



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, OCTOBER 3, 2023

CITY COUNCIL CHAMBERS, 455 E CALAVERAS BLVD, MILPITAS, CA

6:00 PM (CLOSED SESSION)

7:00 PM (PUBLIC BUSINESS)

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-2400

Para sa Tagalog, tumawag sa 408-586-3051

Para español, llame 408-586-3072

The City Council meeting is held in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas and via teleconference/Zoom webinar.

You may watch the Council meeting without providing public comment by accessing it via links here.

Meeting shall be livestreamed - Go to:

Facebook: <https://www.facebook.com/CityofMilpitas/>

YouTube: <https://www.milpitas.gov/youtube>

Web Streaming: <https://www.milpitas.gov/webstreaming>

PUBLIC COMMENT INSTRUCTIONS

Oral public comments may be provided live during the City Council meeting in person or by registering for the zoom meeting in advance. To register you will need to provide an email address (not disclosed) and a name. To minimize technical difficulties, please make sure that you have the latest version of the Zoom Application. Below is the link to register for this meeting only:

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_Qk5qNZ5QTzamAjiKkbPyrg

After you register a link will be sent to you to join the City Council meeting in order to give your comments. All Zoom meeting attendees who wish to speak must click on the "raise hand" icon when the Mayor calls for public comments. If participating via phone, dial *9 to use the "raise hand" feature, and when called to speak, dial *6 to unmute your phone. Your phone number will be displayed in the live meeting. The Mayor will call speakers by name to address the City Council.

All comments provided shall be limited to three minutes or less as determined by the Mayor. All members of the public will be limited to one comment per agenda item, and one comment for non-agenda items.

NOTE: If a member of the public wishes to share any presentation materials for Council consideration, they must be submitted to the Clerk's Office by email to CityClerk@milpitas.gov by 12:00 p.m. on the day of the meeting. No presentations will be accepted in person in the Council Chambers.

MILPITAS CITY COUNCIL CODE OF CONDUCT

- Be respectful and courteous (words, tone, and body language).
- Model civility.
- Avoid surprises.
- Praise publicly and criticize privately.
- Focus on the issue, not the person.
- Refrain from using electronic devices while on the Council dais.
- Disclose conflicts of interest and affiliations related to agenda items.
- Separate governing from campaigning.
- The Council speaks with one voice after making policy on issues.
- Respect the line between policy and administration.
- Council will hold one another accountable to comply with this Code of Conduct.

CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk (6:00 PM)

ADJOURN TO CLOSED SESSION

(a) THREAT TO PUBLIC SERVICES OR FACILITIES

Pursuant to Government Code section § 54957

Consultation with: City of Milpitas Acting City Manager Ned Thomas

(b) PUBLIC EMPLOYEE APPOINTMENT

Pursuant to Government Code Section 54957(b)(1)

Employee Position: City Manager

CLOSED SESSION ANNOUNCEMENT:

Report on action taken in Closed Session, if required per Government Code Section 54957.1, including the vote or abstention of each member present.

PLEDGE OF ALLEGIANCE

INVOCATION (Councilmember Phan)

PRESENTATIONS (7:05 PM)

- Fire Prevention Week (Proclamation)
- Indigenous Peoples' Day (Proclamation)
- Hindu American Awareness and Appreciation Month (Proclamation)
- Clean Air Day (Proclamation)
- Silicon Valley Clean Energy Electric Showcase Awards Presentation

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

READING OF THE CITY COUNCIL CODE OF CONDUCT

APPROVAL OF AGENDA

CONSENT CALENDAR (7:20 PM)

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a City Councilmember, member of the audience or staff requests the Council to remove an item from (or be added to) the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar.

C1. Receive City Council Calendar of Meetings for October 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive City Council Calendar of Meetings for October 2023.

C2. Approve City Council City Council Meeting Minutes of September 14 and 19, 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve City Council Meeting minutes of September 14 and 19, 2023.

C3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive the list of anticipated agenda items for the next regular City Council meeting.

C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Review the list of items that have been requested by City Councilmembers and provide direction to staff as necessary. No substantive discussion about any specific item shall occur and the City Council shall hold all debate about the item until it is scheduled as a full agenda item.

C5. Consider Recommendations for Appointments to City Commissions (Contact: Mayor Montano, 408-586-3024)

Recommendation: Receive recommendations and approve recommendations for appointments to the Community Advisory Commission and Energy and Environmental Sustainability Commission and direct the City Clerk to post the Notice of Unscheduled Vacancy.

