

RESOLUTION NO. 7053

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS SETTING FORTH THE NEIGHBORHOOD BEAUTIFICATION ORDINANCE PENALTY SCHEDULE FOR CERTAIN VIOLATIONS OF TITLE V, CHAPTER 500

WHEREAS, Milpitas Municipal Code Title V, Chapter 500 (Milpitas Public Health, Safety and Welfare Code), Section 8.01 authorizes enforcement of violations of the Neighborhood Beautification Ordinance through administrative citations; and

WHEREAS, Sections V-500-8.03 provides that the amount of fines shall be set by resolution of the City Council; and

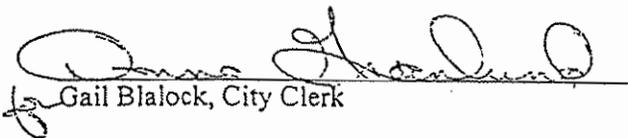
WHEREAS, the administrative citation fine amount for the violation of provisions of the Neighborhood Beautification Ordinance is shown on Attachment A, which is incorporated herein.

NOW, THEREFORE, BE IT RESOLVED that the penalty schedule shown in Attachment A is established for those violations of the Milpitas Neighborhood Beautification Ordinance.

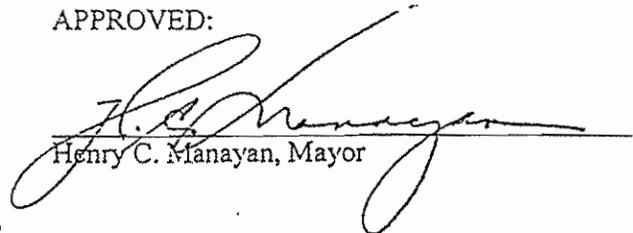
PASSED AND ADOPTED this 19th day of December, 2000, by the following vote:

AYES: (4) Mayor Manayan and Councilmembers Lawson, Dixon and Esteves
NOES: (0) None
ABSENT: (1) Livengood
ABSTAIN: (0) None

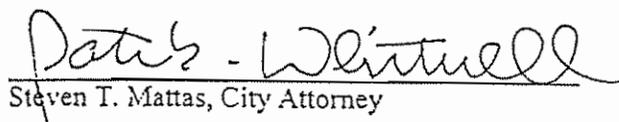
ATTEST:


Gail Blalock, City Clerk

APPROVED:


Henry C. Manayan, Mayor

APPROVED AS TO FORM:


Steven T. Mattas, City Attorney

ATTACHMENT "A"

Administrative Citation Penalty Schedule
For Violations to the Neighborhood Beautification Ordinance

SECTION	OFFENCE
V-500-2.01	Unlawful Property Nuisance – Private Property
V-500-2.02	Unlawful Property Nuisance – Public Property

Standard Penalty. The penalty for a first violation of the Neighborhood Beautification Ordinance shall be one hundred (\$100) dollars.

Second Violation. The penalty amount for a second violation of the same section of the Municipal Code by the same person within twelve (12) months from the date of an administrative citation, shall be two hundred (\$200) dollars.

Third Violation. The penalty amount for a third and subsequent violation of the same section of the Municipal Code by the same person within twelve (12) months from the date of an administrative citation, shall be five hundred (\$500) dollars.

Delinquency Penalty. Payments received after the due date (30 days from the date of the administrative citation) shall be deemed late. A flat charge of \$25.00 shall be charged for all late payments.

Chapter 500

NEIGHBORHOOD BEAUTIFICATION

Sections:

- V-500-1 Definitions
 - V-500-2 Nuisances
 - V-500-3 Abatement Procedure
 - V-500-4 Cost Recovery
 - V-500-5 Lien Procedure
 - V-500-6 Interest on Liens
 - V-500-7 Miscellaneous
 - V-500-8 Administrative Citation
- V-500-1.00 Definitions
- V-500-1.01 Abate
“Abate” shall mean to repair, replace, remove, destroy or otherwise remedy the condition in violation of this Chapter. (Ord. 252 (part), 9/21/99)
- V-500-1.02 Accumulation
“Accumulation” shall mean a collection, pile, stockpile, or heap of some material. (Ord. 252 (part), 9/21/99)
- V-500-1.03 Building
“Building” shall mean any structure used or intended for supporting or sheltering any use or occupancy. (Ord. 252 (part), 9/21/99)
- V-500-1.04 City Manager
“City Manager” shall mean the City Manager of the City of Milpitas or his or her designees. (Ord. 252 (part), 9/21/99)
- V-500-1.04-1 Continuing Violation
A violation, infringement or breach of a provision of this chapter that is uninterrupted and lasts for a continuous period in excess of 24 hours. (Ord. 124.27 (3), 8/2/05)
- V-500-1.05 Enforcement Officer
“Enforcement officer” shall mean that person or persons specifically designated by the City Manager

to enforce the provisions of this Chapter. (Ord. 252 (part), 9/21/99)

