Date: June 23, 2004 Planning Commission Meeting Item No. 1.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing Report prepared by: Troy Fujimoto

Public Hearing: Yes: X No: _____

Notices Mailed On: 6/11/04 Published On: 6/10/04 Posted On: 6/11/04

TITLE:	**REVOCATION OF USE PERMIT AMENDMENT NO. UA2003-15 (AD2004-8)**
Proposal:	Revocation of existing use permit amendment for live entertainment, including dancing and karaoke at the Manila Natori restaurant.
Location:	579 South Main Street
APN:	086-11-012
RECOMMENDATION:	**Recommend revocation to the City Council**
Applicant:	Bella Juniega, 579 S. Main Street, Milpitas, CA 95035
Property Owner:	Seton Chow, 863 Alcosta Drive, Milpitas, CA 95035
Previous Action(s):	General Plan Amendment, Rezone, "S" Zone Approval, Use Permit, EIA
General Plan Designation:	Mixed Use
Present Zoning:	Mixed Use with an "S" Zone Overlay (MXD-S)
Existing Land Use:	Restaurant
Agenda Sent To:	Applicant & Owner (as noted above)
Attachments:	Notice to Abate Letter, dated May 13, 2004 Administrative Citation, dated June 15, 2004

BACKGROUND

In July 2002, the Planning Commission approved an "S" Zone Approval Amendment (P-SA2002-56) and a temporary Use Permit (P-UA2002-16) for building and site improvements and a request to add karaoke and dancing/live entertainment to an existing restaurant. The temporary use permit was for a six (6) month period, with an expiration of January 24, 2003.

Between July 2002 and January 2003, a plan was agreed upon between the business owner and City staff that phased the cost and timing of the conditions of approval. This plan was never carried out by the applicant. Subsequently, the applicant returned to the Planning

Commission for a second, temporary 6-month use permit on January 22, 2003. The application was approved with conditions of approval that required the applicant conform with all remaining conditions of approval prior to the July 23, 2003 Planning Commission meeting. The conditions of approval were not completed.

For due process reasons, a hearing was held during the July 23rd Planning Commission meeting. At the hearing, staff recommended that the hearing be continued to make note of the automatic expiration of the temporary use permit. In addition, a new applicant, now the current applicant, was in the process of submitting for a new, permanent use permit amendment for live entertainment. Entertainment was required to be discontinued until a new permanent use permit amendment was granted.

In October 2003, the Planning Commission approved an "S" Zone Amendment and Use Permit Amendment application for building and site improvements and a request to add karaoke and dancing/live entertainment to an existing restaurant. Because the site was in need of improvements given lack of maintenance, staff continued to implement conditions of approval that would improve the appearance of the site and comply with Midtown. In addition current restaurant conditions of approval were added to the permit. The October 2003 approvals (S-Zone and Use Permit amendments) included a six-month review of the live entertainment uses and compliance with the conditions of approval.

In May 2004, the Planning Commission heard the six-month review that was a condition of approval of the October 2003 approval. At that time all of the conditions had not been met. The Planning Commission closed the public hearing and it was noted that the applicant would have four (4) additional weeks to satisfy the conditions of approval due to the time allowance included as part of the notice to abate and because of the legal notification that is required as part of a revocation process. If compliance with the conditions of approval still had not been achieved, staff would begin and bring forward the public hearing for revocation of the use permit amendment.

REVOCATION PROCEDURE

As per the Zoning Ordinance, this revocation is being processed consistent with Section 63.06 (Revocation, Suspension, Modification). A use permit revocation shall only occur after notice of violation is mailed to the holder of the permit (see attached Notice to Abate letter, dated May 13, 2004). After the close of the public hearing and hearing all testimony, the Planning Commission shall make a recommendation to the City Council in regards to revocation of the permit.