C6. Adopt a Resolution Authorizing the Application to the Prohousing Designation Program (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, 408-586-3275)

Recommendation: Adopt a resolution authorizing the application to and participation in the Prohousing Designation Program.

C7. Authorize the Acting City Manager to Enter into a Master Professional Services Agreement with Asquare, Inc. for Temporary IT Staffing Services (Staff Contact: Nick Raisch, Human Resources Director, 408-586-3086; and Daniel Nam, Information Technology Director, 408-586-2712)

Recommendation: Authorize the Acting City Manager to enter into a two-year Master Professional Services Agreement with Asquare, Inc. for Temporary IT Staffing Services for the not-to-exceed amount of \$250,000.00.

C8. Adopt a Resolution to Approve Sole Source Procurement of Police Vehicles from Duval Ford, LLC, and Authorize the Acting City Manager to Execute a Purchase Agreement with a Total Not-to-Exceed Amount of \$701,953.92 for the Purchase of Up to 12 Police Vehicles (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406 and Christian Di Renzo, Public Works Director, 408-586-2602)

Recommendation: (1) Adopt a resolution to approve sole source procurement of police vehicles from Duval Ford, LLC, and authorize the Acting City Manager to execute a purchase agreement with a total not-to-exceed amount of \$701,953.92 for the purchase of up to 12 police vehicles; and (2) In the event the City is unable to procure the vehicles from Duval Ford LLC, the City Manager is authorized to select another vendor and execute a purchase agreement with a total not-to-exceed amount of \$701,953.92 for the purchase of up to 12 police vehicles.

C9. Receive an Update on the Emergency Repairs to the HVAC System and Equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)

Recommendation: (1) Receive an update on the emergency repairs to the HVAC system and equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings; and (2) Determine by a four-fifths vote that the condition continues to constitute an emergency.

C10. Consider Two Fee Waiver Requests from FAREPA Silicon Valley and the Joseph Bettencourt Foundation and One Donation Request from Korean Language and Culture Foundation (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)

Recommendation: (1) Approve a Fee Waiver of \$945.00 for the Joseph Bettencourt Foundation Fundraiser at the Milpitas Community Center on October 20, 2023; (2) Approve a Fee Waiver of \$1,500 for the FAREPA Silicon Valley Unity in Diversity event at the Milpitas Community Center on October 12, 2023; and (3) Approve Donation request of \$500 for the Korean Language and Culture Foundation Alphabet event at the Milpitas Library on October 1, 2023.

COMMUNITY DEVELOPMENT (7:30 PM)

11. Provide Feedback and Guidance on the Proposed Workforce Housing Rental Assistance Program Approve an Additional Appropriation of \$28,389.76 from the Affordable Housing Community Benefit Fund to FORWARD for the Administration of the Workforce Housing Rental Assistance Program, and Direct the Use of an Allocation from the State Budget for Homelessness Prevention and Unhoused Services (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, Housing Division Manager, 408-586-3275)

Recommendation: (1) Receive a recommendation from the Housing Subcommittee and staff to provide rental assistance for up to 50 households over 24 months through a Workforce Housing Rental Assistance Program; (2) Approve and Authorize the Acting City Manager, or designee, to allocate an additional appropriation of \$28,389.76 from the Affordable Housing Community Benefit Fund to FORWARD for the administration of the Workforce Housing Rental Assistance Program ; and (3) Provide feedback and guidance on the use of an allocation from the State Budget for Homelessness Prevention and Unhoused Services for the Workforce Housing Rental Assistance Program.

12. Receive a Progress Report and Provide Direction to Staff on the Work Completed to Date on Phase 1 of the Comprehensive Zoning Ordinance Update, Including the Background and Recommendations Report, Draft New Zoning Districts (Business Park. Research and Development and Metro Area Zoning Districts), and Draft Updated Citywide Zoning Map (Staff Contact: Jay Lee, Interim Planning Director, 408-586-3077; and Holly Pearson, Senior Special Projects Associate, 408-609-0072)

Recommendation: Receive a progress report and provide direction to staff on the work completed to date on Phase 1 of the Comprehensive Zoning Update, including the Background and Recommendations Report, draft new zones (Business Park Research and Development and Metro Area Zones), and draft updated Citywide Zoning Map.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE (9:00 PM)

13. Receive Presentation from Staff on Storm Drain System Revenue Requirements Analysis (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)

Recommendation: Receive an informational presentation on the stormwater revenue requirements analysis and provide feedback to staff.