V-500-1.05-1 Individual Violation

A noncontinuous condition or occurrence in violation, infringement or breach of a provision of this chapter that does not exceed 24 hours in duration. An Individual Violation may be recurrent. Examples of “Individual Violation” for the purposes of this Chapter include, but are not limited to, the illegal outdoor storage of materials, lawn parking and vehicle repair. (Ord. 124.27 (4), 8/2/05)

V-500-1.06 Junk

“Junk” shall mean any discarded, scrapped, unusable, or wrecked object, thing or material. (Ord. 252 (part), 9/21/99)

V-500-1.07 Major Vehicle Repairs

“Major repairs” include pulling an engine block, repair or replacement of transmissions and front and rear axles, major body repair, dismantling, and similar work associated with automobiles, boats or other motorized vehicles. (Ord. 252 (part), 9/21/99)

V-500-1.08 Minor Vehicle Repairs

“Minor repairs” include routine maintenance such as changing oil and tires; replacement of water pump, alternator, brakes, shocks, oil and air filters, and spark plugs; and similar work associated with automobiles, boats or other motorized vehicles. (Ord. 252 (part), 9/21/99)

V-500-1.09 Owner/Occupant

“Owner/occupant” shall mean any person owning property, as shown on the last equalized assessment roll for City taxes, or the lessee tenant, or other person having control or possession of the property. (Ord. 252 (part), 9/21/99)

V-500-1.10 Person

“Person” shall mean any individual, partnership, corporation, association or other organization, however formed. (Ord. 252 (part), 9/21/99)

V-500-1.11 Property

“Property” shall mean all real property and fixtures, including, but not limited to parking lots, sidewalks, gutters, driveways, walkways and any building and structure located on such property. (Ord. 252 (part), 9/21/99)

V-500-1.12 Registered/Registration

A current, valid California Registration for a vehicle conforming to California Vehicle Code Sections 4000 or 9840 et seq. (Ord. 252 (part), 9/21/99)

V-500-1.13 Public Right-of-Way

“Public right-of-way” shall mean the full width of the right-of-way of any street, as defined in the California Vehicle Code used by the general public, whether or not such street has been accepted as and declared to be part of the City system of streets, including streets forming a part of the State Highway System. “Public right-of-way” also includes easements where the City is the grantee of the easement and property owned by the City of Milpitas or the Milpitas Redevelopment Agency and any public park, trail, or right-of-way within the City of Milpitas. (Ord. 252.1 (part), 6/19/01; Ord. 252 (part), 9/21/99)

V-500-1.14 Reserved

(Ord. 252 (part), 9/21/99)

V-500-1.15 Unreasonable Period of Time

“Unreasonable period of time” shall mean not less than fifteen (15) calendar days following notification by the City to the owner/occupant pursuant to Section V-500-3.01 that the property is in violation of this Chapter. The City Manager, upon a finding that the violation in question constitutes a threat to the health and safety of any person may designate a time period of fifteen (15) calendar days or less upon notice to the owner/occupant to abate the nuisance. Prior notice shall not be required for summary abatement pursuant to Section V-500-3.08. (Ord. 124.27 (5), 8/2/05; Ord. 252.1 (part), 6/19/01; Ord. 252 (part), 9/21/99)

V-500-1.16 Vector

“Vector” shall mean any insect or animal likely to transmit any disease and injurious to humans. (Ord. 252 (part), 9/21/99)

V-500-1.17 Vehicle

“Vehicle” shall mean a device by which any person or property may be propelled, moved or drawn upon a highway, road or body of water, and for the purposes of this Chapter shall include, but not be limited to, automobiles, recreational vehicles, campers, boats, motorcycles and mopeds, but shall not include bicycles, skateboards or similar non-motorized personal transportation. (Ord. 252 (part), 9/21/99)

V-500-1.18 Reserved

(Ord. 252 (part), 9/21/99)

V-500-2.00 Nuisances

**V-500-2.01 Unlawful Property Nuisance—
Private Property**

It shall be unlawful for any person owning, leasing, renting, occupying, or having charge or possession of private property in the City to maintain or to allow to be maintained such property in such manner that any of the following conditions are found to exist thereon for an unreasonable period of time (as defined in Section V-500-1.15) after a notice to abate pursuant to Section V-500-3.01 is provided, except as may be allowed by this Code:

(a) Outdoor Storage.

(1) The accumulation (as defined in Section V-500-1.02) of abandoned or discarded objects, including but not limited to junk, machine parts, scrap material, appliances, furniture, household equipment and furnishings, containers, packing materials, scrap metal, garbage, or similar matter which constitutes a threat to the health or safety of any person; or which is visible from the public right-of-way.

(2) The accumulation of more than one cubic yard of dirt, sand, gravel, concrete, litter, debris or other similar material on the property, which is visible from the public right-of-way. Dirt, sand, gravel, concrete or topsoil may be stored in an area visible

PUBLIC HEALTH, SAFETY AND WELFARE

from the public right-of-way for no more than fourteen (14) calendar days as part of a landscaping or driveway or sidewalk repair or replacement project.

