REGULAR

ORDINANCE NO. 124.27

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS REPEALING CHAPTER 30 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE, "SIGNS," AND REPLACING IT WITH A NEW CHAPTER 30 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE, "SIGNS"; AND AMENDING SECTION 1.15 OF TITLE V, CHAPTER 500 OF THE MILPITAS MUNICIPAL CODE, SECTION 63.07 OF TITLE XI, CHAPTER 10; AND ADOPTING FIVE NEW SECTIONS ADDING NEW DEFINITIONS FOR "CONTINUING VIOLATION" AND "INDIVIDUAL VIOLATION" AS SECTIONS 1.04-1, AND 1.05-1, RESPECTIVELY, OF TITLE V, CHAPTER 500; AND ADDING NEW SECTION 3.06 TO TITLE V, CHAPTER 500 TO PROVIDE FOR APPEAL OF THE DECISION BY THE CITY MANAGER AND HIS/HER DESIGNEE; AND AMENDING SECTION 3.07 TO TITLE V, CHAPTER 500 LIMITATION OF JUDICIAL ACTION; AND ADDING NEW SECTION 8.01-1 TO TITLE V, CHAPTER 500, EXPANDING ON THE AUTHORITY OF ENFORCEMENT OFFICERS TO ISSUE ADMINSTRATIVE CITATIONS; AND ADOPTING SECTION XI-10-2.26-8 CONTINUING VIOLATION; AND ADOPTING SECTION XI-10-2.43.5 INDIVIDUAL VIOLATION; AND AMENDING SECTION XI-10-63.07 PROVIDING AUTHORITY TO ISSUE ADMINISTRTIVE CITATIONS FOR VIOLATIONS OF THE ZONING ORDINANCE; AND ADOPTING SECTION XI-10-63.08 ESTABLISHING A PROCEDURE TO ISSUE ADMINISTRATIVE CITATIONS; AND ADOPTING SECTION XI-10-2.01-1 DEFINING THE TERM ABATE (AND RE-NUMBERING SUBSEQUENT SECTIONS IN DEFINITIONS); AND ADOPTING SECTION XI-10-2.26-2 DEFINING THE TERM CITY MANAGER; AND ADOPTING SECTION XI-10-2.37-.5 DEFINING THE TERM ENFORCEMENT OFFICER; AND ADOPTING SECTION XI-10-2.62-.5 DEFINING THE TERM OWNER/OCCUPANT; AND ADOPTING SECTION XI-10-2.67 (A) TO DEFINE THE TERM PROPERTY; AND ADOPTING SECTION XI-10-2.77 (C) DEFINING THE TERM UNREASONABLE PERIOD OF TIME; AND ADOPTING SECTIONS XI-10-63.09 THROUGH XI-10-63.09 (I) TO ESTABLISH AN ABATEMENT PROCEDURE; AND ADOPTING SECTIONS XI-10-63.10 THROUGH XI-10-63.10 (E) TO ESTABLISH A PROCEDURE TO ACCOMPLISH COST RECOVERY; AND ADOPTING SECTIONS XI-10-63.11 THROUGH XI-10-63.11 (B) TO ESTABLISH A LIEN PROCEDURE; AND ADOPTING SECTIONS XI-10-63.12 THROUGH XI-10-63.12 (B) RELATING TO INTEREST ON LIENS; AND ADOPTING SECTIONS XI-10-63.13 THROUGH XI-10-63.13 (C) MISCELLANEOUS.

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of July 5, 2005, upon motion by Councilmember Giordano and was adopted (second reading) by the City Council at its meeting of August 2, 2005, upon motion by _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose Esteves, Mayor

APPROVED AS TO FORM:

_____
Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

Section 1

Chapter 30 of Title XI of the Milpitas Municipal Code, "Signs," is hereby repealed in its entirety.

Section 2.

A new Chapter 30 of Title XI, to be titled "Signs," is hereby added to the Milpitas Municipal Code, to read as follows:

Chapter 30 SIGNS*

* Prior ordinance history: Ords. 124, 124.1, 124.2, 124.8, 124.9, 124.10, 124.11, 124.12, 124.13, 124.14, 124.15, 124.16, 124.18, 124.19, 124.20, 124.21 and 124.22.

Section 1 Purpose, Application, Notices

XI-30-1.01 Purpose and Intent

The City Council declares the purpose of this Chapter is to provide for regulation of all signs which are publicly displayed in the City of Milpitas. It is recommended that the safety of pedestrians and vehicles, protection against fire, and the enhancement of the outward appearance of the community are important factors in the general welfare of the people, and that accordingly reasonable control of such signs by ordinances is in the public interest. (Ord. 124 (part), 7/20/65)

XI-30-1.02 Application

The provisions of this Chapter are in addition to other requirements of the ordinances of the City of Milpitas and Milpitas Municipal Code imposed upon signs including, but not limited to the requirements of the following (and amendment thereto):

Ordinance No.	Chapter	Title	Common Name
38	10	XI	Zoning Ordinance
65	1	II	Building Ordinance

(Ord. 124.15 (1), 4/3/90; Ord. 124 (part), 7/20/65)

XI-30-1.03 Notices, Hearings, Abatement

Notices, hearings and abatement procedures herein provided shall be given and held in accordance with the provisions of the Standard Procedures Chapter of the Milpitas Municipal Code. (Ord. 124 (part), 7/20/65)

Section 2 Definitions

XI-30-2.01 General Definitions

For the purpose of this Code, certain abbreviations, terms, phrases, words and their derivations shall be construed as specified in this section. Words used in the singular include the plural, and the plural, the singular; the word "building" includes the word "structure." The word "shall" is mandatory. (Ord. 124 (part), 7/20/65)

XI-30-2.02 Abandoned Signs

Abandoned Signs shall mean any sign used for advertising purposes where the business it advertised has ceased operation for 90 days.

XI-30-2.03 A-Frame Sign

A-Frame Sign shall mean and include a sign that is portable, is capable of standing without support or attachment, and folds open in the form of an "A" or "sandwich-board" and is used for advertising purposes.

XI-30-2.04 Approved Plastics

Approved plastic materials shall be those specified in the U.B.C. Standard No. 52-1 which have a flamespread rating of 225 or less and a smoke density not greater than that obtained from the burning of untreated wood under similar conditions when tested in accordance with U.B.C. Standard No. 42-1 in the way intended for use. The products of combustion shall be no more toxic than the burning of untreated wood under similar conditions. (Ord. 124.8, 9/17/74; Ord. 124 (part), 7/20/65)

XI-30-2.05 Architectural Sign

Architectural Sign shall mean and include a sign used for advertising purposes which constitutes an integral part of a roof or marquee and is designed with an intent and purpose to relate to the architectural style of the main building.

XI-30-2.06 Area Identification Sign

Area Identification Sign shall mean and include a permanent sign which serves to identify an area.

XI-30-2.07 Balloon Sign

Balloon Sign shall mean and include any large (over 3 cubic feet in size) inflatable hot/cold air or helium balloon that is used as an advertising device for any business or promotional event.

XI-30-2.08 Banner Sign

Banner Sign shall mean and include a temporary sign composed of light weight, flexible, non-rigid material either enclosed or not enclosed in a rigid frame.

XI-30-2.09 Building Perimeter

Building perimeter shall mean the total exterior wall length for any and all buildings intended for human occupancy, as measured at the ground elevation. No second story or subsequent upper story areas shall be considered as a part of this calculation. (Ord. 124.23 (part), 6/15/99)

XI-30-2.10 Candidate

Any person, party, referendum, initiative or other ballot measure. (Ord. 124.23 (part), 6/15/99)

XI-30-2.11 Church/Religious Assembly Sign

Church/Religious Assembly Sign shall mean and include a sign that serves to identify a building as a Church or place of Religious Assembly.

XI-30-2.12 City

"City" shall mean the City of Milpitas. (Ord. 124.23 (part), 6/15/99)

XI-30-2.13 City Identification Sign

City Identification Sign shall mean and include a sign placed at the point of entry to the City of Milpitas for the purpose of informing a person that they are entering the City of Milpitas.

XI-30-2.14 Construction Sign

Construction Sign shall mean and include a sign placed on the property where site work, building construction and/or a tenant improvement within an existing building is in progress. The sign may denote that a business will be opening soon, the opening date, names of the architect, engineer, contractor, future business and lending agency.

XI-30-2.15 Continuing Violation

A Continuing Violation shall mean 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.

XI-30-2.16 Directional Sign

Directional signs shall mean a sign which guides and directs motorists to a specified destination in the most direct manner possible. (Ord. 124.23 (part), 6/15/99)

XI-30-2.17 Display Surface

Display surface is the area made available by the sign structure of building surface for the purpose of displaying the advertising message. (Ord. 124.23 (part), 6/15/99)

XI-30-2.18 Electric Sign

Electric sign shall mean any sign containing electrical wiring, but not including signs illuminated by an exterior light source. (Ord. 124.23 (part), 6/15/99)

XI-30-2.19 Erect

Erect shall mean to build, construct, attach, hang, place, suspend or affix. (Ord. 124.23 (part), 6/15/99)

XI-30-2.20 Freestanding Sign

Freestanding sign shall mean a sign which is supported by one or more uprights, poles, or braces in or upon the ground, or partially supported and attached to any building, other structure or foundation on the ground. (Ord. 124.23 (part), 6/15/99)

XI-30-2.21 Garage Sale Sign

A sign used primarily for the purpose of advertising a "garage sale" and/or "yard sale" at a residence. (Ord. 124.23 (part), 6/15/99)

XI-30-2.22 Grand Opening Sign

Grand Opening Sign shall mean and include banners, pennants, flags, balloons, and similar advertising devices when used only for bona-fide grand-opening functions, new ownership, name change or the reopening of a business that has completely closed for remodeling for at least two weeks.

XI-30-2.23 Graphic Panel (Freestanding)

A freestanding sign located within five (5) feet of the main building wall, which relates to the architecture of the building and depends primarily on a graphic image for delivering its advertising message. Graphic panels do not count as freestanding signs. The display area on graphic panels counts towards overall sign area. (Ord. 124.23 (part), 6/15/99)

XI-30-2.24 Individual Violation

An Individual Violation shall mean a non-continuous 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 Violations" for the purposes of this Chapter include, but are not limited to the placement of Balloon Signs without a permit or beyond the time permitted by a permit or the placement of a prohibited sign.

XI-30-2.25 Impact Resistive Plastic

Impact Resistive Plastic is any plastic material capable of resisting fifty (50) foot pounds of force as tested in accordance with ANSI/UL 972 Multiple Impact Test or any similar test procedure. (Ord. 124.23 (part), 6/15/99)

XI-30-2.26 Information Sign

Information Sign shall mean and include signs providing courtesy information or direction to the public without advertising the business products or services such as hours, entrance, exit, self-serve, credit cards, restrooms, telephone drive-up, or which serves to direct motorist and pedestrians on private property. (Ord. 124.23 (part), 6/15/99)

XI-30-2.27 Joint Use Sign

Joint Use Sign shall mean and include a freestanding sign for a commercial district under multiple ownerships where freestanding signs for each parcel for which signage is desired is infeasible. The commercial district shall be characterized by close proximity of the businesses and small parcel size. A common parking field and common vehicular circulation are encouraged.