A revocation of a permit may be allowed, at the discretion of the City Council, upon making any of the following findings:

1. There was a violation of a condition of the permit, and the violation was not abated, corrected or rectified within the time specified on the notice of violation;
2. There was a violation of law relating to the permit and the violation was not abated, corrected or rectified within the time specified on notice of violation;
3. The permit or approval is being exercised in a manner which creates a public nuisance; or;
4. The permit or approval is being exercised in a manner, which is contrary to the public health, safety and welfare.

In this case, the applicant is in violation of item 1 since the violation was not rectified within the time specified on the notice of violation (a period of 30 days, ending June 13, 2004). The applicant is in violation of the conditions of approval listed below:

4. Within six (6) months of October 8, 2003, the applicant shall restore the landscaping to the previously approved landscaping plan, ensuring that all of the required trees are on the site and dead landscaping is replaced. All required landscaping shall be continuously maintained as necessary to provide a permanent, attractive and effective appearance. (P,PC)

7. Within six (6) months of October 8, 2003, the applicant shall submit building permit plans and construct a new garbage enclosure to the approval of the City. The garbage enclosure shall be of concrete masonry unit (cmu) construction and shall match the existing building colors and architecture style. The garbage enclosure location shall be approved by the City of Milpitas. The applicant shall work with City staff and BFI (Browning Ferris Industries) in siting of the garbage enclosure. (P,E)

21. Within six (6) months of October 8, 2003, the applicant shall construct a trash enclosure, designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the trash enclosure. ***The trash enclosure detail shown on the submitted plan is not per Development Guidelines for Solid Waste Services and must be revised prior to Building permit submittal.*** (E)

Two of the conditions are related to the construction of a new garbage enclosure and one of the conditions is related to restoring and maintaining landscaping at the site.

Since the time the applicant was notified via a Notice to Abate letter, dated May 13, 2004, compliance with the conditions of approval has not occurred. The applicant has applied for a building permit for the enclosure, however, as of now no action has been done at the site. Also, the landscaping has not been replaced as per previously approved plans. In addition to the 30 days provided to comply in the notice to abate letter, the applicant has been aware of these requirements since October 2003. The amount of time has been more than adequate to accomplish compliance with conditions of approval given the time customarily required of other businesses for these standard development activities. In addition, the applicant was allowed to operate prior to the conditions being satisfied, which in and of itself is an extraordinary right, contrary to the traditional way of granting use permits given the high risk to the City.

If the City Council approves the revocation of the Use Permit Amendment for the live entertainment the site would still be able to have a restaurant and the various site and architecture approvals would remain in effect. However, in this case, the applicant would not be required to do the new site improvements (landscaping and garbage enclosure). The site improvement permit (S-Zone Amendment) would expire within 18 months of the October 2003 approval if the improvements do not occur.

RECOMMENDATION

Close the public hearing and based on the finding listed below, recommend revocation of Use Permit Amendment No. UA2003-15 to the City Council.

FINDINGS

1. There was a violation of three (3) conditions of the permit, and the violation was not abated, corrected or rectified within the time specified on the notice of violation as further described above in this staff report.

1.

City of Milpitas

455 E. Calaveras Blvd.
Milpitas, California 95035

May 13, 2004

CERTIFIED MAIL
APN# 8611012

Manila Manila Natori
Attn: B. V. & J. R. Juniega
579 S. Main Street
Milpitas, Ca 95035

Seton Chow
863 Alcosta Drive
Milpitas, Ca 95035

Subject: **Notice to Abate-**
Neighborhood Beautification Ordinance,
Title V, Chapter 500, Milpitas Municipal Code

Dear Business / Property Owner:

The City Council has adopted the Neighborhood Beautification Ordinance effective February 1, 2000, and the Neighborhood Preservation Division's responsibilities include responding to citizen complaints and enforcing this Ordinance.

