

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF MILPITAS AT THE REGULAR MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION ON NOVEMBER 8, 2016, AN ORDINANCE REQUIRING, UNTIL DECEMBER 31, 2038, ANY AMENDMENTS OR MODIFICATIONS TO THE HILLSIDE ORDINANCE OR THE LAND SUBJECT TO THE HILLSIDE ORDINANCE BE APPROVED BY THE VOTERS OF THE CITY OF MILPITAS

WHEREAS, in September of 1992, the City Council, after extensive public input, adopted Ordinance No. 38.672, which is generally known as the “Hillside Ordinance”; and

WHEREAS, the purpose of the Hillside Ordinance is to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular problems associated with the development of hillside areas, including, but not limited to, geologic problems, slope, safety access, and visibility; and

WHEREAS, the primary regulations of the Hillside Ordinance are set forth at Section 45 of Chapter 10 of Title XI of the Milpitas Municipal Code, which section is entitled “H” Hillside Combining District; and

WHEREAS, the Hillside Ordinance also made several conforming changes to other provisions of the Milpitas Municipal Code; and

WHEREAS, the City’s General Plan designates certain property within the hillside area of the City as “Hillside Very Low, Hillside Low, and Hillside Medium;” and

WHEREAS, on November 2, 2004, a majority of the eligible voters voting on the ballot measure approved Ordinance No. 264 to require that, until December 31, 2018, any amendments or modifications to the Hillside Ordinance or the Land Subject to the Hillside Ordinance require voter approval; and

WHEREAS, the City Council now desires to submit an Ordinance, a copy of which is attached hereto as Exhibit “A”(“Ordinance”) to the City of Milpitas voters to extend the sunset clause of Ordinance No. 264 from December 31, 2018 to December 31, 2038; and

WHEREAS, pursuant to City Municipal Code section I-200-1.00 and the laws of the State of California, on June 7, 2016, the City Council has passed Resolution No. 8553, calling a general municipal election for the purpose of electing a Mayor and two members of the City Council, requesting that the general municipal election be consolidated with the Statewide general election to be held on Tuesday, November 8, 2016, and requesting that the Board of Supervisors of Santa Clara County direct the Registrar of Voters thereof to take any and all necessary steps to conduct the consolidated election; and

WHEREAS, the City Council desires to consolidate the election of the Ordinance with the General Municipal Election to be held on November 8, 2016.

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

1. **Record; Recitals.** 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 it. Furthermore, the recitals set forth are found to be true and correct and are incorporated herein by reference.
2. **Submission of Ordinance.** The City Council hereby orders the Ordinance attached hereto as Exhibit “A” be submitted to the qualified voters of the City at the general municipal election on Tuesday,

November 8, 2016. The proposed Ordinance shall be in the form attached hereto as Exhibit “A” to this Resolution and is incorporated by this reference as if fully set forth herein.

3. **Ballot Measure.** The City Council does hereby order that the ballot measure shall be presented and printed upon the November 8, 2016 ballot and submitted to the qualified voters in substantially the following form:

Shall an ordinance, requiring until December 31, 2038, any amendments to the existing “Hillside Combining District” Ordinance and any amendments to the general plan land use designation for lands currently designated as “Hillside” property be approved by the voters before becoming effective, be adopted?	YES
	NO

4. **Election Procedures.**

- a. Consolidated Election. Per Elections Code Section 10403, the Board of Supervisors of the County of Santa Clara County is requested to consent to the consolidation of the election for the Ordinance with the Statewide general election to be held on Tuesday, November 8, 2016 for the purpose of submitting the Ordinance to the voters of the City of Milpitas. The City acknowledges that the consolidated election will be held and conducted in the manner prescribed in Section 10418.
- b. County Election Services. In accordance with Elections Code Section 10002, the City of Milpitas requests the services of the Board of Supervisors of the County of Santa Clara and the Registrar of Voters of the County of Santa Clara to render such election services to the City of Milpitas as may be requested by the City Clerk, and the County of Santa Clara is to be reimbursed in full for such services as are performed. The election services which the City of Milpitas requests the Registrar of Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform, if said Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and polling place cards; the establishment or appointment of precincts, polling places, and election officers, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for polling places; the canvassing of the returns of the election and the furnishing of the results of such canvassing to the City Clerk of the City of Milpitas; and the performance of such other election services as may be requested by the City Clerk.
- c. City Clerk Election Services. The City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.
- d. Polls. The polls for the election shall be open at 7:00 a.m. (PST) on election day and shall remain open continuously from that time until 8:00 p.m. (PST) on the same day when the polls shall be closed.
- e. Notice. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.
- f. Ballot Procedure; Certification. The ballots to be used at the election shall be in the form and content as required by law. All ballots shall be tallied at a central counting place and not at the precincts. The Santa Clara County Registrar of Voters is hereby authorized to canvass the returns

of the election. The City Clerk of the City of Milpitas shall receive the canvass as it pertains to the election on the Ordinance, and shall certify the results to the City Council, as required by law.

