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Planning Commission Date: March 24, 2004 Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing Report prepared by: Staci Pereira

Public Hearing: Yes: X No: _____

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TITLE: **CONSIDERATION OF AMENDMENTS TO THE ZONING ORDINANCE TEXT AND RELATED DRAFT NEGATIVE DECLARATION (ZT2004-1 AND EA2004-1)**

Proposal: Proposed Ordinance No. 38.763 regarding zoning code text amendments as they relate to single family dwellings and legal posting requirements for public hearings.

Location: Citywide

RECOMMENDATION: **Recommend the following to the City Council:**

1. **Adopt the Negative Declaration (EA2004-1); and**
2. **Adopt Ordinance No. 38.763 for amendments to the Zoning Ordinance text (ZT2004-1).**

Applicant: City Initiated

Attachments: Ordinance No. 38.763 matrix, zoning ordinance sections, memo from City Attorney dated September 12, 2003, March 3, 2004 CAC Unapproved Minutes, Summary of Research, Matrix of Regulations Affecting Single Family Dwellings, Initial Study and Draft Negative Declaration

BACKGROUND

Ordinance No. 38.763 is the third phase of ongoing, necessary amendments to the zoning code to improve its effectiveness as a regulatory tool, recognize it as a dynamic and living document and phase the cost and effort of a comprehensive update. This third phase of zoning code text amendments were spurred by community concerns of overcrowding in the residential neighborhoods and its impact on parking. At a Town Hall meeting on October 9, 2003, the Community Advisory Committee discussed the City's authority to regulate occupancy in residential homes. With the assistance of the City Attorney, it was apparent that several of the

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City's regulations were either not enforceable or in conflict with current federal and state laws. It was evident that the City's zoning code required revisions to be consistent with these laws.

On February 24, 2004, the Planning Commission continued their review of the proposed zoning text amendments in order to allow staff additional time to document research and allow review by the Community Advisory Commission (CAC). Staff has provided documentation of research from local cities (see attached Summary of Research) and responses to the Commission's inquiries noted at the February 25th meeting below.

RESPONSES

Explanation of Proposed Amendments Affecting Single Family Residences

The purpose of the proposed amendments is two-fold. The Zoning Ordinance's current definition of family limits the number of unrelated persons that can occupy a single-family dwelling to five (5). As previously mentioned, the City cannot enforce this because it is in conflict with current federal and state laws. Therefore, consistent with local cities, staff proposes to modify the definition of family to be consistent with federal and state laws.

Secondly, there is a high level of concern coming from the community regarding overcrowding in the single-family neighborhoods and its impact on parking. The City's Code Enforcement section has witnessed this in the field when they respond to complaints and find a single-family residence that has been divided to accommodate several families or independent living units. With the loss of the City's ability to regulate occupants in dwellings, the potential of compounding the overcrowding problem exists.

Staff reviewed the single-family regulations and looked for ways to ensure that a single-family dwelling is occupied in such a manner as to retain the character of the single-family neighborhood and minimize parking impacts. Staff also performed research from local cities (Campbell, Dublin, San Jose, Santa Clara, Sunnyvale) and found that the amendments proposed are similar to the majority of Milpitas' municipal neighbors (see attached Summary of Research).

The amendments being proposed would have the following significant affects on single-family residences:

- Reduce the areas that could be converted into bedrooms and rented as a separate unit by requiring 2 *enclosed* parking spaces to be permanently maintained, thus prohibiting garage conversions;
- No longer allow a residence to be converted into or function as several independent living units or the rental of rooms with separate entrances and compartmentalized areas by requiring all occupants to function as a single housekeeping unit (i.e. joint use of all common areas, shared expenses, internal access only, etc.) and by permitting only 1 kitchen per dwelling; and
- Require 1 parking space to be provided on-site for each room rented in a boarding house (where meals are included with rent), which is in addition to the 2 enclosed parking spaces required for the dwelling unit.

Staff will be able to enforce these new strengthened regulations during plan checks for residential remodels and in the field during building inspections and code enforcements responses.

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In an unrelated amendment, staff proposes to modify the location of the legal notice postings from the project vicinity to the project site. This will result in larger, more visible notices posted on the property rather than several 8 ½" x 11" notices taped to utility poles which are difficult to read due to their size and are unsightly when left on the poles in the public right-of-way after the public hearing occurred. In addition, staff proposes to establish criteria for sign postings based on the size of property and number of street frontages to ensure the visibility of notices for the public.

CAC Feedback
On March 3, 2004, staff presented the proposed zone text amendments relating to single-family dwellings to the CAC. At this meeting, the CAC concluded to prohibit garage conversions, rather than permit a partial garage conversion as originally proposed by staff. Staff worked with the CAC subcommittee to revise the proposed parking requirement for single-family dwellings to 2 *enclosed* parking spaces. Homes built with 1-car garages and garage conversion approved by the City prior to the adoption of the proposed ordinance will not be subject to these parking requirements.

Bedroom Limitations for Second Family Units in the Hillside
The current code limits all (hillside and valley floor) second family units to 1 bedroom and 1 kitchen. The maximum size of second family units in the hillside can be 60% larger (1,200 square feet) than those in the valley floor residential (475 square feet) and could accommodate more than 1 bedroom.

Staff has begun researching local cities requirements for second family units. However, due to the public noticing requirements, staff could not include any modifications to these regulations in this round of zoning ordinance amendments. Staff will take up this matter in the next round of amendments anticipated this June.

Additional Public Noticing
The Commission requested staff provide additional public noticing for the zone text amendments, beyond the legal noticing in the Milpitas Post on February 12, 2004. Staff prepared a quarter-page display ad that noted that significant amendments proposed, which was published on page 11 of the Milpitas Post on March 11, 2004.

ENVIRONMENTAL REVIEW

An Initial Study and a Negative Declaration (Environmental Impact Assessment No. EA2004-1) have been prepared for this project. The twenty-day public review period began on February 4, 2004. No comments on the document have been received to date. Any comments received will be presented at the public hearing for this project. The proposed zone text amendments had the following impacts that were considered to be less than significant:

There would be a less than significant impact in regards to aesthetics, as a result of the change of the posting requirements from the project vicinity to the project site, which will result in a larger notice to be placed on the project site in order to maintain visibility from all adjacent frontages. These larger signs would impact the visual character of project site, however only temporarily, due to the 10-day posting requirement. In addition, posting on the site will reduce the legal

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notices left on the utility poles in public right-of-ways in the project vicinity, which are unsightly when not removed promptly after the 10-day noticing period.

There would be a less than significant impact in regards to population and housing, as a result of the amendment to remove the occupant limit for unrelated persons in a household. However, the ordinance also proposes to limit the number of occupants in other ways - by requiring all occupants of a single family dwelling to function as a single housekeeping unit and by an amendment to require two parking spaces, one of which must be covered, which will assist in prohibiting garage conversions and thus limiting the habitable space that can be created.

There would be a less than significant impact in regards to transportation and traffic, as a result of the amendment to remove the occupant limit for unrelated persons in a household, which could result in an increase in vehicular trips on the residential and major streets. However, as mentioned above, the ordinance proposes to limit the number of occupants by requiring all occupants of a single family dwelling to function as a single housekeeping unit and by an amendment to require two parking spaces, one of which must be covered, which will assist in prohibiting garage conversions, thus limiting habitable space that can be created.

There would be a less than significant impact in regards to transportation and traffic, as a result of the amendment to remove the occupant limit for unrelated persons in a household, which could result in inadequate parking. However, as mentioned above, the ordinance proposes to limit the number of occupants by requiring all occupants of a single family dwelling to function as a single housekeeping unit and by an amendment to require two parking spaces, one of which must be covered, which will assist in prohibiting garage conversions, thus limiting habitable space that can be created. Not only do these amendments reduce the likelihood of expanded households, the later also ensures that, in essence, at least three parking spaces for each single family dwelling (one in the garage and two on the driveway) are maintained and available at all times as opposed to only two uncovered spaces currently required.

Any additional comments received will be presented at the Planning Commission hearing.

RECOMMENDATION

Close the Public Hearing. Recommend the following to the City Council:

1. Adopt the Negative Declaration (EIA NO. EA2004-1); and
2. Adopt Ordinance No. 38.763 for amendments to the Zoning Ordinance text (ZT2004-1).

PROPOSED ORDINANCE NO. 38.763

Summary Matrix of Zoning Code Text Amendment No. ZT2004-1

PAGE NO.	ISSUE	AFFECTED SECTIONS	PROPOSED SOLUTION
1	Federal and state laws prevent the City from limiting the number of unrelated persons that make up a family unit. Staff found that 4 out of 5 local cities have amended their definition of family to be consistent with this recent change in federal and state laws.	2.38	❑ Revise the definition of family to remove the number of unrelated persons that could occupy a dwelling.
2	With the loss of the City's ability to regulate the number of unrelated persons in a household, there are concerns of overcrowding and the inherent parking impacts. The City needs a way to ensure that unrelated persons occupying a single-family dwelling function in a similar manner as a traditional family and prevent the renting of rooms with separate entrances with no internal access to common areas, or compartmentalized cabinets and shelves. Staff found that 1 out of 5 local cities include the requirement of families functioning as a single housekeeping unit.	2.69-1.1	❑ Amend the definition of family to require the persons to function together as a single housekeeping unit. ❑ Add a definition for a single housekeeping unit (similar to San Jose's definition) as the functional equivalent of a traditional family, whose members are a non-transient interactive group of persons jointly occupying a single dwelling unit, including the joint use of common areas and sharing household activities and responsibilities such as meals, chores and expenses.

