

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD14-0008 AND CONDITIONAL USE PERMIT NO. UP14-0010 TO CONDITIONALLY PERMIT A THRIFT STORE IN THE NEIGHBORHOOD COMMERCIAL (C1) ZONING DISTRICT WITH SITE IMPROVEMENTS LOCATED AT 311 WEST CALAVERAS BOULEVARD

WHEREAS, on April 1, 2014, Reid Lerner, on behalf of Goodwill of Silicon Valley, a California corporation (Goodwill), submitted an application for a Zoning Text Amendment, Site Development Permit, and Conditional Use Permit for a proposed Goodwill store located at 311 West Calaveras Boulevard. The property is located within the Neighborhood Commercial (C1) Zoning District with a Site and Architectural Overlay (APN 022-25-036 and 022-25-037). The application is submitted pursuant to Milpitas Municipal Code Section XI-10-57.02 (General Plan/Specific Plan/Zoning Amendments), Milpitas Municipal Code Section XI-10-57.03 (Site Development Permits), and Milpitas Municipal Code Section XI-10-57.04 (Conditional Use Permits); and

WHEREAS, thrift stores are currently not permitted in the Neighborhood Commercial (C1) Zoning District and Goodwill currently operates a similar use across the street at 91 S. Abbott Avenue and wishes to relocate operations into a larger, more modern building space located at 311 West Calaveras Boulevard; and

WHEREAS, Goodwill has submitted an application to amend the Milpitas Zoning Code to conditionally permit thrift stores in the Neighborhood Commercial (C1) Zoning District; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the City Council determines this project categorically exempt from further CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities, because the project does not result in a change of use, rather it maintains a commercial use for an existing building. The project is also exempt from further CEQA review under Section 15061(b)(3) of the CEQA Guidelines, Review for Exemption, since the project has no potential to cause a significant effect on the environment as the project includes a commercial retail use occupying a vacant retail tenant space and no changes are proposed to alter the size, purpose, and capacity of the existing commercial building; and

WHEREAS, on June 11 2014, 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 continued the item to a future Planning Commission meeting to allow time for the applicant to address concerns regarding loading and unloading of merchandise, parking, and coordination with adjacent property owners; and

WHEREAS, on July 23, 2014, 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 recommended approval of Zoning Text Amendment No. ZA14-0002, Site Development Permit No. SD14-0008, and Conditional Use Permit No. UP14-0010 to the City Council; and

WHEREAS, on August 19, 2014 the City Council held a hearing to consider the Planning Commission's recommendation and evidence regarding the project and introduced Ordinance No. 38.816 conditionally permitting thrift stores in the Neighborhood Commercial (C1) Zoning District; and

WHEREAS, this Resolution shall become effective at the same time Ordinance No. 38.816 is effective.

NOW THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

Section 1: The City Council has 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 it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The proposed project is categorically exempt from further CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities, because the project does not result in a change of use, rather it maintains a commercial use for an existing building. The proposed project is also exempt from further environmental review pursuant to Section 15061(b)(3) of the CEQA Guidelines, Review for Exemption because the project has no potential to cause a significant effect on the environment, since the project includes a commercial retail use occupying a vacant retail tenant space and no changes are proposed to alter the size, purpose, and capacity of the existing commercial building. Conditionally permitting retail thrift stores, subject to certain performance standards, in areas designated for similar retail uses also meets the intent of the zoning district to provide for the provision of commercial goods and services to nearby neighborhoods.

Section 3: Conditional Use Permit (Section XI-10-57.04-1(F)) - The City Council makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP14-0010:

- 1. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare;*

If Ordinance No. 38.816 becomes effective, the proposed project would be consistent with this finding because the proposed retail use will complement the existing commercial tenants in the existing shopping center. No adverse impacts are anticipated for the project regarding traffic or waste generated by the proposed use. Goodwill will not make use of the existing dumpster for the property because all waste generated by Goodwill or unsellable donated items are taken to their reclamation and recycling facilities by their own trucks and equipment.

- 2. The proposed use is consistent with the Milpitas General Plan; and*

The proposed thrift store use promotes and encourages neighborhood commercial uses while providing Milpitas residents with shopping facilities that provide for convenience needs and promotes business within the City of Milpitas. The project is consistent with the Retail Subcenter land use designation in that the proposed use is an indoor retail and donation service. The proposed use does not increase the floor area ratio, density, or development standards for the Retail Subcenter land use designation. Specifically, the proposed use supports the following General Plan policies:

- 2.a-G-10: Consider long-term planning and strong land use policy in managing the City’s fiscal position.
- 2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.
- 2.a-1-29: Develop the Midtown area, as shown on the Midtown Specific Plan, as an attractive and economically vital district that accommodates a mixture of housing, shopping, employment, entertainment, cultural and recreational activities organized within a system of landscaped boulevards, streets and pedestrian/bicycle linkages.