- g. Conduct of Election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the City.
5. **Impartial Analysis.** The City Clerk is directed to transmit a copy of the measure to the City Attorney, and directs the City Attorney to prepare an impartial analysis of the measure showing the effect of the measure on existing law and the operation of the measure. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments. The City Council hereby directs the City Attorney to prepare an impartial analysis of the ballot measure not to exceed five hundred (500) words in accordance with Elections Code Section 9280. The impartial analysis shall include a statement indicating that the proposed ballot measure was placed on the ballot by the City Council. In the event the entire text of the Ordinance is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10 point font bold type, the following: “The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the election official’s office at (insert phone number) and a copy will be mailed at no cost to you.”
6. **Arguments in Favor and Opposed.** Pursuant to Elections Code Sections 9282(b), the City Council, or any member of the City Council, or any individual voter eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations, may file a written argument for or against the proposed ballot measure, not to exceed three hundred (300) words in length. The City Council shall file the argument in favor of the ballot measure and hereby designates councilmembers _____ and _____ to prepare and file an argument and rebuttal argument on behalf of the City Council. Such written arguments in favor of or opposed to the proposed measure may include up to five (5) signatures in accordance with Elections Code Section 9283.
7. **Arguments For and Against; Rebuttals.** The City Council hereby authorizes arguments for and against the ballot measure and rebuttal arguments to be filed in accordance with Elections Code Section 9282-9287 and establishes August 16, 2016, at 5:00 p.m. (PST) as the deadline to file arguments for and against the ballot measure, and August 23, 2016, at 5:00 p.m. (PST) as the deadline to file rebuttal arguments. The City Council hereby approves the submittal of rebuttal arguments in response to arguments for and against the ballot measure and authorizes any member or members of the City Council to author and submit a rebuttal, if any.
8. **Public Examination Periods.** The City Council hereby establishes August 17, 2016, through August 26, 2016, as the ten (10) calendar day examination period required by Elections Code Section 9295 with respect to arguments for and against the ballot measure and the impartial analysis. Voters may examine the ballot measure, the impartial analysis, the argument for the ballot measure and the argument against the ballot measure in the City Clerk’s office at 455 E. Calaveras Blvd., Third Floor, Milpitas, CA 95035, between the hours of 8:00 a.m. and 5:00 p.m. (PST), Monday through Friday during such period.
- The City Council hereby establishes August 24, 2016, through September 2, 2016, as the ten (10) calendar day examination period required by Elections Code Section 9295 with respect to any rebuttal arguments. Voters may examine the ballot measure, the impartial analysis, the argument for the ballot measure, the argument against the ballot measure, and any rebuttal arguments in the Office of the City Clerk at 455 E. Calaveras Blvd., Third Floor, Milpitas, CA 95035, between the hours of 8:00 a.m. and 5:00 p.m. (PST), Monday through Friday during such period.
9. **Placement on the Ballot.** A statement shall be printed in the ballot pursuant to Elections Code section 9223 advising voters that they may obtain a copy of the Ordinance, at no cost, upon request made to the City Clerk.

10. **Delivery of Resolution to County.** The City Clerk is hereby directed to deliver certified copies of this Resolution to the Clerk of the Board of Supervisors of Santa Clara County and the Registrar of Voters of Santa Clara County promptly upon its adoption.
11. **Severability.** If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.
12. **Effective Date.** This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this _____ day of _____, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

EXHIBIT "A"

ORDINANCE

[Attached behind this cover page]

REGULAR

NUMBER: _____

TITLE: **AN UNCODIFIED ORDINANCE OF THE CITY OF MILPITAS REQUIRING THAT UNTIL DECEMBER 31, 2038, ANY AMENDMENTS OR MODIFICATIONS TO THE HILLSIDE COMBINING DISTRICT ORDINANCE OR THE LAND SUBJECT TO THE HILLSIDE ORDINANCE BE APPROVED BY THE VOTERS OF THE CITY OF MILPITAS**

HISTORY: This Ordinance was approved by the voters at the general election on November 8, 2016.