Our Office has been notified of a violation of this Ordinance at 579 S. Main Street, Milpitas, Ca 95035, and in response, staff inspected your property and observed no garbage enclosure and insufficient number of trees at the site. In addition it has come to our attention that a valid Certificate of Occupancy does not exist for your restaurant (with the adding of live entertainment). Having these conditions not satisfied are in violation of the following:

Neighborhood Beautification Ordinance Section V-500-2.01
(h) (3) Miscellaneous

It is the responsibility of the property owner/occupant to abate (V-500-1.01) violations. A suggested method of abatement would be to have a total of 13 on-site trees planted and in place, complete construction of the garbage enclosure, and procure a new certificate of occupancy. **We must hereby notify you that you have thirty-one (31) calendar days from the date of this Notice to abate this condition (V-500-3.01). An inspection to verify compliance will be conducted on or after June 13, 2004.**

Please see the attached list of City resources available to assist you. If you cannot comply with this Notice by the due date because doing so will be an undue hardship, *and you are not acting as a landlord of rental property*, you may request an extension by stating your reason(s) in writing. Your request must be received within seven (7) calendar days of the date of this Notice, in this case **May 20, 2004.**

We are confident that this violation will be abated as required. However, if the condition is not abated, the Ordinance provides that, the City may abate the violation and recover the costs of abatement from you and/or impose a fine of $100. If you have any questions, please contact me at (408) 586-3072.

Thank you for your commitment to keeping Milpitas beautiful,

Zulema C. Maggi
Housing and Neighborhood Preservation Specialist

Enclosure: Request for an extension and photos

CC:
Troy Fujimoto, Planning Division 408-586-3287

City of Milpitas
Attn: Neighborhood Preservation Division
455 E. Calaveras Blvd.
Milpitas, Ca 95035

Notice to Abate- Extension request

Name _____
Address _____
Day phone number _____
Evening phone number _____

I received a Notice to Abate, dated _____, for a violation of Sections

Neighborhood Beautification Ordinance Section V-500-2.01
(h) (3) Miscellaneous

of the Milpitas Municipal Code. I am requesting an extension of the compliance date because:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

_____ _____
Property owner signature Date

APPROVED SPECIAL CONDITIONS

USE PERMIT AMENDMENT NO. P-UA2003-15 AND S-ZONE AMENDMENT (P-SA2003-118)

A request to add live entertainment (karaoke and dancing), add 34 seats for special events, construct a new garbage enclosure, and a request for the joint use of 20 parking spaces at an existing restaurant (Manila Natori Restaurant)

579 South Main Street

Planning Commission Approval: October 8, 2003

SPECIAL CONDITIONS

1. Use Permit Amendment No. P-UA2003-15 and S-Zone Amendment (P-SA2003-118) is for the addition of karaoke and dancing at an existing 163 seat restaurant, which will be serving all types of alcohol with hours of operation from 11:00AM to 2:00AM daily, as depicted on the approved plans dated October 8, 2003, and as amended by the approved special conditions. Any addition of seating, loss of parking, or change in nature of the operation shall require review and approval by the Planning Commission of an amendment to this Use Permit. (P)

2. The approved seating for this restaurant is 146 indoor seats. Prior to issuance of a certificate of occupancy for this use, a sign measuring at least 8½ inches by 11 inches, with a lettering height of at least 3 inches, shall be placed in a conspicuous location near the restaurant front entrance stating "Dining room seating: 146, as per Use Permit No. P-UA2003-15 granted by the Planning Commission on September 25, 2003." For occasional special events, when the dance floor is not in use the maximum seating for the building is 197 seats. (P)

3. This use shall be conducted in compliance with all appropriate local, state and federal laws and regulations. (P)

4. Within six (6) months of October 8, 2003, the applicant shall restore the landscaping to the previously approved landscaping plan, ensuring that all of the required trees are on the site and dead landscaping is replaced. All required landscaping shall be continuously maintained as necessary to provide a permanent, attractive and effective appearance. (P,PC)