LEADERSHIP AND SUPPORT SERVICES (9:45 PM)

14. Approve Employment Agreement for the City Manager (Staff Contact: Nick Raisch, Human Resources Director, 408-687-5086)

Recommendation: Approve Employment Agreement for the City Manager.

PUBLIC FORUM (10:00 PM)

Members of the public are invited to speak on any item that does not appear on today's agenda. Comments will be limited to three minutes or less at the Mayor's discretion. When called to speak, you are encouraged to state your name for the record. As an item not listed on the agenda, no action can be taken, however the City Council may instruct the City Manager to place the item on a future meeting agenda.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (10:05 PM)

Members of the City Council or City Manager may make brief announcements at this time. Members of the City Council may also suggest future agenda items. For future agenda items, the City Council shall not debate the topic or engage in discussion but shall simply state a "yes" or "no" as whether to move the item forward. If a majority of the City Council agrees to move the item forward, the City Manager shall place the item on a future agenda.

ADJOURNMENT (10:10 PM)**KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other City agencies exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: mmutalipassi@milpitas.gov / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.milpitas.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on City website. City Council agendas and related materials can be viewed online: <https://www.milpitas.gov/129/Agendas-Minutes> (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at www.milpitas.gov or at Milpitas City Hall. Contact the City Clerk's Office at 408-586-3001 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to CityClerk@milpitas.gov prior to the meeting. You may request a larger font agenda.

September 2023						
S	M	T	W	T	F	S
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

MILPITAS CITY COUNCIL CALENDAR

October 2023

November						
S	M	T	W	Th	F	S
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Item # C1.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 7:00 PM -Parks, Recreation & Cultural Resources Commission (HL)	3 6:00 PM -Closed Session 7:00 PM -City Council	4 1:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) (Santa Clara) 5:30 PM -Veterans Commission (CM) 7:00 PM -Community Advisory Commission (EC)	5 5:30 PM -Milpitas Chamber of Commerce Board (GB) 5:30 PM -Santa Clara VTA Board of Directors (CM)	6	7 4:00-6:00 PM - Artwalk (Main Street)
8	9 4:30 PM -Economic Development and Trade Commission (CM)	10	11 4:30 PM -City Council Transportation Subcommittee (CM/EC) 7:00 PM -Silicon Valley Clean Energy Board of Directors (EC) (Cupertino) 7:00 PM -Planning Commission	12 4:00 PM -Treatment Plant Advisory Committee (CM) (San Jose) 4:00 PM -Santa Clara VTA Policy Advisory Committee (EC) 6:00 PM -Youth Advisory Commission (HL) 7:00 PM -Cities Assoc of SCC Board of Directors (CM)	13	14 11:00 AM -Delano Manongs Park Opening Ceremony (McCandless Drive)
15	16 7:00 PM -Science, Technology, and Innovation Commission (GB)	17 5:00 PM -Closed Session 7:00 PM -City Council	18 6:00 PM -Energy and Environmental Sustainability Commission (EC)	19 10:30 AM -South Bay Odor Stakeholders Group (CM) 3:00 PM -VTA Safety, and Transit Planning & Operations Committee (CM)	20	21
22	23 4:00 PM - Finance Subcommittee	24 1:30 PM -Senior Advisory Commission (CM)	25 12:00 PM -Santa Clara Valley Water District - Water Commission (CM) 5:30 PM -Cities Assoc. of SCC - Recycling and Waste Reduction Commission (CM) 7:00 PM -Planning Commission	26 12:00 PM -Santa Clara County Library JPA Board of Directors (CM) (Campbell)	27	28
29	30	31 				



SPECIAL MEETING OF THE MILPITAS CITY COUNCIL

Item # C2.

MINUTES THURSDAY, SEPTEMBER 14, 2023

The City Council of the City of Milpitas convened in a Special Meeting of the Milpitas City Council on January 26, 2023, in the Douglas Room of the Sonesta Event Center, 1800 Barber Lane, Milpitas, CA.

CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk

Mayor Montano called the Special City Council meeting to order at 8:08 AM.

PRESENT: Mayor Montano, Vice Mayor Chua, Councilmembers Barbadillo (8:18 AM), Lien, and Phan.

ABSENT: None.

PLEDGE OF ALLEGIANCE

Mayor Montano led the Pledge of Allegiance.

ADJOURN TO CLOSED SESSION

City Attorney Mutalipassi announced the closed session items.

There were no public speakers.

The City Council adjourned to Closed Session at 9:09 AM.