- 3. The proposed use is consistent with the Milpitas Zoning Ordinance.*

If Ordinance No. 38.816 becomes effective, the proposed project would be consistent with this finding because the proposed use complies with the development standards for the Neighborhood Commercial Zoning District. The project proposes no exterior changes to the building in terms of existing setbacks, floor area ratio, and height regulations. The proposed thrift store use complements the purpose and intent of the Neighborhood Commercial Zoning District by providing attractive commercial development and a retail store that is accessible to Milpitas residents of all ages. The proposed thrift store is a complementary commercial use and will not generate a more intense use than otherwise would be allowed in the existing shopping center and will not result in the need of additional parking spaces.

The applicant proposes to reconfigure the parking area to create three spaces to be designated by signage and pavement markings for Goodwill loading zones. Per Section XI-10-53.09, Table 53.09-1 *Number of Parking Spaces Required* the proposed thrift store use would be interpreted as a Commercial Use – General Retail and Convenience Store. The minimum parking spaces required is 1 per 200 square feet. The existing building is 9,950 square feet, for a total of 50 required parking spaces. Goodwill of Silicon Valley is an indoor retail and donation use that currently meets the required

amount of parking spaces for the existing commercial center and does not result in the need for additional parking; however, the applicant proposes to create an additional three parking spaces to the existing parking lot.

4. *The proposed use is consistent with the Midtown Specific Plan.*

If Ordinance No. 38.816 becomes effective, the proposed use would be consistent with this finding because the proposed project meets the objective of the Midtown Specific Plan. The “overall strategy in the Midtown Area is to create a mixed-use community that includes high-density, transit-oriented housing and a central community “gathering place,” while maintaining needed industrial, service, and commercial uses.” The proposal conforms to the Midtown Specific Plan by encouraging a compatible retail use to an existing commercial shopping center. As conditioned, the proposed use will not result in an intensification of the existing use and will not increase the floor area ratio or development standards for the Retail Subcenter land use designation of the Midtown Specific Plan. Specifically, the proposed use supports the following Midtown Specific Plan goals and policies:

- Goal 1: Encourage a compatible mixture of residential, retail, office, service-oriented commercial, and industrial uses within the Midtown area.
- Policy 3.16: Provide for the continuation of retail development along the Calaveras Boulevard corridor

Section 4: Site Development Permit (Section XI-10-57.03-1(F)) - The City Council makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD14-0008

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The proposed project is consistent with this finding because the proposal does not impact circulation for the existing shopping center by creating a designated loading zone for Goodwill customers to drop off donations. The proposal to reconfigure the parking lot includes creating three new parking spaces that will be located on the western portion of the building and dedicated as Goodwill loading zones for members of the public to drop off donations. The three proposed loading spaces will have signage and pavement markings indicating them as loading zones for Goodwill customers only. The applicant has also proposed a new landscape planter with one 24-inch box Crape Myrtle tree, groundcover, and irrigation to be placed south of the loading zone. No changes will be made to the exterior of the building.

2. *The project is consistent with the Milpitas Zoning Ordinance.*

If Ordinance No. 38.816 becomes effective, the proposed project would be consistent with this finding because the proposed use complies with the development standards for the Neighborhood Commercial (C1) Zoning District. The project proposes no exterior changes to the building in terms of existing setbacks, floor area ratio, and height regulations. The proposed thrift store use complements the purpose and intent of the Neighborhood Commercial (C1) Zoning District by providing attractive commercial development and a retail store that is accessible to Milpitas residents of all ages. The proposed thrift store is a complementary commercial use and will not generate a more intense use than otherwise would be allowed in the existing shopping center and will not result in the need of additional parking spaces.

The applicant proposes to reconfigure the parking area to create three spaces to be designated by signage and pavement markings for Goodwill loading zones. Per Section XI-10-53.09, Table 53.09-1 *Number of Parking Spaces Required* the proposed thrift store use would be interpreted as a Commercial Use – General Retail and Convenience Store. The minimum parking spaces required is 1 per 200 square feet. The existing building is 9,950 square feet, for a total of 50 required parking spaces. Goodwill of Silicon Valley is an indoor retail and donation use that currently meets the required amount of parking spaces for the existing commercial center and does not result in the need for additional parking; however, the applicant proposes to create an additional three parking spaces to the existing parking lot.

3. *The project is consistent with the Milpitas General Plan.*

The proposed thrift store use promotes and encourages neighborhood commercial uses while providing Milpitas residents with shopping facilities that provide for convenience needs and promotes business within the City of Milpitas. The project is consistent with the Retail Subcenter land use designation in that the proposed use is an indoor retail and donation service. The proposed use does not increase the floor area ratio, density, or development standards for the Retail Subcenter land use designation. Specifically, the proposed use supports the following General Plan policies:

- 2.a-G-10: Consider long-term planning and strong land use policy in managing the City’s fiscal position.
- 2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.
- 2.a-1-29: Develop the Midtown area, as shown on the Midtown Specific Plan, as an attractive and economically vital district that accommodates a mixture of housing, shopping, employment, entertainment, cultural and recreational activities organized within a system of landscaped boulevards, streets and pedestrian/bicycle linkages