5. No outdoor loudspeakers shall be installed at any exterior locations of the building, nor shall any music of any type be played outdoors at any time. (P)

6. During times when music is played, the business shall not prop open any doors. (P)

7. Within six (6) months of October 8, 2003, the applicant shall submit building permit plans and construct a new garbage enclosure to the approval of the City. The garbage enclosure shall be of concrete masonry unit (cmu) construction and shall match the existing building colors and architecture style. The garbage enclosure location shall be approved by the City of Milpitas. The applicant shall work with City staff and BFI (Browning Ferris Industries) in siting of the garbage enclosure. (P,E)

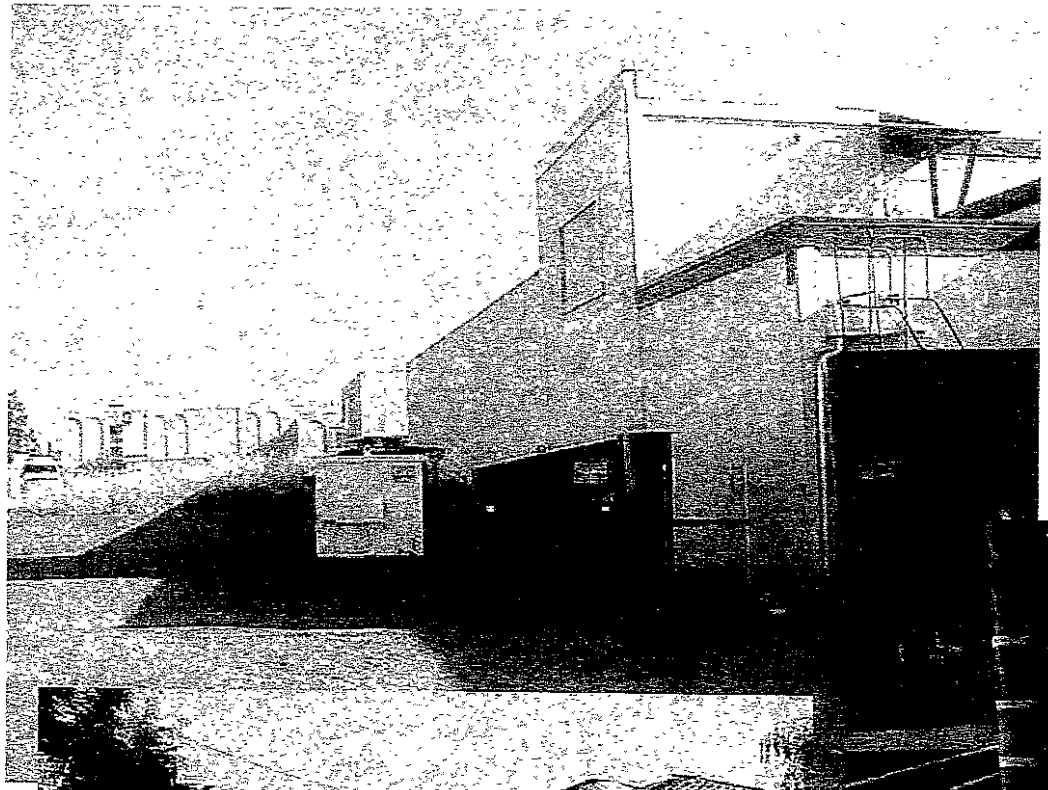
8. The applicant shall store all garbage, tallow and recycling bins associated with this tenant, in the enclosure in perpetuity. (P)