(3) Attractive nuisances visible from a public right-of-way, dangerous to those members of the public unable to discover the nuisance condition, or recognize its potential danger, including, but not limited to, abandoned, broken or neglected vehicles, machinery, equipment, refrigerators and freezers, swimming pools, ponds and excavations.

(4) Materials stored or stacked on commercial or industrial property in a disorderly manner in view of the public right-of-way in zoning districts where outdoor storage is permitted. Nothing in this section shall be construed as prohibiting the orderly outdoor storage of business related materials and inventory above fence height where permitted by applicable zoning designation and/or conditional use permit.

(5) Vehicles which are in a state of partial construction, dilapidation, or disrepair and are visible from the public right-of-way.

(6) Camper shells which are stored in front yards, driveways, side yards, or walkways and are visible from the public right-of-way. This subsection shall not apply to campers which include a floor and accessories similar to a recreational vehicle such as beds, seats, a stove and refrigerator.

(7) Clotheslines or clothes hanging in front yards, porches or balconies visible from a public right-of-way.

(8) Tarpaulins or other types of temporary covering materials used for covering of solid waste, junk, abandoned materials or roofs or real property as defined in Section V-500-1.11, and visible from the public right-of-way.

(b) Landscaping/Vegetation.

(1) Dead, decayed, diseased or hazardous trees, weeds, shrubs or other vegetation, dangerous to public health, safety and welfare or if visible from the public right-of-way. This Section shall not be interpreted to prevent an owner/occupant from maintaining a garden on the property for the purpose of growing fruits and vegetables.

(2) Vegetation, that is overgrown and likely to harbor rats, vermin, and other similar nuisances det-

rimental to neighboring properties, or vegetation growing into the public right-of-way, or vegetation obstructing the view of drivers on any public street or right-of-ways or private driveways.

(c) Buildings and Structures.

(1) Buildings or parts thereof which are (i) abandoned, boarded up, partially destroyed, or (ii) have broken window glass or broken windows secured with wood or other materials and are dangerous to the public health, safety, and welfare, or (iii) are left in a state of partial construction, or (iv) are subject to demolition pursuant to applicable permit or other authority for which demolition has not been completed within the time period specified by the applicable permit or other authority; or (v) are unpainted or where the paint on the building exterior has extensive cracking, peeling, or chalking and where such condition is visible from the public right-of-way.

(2) Unsecured buildings constituting a hazardous condition or inviting or permitting trespassers or malicious mischief.

(3) Awnings, covers, canopies, umbrellas, screens, signs or other window coverings or building structures which are severely damaged, torn, faded, rusted, or bent, unpainted or in some other state of disrepair and visible from the public right-of-way.

(4) The maintenance of private sidewalks or sound walls in an unsafe or unsanitary condition. A vertical separation distance of greater than 3/4 inch at a private sidewalk joint shall be evidence of an unsafe condition.

(d) Fences and Gates.

(1) Fences or other structures on private property abutting, fronting upon, or visible from the public right-of-way, which are severely sagging, leaning, fallen, decayed or extending into the public right-of-way without being allowed by an encroachment permit or which is otherwise in an unsafe condition.

(2) The existence of any barbed wire or razor ribbon fences within four feet of any public sidewalk or public right-of-way and at a height of less than six feet from the ground level; or any wire, twine, or rope fences consisting of one or more strands, less than three feet in height and within three feet of any public sidewalk; or any electric fences or any fences

or walls with pieces of glass or other sharp objects (not including barbed wire) embedded or affixed to the top thereof.

(e) Parking in Residential Front Yards or Public Right-of-Way Residential Corner Side Yards.

(1) Vehicles parked upon any lawn or other surface lying within any residential front yard or public right-of-way residential corner side yard,

[Text continues on page 414-5]

unless the vehicle is parked on (i) a paved driveway which provides access to a required parking space, (ii) or paved recreational vehicle parking space, and where access is derived from any public or private public right-of-way. This section shall not apply to vehicles parked upon a lawn or other surface lying within any residential front yard or public right-of-way residential corner side yard for the purpose of washing or waxing the vehicle provided that the vehicle shall not be so parked for a period of more than six consecutive hours.

(2) Four purposes of this section only, "paved driveway" shall mean a private roadway or wheel strips that is created by some impervious material, such as brick, concrete, asphalt or paving blocks, placed on the property and intended to allow vehicular access to a parking area.

(3) For purposes of this section only, "paved recreational vehicle parking space" shall mean a private surfaced area created by some impervious material, such as brick, concrete, asphalt, or paving blocks, placed on the property and intended solely for the parking of recreational vehicles.

(f) Residential Vehicle Repair.