(a) PUBLIC EMPLOYEE APPOINTMENT/HIRING

Pursuant to California Government Code Section 54957

Position to be filled: City Manager

The City Council reconvened in open session at 4:23 PM.

CLOSED SESSION ANNOUNCEMENT

Mayor Montano announced that the Special Meeting scheduled for September 15, 2023 was cancelled and that there was nothing to report.

ADJOURNMENT

Mayor Montano adjourned the meeting at 4:25 PM.

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

MINUTES
TUESDAY, SEPTEMBER 19, 2023

The City Council of the City of Milpitas convened on September 19, 2023, in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas, and via teleconference/ Zoom webinar.

CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk

Mayor Montano called the Regular City Council meeting to order at 6:01 PM. Roll Call was taken by City Clerk Guzzetta.

PRESENT: Mayor Montano, Vice Mayor Chua, Councilmembers Barbadillo, Lien, and Phan (6:07 PM).
ABSENT: None.

City Attorney Mutalipassi announced the closed session items. The City Council adjourned to Closed Session at 6:04 PM.

ADJOURN TO CLOSED SESSION

(a) CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6

Agency designated representative: Nick Raisch, Human Resources Director

Bargaining unit: LIUNA, UPEC (Pro-Tech, MEA, MidCon), IAFF, MPOA

(b) CONFERENCE WITH LEGAL COUNSEL – Existing Litigation

Pending Litigation Pursuant to Government Code Section 54956.9(d)(1)

City as Defendant

Lorin Preston v. City of Milpitas, Workers' Compensation Appeals Board nos. ADJ11353145, ADJ11353106, ADJ15144006, and ADJ15056426.

The City Council reconvened in open session at 7:29 PM

CLOSED SESSION ANNOUNCEMENT:

City Attorney Mutalipassi reported that there was no action taken on Closed Session items.

PLEDGE OF ALLEGIANCE

Mayor Montano led the Pledge of Allegiance.

INVOCATION (Councilmember Barbadillo)

Councilmember Barbadillo presented the invocation.

PUBLIC FORUM

The following people spoke under Public Forum:

1. Johnny Reed
2. Kayleen Buteau

3. Marvin Serber
4. Voltaire Montemayor
5. Tom Valore

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Mutalipassi asked the Mayor and City Councilmembers if they had any personal conflicts of interest. By roll call, there were no conflicts of interest. City Attorney Mutalipassi asked the Mayor and City Councilmembers if they had any reportable campaign contributions. By roll call, there were no reportable campaign contributions.

READING OF THE CITY COUNCIL CODE OF CONDUCT

Mayor Montano read the Code of Conduct.

APPROVAL OF AGENDA

Motion: to approve the September 12, 2023 Regular Meeting Agenda, hearing the Announcement and Future Agenda Items section prior to the Consent Calendar.

Motion/Second: Vice Mayor Chua / Councilmember Lien

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano

NOES: None

ABSENT: None

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

Mayor Montano recognized the Fire Department softball team for winning the gold medal in the California Firefighter Olympics.

Councilmember Phan asked to add an item to the future agenda items list to bring back Capital Projects that haven't yet been named for the Council to review and as an overview of CIP Projects in the works. There was unanimous consensus from the City Council to add it to the prioritization list.

CONSENT CALENDAR

Motion: to approve the Consent Calendar

Motion/Second: Vice Mayor Chua / Councilmember Lien

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano

NOES: None

ABSENT: None

There were the following public speakers:

1. Voltaire Montemayor

C1. Receive City Council Calendar of Meetings for September and October 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Received City Council Calendar of Meetings for September and October 2023.