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PROPOSED ORDINANCE NO. 38.763

Summary Matrix of Zoning Code Text Amendment No. ZT2004-1

3-5	There is currently no limit to the number of kitchens in a single-family dwelling. With concerns of overcrowding, regulations need to be strengthened to ensure that numerous separate units or households (other than legitimate 2nd family unit) are not occupying a single-family dwelling. Staff found 3 out of 5 local cities limit single-family dwelling units to having only 1 kitchen.	2.33 2.44-1 4.02-1	◻ Similar to the majority of local cities staff recommends modifying the definition of single family dwelling by adding the limitation of only 1 interior kitchens per dwelling unit. ◻ To ensure that make-shift kitchens do not occur staff recommends defining what a kitchen is and providing specifics and minimum sizes for appliances.
2-12	Rooming and boarding houses are currently allowed in the residential districts as permitted uses for up to 2 persons and conditionally for more persons, the number depending on the district. These types of uses are different than a single housekeeping unit in that a room and prepared meals are provided for compensation, typically chores and household expenses are not shared and not all common areas are accessible. Since these types of uses do not function as a family, the City has the ability to regulate the number of persons permitted and parking requirements that will assist in reducing the impact on residential neighborhoods. Staff found that 4 out of 5 local cities require additional parking spaces for boarding houses.	2.16 2.31 2.48 2.68 4.03-1 6.03-1 6.04-1 7.03-1 7.04-1 8.04-1 38.03(y) 53.23-1(2) 55.03-5	◻ To reduce the impacts on parking, add a parking requirement of 1 additional on-site parking space per room rented for boarding houses; ◻ To provide consistency throughout the residential districts, modify the boarding house conditional use to be for 3 or more persons; ◻ Remove the minimum number of persons in the boarding house definition, since the number of persons is already regulated within each residential district (e.g. 2 boarders is a permitted use and 3 or more is a conditional use); ◻ To provide clarity among similar uses, remove references and definitions for lodging and rooming houses since they are

PROPOSED ORDINANCE NO. 38.763

Summary Matrix of Zoning Code Text Amendment No. ZT2004-1

			similar uses to boarding houses; ▫ Modify the definition of boarding house to include bed and breakfasts as an example use.
13	With concerns of overcrowding and the inherent parking impacts, staff looked at reducing the ability to add additional rooms in the garage. The current parking requirement for single-family residences is to provide 2 parking spaces on-site, which can be accommodated on an existing driveway, thereby allowing the garage to be fully converted. Staff found that 4 out 5 local cities require a minimum of 2 covered or enclosed parking spaces thereby prohibiting garage conversions.	4.07	▫ Similar to the local cities parking requirement, staff recommends modifying automobile parking requirements for single-family dwellings (R1 and R2 districts) to 2 *enclosed* parking spaces to be maintained permanently. This will apply to all residences after the effective date of the ordinance. A garage conversion prior to the effective date will not be grandfathered unless the conversion received building permits.
14-15	Current noticing procedures require legal notices to be posted near the affected property on utility poles and procedures do not state number of signs required to be posted when a parcel is of a specific size or landlocked, without a street frontage.	64.02-1 (a-f) 64.02-4	▫ Change the location of legal notices from project vicinity to project site. ▫ Update the section by referencing current state and local codes sections. ▫ Establish criteria for required number of sign postings based on size of property and number of street frontages.

2.37-1 Erosion

Erosion is the wear and removal of the material in the earth's crust from one site and the deposition at another. (Ord. 38.355, 9/16/75; Ord. 38 (part), 3/15/55)

2.37-2 Expansive Soils

Expansive soils are earth materials, which greatly increase in volume when they absorb water and shrink when they dry. (Ord. 38.355, 9/16/75: Ord. 38 (part), 3/15/55)

2.38 Family

An individual, or two (2) or more persons related by blood or marriage~~, or a group of not more than five (5) persons (excluding servants) not related by blood or marriage, living together as a single housekeeping unit in a dwelling unit,~~ or legal adoption or joined through a judicial or administrative order of placement or guardianship; or unrelated persons who function together as a single housekeeping unit. (Ord. 38 (part), 3/15/55)

2.38-1 Family Child Care Homes

A home in which care, protection, and supervision of fourteen (14) or fewer children is regularly provided, in the care giver's own home, for periods of less than twenty-four 24) hours per day, while the parents or guardians are away. Such homes are licensed by the State of California and include the following:

a) "Large family child care home" which means a home in which family child care is provided to nine (9) to fourteen (14) children, including children under the age of ten (10) who reside at the home.
b) "Small family day care home" which means a home in which family day care is provided to eight (8) or fewer children, including children under the age of ten (10) who reside at the home.(Ord. 38.702 (2) (part), 8/15/95; Ord. 38.339, 2/19/74; Ord. 38 (part), 3/15/55)

2.38-2 Floor Area Ratio

Floor Area Ratio (FAR) is defined for non-residential Zoning Districts as the maximum permitted ratio of gross floor area (as defined in Section 2.41-1.2) to site area and is calculated as follows:

$$\text{FAR} = \frac{\text{Total of Gross Floor Area for All Structures on Site}}{\text{Site Area}}$$

Increases above the maximum permitted FAR for any district can be allowed with approval of a Use Permit by the Planning Commission. This can be considered when the applicant can demonstrate that the proposed development will (1) generate low peak-hour traffic; (2) will not create a dominating visual prominence. Examples of such uses include wholesaling, distribution and hospitals. In each case where an increase in the maximum permitted FAR has been allowed, all other development standards for the site must be met. (Ord. 38.713 (1) (part), 12/3/96)

2.39 Frontage

All the property fronting on one side of a street between intersecting or intercepting streets, or between a street and a right-of-way, waterway, end of dead-end street, or city boundary, measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts. (Ord. 38 (part), 3/15/55)

relative redemption rates, and to meet the requirements of certification as a recycling facility, multiple grouping of reverse vending machines may be necessary.

(b) A bulk reverse vending machine is a reserve vending machine that is larger than fifty (50) square feet, is designed to accept more than one container at a time; and will pay by weight instead of by container. (Ord. 38.629 (A) (part), 10/27/87)

~~**2.68 Rooming House**~~

~~Same as "Lodging House". (Ord. 38 (part), 3/15/55)~~

2.68-1 Satellite Dish Antenna or Satellite Antenna

Any device incorporating a reflective surface that is solid, open mesh or bar configured to form a shallow dish, cone, horn or cornucopia used to transmit and/or receive electromagnetic signals. This definition includes antennas that are sometimes called "SES", "TVRO", "TVBS", and "DBS".

2.69 School: Elementary, Middle or High

An institution which offers instruction in the several branches of learning and study required to be taught in the public schools by the Education Code of the State of California. (Ord. 38.710 (part), 8/6/96: Ord. 38 (part, 3/15/55), 3/15/55, Ord. 38.710, 8/6/96)

2.69-.5 Setback

See "Yard".

2.69-1 Second Family Unit

An attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking and sanitation on the same parcel as the single-family dwelling is situated. A second unit also includes an efficiency unit, as defined in Section 17958.1 of the State Health and Safety Code, and a manufactured home, as defined in Section 18007 of the State Health and Safety Code. Refer to Subsection 54.22 of this Chapter for development standards.

2.69-1.1 Single Housekeeping Unit

The functional equivalent of a traditional family, whose members are a non-transient interactive group of persons jointly occupying a single dwelling unit, including the joint use of common areas which are not compartmentalized, such as locked cabinets or doors, and sharing household activities and responsibilities such as meals, chores and expenses. A single housekeeping unit shall be limited to one (1) kitchen and shall have permanent internal access to all rooms within the dwelling unit, except as provided for section 54.22.

2.69-2 Slope

Same as "Natural Land Slope". (Ord. 38.355, 9/16/75)

2.69-3 Slope Stability

Slope stability is the relative ability of slopes to retain their frictional resistance to downslope movement. (Ord. 38.355, 9/16/75)

2.70 Stable, Private

2.29.1 Day Care Center (deleted by Ord. 38.761, 5/20/03)

2.30 District

A portion of the City within which certain uses of land and buildings are permitted or prohibited and within which certain yards and other open spaces are required and certain height limits are established for buildings, all as set forth and specified in this Chapter. (Ord. 38 (part), 3/15/55)

2.31 Dwelling

A building or portion thereof designed exclusively for residential occupancy, including single-family, two-family, and multiple-family dwellings, but not including hotels~~, boarding and lodging houses~~. (Ord. 38 (part), 3/15/55)

2.32 Dwelling Unit

Two (2) or more rooms in a dwelling or apartment hotel designed for occupancy by one (1) family for living purposes and having only one (1) kitchen. (Ord. 38 (part), 3/15/55)

2.33 Dwelling, Single-Family

A detached building designed exclusively for occupancy by one (1) family for living purposes and having only one (1) kitchen. (Ord. 38 (part), 3/15/55)

2.34 Dwelling, Two-Family

A building designed exclusively for occupancy by two (2) families living independently of each other. (Ord. 38 (part), 3/15/55)

2.35 Dwelling, Multiple-Family

A building or portion thereof, designed for occupancy by three (3) or more families living independently of each other. (Ord. 38 (part), 3/15/55)

2.36 Dwelling, Group

One (1) or more dwellings, other than a tourist court, arranged around two (2) or three (3) sides of a court, which opens onto a street, or a place approved by the commission, including single-family, two-family or multiple-family dwellings and court apartments. Group dwelling include homeless shelters and transitional housing. (Ord. 38 (part), 3/15/55)

2.36-1 EcoPass

A program offered by the Valley Transportation Agency (VTA) in which employers or property owners purchase annual EcoPass stickers that allow their employees, tenants or residents to ride all VTA bus and light rail vehicles at no cost. (Ord. 38.759 (part), 4/2/02)

