

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 OF THE CITY OF MILPITAS PROHIBITING ALL NEW RESIDENTIAL USES IN THE TOWN CENTER IN THE CITY OF MILPITAS GENERAL PLAN AND ZONING ORDINANCE

WHEREAS, the Town Center land use designation and zoning district is located in the central part of the City, generally located along Calaveras Boulevard between I-680 and the Union Pacific railroad corridor; and

WHEREAS, in 2010, the Town Center designation was amended and expanded to include parcels south of Calaveras Boulevard for the purpose of requiring existing uses on these parcels, which consisted of offices, cultural centers, religious institutions, medical offices, financial institutions, gasoline stations and retail, to conform and allow for the flexibility of integrating other commercial and residential uses for future development, and since this rezoning several land use conversions to residential development within the Town Center have occurred; and

WHEREAS, on May 21, 2013, the City Council approved an amendment to the City Zoning Ordinance to allow live/work units as a conditional use in the Town Center Zoning District; and

WHEREAS, on December 11, 2014, the City of Milpitas Planning and Neighborhood Services Department prepared an application pursuant to Section 57 of the Milpitas Zoning Ordinance for a General Plan Amendment to remove references to residential density, discussions and references to residential land use and references to mixed-use residential development, and a Zoning Amendment to modify the Zoning Ordinance to add the words “mixed use” residential to the description of the Town Center zone, and prohibit ground floor residential in the Town Center zone; and

WHEREAS, on February 3, 2015, the City Council conducted a public hearing to amend the Zoning Ordinance to eliminate new ground floor residential uses to encourage commercial, retail, entertainment and restaurant type uses in the first floor of new or redevelopment in the Town Center Zone and, during the hearing, the City Council expressed a desire to make the Town Center a distinct commercial district; and

WHEREAS, on February 25, 2015, the Milpitas Planning Commission conducted a public hearing and adopted a resolution recommending the City Council adopt a proposed General Plan Amendment and Zoning Amendment to prohibit new residential development in the Town Center District; and

WHEREAS, on March 17, 2015, the City Council, after holding a duly-noticed public hearing, adopted Resolution No. 8455 approving a General Plan Amendment, Zoning Amendment, and Environmental Impact Assessment, and introduced Ordinance No. 38.820 prohibiting all new residential uses from the Town Center Zoning District; and

WHEREAS, on April 7, 2015, the City Council approved Ordinance No. 38.820 amending the Zoning Ordinance to prohibit all new residential uses from the Town Center Zoning District; and

WHEREAS, the City now desires to submit an Ordinance, a copy of which is attached as Exhibit “A” hereto, (“Ordinance”) to the City of Milpitas voters to prohibit all new residential uses from Town Center Zoning District in the City of Milpitas General Plan and Zoning Ordinance; 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 adopted 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 prohibiting all new residential uses in the Town Center in the City General Plan and Zoning Ordinance, which may only be amended in the future by voter approval, and shall be effective until December 31, 2038, 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 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 prepare any documents and take any additional actions 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: 38.____

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS PROHIBITING ALL NEW RESIDENTIAL USES IN THE TOWN CENTER IN THE CITY OF MILPITAS GENERAL PLAN AND ZONING ORDINANCE

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, the Town Center land use designation and zoning district is located in the central part of the City, generally located along Calaveras Boulevard between I-680 and the Union Pacific railroad corridor; and

WHEREAS, in 2010, the Town Center designation was amended and expanded to include parcels south of Calaveras Boulevard for the purpose of requiring existing uses on these parcels, which consisted of offices, cultural centers, religious institutions, medical offices, financial institutions, gasoline station and retail, to conform and allow for the flexibility of integrating other commercial and residential uses for future development, and since this rezoning several land use conversions to residential development within the Town Center have occurred; and

WHEREAS, on May 21, 2013, the City Council approved an amendment to the City Zoning Ordinance to allow live/work units as a conditional use in the Town Center Zoning District; and

WHEREAS, on December 11, 2014, the City of Milpitas Planning and Neighborhood Services Department prepared an application pursuant to Section 57 of the Milpitas Zoning Ordinance for a General Plan Amendment to remove references to residential density, discussions and references to residential land use and references to mixed-use residential development, and a Zoning Amendment to modify the Zoning Ordinance to add the words “mixed use” residential to the description of the Town Center zone, and prohibit ground floor residential in the Town Center zone; and

