

URGENCY

NUMBER: 38.801

TITLE: AN UNCODIFIED URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ESTABLISHING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, PROCESSING AND APPROVAL OF APPLICATIONS FOR CONVERSIONS OF CERTAIN INDUSTRIAL AND/OR COMMERCIAL ZONES TO RESIDENTIAL ZONES

HISTORY: This Ordinance was introduced by the City Council at its meeting of _____, upon motion by _____ and was adopted immediately as an interim urgency ordinance pursuant to the provisions of California Government Code Section 65858(b). 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

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, Government Code Section 65858 allows a city to adopt, as an urgency measure, an interim ordinance prohibiting any uses which may be in conflict with any contemplated general plan, specific plan, or zoning ordinance amendment proposal which the legislative body, planning commission, or planning department is intending to study within a reasonable time, in order to protect the public safety, health and welfare; and

WHEREAS, the City of Milpitas Planning & Neighborhood Services Department and the Engineering Department are in the process of studying the cumulative effects of past and future proposed rezones of areas zoned for industrial uses to residential uses on the City's jobs to housing balance, sewer capacity, water capacity, and other infrastructure limitations; and

WHEREAS, a public hearing was held by the City Council on February 7, 2012, after the provision of duly required legal notice under Government Code Section 65090; and

WHEREAS, at the February 7, 2012, City Council meeting, the City Council received City staff analysis and reports and received public testimony on the negative effects of ad hoc conversions of areas currently zoned for industrial uses to residential uses; and

WHEREAS, significant concerns have been raised in the community regarding the slow decay and inability of current zoning regulations and plans to address the increasing number of rezone applications, thereby threatening the historic and planned areas of the City for industrial and commercial activities and the continued protection and growth of long-term, high paying jobs; and

WHEREAS, citizens and businesses within the City of Milpitas have expressed concerns regarding the impact that a proliferation of new residential developments within or adjacent to industrial establishments within the City may negatively affect the future desirability of the City as a place for productive, employment-creating activity and possibly expose such new residential developments to harmful noise, air, and other public health impacts; and

WHEREAS, the City Council therefore finds that the approval of new applications for zoning conversions or rezones to residential uses, while possible amendments to the Zoning Ordinance and review of appropriate land use planning to maintain a healthy jobs to housing balance are being studied, could result in conflicts with any proposed amendments and would undermine the purpose of studying such amendments, thereby reducing the quality of life within the community by detrimentally affecting the overall public health, safety and welfare; and

WHEREAS, the City Council also finds that the continued ad hoc rezone of industrial properties presents a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.

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. PREPARATION OF ZONING CODE AND/OR SPECIFIC PLAN AND GENERAL PLAN AMENDMENTS

The City Council hereby directs the Planning and Neighborhood Services Department to prepare a Zoning Code amendment and, if necessary, Specific Plan and General Plan amendment, governing the standards and allowable extent of rezones or conversions of areas currently zoned for industrial uses and/or commercial uses to residential uses, and to present such zoning and/or Specific Plan and General Plan amendments to the Planning Commission as soon as possible in order for the Planning Commission to make a recommendation to the City Council.

SECTION 3. TEMPORARY MORATORIUM

The City Council hereby adopts a moratorium on the acceptance, processing or approval of applications to rezone certain areas currently zoned for industrial and/or commercial uses to residential uses for an initial 45-day period, or until such time as the City concludes the review described above and amends the Zoning Ordinance and/or relevant Specific Plan and General Plan to address the negative public health, safety and welfare effects that such ad hoc conversions of existing industrial zones to residential zones have on the community. This moratorium shall apply only to applications associated with the industrial and commercial zones set forth in Exhibit 1 of this Ordinance.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council finds that adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) and 15308 of the CEQA Guidelines.