(1) The performance of major vehicle repairs, as defined in Section V-500-1.07 of this Chapter or dismantling of any motorized or non-motorized vehicle, boat, or part thereof, in a location outside of a garage visible from the public right-of-way. This section shall not be construed as prohibiting the registered owner/occupant of a vehicle or boat, or part thereof, from performing minor repair of said vehicle in the driveway or other paved surface of a residence, provided that the vehicle or boat is registered to someone living in the residence. Further, this Section shall not be construed to prohibit the owner/occupant of the property from performing minor vehicles repairs for friends or family provided that the owner/occupant does not receive any monetary compensation for his or her labor and provided the owner/occupant does not store more than one (1) vehicle under repair on the property and visible from the public right-of-way.

(g) Reserved.

(h) Miscellaneous.

(1) Any other condition or use of property which represents a threat to the health and welfare of the public by virtue of its unsafe, dangerous or hazardous nature.

(2) The existence of any condition or use causing continuous or intermittent dense smoke, gas, soot, cinders or other particulate matter to such a degree as to render the occupancy of surrounding properties uncomfortable to a person of ordinary sensibilities.

(3) Failure to comply with the requirements set forth in any City zoning approval or permit applicable to the premises.

(4) The existence of any body of stagnant water or other liquid in which mosquitoes or other insects may breed, or which may generate noxious or offensive gases or odors. This section shall not apply to properly maintained birdbaths, landscape ponds or fountains. (Ord. 252.1 (part), 6/19/01; Ord. 252 (part), 9/21/99)

V-500-2.02 Unlawful Property Nuisance— Public Property

It shall be unlawful for any person owning, leasing, renting, occupying or having charge or possession of any private property in the City to use, maintain or allow to be maintained such property for any purposes so as to create any of the following conditions on adjacent or contiguous public property, except as may be allowed by this Code:

(a) Outdoor Storage, Operations or Encroachment.

(1) The depositing of mud, dirt, sand, gravel, or concrete onto the public right-of-way. In the event that such material is deposited in the public right-of-way, the responsible party shall make every effort to ensure that the material does not flow into a public storm drain or watercourse and shall remove the material as quickly as is feasible, but in no event less than twenty-four (24) hours from the time of depositing.

(2) The spilling of debris, including trash, paper, wood, plant cuttings and other vegetation, onto the public right-of-way.

(3) Vehicles and/or other materials associated with business activity stored on the public right-of-way or in the public right-of-way.

(4) The existence of any condition or use which unlawfully obstructs the free passage or use in the customary manner of any navigable waterway or any public park, square, public right-of-way, highway, lane or sidewalk.

(5) The placement of items of business inventory, equipment, vehicles, furniture, or obstruction on any public right-of-way or sidewalk unless allowed by an encroachment permit, conditional use permit, or other City approval.

(b) Miscellaneous.

(1) Any other condition or use of public property which represents a threat to the health and welfare of the public by virtue of its unsafe, dangerous or hazardous nature. (Ord. 252 (part), 9/21/99)

V-500-2.03 Declaration of Public Nuisance

Any private property, or use of private and/or public property found to be maintained in violation of the foregoing sections is hereby declared to be a public nuisance and shall be abated by rehabilitation, removal, or repair pursuant to the procedures set forth herein. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the City from enforcing other City ordinances or abating public nuisances in any other manner provided by law including, but not limited to, Civil Code Section 3480. Any other City ordinance that provides that a violation of the ordinance may be declared a nuisance or a public nuisance may be abated pursuant to the procedures set forth herein, and be subject to those provisions allowing for cost recovery, at the discretion of the City Manager. (Ord. 252.1 (part), 6/19/01; Ord. 252 (part), 9/21/99)

V-500-3.00 Abatement Procedure

V-500-3.01 Notification of Nuisance

Whenever the City Manager determines that any property within the City is being maintained contrary to one or more of the provisions of this Chapter,

he/she will give written notice ("Notice to Abate") to the owner/occupant(s) (as defined in Section V-500-1.09) of said property stating the section(s) being violated. Such notice shall set forth a reasonable time limit, in no event less than or equal to thirty (30) calendar days, for correcting the violation(s) of Section V-500-2.01(e), not less than or equal to fifteen (15) calendar days, for correcting the violation(s) and may also set forth suggested methods of correcting the same unless the City Manager determines that the condition constitutes a threat to the health and safety of any person, in which event, the City Manager may designate a shorter time limit for correcting the violation. The notice shall inform the owner/occupant of City programs that provide fiscal assistance to very low and low income persons for the repair and rehabilitation of residential property. Such notice shall be served upon the owner/occupant in accordance with provisions of Section V-500-3.03 covering service in person or by mail. (Ord. 252 (part), 9/21/99)

V-500-3.01.1 Exception for Undue Hardship

The notice shall also inform the owner/occupant (excluding an owner acting in a capacity of landlord of rental property) that, upon written request of the owner/occupant submitted within seven (7) calendar days of the "Notice to Abate," the City Manager, in his or her sole discretion, may allow for a time limit in excess of thirty (30) days for correcting the violation in cases where strict enforcement of the time limit would result in an undue hardship on the owner/occupant. In the written request, the owner/occupant shall state the reasons why strict enforcement of the time limit would result in an undue hardship. (Ord. 252.1 (part), 6/19/01; Ord. 252 (part), 9/21/99)

