

NUMBER: 38.812

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO ESTABLISHMENT OF A CITYWIDE FREEWAY CORRIDOR OVERLAY AND ZONING MAP AMENDMENT FOR THE PACIFIC MALL AND HOTEL PROJECT

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of February 4, 2014, upon motion by Vice Mayor Polanski 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, on January 30, 2013, an application was submitted by TMS McCarthy, Inc., a California corporation, to create a Pacific Mall Freeway Corridor Overlay increasing the maximum permitted Floor Area Ratio (“FAR”) from 0.50 to 0.52 to allow the demolition of a portion of the McCarthy Ranch Marketplace, and to construct 284,587 square feet of retail space, including a 240 room hotel (the “Project”). The Project is located at 11-111 Ranch Drive (APN: 22-053-002, -003, -006, and -007.); and

WHEREAS, the City of Milpitas (“City”) believes a Citywide Freeway Corridor Overlay allowing properties within three hundred (300) feet of a highway located in the City of Milpitas to request an increase of up to twenty percent (20%) above the maximum permitted FAR in the General Plan and Milpitas Zoning Code will spur retail and commercial developments in the City, increase sales tax and other revenues to the City, and will not be detrimental or injurious to the public health, safety, and general welfare of the residents of the City; and

WHEREAS, the Planning Division completed an environmental assessment for General Plan and Zoning Amendments to create a Citywide Freeway Corridor Overlay in accordance with the requirements of the California Environmental Quality Act of 1970, as amended (“CEQA”), and State and local guidelines implementing CEQA, and determined that the General Plan and Zoning Amendments to create a Citywide Freeway Corridor Overlay is not a “project” under CEQA and State and local guidelines implementing CEQA as further described below; and

WHEREAS, the Planning Division completed an environmental assessment for the General Plan and Zoning Amendments to create a Pacific Mall Freeway Corridor Overlay in accordance with CEQA, and State and local guidelines implementing CEQA, and determined that an Environmental Impact Report (“EIR”) would be required for the amendment and an EIR was properly prepared, circulated, and certified as further described below; and

WHEREAS, on January 8, 2014, the Planning Commission held a duly-noticed public hearing on the subject application for the Pacific Mall Freeway Corridor Overlay and Citywide Freeway Corridor Overlay and considered evidence presented by City staff, the applicant, and other interested parties and recommended to the City Council approval of General Plan Amendment GP13-0001 for the consideration of the Citywide Freeway Corridor Overlay and approval of the Project, including establishment of the Pacific Mall Freeway Corridor Overlay; and

WHEREAS, the City Council adopted two separate resolutions on February 4, 2014, amending the Milpitas General Plan and creating a “Citywide Freeway Corridor Overlay” and a “Pacific Mall Freeway Corridor Overlay,” and

WHEREAS, the General Plan Amendment creating the Citywide Freeway Corridor Overlay stated that the process to request an increase in FAR as described above will be further defined in the Milpitas Zoning Code; and

WHEREAS, City desires to amend the Milpitas Zoning Code to further define the purpose and process for eligible properties to request an increase in the maximum permitted FAR pursuant to the Citywide Freeway Corridor Overlay in the General Plan; and

WHEREAS, City also desires to amend the Milpitas Zoning Map to create a Pacific Mall Freeway Corridor Overlay increasing the FAR under the Milpitas Zoning Code from 0.50 to 0.52 for the specific Project site area only.

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. ENVIRONMENTAL REVIEW

For the Zoning Amendment related to the Citywide Freeway Corridor Overlay described below, the City Council has reviewed and exercised its independent judgment on the environmental assessment completed for the Zoning Amendment to create a Citywide Freeway Corridor Overlay in accordance with the requirements of CEQA, and State and local guidelines implementing CEQA, and determined that the Zoning Amendment to create a Citywide Freeway Corridor Overlay is not a “project” under CEQA and State and local guidelines implementing CEQA. The Zoning Amendment is not a “project” as defined in Section 21065 of CEQA since the Zoning Amendment does not create either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The Zoning Amendment creates implementing guidelines for eligible properties to submit a development application to request an increase in the maximum permitted floor area space in the Milpitas General Plan and Milpitas Zoning Code. Any eligible properties interested in a development exceeding the maximum FAR in the Milpitas General Plan and Milpitas Zoning Code will be required to submit a development application for an applicable discretionary permit(s) as required under the Milpitas Zoning Code and comply with the requirements of CEQA and State and local guidelines implementing CEQA.

For the Zoning Amendment related to the Pacific Mall Freeway Corridor Overlay, the City Council has reviewed, considered and exercised its independent judgment on the Project’s Final EIR and adopted Resolution No. 8340 certifying the Final EIR for the Project as completed in compliance with CEQA and State and local guidelines implementing CEQA. All applicable mitigation measures identified in the Final EIR will apply and be incorporated into the Project and, where impacts cannot be reduced to a level of less than significant, statements of overriding considerations are set forth in Resolution No. 8340. Resolution No. 8340 is hereby adopted by reference as though fully set forth herein.