2.37 Educational Institution

A college or university giving general academic instruction equivalent to the standards prescribed by the State Board of Education. (Ord. 38 (part), 3/15/55)

2.44 Junk Yard

The use of more than one hundred (100) square feet of the area of any lot for the storage of junk, including scrap materials and metals, or wrecked vehicles and machinery, whether or not sale of such junk is made or proposed. (Ord, 38 (part), 3/15/55)

2.44-1 Kitchen (for residential uses)

A residential kitchen shall be enclosed and interior to the dwelling unit, utilized for the preparation of food and include two (2) or more of each of the following:

a) A sink (typically larger than 14" x 17");
b) A full size refrigerator (typically larger than 24" x 64");
c) A 220-V electrical service outlet (typically used for major cooking appliances such as a stove, oven or cooking range)

~~. Each additional enclosed food preparation room shall be limited to a wetbar sink no larger than .5 cubic feet and a mini-refrigerator.~~

2.45 Kennel

Any lot or premises on which four (4) or more dogs, more than four (4) months of age are kept. (Ord. 38 (part), 3/15/55)

2.45-1 Lateral Spreading

Lateral spreading is the movement of loose soils over low-angle slopes ((less than five (5) percent) into open areas during an earthquake. (Ord. 38.355, 9/16/75: Ord. 38 (part), 3/15/55)

2.45-2 Live Work Unit

A dwelling unit with a separate living space attached to a work space within the same unit. The work space and the living space must be occupied by the same tenant. (Ord. 38.759 (part), 4/2/02)

2.46 Loading Area

An open area, other than a street or alley, used for the loading or unloading of vehicles. (Ord. 38 (part), 3/15/55)

2.47 Loading Space

An off-street space or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading and unloading merchandise or materials, and which abuts upon a street or other appropriate means of access. (Ord. 38 (part), 3/15/55)

~~**2.48 Lodging House**~~

~~A building, or portion thereof, other than a hotel, where lodging for five (5) or more persons is provided for compensation, including rooming house. (Ord. 38 (part), 3/15/55)~~

2.49 Lot

Section 4 "R1" Single Family Residence District

4.01 Purpose

To stabilize and protect the residential characteristics of the District and to promote and encourage a suitable environment for family life. The "R1" District is intended for the suburban family home and the services appurtenant thereto. (Ord 38.19, 1/17/61)

4.02 Principal Permitted Uses

The following are the principal permitted uses in an "R1" District:

4.02-1 Single-family dwellings, that contain one (1) kitchen and have internal access to all rooms and common areas, except as provided for in Section 54.22.

4.02-2 Planned Unit Developments subject to provisions of Subsection 54.07.

4.02-3 Agriculture, except the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises. (Ord 38.19, 1/17/61)

4.02-4 Mobile homes subject to provisions of Subsection 54.14. (Ord 38.541, 4/20/82)

4.03 Accessory Uses

The following are the accessory uses permitted in an "R1" District:

4.03-1 ~~Rooming and b~~Boarding houses of not more than two (2) persons.

4.03-2 Home occupations and professional offices in home, as provided for is Subsection 54.08 (Ord 38.19, 1/17/61)

4.03-3 A State authorized, certified or licensed family care home, foster home, or group home serving six (6) of fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such home furnishes such care on a 24 hour a day basis. (Ord 38.339, 2/19/74)

4.03-4 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in Subsection 54.09.

4.03-5 Small family day care home (Ord. 38.702, 8-15-95, amending Ord 38.339, 2/19/74)

4.04 Conditional Uses

The following uses may also be permitted if their location is first approved by the Commission, as provided for in Subsection 57: (Ord 38.19, 1/17/61)

4.04-1 School (elementary and high) and park, playground or community center, owned and operated by a governmental agency or non-profit community organization;

Permanent church buildings (except rescue mission and temporary revival);

Public service structures, not including corporation yards, storage or repair yards and warehouses; and

Golf course (except driving tee or range, miniature course and similar uses operated for commercial purposes).

An open area, other than a street, used for the display, sale or rental of new or used automobiles or trailers, and where no repair work is done except minor incidental repair of automobiles or trailers to be displayed or sold on the premises. (Ord. 38 (part), 3/15/55)

2.13 Automobile Wrecking

The dismantling or wrecking of used motor vehicles or trailers, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts. (Ord. 38 (part), 3/15/55)

2.14 Basement

A story, partly or wholly, underground. For purposes of height measurement, a basement shall be counted as a story where more than one-half (1/2) of its height is above the average level of the adjoining ground. (Ord. 38 (part), 3/15/55)

2.14-1 Bay Window

A window or set of windows jutting out from the wall of a building, rising from the ground and forming an alcove which may or may not add additional floor area or a sitting area within. (Ord. 38.667 (part), 1/21/92)

2.14-2 Billiard Center

A place for the public to view and participate in cuesports, such as but not limited to billiards, pocket billiards (e.g. pool), snooker, and the various forms of carom billiards. (Ord. 38.688 (part), 3/15/94)

2.15 Block

That property so designated on an official map of the City, or part of the City, or bounded by streets, or by a street or streets, and railroad right-of-way, canal right-of-way, or unsubdivided acreage. (Ord. 38 (part), 3/15/55)

2.16 Boarding House

A building, or portion thereof, other than a hotel, where ~~meals and~~ meals and lodging ~~for five (5) or more persons~~ are provided for compensation~~.~~, including a bed and breakfast. (Ord 38 (part), 3/15/55)

2.17 Breezeway

A covered passageway between buildings which does not exceed ten (10) feet in width and which has at least one (1) side open, except for necessary supporting columns. (Ord. 38 (part), 3/15/55)

2.18 Building

A structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, or chattels. Where a dwelling is separated by a division wall without openings, each portion of such dwelling shall be deemed a separate building. (Ord. 38 (part), 3/15/55)

2.19 Building, Height of

Section 6 "R2" One and Two Family Resident District

6.01 Purpose

To stabilize and protect the residential characteristics of the District and to promote and encourage a suitable environment for family life. The "R2" District is intended for suburban family homes and the community services appurtenant thereto. (Ord 38.19, 1/17/61)

6.02 Principal Permitted Uses

The following are the principal permitted uses in an "R2" District: (Ord 38.19, 1/17/61)

6.02-1 Single-family dwellings.

6.02-2 Duplex or two-family dwellings.

6.02-3 Planned Unit Development, subject to provisions of Subsection 54.07.

6.02-4 Agriculture, except the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.

6.03 Accessory Uses

The following are the accessory uses permitted in an "R2" District:

6.03-1 ~~Rooming and b~~Boarding houses of not more than two (2) persons.

6.03-2 Home occupations and professional offices in home, as provided for in Subsection 54.08.

6.03-3 A State authorized, certified or licensed family care home, foster home or group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such home furnishes care on a 24 hour a day basis. (Ord 38.339, 2/19/74)

6.03-4 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in Subsection 54.09.

6.03-5 Small family day care home (Ord. 38.702, 8-15-95, amending Ord 38.339, 2/19/74)

6.04 Conditional Uses

6.04-1 ~~Rooming and b~~Boarding houses for ~~not over six (6) guests~~three (3) or more persons.

6.04-2 Licensed nursing home exceeding six (6) persons. (Ord 38.339, 2/19/74)

6.04-3 Schools (elementary and high) and park, playground or community center, owned and operated by a governmental agency or a non-profit community organization;

Permanent church building (except rescue mission and temporary revival);

Public service structures, not including corporation yards, storage or repair yards and warehouses; and

Golf course (except driving tee or range, miniature course and similar uses operated for commercial purposes).

6.04-4 Off-street public parking area.

Section 7 "R3" Multiple Family District

7.01 Purpose

To stabilize and protect the residential characteristics of the District and to promote, insofar as compatible with the intensity of land use, a suitable environment for family life.
(Ord 38.19, 1/17/61; Ord. 38 (part), 3/15/55)

7.02 Principal Permitted Uses

The following are the principal permitted uses in an R3 District: (Ord 38.19, 1/17/61)

7.02-1 Dwelling, multiple

7.02-2 Planned unit developments subject to provisions of Subsection 54.07

7.02-3 Agriculture, except the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises. (Ord. 38.19 (part), 1/17/61; Ord 38 (part), 3/15/55)

7.03 Accessory Uses

The following are the accessory uses permitted in an R3 District· (Ord 38.19, 1/17/61)

7.03-1 ~~Rooming and b~~Boarding houses of not more than two (2) persons.

7.03-2 Home occupations and professional offices in home, as provided for in Subsection 54.08.

7.03-3 A State-authorized, certified or licensed family care home, foster home or a group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such care home furnishes care on a 24-hour a day basis. (Ord 38.339, 2/19/74)

7.03-4 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for is Subsection 54.09.

7.03-5 Small family day care home. (Ord 38.702 (1) (part); Ord. 38.339 (part), 2/19/74; Ord. 38.19 (part), 1/17/61; Ord. 38 (part), 3/15/55),)

7.04 Conditional Uses

7.04-1 ~~Rooming and b~~Boarding houses for ~~any number of guests~~ three (3) or more persons.

7.04-2 Group dwellings.

7.04-3 Hospital, sanitarium or licensed nursing home exceeding six (6) persons except for the following: clinic, animal hospital, and hospital, sanitarium, or nursing home used primarily for contagious, mental or drug or alcohol addict cases.

7.04-4 Large family day care and day care center.

7.04-5 Incidental services, such as restaurants and retail sales to serve residents, provided there is no exterior display or advertising and such activities are conducted in spaces which are integral parts of a main building excluding Adult Businesses, as defined in Subsection 54.18.