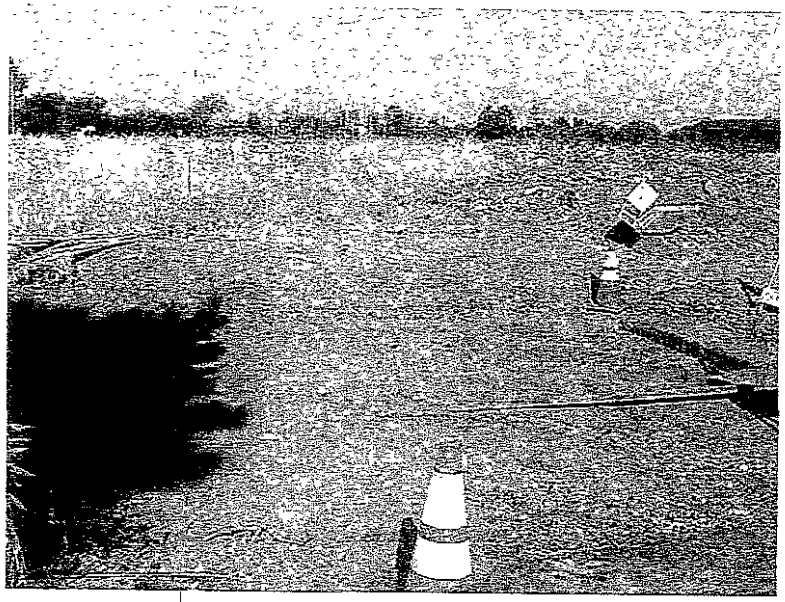
9. The business owner shall hold training sessions to instruct their employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all State and local health and sanitation

standards (refer to the County of Santa Clara Department of Environmental Health at (408) 729-5155 for their guidelines). (P)

10. Prior to issuance of a certificate of occupancy the business owner shall post signs (English, Spanish, Vietnamese, and Filipino) inside the premises for all employees which identify procedures for the food delivery and disposing of garbage. (P)
11. The preparation and storage of food shall not be permitted outside of the establishment. (P)
12. Washing of containers, equipment, and floor mats shall be conducted in the kitchen area so that wash water may drain into the sanitary sewer. (P)
13. Prior to issuance of a certificate of occupancy, the business owner shall submit a report detailing a program assigning restaurant staff perpetual responsibility for complying with the following guidelines (P)
    a) Keep garbage dumpsters clean inside and out; replace dirty or leaking dumpsters with new, clean ones.
    b) Double or triple bag waste to prevent leaking.
    c) Place, do not drop or throw, waste-filled bags, to prevent leaking.
    d) Keep the ground under and around the garbage dumpsters swept.
    e) Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.
    f) It is expected that Best Management Practices for solid waste handling will advance over time, thus it is the expectation that the applicant will modify their practices in accordance with future standards.
14. Prior to establishing the new use, a revised security plan shall be submitted to the Planning and Police Departments to reflect that the security protocol will also be in effect on any Sunday for which a karaoke or dancing event is scheduled. (PD)
15. The proposed security plan will be reviewed by the Police Department within six (6) months from issuance of a certificate of occupancy. Modifications to the security plan can be made at this time. (PD)
16. To ensure that the garbage enclosure is built and to ensure that the project is in compliance with all approved special conditions of approval, Use Permit Amendment No. P-UA2003-11 shall be reviewed by the Planning Commission in a fully noticed public hearing *within* six (6) months of October 8, 2003, (by April 14, 2004). The Planning Commission may impose additional special conditions, if necessary, to address any issues related to the new use. (P)
17. If at the time of application for permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
18. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)
19. A new certificate of occupancy shall be obtained prior to the addition of the new uses (karaoke and dancing) to the business. (B)
20. The applicant shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire and pay the related fees. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). (E)
21. Within six (6) months of October 8, 2003, the applicant shall construct a trash enclosure, designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the trash enclosure. ***The trash enclosure detail shown on the submitted plan is not per Development Guidelines for Solid Waste Services and must be revised prior to Building permit submittal.*** (E)