XI-30-2.28 Non-Combustible Material

Non-combustible material is any material which will not ignite at, or below a temperature of one thousand two hundred (1200) degrees during an exposure of five (5) minutes, and which will not continue to burn or glow at that temperature. Tests shall be made as specified in U.B.C. Standard No. 4-1. (Ord 124.23 (part), 6/15/99)

XI-30-2.29 Marquee

Marquee is a permanent roofed structure, attached to, and support by the building and projecting beyond the main building. (Ord. 124.23 (part), 6/15/99)

XI-30-2.30 Multi-Use Structures

Any commercial, industrial, quasi public, or agricultural farm products sales use, containing five (5) or more stores or businesses on a single parcel of land. (Ord. 124.23 (part), 6/15/99)

XI-30-2.31 Non-Structural Trim

Non-structural trim shall mean the molding, battens, cappings, nailing strips, latticing, cutout, or letters and walkways which are attached to the sign structure. (Ord. 124.23 (part), 6/15/99)

XI-30-2.32 Off-Site Advertising Sign

Off-Site Advertising Sign shall mean any sign that advertises or informs about a business organization, event, goods, products, services or uses not available on the property upon which the sign is located. The term Off-Site Advertising Sign does not include Joint Use Sign, Temporary Tract Advertising Signs for subdivisions under construction in the City, Open House Directional Signs, Garage Sale Signs, Off-Site Directional Church/Religious Assembly/Institutional Signs, Off-site Pubic Information Signs, outdoor advertising structures as permitted by Chapter 14 of the Milpitas Municipal Code and off-site directional signs for purposes of identifying regional shopping centers per Section XI-30-4.02 of this Chapter.

XI-30-2.33 Off-Site Directional Church/Religious Assembly/Institutional Sign

Off-Site Directional Church/Religious Assembly/Institutional Sign shall mean and include signs erected by the City within the public right-of-way for the purpose of identifying the church/religious assembly/institution.

XI-30-2.34 Off- Site Public Information Sign

Off-Site Public Information Sign shall mean and include a sign that is placed proximate to a major city entry on privately owned property that is used to provide non-advertising information to the public.

XI-30-2.35 Open House Directional Sign

A sign, no larger than six (6) square feet in sign area per side, used primarily for the purpose of directing traffic to a house being offered for sale or lease. (Ord. 124.23 (part), 6/15/99)

XI-30-2.36 Other Advertising Structure

Other advertising structure shall mean any device erected or used for the same purpose as a sign, whether erected or used:

(1) Exclusively for advertising purposes, upon which any poster bill, printing, painting device or other advertisement or identification of any kind whatsoever may be placed, posted, painted, fastened or affixed.

(2) Exclusively for advertising purposes and including any spectacle, display or advertising statuary. (Ord. 124.23 (part), 6/15/99)

XI-30-2.37 Permanent Sign

Permanent sign shall mean and include every sign except temporary sign as defined herein. (Ord. 124.23 (part), 6/15/99)

XI-30-2.38 Person

Person shall mean and include any natural person, firm, partnership, association, corporation, company or organization of any kind. (Ord. 124.23 (part), 6/15/99)

XI-30-2.39 Political Signs

A political sign is a sign which is designated to influence the action of the voters, and election or defeat of a candidate for the nomination or election to any public office or a measure appearing on the ballot at any national, state, district or local election. (Ord. 124.23 (part), 6/15/99)

XI-30-2.40 Portable

Portable shall mean and include capable of being borne or carried, easily transported, or conveyed without difficulty.

XI-30-2.41 Portable Sign

Portable Sign shall mean and include a sign that is portable and capable of being borne or carried, easily transported, or conveyed without difficulty, is capable of standing without support or attachment, is unattached to any structure, and is used for advertising purposes.

XI-30-2.42 Projection

Projection means the distance by which a sign extends over public property or beyond the building line. (Ord. 124.23 (part), 6/15/99)

XI-30-2.43 Projecting Sign

Projecting sign shall mean a sign other than a wall sign which projects from and is supported by a wall of a building or structure. (Ord. 124.23 (part), 6/15/99)

XI-30-2.44 Public Information Sign

Public Information sign shall mean a sign erected for the sole purpose of displaying advertising for community activities and/or identification symbols or plaques for civic organizations or service clubs. (Ord. 124.23 (part), 6/15/99)

XI-30-2.45 Public Street Frontage

A publicly owned street immediately adjacent to the parcel, for purposes of sign area and height calculations. Public streets for which the parcel does not have access rights are not included for purposes of any sign calculations. (Ord. 124.23 (part), 6/15/99)

XI-30-2.46 Regional Shopping Center

Any commercial development on one (1) or more parcels of land which are contiguous or across from a right-of-way which contains a gross land area of at least thirty (30) acres or a gross building area of at least 200,000 square feet. Current regional shopping centers are McCarthy Ranch Marketplace, the Town Center shopping center, and the Great Mall and its out-parcels zoned General Commercial. (Ord. 124.23 (part), 6/15/99)

XI-30-2.47 Roof Sign

Roof sign shall mean a sign erected upon or above a roof or a part of a parapet of a building or structure. (Ord. 124.23 (part), 6/15/99)

XI-30-2.48 Scoreboard Sign

Scoreboard Sign shall mean and include a sign located on scoreboard structures located in an adult or youth outdoor playing field on public property and shall be for products or businesses available to persons of all ages.

XI-30-2.49 Shopping Center

Any commercial development containing five (5) or more stores or businesses on one (1) or more parcels of land operating as an integrated use and having a gross parcel area of five (5) or more acres. (Ord. 124.23 (part), 6/15/99)

XI-30-2.50 Shopping Center Identification Sign

Shopping Center Identification Sign shall mean and include a sign located on the site of a regional shopping center that states the name of the regional shopping center.

XI-30-2.51 Sign

Sign shall mean and include every announcement, declaration, demonstration, display, illustration insignia, surface or space when erected or maintained out of doors in view of the general public for identification, advertisement or promotion of the interests of any person. (Ord. 124.23 (part), 6/15/99)

XI-30-2.52 Sign Area

The area of a sign shall be calculated to include all lettering, wording, and accompanying designs or symbols, together with any background of a different material or color than the remainder of the wall of the building to which is affixed or upon which it is painted.

Where the sign consists of individual letters or symbols, the area shall be considered to be that of the smallest rectangle, circle, square, or triangle which can be drawn to encompass all of the letters.

Provided however, that where such individual type letters or symbols are separated more than thirty-six (36) inches from each other, those letters or symbols shall be calculated separately.

If the sign has more than one (1) advertising surface, the sum of all the areas of all such surfaces shall be the area of the advertising surface of such sign except that if two (2) surfaces on the same face in opposite directions (i.e., the relative angles between the directions they face is 180 degrees) and the distance between such two (2) surfaces is not more than twenty-four (24) inches, then the area of only one of the two surfaces (the largest if they are not equal) shall be included in the computation. (Ord. 124.23 (part), 6/15/99)

XI-30-2.53 Sign Surface

Sign surface shall mean the surface of the sign upon, against or through which the message is displayed or illustrated. (Ord. 124.23 (part), 6/15/99)

XI-30-2.53.5 Statuary Sign

Statuary Sign shall mean statuary used for advertising purposes or representing the logo of a business.

XI-30-2.54 Temporary Sign

Temporary sign shall mean and include any sign, banner, flag, valance, pennant, streamer, whirligig or advertising display, constructed of cloth, canvas, fabric, cardboard, plywood or other light material with or without a frame, whether attached or portable, and designed or intended to be displayed for a short period of time.

XI-30-2.55 Temporary Promotional Sign

Temporary Promotional Sign shall mean and include temporary Balloon Signs, banners, and similar advertising devices when used only for special promotional events.

XI-30-2.56 Temporary Tract Advertising Sign

Temporary Tract Advertising Sign shall mean and include a uniformly designed sign which advertises a residential development.

XI-30-2.57 Vehicle-Mounted Sign

Vehicle-Mounted Sign shall mean and include a sign, used for the purpose of advertising, larger than three (3) feet by three (3) feet mounted on, attached to or capable of being borne or carried, easily transported or conveyed without difficulty by a vehicle, where that vehicle is parked on public or private property. This definition does not include signs on delivery vehicles in the act of making a delivery or signs on vehicles parked on residential driveways or public streets.

XI-30-2.58 Wall Sign

Wall Sign shall mean any sign painted on, attached to or erected against the wall of a building or structure. (Ord. 124.23 (part), 6/15/99)

XI-30-2.59 Window Sign

Window Sign shall mean and include a sign attached to, suspended behind, placed or painted upon, the window or glass door of a building, which is intended for viewing from the exterior of the building.

Section 3 General Regulations

XI-30-3.01 Review and Approval

Permitted signs may be erected or painted upon posts, poles, buildings or structures subject to compliance with the following provisions:

(a) Hillside district. The City Council, upon recommendation by the Planning Commission, shall be empowered to approve, conditionally approve or disapprove any

"S" Zone Application or Use Permit for any sign(s) proposed in the Hillside district, subject to the provisions of Section XI-10-45.09, and for any signs proposed on designated historical or cultural resource buildings or sites, subject to the provisions of Section XI-4-10.00.

(b) Sign Program. The Planning Commission shall be empowered to approve, conditionally approve or disapprove a "S" Zone Application for a sign program(s) pursuant to Section XI-30-4.04, Sign Programs.

(c) Signs exceeding six (6) feet. The Planning Commission shall be empowered to approve, conditionally approve or disapprove freestanding signs exceeding six (6) feet in height, under the provisions of the Conditional Use Permit, as provided by Section XI-30-3.10(h)6 of this Chapter.

(d) The Planning Commission Subcommittee shall be empowered to approve, conditionally approve or disapprove the following signs, under the provisions of Section XI-10-42.10-2: new building signs for single-tenant structures and freestanding signs up to six (6) feet in height, as measured from the closest public sidewalk or curb, on sites which are not in the Hillside District or on designated historical or cultural resource buildings or sites.

(e) The Planning staff shall be empowered to approve, conditionally approve or disapprove the following signs, under the provisions of Section XI-10-42.10-2: signs which conform to an approved sign program and building signs which replace previously approved building signs, provided sign type, size and location are unchanged, on sites which are not in the Hillside District or on designated historical or cultural resource buildings or sites. (Ord. 124.23 (part), 6/15/99)

XI-30-3.02 Maximum Permissible Sign Area

XI-30-3.02(a) Commercial, Industrial, Quasi-Public, Agricultural Sales

The maximum permissible total sign area for commercial, industrial, quasi-public or agricultural farm product sales will conform to the following standard:

(1) The total aggregate area of all signs permitted on any building site or property shall not exceed one (1) square foot of sign for each two (2) lineal feet of building perimeter on the subject parcel or not exceed two (2) square feet of sign for each one (1) lineal foot of public street frontage, at the applicant's discretion.