WHEREAS, on February 3, 2015, the City Council conducted a public hearing to amend the Zoning Ordinance to eliminate new ground floor residential uses to encourage commercial, retail, entertainment and restaurant type uses in the first floor of new or redevelopment in the Town Center Zone and, during the hearing, the City Council expressed a desire to make the Town Center a distinct commercial district; and

WHEREAS, on February 25, 2015, the Milpitas Planning Commission conducted a public hearing and adopted a Resolution recommending the City Council adopt a proposed General Plan Amendment and Zoning Amendment to prohibit new residential development in the Town Center District; and

WHEREAS, on March 17, 2015, the City Council, after holding a duly-noticed public hearing, adopted Resolution No. 8455 approving a General Plan Amendment, Zoning Amendment, Environmental Impact Assessment, and introduced Ordinance No. 38.820 prohibiting all new residential uses from the Town Center Zoning District; and

WHEREAS, on April 7, 2015, the City Council approved Ordinance No. 38.820 amending the Zoning Ordinance to prohibit all new residential uses from the Town Center Zoning District; and

WHEREAS, the City now desires to submit the General Plan Amendment and Zoning Amendment, as set forth in Resolution No. 8455 and Ordinance No. 38.820, to the voters for approval; and

WHEREAS, the City desires for this Ordinance to have a sunset clause of December 31, 2038, unless otherwise extended by the voters.

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

SECTION 1. PURPOSE AND INTENT

The Purpose and Intent of this Ordinance is for the electorate to approve the General Plan Amendment and Zoning Amendment as set forth in Resolution No. 8455 and Ordinance No. 38.820, and to require voter approval for any amendments to the provisions of the General Plan and Zoning Ordinance set forth in this Ordinance. Except as otherwise expressly provided herein, this Ordinance shall not repeal or replace any provisions of the Milpitas General Plan or Milpitas Zoning Ordinance (codified as Chapter 10 of Article XI of the Milpitas Municipal Code). In the event this Ordinance is not approved by a majority of the voters voting on this Ordinance, Resolution No. 8455 and Ordinance No. 38.820 shall remain in full force and effect.

SECTION 2. GENERAL PLAN AMENDMENT NO. 15-0001

The City of Milpitas General Plan Land Use Element, Page 2-9, Table 2-3* shall read, as applicable to the Town Center only, as follows:

Table 2-3 - Standards for Density and Development Intensity

General Plan Land Use Designations	TC
Town Center	•

*Footnotes for Table 2-3 shall remain as stated in the General Plan.

The City of Milpitas General Plan Land Use Element, Page 2-10, Table 2-4 shall read, as applicable to the Town Center only with regard to Residential Density and Residential Population only, with the Maximum Permitted Floor Area Ratio – FAR not covered in this Ordinance, and the removal of footnotes 5 and 6, as follows:

Table 2-4 - Standards for Density and Development Intensity

Land Use Designation	Residential Density (units/gross acre)	Maximum Permitted Floor-Area Ratio — FAR	Residential Population	
			Persons/Housing Unit	Persons/Acre
Commercial-Town Center	n.a.	0.85	n.a.	n.a.

The City of Milpitas General Plan Land Use Element, Page 2-13 – 2-14 shall read as follows:

Town Center: This designation provides for a variety of commercial and civic uses appropriate to the Center’s role as the functional and visual focus of Milpitas. The Town Center is a meeting place and a market place, the home of commercial and professional firms, an entertainment area and a place for restaurants and hotels.

The City of Milpitas General Plan Land Use Element, Page 2-33 shall read as follows:

Implementing Policy 2.a – I-27 Develop the Town Center as an architecturally distinctive complex which will add to Milpitas’ identity and image.

SECTION 2. CITY ZONING ORDINANCE

Section XI-10-5.01.E entitled “Purpose and Intent” of the Milpitas Municipal Code shall read as follows:

Town Center (TC) Zone. The purpose and intent of this zone is to provide for an area that supports a wide range of administrative, business, entertainment, dining, and cultural activities in the geographic center of the City to suit the varying lifestyles of residents and visitors alike. The area is easily accessible via the City’s transportation network.