4. *The project is consistent with the Midtown Specific Plan.*

The proposed amendment is consistent with this finding because the proposed project meets the objective of the Midtown Specific Plan. The “overall strategy in the Midtown Area is to create a mixed-use community that includes high-density, transit-oriented housing and a central community “gathering place,” while maintaining needed industrial, service, and commercial uses.” The proposal conforms to the Midtown Specific Plan by encouraging a compatible retail use to an existing commercial shopping center. As conditioned, the proposed use will not result in an intensification of the existing use and will not increase the floor area ratio or development standards for the Retail Subcenter land use designation of the Midtown Specific Plan. Specifically, the proposed use supports the following Midtown Specific Plan goals and policies:

- Goal 1: Encourage a compatible mixture of residential, retail, office, service-oriented commercial, and industrial uses within the Midtown area.
- Policy 3.16: Provide for the continuation of retail development along the Calaveras Boulevard corridor

Section 5: Based on the foregoing, the City Council of the City of Milpitas hereby approves Site Development Permit No. SD14-0008 and Conditional Use Permit No. UP14-0010, based on the above Findings and subject to the Conditions of Approval attached hereto as **Exhibit 1** incorporated herein.

PASSED AND ADOPTED this _____ day of _____, 2014, 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

EXHIBIT 1

CONDITIONS OF APPROVAL SITE DEVELOPMENT PERMIT NO. SD14-0008 AND CONDITIONAL USE PERMIT NO. UP14-0010

General Conditions

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Site Development Permit No. SD14-0008 and Conditional Use Permit No. UP14-0010 (collectively “Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which Ordinance No. 38.816 becomes effective.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
6. Project Job Account. If Permittee’s project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee’s private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.
7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.

10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.
13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Fees and Charges. Permittee shall pay all applicable fees and charges at the rate in effect when the fees and charges are due to the City.
16. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on July 23, 2014 in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

Special Conditions

17. Approval is granted to allow operation of a thrift store with incidental donations, operated by Goodwill of Silicon Valley, Monday through Saturday from 9:00 a.m. until 9:00 p.m. and Sunday from 9:00 a.m. until 8:00 p.m. Incidental donations shall be accepted during regular business hours only and shall only be received and stored inside the building. **(P)**
18. Signs stating the hours in which donations are accepted and notifying the public that donations at any other time are strictly prohibited shall be installed prior to issuance of certificate of occupancy. The signs shall be cleanly maintained and visible to the public at all times. **(P)**
19. "No Dumping" and "No Trespassing" signs with the appropriate Penal Code shall be installed on the building prior to occupancy. **(P)**

20. The property shall be kept in a clean and orderly condition. No outdoor uses including outdoor storage, outdoor displays, or dumping is allowed. Site maintenance of the parking lot and street frontages shall occur daily by employees to ensure the property is kept in an orderly condition free of any outdoor storage and trash. **(P)**
21. Any goods or materials left outside of the store overnight shall be removed immediately upon the thrift store opening the next business day. **(P)**
22. There shall be no pick-up or delivery of items made by Goodwill trucks during the weekday lunch hours of 11:30 a.m. to 1:30 p.m. **(P)**
23. A Goodwill parking attendant shall be present during the weekday lunch hours of 11:30 a.m. to 1:30 p.m. to deter customers from parking in the Goodwill parking lot and walking to the adjacent restaurants and businesses. **(P)**
24. Parking attendant personnel shall be clothed in a manner so that they are clearly and readily identifiable. **(P)**
25. A sign permit application shall be submitted and approved prior to the installation of any and all signage, pursuant to Section XI-10-24.03 (Signs) of the Milpitas Municipal Code. **(P)**
26. Security cameras shall be installed to monitor any after-hours activities to the satisfaction of the Police Department and Planning Director to provide security for the existing commercial building and parking lot, prior to issuance of certificate of occupancy. **(P)**
27. The Permit shall be reviewed by the Planning Commission in a fully noticed public hearing *within* six (6) months of occupancy. The Planning Commission may impose additional special conditions, if necessary, to address any issues related to the subject property. Permittee shall bear the costs of all fees and costs associated with the hearing. **(P)**
28. Prior to any building permit issuance, Permittee shall obtain design approval and bond for all necessary public improvements including but not limited to relocation of the water meter services. The bond amount is 100% of the engineer's estimate of the construction cost for faithful performance and labor & materials. All improvements must be in accordance with the City of Milpitas standard and specification, and all public improvements shall be constructed to the City Engineer's satisfaction and accepted by the City prior to building final permit issuance. See the standard drawing below for the backflow location and alignment requirements. **(E)**
29. Prior to any building permit issuance, Permittee shall dedicate necessary public service utility easements for water extension and the new water meter purposes. **(E)**
30. Prior to any work within public right of way or City easement, Permittee shall obtain an encroachment permit from City of Milpitas Engineering Division. **(E)**
31. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, Permittee shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, Permittee shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), Permittee shall submit evidence to the City that a minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection. After Permittee has started its business, Permittee shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, Permittee shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. **(E)**

(P) = Planning

(E) = Engineering

(CA) = City Attorney