7.04-6 Social halls, lodges, fraternal organizations and clubs, except those operated for a profit.

Section 8 R4 Multi-Family Very High Density District

8.01 Purpose and Intent

To stabilize and protect the residential characteristics of the District and to promote a suitable residential environment. The "R4" District is intended to provide for higher-density residential "villages" structured around transit stations, streets, creek side open spaces, trails and parks. (Ord 38.759, 4/2/02)

8.02 Principal Permitted Uses

The following are the principal permitted uses in an R4 District:

8.02-1 Multiple family dwellings.

8.02-2 Planned Unit Developments subject to provisions of subsection 54.07. (Ord. 38.759 (part) 4/2/02)

8.03 Accessory Uses

The following are the accessory uses permitted in an "R4" District:

8.03-1 Home occupations and professional offices in home, as provided for in subsection 54.08.

8.03-2 A State authorized, certified or licensed family care home, foster home or group home serving six (6) or fewer mentally disordered or otherwise handicapped persons or dependent or neglected children provided such care home furnishes care on a 24-hour a day basis.

8.03-3 Other accessory uses and accessory buildings customarily appurtenant to a permitted use, as provided for in subsection 54.09.

8.03-4 Small family day care home. (Ord. 38.759 (part), 4/2/02)

8.04 Conditional Uses

8.04-1 ~~Rooming and b~~Boarding houses for ~~any number of guests.~~three (3) or more persons.

8.04-2 Group dwellings.

8.04-3 Large family day care homes and day care centers.

8.04-4 Live-work units; allowed commercial uses to be specified through the use permit process.

8.04-5 Park, playground or community center, owned and operated by a governmental agency or a non-profit community organization.

8.04-6 Public service structures, not including corporation yards, storage or repair yards and warehouses.

8.04-7 Temporary tract offices and tract signs with the exception that no tract sign shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.

8.04-8 Condominium conversion, subject to the regulations set forth in Section 7.14. (Ord. 38.759 (part, 4/2/02)

8.05 Development Standards

8.05-1 Structure Height. No building shall exceed four (4) stories and sixty (60) feet in height, including special architectural elements such as towers and spires.

8.05-2 Residential Density. Residential development shall be a minimum of thirty-one (31) dwelling units per gross acre and shall not exceed forty (40) dwelling units per gross acre.

8.05-3 Front and Street Side Setbacks.

- Post signs (in English and multi-lingual) inside the premises for all employees identifying procedures for food delivery and garbage disposal.
- All garbage bins shall be stored in the garbage enclosure except for the twelve (12) hours immediately before and after garbage collection.

38.02-3 Medical or dental clinics.

38.02-3.1 Mixed use developments

38.02-4 Multi-Family housing. See Section 38.04 regarding prohibition of ground level residential along portions of South Main Street.

38.02-4.1 Live-work units

38.02-5 Small family day care home.

38.02-6 Planned Unit Developments.

38.02-7 Any other uses which are added to this list by the City Planning Commission, in accordance with the procedure prescribed in Section XI-10-54.02.

38.03 Uses Permitted Subject to Receiving a Conditional Use Permit

38.03-1 The following uses may also be permitted, provided their location and operation is first approved by the Planning Commission, as provided for in Section 57, and they are not Adult Businesses as defined in Subsection 54.18:

(a) Retail stores, offices or commercial service establishments greater than ten thousand (10,000) square feet in gross floor area.

(b) Retail stores, offices or commercial service establishments open past 10:00 p.m.

(c) Arcades, with mechanical or electronic games or games of skill or science.

(d) New and used auto, recreational vehicle, and boat sales, excluding commercial vehicles, trucks, buses, vans, farm and construction equipment, with accessory repairs and services. Said accessory repairs and services shall be conducted wholly within a completely enclosed building. Outdoor display is allowed.

(e) Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals. Outdoor display is allowed.

(f) Billiard centers.

(g) Blueprinting.

(h) Bowling alleys.

(i) Catering establishments.

(j) Cocktail lounges with or without live entertainment.

(k) Commercial laboratories, including medical and dental laboratories.

(l) Large family day care homes and day care centers.

(m) Laundries and dry cleaning establishments.

(n) Liquor stores.

(o) Motels and hotels.

(p) Music or dance instruction.

(q) Pet hospitals and veterinarians.

(r) Pet and bird stores.

(s) Restaurants, or restaurants which include internet usage for customers, that do not meet the performance standards listed in Subsection 38.02-2.

(t) Restaurants with a bar area, dancing or live entertainment.

(u) Stores selling used merchandise, such as thrift stores.

(v) Tanning salons.

(w) Temporary tract advertising signs with the exception that no tract signs shall be permitted within six hundred (600) feet of a Santa Clara County Expressway.

(x) Theatres, indoor only.

(y) ~~Rooming and b~~Boarding houses for ~~any number of guests.~~ three (3) or more persons.

(z) Group dwellings.

53.23 Parking Schedule

53.23-1 Residential Land Uses

.1 Single-family, duplexes and multi-family residences -- Refer to residential districts in this Chapter.

.2 Boarding houses, Ddormitories, sororities and fraternities -- 1 sp/room rented ~~or living unit.~~

53.23-2 *Commercial Land Uses*

.1 Hotels, motels -- 1 sp/guest room or unit plus 2 sp/manager unit.

.2 Clubs and lodges -- 1 sp/200 Sq. Ft. GFA.

.3 Office buildings and business services (excluding financial institutions) -- 1 sp/200 Sq. Ft. NFA for 1 st floor plus 1 sp/400 Sq. Ft. GFA for each upper floor. (Ord 38.530, 7/21/81)

.4 Shopping goods, retail, convenience goods, personal services and repairs, except furniture stores, restaurants, service stations and car washes -- 1 sp/200 Sq. Ft. GFA for 1 st floor plus 1 sp/300 Sq. Ft. for each upper floor.

.5 Furniture stores and other bulky item retail stores -- 1 sp/350 Sq. Ft. GFA.

.6 Restaurants (table or counter service) -- For indoor and outdoor seats, 1 sp/3 seats (all seats including those in the waiting area) and an additional ten (10%) percent for employee parking. (Ord 38.675, 10/20/92)

.7 Restaurants which are of the fast food or take-out type -- 1 sp/2.5 seats for the seating or table/dining area (indoor and outdoor) plus 1 sp/50 Sq. Ft. NFA for the ordering or take-out area, not the seating or table/dining area. (Ord 38.665, 10/29/91)

.7-1 Window service or Drive-thru -- Queuing for five (5) vehicles which do not interfere with any on-site parking spaces (to be combined with but not limited to categories 53.23-2.6 or 53.23-2.7, when window service is provided). (Ord 38.665, 10/29/91)

.7-2 Drinking establishments, nightclubs, bars, cocktail lounges, discos or similar uses with or without entertainment -- 1 sp/30 Sq. Ft. GFA. (Ord 38.665, 10/29/91)

.8 Bowling alleys including incidental accessory uses (eating and drinking, billiards, etc.) -- 6 sp/alley or lane.

.9 Day care schools -- 1 sp/classroom or 1 sp/500 Sq. Ft. GFA.

.10 Service stations with lube bays -- 3 sp/lube bay.

.11 Service stations without lube bays -- 1 sp/200 Sq. Ft. GFA of building area.

.12 Car washes -- 1 sp/200 Sq. Ft. GFA of building area and reservoir space outside of building equal to 2 times the maximum capacity of facility.

.13 Mortuary, funeral parlor -- 1 sp/4 seats and 1 sp/employee.

.14 Financial institutions (banks, savings and loans, etc.) -- 1 sp/180 Sq. Ft. GFA for each floor. (Ord 38.530, 7/21/81)

55.03-3 Front Yard - Adjoining Projecting Building

Where a lot adjoins only one (1) lot having a main building (within twenty-five (25) feet of its side lot lines), which projects beyond the established front yard line and has been so maintained since this Ordinance became effective, the front yard requirement on such lot may be the average of the front yards of said existing buildings. (Ord 38, 3/15/55)

55.03-4 Front Yard - Sloping Lot

Where the elevation of the ground at a point fifty (50) feet from the front line of a lot, and midway between the side lines, differs ten (10) feet or more from the curb level, or where the slope (measured in the general direction of the side lot lines) is twenty (20%) percent or more on at least one-quarter (1/4) of the depth of the lot, the front yard need not exceed fifty (50%) percent of that required in the district. (Ord 38, 3/15/55)

55.03-5 Front Yard and Side Yard Waived - Dwelling Over Store

The front and side yards shall be waived for dwelling~~,~~ and hotels ~~and boarding or lodging houses,~~ erected above the ground floor of a building when said ground floor is designed exclusively for commercial or industrial purposes. (Ord 38, 3/15/55)

55.03-6 Front and Side Yards Varied - Unit Development

Where an entire frontage on both sides of a street or streets in an "R1" District is designed and developed as a unit, the following provisions shall apply:

a) The front yard requirements may be varied by not more than five (5) feet in either direction, i.e., from twenty (20) feet to thirty (30) feet in the case of a required front yard of twenty-five (25) feet, provided the average front yard for the entire frontage is not less than the minimum front yard required in the district; and

b) The side yard requirements may also be varied, provided that the total combined width of the two (2) side yards on a lot is not less than the total side yards required for lots in the district and that the minimum distance between the sides of the buildings shall not be less than the total combined width of the side yards required in the district. (Ord 38, 3/15/55)

55.03-7 Side Yard Waived - Semi-Detached Dwellings, etc.