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS:

WHEREAS, in September of 1992, the City Council, after extensive public input, adopted Ordinance No. 38.672, which is generally known as the “Hillside Ordinance”; and

WHEREAS, the purpose of the Hillside Ordinance is to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular problems associated with the development of hillside areas, including, but not limited to, geologic problems, slope, safety access, and visibility; and

WHEREAS, the primary regulations of the Hillside Ordinance are set forth at Section 45 of Chapter 10 of Title XI of the Milpitas Municipal Code, which section is entitled “H” Hillside Combining District; and

WHEREAS, the Hillside Ordinance also made several conforming changes to other provisions of the Milpitas Municipal Code; and

WHEREAS, the City’s General Plan designates certain property within the hillside area of the City as “Hillside Very Low, Hillside Low, and Hillside Medium;” and

WHEREAS, on November 2, 2004, a majority of the eligible voters voting on the ballot measure approved Ordinance No. 264 to require that, until December 31, 2018, any amendments or modifications to the Hillside Ordinance or the Land Subject to the Hillside Ordinance require voter approval; and

WHEREAS, the City now desires to extend the sunset clause of Ordinance No. 264 from December 31, 2018 to December 31, 2038, with all other provisions of Ordinance No. 264 remaining.

NOW THEREFORE, THE PEOPLE OF THE CITY OF MILPITAS DO ORDAIN AS FOLLOWS:

SECTION 1. EXTENSION OF SUNSET CLAUSE OF ORDINANCE NO. 264 TO DECEMBER 31, 2038

Section 3 of Ordinance No. 264 is hereby repealed and replaced in its entirety as follows:

“Sections 1 and 2 of this ordinance shall have no further effect after December 31, 2038.”

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) as it can be seen with certainty that it will not have a significant effect on the environment as this Ordinance maintains existing conditions and does not propose any change to the environment.

SECTION 3. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION AND EFFECTIVE DATE

This Ordinance shall take effect ten (10) days after its adoption by the voters of Milpitas, and prior to the expiration of 15 days from the passage thereof shall be published at least once in a newspaper of general circulation published and circulated in the City of Milpitas, County of Santa Clara.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF MILPITAS AT THE REGULAR MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION ON NOVEMBER 8, 2016, AN ORDINANCE REQUIRING, UNTIL DECEMBER 31, 2038, ANY AMENDMENTS OR MODIFICATIONS TO THE HILLSIDE ORDINANCE OR THE LAND SUBJECT TO THE HILLSIDE ORDINANCE BE APPROVED BY THE VOTERS OF THE CITY OF MILPITAS

WHEREAS, in September of 1992, the City Council, after extensive public input, adopted Ordinance No. 38.672, which is generally known as the “Hillside Ordinance”; and

WHEREAS, the purpose of the Hillside Ordinance is to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular problems associated with the development of hillside areas, including, but not limited to, geologic problems, slope, safety access, and visibility; and

WHEREAS, the primary regulations of the Hillside Ordinance are set forth at Section 45 of Chapter 10 of Title XI of the Milpitas Municipal Code, which section is entitled “H” Hillside Combining District; and

WHEREAS, the Hillside Ordinance also made several conforming changes to other provisions of the Milpitas Municipal Code; and

WHEREAS, the City’s General Plan designates certain property within the hillside area of the City as “Hillside Very Low, Hillside Low, and Hillside Medium;” and

WHEREAS, on November 2, 2004, a majority of the eligible voters voting on the ballot measure approved Ordinance No. 264 to require that, until December 31, 2018, any amendments or modifications to the Hillside Ordinance or the Land Subject to the Hillside Ordinance require voter approval; and

WHEREAS, the City Council now desires to submit an Ordinance, a copy of which is attached hereto as Exhibit “A”(“Ordinance”) to the City of Milpitas voters to extend the sunset clause of Ordinance No. 264 from December 31, 2018 to December 31, 2038; and

WHEREAS, pursuant to City Municipal Code section I-200-1.00 and the laws of the State of California, on June 7, 2016, the City Council has passed Resolution No. 8553, calling a general municipal election for the purpose of electing a Mayor and two members of the City Council, requesting that the general municipal election be consolidated with the Statewide general election to be held on Tuesday, November 8, 2016, and requesting that the Board of Supervisors of Santa Clara County direct the Registrar of Voters thereof to take any and all necessary steps to conduct the consolidated election; and

WHEREAS, the City Council desires to consolidate the election of the Ordinance with the General Municipal Election to be held on November 8, 2016.