V-500-3.02 Administrative Hearing to Abate Nuisance

In the event said owner/occupant shall fail, neglect or refuse to comply with the "Notice to Abate," the City Manager shall conduct an administrative hearing to ascertain whether said violation constitutes a public nuisance. (Ord. 252 (part), 9/21/99)

V-500-3.03 Notice of Hearing

Notice of said administrative hearing shall be served upon the owner/occupant not less than seven (7) calendar days before the time fixed for hearing. Notice of the hearing shall be served in person or by certified mail to the owner/occupant's last known address. Service shall be deemed complete at the time notice is personally served or deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder. Notice shall be substantially in the format set forth below:

NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE

This is a notice of hearing before the City Manager (or his/her designees) to ascertain whether certain property situated in the City of Milpitas, State of California, known and designated as (public right-of-way address) _____, in said City, and more particularly described as (Assessor's Parcel Number) _____ constitutes a public nuisance subject to abatement pursuant to Chapter V-500 of the Milpitas Municipal Code. If said property, in whole or part, is found to constitute a public nuisance as defined in the Milpitas Municipal Code and if the same is not properly abated by the owner/occupant, such nuisance may be abated by municipal authorities, in which case the cost of such rehabilitation, repair, or abatement will be assessed upon such property and such costs, together with interest thereon, may constitute a special assessment or lien upon such property until paid. In addition, you may be cited for violation of the provisions of the Municipal Code and subject to an administrative fine.

Said alleged conditions consist of the following:

The method(s) of abatement are:

All persons having an interest in said matters may attend the hearing and their testimony and evidence will be Dated this _____ day of _____, 20__.

City Manager

Time and Date of Hearing: _____

Location of Hearing: _____

(Ord. 252 (part), 9/21/99)

V-500-3.04 Administrative Hearing by City Manager or His/Her Designees

At the time stated in the notice, the City Manager shall hear and consider all relevant evidence, objections or protests, and shall receive testimony relative to such alleged public nuisance and to proposed rehabilitation, repair, removal or abatement of such property. Said hearing may be continued from time to time.

If the City Manager finds that such public nuisance does exist and that there is sufficient cause to rehabilitate, abate, remove or repair the same, the City Manager shall prepare findings and an order, which shall specify the nature of the nuisance, the method(s) of abatement and the time within which the work shall be commenced and completed. A copy of the findings and order shall be served on all owner/occupants of the subject property in accordance with the provisions of Section V-500-3.03. In addition, a copy of the findings and order shall be forthwith conspicuously posted on the property. The order shall set forth the time within which such work shall be completed by the owner/occupant, in no event less than fifteen (15) calendar days. The findings and order of the City Manager shall be final.

In the event the owner/occupant fails to abate the nuisance as ordered, the City Manager shall cause the same to be abated by City employees or private contract. The costs shall be billed to the owner/occupant, as specified in Sections V-500-4.01 through V-500-4.05. In appropriate circumstances, the City Manager shall request the City Attorney to obtain all necessary judicial approval for entry onto the subject premises for abatement purposes. (Ord. 252 (part), 9/21/99)

V-500-3.05 Hearing Procedure Before City Manager and His/Her Designees

All hearings shall be tape recorded.

Hearings need not be conducted according to the technical rules of evidence.

Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

Irrelevant and unduly repetitious evidence shall be excluded. (Ord. 252 (part), 9/21/99)

V-500-3.06 Appeal of Decision by City Manager and His/Her Designees to the City Council

The decision of the City Manager and His/Her Designees may be appealed to the City Council in conformance with the provisions of Milpitas Municipal Code Section 1-20-5. (Ord. 124.27 (6), 8/2/05; Ord. 252 (part), 9/21/99)

V-500-3.07 Limitation on Filing Judicial Action

Any judicial action appealing the City Council's decision and order shall be commenced within thirty (30) calendar days of the date of service of the decision. (Ord. 124.27 (7), 8/2/05; Ord. 252 (part), 9/21/99)

V-500-3.08 Summary Abatement of Immediate Hazard or Obstruction

In the event of:

(a) A nuisance defined by statute, ordinance or resolution as a public nuisance which constitutes an immediate danger to persons or property;

(b) A nuisance defined by statute, ordinance or resolution as a public nuisance which is located or maintained on public property including, but not limited to, any public right-of-way, highway, sidewalk, easement, park or building; or

(c) Any obstruction or encroachment to free passage upon any public property (which is hereby declared to be a public nuisance) including, but not limited to, any public right-of-way, highway, easement, sidewalk, park or building, the City Manager may, forthwith and without notice, abate said nuisance and recover the cost of abatement as provided for in Section V-500-4.00. Summary abatement may include the temporary removal to a safe location of persons placed in immediate danger from a public nuisance. In such event, the City shall be entitled to recover all costs related to the removal, including but not limited to, storage of possessions and rental of living accommodations, as well as any other recoverable cost provided for in Section V-500-4.00. (Ord. 252.1 (part), 6/19/01; Ord. 252 (part), 9/21/99)