For the purpose of side yard regulations, the following dwellings with common party walls shall be considered as one (1) building occupying one (1) lot, semi-detached two (2) and four (4) family dwellings, row dwellings, group dwellings and court apartments. (Ord 38, 3/15/55)

R1-8 Twenty-five (25) feet. If principal building is two (2) stories or over, thirty (30) feet.
R1-6 Twenty-five (25) feet.
R1-5 Twenty (20) feet.
R1-4 Fifteen (15) feet. If principal building is two (2) stories or over, twenty (20) feet.
R1-3 Fifteen (15) feet. If principal building is two (2) stories or over, twenty (20) feet.
R1-2.5 Fifteen (15) feet. If principal building is two (2) stories or over, twenty (20) feet.

(Ord 38.526, 1/20/81)

5.2 Rear Yard - Slope equal to or greater than sixteen (16%) percent but less than twenty-six (26%) percent.

R1-10 Forty (40) Feet. (Ord 38.339, 9/20/77)

5.3 Rear Yard - Slope equal to or greater than twenty-six (26%) percent.

R1-10 Forty (40) Feet. (Ord 38.339, 9/20/77)

4.07 Automobile Parking Restrictions

4.07-1 Upon every lot containing a dwelling, ~~T~~there shall be ~~provided at the time of erection of any dwelling~~ at least two (2) enclosed ~~permanently maintained~~ parking spaces permanently maintained~~on the same lot with the dwelling for each dwelling~~. *However, in cases where a* dwelling was constructed with one (1) enclosed parking space and approved prior by the City prior to *[insert effective date of ord.]* only one (1) enclosed parking space shall be required. Any *conversion of a garage or other enclosed parking area approved by the city prior to [insert effective date of ord.]* is not subject to this requirement.

Such parking spaces shall not be less than ten (10) feet wide and twenty (20) feet long with adequate provisions for ingress and egress. No automobile driveway to provide access shall be less than eight (8) feet in width. (Ord 38.373, 5/4/76)

4.07-2 Deleted (Ord 38.384, 10/26/76)

4.08 Required Improvements

The above parking areas shall be improved as provided in Subsection 54.03.
(Ord 38.19, 1/17/61)

4.09 Corner Lots

On corner lots the side yard regulations shall be the same as for interior lots, except on the street side of a corner or reverse corner lots, in which case the side yard shall not be less than fifty (50%) percent of the front yard required on the lots in the rear of such corner lots, but such side yard need not exceed ten (10) feet, nor shall it be less than the side yard required on interior lots. (Ord 38.22, 2/1/62)

4.10 Areas for Collecting and Loading Recyclable Materials

There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of subsection 54.15 of this Chapter. (Ord. 38.687, 5/19/94)

Section 64 Notice and Appeal

64.01 Time

Time of giving notice:

Whenever notice of hearing is required by this Chapter, it shall be given at least ten (10) calendar days before the hearing. (Ord 38.92, 12/6/66)

64.02 Manner

Manner of giving notice:

Whenever notice of hearing is required by this Chapter for any of the following matters:

64.02-1 For pre-zoning of unincorporated land; an amendment to the provisions of this Chapter (including Changes of Zone); an application for a variance or a conditional use permit or new "S" Zone and amendments pursuant to Section 42.10 or for revocation, suspension or modification of the same, or an appeal from the action taken thereon, notice shall be given as per State of California Government Code Section 65091, and shall include all of the following materials: (Ord 38.706, 7/16/96)

a) ~~By publication~~ Publishing the notice in a newspaper of general circulation within the City.~~;~~(Ord 38.600, 3/4/86)

b) ~~By p~~Posting ~~the~~ one (1) sign notice per 1000 lineal feet of property street frontage ~~in at least three (3) conspicuous places close to the property affected; and~~ in a conspicuous place on the affected property visible from the street frontage. If the affected property has no street frontage, no less than one (1) sign notice shall be required to be posted.

c) ~~Public hearing notices shall be mailed~~ Mailing the notice, in accordance with Section I-20-2.20 of the Milpitas Municipal Code, to all property owners and residential renters within three hundred (300) feet of the subject parcel's property boundaries. The ~~Community Development~~ Planning Director ~~or Planning Commission Chair~~ shall have the discretion to require a 1,000 feet notification requirement for public hearings, if the project is deemed to be potentially controversial. (Ord 38.706, 7/16/96)

d) Mailing the notice, in accordance with Section I-20-2.20 of the Milpitas Municipal Code, to ~~T~~the owner of the subject real estate property and the applicant, respondent or appellant. ~~shall be given notice by mail in accordance with the provisions of Section I-20-2.02 of the Milpitas Municipal Code.~~ (Ord 38.600, 3/4/86)

e) Deleted (Ord 38.706, 7/16/96)

f) Mailing the notice, in accordance with Section I-20-2.20 of the Milpitas Municipal Code, to ~~Notice shall be given by mail in accordance with the provisions of Section I-20-2.02 to~~ the Milpitas Unified School District and, in addition, to any other local agency expected to provide essential facilities and services to the project and whose ability to provide said facilities and services may be significantly affected. (Ord 38.600, 3/4/86)

2 Contents of Notice of Public Hearing

All notices shall include the date, time and place of any public hearing, the identity of the hearing body and a general explanation of the matter to be considered and a general description, by text or diagram, of the location of the real property, if any, that is the subject of the hearing. (Ord 38.600, 3/4/86)

3 Deleted (Ord 38.513, 6/3/80)

4 For cases not otherwise provided for herein: (and, except where otherwise required by the law of the State of California), notice shall be given by publication or posting or mailing, in the discretion of the City Manager, and in accordance with the provisions of Section ~~2, Chapter 20, Title I~~ I-20-2 of the Milpitas Municipal Code.

a) Nothing herein contained shall be construed to require the giving of notice or the holding of a hearing unless a public hearing is required by law.

64.03 Appeals

64.03-1 Except as otherwise provided in Section 62.03-4 (a) of this Chapter, any person aggrieved by any decision of any officer, board, commission or department of the City of Milpitas under the provisions of this Chapter may appeal said decision to the Code.

2 While appeals hereunder shall be heard at general or special meetings of the City Council, no notice thereof need be given (other than as required by said Section 5, Chapter 20, Title I of the Milpitas Municipal Code). Provided, however, that if the appeal is taken from action on an application for a variance, conditional use or other permit, notice of the hearing of the appeal shall also be given in accordance with the provisions of Subsection 64.01-1 and 64.02-2 of this Chapter.

3 Exception to Appeal Procedure

Provided, however, that the time for any appeal from action of the Planning Commission in granting, granting subject to condition or denying an "S" Zone pending a zoning amendment (pursuant to the provisions of Section XI-10-42.02) or in granting, granting subject to condition or denying a Use Permit pending a zoning amendment (pursuant to the provisions of Section XI-10-57.04) shall be extended so that said appeal may be taken at the time within ten (10) days from the date that said City Council shall give second reading to the Zoning Ordinance amendment. (Ord 38.205, 10/20/70)

64.04 Expiration of Permit or Approvals

Any Conditional Use, "S" Zone, Variance or other permit approval granted under the terms of this Ordinance shall expire (without notice to the grantee) eighteen (18) months after the date of approval, unless the approval is used or exercised before expiration. (Ord 38.542, 4/6/82)

64.04-1 Time Extension

An extension of time not exceeding eighteen (18) months may be granted by the Planning Commission and no more than one (1) extension shall be granted. An extension is valid only if approved before the pending expiration date. New conditions may be imposed on an extension of time for any permit. (Ord 38.5432, 4/6/82)

2 Use of Approvals

For the purposes of Section 64.04 an approval is "used" or "exercised" if the applicant:

1) obtains a building permit and completes a foundation, or
2) dedicates any land or easement as required from the zoning action, or
3) complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner. (Ord 38.542, 4/6/82)

3 Date of Approval

Unless there is an appeal the date of approval is the date on which the deciding body votes on the motion of approval. When there is an appeal, the date of approval is the date of the administrative vote on the motion finally determining the appeal. (Ord 38.542, 4/6/82)

MEMORANDUM

Department of the City Attorney

To: Tambri Heyden, Director of Planning and Neighborhood Preservation

From: John Bakker, Assistant City Attorney

Subject: Regulation of "Overcrowding" in Residential Homes

Date: September 12, 2003

This memorandum addresses several issues related to the regulation of overcrowding in residential homes and the City's limited authority to do so.

The City's Zoning Ordinance generally limits uses in residential districts to single-family dwellings, two-family dwellings, or multiple-family dwellings. The definition of "family" thus is a key term in the Zoning Ordinance's structure. The Zoning Ordinance defines "family" as follows:

> An individual, or two (2) or more persons related by blood or marriage, or a group of not more than five (5) persons (excluding servants) not related by blood or marriage, living together as a single housekeeping unit in a dwelling unit.

(Milpitas Mun. Code, § XI-10-2.38.) This definition was adopted in 1955 and has not been updated since.

As we have advised the City in the past, enforcement of this provision is precluded by federal statutory law, and, in addition, the provision is likely unconstitutional. The federal Fair Housing Act (42 U.S.C. §§ 3601 et seq.) generally prohibits housing discrimination. Section 3604(f)(3)(B) provides that discrimination includes "a refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford [handicapped] persons equal opportunity to use and enjoy a dwelling." One of the ways a person or persons can be "handicapped" under the Fair Housing Act is due to "familial status." The courts have therefore held a housing regulation cannot treat a group of unrelated persons differently from a family of related persons. Thus, if the City does not place an occupancy limit on the number of family members who can live in a single family residential unit cannot place such a limit on the number of unrelated persons. (See *City of Edmonds v. Oxford House, Inc.* (1995) 115 S.Ct.1776.) Courts have also held that similar language violates equal protection, because it treats similarly situated persons differently. (See, e.g., *College Area Renters and Landlord Assoc. v. City of San Diego* (1996) 42 Cal.App.4th 543 [50 Cal.Rptr.2d 515].)