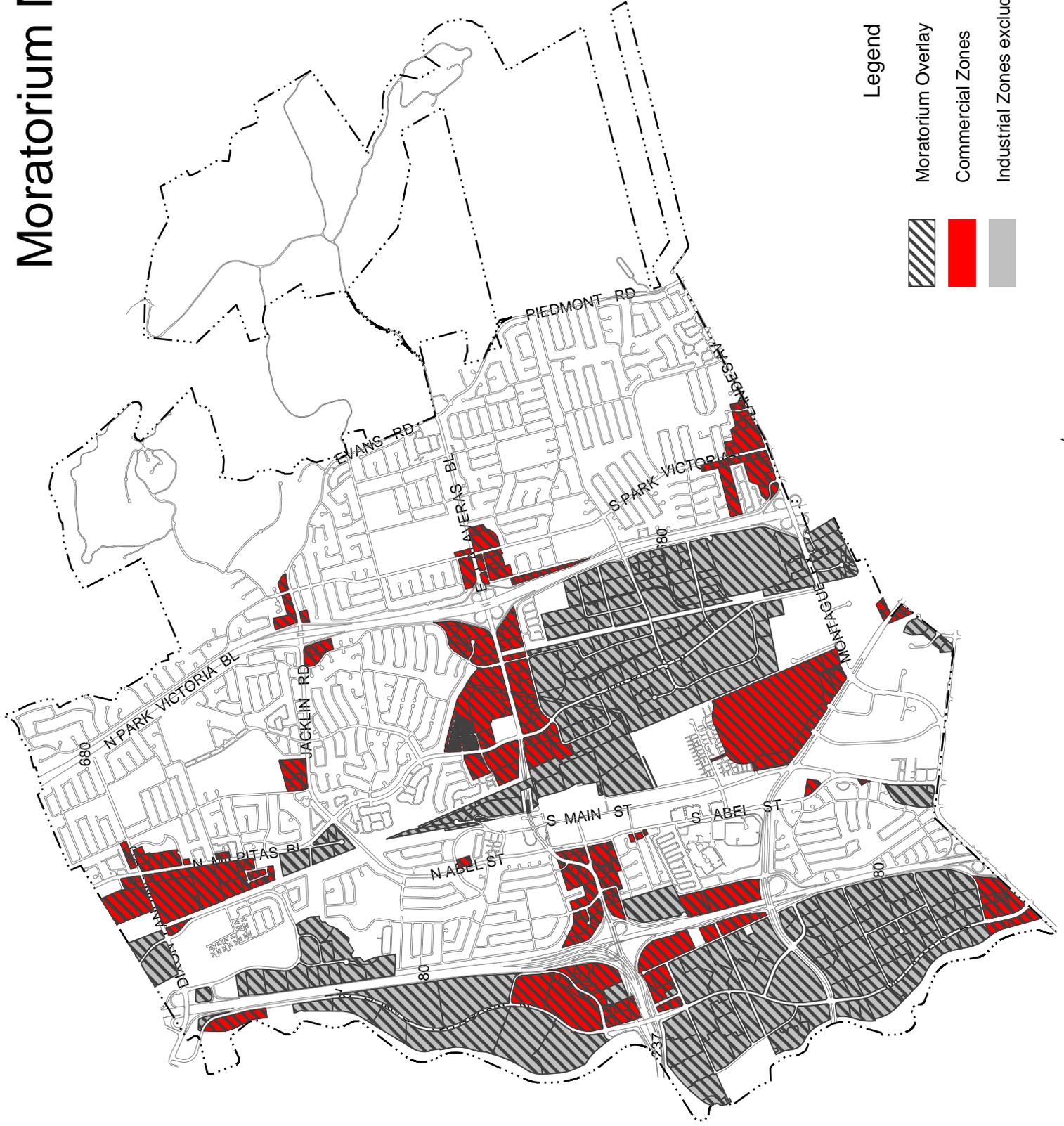
SECTION 5. SEVERABILITY

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 6. EFFECTIVE DATE AND POSTING

In accordance with Government Code Section 65858(b), this Ordinance is effective immediately as an urgency interim ordinance and shall be in full force and effect for a period of 45 days from the date of its adoption. This initial 45-day period may be extended by the City Council in accordance with the provisions of California Government Code Section 65858(c). 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.

Moratorium Map Exhibit



- Legend**
- Moratorium Overlay
 - Commercial Zones
 - Industrial Zones excluding Pending Projects

REGULAR

NUMBER: 38.802

TITLE: AN UNCODIFIED INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ESTABLISHING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, PROCESSING AND APPROVAL OF APPLICATIONS FOR CONVERSIONS OF CERTAIN INDUSTRIAL AND/OR COMMERCIAL ZONES TO RESIDENTIAL ZONES

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ 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

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, Government Code Section 65858 allows a city to adopt an interim ordinance prohibiting any uses which may be in conflict with any contemplated general plan, specific plan, or zoning ordinance amendment proposal which the legislative body, planning commission, or planning department is intending to study within a reasonable time, in order to protect the public safety, health and welfare; and

WHEREAS, the City of Milpitas Planning & Neighborhood Services Department and the Engineering Department are in the process of studying the cumulative effects of past and future proposed rezones of areas zoned for industrial uses to residential uses on the City's jobs to housing balance, sewer capacity, water capacity, and other infrastructure limitations; and

WHEREAS, a public hearing was held by the City Council on February 7, 2012, after the provision of duly required legal notice under Government Code Section 65090; and

WHEREAS, at the February 7, 2012 City Council meeting, the City Council received City staff analysis and reports and received public testimony on the negative effects of ad hoc conversions of areas currently zoned for industrial uses to residential uses; and

WHEREAS, significant concerns have been raised in the community regarding the slow decay and inability of current zoning regulations and plans to address the increasing number of rezone applications, thereby threatening the historic and planned areas of the City for industrial and commercial activities and the continued protection and growth of long-term, high paying jobs; and

WHEREAS, citizens and businesses within the City of Milpitas have expressed concerns regarding the impact that a proliferation of new residential developments within or adjacent to industrial establishments within the City may negatively affect the future desirability of the City as a place for productive, employment-creating activity and possibly expose such new residential developments to harmful noise, air, and other public health impacts; and

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WHEREAS, the City Council also finds that the continued ad hoc rezone of industrial properties presents a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.