V-500-4.00 Cost Recovery

V-500-4.01 Recovery of Costs

This section establishes procedures for the recovery of administrative costs, as well as attorneys' fees and costs, incurred by the City in the enforcement process, for the abatement of conditions defined as a nuisance by Section V-500-2.01 and Section V-500-2.02. (Ord. 252 (part), 9/21/99)

V-500-4.02 Definition of Costs

For the purposes of this Chapter, "costs" shall mean administrative costs, including staff time expended and reasonably related to nuisance abatement cases; for items including, but not limited to, investigation, site inspection and monitoring, testing, reports, telephone contacts, correspondence and meetings with affected parties, as well as all attorneys' fees incurred pursuant to any action, administrative proceeding, or special proceeding to abate the nuisance including but not limited to filing fees

and fees for witnesses. Pursuant to Government Code Section 38773.5(a), where the City seeks to recover attorneys' fees at the initiation of any action or proceeding, a prevailing opposing party may recover its reasonable attorneys' fees to the extent that the

[Text continues on page 414-9]

amount of said fees does not exceed the amount of reasonable attorney fees incurred by the City in the action or proceeding. (Ord. 252.1 (part), 6/19/01; Ord. 252 (part), 9/21/99)

V-500-4.03 Cost Accounting and Recovery Required

The City shall maintain records of all costs incurred by responsible City departments associated with the enforcement process pursuant to this Chapter and shall recover the costs from the property owner/occupant as provided by this section. (Ord. 252 (part), 9/21/99)

V-500-4.04 Notice of Cost Recovery Requirements

The City Manager shall include in the "Notice to Abate" a statement of the intent of the City to charge the property owner/occupant for all costs incurred by the City if the violation is not corrected as required. The notice shall state that the property owner/occupant will receive at the conclusion of the enforcement case a summary of enforcement costs associated with the processing of the case. (Ord. 252 (part), 9/21/99)

V-500-4.05 Collection of Charges

Such costs shall be recoverable as provided for in Sections V-500-5.01 through V-500-5.02. (Ord. 252 (part), 9/21/99)

V-500-5.00 Lien Procedure

V-500-5.01 Record of Cost of Abatement

The City Manager shall keep an account of the costs, as defined in Section V-500-4.02 for abating such nuisance on each separate lot or parcel of land where the work is done by the City and shall render an itemized report in writing showing the cost of abatement, including the rehabilitation or repair of said property, including any salvage value relating thereto. A copy of the same shall be posted for at least five (5) calendar days upon such property, together with a notice of the right to appeal to the City Manager. A copy of said report and notice shall

be served upon the owner/occupants of said property, based on the last equalized assessment roll or the supplemental roll, whichever is more current. If the owner/occupant of record, after diligent search, cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in the county in which the property is located. Proof of said posting and service shall be made by affidavit filed with the City Clerk. The owner/occupant shall have thirty (30) calendar days from the date upon which the notice is served to reimburse the City for its costs or to otherwise make arrangements for repayment as to which the City, in its sole discretion, may agree. (Ord. 252 (part), 9/21/99)

V-500-5.02 Assessment and Lien

The total cost for abating such nuisance, as so confirmed by the City Manager, shall, upon failure to pay the costs as specified in Section V-500-5.01, constitute a lien or special assessment pursuant to Government Code Sections 38773.1 (nuisance abatement lien), 38773.2 (graffiti nuisance abatement lien) or 38773.5 (special assessment), or 38773.6 (graffiti special assessment) against the respective lot or parcel of land to which it relates.

After confirmation and recordation of a Notice of Special Assessment, a certified copy of the City Manager's decision shall be filed with the Santa Clara County Assessor's Office on or before August 1 of each year, whereupon it shall be the duty of said Assessor to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes and thereafter said amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided of ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessments.

Upon recordation in the Office of the County Recorder, a Notice of Lien, as so made and confirmed, shall constitute a lien on said property and from the date of recording shall have the force, effect, and priority of a judgment lien.

In the alternative, after such recordation, such lien may be foreclosed by an action brought by the City for a money judgment or by any other means provided by law.

A Notice of Lien for recordation shall be in form substantially as follows:

NOTICE OF LIEN

(Claim of City of Milpitas)

Pursuant to the authority vested by the provisions of Section V-500-2.03 of the Milpitas Municipal Code, the City Manager of the City of Milpitas did on or about the _____ day of _____, 20____, cause the property hereinafter described to be rehabilitated or the building or structure on the property hereinafter described, to be repaired or demolished in order to abate a public nuisance on said real property, pursuant to an order to abate issued by _____ on; and the City Manager of the City of Milpitas did on the _____ day of _____, 20____, assess the cost of such rehabilitation, repair, demolition, or abatement upon the real property hereinafter described; and the same has not been paid nor any part thereof; and that said City of Milpitas does hereby claim a lien on such rehabilitation, repair, or abatement in the amount of said assessment, to wit; the sum of \$ _____ : and the same, shall be a lien upon said real property until the same has been paid in full and discharged of record.