State law provisions also preclude enforcement of this definition of family. Government Code section 65008 provides that any land use action taken by a local government is null and void if it denies to any individual or group of individuals the enjoyment of a residence because of any of the

following reasons: "The . . . familial status . . . of the individual or group of individuals. . . ." In addition, Government Code Section 12955(l) makes it unlawful to discriminate through public land use practices on the basis of, among other things, familial status. This section provides that zoning laws can be considered discriminatory. Although there are no cases that interpret the phrase "familial status," there is the earlier case of *City of Santa Barbara v. Adamson* (1980) 164 Cal.Rptr. 539. Briefly, this case invalidated a Santa Barbara ordinance that imposed stricter occupancy restrictions on unrelated persons living in single family residences than it did on related persons.

The definition of family in the *City of Santa Barbara* case was essentially the same as the definition of family in Milpitas Municipal Code XI-10-2.38. Based on the preceding discussion, it is the opinion of this office that the definition, if enforced against unrelated persons because they are unrelated persons, violates both federal and state law. It is our recommendation that the City amend the zoning code to address this likelihood.

The above-referenced authorities would appear to allow generally applicable *occupancy limits.* That is, the authorities suggest that the City could adopt a definition of family that stated that a family constitutes a group of *no more than 5 persons* living as a "single housekeeping unit." However, as will be apparent from the subsequent discussion, even occupancy limits appear to be preempted by state law.

California courts have held that limits on the number of persons that may occupy a home are preempted by state law. Health and Safety Code Section 17922 requires the Department of Housing and Community Development to adopt building standards for the construction and use of housing. The courts have held that these building standards preempt local regulation. In particular, the courts have held that the state has preempted the field of occupancy standards.[1] (See *College Area Renters, supra*, 43 Cal.App.4th at pp. 688–689; *Briseno v. City of Santa Ana* (1992) 6 Cal.App.4th 1378.) With respect to maximum residential occupancy, the Department has adopted those standards contained in the Uniform Housing Code. (Cal. Code Regs., tit. 25, § 32; Uniform Housing Code, § 503.2.) The Uniform Code requires that at least one room in a residence be not less than 120 sq. ft. Other habitable rooms must be at least 70 sq. ft. If the room is occupied for sleeping purposes, then the floor area minimum is increased by 50 sq. ft. for each occupant in excess of two. For example, a 15 foot by 15 foot room (225 sq. ft.) could serve as sleeping quarters for upwards of five persons.

Given these preemptive legal authorities, we would recommend that the Zoning Ordinance definition of "family" focus on the concept of the *single housekeeping unit.* For instance, the City of San Jose defines family as "one or more persons occupying a premises and living as a single housekeeping unit."[2] (San Jose Mun. Code, § 20.200.370.) With such a definition, the focus of enforcement would be solely on whether the persons occupying a residence are "living

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[1] I find these decisions to be counterintuitive, but they are binding precedent. The Housing Code deals with safety of those residing in the home, while zoning occupancy standards deal with impacts on the neighborhood and the residence's surroundings. In my opinion, the courts did not give sufficient weight to the different regulatory purposes behind the legislation. However, these cases are "the law of the land."

[2] San Diego defines family as "two or more persons related through blood, marriage, or legal adoption or joined through a judicial or administrative order of placement of guardianship; or unrelated persons who jointly occupy and have equal access to all areas of a dwelling unit and who function together as an integrated economic unit." (San Diego Mun. Code, § 113.0103.)

as a single housekeeping unit." This, of course, is primarily directed at residential homes that are internally subdivided into residential hotels or boarding house-like operations. The Zoning Ordinance does not define "single housekeeping unit." San Jose defines the term to mean "the functional equivalent of a traditional family; whose members are a non-transient interactive group of persons jointly occupying a single dwelling unit, including the joint use of common areas and sharing household activities and responsibilities such as meals, chores and expenses." (San Jose Mun. Code, § 200.1130.) In an unpublished decision, the Sixth District Court of Appeal concluded that this definition is not unconstitutionally vague, which although not precedential provides a certain level of comfort. Evidence that persons are not living as a single housekeeping unit might include (a) the renting of individual rooms in a residence; (b) compartmentalized common area, such as locked kitchen cabinets or refrigerators and bathrooms that are only accessible to certain tenants; and (c) locked doors on the individual bedrooms.[3] Tightening these definitions may allow the City to effectively enforce the provisions of the Zoning Code prohibiting boarding house-like operations in residential zones.

In addition, although state law restricts the City's ability to impose occupancy standards for residences, the City is not prohibited from enforcing its other ordinances with respect to health, safety, and nuisances. Thus, if a particular property creates a public health hazard to the residents or a nuisance due to overcrowding, the City can proceed to abate the nuisance pursuant to its nuisance abatement ordinances. Enforcement of these ordinances may mitigate many of the negative aspects of overcrowding and may result in the tenants or the landlord voluntarily reducing the number of persons living in the residence.

We trust that this memorandum will prove useful to you. Please let me know if you have any further questions.

c: James Lindsay
Gloria Anaya

[3] We have cataloged this evidence from *Ferris v. City of San Jose* (Feb. 6, 2003, H023017) [2003 WL 257949], which is an unpublished, nonprecedential decision from the Sixth District, Court of Appeal. It essentially upholds the City of San Jose's enforcement of its provisions precluding "guesthouses" in single family neighborhoods. While the case is somewhat instructive in how to deal with guesthouses, it is not binding precedent, and we have not extensively relied on it.

request for two more members from the CAC to participate to increase the public participation. The two additional members are: Chair Iloreta and Commissioner Abelardo.

Commissioner Ranker continued to state that the next largest thing happening at the moment is the survey. The steering committee is in the process of reviewing the survey prior to Council consideration on March 2, 2004. Through consultation with Dr. Shanks, the steering committee has determined that requests to complete the on-line survey will be mailed the week ending March 6th to a random sample of Milpitas households to ensure statistical validity.

X.
Old Business

a. Presentation and review of proposed Zoning Code Amendments regarding the definitions of Family, Single Housekeeping Unit, Single Family Dwelling, Rooming and Boarding Houses and Kitchen and requiring public parking.

Staff stated that they are proposing zoning text changes to address overcrowding, parking, and the requirements of Federal and State laws. One of the proposed solutions is to revise the definition of "Family" to remove the number of unrelated persons that could occupy a dwelling. Define a single housekeeping unit as the functional equivalent of a traditional family. Limit the number of kitchens to one per dwelling. Eliminate references to lodging houses and rooming houses. Modify the boarding house conditional use to be for 3 or more persons and to modify the definition of boarding house to include bed and breakfasts as an example.

Commissioner Queenan asked, if we are speaking about a single family dwelling under the new definition, where does how rooms are rented in a home fit into it. Staff stated that they cannot limit the number of rooms rented but they can say they cannot have any lockable rooms or cabinets in the kitchen. Commissioner Queenan feels that the code isn't any different than it is now. Staff stated the City is constrained by the law.

Commissioner Queenan feels that currently staff cannot go into a home by these definitions and do much of anything. Staff stated that if they have reason to believe that there is a violation they can enter the premises to inspect.

Commissioner Mandal asked if there is any process in correlation of number of cars that can be parked in front of a house. Staff stated that you can not require a greater number of parking spaces for a single family home than we already do, very traditional. Unless it is a second family unit, then you are allowed to require more parking spaces as required of all cities and counties in the state.

Commissioner Queenan asked the difference between rooming boarding house and a property that has multiple granny flats in the backyard. Staff stated that there is a limit of one granny flat per lot.

Commissioner Mohsin asked if there is a new ordinance for garage conversions. Staff stated the City allows two parking spaces on site, and is proposing a text agreement to require that one must be covered. Many local cities are dealing with this by requiring that there be two covered parking spaces. Staff stated that someone could covert one of the parking spaces under the new language.

Commissioner Queenan is concerned that it would be easy to apply for a permit without anyone going out to inspect. Staff stated that they would need a building permit. Commissioner Queenan also feels there is a loophole in the front yard paving regulations.

Commissioner Mohsin is concerned with safety. He feels the garage is for parking of cars only.

Chair Iloreta stated that one of the concerns is the definition of covered parking spaces. Commissioner Mohsin stated that if a garage is converted there would be more cars on the street and more parking problems. He feels there shouldn't be any garage conversions allowed.

Commissioner Ranker is concerned with the wording of "covered" spaces. He feels it should be dropped from the ordinance.

Commissioner Mandal suggested having the Commission review the language when it is being drafted or help with the process.

MOTION to authorize the subcommittee to review the zoning code amendments and forward their findings to the Planning Commission and City Council for adoption.

M/S: Lind, Mandal Ayes: 9

b. Subcommittee/Task Force Status Reports

Due to the CDBG funding, these items would be discussed at a future meeting.

XI. Adjournment

Chair Iloreta adjourned the meeting at 11:30 p.m. to the March 31, 2004 meeting.