(a) For buildings or uses containing more than one (1) business, the allowable sign area as defined in Section (1) above shall be distributed to each business proportionately to the floor area of the subject business to the total floor area for all leasable structures on the parcel or site.

(b) Provided further that in the case of a shopping center or other multi-use structure containing five (5) or more stores, sign area to be allowed on those stores which have frontage on an interior pedestrian mall shall be calculated as one (1) square foot of sign are for each one (1) lineal foot of building frontage for use only on that frontage facing said area.

XI-30-3.02(b) Maximum Sign Area in Residential Zones

Sign area in Residential Zones shall comply with the following requirements:

(1) "R1" (Single Family Residential) and "AR" (Agricultural Residential) Zones: Permanent signs erected for the purpose of announcements or nameplates shall not exceed one (1) square foot.

(2) "R2" (Two Family Residential) District and "R3" (Multiple Family Residential) District: Permanent signs erected for permitted uses shall not exceed ten (10) square feet.

(3) Conditional Uses in any Residential Zone (except Church/Religious Assembly Signs which are provided for in Subsection XI-30-3.10 will be allowed sign area not exceeding one (1) square foot of sign area for each three (3) lineal feet of public street frontage, provided, however, that this sign area shall not, in any case, exceed a maximum of either thirty-two (32) square feet for Valley Floor Residential Zones or twenty-four (24) square feet in the designated Hillside.

XI-30-3.02(c) Limitations on Public Street Frontage.

Public street frontage with non-access rights or no immediate direct access, such as flood control channels, but excluding landscaped planter areas, shall not be included in computing public street frontage for purposes of sign area calculations. Refer to Section XI-30-4.02(b) of this Chapter for additional information relating to regional shopping centers unless permitted pursuant to a sign program. (Ord. 124.23 (part), 6/15/99)

Section XI-30-3.03 (reserved)

XI-30-3.04 Design Guidelines

In considering the appropriateness of the design proposed for any sign as provided in this Section, the following criteria shall be utilized by the Planning Commission, Planning Commission Subcommittee and Planning staff:

The following factors shall be considered in the review of the design of each proposed sign:

1. The relationship of the sign to the space on the building where the sign is to be located.
2. Relationship of the location of the sign to all facades of all buildings on the site.
3. Compatibility of materials, architecture, design, and continuity with other signs on the building.
4. Illumination of the sign as it relates to other signs on the subject building, other light sources, competition and interference of light sources and intrusion of light into residential areas
5. Visibility and legibility (letter height and legibility, contrast-background relationship, placement and location).
6. Impact on other immediate signs in terms of visibility, legibility, and scale.
7. Traffic conditions, including but not limited to, traffic safety and circulation, visibility, road width, curb cuts, or driveway indentations, median, proximity of major intersections, signals or stops, average traveling speed or any other natural physical obstruction.
8. The proximity of the sign to residential districts.
9. Relationship of the height of the sign to the height of the building at that location.
10. Quantity of other signs in the vicinity of the subject sign on or off of the subject parcel.
11. Impact on visibility of other signs in the vicinity of the subject sign.
12. Other such factors that the Planning Commission, Planning Commission Subcommittee and Planning staff shall determine as relating to the impact of the sign to the general environment.

Each proposed sign shall be reviewed for conformity to the following criteria:

1. The sign shall relate to the architectural design of the building. An attractive scale between the sign, the building and the immediate surrounding buildings and signs shall be maintained.
2. To the extent feasible, a sign shall be graphic with design emphasis on simplicity, style, trademark, business identification and symbol. Wording shall be an integral part of the overall design.
3. All light sources shall be adequately diffused or shielded.
4. The sign's supporting structure shall be as small in density and as simple as is structurally safe.
5. Multiple signing on a single-faced building shall be reviewed for coordination of all signs architecturally and aesthetically.
6. Sign faces should be constructed of non-brittle, non-yellowing Polycarbonate material or superior.
7. Neon, bare fluorescent tubes, incandescent bulbs, light emitting diodes (LEDs) and similar devises are not permitted except pursuant to "S" Zone approval.
8. Signage shall not obstruct pedestrian circulation.
9. Signs should be an integral part of the design of the storefronts of mixed-use buildings.
10. Sign letters and materials should be professionally designed and fabricated.

11. Signs should be constructed using high-quality materials such as metal, plastic, stone and wood.
12. Exposed conduit and tubing should be mitigated so that they are inconspicuous.
13. Exposed transformers are prohibited.
14. Projecting signs mounted perpendicular to the façade of the building should be located at least eight (8) feet above the sidewalk. The outside edge should be no more than five (5) feet from the face of the building.
15. While bilingual signs are allowed, the size of English lettering should be at least equal to the size of letters of another language.
16. The business name and address shall be displayed on the tenant space if located in a multi-tenant building or on the building or property for a single occupant building.

XI-30-3.05 Impact Resistive Plastic

(1) Impact Resistive Plastic shall be used on all internally illuminated signs utilizing plastic sign faces.

(2) Whenever a plastic internally illuminated sign face, advertising copy or message becomes damaged and is to be replaced, said sign face shall be replaced with a sign face constructed of impact resistive plastic, as defined herein. (Ord. 124.23 (part), 6/15/99)

XI-30-3.06 Off-Site Advertising Signs Prohibited

All signs except Joint Use Signs, Temporary Tract Advertising Signs, for subdivisions under construction in the City, Open House Directional Signs, Garage Sale Signs, Off-Site Directional Church/Religious Assembly/Institutional Signs, Off Site Pubic Information Signs, Outdoor Advertising Structures as permitted by Chapter 14 of the Milpitas Municipal Code and Off-Site Directional Signs for purposes of identifying regional shopping centers per Section XI-30-4.02 of this Chapter, shall be erected only upon the site occupied by the persons or business sought to be identified or advertised by such signs. It is the intent of this limitation to prohibit the use of exterior signs for the general advertisement of products, services or other matters having no relation to the site upon which they are placed. Signs shall not extend over street or other rights-of-way except as provided for elsewhere in this Chapter.

(a) Provided further, that off-site public information signs may be permitted by the Planning Commission when said signs are located proximate to a major entry to the City and on privately owned property pursuant to Section XI-30-3.10(m).

(b) Provided further, that any church, religious assembly or institution may request up to two (2) off-site directional signs to be located by the City within the public right-of-way pursuant to Section XI-30-3.10.l.

XI-30-3.07 Advertising Prohibited on Public Property

Prohibition. No merchandise shall be displayed and no person shall mark, post, paste, paint, print, nail, tack, or otherwise fasten or leave a card, banner, handbill, sign, sticker, poster, or advertisement or notice of any kind or cause the same to be done, on any real or personal property including, but not limited to any street, curb, sidewalk, alley, billboard, fence post, tree, pole, hydrant, bridge, real property or personal property or other structure within the corporate limits of the City of Milpitas, except as may be required by law.

Violation. Any violation of the above named items erected upon public property in violation of the provisions hereof may be removed and destroyed summarily by any City officer or employee. Signs so confiscated may be redeemed within ten (10) days on payment by the owner of costs of removal. The minimum charge for removal of any sign shall be Ten Dollars ($10.00) per sign. Any sign not claimed within ten (10) days of removal shall become the property of the City.

Exceptions. Provided further, free-standing open house directional signs and garage sale signs may be placed within the public right-of-way pursuant to Sections XI-30-3.10 (o) and XI-30-3.10 (i) respectively.

XI-30-3.08 Signs for Non-Conforming Uses

Signs for non-conforming uses and businesses may be permitted subject to the following:

(a) All signs shall require the review and approval of the Planning Commission under the provisions of a Conditional Use Permit.

(b) The total sign area allowed for any non-conforming use or parcel of land shall be calculated as specified in Section XI-30-3.02 of this Chapter but in no event shall the total sign area exceed sixty (60) square feet.

(c) The maximum height for any freestanding sign shall not exceed ten (10) feet. (Ord. 124.23 (part), 6/15/99)

XI-30-3.09 Non-Conforming Signs

(a) Notwithstanding any other provision of this Chapter:

(1) All signs presently existing and not in conformity with the provisions of this Chapter shall conform to the provisions of this Chapter or be removed by December 31, 1984.

(2) Any sign which shall become non-conforming because of an amendment to this Chapter shall be made to conform to the provisions of this Chapter as amended or be removed no later then ten (10) years from the date of said amendment.

(3) Without limitation to any other provision of this Chapter or any other provision of the Milpitas Municipal Code, a non-conforming sign shall not be added to or enlarged unless such sign, including such addition and enlargement, is made to conform to all of the regulations applicable to said sign at the time of said addition or enlargement. Repairs and alterations may be made to a non-conforming sign provided that any structural alteration (other than those required by law) shall not be made unless such sign, including such alteration, is made to conform to all the regulations applicable to said sign at the time of said addition or enlargement. Replacement of the face of a sign shall not be considered to be a structural alteration. No nonconforming sign shall be moved in whole or in part to any other location on the parcel of its location unless said sign is made to conform to all of the regulations applicable to said sign at the time of said moving.

(b) Maintenance of Signs

Nothing herein contained shall be construed to vary the provisions of this Chapter relating to the maintenance of signs in good condition. It is the intent of this Chapter that non-conforming signs shall be maintained in good condition until amortized by the provisions of this section. Signs which are not maintained in good condition (whether conforming or non-conforming) shall be subject to abatement in accordance with the other provisions of this Chapter and this section shall not be construed to be a bar thereto. (Ord. 124.23 (part), 6/15/99)

XI 30-3.10 Signs Subject To Permits. The following signs shall be allowed pursuant to the permits required in the Zoning Districts as indicated in Matrix A and shall be regulated as follows:

(a) Architectural Sign. An Architectural Sign shall constitute an integral part of a roof or marquee and be designed with an intent and purpose to relate to the architectural style of the main building. An Architectural Sign must have a minimum clearance of ten feet from the ground.

(b) Area Identification Sign. An Area Identification Sign shall be erected subject to the following conditions:

(1) The sign surface area shall not exceed twenty-five (25) square feet in Residential areas and sixty (60) square feet in Commercial and Industrial areas.

(2) The materials utilized for sign construction and sign support shall not require extensive maintenance or upkeep..

(c) Balloon Sign. A Balloon Sign shall be allowed pursuant to the provisions of a Temporary Promotional Sign for the following:

(1) Community-wide events (an event that either promotes and/or benefits the entire City and has been approved by the City Council (such as Art and Wine Festival, Harvest Festival and the like) or when the City Council has authorized a public street closure for an event).

(2) Grand openings (when first opened or after a significant remodeling) for a business.

(3) Promotional events for individual businesses or group of businesses on a parcel.