- C2. Approve City Council City Council Meeting Minutes of August 29 and September 5, 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**
- Approved City Council Meeting minutes of August 29 and September 5, 2023.
- C3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**
- Received the list of anticipated agenda items for the next regular City Council meeting.
- C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**
- Reviewed the list of items that have been requested by City Councilmembers and provided direction to staff as necessary.
- C5. Receive Report and Direct City Attorney to Introduce an Ordinance Regarding Regulation of Sidewalk Vendors in Parks and Public Rights of Way (Staff Contact: Michael Mutalipassi, City Attorney, 408-858-3040)**
- Received a report and directed the City Attorney to introduce an ordinance regarding the regulation of street vendors in parks and public rights of way consistent with the Council's policy and SB 946.
- C6. Consider Recommendations from Mayor Montano for Removal from City Commission, and Accept Commissioner Resignation (Contact: Mayor Montano, 408-586-3024)**
- Approved the removal of Steven Huang as non-voting Student Commissioner from the Economic Development and Trade Commission; Accepted the resignation of Zeya Mohsin from the Planning Commission; and directed the City Clerk to post the notice of unscheduled vacancies.
- C7. Review and Accept the 2023 Legislative Season Action Report, Including an Update on 2023 State and Federal Earmark Requests (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012)**
- Reviewed and accepted the 2023 Legislative Season Action Report, including an update on 2023 State and Federal Earmark Requests.
- C8. Authorize and Approve the Out-of-State Travel to Washington, D.C., for Mayor Carmen Montano to Attend the Forward Latino *National Advocacy Day* to be held on October 4 – 5, 2023, for an Estimated Total Not-to-Exceed Amount of \$2,000 Budgeted Under the Individual Elected Official Allocation for Conferences/Meetings/Trainings (Staff Contact: Ned Thomas, Acting City Manager, 408-586-3059)**
- Authorized and approved the out-of-state travel to Washington, D.C., for Mayor Carmen Montano to attend the Forward Latino *National Advocacy Day* to be held on October 4 – 5, 2023, for an estimated total not-to-exceed amount of \$2,000 budgeted under the Individual Elected Official allocation for Conferences/Meetings/Trainings.
- C9. Authorize the City Manager to Execute the Fee Reimbursement Agreement for Transit Area Specific Public Facilities and Public Improvements at the 2001 Tarob Court Project by KB Home South Bay, Inc.; and Approve Budget Appropriation in the Amount of \$180,000.00 to the Non-Departmental Operating Budget in the TASP Fund (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Authorized the City Manager to execute the Fee Reimbursement Agreement for Transit Area Specific Public Facilities and Public Improvements at the 2001 Tarob Court Project by KB Home South Bay, Inc.; and approved a budget appropriation in the amount of \$180,000.00 to the non-departmental operating budget in the TASP Fund.

- C10. Approve and Authorize the City Manager to Execute the Improvement Agreement with Extra Shine Car Wash, Inc., for the Completion of Offsite Public Improvements Located at 554 South Main Street Associated with Site Development Permit (SD18-0010) and Conditional Use Permit (UA18-0020) (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Approved and authorized the City Manager to execute the Improvement Agreement with Extra Shine Car Wash, Inc., for the completion of offsite public improvements located at 554 South Main Street associated with Site Development Permit (SD18-0010) and Conditional Use Permit (UA18-0020).

- C11. Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and DREF Milpitas, LLC, for the Apple Inc. Site Improvement Project at 260 S. Milpitas Blvd. (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Approved and authorized the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and DREF Milpitas, LLC, for the Apple Inc. Site Improvement Project at 260 S. Milpitas Blvd.

- C12. Review and Approve the FY 2022-23 Fourth Quarter Financial Status Report, Fund Balances Thereof and Related Budget Amendments and Vehicle Purchase Order to Close-out the FY 2022-23 Budget and Authorize an Additional \$100,000 Blanket Purchase Order to the National Auto Fleet Cooperative Agreement for Vehicle Carry-Forward (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)**

(1) Reviewed the FY 2022-23 Quarterly Financial Status Report for the quarter ending June 30, 2023 (unaudited); (2) Approved budget amendments; and (3) Authorized an additional \$100,000.00 to the National Auto Fleet Cooperative Agreement blanket purchase order for vehicle carry-forward.

- C13. Approve and Authorize the City Manager to Execute Amendment No. 1 to the Professional Services Agreement with Liebert Cassidy Whitmore for an Additional Agreement Amount of \$200,000.00, Subject to the Annual Appropriation of Funds (Staff Contact: Nick Raisch, Human Resources Director, 408-586-3086)**

Approved and authorized the City Manager to execute Amendment No. 1 to the Professional Services Agreement with Liebert Cassidy Whitmore ("LCW") for an additional agreement amount of \$200,000.00, subject to the annual appropriation of funds.

- C14. Adopt a Resolution Approving and Authorizing the City Manager to Execute an Agreement Amendment with Insight Public Sector, Inc. (Staff Contact: Nick Raisch, Human Resources Director, 408-586-3086)**

Adopted **Resolution No. 9273** approving and authorizing the City Manager to execute an agreement amendment with Insight Public Sector, Inc., with additional funding in the amount of \$116,425.49, subject to the annual appropriation of funds, for a total agreement amount of \$300,441.49.