Section XI-10-5.02.B entitled “Prohibited Uses” of the Milpitas Municipal Code shall read as follows:

Prohibited Uses. The following uses are prohibited:

1. Uses where the symbol “NP” appears within Table 5.02-1.
2. Uses that have been excluded from Table 5.02-1, unless they are found by the City to be similar to permitted or conditionally permitted uses in accordance with C below.
3. Any residential uses in the Town Center Zone shall strictly be prohibited provided residential uses constructed on or before February 17, 2015 or any project securing an approved tentative map or site development permit for construction of residential uses on or before February 17, 2015 shall be exempt from this prohibition and Milpitas Zoning Code Section 56, Nonconforming Buildings and Uses.

Table XI-10-5.02-1* entitled “Commercial Zone Uses” of the Milpitas Municipal Code shall read, as applicable to the Town Center zone only with regard to Residential Uses, as follows:

**Table XI-10-5.02-1
Commercial Zone Uses**

Use	TC
9. Residential Uses	
Caretaker (in conjunction with contractor's yard or mini-storage complex)	NP
Emergency shelters ⁹	NP
Single-room occupancy residences ¹⁰	NP

*Footnotes for Table XI-10-5.02-1 shall remain as stated in the Zoning Ordinance.

SECTION 3. DECEMBER 31, 2038 SUNSET DATE

Sections 1 and 2 of this Ordinance have no further effect after December 31, 2038.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT

On March 17, 2015, the City adopted a Negative Declaration in support of the General Plan Amendment and Zoning Amendment made pursuant to Resolution No. 8455 and Ordinance No. 38.820 (“Amendments”) to prohibit any new residential uses from the Town Center Land Use Designation and Zone. The Negative Declaration determined that the Amendments would not have a significant impact on the environment because they would not expand the range of uses permitted in the Town Center Zone, nor would they increase the development intensity of uses in the Town Center Zone. Based on a review of the Negative Declaration and this Ordinance, the City Council finds that, because this Ordinance simply restates the Amendments, none of the conditions under State California Environmental Quality Act (“CEQA”) Guidelines section 15162 requiring subsequent environmental review have occurred. Specifically, this Ordinance a) will not result in substantial changes that would require major revisions of the Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and b) will not result in substantial changes with respect to the circumstances under which this Ordinance is implemented that would require major revisions of the Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and c) does not present new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Negative Declaration was adopted. Accordingly, no further CEQA review is required for the Ordinance.

SECTION 5. 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 6. 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 OF THE CITY OF MILPITAS PROHIBITING ALL NEW RESIDENTIAL USES IN THE TOWN CENTER IN THE CITY OF MILPITAS GENERAL PLAN AND ZONING ORDINANCE

WHEREAS, the Town Center land use designation and zoning district is located in the central part of the City, generally located along Calaveras Boulevard between I-680 and the Union Pacific railroad corridor; and

WHEREAS, in 2010, the Town Center designation was amended and expanded to include parcels south of Calaveras Boulevard for the purpose of requiring existing uses on these parcels, which consisted of offices, cultural centers, religious institutions, medical offices, financial institutions, gasoline stations and retail, to conform and allow for the flexibility of integrating other commercial and residential uses for future development, and since this rezoning several land use conversions to residential development within the Town Center have occurred; and

WHEREAS, on May 21, 2013, the City Council approved an amendment to the City Zoning Ordinance to allow live/work units as a conditional use in the Town Center Zoning District; and

WHEREAS, on December 11, 2014, the City of Milpitas Planning and Neighborhood Services Department prepared an application pursuant to Section 57 of the Milpitas Zoning Ordinance for a General Plan Amendment to remove references to residential density, discussions and references to residential land use and references to mixed-use residential development, and a Zoning Amendment to modify the Zoning Ordinance to add the words “mixed use” residential to the description of the Town Center zone, and prohibit ground floor residential in the Town Center zone; and

WHEREAS, on February 3, 2015, the City Council conducted a public hearing to amend the Zoning Ordinance to eliminate new ground floor residential uses to encourage commercial, retail, entertainment and restaurant type uses in the first floor of new or redevelopment in the Town Center Zone and, during the hearing, the City Council expressed a desire to make the Town Center a distinct commercial district; and

WHEREAS, on February 25, 2015, the Milpitas Planning Commission conducted a public hearing and adopted a resolution recommending the City Council adopt a proposed General Plan Amendment and Zoning Amendment to prohibit new residential development in the Town Center District; and

WHEREAS, on March 17, 2015, the City Council, after holding a duly-noticed public hearing, adopted Resolution No. 8455 approving a General Plan Amendment, Zoning Amendment, and Environmental Impact Assessment, and introduced Ordinance No. 38.820 prohibiting all new residential uses from the Town Center Zoning District; and