SECTION 3. ZONING AMENDMENT FINDINGS

In accordance with Municipal Code Section XI-10-57.02(G), the City Council finds that:

1. The proposed amendment is consistent with the General Plan.

As for the proposed Citywide Freeway Corridor Overlay, it will create a framework for properties within three hundred (300) feet of a highway located in the City of Milpitas to submit development application(s) requesting an increase in the maximum permitted FAR in the Milpitas General Plan and Milpitas Zoning Ordinance. The proposed amendment does not conflict with other sections of the Milpitas General Plan. The Milpitas General Plan Amendment provides for a description of the Overlay District and intends for its applicability to be implemented through the Zoning Ordinance as each project will be required to apply for the applicable discretionary permit(s) under the Zoning Ordinance and comply with the requirements of CEQA and State and local guidelines implementing CEQA.

As for the proposed Pacific Mall Freeway Corridor Overlay, the proposed retail, professional services, and hotel uses are consistent with the underlying General Commercial designation in the General Plan. The General Commercial land use designation allows a maximum permitted 0.50 FAR. The Project proposes a FAR of 0.52 (24,255 square feet over the maximum threshold). The proposed General Plan Amendment would create a new Pacific Mall Freeway Overlay District to allow for the increase in the maximum permitted FAR from 0.50 to 0.52 and does not conflict with other provisions of the General Plan.

Additionally, the proposed amendments support the following Land Use Principles and Policies in the General Plan:

2.a-1-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.

2.a.1-7: Endeavor to maintain a balanced economic base that can resist downturns in any one economic sector.

The proposed amendments will help promote economic development in the City of Milpitas and increase sales tax and other revenues to the City.

2. The proposed amendment will not adversely affect the public health, safety, and welfare.

The Zoning Amendment for the Citywide Freeway Corridor Overlay is not a “project” as defined in Section 21065 of CEQA since the Zoning Amendment does not create either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The Zoning Amendment creates implementing guidelines for eligible properties to submit a development application to request an increase in the maximum permitted floor area space in the Milpitas General Plan and Milpitas Zoning Code. Any eligible properties interested in a development exceeding the maximum FAR in the Milpitas General Plan and Milpitas Zoning Code will be required to submit a development application for a applicable discretionary permit(s) as required under the Milpitas Zoning Code and to comply with the requirements of CEQA and State and local guidelines implementing CEQA. Through the review and consideration of such discretionary permit(s), the City will evaluate any adverse impact the proposed project may have on the public health, safety, and welfare.

The Zoning Map Amendment for the Pacific Mall Freeway Corridor Overlay to increase the FAR does not supersede any other applicable public health, safety and welfare codes and regulations related to the review of the Project. The proposed overlay does not hinder the ability of the City to monitor, regulate or enforce public health and safety requirements for the Project. As described in detail in the staff report to the Milpitas Planning Commission and provided to the City Council in consideration of this amendment, the proposed Project meets the development standards in the Zoning Code including parking requirements, and will be required to implement all mitigations set forth in the Final EIR.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 12

Title XI, Chapter 10, Section 12 (Overlay Districts and Standards) of the Milpitas Municipal Code is amended to add an additional overlay for “Freeway Corridor Overlay (-FC)” to read as follows:

XI-10-12.08 –Freeway Corridor (-FC) Overlay District

A. Purpose and Intent

The purpose of the Freeway Corridor Overlay (-FC) is to establish a process to consider an increase in the maximum permitted Floor Area Ratio to accommodate new and infill developments along the freeway corridor.

B. Applicability

The (-FC) overlay may be combined with any non-residential zoned property within 300 feet of Interstate 680, Interstate 880, and State Route 237. Increase in the maximum permitted Floor Area Ratio pursuant to this Section shall require an application for the applicable discretionary permit(s) in accordance to this Chapter and completion of all required environmental analysis and documents for City review and consideration.

C. Permitted, Accessory, and Conditionally Permitted Uses.

Permitted and conditionally permitted uses within the (-FC) overlay are the same as those allowed within the underlying base zone.

D. Development Standards

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

1. Increase of up to twenty percent (20%) above the maximum permitted Floor Area Ratio authorized in the General Plan and this Chapter may be allowed with approval of the applicable discretionary permit provided the new or infill development meets all of the requirements of this Chapter. For example, if the General Plan and Zoning Ordinance authorize a maximum permitted Floor Area Ratio of 0.50, eligible properties within the Freeway Corridor Overlay District may submit a development application requesting an increase in floor area ratio of up to 0.60, which is a twenty percent (20%) increase from the maximum permitted Floor Area Ratio in the General Plan and Zoning Ordinance.