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

1. **Record; Recitals.** 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 it. Furthermore, the recitals set forth are found to be true and correct and are incorporated herein by reference.
2. **Submission of Ordinance.** The City Council hereby orders the Ordinance attached hereto as Exhibit “A” be submitted to the qualified voters of the City at the general municipal election on Tuesday,

November 8, 2016. The proposed Ordinance shall be in the form attached hereto as Exhibit “A” to this Resolution and is incorporated by this reference as if fully set forth herein.

3. **Ballot Measure.** The City Council does hereby order that the ballot measure shall be presented and printed upon the November 8, 2016 ballot and submitted to the qualified voters in substantially the following form:

Shall an ordinance, requiring until December 31, 2038, any amendments to the existing “Hillside Combining District” Ordinance and any amendments to the general plan land use designation for lands currently designated as “Hillside” property be approved by the voters before becoming effective, be adopted?	YES
	NO

4. **Election Procedures.**

- a. Consolidated Election. Per Elections Code Section 10403, the Board of Supervisors of the County of Santa Clara County is requested to consent to the consolidation of the election for the Ordinance with the Statewide general election to be held on Tuesday, November 8, 2016 for the purpose of submitting the Ordinance to the voters of the City of Milpitas. The City acknowledges that the consolidated election will be held and conducted in the manner prescribed in Section 10418.
- b. County Election Services. In accordance with Elections Code Section 10002, the City of Milpitas requests the services of the Board of Supervisors of the County of Santa Clara and the Registrar of Voters of the County of Santa Clara to render such election services to the City of Milpitas as may be requested by the City Clerk, and the County of Santa Clara is to be reimbursed in full for such services as are performed. The election services which the City of Milpitas requests the Registrar of Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform, if said Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and polling place cards; the establishment or appointment of precincts, polling places, and election officers, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for polling places; the canvassing of the returns of the election and the furnishing of the results of such canvassing to the City Clerk of the City of Milpitas; and the performance of such other election services as may be requested by the City Clerk.
- c. City Clerk Election Services. The City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.
- d. Polls. The polls for the election shall be open at 7:00 a.m. (PST) on election day and shall remain open continuously from that time until 8:00 p.m. (PST) on the same day when the polls shall be closed.
- e. Notice. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.
- f. Ballot Procedure; Certification. The ballots to be used at the election shall be in the form and content as required by law. All ballots shall be tallied at a central counting place and not at the precincts. The Santa Clara County Registrar of Voters is hereby authorized to canvass the returns

of the election. The City Clerk of the City of Milpitas shall receive the canvass as it pertains to the election on the Ordinance, and shall certify the results to the City Council, as required by law.

- g. Conduct of Election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the City.
5. **Impartial Analysis.** The City Clerk is directed to transmit a copy of the measure to the City Attorney, and directs the City Attorney to prepare an impartial analysis of the measure showing the effect of the measure on existing law and the operation of the measure. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments. The City Council hereby directs the City Attorney to prepare an impartial analysis of the ballot measure not to exceed five hundred (500) words in accordance with Elections Code Section 9280. The impartial analysis shall include a statement indicating that the proposed ballot measure was placed on the ballot by the City Council. In the event the entire text of the Ordinance is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10 point font bold type, the following: “The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the election official’s office at (insert phone number) and a copy will be mailed at no cost to you.”
6. **Arguments in Favor and Opposed.** Pursuant to Elections Code Sections 9282(b), the City Council, or any member of the City Council, or any individual voter eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations, may file a written argument for or against the proposed ballot measure, not to exceed three hundred (300) words in length. The City Council shall file the argument in favor of the ballot measure and hereby designates councilmembers _____ and _____ to prepare and file an argument and rebuttal argument on behalf of the City Council. Such written arguments in favor of or opposed to the proposed measure may include up to five (5) signatures in accordance with Elections Code Section 9283.
7. **Arguments For and Against; Rebuttals.** The City Council hereby authorizes arguments for and against the ballot measure and rebuttal arguments to be filed in accordance with Elections Code Section 9282-9287 and establishes August 16, 2016, at 5:00 p.m. (PST) as the deadline to file arguments for and against the ballot measure, and August 23, 2016, at 5:00 p.m. (PST) as the deadline to file rebuttal arguments. The City Council hereby approves the submittal of rebuttal arguments in response to arguments for and against the ballot measure and authorizes any member or members of the City Council to author and submit a rebuttal, if any.
8. **Public Examination Periods.** The City Council hereby establishes August 17, 2016, through August 26, 2016, as the ten (10) calendar day examination period required by Elections Code Section 9295 with respect to arguments for and against the ballot measure and the impartial analysis. Voters may examine the ballot measure, the impartial analysis, the argument for the ballot measure and the argument against the ballot measure in the City Clerk’s office at 455 E. Calaveras Blvd., Third Floor, Milpitas, CA 95035, between the hours of 8:00 a.m. and 5:00 p.m. (PST), Monday through Friday during such period.
- The City Council hereby establishes August 24, 2016, through September 2, 2016, as the ten (10) calendar day examination period required by Elections Code Section 9295 with respect to any rebuttal arguments. Voters may examine the ballot measure, the impartial analysis, the argument for the ballot measure, the argument against the ballot measure, and any rebuttal arguments in the Office of the City Clerk at 455 E. Calaveras Blvd., Third Floor, Milpitas, CA 95035, between the hours of 8:00 a.m. and 5:00 p.m. (PST), Monday through Friday during such period.
9. **Placement on the Ballot.** A statement shall be printed in the ballot pursuant to Elections Code section 9223 advising voters that they may obtain a copy of the Ordinance, at no cost, upon request made to the City Clerk.