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.

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SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council finds that adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) and 15308 of the CEQA Guidelines.

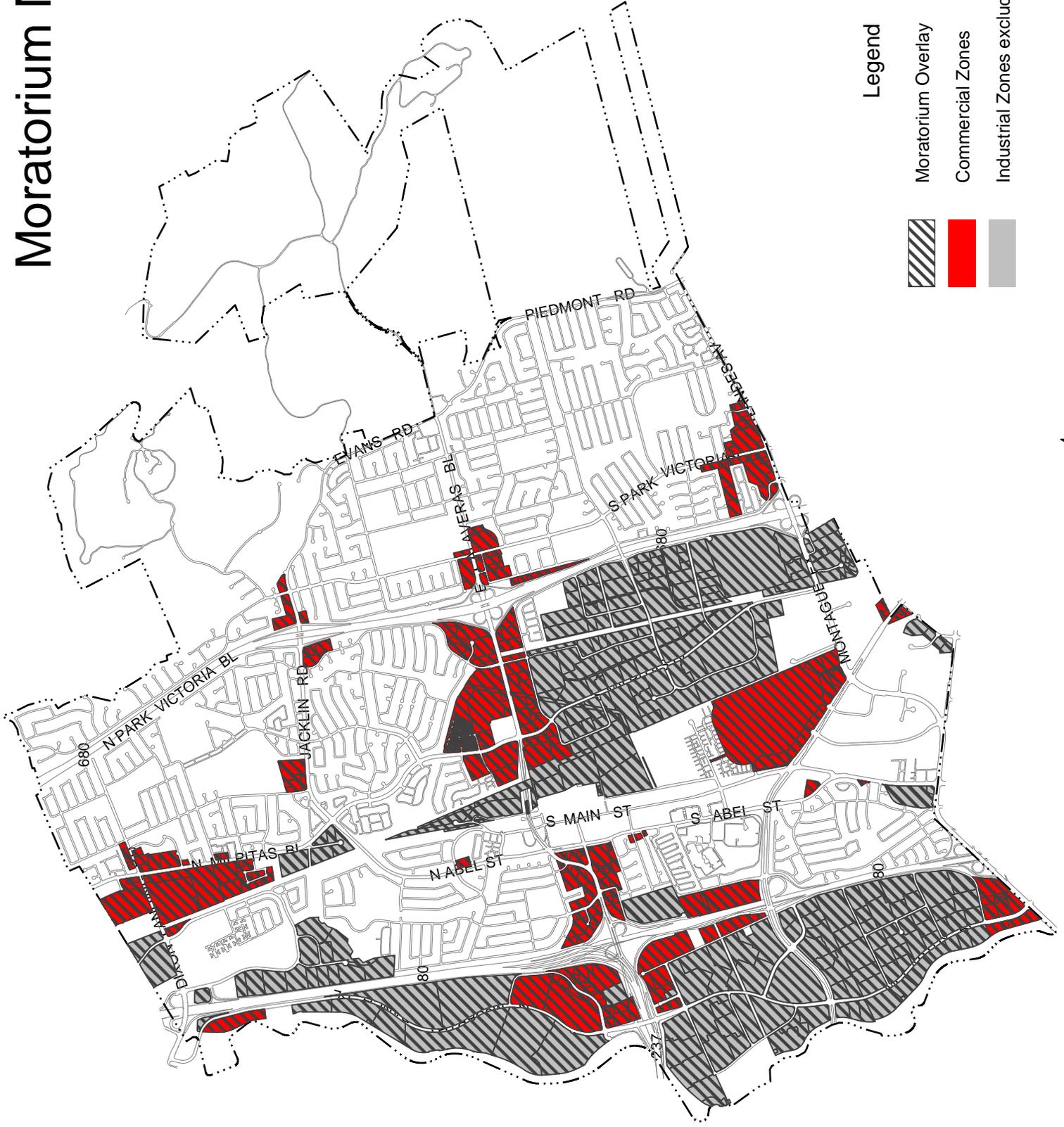
SECTION 5. SEVERABILITY

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 6. 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.