2. This overlay may not be combined with any other overlay districts or any other process permitted under this Chapter allowing additional Floor Area Ratio.

SECTION 5. AMENDMENT OF ZONING MAP OF THE CITY OF MILPITAS INCORPORATED IN MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 3.03

The Zoning Map of the City of Milpitas, which was adopted as part of Ordinance No. 38, enacted as Chapter XI-10 (Zoning, Planning and Annexation) of the Milpitas Municipal Code, is hereby amended by adding a new Sectional District Map No. 582 for the Pacific Mall Freeway Corridor Overlay, a copy of which is attached hereto and incorporated as Exhibit 1. This Zoning Map shall be kept in uncodified form and shall be made available upon request from the Director of Planning and Neighborhood Services.

SECTION 6. 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.

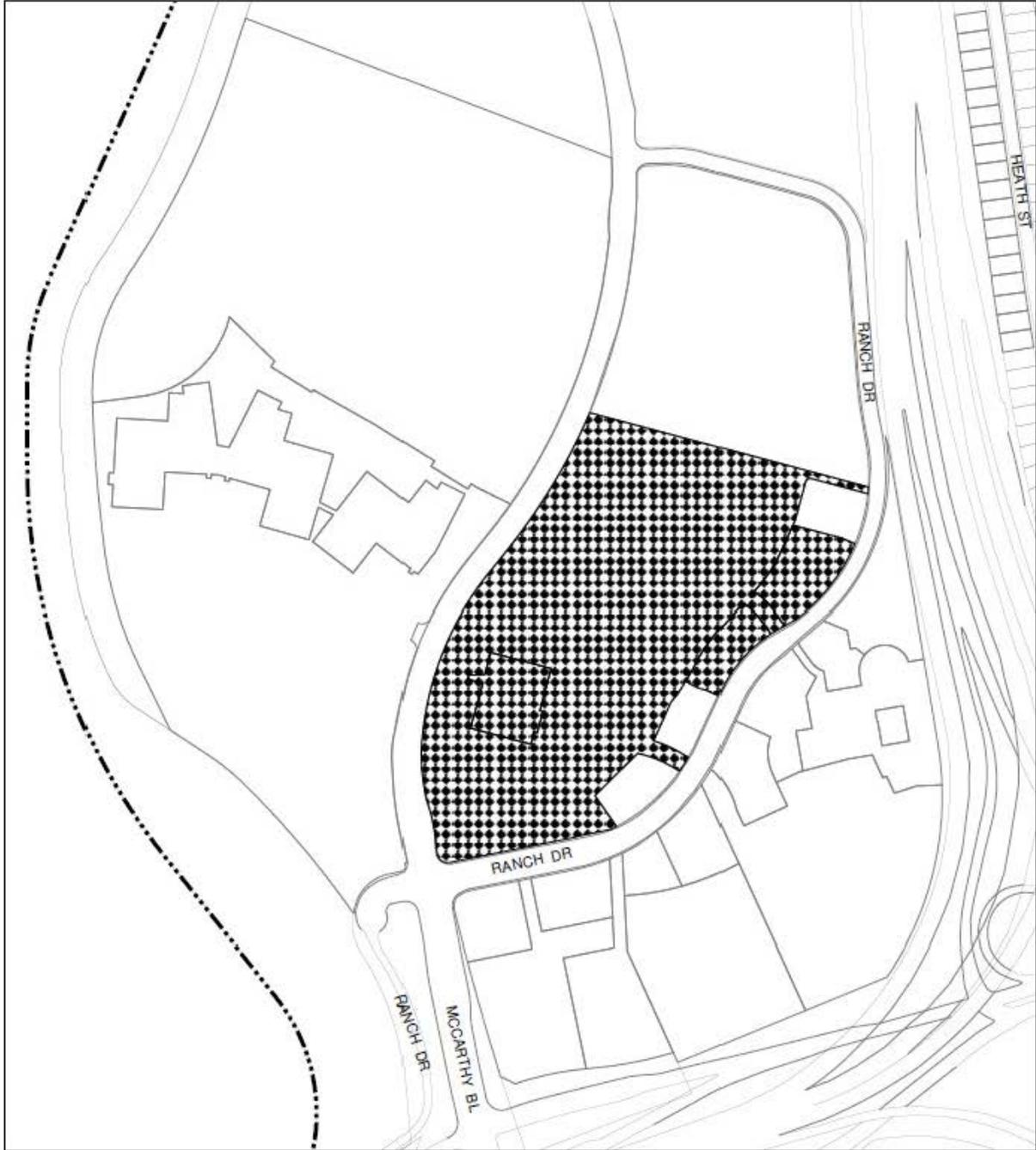
SECTION 7. EFFECTIVE DATE AND POSTING

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 1

ZONING MAP AMENDMENT

Sectional District Map No. 582



Legend

-  City Boundary
-  Freeway Corridor (FC) Overlay
-  Parcel Boundary