Balloon Signs shall be subject to the following regulations:

(1) Only one balloon per event.
(2) The maximum height of a Balloon Sign shall not exceed 50 feet in height above grade.
(3) An application for an Administrative Permit for a Balloon Sign must be submitted to the Planning Division at least three days prior to displaying the balloon.
(4) For community wide events, the balloon may be installed after five o'clock p.m. the day preceding the event, and must be removed prior to ten o'clock a.m. the day after the event.
(5) For grand openings and promotional events, the balloon shall be displayed for a maximum of 30 days for the first such event for a business and a maximum of 15 days for all subsequent events for a business.
(6) One sign may be attached to the balloon to identify the name of the shopping center, business, activity or event.
(7) No other smaller balloons shall be attached to the balloon or its supporting or secure lines.
(8) The balloon shall be securely mounted to the ground or a roof.
(9) The balloon shall not move by any other means than normal wind current.
(10) These regulations do not apply to balloons used in residential areas for non-commercial purposes.
(11) Display of balloon signs is limited to 4 times per calendar year for each business. Display occurrences shall be interrupted by a minimum of 30 days.

(d) Banner Sign. A Banner Sign shall not be larger than 60 square feet in size, securely attached to a building or pole and shall be located on the premises of the business it advertises.

(e) Church/Religious Assembly Sign. A Church/Religious Assembly Sign. A Church or Religious Assembly shall be allowed a total sign area not to exceed one hundred (100) square feet per parcel. The maximum square footage for any individual sign, either a wall sign or freestanding sign, shall not exceed a total of fifty (50) square feet. The height of any freestanding sign shall be regulated by Sections XI-30-3.10(h).

(f) City Identification Sign. Permanent City identification signs erected on private property do not count toward the maximum sign area limits, nor the maximum number of freestanding signs allowed on a site.

(g) Construction Sign. Construction Signs:

(1) Shall have a maximum height of eight (8) feet when freestanding

(2) Shall be constructed pursuant to an approved Building Permit if over six (6) feet in height.

(3) Shall require an 'S' Zone Approval by the Planning Commission if over six (6) feet in height.

(4) Shall have a maximum area of thirty-two (32) square feet.

(5) May indicate the opening date, architect, engineer, contractor, future business or lending agency

(6) Shall only be placed on the site of work under construction.

(7) Shall be limited in number to a maximum of two (2) per street frontage to consolidate identification of companies associated with work being performed on the property. However, for tenant improvement work there shall be a limit of two (2) signs per property.

(8) May only be placed after issuance of a building permit for the main structure and must be removed upon final occupancy of the main structure.

(h) Freestanding Signs. Freestanding signs shall be erected subject to the following:

(1) Landscaped planter. Freestanding signs shall be erected in on-site landscaped planter areas.

(2) Number of freestanding signs on a parcel. There may be one (1) freestanding sign for each individual parcel's public street frontage. If the frontage exceeds three hundred (300) feet one (1) additional sign shall be allowed. The height of freestanding signs shall be determined from Section XI-30-3.10.h.7 and 8.

(3) Number of freestanding signs in a shopping center. In the case of a shopping center, the number of freestanding signs shall be determined as specified in section (h)(2) above, and any business within the shopping center may be advertised on any freestanding sign allocated to that shopping center as provided in that Section.

(4) Square footage deducted from total. Any square footage of sign placed on a freestanding sign shall be deducted from the total amount of allowable sign area specified in Section XI-30-3.02 above.

(5) Approval of freestanding signs up to six (6) feet in height. Freestanding signs up to six (6) feet in height shall be approved as provided in Section XI-30-3.01 above.

(6) Approval of freestanding signs over six (6) feet in height. Freestanding signs over six (6) feet in height, including their location and architectural design (not structural) of the supporting sign structure shall be reviewed after notice and hearing by the Planning Commission under the provisions of a Conditional Use Permit. The Commission shall be empowered to approve, conditionally approve or disapprove any Use Permit for a freestanding sign. The following factors shall be considered by the Planning Commission in making its decision:

(a) Height and size of sign.

(b) Structure of sign.

(c) Illumination of sign.

(d) Proximity to residential districts.

(e) Relationship of height and size of sign to that of parcel.

(f) Density of other signs in vicinity.

(g) Impact of other signs in vicinity.

(h) And such other factors that the Planning Commission shall determine as relating to the impact of the sign to the environment.

(7) Freestanding Sign Height in Non-Residential Zones. One (1) foot of height to a maximum of twenty-five (25) feet for each eight (8) feet of public street frontage. If a public street frontage exceeds three hundred (300) feet, then the height of the second freestanding sign shall be determined as described above, using only the public street frontage in excess of three hundred

(300) feet. Any freestanding sign proposed under Section XI-30-3.10.(h).6 above may be reduced in height from the maximum twenty-five (25) foot height limit as part of the approval process specified in Section XI-30-3. 3.10.(h).6 Refer to Section XI-30-4 of this Chapter for additional information.

(8) Freestanding Sign Height in Residential Zones as a Conditional Use. One (1) foot of height to a maximum of twenty-five (25) feet for each twenty-five (25) feet of public street frontage, except those freestanding signs on any parcel of land located in the designated Hillside which shall, in no case, exceed a height of four (4) feet measured from a warped plane parallel to the natural grade. Refer to Section XI-30-4.05 of this Chapter for additional requirements regarding Hillside signage.

(9) Computing street frontage. Public street frontage with non-access rights or no immediate direct access such as flood control channels, but excluding landscaped planter areas, shall not be included in computing public street frontage, for purposes of determining number of freestanding signs or sign height.

(10) Height. All freestanding sign heights shall be measured from grade level of the closest public sidewalk, curb or public street.

(i) Garage Sale Sign. Garage Sale Signs:

(1) Shall be no larger than six (6) square feet in sign area per side.

(2) Shall not be placed within the vehicular or pedestrian traveled portion of the public right-of-way, except as allowed under (3) below.

(3) May be placed within the public right-of-way in the following manner: First, in the unpaved, parkstrip area between the face of the curb and the public sidewalk, however, only in the intersection area between the end of the curb return and that point along the curbline that is fifteen (15) feet distant from the end of the curb return. If no such parkstrip, or other paved or unpaved area in the public-right-way exists for the alternative placement of the sign so as to minimize intrusion upon the four feet minimum handicap accessible pathway, then said sign may be placed on the sidewalk as above within the public right-of-way, provided that the width of the pedestrian and handicap accessible pathway shall not be reduced by the sign placement to less than four feet.

(4) Shall not be placed:

a. In any curb return.

b. In any bus or light rail stop zone.

c. Within two feet of any driveway or curbcut access ramp.

d. Between light rail tracks and curb.

e. Adjacent to or within four feet of any disabled parking zone.

f. On any median strip.

g. If over three feet tall within a "Line of Sight Triangle" which shall mean a triangle of land formed by two intersecting streets, where two sides of the triangle consist of the curblines of the intersecting streets and the third side of the triangle is a straight line drawn between points on each curbline located forty-five feet from the intersection where the prolongation of the curblines meet.

(5) Shall not be attached in any manner to any other structure, such as trees, lampposts, streetlights, utility poles, utility cabinets, street or traffic signs, benches, hydrants and mailboxes if said sign is placed in the public right-of-way.

(6) Said signs shall only be allowed on Saturdays, Sundays and holidays.

(7) Shall be limited to two per garage sale per intersection.

(j) Grand Opening Sign. Grand-Opening Signs:

(1) Are permitted when used for bona-fide grand-opening functions after a business' initial occupancy, new ownership, name change or the reopening of a business that completely closed for remodeling for at least two weeks.

(2) Are allowed for a maximum of thirty (30) consecutive calendar days from the start date noted on the Administrative Permit.

(3) Shall only be displayed at the business for which the grand opening will occur.

(j) Graphic Panel Sign. Graphic Panel Signs:

(1) Shall be located within five (5) feet of the main building wall.

(2) Shall relate to the architecture of the building and depend primarily on a graphic image for delivering their advertising message.

Note: Graphic panels do not count as freestanding signs. The display area on graphic panels counts towards overall sign area.

(l) Joint Use Sign.

(1) A Joint Use Sign shall be approved pursuant to a Sign Program by the Planning Commission.

(2) A Joint Use Sign shall only be approved for a commercial district under multiple ownerships where freestanding signs for each parcel for which signage is desired is infeasible.

(3) The commercial district shall be characterized by close proximity of the businesses and small parcel size. A common parking field and common vehicular circulation are strongly encouraged.

(m) Off-Site Directional Church/Religious Assembly/Institutional Sign

(1) Any church, religious assembly or institution may request up to two (2) Off-Site Directional Church/Religious Assembly/Institutional Signs to be located by the City within the public right-of-way.

(2) These signs shall only include the name of the church, religious assembly or institution in letters not exceeding four (4) inches in height and an arrow specifying the appropriate direction.

(3) Requests for such signs shall be made in writing by an authorized representative of the church, religious assembly or institution and shall include the general location desired for said signs.

(4) The City Manager, or his or her designee, shall determine the precise location and sign design based on good traffic engineering practice, and shall provide for erection of the signs.

(5) An Administrative Permit will be required for such signs.

(n) Off-Site Public Information Signs:

(1) May be permitted by the Planning Commission pursuant to a Conditional Use Permit when said signs are located proximate to a major entry to the City and on privately owned property.

(2) Shall be of a size, and shall be located, as determined by the Conditional Use Permit.

(o) Open House Directional Signs:

(1) Shall be no larger than six (6) square feet in sign area per side.

(2) Shall not be placed within the vehicular or pedestrian traveled portion of the public right-of-way, except as allowed under (3) below.

(3) May be placed within the public right-of-way in the following manner: First, in the unpaved, parkstrip area between the face of the curb and the public sidewalk, however, only in the intersection area between the end of the curb return and that point along the curbline that is fifteen (15) feet distant from the end of the curb return. If no such parkstrip, or other paved or unpaved area in the public-right-way exists for the alternative placement of the sign so as to minimize intrusion upon the four feet minimum handicap accessible pathway, then said sign may be placed on the sidewalk as above within the public right-of-way, provided that the width of the pedestrian and handicap accessible pathway shall not be reduced by the sign placement to less than four feet.

(4) Shall not be placed:

a. In any curb return.

b. In any bus or light rail stop zone.

c. Within two feet of any driveway or curbcut access ramp.

d. Between light rail tracks and curb.

e. Adjacent to or within four feet of any disabled parking zone.

f. On any median strip.

g. If over three feet tall within a "Line of Sight Triangle" which shall mean a triangle of land formed by two intersecting streets, where two sides of the triangle consist of the curblines of the intersecting streets and the third side of the triangle is a straight line drawn between points on each curbline located forty-five feet from the intersection where the prolongation of the curblines meet.

(5) Shall not be attached in any manner to any other structure, such as trees, lampposts, streetlights, utility poles, utility cabinets, street or traffic signs, benches, hydrants and mailboxes if said sign is placed in the public right-of-way.

(6) Said signs shall only be allowed on Saturdays, Sundays and holidays.

(7) A maximum of two signs shall be located at a given intersection for each property advertised.

(p) Political Signs

(1) Intent. Political signs are a necessary part of our political life before an election. After the election is over, political signs become litter, create a health and safety problem and encourage blight. It is the purpose of these regulations to provide for their prompt removal after election.

(2) Regulations. Except as otherwise authorized in this Section, political signs and persons posting political signs shall meet the following requirements:

(a) Scope of Regulations: Nothing contained in this Chapter shall be construed to regulate the content of any political sign.

(b) Exemption for Political Signs: Political signs shall not be included in the maximum sign area permitted for any site or use.