The real property hereinabove mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Milpitas, County of Santa Clara, State of California, owned by and more particularly described as follows (legal description):

(description)

Dated this _____ day of _____, 20____.

City Manager

In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the amount of the lien, the name of the agency on whose behalf the lien was imposed, the date of the abatement order, the public right-of-way address, legal description, and the name and address of the recorded owner/occupant of the property shall be recorded by the governmental agency. A nuisance abatement and the release of the lien shall be indexed in the grantor-grantee index. (Ord. 252.1 (part), 6/19/01; Ord. 252 (part), 9/21/99)

V-500-6.00 Interest on Liens

V-500-6.01 Amount of Interest on City Liens and Assessments— Findings

The City Council finds and declares that the establishment of an interest accrual requirement as to unpaid City liens and assessments upon real property which are of record with the County Recorder for Santa Clara County is a necessary and appropriate exercise of the City Council's police power. (Ord. 252 (part), 9/21/99)

V-500-6.02 Accrual of Interest on Liens and Assessments

Unless otherwise prohibited by law or regulation, all liens and assessments which are imposed by the City against any real property located in the City of Milpitas that are recorded on and after the effective date of this regulation shall accrue interest at the rate of eight (8) percent annually until the lien or assessment, including interest thereon, is paid in full. (Ord. 252 (part), 9/21/99)

V-500-7.00 Miscellaneous**V-500-7.01 Alternative Actions Available;
Violation an Infraction**

Nothing in this chapter shall be deemed to prevent the Council from ordering the commencement of a civil proceeding to abate a public nuisance pursuant to applicable law or from pursuing any other remedy available under applicable law. Violation of the provisions of this Chapter constitutes an infraction, as set forth in Section I-1-4.09 of the Municipal Code. The City Manager is designated as the enforcement authority. (Ord. 252 (part), 9/21/99)

V-500-7.02 Additional Costs of Abatement

The City Council provides that a court may order the owner/occupant of property responsible for a condition that may be abated in accordance with this Chapter to pay three times the costs of abatement pursuant to Government Code 38773.7 upon the entry of a second civil court judgment for violation of this Chapter within a two-year period. (Ord. 252 (part), 9/21/99)

V-500-7.03 Residential Rental Housing

The notice sent to the owner/occupant of residential rental housing pursuant to Section V-500-3.01 shall contain the statement required by Health and Safety Code Section 17980 regarding the application of Revenue and Taxation Code Sections 17274 and 24436.5, which allow the Franchise Tax Board to deny state income tax deductions to taxpayers who fail to bring substandard residential rental property into compliance with this Chapter. (Ord. 252 (part), 9/21/99)

V-500-8.00 Administrative Citation**V-500-8.01**

Whenever an enforcement officer charged with the enforcement of any provision of this Chapter determines that a violation of that provision has occurred, the enforcement officer shall have the authority to issue an administrative citation to any person responsible for the violation.

**V-500-8.01-1 Authority to Issue an
Administrative Citation**

(a) Continuing Violation that does not create an immediate danger to public health and safety. Where the violation is a Continuing Violation that does not create an immediate danger to public health and safety, the citation shall set forth a reasonable period of time, which shall not be less than 15 days, for the person responsible for the continuing violation to correct or otherwise remedy the violation prior to the imposition of the administrative fine.

(b) Continuing violation that creates an immediate danger to public health and safety. Where a violation is a Continuing Violation that constitutes an immediate danger to public health and safety, the property owner shall be provided notice to correct the violation within a maximum of two (2) hours from when the verbal or written notice was received. Depending upon the severity of the violation, if the violation is not corrected within the two hour time period, the City shall have the option to initiate summary abatement procedures under Section V-500-3.08 or impose the administrative fine and administrative citation provisions under Section V-500-8.00.

(c) Individual Violation that does not create an immediate danger to public health and safety. Where a violation is an Individual Violation that does not create an immediate danger to public health and safety, a written notice to correct the violation shall be issued for the first offense. For second and subsequent violations of the same code provision, the person responsible for the violation shall not have an opportunity to correct or otherwise remedy the violation prior to the administrative fine being imposed. Each person, firm or corporation shall be guilty of a separate offense for each day and everyday during any portion of which any violation of any provision is committed.