579 Main St Manila Natori 4-30-04





City of Milpitas

455 E. Calaveras Blvd.
Milpitas, California 95035

June 15, 2004

Certified Mail
APN#8611012

Manila Manila Natori
Attn: Bella Juniega
579 S. Main Street
Milpitas, Ca 95035

Seton Chow
863 Alcosta Drive
Milpitas, Ca 95035

Subject: **Administrative Citation**
Violation of the Neighborhood Beautification Ordinance,
Title V, Chapter 500, Milpitas Municipal Code (Copy attached)

Dear Ms. Juniega:

This is a follow-up to the Notice to Abate, dated May 13, 2004, that this department sent to you. Staff re-inspected your property at 579 S. Main Street, in Milpitas, on June 14, 2004 and observed the following violations:

Section violated:	Neighborhood Beautification Ordinance V-500-2.01 (h) (3) Miscellaneous
Description of violation:	Failure to comply with the requirements set forth in City zoning approvals as follows:

- **Condition of Approval No. 4**

  Within six (6) months of October 8, 2003, the applicant shall restore the landscaping to the previously approved landscaping plan, ensuring that all of the required trees are on the site and dead landscaping is replaced. All required landscaping shall be continuously maintained as necessary to provide a permanent, attractive and effective appearance. (P,PC)

- **Condition of Approval No. 7**

  Within six (6) months of October 8, 2003, the applicant shall submit building permit plans and construct a new garbage enclosure to the approval of the City. The garbage enclosure shall be of concrete masonry unit (cmu) construction and shall match the existing building colors and architecture style. The garbage enclosure location shall be approved by the City of Milpitas. The applicant shall work with City staff and BFI (Browning Ferris Industries) in siting of the garbage enclosure. (P,E)

- **Condition of Approval No. 21**

  Within six (6) months of October 8, 2003, the applicant shall construct a trash enclosure, designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the trash enclosure. ***The trash enclosure detail shown on the submitted plan is not per Development Guidelines for Solid Waste Services and must be revised prior to Building permit submittal.*** (E)

The amount of the fine due for this violation is $100.00

The fine for the violation listed above is $100.00 and is due and payable to the City of Milpitas within thirty (30) calendar days from the date of this Notice.

Please make your check payable to the City of Milpitas:
Payment may be made by mail or in person:
City of Milpitas
Attn: Housing and Neighborhood Preservation
455 E. Calaveras Blvd.
Milpitas, CA 95035

You have a right to appeal this citation. If you wish to appeal this citation, you must provide an advance deposit of the fine amount listed above and request an Administrative Hearing within fifteen (15) days of the date of this notice, in this case June 30, 2004 by 5pm. You may use the attached hearing request form. If your appeal is successful, the fee will be refunded to you.

Payment of this fine does not excuse you from continuing violations of the code section that is the subject of this administrative citation. You are hereby ordered to immediately correct or abate the violation described in this administrative citation. Failure to comply with this order will result in the City of Milpitas issuing additional administrative citations. The fine for a second is $200.00 and a third offense is $500, or the City, after an administrative hearing, abating the violation and recovering the costs of abatement from you. If you have any questions, please contact me at (408) 586-3075.