(c) Notification Procedures: Any person or group erecting political signs as defined in Section XI-30-2.34 of the Sign Ordinance, shall provide the Milpitas City Clerk a notice in writing, either by registered mail or in person, including the name, address and telephone number of the person or group responsible for erecting or removing the political sign. The notice shall be provided prior to erecting any political signs.

(d) Removal: The responsibility for removal shall be that of the person or group identified in the notice given pursuant to Section XI-30-3.10.(o).2.c of this Chapter. All political signs shall be removed within fifteen (15) days following the election or elections to which the political sign pertains. Any political sign that is not removed within this time period is declared a public nuisance. No notice need be given by the City to that person or group to remove said sign. If the responsible person or group fails to remove any political sign, the owner of the land shall be responsible for its removal provided the owner shall be given fifteen (15) days' prior notice in writing by the City to remove said sign. Notice hereunder shall be given personally or by certified mail addressed to the owner of the land as shown on the last equalized assessment roll of the County of Santa Clara. In the exercise of the remedies provided by law or by this Chapter, City shall not be required to proceed against the property owner before proceeding against the person or group nor shall it be required to proceed against the person or group as a condition to proceeding against the landowner.

(e) Allowable Locations: Political signs shall be permitted in any zoning district on private property without permit provided that they shall conform to all the provisions of this Chapter.

(i) In residential zoning districts, no such sign shall project above the height or from the sides of the dwelling or block access to or from any door or window and every such sign shall be placed in a manner to secure it from being blown or falling down.

(ii) No political sign shall be erected on trees, fence posts, or public utility poles or located within any public right-of-way. No political sign erected on private property shall be placed within the traffic safety visibility area at the intersection of any street.

(iii) No political sign shall be erected in such a manner that will, or reasonably may be expected to, interfere with, obstruct, confuse or mislead traffic. No political sign shall be erected in a manner that will interfere with pedestrians so as to constitute a hazardous condition. No political sign shall be erected which has less horizontal or vertical clearance from any public utility lines than is prescribed by the State of California, or rules and regulations duly promulgated by agencies thereof.

(f) Allowable Size and Height: The following limitations and requirements shall apply:

(i) The maximum size of political signs shall be no more than thirty-two (32) square feet in all zoning districts.

(ii) The maximum height of any political sign placed in all zoning districts shall be six (6) feet, measured from the ground level to the top of the sign.

(3) Remedies. Without limitation to the remedies authorized by law or by this Chapter for the enforcement of this Chapter, City may exercise one or more of the following remedies which shall be cumulative to all other remedies:

(a) Enter on vacant property and abate the nuisance.

(b) Enter on occupied property with the consent of the owner and occupant thereof and abate the nuisance.

(c) After sending each candidate or landowner a 15 day prior notice, the City may remove any sign in violation of this Section and shall charge a fee of $25.00 per sign for the reasonable cost of abatement. The $25.00 fee shall also be assessed against the candidate for all signs removed by City staff which are installed or posted contrary to the provisions set forth in Section XI-30-3.10.(o).2.e. The City shall demand payment for the cost of abatement from the candidate or the owner of land or both and institute legal proceedings for the collection thereof.

(d) Abate the nuisance and impose a charge therefore on the land pursuant to the provisions of Chapter 2, Title II of the Milpitas Municipal Code.

(e) Institute a civil action for abatement of the nuisance.

(f) Institute a criminal proceeding against candidate or landowner, or both, for violation of the provisions of this Chapter.

(g) Abated Sign Materials: Materials from signs abated under this Chapter shall be disposed of as rubbish by the official abating said signs.

(q) Projecting Sign

(1) Clearance of Projecting Signs. Projecting Signs shall have a clearance of eight (8) feet above the ground and fourteen (14) feet above a driveway, alley, or other vehicular access way.

(2) Location of Projecting Signs. Projecting Signs shall only be located on the middle one-third of the front wall of a building. This requirement may be modified by means of an "S" Zone Amendment.

(3) Number of Projecting Signs. Only one Projecting Sign shall be permitted for each business located on the site.

(4) Projecting Sign Areas. A Projecting Sign shall have a maximum size of sixteen (16) square feet per side unless increased pursuant to an "S" Zone Amendment.

(5) Projecting Sign Projection Limit. Projecting Signs shall not extend from the front wall to which they are attached more than eight (8) feet unless modified by an "S" Zone Amendment.

(6) Projecting into a public right-of-way. No such sign shall project into a public right-of-way.

(r) Public Information Sign

(1) A Public Information Sign shall be located at a prominent entry to the City of Milpitas or a significant location in the City where it will be visible to large numbers of citizens.

(2) The location, design and size of the sign will be determined by the "S" Zone Amendment.

(s) Scoreboard Sign

(1) Scoreboard Signs may be located on scoreboard structures located in an adult or youth outdoor playing field on public property.

(2) The Planning Commission may after notice and hearing, permit advertising signs to be located on the scoreboard subject to a conditional use permit.

(3) Advertising on any scoreboard sign shall not exceed 30% of the total scoreboard area and shall be for products or businesses available to persons of all ages.

(t) Shopping Center Identification Sign (see Section XI-30-4.02, Regional Shopping Centers).

(u) Temporary Promotional Sign (see Section XI – 30-3.10 (C) for Balloon Sign regulations)

(1) Temporary Promotional Signs permitted pursuant to an Administrative Permit may be placed on a business for a maximum of thirty (30) consecutive calendar days per permit for the first promotional event for a business and a maximum of fifteen (15) consecutive calendar days for all subsequent events for a business.

(2) A Temporary Promotional Sign will be permitted a maximum of four times per calendar year per business. Display occurrences shall be interrupted by a minimum of 30 days.

(v) Temporary Tract Advertising Sign

(1) Types. The City of Milpitas authorized only the following two types of Temporary Tract Advertising Signs:

(a) "Major Signs."

(b) "Directional Signs."

(2) Number of Signs Allowed. The total amount of "major signs" is limited to six (6) per tract; provided, however, that the Planning Commission in its discretion may grant additional signs upon the following conditions:

(a) Said grant will not be contrary to or materially detrimental to public interest and welfare.

(3) Restrictions. None of the six (6) "major signs" shall:

(a) Exceed twelve (12) feet in height including appendages.

(b) Exceed thirty-two (32) square feet of surface area including all borders.

(c) Not to be closer than one hundred fifty (150) feet from any residential building.

(d) Be closer than one hundred (100) feet from any existing and authorized sign or billboard.

(e) Be set back less than fifteen (15) feet from any property boundary line on which it is to be located.

(f) Not be permitted within six hundred (600) feet of a Santa Clara County Expressway.

(4) Additional Directional Signs. Additional directional signs of a size as indicated below, under Section XI-30-3.10.(u).4.a of this Chapter may be allowed, as needed, in the discretion of the Planning Commission:

(a) Directional signs shall not exceed sixteen (16) square feet of surface area. Said directional signs shall not exceed five (5) feet in height or eight (8) feet in length.

(5) Removal of Temporary Tract Signs. No sign permit for a temporary tract sign shall be issued unless and until the applicant therefor has signed an agreement that upon cessation of the use under the permit, the sign involved will promptly be removed within fifteen (15) days after the expiration of the permit. Said agreement shall be accompanied by a refundable cash deposit of fifty ($50) dollars per sign, which deposit may be used to defray the costs of the sign removal in the event the permit holder defaults upon the agreement, as aforesaid. If necessary, the City's agents may, after five (5) days' written notice to the original applicant and to the property owner of record, enter private property to remove such signs which shall then become the property of the City.

(w) Wall Signs

(1) The area of Wall Signs shall be determined by Section XI-30-3.02, Maximum Permissible Sign Area.

(2) The exposed face of a Wall sign shall be installed in a plane parallel to the plane of the wall.

(x) Window Signs

(1) Window Signs shall be attached directly to or within twelve (12) inches of the inside of commercial establishment's windows.

(2) Window Signs shall not exceed twenty-five percent (25%) of the contiguous window area.

Section 4 Special Regulations

The following regulations pertain to signage requirements in special districts, and take precedence over other regulations in this Chapter, unless otherwise specified. (Ord. 124-23 (part), 6/15/99)

XI-30-4.01 Shopping Centers

The Planning Commission may permit the following, subject to approval of a Conditional Use Permit: one (1) double faced freestanding sign for the purpose of identifying the center, including its principal tenants. Said sign shall have an area not exceeding three hundred (300) square feet on any one (1) face and a maximum height limit of forty-five (45) feet. Said sign shall be in addition to those signs allowed under the provisions of Section XI-3-3.10.(h) of this Chapter. Furthermore, the sign area on the identification sign shall be in addition to the total sign area allowed under the provisions of Section XI-3-3.02. Refer to Section XI-3-4.02 of this Chapter for additional information relating to regional shopping centers. (Ord. 124.23 (part), 6/15/99)

XI-30-4.02 Regional Shopping Centers

(a) For regional shopping centers, the Planning Commission may permit the following, subject to the issuance of a Conditional Use Permit or "S" Zone approval, with notice and hearing, per Section XI-10-57 or XI-10-42 of the Milpitas Municipal Code:

(1) An increase to the maximum site sign area not more than twenty-five percent (25%) greater than that otherwise allowed in this Chapter.

(2) An increase to the maximum shopping center identification sign area no more than fifty percent (50%) greater than that otherwise allowed in this Chapter, allowing up to four hundred fifty (450) square feet of sign area on such sign.

(3) An increase to the maximum height of shopping center identification sign not more than fifteen (15) feet taller than otherwise allowed in this Chapter, allowing up to a sixty (60) foot height.

(4) On-site directional sign(s). Any request for on-site directional signs within the regional shopping center shall be made in writing to the Planning Division by any authorized representative of the regional shopping center. The request shall indicate the proposed number, locations and design of the proposed on-site directional signs.

(5) One (1) off-site directional sign, for the purpose of identifying a regional shopping center. Any request for an off-site directional sign shall be made in writing to the Planning Division by any authorized representative of the regional shopping center. The request shall indicate the proposed location and design of the proposed directional sign.

Prior to the installation of any off-site directional sign within the public right-of-way, the sign applicant must obtain an encroachment permit from the Public Works Department. Prior to the issuance of the conditional use permit, the Public Works Director or his or her designee, shall recommend any necessary modifications of the proposed location and sign design to assure traffic safety is maintained.

(b) For regional shopping centers encompassing at least one (1) million square feet of building area, the following apply: Where private streets delineate separate parcels within the shopping center, a parcel's private street frontage may be used instead of its public street frontage (or applicable building perimeter formula), for purposes of calculating sign area, but not for purposes of determining number of on-site freestanding signs, unless a parcel has no public street frontage.

The Planning Commission may permit the following, subject to the issuance of a Conditional Use Permit or "S" Zone approval, with notice and hearing, per Section XI-10-57 or XI-10-42 of the Milpitas Municipal Code.

(1) Two (2) off-site directional signs for the purpose of identifying a regional shopping center. Refer to Section 4.02(a)5 above for additional requirements.

(2) Graphic panel(s) (freestanding).

