and payments provided.

(2) After the commencement of power service by Pacific Gas & Electric and concurrent with final inspection approval by the City under the Milpitas Building Code, the Developer shall pay a one-time, One Hundred Thousand Dollar (\$100,000.00) advance to the City. Such advance shall be deducted from future quarterly payments by Developer to the City.

(3) Developer shall be solely responsible for securing all applicable approvals, permits and licenses from non-City regulatory agencies (such as the California Department of Transportation) and landowners (such as the County of Santa Clara), as necessary.

(4) Developer shall prohibit and not display any adult-oriented content or allow the advertisement of any adult-oriented businesses or products on the Sign.

(5) Developer shall reserve at least five percent (5%) of electronic display time for City-promoted community events, messages and performances.

(6) Developer shall maintain and keep in good repair and clean condition the Project Site and the Sign erected thereon at all times during the term of this Agreement.

(7) Developer shall not permit any shrubs, trees, vines, buildings, or other signs or billboards to be planted or erected on the Property which would obstruct or materially impair the visibility of the Sign.

(8) Developer shall not permit any other billboards or signs advertising off-site uses to be erected on the Property.

(9) Developer shall comply with all laws, regulations, ordinances and rules, including but not limited to any and all environmental laws, rules and regulations, applicable to the construction, erection, maintenance, replacement and removal of signs, sign structures and equipment used or placed on the Property.

(10) After prior written Notice to cure the condition and except for Force Majeure events as defined in Section 10, Developer shall demolish and remove the Sign in the event that it remains vacant or unused for a period of six (6) months or more or upon the termination or expiration of this Agreement.

(11) In order to assist City in its efforts to receive direct distribution of the local tax on materials associated with the development and operation of the Project, the California Sales and Use Tax (the "Local Tax") shall be allocated to the Project site, within the City, to the maximum extent reasonably possible. The Project, as currently envisioned, has the potential to be a significant source of additional local use tax revenue to the City. The Developer and all of its contractors, subcontractors, and suppliers shall cooperate with the City to the extent reasonably possible to maximize the allocation of the Local Tax to the City. Such cooperation shall include but not be limited to:

(a) Purchases: To the extent commercially reasonable, the Developer and its contractor and sub-contractor shall require equipment and material vendors and suppliers from which they make any individual purchases, which are subject to use tax and are to be used in the City, to allocate the local use tax to the City to the extent authorized by law. The incremental Local Tax generated from the construction of Project shall accrue to the City in accordance with applicable law.

(12) Developer expressly acknowledges and agrees that the obligations set forth herein are reasonable restraints on Owner's right to own, use, maintain and transfer the Property and any estate or interest therein, and are not and shall not be construed to be an unreasonable restraint or alienation.

(13) Developer shall maintain and make available for inspection, audit, and/or copying at any time during regular business hours, upon 48 hours oral or written request

of the City, records or documents relating to the collection and calculation of Adjusted Gross Revenue.

E. City Obligations

(1) The City shall assist the Developer and its Sublessee, CBS, with expeditiously processing the Developer and its Sublessee, CBS required submittals, such as public hearings, site plan and construction approvals, any environmental reviews, permits, etc., in order that Developer may obtain final City action on the Project; provided however that the City does not warrant or represent that such approval shall be obtained.

(2) The City shall not permit any shrubs, trees, vines, buildings or other signs or billboards to be planted or erected on any of their Properties which would obstruct or materially impair the visibility of this Sign; nor permit any other billboards or signs be erected on adjoining property that would negatively impact the Developer's marketing and usage of the Sign.

F. Development Not Required

Notwithstanding anything to the contrary contained herein, Developer is not obligated to develop the Project.

SECTION 4

AMENDMENT

A. Mutual Consent

This Agreement may be amended, or cancelled in whole or in part, at any time and from time to time by mutual consent of the parties or their successors in interest. Notice of, and a public hearing regarding an intention to amend or cancel any portion of this Agreement shall be given and held in the manner provided in City Resolution No. 6642.