WHEREAS, on April 7, 2015, the City Council approved Ordinance No. 38.820 amending the Zoning Ordinance to prohibit all new residential uses from the Town Center Zoning District; and

WHEREAS, the City now desires to submit an Ordinance, a copy of which is attached as Exhibit “A” hereto, (“Ordinance”) to the City of Milpitas voters to prohibit all new residential uses from Town Center Zoning District in the City of Milpitas General Plan and Zoning Ordinance; 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 adopted 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 prohibiting all new residential uses in the Town Center in the City General Plan and Zoning Ordinance, which may only be amended in the future by voter approval, and shall be effective until December 31, 2038, 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 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 prepare any documents and take any additional actions 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: 38.____

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS PROHIBITING ALL NEW RESIDENTIAL USES IN THE TOWN CENTER IN THE CITY OF MILPITAS GENERAL PLAN AND ZONING ORDINANCE

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, the Town Center land use designation and zoning district is located in the central part of the City, generally located along Calaveras Boulevard between I-680 and the Union Pacific railroad corridor; and

WHEREAS, in 2010, the Town Center designation was amended and expanded to include parcels south of Calaveras Boulevard for the purpose of requiring existing uses on these parcels, which consisted of offices, cultural centers, religious institutions, medical offices, financial institutions, gasoline station and retail, to conform and allow for the flexibility of integrating other commercial and residential uses for future development, and since this rezoning several land use conversions to residential development within the Town Center have occurred; and

WHEREAS, on May 21, 2013, the City Council approved an amendment to the City Zoning Ordinance to allow live/work units as a conditional use in the Town Center Zoning District; and

WHEREAS, on December 11, 2014, the City of Milpitas Planning and Neighborhood Services Department prepared an application pursuant to Section 57 of the Milpitas Zoning Ordinance for a General Plan Amendment to remove references to residential density, discussions and references to residential land use and references to mixed-use residential development, and a Zoning Amendment to modify the Zoning Ordinance to add the words “mixed use” residential to the description of the Town Center zone, and prohibit ground floor residential in the Town Center zone; and

WHEREAS, on February 3, 2015, the City Council conducted a public hearing to amend the Zoning Ordinance to eliminate new ground floor residential uses to encourage commercial, retail, entertainment and restaurant type uses in the first floor of new or redevelopment in the Town Center Zone and, during the hearing, the City Council expressed a desire to make the Town Center a distinct commercial district; and

WHEREAS, on February 25, 2015, the Milpitas Planning Commission conducted a public hearing and adopted a Resolution recommending the City Council adopt a proposed General Plan Amendment and Zoning Amendment to prohibit new residential development in the Town Center District; and

WHEREAS, on March 17, 2015, the City Council, after holding a duly-noticed public hearing, adopted Resolution No. 8455 approving a General Plan Amendment, Zoning Amendment, Environmental Impact Assessment, and introduced Ordinance No. 38.820 prohibiting all new residential uses from the Town Center Zoning District; and

WHEREAS, on April 7, 2015, the City Council approved Ordinance No. 38.820 amending the Zoning Ordinance to prohibit all new residential uses from the Town Center Zoning District; and

WHEREAS, the City now desires to submit the General Plan Amendment and Zoning Amendment, as set forth in Resolution No. 8455 and Ordinance No. 38.820, to the voters for approval; and

WHEREAS, the City desires for this Ordinance to have a sunset clause of December 31, 2038, unless otherwise extended by the voters.

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

SECTION 1. PURPOSE AND INTENT

The Purpose and Intent of this Ordinance is for the electorate to approve the General Plan Amendment and Zoning Amendment as set forth in Resolution No. 8455 and Ordinance No. 38.820, and to require voter approval for any amendments to the provisions of the General Plan and Zoning Ordinance set forth in this Ordinance. Except as otherwise expressly provided herein, this Ordinance shall not repeal or replace any provisions of the Milpitas General Plan or Milpitas Zoning Ordinance (codified as Chapter 10 of Article XI of the Milpitas Municipal Code). In the event this Ordinance is not approved by a majority of the voters voting on this Ordinance, Resolution No. 8455 and Ordinance No. 38.820 shall remain in full force and effect.