- C15. Approve an Amendment of the Master Services and Purchasing Agreement with Axon Enterprise, Inc., by Increasing the Total Not-to-Exceed Amount from \$913,178.60 to**

\$1,026,887.82 Over the Five-Year Term (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406; and Frank Morales, Assistant Chief of Police, 408-586-2521)

Approved an amendment of the Master Services and Purchasing Agreement with Axon Enterprise, Inc., by increasing the total not-to-exceed amount from \$913,178.60 to \$1,026,887.82 over the five-year term.

- C16. Receive an Update on the Emergency Repairs to the HVAC System and Equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)**

Received an update on the emergency repairs to the HVAC system and equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings; and determined by a four-fifths vote that the condition continues to constitute an emergency.

- C17. Accept the FY 2022-23 Commissioners Annual Report for Six (6) Commissions and Approve Six (6) Commission Work Plans for FY 2023-24 (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

Accepted the FY 2022-23 Commissioners Annual Report; and approved proposed FY 2023-24 Work Plans for: (a) Arts Commission (including two requested workplan additions detailed in the report); (b) Library and Education Commission; (c) Parks, Recreation and Cultural Resources Commission; (d) Senior Advisory Commission; (e) Veterans Commission; and (f) Youth Advisory Commission.

COMMUNITY DEVELOPMENT

- 18. Approve Proposed Project Locations Pertaining to Project No. 4299 Bicycle Improvement Project to be Funded by Caltrans 2022 Priority Legislative Budget Project (PLPB) Earmarks (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012; and Roberto Alonzo, Acting Transportation and Traffic Manager, 408-586-3316)**

Acting City Manager Thomas introduced the item. Deputy City Manager Cano and Acting Transportation and Traffic Manager Alonzo presented the report.

Council discussion ensued.

There were the following public speakers:

1. Voltaire Montemayor

After discussion, motion: to approve proposed project locations pertaining to Project No. 4299 Bicycle Improvement Project to be funded by Caltrans 2022 Priority Legislative Budget Project (PLPB) Earmarks.

Motion/Second: Councilmember Lien / Councilmember Barbadillo

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano
 NOES: None
 ABSENT: None

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE

19. Approve Historical Park Marker Project at Various City Parks and Appropriate Funds of \$90,000 to CIP No. 3489 (Staff Contact: Tegan McLane, Community Engagement and Inclusion Administrator, 408-586-3212)

Acting City Manager Thomas introduced the item. Recreation and Community Services Director Lorentzen presented the report.

There were the following public speakers:

1. Voltaire Montemayor

Vice Mayor Chua asked to have the marker project reviewed by the Naming Subcommittee prior to creating the markers.

After discussion, motion: to approve the Historical Park Marker Project concept at Bob McGuire, Frederick Creighton, Peter B. Gill, Jose Higuera Adobe, Murphy, Sunnyhills Albert Augustine Jr. Memorial, and Delano Manongs parks and appropriate \$90,000.00 to Public Art CIP No. 3489.

Motion/Second: Vice Mayor Chua / Councilmember Phan

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano
 NOES: None
 ABSENT: None

LEADERSHIP AND SUPPORT SERVICES

20. Provide Feedback Regarding Potential Amendments to Title V, Chapter 9, Section 4.05 of the Milpitas Municipal Code Related to Use of Noise-Amplifying Devices at Gill Park (Staff Contact: Michael Mutalipassi, City Attorney, 408-858-3040)

City Attorney Mutalipassi presented the report.

There were the following public speakers:

1. Jennifer Ting
2. Albert
3. Voltaire Montemayor

Councilmember Barbadillo emphasized the importance of the respectful use of the park in consideration of the nearby neighbors and community.

City Attorney Mutalipassi noted that the ordinance would come back to the City Council.

ADJOURNMENT

Mayor Montano adjourned the meeting at 8:35 PM.

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

Item # C3.

as of 9/29/2023

October 17, 2023 – Regular Meeting

CLOSED SESSION

- Labor Relations

INVOCATION (Councilmember Phan)

PRESENTATION

- Breast Cancer Awareness Month
- Diwali

CONSENT CALENDAR

1. Receive City Council calendar for October and November 2023 (City Clerk)
2. Approve City Council Meeting minutes of October 3, 2023 (City Clerk)
3. Preview list of items for November 7, 2023 (City Clerk)
4. Councilmember Request List (City Clerk)
5. Commission Appointments (City Clerk)
6. Commission Workplan and Accomplishments
7. Initial Acceptance - 355 Sango Ct. (Engineering)
8. Offsite Improvement Agreement - 540 S. Abel St. (Engineering)
9. ARPA Quarterly Report (Finance)
10. HDL Agreement for Sales Tax services (Finance)
11. Report on Emergency HVAC Repairs (Public Works)
12. Disposition of Fleet and Equipment (Public Works)
13. Proposed Joint Powers Agreement for the Cities Association of Santa Clara County (City Attorney)