B. Conflict with State or Federal Laws and Regulations

In the event that state or federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified in accordance with the provisions set forth in this Section or suspended as may be necessary to comply with such state or federal laws or regulations. Notwithstanding the foregoing, Developer shall have the right to challenge, at its sole cost, in a court of competent jurisdiction, the law or regulation preventing compliance with the terms of this Agreement and, if the challenge in a court of competent jurisdiction is successful, this Agreement shall remain unmodified and in full force and effect.

C. Procedure for Modification Due to Conflict with State or Federal Laws

In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be approved by the City Council in accordance with Resolution No. 6642.

SECTION 5

DEFAULT, TERMINATION AND REMEDIES

A. General Provisions

Any failure to perform, or any delay in performing, the terms and conditions hereof shall constitute a default under this Agreement. Any party alleging a default under this Agreement shall give the other party not less than sixty (60) days notice in writing, specifying the nature of the alleged default and the manner in which it may be satisfactorily cured. During the period specified in the notice, the alleged default shall not be considered a default for purposes of termination or institution of legal proceedings. If the default is cured within the period specified in the notice, the noticing party shall take no further action.

B. Default and Remedies

Developer shall be in default under this Agreement upon the happening of one or more of the following events:

(1) If a warranty, representation or statement as relates to the Piercey Toyota dealership sign parcel made or furnished by Developer to the City subsequent to the Request for Proposals process is false or proves to have been false in any material respect when it was made; or,

(2) A finding and determination by the City made following an annual or special review under the procedure provided for in Resolution No. 6642 and Government Code Section 65865.1 that, upon the basis of substantial evidence, Developer has not complied in good faith with the terms and conditions of this Agreement; or,

(3) Developer fails to fulfill any of its obligations set forth in this Agreement and such failure continues beyond any applicable cure period provided in this Agreement. This provision shall not be interpreted to create a cure period for any event of default where such cure period is not specifically provided for in this Agreement; provided, however, that if such default is not capable of being cured within such 30 day period, Developer shall have such additional time to cure as is reasonably necessary.

C. Procedure upon Default

(1) Upon the occurrence of an event of default, City may terminate or modify this Agreement in accordance with the provisions of Government Code Section 65865.1 and Resolution No. 6642.

(2) The City shall not be deemed to have waived any claim of defect in Developer's performance if, on annual or special review, the City does not propose to terminate this Agreement.

(3) No waiver or failure by the City or Developer to enforce any provision of this Agreement shall be deemed to be a waiver of any provision of this Agreement or of any subsequent breach of the same or any other provision.

(4) Any actions for breach of this Agreement shall be decided in accordance with California law. The remedy for breach of this Agreement shall be limited to specific performance.

(5) The City shall give Developer written notice of any default under this Agreement, and Developer shall have thirty (30) days after the date of the notice to cure the default or to reasonably commence the procedures or actions needed to cure the default.

D. Enforceability

Except as otherwise provided herein, the rights of the parties under this Agreement shall be enforceable notwithstanding any change subsequent to the Effective Date in any applicable General or Specific Plan or building, zoning, subdivision or other land use ordinance.

SECTION 6

INDEMNIFICATION

City and Developer shall defend, hold harmless and indemnify each other and their respective officials, employees, agents, and representatives, as appropriate, from and against any and all claims, suits, demands, liability, loss, costs, damages, and other expenses of litigation arising from or relating to the negligence or willful misconduct of the City or the Developer.

SECTION 7

NOTICES

Any notice or communication hereunder must be in writing and may be given either by personal service or by registered or certified mail, return receipt requested. Any notice or communication personally served shall be deemed given and received on the date of personal service on the party noticed at the appropriate address designated below, and any notice or communication sent by registered or certified mail, return receipt requested, properly addressed

to the appropriate address designated below, with postage prepaid, shall be deemed given and received on the fifth (5th) day after the date appearing on the signed return receipt. Any party hereto may at any time and from time to time, in the manner provided herein, designate any other address in substitution of the address to which such notice or communication shall be given. All such notices or communications shall be given to the parties at their addresses hereinafter set forth:

IF TO CITY:
City Manager, City of Milpitas
City Hall
455 E. Calaveras Blvd.
Milpitas, CA 95035