(3) For major tenants (those with a minimum 40,000 square feet of leasable floor area), signs that move or have the illusion of movement with the approval of a Conditional Use Permit as provided for in XI-10-57.01 and XI-30-4.02(d).

(c) In considering the approval of a Conditional Use Permit or "S" Zone application, no other deviations to the Sign Ordinance shall be permitted which are inconsistent with the provisions of this Chapter.

(d) In considering the approval of a Conditional Use Permit or "S" Zone application, under Subsections 4.02(a) and (b) above, the Planning Commission shall consider the design criteria in Section XI-30-3.04 in addition to the regulations specified in Section XI-10-57 and XI- 10-42.

XI-30-4.03 Town Center District

One freestanding sign shall be allowed within each sub-area of the "Town Center District", with the exception of the main Town Center shopping area which shall be allowed three (3) freestanding signs. No signs shall exceed a height of forty-five (45) feet. The sub-areas shall be identified as follows:

(1) Beresford Square
(2) Shapell Office Building
(3) Main Town Center shopping area, east of Milpitas Boulevard to Hillview Drive
(4) Hotel and offices east of Berryessa Creek.

Refer to Section XI-30-4.02 of this Chapter for additional information relating to regional shopping centers. (Ord. 124.26 (5/4/04), 124.23 (part), 6/15/99)

XI-30-4.04 Sign Program / "S" Zone approval

(a) Signage for a new retail, office or industrial complex on four (4) or more acres having a gross floor area of 40,000 square feet or larger, a multi-tenant building, a new automobile dealership, or any buildings more than two (2) stories high shall be subject to a Sign Program/"S" Zone approval to be reviewed by the Planning Commission pursuant to Section XI-10-42 "S" Combining District (Site and Architectural Review or "S" Zone).

(b) An existing retail, office or industrial complex (all of the businesses in the complex or shopping center, not an individual business in a complex or shopping center), multi-tenant building, automobile dealership or building more than two (2) stories high, regardless of the size of the site on which it is located, may apply for a Sign Program/"S" Zone approval to be reviewed by the Planning Commission.

(c) A Sign Program may deviate from the standards of the Sign Regulations if the Planning Commission makes the following findings:

1. That the program's contribution to effective and attractive identification of businesses, services and uses and the design quality of the site and surrounding area will be superior to the quality that would result under the regulations and standards of the Sign Regulations; and
2. That all of the proposed signs of the retail, office or industrial complex, multi-tenant building, shopping center, automobile dealership or building are well related to each other, and compatible with the style or character of existing improvements on the site and adjacent sites;
3. That all of the proposed signage shall generally conform with the Design Guidelines in Section XI-30-3.04;
4. No signs in the Sign Program are Prohibited Signs as regulated in Section 6; and
5. That the requirements of Section XI-10-42.03 are met.

XI-30-4.05 Hillside Combining District

Signs in the Hillside combining district shall conform to the following:

(a) Permanent signs erected for the purpose of announcements or nameplates shall not exceed one (1) square foot.

(b) Maximum sign area for conditional uses shall be limited to one (1) square foot of sign area for each three (3) lineal feet of public street frontage, but shall, in no case, exceed twenty-four (24) square feet. See exception in Section XI-30-3.10(e) of this Chapter relating to sign area for churches.

(c) Freestanding signs on any parcel of land located in the designated Hillside shall, in no case, exceed a height of four (4) feet measured from a warped plane parallel to the natural grade.

(d) Any sign over one (1) square foot in area located in the designated Hillside shall be constructed of either wood or masonry materials. Incised lettering or individual letters, numbers, symbols, etc., of a metallic material mounted on said wood or masonry structure is permitted. Furthermore, all such lettering may only be illuminated by external or indirect means. (Ord. 124.23 (part), 6/15/99)

Section 5 Exempt Signs

XI-30-5.01 Exempt Signs

A Permit shall not be required for the following types of signs:

(a) Traffic or other municipal signs, legal notices, railroad crossings signs, danger and emergency signs.
(b) Repainting or cleaning (or changing of the advertising copy thereon) of an advertising structure shall not be considered an erection or alteration which requires a sign permit unless a structural change is made.

(c) Memorial sign or tablets, erected by recognized historical agencies, or names of buildings and date of erection when cut into masonry surface or when constructed of bronze or other incombustible letters and affixed flat against the wall of such building.
(d) Signs regulating on-premises traffic and parking when less than twelve (12) square feet in area.
(e) Window signs.
(f) Signs used by public utilities for the safety, welfare or convenience of the public shall be exempt from the provisions of this ordinance.
(g) Poles, structures or other housings intended for the purpose of flying or otherwise displaying of the United States flag, California State flag, City or County flag or flag of any similar public agency are exempt from the approval provisions of Sections XI-30-3.01, XI-30-3.10(h)5 and XI-30-3.10(h)6. The flags specified herein are exempt from all other permit requirements.
(h) House numbers, name plate or identification of house members (provided sign does not exceed two (2) square feet maximum area), mail box identification, street names, "no-trespass" signs, and other warning signs.
(i) Signs for the California State Lottery approved by the Lottery Commission for display by Lottery Game Retailers.
(j) Murals or other artistic paintings on walls, provided no logos, emblems or other similar devices, sign copy or illustrations of activities associated with uses on the premises or in the vicinity are included in the mural or painting.
(k) On-Site Temporary For Sale Or Lease Signs, which shall:

1. Not exceed a maximum area of thirty-two (32) square feet per sign face.
2. Be limited to one (1) such sign. However, if the property has over (100) feet of street frontage, a maximum of two (2) signs per parcel is allowed.
3. Be constructed pursuant to an approved building permit if over 6 feet in height.
4. A sign over 6 feet in height shall require an 'S' Zone Approval by the Planning Commission.
5. State that the property is for sale, lease or exchange by the owner or his or her agent and the name, address and phone number of the owner or agent and/or agency and directions;
6. Be painted a light color;
7. Be constructed of wood, plywood, metal or other rigid material; and
8. Not be placed on a private or public right-of-way.
9. If advertising a tenant space, the sign shall be located on the tenant space
10. Not be allowed unless the property is on the market or there is a tenant space on the property that is vacant or will be vacated.
11. Be professionally constructed and well maintained.

(l)Information Sign. An Information Sign:

1. Shall provide courtesy information or direction to the public without advertising the business products or services such as hours, entrance, exit, self-serve, credit cards, restrooms, telephone drive-up;
2. Or shall serve to direct motorist and pedestrians on private property;
3. Shall not be larger than Twelve (12) square feet in size; and.
4. Shall not be a traffic hazard.

(m) Signs regulating the use of enumerated public facilities as provided for in Chapter 18 of Title V of the Milpitas Municipal Code.
(o) Other signs similar to the above as provided for in Section XI-30-12.02 of this Chapter. (Ord. 124.23 (part), 6/15/99)

Section 6 Prohibited Signs

XI-30-6.01 Prohibited Signs

The following signs, or signs which contain the following elements, are Prohibited Signs:

(a) Abandoned Signs. Abandoned Signs shall be removed within 90 days after the business the sign advertised has ceased as follows: Removal shall involve elimination of all sign copy. In addition, if the sign was mounted on a building, the building façade shall be restored to its original state to the best extent possible.

(b) A-Frame Signs. Any A-Frame Sign with the exception of public service signs and open house directional signs.

(c) Blinking, Flashing Lights. Any sign having blinking, flashing or fluttering lights, or any other illuminating device which has a changing light intensity, brightness or color unless approved pursuant to a Sign Program ("S" Zone) by the Planning Commission.

(d) Off-Site Advertising Signs with the exception of Joint Use Signs, Off-Site Advertising signs as regulated by Section XI-30-3.06 except for Temporary Tract Advertising Signs, Regional Shopping Centers signage as regulated in Section XI-30-4.02, Open-House Directional Signs, Outdoor Advertising Structures as permitted by Chapter 14 of the Milpitas Municipal Code and Off-Site Directional Signs for churches, religious assembly or institutions.

(e) On Public Property. Any sign located on public property as regulated by Section XI-30-3.07.

(f) Other Advertising Structure as defined in Section XI-30-2.34.

(g) Outdoor Advertising Structures unless permitted pursuant to Chapter 14 of the Municipal Code.

(h) Portable Signs. Any Portable Sign with the exception of public service signs and open house directional signs.

(i) Privately owned signs resembling Traffic Signs. Any privately owned sign resembling any public directional sign or traffic control device.

(j) Reflective Signs. Signs using colors that contain reflective properties.

(k) Rotating or Moving Signs. Any sign which revolves, rotates, moves in any manner or creates the illusion of movement, rotation or revolvement, or has any visible moving, revolving or rotating surfaces or parts, is held and/or moved by a human being or animal except as otherwise provided for in Section XI-30-4.02(b)(3).

(l) Roof Sign or Signs Extending Above Roof Ridge. Any Roof Sign or sign, which is placed on, above or attached to any building roof (above the gutter line); above or on top of any marquee; or on, above, made a part of or attached to any parapet.

(m) Signs that are a Traffic Hazard. Any sign, which creates a traffic hazard to operators of motor vehicles or any sign, which obstructs or interferes with a motorist's vision.

(n) Sound Or Odor Emitting Signs. Any sign designed for emitting sound, odor or visible matter.

(o) Statuary Signs. Statuary when used for advertising purposes.

(p) Temporary Signs. Temporary signs except as approved in conjunction with approved signage for Construction, Garage Sale, Grand-Opening, Open House Directional, Outdoor Advertising Structures as permitted by Chapter 14 of the Milpitas Municipal Code, Temporary Promotional and Temporary Tract Advertising Signs.

(q) Vehicle-Mounted Signs Vehicle-Mounted Signs where the vehicle Is:

i) Not legally registered, or

ii) Not operable, or

iii) Not parked within the confines of a striped parking space approved by the City of Milpitas, residential driveway or residential street, or

iv) Parked within the confines of a striped parking space approved by the City of Milpitas for more than 72-hours.