PUBLIC HEARINGS

14. Variance for Single-Family Home at 1339 Terra Vista Court (Countryside Estates, Lot 1) (Planning)

COMMUNITY SERVICES

15. LWCF Grant (Recreation)

COMMUNITY DEVELOPMENT

16. Study Session: Housing Opportunity Districts (Planning)

LEADERSHIP AND SUPPORT SERVICES

17. Council Prioritization Quarterly Update (City Manager)

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

OPEN ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
1	Bring back Capital Projects that haven't yet been named for the Council to review and as an overview of CIP Projects in the works	Phan	9/19/2023	An update on this item will be provided at the next City Council prioritization meeting
2	Have the Police Chief direct staff to complete an analysis in partnership with the County to determine if it would be beneficial to have a location where residents can pickup Narcan	Chua	9/5/2023	An update on this item will be provided at the next City Council prioritization meeting
3	City Attorney to look at the policy for commissioners to release funds without the approval of the City Council. If any commission is granting a waiver, it must go through the City Council	Chua	9/5/2023	An update on this item will be provided at the next City Council prioritization meeting
4	Explore taking steps towards becoming a Charter City	Phan	9/5/2023	An update on this item will be provided at the next City Council prioritization meeting
5	Consider an art project for the City Hall lobby, receive input from Arts Commission	Montano	9/5/2023	An update on this item will be provided at the next City Council prioritization meeting
6	Ordinance to increase the below-market-rate (BMR) requirement from 15% to 20% for all new residential projects and explore flexibility in meeting the new requirement	Montano	9/5/2023	An update on this item will be provided at the next City Council prioritization meeting
7	Provide the City Council with an informational memorandum on lessons learned from the recent fire on Maui and how the City can update its emergency plan	Chua	8/15/2023	This task is completed. The Fire Chief sent an informational memo to the Mayor and City Council on September 5, 2023.
8	Look into what would be needed to convert the unused Teen Center space at the Sports Center to an indoor pickleball court.	Chua	8/8/2023	An update on this item will be provided at the next City Council prioritization meeting
9	Consider a Safe Parking Program to find businesses and churches that would allow the unhoused to sleep in their cars and vans	Montano	6/20/2023	An update on this item will be provided at the next City Council prioritization meeting

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
10	Human Resources Director to conduct a job fair specific to the job openings at City Hall	Chua	5/2/2023	June 2023 update: Staff is evaluating synergies with existing Economic Development activities and endeavors to which recruiting efforts can be incorporated and creates space for multiple events throughout the year increasing overall exposure to local talent
11	Satellite Consulate Office	Montano	2/28/2023	An update on this item will be provided at the next City Council prioritization meeting
12	Have the City look into the possibility of a Citywide Senior Discount	Barbadillo	2/7/2023	An update on this item will be provided at the next City Council prioritization meeting