SECTION 2. GENERAL PLAN AMENDMENT NO. 15-0001

The City of Milpitas General Plan Land Use Element, Page 2-9, Table 2-3* shall read, as applicable to the Town Center only, as follows:

Table 2-3 - Standards for Density and Development Intensity

General Plan Land Use Designations	TC
Town Center	•

*Footnotes for Table 2-3 shall remain as stated in the General Plan.

The City of Milpitas General Plan Land Use Element, Page 2-10, Table 2-4 shall read, as applicable to the Town Center only with regard to Residential Density and Residential Population only, with the Maximum Permitted Floor Area Ratio – FAR not covered in this Ordinance, and the removal of footnotes 5 and 6, as follows:

Table 2-4 - Standards for Density and Development Intensity

Land Use Designation	Residential Density (units/gross acre)	Maximum Permitted Floor-Area Ratio — FAR	Residential Population	
			Persons/Housing Unit	Persons/Acre
Commercial-Town Center	n.a.	0.85	n.a.	n.a.

The City of Milpitas General Plan Land Use Element, Page 2-13 – 2-14 shall read as follows:

Town Center: This designation provides for a variety of commercial and civic uses appropriate to the Center’s role as the functional and visual focus of Milpitas. The Town Center is a meeting place and a market place, the home of commercial and professional firms, an entertainment area and a place for restaurants and hotels.

The City of Milpitas General Plan Land Use Element, Page 2-33 shall read as follows:

Implementing Policy 2.a – I-27 Develop the Town Center as an architecturally distinctive complex which will add to Milpitas’ identity and image.

SECTION 2. CITY ZONING ORDINANCE

Section XI-10-5.01.E entitled “Purpose and Intent” of the Milpitas Municipal Code shall read as follows:

Town Center (TC) Zone. The purpose and intent of this zone is to provide for an area that supports a wide range of administrative, business, entertainment, dining, and cultural activities in the geographic center of the City to suit the varying lifestyles of residents and visitors alike. The area is easily accessible via the City’s transportation network.

Section XI-10-5.02.B entitled “Prohibited Uses” of the Milpitas Municipal Code shall read as follows:

Prohibited Uses. The following uses are prohibited:

1. Uses where the symbol “NP” appears within Table 5.02-1.
2. Uses that have been excluded from Table 5.02-1, unless they are found by the City to be similar to permitted or conditionally permitted uses in accordance with C below.
3. Any residential uses in the Town Center Zone shall strictly be prohibited provided residential uses constructed on or before February 17, 2015 or any project securing an approved tentative map or site development permit for construction of residential uses on or before February 17, 2015 shall be exempt from this prohibition and Milpitas Zoning Code Section 56, Nonconforming Buildings and Uses.

Table XI-10-5.02-1* entitled “Commercial Zone Uses” of the Milpitas Municipal Code shall read, as applicable to the Town Center zone only with regard to Residential Uses, as follows:

**Table XI-10-5.02-1
Commercial Zone Uses**

Use	TC
9. Residential Uses	
Caretaker (in conjunction with contractor's yard or mini-storage complex)	NP
Emergency shelters ⁹	NP
Single-room occupancy residences ¹⁰	NP

*Footnotes for Table XI-10-5.02-1 shall remain as stated in the Zoning Ordinance.

SECTION 3. DECEMBER 31, 2038 SUNSET DATE

Sections 1 and 2 of this Ordinance have no further effect after December 31, 2038.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT

On March 17, 2015, the City adopted a Negative Declaration in support of the General Plan Amendment and Zoning Amendment made pursuant to Resolution No. 8455 and Ordinance No. 38.820 (“Amendments”) to prohibit any new residential uses from the Town Center Land Use Designation and Zone. The Negative Declaration determined that the Amendments would not have a significant impact on the environment because they would not expand the range of uses permitted in the Town Center Zone, nor would they increase the development intensity of uses in the Town Center Zone. Based on a review of the Negative Declaration and this Ordinance, the City Council finds that, because this Ordinance simply restates the Amendments, none of the conditions under State California Environmental Quality Act (“CEQA”) Guidelines section 15162 requiring subsequent environmental review have occurred. Specifically, this Ordinance a) will not result in substantial changes that would require major revisions of the Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and b) will not result in substantial changes with respect to the circumstances under which this Ordinance is implemented that would require major revisions of the Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and c) does not present new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Negative Declaration was adopted. Accordingly, no further CEQA review is required for the Ordinance.

SECTION 5. 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 6. 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.