Section 7 Sign approvals by type of permit and by zoning district

SIGN APPROVALS BY TYPE OF PERMIT AND BY ZONING DISTRICT MATRIX

Sign Type	**A** (Agri-culture)	**R1, R2, R3, R4 AR** (Residential)	**CO** (Admin & Professional)	**C1** (Neigh. Commercial)	**C2** (Gen. Commercial)	**HS** (Highway Services)	**TC** (Town Center)	**M1, M2, MP** (Ind.)	**MXD** (Mixed Use)	**HILLSIDE** (By City Council)
Architectural	X	X	S	S	S	S	S	S	S	X
Area Identification	AP	AP	AP	AP	AP	AP	CUP	AP	AP	S or CUP
City Identification	X	AP	AP	AP	AP	AP	X	AP	AP	X
Church/Religious Assy.	X	CUP	CUP	CUP	CUP	X	X	CUP	CUP	X
Construction	AP	AP	AP	AP	AP	AP	AP	AP	AP	X
Freestanding ≤6 feet	PCS	CUP	PCS	PCS	PCS	PCS	PCS	PCS	PCS	S or CUP
Freestanding > 6 feet	X	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	X
Grand Opening	X	X	AP	AP	AP	AP	AP	AP	AP	X
Graphic Panel	PCS	CUP	PCS	PCS	PCS	PCS	PCS	PCS	PCS	X
Information	AP	AP	AP	AP	AP	AP	AP	AP	AP	X
Off-Site Directional Church, Religious Assembly, Institutional Sign	AP	AP	AP	AP	AP	AP	AP	AP	AP	X
Off Site Public Info.	X	CUP	CUP	CUP	CUP	CUP	X	CUP	X	X
Political (Sec. 30-3.10 p)	AP	AP	AP	AP	AP	AP	AP	AP	AP	X
Projecting	X	X	AP	AP	AP	AP	AP	AP	AP	X
Public Information	S	S	S	S	S	S	S	S	S	X
Scoreboard Sign	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	X
Shopping Center Identification	X	X	X	S	S	S	S	S	S	X
Temporary Promotional	X	X	AP	AP	AP	AP	AP	AP	AP	X
Temporary Tract Advertising	CUP	X	X	CUP	CUP	X	X	CUP	CUP	X
Wall	X	CUP	AP	AP	AP	AP	AP	AP	AP	S or CUP

Notes for Matrix: AP Administrative Permit by Staff (over the counter)
CUP Conditional Use Permit Approval Required by Planning Commission (except Hillside)
S "S" Zone Amendment by the Planning Commission (except Hillside)
PCSPlanning Commission Subcommittee
X Not Permitted

Section 8 Variance

XI-30-8.01 Variance

When practical difficulties, unnecessary hardships or results inconsistent with the purpose and intent of this Chapter result from the strict application of the provisions hereof, variances may be granted as provided in this Article by application to the Planning Commission. (Ord. 124.23 (part), 6/15/99)

XI-30-8.02 Criteria for Variance

The Planning Commission may grant a variance if the following criteria are found applicable:

(a) Special conditions and extraordinary circumstances applicable to the property involved or its intended uses, which were not created by the owner or his tenant, and which do not apply generally to other properties with the same land use.

(b) Literal enforcement of the provisions of this Chapter will result in unnecessary hardship inconsistent with the spirit and intent of this Chapter.

(c) The variance of the sign use corresponds with the land use and will not be contrary to, nor materially detrimental to public interest and welfare, or injurious to conforming signs in the City.

(d) The variance to be granted is one that will require the least modification of the prescribed regulation, and the minimum variance that will accomplish that purpose. (Ord. 124.23 (part), 6/15/99)

XI-30-8.03 Variance Procedure and Fee

(a) A completed sign variance application form must be filed with the Planning Division along with the required fee as adopted by resolution of the Milpitas City Council. Pursuant to City Council Ordinance No. 124.8, no fee shall be required of the Milpitas Unified School District. The Commission shall hold a public hearing on each sign variance application.

(b) The Commission shall make its determination in writing within forty (40) days from the date of filing an application and shall transmit a copy thereof to the applicant.

(c) In approving a variance, the Commission shall have the authority to impose such conditions as it deems necessary to protect the best interests of the surrounding property or neighborhood and the Comprehensive General Plan. (Ord. 124.23 (part), 6/15/99)

Section 9 Enforcement

XI-30-9.01 Declaration of Nuisance

(a) Any sign or structure erected, constructed, maintained, marked, posted, pasted, painted, printed, altered or repaired in violation of the provisions of the Chapter or after a permit or variance therefore has been revoked or expired is hereby found and declared to be a public nuisance and may be abated in accordance with the provisions of section XI-30-9.06.

(b) Without limitation to the generality of the foregoing, any sign or structure erected, constructed, maintained, marked, posted, pasted, painted, altered or repaired:

(1) So as to be unsafe and so as to constitute an immediate peril to persons or property; or

(2) Upon public property without written permission of the Community Development Manager or City Manager of the City of Milpitas; is hereby found and declared to be a public nuisance and may be summarily abated in accordance with the provisions of this Chapter.

XI-30-9.02 Revocation of Permit or Variance

After written notice by mail to the permittee or grantee of a variance and hearing before the Planning Commission in accordance with the provisions of the Standard Procedure Chapter of the Milpitas Municipal Code, any permit or variance may be revoked if:

(a) Said permit or variance was issued in violation of law.

(b) The conditions or limitations so said permit or variance have not been complied with.

It shall be unlawful for any person to erect, construct, maintain, mark, post, paste, paint, print, alter or repair any sign or structure for which the permit or variance has been revoked. (Ord. 124.23 (part), 6/15/99)

XI-30-9.03 Expiration of Permit or Variance

(a) Any permit or variance granted herein shall expire by the terms thereof.

(b) Any permit or variance granted herein shall expire if the same is not used within six (6) months from the date that the same is issued.

(c) It shall be unlawful for any person to erect, construct, maintain, mark, post, paste, print, alter or repair any sign or structure for which the permit has expired. (Ord. 124.23 (part), 6/15/99)

XI-30-9.04 Continuing and Individual Violations

Continuing and Individual Violations shall be enforced as follows:

(a) Continuing Violation.

(i) Where a Continuing Violation that exists on private property does not create an immediate danger to public health and safety, the owner/occupant shall be provided 30 days written notice to correct the placement of the sign to comply with this ordinance. If upon the expiration of 30 days the sign has not been corrected, the City shall send further notices until the violation is abated.

(ii) Where a Continuing Violation exists on public property that does not create an immediate danger to public health and safety, the sign shall be confiscated if it is in violation of XI-30-3.07 or if the sign is an open house or garage sale sign it shall be confiscated if it is in violation of XI-30-3.10 (i) and XI-30-3.10 (o).

(iii) Where a Continuing Violation that exists on private property constitutes an immediate danger to public health and safety, the owner/occupant shall be provided notice to correct the sign 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 sign is not corrected within the two hour time period, the City shall have the option to impose summary abatement procedures under XI-30-9.06.

(iv) Where a Continuing Violation exists on public property that creates an immediate danger to public health and safety, the sign shall be confiscated according to XI-30-3.07 or if the sign is an open house or garage sale sign it shall be confiscated if it is in violation of XI-30-3.10 (i) and XI-30-3.10 (o).

(b) Individual Violation.

(i) Where an Individual Violation that exists on private property that does not constitute 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 City shall send further notices until the violation is abated.

(ii) Where an Individual Violation that exists on public property that does not create an immediate danger to public health and safety, the sign shall be confiscated if it is in violation of XI-30-3.07. If the sign is an Open House Directional Sign or Garage Sale Sign it shall be confiscated if it is in violation of XI-30-3.10(i) and XI-30-3.10(o).

(iii) Where an Individual Violation that exists on private property constitutes an immediate danger to public health and safety, the owner/occupant shall be provided notice to correct the sign 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 sign is not corrected within the two hour time period, the City shall have the option to impose summary abatement procedures under XI-30-9.06.

(iv) Where an Individual Violation that exists on public property constitutes an immediate danger to public health and safety, the sign shall be confiscated according to XI-30-3.07 or if the sign is an open house or garage sale sign it shall be confiscated if it is in violation of XI-30-3.10 (i) and XI-30-3.10 (o).

(c) Any person, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of XI-30-9.04 shall be guilty of a separate offense for each and every day during any portion of which any violation of this Chapter is committed, continued or permitted by such person, and shall be punishable as herein provided.

XI-30-9.05 Definitions

XI-30-9.05 (a) Abate

Abate shall mean to repair, replace, remove, destroy or otherwise remedy the condition in violation of this Chapter.

XI-30-9.05 (b) Building

Building shall mean any structure used or intended for supporting or sheltering any use or occupancy.

XI-30-9.05 (c) City Manager

City Manager shall mean the City Manager of the City of Milpitas or his or her designees.

XI-30-9.05 (d) Enforcement Officer

Enforcement officer shall mean that person or persons specifically designated by the City Manager to enforce the provisions of this Chapter.

XI-30-9.05 (e) 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.

XI-30-9.05 (f) Person

Person shall mean any individual, partnership, corporation, association or other organization, however formed.

XI-30-9.05 (g) 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.

XI-30-9.05 (h) 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.

XI-30-9.05 (i) Unreasonable Period of Time

Unreasonable period of time shall mean not less than thirty (30) calendar days following notification by the City to the owner/occupant pursuant to Section XI-30-9.06 (b) 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 thirty (30) 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 XI-30-9.06 (i).

XI-30-9.06 Abatement Procedure

XI-30-9.06(a) Notification of Nuisance
Whenever the City Manager determines that any signage 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) 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 Chapter XI-30, Signs, 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. Such notice shall be served upon the owner/occupant in accordance with provisions of Section XI-30-9.06 (d) covering service in person or by mail.

XI-30-9.06 (b) 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.

XI-30-9.06 (c) 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.

XI-30-9.06 (d) 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 signage 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 Section XI-30-9.01 of the Milpitas Municipal Code. If said signage, 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: _____

XI-30-9.06 (e) 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 signage. 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 XI-30-9.06 (d). 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.

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 XI-30-9.07 (a) through XI-30-9.07 (e). 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.

XI-30-9.06 (f) 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.

XI-30-9.06 (g) 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 I-20-5.

XI-30-9.06 (h) 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.

XI-30-9.06 (i) Summary Abatement of Immediate Hazard or Obstruction
In the event of:

1. A nuisance defined by statute, ordinance or resolution as a public nuisance which constitutes an immediate danger to persons or property, or
2. 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
3. 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 XI-30-9.07. 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 XI-30-9.07.

XI-30-9.07 Cost Recovery

XI-30-9.07 (a) 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 XI-30-9.01.

XI-30-9.07 (b) 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 attorney fees at the initiation of any action or proceeding, a prevailing opposing party may recover its reasonable attorney fees to the extent that the amount of said fees does not exceed the amount of reasonable attorney fees incurred by the City in the action or proceeding.

XI-30-9.07 (c) 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.

XI-30-9.07 (d) 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.

XI-30-9.07 (e) Collection of Charges
Such costs shall be recoverable as provided for in Sections XI-30-9.08 (a) through XI-30-9.08 (b).

XI-30-9.08 Lien Procedure

XI-30-9.08 (a) Record of Cost of Abatement
The City Manager shall keep an account of the costs, as defined in Section XI-30-9.07 (b) 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.

XI-30-9.08 (b) 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 XI-30-9.08 (a), 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 XI-30-9.01 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.

XI-30-9.09 Interest on Liens

XI-30-9.09 (a) 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.

XI-30-9.09 (b) 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.

XI-30-9.10 Miscellaneious

XI-30-9.10 (a) 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.

XI-30-9.10 (b) 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.

Section 10 Appeals

All appeals shall be made in accordance with Article V of Chapter 20, Title 1 of the Milpitas Municipal Code.