Moratorium Map Exhibit



Legend

-  Industrial Zones excluding Pending Projects
-  Commercial Zones
-  Moratorium Overlay

MEMORANDUM

Planning and Neighborhood Services



To: Transportation and Land Use Subcommittee
Through: Thomas C. Williams, City Manager
From: Diana Barnhart, Planning and Neighborhood Services Director
Subject: **Proposed Moratorium on Conversion of Industrial Land to Residential**
Date: January 23, 2012

Background: A moratorium is proposed to give the City time to evaluate infrastructure capacity to serve new residential outside the existing 780 acres included in the Transit Area Specific Plan (TASP) and the Midtown Specific Plan (Midtown) areas.

Sewer Capacity Purchase: Under our Master Agreement with the San Jose/Santa Clara Water Pollution Control Plant (WPCP), the City holds sewer treatment capacity rights of 14.25 million gallons per day (MGD). This is the amount needed to serve the future planned build out of the City provided that the build out conforms to the land uses defined in the current zoning plan. Staff has tracked sewer treatment capacity needs closely to ensure it will not constrain desired growth. In 2006 the City purchased 1 MGD of sewer treatment capacity from the West Valley Sanitation District and in 2009 purchased 0.75 MGD gallons of sewer treatment capacity from the Cupertino Sanitary District, fellow member agencies of the WPCP. These purchases were to allow the TASP and Midtown to develop to capacity. Accordingly, if the two Specific Plan areas develop as proposed, there is little or no capacity for additional residential development.

Transit Area and Midtown Specific Plan Residential Development: A total of 9,969 dwelling units (du) are allowed for in the TASP (7,109 du's) and Midtown (2,860 du's). To date, 1,068 du have been constructed in the Midtown, another 381 units are under construction (Lyons) and an additional 204 apartment units (Shea) have been approved for construction.

South Main Senior Lifestyles: In addition to the projects noted above, the City has a Disposition and Development Agreement with South Main Senior Lifestyles LLC to create market rate housing and a senior lifestyle living project with the Midtown area for an additional 387 dwelling units. The developer is proposing to combine the existing proposal with the City owned parcel at 1440 South Main Street (purchased in February 2011) together with the two parcels separating them and to expand the project to 562 market rate units. Staff will be presenting the proposal to the City Council for consideration at the February 7th meeting. If approved by the Council, the Midtown will have a total of 2,215 dwelling units constructed, approved or under construction within the next year. This leaves 645 available dwelling units available for the Midtown area.

While there are no residential projects under construction in the TASP, a total of 2,773 dwelling units have been approved to date. Staff is also processing two other submittals for new housing consisting of 645 du's, leaving a total of 3,691 dwelling units available for future development.

Therefore, of the 9,979 dwelling units envisioned in for the Midtown and TASP areas, a total of 4,336 dwelling units remain available for development.

Previous Conversions to Residential: The City has also approved the conversion of approximately 138 acres for residential development outside the TASP and Midtown areas: Fairfield Residential (28 acres for 659 dwelling units) and Landmark Towers (3 acres for 375 du's), both in the Milpitas Business Park. Additionally, the 2010 Los Coches rezone, (50 acres to Town Center Commercial) allows for R-4 residential development. In the Los Coches area, staff has received 3 separate developments inquires for residential development, in addition to the Robson Homes (83 single family units) currently under construction.

Current Residential Conversion Proposals: Recently the City received two proposals to convert Industrial zones to residential: the KB Homes Preston Pipeline project for 209 du's (15.4 acres) and Trumark's CA Circle for 108 du's (31 acres). Brokers have also inquired about the potential to rezone Industrial land west of 1-880 and south of Highway 237 for residential uses. Staff is aware that residential developers are also looking at industrial sites for conversion in the Town Center Business Park as well.

Sewer Impacts of Conversions: Utility Engineering has considered the possible impacts of converting industrial land uses to residential land uses to provide an initial impact to sewer capacity. Staff estimates that for every acre of R-2 zoned land, a sewer demand of 8,505 Gallons Per Day (GPD) is created. R-4, or Very High Density Residential uses, generates the need for 12,150 GPD. However, Industrial and Manufacturing uses only generate the need for 400-600 GPD per acre.

The City's sewer need at build out, under the current zoning, is 14.25 million gallons per day (mgd) and which is available through the contract purchases mentioned earlier. If one half of the City's zoned industrial lands (646 acres) were to convert to very high density residential, the City would need to acquire an additional 8.25 mgd of sewer treatment capacity. While it is unlikely that it would be available for purchase, if it could be obtained the cost would be on the order of \$75 million.

Conclusion: With current market conditions favoring the continuation of single family home development, the Industrial lands offer the largest sized parcels with the most reasonable residential development costs. This creates the interest in continued land use conversion. Staff recommends that a moratorium be placed on future conversions to provide the opportunity to estimate the impact of proposed rezoning developments have on available sewer treatment capacity and future job creation. If not balanced by other areas of lower than expected sewer usage, they may result in the need for addition capacity purchases.