(d) Individual Violation that creates an immediate danger to the public health and safety. Where a violation is an Individual Violation that constitutes an immediate danger to the public health and safety, the property owner shall be provided notice to correct the violation within a maximum of two (2) hours from when the verbal or written notice was received. De-

pending upon the severity of the violation, if the violation is not corrected within the two hour time period, the City shall have the option to initiate summary abatement procedures under Section V-500-3.08 or impose the administrative fine and administrative citation provisions under Section V-500-8.00. Each person, firm or corporation shall be guilty of a separate offense for each day and everyday during any portion of which any violation of any provision is committed. (Ord. 124.27 (8), 8/2/05)

V-500-8.02

Each administrative citation shall contain the following information:

1. The date of the violation;
2. The address or a definite description of the location where the violation occurred;
3. The section of this Chapter violated and a description of the violation;
4. The amount of the fine for the code violation;
5. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
6. An order prohibiting the continuation or repeated occurrence of the violation described in the administrative citation;
7. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and
8. The name and signature of the citing enforcement officer. (Ord. 252 (part), 9/21/99)

V-500-8.03 Amount of Fines

(a) The amounts of the fines for code violations imposed pursuant to this Chapter shall be set forth in the schedule of fines established by resolution of the City Council.

(b) The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person within twelve months from the date of an administrative citation.

(c) The schedule of fines shall specify the amount of any late payment charge imposed for the payment of a fine after its due date. (Ord. 252 (part), 9/21/99)

V-500-8.04 Payment of the Fine

(a) The fine shall be paid to the City within thirty days from the date of the administrative citation.

(b) Any administrative citation fine paid pursuant to Section V-500-8.04(a) shall be refunded, with interest, if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

(c) Payment of a fine under this Chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation. (Ord. 252 (part), 9/21/99)

V-500-8.05 Hearing Request

(a) Any recipient of an administrative citation may contest that there was a violation of the Code or that he or she is the responsible party by completing a request for hearing form and returning it to the City within fifteen (15) days from the date of the administrative citation, together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed.

(b) A request for hearing form may be obtained from the City Clerk.

(c) The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.

(d) If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing. (Ord. 252 (part), 9/21/99)

**V-500-8.06 Advance Deposit Hardship
Waiver**

Any person who intends to request a hearing to contest that there was a violation of the Code or that he or she is the responsible party and who is financially unable to make the advance deposit of the fine as required in Section V-500-8.05 may file a request for an advance deposit hardship waiver at the time of filing the hearing request. (Ord. 252 (part), 9/21/99)

[Text continues on page 415]

CDBG FUNDING FY 2009/10

PUBLIC SERVICES

	Applicant	Program Description	2009-10 Approved Allocation	CDBG - R Qualifying Activity
1	Alum Rock Counseling Center	24/7 mobile crisis response and intervention counseling	\$5,000.00	
2	Catholic Charities	Long Term Ombudsman Prgm.	\$5,000.00	
3	Catholic Charities	Shared Housing/Single Parents	\$5,000.00	B
4	City of Milpitas-Recreation Srvcs. *	Recreation Assistance Program	\$16,717.08	
5	Community Technology Alliance	Homeless Management Information System	\$0.00	
6	Emergency Housing Consortium	Emergency Housing for Homeless	\$5,000.00	B
7	Filipino Youth Coalition	Prevention and intervention services for youth.	\$0.00	
8	Health Trust	Meals on wheels program	\$5,000.00	B and E
9	Live Oak Adult Day Services	Recreation, Companionship & Meals for Disabled Seniors	\$5,000.00	
10	Milpitas Food Pantry	Provide emergency food to very low income people.	\$11,249.11	B and E
11	Milpitas Unified School District	Special Education Services - Handicapped Teens	\$5,000.00	A
12	Next Door Solutions	Solutions to Domestic Violence	\$5,000.00	B and E
13	Project Sentinel	Tenant/Landlord Dispute Resol. & Fair Housing Assist.	\$0.00	
14	Santa Clara Family Health Foundation	Healthy Kids Program: Comprehensive Medical, Dental, & Vision	\$10,000.00	
15	Second Harvest Food Bank	Self Help Food Asst. Prog. For Very Low Income Seniors	\$5,555.56	B and E
16	Senior Adults Legal Assistance	Free Legal Services for Seniors in SC County	\$5,000.00	
17	Support Network for Battered Women	Domestic Violence Services	\$0.00	B and E
			\$88,521.75	

NON-PUBLIC SERVICES

	Applicant	Program Description	2009-10 Approved Allocation	CDBG - R Qualifying Activity
18	Milpitas Hsng Rehab Loan Prog *	Hsng Rehab Assist for Low & Very Low Income Homeowners	\$262,963.69	A and B
19	Rebuilding Together	Safety, accessibility repairs - very low income homeowners	\$24,444.44	A and F
20	San Jose Conservation Corps	Weatherization/Energy Eff. Rehab	\$5,000.00	A
21	Senior Housing Solutions	Acquisition 2nd Milpitas Residence Project	\$17,777.78	B and F
22	Terrace Gardens Sr Hsng Inc	Replace resident Kitchen cabinets/countertops	\$93,333.33	
			\$403,519.25	

* Adjusted to reflect final allocation

Qualifying Activities : Bold Type

Qualifying Activities

A) Preserving and creating jobs and promoting economic recovery, B) Assisting those most impacted by the recession, C) Providing investment needed to increase economic efficiency, D) Investing in transportation, environmental protection, or other infrastructure, E) Minimizing or avoiding reductions in essential services, F) Fostering energy independence