Section 11 Penalty Provisions

XI-30-11.01 Penalties
Any person, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any violation of this Chapter is committed, continued or permitted by such person, and shall be punishable as herein provided.
(a) Any sign requiring Planning Commission review by the provisions of this Chapter and erected without benefit of such review and approval as provided herein shall be subject to a double Planning Commission application fee. (Ord. 124.23 (part), 6/15/99)

XI-30-11.02 Remedies, Cumulative
The remedies herein contained shall be cumulative and in addition to such other remedies as provided by law. Resort to one remedy shall not preclude resort to any other remedy as may be allowed by law. (Ord. 124.23 (part), 6/15/99)

Section 12 Interpretations

XI-30-12.01
Nothing herein shall limit the Planning Commission from making reasonable interpretations of this Chapter for these foregoing regulations for uses or circumstances not specifically defined herein. Said interpretations shall be made in the form of a written decision based upon the regulations herein and the general public welfare. (Ord. 124.23 (part), 6/15/99)

XI-30-12.02 Other Signs Permitted by Commission
Where the term "other signs similar to the above" is mentioned, it shall be deemed to mean other signs which, in the judgment of the Commission as evidenced by a written decision, are similar to the signs listed in the same section and are not more objectionable to the general welfare. "Other signs" so determined by the Commission shall be regarded as listed signs. In no instance, however, shall these regulations be so interpreted to permit a sign when such sign is specifically listed and regulated herein. (Ord. 124.23 (part), 6/15/99)

Section 3: A new Section 1.04-1 is added to Title V, Chapter 500 to read as follows:

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.

Section 4: A new Section 1.05-1 is added to Title V, Chapter 500 to read as follows:

V-500-1.05-1 Individual Violation
A non-continuous 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 Violations" for the purposes of this Chapter include, but are not limited to, the illegal outdoor storage of materials, lawn parking and vehicle repair.

Section 5: Section 1.15 of Title V, Chapter 500 of the Milpitas Municipal Code is hereby amended to read as follows:

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.

Section 6: A new Section 3.06 is added to Title V, Chapter 500, to read as follows:

***V-500-3.06* Appeal of decision by City Manager and His/Her Designees to the City Council is added to Title XI, Chapter 10, to read as follows:**

V-500-3.06 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 I-20-5.

Section 7: Section 3.07 of Title V, Chapter 500 is hereby amended to Title V, Chapter 500, to read as follows:

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.

Section 8: A new Section 8.01-1 is added to Title V, Chapter 500, to read as follows:

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. 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. 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.

Section 9: A new Section 2.26-8 is added to Title XI, Chapter 10 to read as follows:

XI-10-2.26-8 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.

Section 10: A new Section 2.43.5 is added to Title XI, Chapter 10 to read as follows:

XI-10-2.43.5 Individual Violation
A non-continuous 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 Violations" for the purposes of this Chapter include, but are not limited to, the illegal outdoor storage of materials, entertainment events, or outdoor seating in violation of a use permit.

Section 11: Section 63.07 of Title XI, Chapter 10 of the Milpitas Municipal Code is hereby amended to read as follows:

XI-10-63.07 Administrative Citations

When he or she determines that one or more violations of this Chapter have occurred, the City Manager and his/her designee may issue administrative citations pursuant to the procedures set forth in XI-10-63.08 (a) through XI-10-63.08 (f).

(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 30 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 XI-10-63.09 or impose the administrative fine below and administrative citation provisions under XI-10-63.08.

(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. 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 XI-10-63.09 or impose the administrative fine below and administrative citation provisions under XI-10-63.08. 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.

The schedule of fines for administrative citations issued for violations of this Chapter is as follows:
1. Not to exceed $100 for the first violation
2. Not to exceed $200 for the second violation of the same code provision within twelve (12) months; and
3. Not to exceed $500 for the third and subsequent violation of the same code provision within twelve (12) months.
Each person that fails to pay any fine set out in an administrative citation issued pursuant to this section shall be liable for a late payment charge of 10%.

<u>Section 12</u>: Section 63.08 of Title XI, Chapter 10 of the *Milpitas Municipal Code* is hereby added as follows:

XI-10-63.08 Administrative Citation

(a) 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.

(b) 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.

(c) Amount of Fines

1. 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.
2. 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.
3. The schedule of fines shall specify the amount of any late payment charge imposed for the payment of a fine after its due date.

(d) Payment of the Fine

1. The fine shall be paid to the City within thirty days from the date of the administrative citation.
2. Any administrative citation fine paid pursuant to Section XI-10-63.08(d)(1)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.
3. 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.

(e) Hearing Request

1. 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.
2. A request for hearing form may be obtained from the City Clerk.
3. 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.
4. 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.

(f) 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 XI-10-63.08 (e) may file a request for an advance deposit hardship waiver at the time of filing the hearing request.

<u>Section 13</u>: A new section 2.01-1 (and renumbering subsequent sections in Definitions) Abate is added to Title XI, Chapter 10, to read as follows:

XI-10-2.01-1 Abate

Abate shall mean to repair, replace, remove, destroy or otherwise remedy the condition in violation of this Chapter.

<u>Section 14</u>: A new section 2.26-2 City Manager is added to Title XI, Chapter 10, to read as follows:

XI-10-2.26-2 City Manager

City Manager shall mean the City Manager of the City of Milpitas or his or her designees.

<u>Section 15</u>: A new section 2.37-.5 Enforcement Officer is added to Title XI, Chapter 10, to read as follows:

XI-10-2.37-.5 Enforcement Officer

Enforcement officer shall mean that person or persons specifically designated by the City Manager to enforce the provisions of this Chapter.

<u>Section 16</u>: A new section 2.62-.5 Owner/Occupant is added to Title XI, Chapter 10, to read as follows:

XI-10-2.62-.5 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.

Section 17: A new section 2.67 (a) Property is added to Title XI, Chapter 10, (with subsequent sections being re-numbered) to read as follows:

XI-10-2.67(a) 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.

Section 18: A new section 2.77 (c) Unreasonable Period of Time is added to Title XI, Chapter 10, (with subsequent sections being re-numbered) to read as follows:

XI-10-2.77(c) Unreasonable Period of Time

Unreasonable period of time shall mean not less than thirty (30) calendar days following notification by the City to the owner/occupant pursuant to Section XI-10-63.09 (a) 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 thirty (30) 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 XI-30-63.10 (h).

Section 19: A new section 63.09 Abatement Procedure is added to Title XI, Chapter 10, to read as follows:
XI-30-9.05 Abatement Procedure

Section 20: A new section 63.09 (a) Notification of Nuisance is added to Title XI, Chapter 10, to read as follows:
XI-10-63.09 (a) 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) 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 Chapter XI-10, Zoning, 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. Such notice shall be served upon the owner/occupant in accordance with provisions of Section XI-10-63.09 (d) covering service in person or by mail.

Section 21: A new section 63.09 (b) Exception For Undue Hardship is added to Title XI, Chapter 10, to read as follows:
XI-10-63.09 (b) 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.

Section 22: A new section 63.09 (c) Administrative Hearing to Abate Nuisance is added to Title XI, Chapter 10, to read as follows:
XI-10-63.09 (c) 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.

Section 23: A new section 63.09 (d) Notice of Hearing is added to Title XI, Chapter 10, to read as follows:

XI-10-63.09 (d) 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 violation or public nuisance subject to abatement pursuant to Section XI-10-63.09 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: _____

<u>Section 24</u>: A new section 63.09 (e) Administrative Hearing by City Manager or His/Her Designees is added to Title XI, Chapter 10, to read as follows:

XI-10-63.09 (e) 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 XI-10-63.09 (d). 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.

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 XI-10-63.10 (a) through XI-10-63.10 (e). 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.

Section 25: A new section 63.09 (f) Hearing Procedure Before City Manager and His/Her Designees is added to Title XI, Chapter 10, to read as follows:
XI-10-63.09 (f) 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.

Section 26: A new section 63.09 (g) Appeal of decision by City Manager and His/Her Designees to the City Council is added to Title XI, Chapter 10, to read as follows:
XI-10-63.09 (g) 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 I-20-5.

Section 27: A new section 63.09 (h) Limitation on Filing Judicial Action is added to Title XI, Chapter 10, to read as follows:
XI-10-63.09 (h) 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.

Section 28: A new section 63.09 (i) Summary Abatement of Immediate Hazard or Obstruction is added to Title XI, Chapter 10, to read as follows:
XI-10-63.09 (i) 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, or
(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 XI-10-63.10. 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 XI-10-63.10.

Section 29. A new Section 63.10 Cost Recovery is added to Title XI, Chapter 10 to read as follows:

Cost Recovery

Section 30. **A new Section 63.10 (a) Recovery of Costs is added to Title XI, Chapter 10 to read as follows:**

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 or violation by Section XI-10.63.07.

Section 31. **A new Section 63.10 (b) Definition of Costs is added to Title XI, Chapter 10 to read as follows:**

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 attorney fees at the initiation of any action or proceeding, a prevailing opposing party may recover its reasonable attorney fees to the extent that the amount of said fees does not exceed the amount of reasonable attorney fees incurred by the City in the action or proceeding.

Section 32. **A new Section 63.10 (c) Cost Accounting and Recovery Required is added to Title XI, Chapter 10 to read as follows:**

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.

Section 33. **A new Section 63.10 (d) Notice of Cost Recovery Requirements is added to Title XI, Chapter 10 to read as follows:**

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.

Section 34. **A new Section 63.10 (e) Collection of Charges is added to Title XI, Chapter 10 to read as follows:**

Such costs shall be recoverable as provided for in Sections XI-10-63.11 (a) through XI-10-63.11 (b).

Section 35. **A new Section 63.11 Lien Procedure is added to Title XI, Chapter 10 to read as follows:**

Lien Procedure

Section 36. **A new Section 63.11 (a) Record of Cost of Abatement is added to Title XI, Chapter 10 to read as follows:**

The City Manager shall keep an account of the costs, as defined in Section XI-10--63.10 (b) 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.

Section 37. **A new Section 63.11 (b) Assessment and Lien is added to Title XI, Chapter 10 to read as follows:**

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 XI-10-63.11 (a), 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 XI-10-63.03 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.

Section 38. **A new Section 63.12 Interest on Liens is added to Title XI, Chapter 10 to read as follows:**

Interest on Liens

Section 39. **A new Section 63.12 (a) Amount of Interest on City Liens and Assessments- Findings is added to Title XI, Chapter 10 to read as follows:**

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.

Section 40. **A new Section 63.12 (b) Accrual of Interest on Liens and Assessments is added to Title XI, Chapter 10 to read as follows:**

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.

Section 41. **A new Section 63.13 Miscellaneous is added to Title XI, Chapter 10 to read as follows:**

Miscellaneous

Section 42. **A new Section 63.13 (a) Alternative Actions Available; Violation an Infraction is added to Title XI, Chapter 10 to read as follows:**

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.

Section 43. **A new Section 63.13 (b) Additional Costs of Abatement is added to Title XI, Chapter 10 to read as follows:**

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.

Section 44. **A new Section 63.13 (c) Residential Rental Housing is added to Title XI, Chapter 10 to read as follows:**

The notice sent to the owner/occupant of residential rental housing pursuant to Section XI-10-63.09 (a) 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.

Section 45. **PUBLICATION AND EFFECTIVE DATE.**

Pursuant to the provisions of Government Code Section 36933, a Summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the

summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.

Section 46. SEVERABILITY

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.