Sincerely,

Gloria Anaya

Gloria Anaya, Sr. Housing and Neighborhood Specialist

CC:
City Attorney's Office
Troy Fugimoto, Project Planner (408) 586-3287

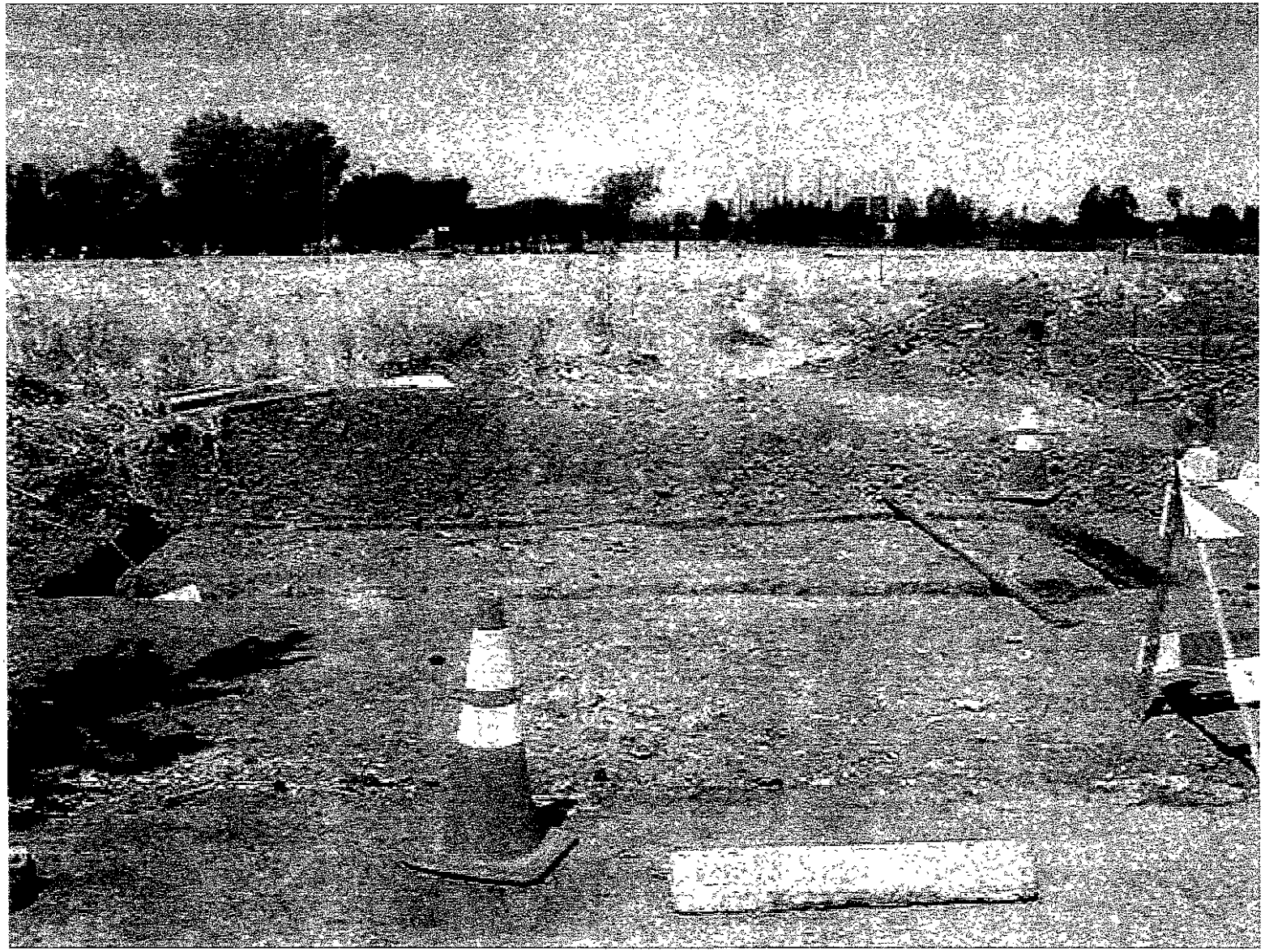
City of Milpitas
Attn: Neighborhood Preservation Division
455 E. Calaveras Blvd.
Milpitas, CA 95035

Hearing Request for Administrative Citation

Name_____
Address_____
Day phone number_____
Evening phone number_____

I received an administrative citation, dated _____, for a violation of Section Neighborhood Beautification Ordinance V-500-2.01 (h) (3) Miscellaneous of the Milpitas Municipal Code. By this request for hearing, I am appealing the citation. Pursuant to section V-500-8.05 of the Milpitas Municipal Code, the advance deposit of the fine is attached as required.

_____ _____
Property owner signature Date

Attachments: deposit of fine

579 Main 6-14-04