IF TO DEVELOPER:
Tom Chadwell, Member
Milpitas Auto Properties, LLC
13600 Beach Blvd.
Westminster, CA 92638

IF TO CBS OUTDOOR, INC.:
Robert H. Harbin, III, Director
CBS Outdoor
1695 Eastshore Hwy.
Berkeley, CA 94710

SECTION 8

NO WAIVER

No failure, delay or omission by a party in exercising or asserting any right, power or remedy hereunder shall impair such right, power or remedy, and no failure, delay or omission by a party occurring upon the other party's noncompliance with or failure to perform the terms and conditions of this Agreement shall be construed as a waiver thereof. A waiver by either party of any failure on the part of the other party to perform any of the terms or conditions to be performed by such other party shall not be construed as a waiver of any succeeding failure of the same or other terms or conditions hereof, nor shall any failure, delay or omission by a party in asserting any of its rights or remedies hereunder deprive such party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies.

SECTION 9

RECORDING

After this Agreement is approved and executed by the parties hereto, either party may submit it to the Santa Clara County Recorder to be recorded. Such recording shall occur with ten (10) days of the effective date of the ordinance adopting this Agreement.

SECTION 10

MISCELLANEOUS

A. No Joint Venture or Partnership

Nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners.

B. Severability

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

C. Attorneys' Fees

(1) **Prevailing Party.** In the event a lawsuit is filed to resolve any dispute between the parties involving the covenants or conditions contained herein, the prevailing party in such suit shall be entitled to recover its reasonable expenses, including attorneys' fees and all costs of suit.

(2) **Action by Third Party.** If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate in defending such action. Developer shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such action or other proceeding.

D. Further Assurance; Covenant to Sign Documents

Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement.

E. Time

Time is of the essence to this Agreement and to each and every term and condition hereof.

F. Force Majeure

Notwithstanding anything to the contrary contained herein, either party shall be excused for the period of any delay in the performance of any of its obligations hereunder, except the payment of money, when prevented or delayed from so doing by certain causes beyond its control, including, and limited to, major weather differences from the normal weather conditions for the South San Francisco area, war, acts of God or of the public enemy, fires, explosions, floods, earthquakes, invasions by non-United States armed forces, failure of transportation due to no fault of the parties, unavailability of equipment, supplies, materials or labor when such unavailability occurs despite the applicable party's good faith efforts to obtain same (good faith includes the present and actual ability to pay market rates for said equipment, materials, supplies and labor), strikes of employees other than Developer's, freight embargoes, sabotage, riots, acts of terrorism and acts of the government (other than the City). The party claiming such extension of time to perform shall send written notice of the claimed extension to the other party within thirty (30) days from the commencement of the cause entitling the party to the extension.

G. Bankruptcy

The obligations of this Agreement shall not be dischargeable in bankruptcy.

H. Governing Law and Venue

The laws of the State of California shall govern this Agreement. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state court of California in the County of Santa Clara.

I. Incorporation of Exhibits

Each of the exhibits attached hereto are incorporated herein by this reference and made a part hereof for all purposes.

J. Counterparts

This Agreement may be executed in counterparts and each counterpart will have the same force and effect as an original.

IN WITNESS WHEREOF, Developer and City have executed this Agreement as of the day and year first written above.

CITY OF MILPITAS
A Municipal Corporation

MILPITAS AUTO PROPERTIES,LLC
A California Limited Liability Company

By: _____
Robert Livengood, Mayor

By: _____
Tom Chadwell, Member

ATTEST:

By: _____
Mary Lavelle, City Clerk

APPROVED AS TO FORM:

By: _____
Michael J. Ogaz, City Attorney

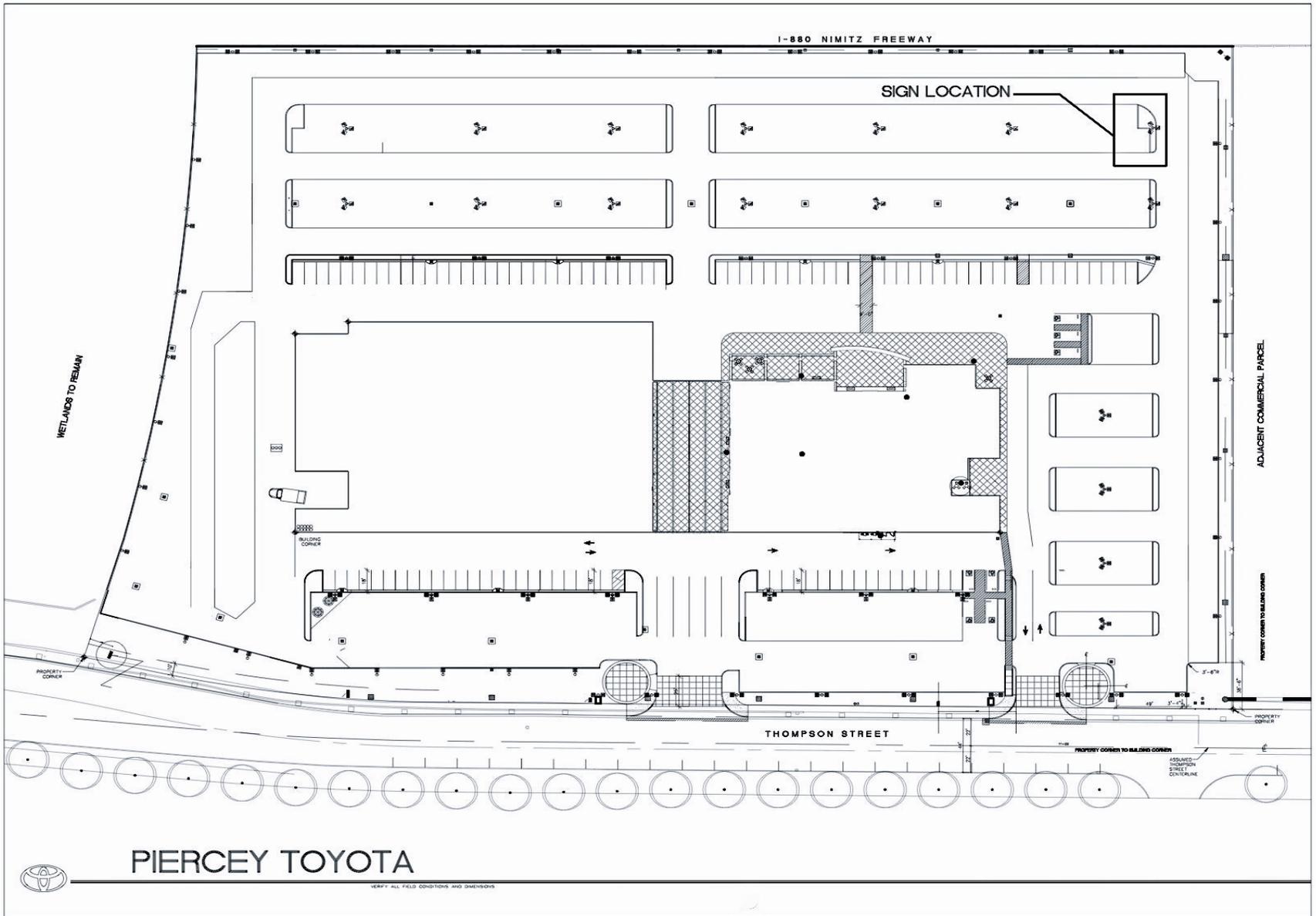
EXHIBIT A

Legal Description

All that certain real property situated in the City of Milpitas, County of Santa Clara, State of California, commonly described as Piercey Toyota, 950 Thompson Street, Milpitas, CA 95035, and being more particularly described as follows:

APN: 086 – 05 – x021

EXHIBIT B
PROJECT SITE PLAN



PIERCEY TOYOTA



VERIFY ALL FIELD CONDITIONS AND DIMENSIONS

Site Plan – Piercey Toyota



EXHIBIT C
CONCEPTUAL DRAWINGS



Design Concept - 14 x 48 LED Display
City of Milpitas Outdoor Signage Project





Design Concept - 14 x 48 LED Display
City of Milpitas Outdoor Signage Project