10. **Delivery of Resolution to County.** The City Clerk is hereby directed to deliver certified copies of this Resolution to the Clerk of the Board of Supervisors of Santa Clara County and the Registrar of Voters of Santa Clara County promptly upon its adoption.
11. **Severability.** If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.
12. **Effective Date.** This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this _____ day of _____, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

EXHIBIT "A"

ORDINANCE

[Attached behind this cover page]

REGULAR

NUMBER: _____

TITLE: **AN UNCODIFIED ORDINANCE OF THE CITY OF MILPITAS REQUIRING THAT UNTIL DECEMBER 31, 2038, ANY AMENDMENTS OR MODIFICATIONS TO THE HILLSIDE COMBINING DISTRICT ORDINANCE OR THE LAND SUBJECT TO THE HILLSIDE ORDINANCE BE APPROVED BY THE VOTERS OF THE CITY OF MILPITAS**

HISTORY: This Ordinance was approved by the voters at the general election on November 8, 2016.

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS:

WHEREAS, in September of 1992, the City Council, after extensive public input, adopted Ordinance No. 38.672, which is generally known as the “Hillside Ordinance”; and

WHEREAS, the purpose of the Hillside Ordinance is to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular problems associated with the development of hillside areas, including, but not limited to, geologic problems, slope, safety access, and visibility; and

WHEREAS, the primary regulations of the Hillside Ordinance are set forth at Section 45 of Chapter 10 of Title XI of the Milpitas Municipal Code, which section is entitled “H” Hillside Combining District; and

WHEREAS, the Hillside Ordinance also made several conforming changes to other provisions of the Milpitas Municipal Code; and

WHEREAS, the City’s General Plan designates certain property within the hillside area of the City as “Hillside Very Low, Hillside Low, and Hillside Medium;” and

WHEREAS, on November 2, 2004, a majority of the eligible voters voting on the ballot measure approved Ordinance No. 264 to require that, until December 31, 2018, any amendments or modifications to the Hillside Ordinance or the Land Subject to the Hillside Ordinance require voter approval; and

WHEREAS, the City now desires to extend the sunset clause of Ordinance No. 264 from December 31, 2018 to December 31, 2038, with all other provisions of Ordinance No. 264 remaining.

NOW THEREFORE, THE PEOPLE OF THE CITY OF MILPITAS DO ORDAIN AS FOLLOWS:

SECTION 1. EXTENSION OF SUNSET CLAUSE OF ORDINANCE NO. 264 TO DECEMBER 31, 2038

Section 3 of Ordinance No. 264 is hereby repealed and replaced in its entirety as follows:

“Sections 1 and 2 of this ordinance shall have no further effect after December 31, 2038.”

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) as it can be seen with certainty that it will not have a significant effect on the environment as this Ordinance maintains existing conditions and does not propose any change to the environment.

SECTION 3. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION AND EFFECTIVE DATE

This Ordinance shall take effect ten (10) days after its adoption by the voters of Milpitas, and prior to the expiration of 15 days from the passage thereof shall be published at least once in a newspaper of general circulation published and circulated in the City of Milpitas, County of Santa Clara.