Respectfully submitted,

_____

Yvonne Andrade, Recording Secretary

Proposed Regulations

Affect on Single Family Dwellings

Types of Rental Situations in a Single-Family Dwelling unit	Current Regulations		Current Parking Requirements	
Renting of rooms or independent living units w/ separate entrance, no or limited access to common & kitchen areas, etc.	Lack of clarity for enforceability	No longer permitted	2 spaces on-site	No longer permitted
Renting of rooms w/ no separate entrance & access to all common & kitchen areas	Lack of clarity for enforceability	❑ Limited to 1 kitchen ❑ Joint use of all common areas & internal access to all rooms ❑ No compartmentalization, i.e. no locked doors or cabinets ❑ Sharing of household activities and responsibilities	2 spaces on-site	2 *enclosed* spaces on-site
Rooming & Boarding houses	❑ Includes prepared meals ❑ Permitted use for up to 2 rooms ❑ Conditional use for any number of rooms	❑ Conditional use for 3 or more rented rooms	None	1 space per room rented In addition to 2 enclosed required for the dwelling
Second family units	❑ Cannot be located in garage ❑ Limited to 1 bedroom & 1 kitchen ❑ Size is limited: - 475 SF in valley floor - 1200 SF in hillside	No change	1 additional space on-site	No change
Garage Conversions	❑ Entire garage can be converted into living space provided that 2 spaces are maintained on the driveway ❑ Cannot contain a second family unit	No longer permitted	2 spaces on-site	No longer permitted

Summary of Research for Proposed Zoning Ordinance Amendments ZT2004-1

March 24, 2004 Planning Commission Meeting

ISSUE	Milpitas	Campbell	Dublin	San Jose	Santa Clara	Sunnyvale
Regulate number of unrelated persons in a family?	No	Yes	No	No	No	No
Require occupants of a single family dwelling to function as a single housekeeping unit?	Yes	No	No	Yes	No	No
Limit number of kitchens in a single family dwelling, if so how many?	1	1	No	No	1 *Additional sinks permitted if drain is of a specific size*	1
Regulate parking for rooming & boarding houses?	1 space/room rented *In addition to 2 spaces for the dwelling*	1 space/bed & 1 space/employee living off premises	2 spaces/dwelling & .5 spaces/sleeping room	1 space/guest room & 1 space/employee	No	Based on room size (SF): <200 = .25 space/room <250 = .5 space/room >250 = 1 space/room
Single family parking requirements	2 spaces (enclosed)	2 spaces (1 covered)	3 spaces (2 enclosed & 1 on-street w/in 150 ft.)	2 spaces (covered)	2 spaces (covered, not in front or corner side yards)	4 spaces (2 covered, 2 uncovered)
Require posting of public notices on project site, if so how many?	1	No	No	1 *Only for major new developments*	No	2

County of Santa Clara
Office of the County Clerk-Recorder
Business Division

County Government Center
70 West Hedding Street, E. Wing, 1st Floor
San Jose, California 95110 (408) 299-5665

ENVIRONMENTAL DECLARATION

For CLERK-RECORDER'S USE ONLY
POSTED ON 2/3/04 THROUGH 2/25/04
IN THE OFFICE OF THE COUNTY CLERK-RECORDER
BRENDA DAVIS, COUNTY CLERK
BY _____, DEPUTY LAURA RIVAS

FOR CLERK-RECORDER FILE STAMP
ENDORSED
FEB 0 2 2004
BRENDA DAVIS, County Clerk-Recorder
Santa Clara County
By _____ Deputy
LAURA RIVAS
CLERK-RECORDER
FILE NO.

CA Dept. of Fish and Game
Receipt #

NAME OF LEAD AGENCY: City of Milpitas

NAME OF APPLICANT: City of Milpitas

CLASSIFICATION OF ENVIRONMENTAL DOCUMENT:

1. ( ) NOTICE OF PREPARATION

2. ( ) NOTICE OF EXEMPTION

3. NOTICE OF DETERMINATION
NEGATIVE DECLARATION PURSUANT TO PUBLIC RESOURCES CODE § 21080(C)

   ( ) **$1300.00 REQUIRED ($1250.00 STATE FILING FEE AND $50.00 COUNTY CLERK FEE)**

   ( ) CERTIFICATE OF EXEMPTION AND/OR DE MINIMUS IMPACT FINDING STATEMENT ATTACHED - **$50.00 COUNTY CLERK FEE REQUIRED**

4. NOTICE OF DETERMINATION
ENVIRONMENTAL IMPACT REPORT PURSUANT TO PUBLIC RESOURCES CODE § 21152

   ( ) **$900.00 REQUIRED ($850.00 STATE FILING FEE AND $50.00 COUNTY CLERK FEE)**

   ( ) CERTIFICATE OF EXEMPTION AND/OR DE MINIMUS IMPACT FINDING STATEMENT ATTACHED - **$50.00 COUNTY CLERK FEE REQUIRED**

5. Other: Notice of Intent to Adopt a Negative Declaration

NOTICE TO BE POSTED FOR 20 DAYS.

THIS FORM MUST BE COMPLETED AND ATTACHED TO THE FRONT OF ALL ENVIRONMENTAL DOCUMENTS LISTED ABOVE (*INCLUDING COPIES*) SUBMITTED FOR FILING.
CHECKS SHOULD BE MADE PAYABLE TO : COUNTY CLERK-RECORDER.

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, James T. Beall, Jr., Liz Kniss
Acting County Executive: Peter Kutras, Jr.

CITY OF MILPITAS

Mailing Address: 455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479 • www.ci.milpitas.ca.gov

NEGATIVE DECLARATION
ENVIRONMENTAL IMPACT ASSESSMENT (EIA NO. EA2004-1)

A NOTICE, PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970, AS AMENDED (PUBLIC RESOURCES CODE 21,000 ET SEQ.), THAT THE CITY OF MILPITAS WILL NOT HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT.

Project Title: Zone Text Amendment No. ZT2004-1 (Ordinance No. 38.763)

Project Description: The city proposes to amend the Zoning Ordinance by modifying the following provisions as they relate to single-family dwellings: remove the maximum number of unrelated persons that can occupy a dwelling, require all occupants to function as a single housekeeping unit and provide a definition for single housekeeping unit, require two parking spaces to be enclosed within the garage and permanently maintained, and expand the definition of a kitchen. In addition, the project proposes to modify the location of the legal notice postings from the project vicinity to the project site.

Project Location: City of Milpitas, 455 E. Calaveras Blvd., Milpitas, CA 95035.

Project Proponent: City of Milpitas, 455 E. Calaveras Blvd., Milpitas, CA 95035

The City of Milpitas Environmental Impact Committee has reviewed the Environmental Impact Assessment for the above project based on the information contained in the Environmental Information Form and the Initial Study, the Committee finds that the project will have no significant impact upon the environment, as recommended in the EIA.

Copies of the E.I.A. may be obtained at the Milpitas Planning Department, 455 E. Calaveras Boulevard, Milpitas, CA 95035.

By: _____
Project Planner

Printed on Tree-Free Alternative Paper

ENVIRONMENTAL IMPACT ASSESSMENT NO. EA2004-1

Planning Division 455 E. Calaveras Blvd., Milpitas, CA 95035 (408) 586-3279

Prepared by: Staci Pereira January 28, 2004
date

Title: Assistant-Planner

1. Project title: Zone Text Amendment No. ZT2004-1 (Ordinance No. 38.763)

2. Lead Agency Name and Address: City of Milpitas, 455 E. Calaveras Blvd., Milpitas, CA 95035

3. Contact person and phone number: Staci Pereira, (408) 586-3278

4. Project location: Citywide

5. Project sponsor's name and address:
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

6. General plan designation: Citywide General Plan Designations 7. Zoning: City Wide Zoning District

8. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)
See attached.

9. Surrounding land uses and setting: Briefly describe the project's surroundings:
See attached.

10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)
N/A

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages:

- ☐ Aesthetics
- ☐ Agriculture Resources
- ☐ Air Quality
- ☐ Biological Resources
- ☐ Cultural Resources
- ☐ Geology / Soils

☐ Hazards & Hazardous Materials	☐ Hydrology / Water Quality	☐ Land Use / Planning
☐ Mineral Resources	☐ Noise	☐ Population / Housing
☐ Public Services	☐ Recreation	☐ Transportation / Traffic
☐ Utilities / Service Systems	☐ Mandatory Findings of Significance	

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

☒ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Date: 1/30/04 Project Planner: Staci Pereira (Signature) STACI PEREIRA. (Printed Name)

A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project level, indirect as well as direct, and construction as well as operational impacts.

WOULD THE PROJECT:	IMPACT					
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source
I. AESTHETICS:						
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☐	☒	18, 19
b) Substantially damage scenic resources, including, but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☐	☒	18, 19
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☒	☐	18, 19
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the areas?	☐	☐	☐	☐	☒	18, 19
II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:						
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☐	☒	18, 19
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☐	☒	18, 19
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	☐	☐	☐	☐	☒	18, 19

WOULD THE PROJECT:	IMPACT					
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source
III. AIR QUALITY: (Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations). Would the project:						
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☐	☒	18, 19
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☐	☐	☒	18, 19
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	☐	☐	☐	☐	☒	18, 19
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☐	☒	18, 19
e) Create objectionable odors affecting a substantial number of people?	☐	☐	☐	☐	☒	18, 19
IV. BIOLOGICAL RESOURCES: Would the project:						
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish & Game or U.S. Fish & Wildlife Service?	☐	☐	☐	☐	☒	18, 19
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish & Game or U.S. Fish & Wildlife Service?	☐	☐	☐	☐	☒	18, 19

WOULD THE PROJECT:	IMPACT					
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☐	☒	18, 19
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☐	☒	18, 19
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☐	☒	19
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☐	☒	19
V. CULTURAL RESOURCES: Would the project:						
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	☐	☐	☐	☐	☒	19
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	☐	☐	☐	☐	☒	19
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☐	☒	19
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☐	☒	19
VI. GEOLOGY AND SOILS: Would the project:						
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	☐	☐	☐	☐	☒	19

WOULD THE PROJECT:	IMPACT					
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☐	☒	11, 19
ii) Strong seismic ground shaking?	☐	☐	☐	☐	☒	19
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☐	☒	19
iv) Landslides?	☐	☐	☐	☐	☒	19
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☐	☒	19
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☐	☒	19
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☐	☐	☒	19
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	☐	☐	☐	☐	☒	19
VII. HAZARDS AND HAZARDOUS MATERIALS:						
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☐	☒	19
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☐	☒	19
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☐	☒	19

WOULD THE PROJECT:	IMPACT					
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☐	☒	19
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☐	☒	18, 19
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☐	☒	18, 19
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☐	☒	19
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas *or where residences are intermixed with* wildlands?	☐	☐	☐	☐	☒	19
VIII. HYDROLOGY AND WATER QUALITY:						
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☐	☒	19
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted?	☐	☐	☐	☐	☒	19
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or situation on- or off-site?	☐	☐	☐	☐	☒	19

WOULD THE PROJECT:	IMPACT					
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	☐	☐	☐	☐	☒	19
e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff as it relates to C3 regulations for development?	☐	☐	☐	☐	☒	19
f) Otherwise substantially degrade water quality?	☐	☐	☐	☐	☒	19
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood ~~hazard~~ delineation ~~map~~?	☐	☐	☐	☐	☒	19
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	☐	☐	☐	☐	☒	18, 19
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☐	☒	18, 19
j) Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☐	☒	19
IX. LAND USE AND PLANNING:						
a) Physically divide an established community?	☐	☐	☐	☐	☐	

WOULD THE PROJECT:	IMPACT					
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☐	☒	18, 19
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☐	☒	19
X. MINERAL RESOURCES:						
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☐	☒	19
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☐	☒	19
XI. NOISE:						
a) Result in exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☐	☐	☒	19
b) Result in exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☐	☒	19
c) Result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☐	☒	19
d) Result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☐	☒	19

WOULD THE PROJECT:	IMPACT					
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source
XIV. RECREATION:						
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☐	☒	18, 19
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☐	☒	18, 19
XV. TRANSPORTATION/TRAFFIC: Would the project:						
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	☐	☐	☐	☒	☐	18, 19
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	☐	☐	☐	☐	☒	18, 19
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☐	☒	18, 19
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☐	☒	18, 19
e) Result in inadequate emergency access?	☐	☐	☐	☐	☒	18, 19
f) Result in inadequate parking capacity?	☐	☐	☐	☒	☐	13, 18, 19

WOULD THE PROJECT:	IMPACT					
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☐	☒	13, 18
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☐	☒	13, 18
XII. POPULATION AND HOUSING:						
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☒	☐	18, 19
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☐	☒	18, 19
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☐	☒	18, 19
XIII. PUBLIC SERVICES:						
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered government facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services: Fire protection? Police protection? Schools? Parks? Other public facilities?	☐	☐	☐	☐	☒	19

WOULD THE PROJECT:	IMPACT					
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	☐	☐	☐	☐	☒	19
XVI. UTILITIES AND SERVICE SYSTEMS: Would the project:						
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☐	☒	19
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☐	☒	19
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☐	☒	19
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☐	☒	19
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☐	☒	19
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☐	☒	19
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☐	☒	19

WOULD THE PROJECT:	IMPACT					
	Cumulative	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source
XVII. MANDATORY FINDINGS OF SIGNIFICANCE:						
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or pre-history?	☐	☐	☐	☐	☒	10, 11, 18, 19,
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☐	☒	☐	11, 12, 18, 19,
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☐	☐	☒	9, 11, 13, 18, 19

ENVIRONMENTAL IMPACT ASSESSMENT
SOURCE KEY

1. Environmental Information Form submitted by applicant
2. Project plans
3. Site Specific Geologic Report submitted by applicant
4. Traffic Impact Analysis submitted by applicant
5. Acoustical Report submitted by applicant
6. Archaeological Reconnaissance Report submitted by applicant
7. Other EIA or EIR (appropriate excerpts attached)
8. Alquist-Priolo Special Studies Zones Maps
9. BAAQMD Guidelines for Assessing Impacts of Projects and Plans
10. Santa Clara Valley Water District
11. Milpitas General Plan Map and Text
12. Milpitas Midtown Specific Plan Map and Text
13. Zoning Ordinance and Map
14. Aerial Photos
15. Register of Cultural Resources in Milpitas
16. Inventory of Potential Cultural Resources in Milpitas
17. Field Inspection
18. Planner's Knowledge of Area
19. Experience with other project of this size and nature
20. Flood Insurance Rate Map, September 1998
21. June 1994 Water Master Plan
22. June 1994 Sewer Master Plan
23. July 2001, Storm Master Plan
24. Bikeway Master Plan
25. Trails Master Plan
25. Other _____

ENVIRONMENTAL CHECKLIST RESPONSES AND ANALYSIS

The following discussion includes explanations of answers to the above questions regarding potential environmental impacts, as indicated on the preceding checklist. Each subsection is annotated with the number corresponding to the checklist form.

EXISTING SETTING:

The proposed Zoning Text Amendments would affect all zoning districts throughout the City of Milpitas (approximately 13.64 square miles) including: CO (Administrative and Professional Office), C1 (Neighborhood Commercial), C2 (General Commercial). HS (Highway Services), TC (Town Center), M1 (Light Industrial), M2 (Heavy Industrial), MP (Industrial Park), MXD (Mixed Use), R1 (Single Family), R2 (One and two-family), R3 (Multiple-family), R4 (Multi-Family Very High), R1-H (Single family hillside), A (Agriculture), and POS (Park/Public open space). The City is generally bounded by the City of San Jose to the east and south, the City of Fremont to the north and County of Santa Clara unincorporated land to the west.

The general makeup of the City includes mostly single-family residential uses in the eastern half of the City, industrial uses to the south, southwest and northwest and commercial uses to the south and west and interspersed throughout the residential areas. Major thoroughfares include Interstates 680 and 880 running north to south and State Highway 237 running east to west.

PROJECT DESCRIPTION:

The city proposes to amend the Zoning Ordinance by modifying the following provisions as they relate to single-family dwellings: remove the maximum number of unrelated persons that can occupy a dwelling, require all occupants to function as a single housekeeping unit and provide a definition for single housekeeping unit, require two parking spaces to be enclosed within the garage and permanently maintained, and expand the definition of a kitchen. In addition, the project proposes to modify the location of the legal notice postings from the project vicinity to the project site.

Attachment to: Ordinance No. 38.763 *(Project name and type of discretionary permits involved)*

Project Number: N/A

Permit Numbers: Environmental Impact Assessment No. EA2004-1 & Zone Text Amendment No. ZT2004-1

Discussion of Checklist/Legend

PS: Potentially Significant Impact
LS/M: Less Than Significant with Mitigation Incorporation
LS: Less Than Significant Impact
NI: No Impact

I. AESTHETICS

Environmental Impacts

c) Would the project substantially degrade the existing visual character or quality of the site and its surroundings? **LS**.

The current legal noticing requirements provide for 3 legal notices to be posted within the project vicinity, which results in adhering 8 ½ x 11 notices to utility poles. The proposed modification, to change the posting requirements from the project vicinity to the project site, will result in a larger notice to be placed on the project site in order to maintain visibility from all adjacent frontages. These larger signs would impact the visual character of project site, however only temporarily, due to the 10-day posting requirement. In addition, posting on the site will reduce the legal notices left on the utility poles in public right-of-ways in the project vicinity, which are unsightly when not removed promptly after the 10-day noticing period. Thus, it has been determined that the impact is less than significant.

XII. POPULATION AND HOUSING

Environmental Impacts

a) Would the project induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? **LS**.

The proposed modifications to single-family dwellings include removing the maximum number of unrelated persons that can occupy a dwelling. Without an occupant limit, the potential for overcrowding could result. However, the ordinance also proposes to limit the number of occupants by requiring all occupants of a single family dwelling to function as a single housekeeping unit. This would require the occupants to all have joint use of all common areas, interior access to all bedrooms and restrooms and share household activities and responsibilities such as meals, chores and expenses. The number of persons would also be limited by an amendment which prohibits garage conversions. By requiring the garage to be maintained as two enclosed parking spaces, the garage cannot be converted into living/habitable area such as an additional bedroom. Thus, this can be considered a less than significant impact.

XV. TRANSPORTATION/TRAFFIC

Environmental Impacts

Would the project:

a) Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)? **LS**.

The proposed modifications to single-family dwellings include removing the maximum number of unrelated persons that can occupy a dwelling. Without an occupant limit, the potential for overcrowding could result and thus an increase in vehicular trips on the

residential and major streets. However, as mentioned above, the ordinance proposes to limit the number of occupants by requiring all occupants of a single family dwelling to function as a single housekeeping unit and by prohibiting garage conversions by requiring the garage to be maintained as two enclosed parking spaces. Thus it can be considered a less than significant impact.

f) Result in inadequate parking capacity?

The proposed modifications to single-family dwellings include removing the maximum number of unrelated persons that can occupy a dwelling. Without an occupant limit, the potential for overcrowding could result and thus result in inadequate parking. However, as mentioned above, the ordinance amendments propose to limit the number of occupants by requiring all occupants of a single family dwelling to function as a single housekeeping unit and by prohibiting garage conversions. Not only do these amendments reduce the likelihood of expanded households it also ensures that, in essence, four parking spaces for each single family dwelling (two in the garage and two on the driveway) are maintained and available at all times as opposed to only two uncovered spaces currently required. Thus it can be considered a less than significant impact.

XVII. MANDATORY FINDINGS OF SIGNIFICANCE

b) Does the project have impacts that are individually limited but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)? **LS**.

These impacts are discussed in the above sections (under "Aesthetics", "Population" and "Traffic").