NOTE: Deferred and Completed Items are not listed

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
13	City Manager to look into defining either a standalone teen center or updating information to indicate the Senior Center also functions as a Teen Center	Chua	9/20/2022	June 2023 update: A Teen Center Survey has been released and is currently gathering responses. It is anticipated that data on the use of the center and/or its programs relative to it's proximity to home and/or school, and the type of programming desired will provide the input needed for the resolution to this request. Discussed at February 2023 Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Prioritization Discussion on 2/7/23.
14	Discuss converting vacant lot that was a basketball court into a community garden at Vasona and Adobe	Montano	8/16/2022	Staff conducted a survey of residents within an 800 foot radius from Adobe Ave., asking for feedback on potential recreational improvements to the area. Notification was sent via postcard to individual homes, NextDoor, Facebook, and Instagram. The survey was out for 3 weeks and 43 responses were received. Of those received, 16 identified themselves as living in the Adobe Ave/Vasona St. Neighborhood. The majority of residents currently use Adobe Ave to walk to school (Curtner Elementary) and as a pedestrian trail for fitness. Survey takers responded most favorably to turning the area into a parklet with some benches and greenery, followed by interest in a community garden. Residents indicated some concern over new uses of the area creating a noise and loitering issue in the neighborhood. Staff will present consolidate responses to the Mayor and City Council to receive further direction during the upcoming CIP budget process.
15	City Manager look into implementing a workshop for small businesses on the bidding process for projects in the city	Chua	8/9/2022	June 2023 update: Staff was scheduled to provide a report to the Economic Development and Trade Commission on June 12, 2023 however that meeting with postponed due to lack of quorum. Staff will present to the Commission in August 2023. Further analysis on options and alternatives to connect more local and local small City of Milpitas businesses to our procurement processes will continue through 2023. Discussed at February 2023 Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Prioritization Discussion on 2/7/23
16	Quarterly or Monthly crime statistics on Homekey Project	Chua	6/7/2022	Quarterly reports to City Council are ongoing.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
17	Memorial Plaque in honor of youth skateboarder that passed away	Montano	6/7/2022	This request was approved as part of the FY23-24 Budget. Staff will begin working with the family in Fall 2023.
18	Funding to hire a consultant for the Sunnyhills Historical Designation on a state level	Tran	6/7/2022	Based on staff research, the best way to try for a Historical District Designation is at the National Level. This can be wrapped into the approved CIP for the Historical Resources Plan update or through grant consultant California Consulting. Request will be included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program.
19	Explore the policy for locking mechanisms on shopping carts for large commercial businesses	Tran	4/19/2022	June 2023 update: No change in status. Prior updates: MMC V-13-140 Mandatory Plan to Prevent Cart Removal includes requirement for physical measures to prevent cart removal however V-13-120 provides an exemption for cart owner that agrees to enter into a contract with a City-designated retrieval service. Staff suggestion to Council is to review this exemption and repeal it which would require all cart owners to have physical measures to prevent cart removal. Business outreach was conducted to grocery store operators in Q2 of 2022 to inquire about shopping cart removal and theft. Grocery stores contacted were Ocean Supermarket, Seafood City Supermarket, Chung Chou City, Milpitas Grocery Outlet, and 99 Ranch Market.
20	Explore an ordinance or policy to reduce thefts and increase security in the commercial retail parking areas	Chua	4/5/2022	June 2023 update: Security measures can be mandated for new or renovating development projects but cannot be mandated for existing businesses. The Police Department has taken action to partner with existing businesses, including McCarthy Ranch and the shopping center at Barber Lane with regard to education and deterrence, including placement of signage and cameras.
21	Request for Crossing Guards at McCandless and Montague Expressway and review wages for Crossing Guards	Montano	4/5/2022	Info Memos were sent to the City Council on 6/13/2022 and 1/27/2023. At the January 31st budget study session, Council voted to move to a contract model; Staff is in the middle of a citywide traffic study, which includes school aged pedestrian counts around schools in the City including the McCandless and Montague Expressway intersection.
22	Evaluate reopening the childcare center with a non-profit organization running the center	Montano	2/1/2022	No additional funds required to complete the internal review. Internal review can be done by late 2023. Approved during Spring Quarterly City Council Workplan Items Prioritization Discussion on 5/03/2022.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
23	Requested an appropriation in an amount not to exceed \$250,000 to procure a contract to address the streetlights that are pending fieldwork.	Tran	2/1/2022	At this time, staff has sufficient Council approved resources to address the remaining streetlight outages; however, will bring relevant actions for Council consideration, if needed.
24	Staff to look into mural Art on Great Mall Parkway on the VTA owned Light rail pillars	Montano	11/16/2021	Staff has identified a potential location on Great Mall Parkway and is solidifying the workplan for installation.
25	Request for the City to make the temporary third-party food deliver fee caps permanent and add additional provisions for enforcement	Phan	11/16/2021	June 2023 update: The City Attorney's Office has prepared a confidential memorandum regarding potential legal issues and implementation of a food delivery cap. As stated in that memorandum, should the Council wish to move forward with a cap, the next step will be to authorize the retention of a consultant to determine if a factual basis exists to support the need for a further food delivery cap.
26	Have a picture of Albert Vogel Sr. put up in the Senior Center	Montano	10/19/2021	June 2023 update: The approved CC request included to add Maria Lemery and Albert Vogel to the Mural at the Senior Center. Staff has spoken to the artist and confirmed that additional images would not fit with the existing piece. However, due to the location of the current mural, additional mural panels featuring additional people could be added to the senior center entry way. Staff received interest from Mayor Montano to add Joanne Sousa to this request.
27	Include a bust of Maria Lemire on the Mural in front of the Senior Center	Montano	8/17/2021	June 2023 update: The approved CC request included to add Maria Lemery and Albert Vogel to the Mural at the Senior Center. Staff has spoken to the artist and confirmed that additional images would not fit with the existing piece. However, due to the location of the current mural, additional mural panels featuring additional people could be added to the senior center entry way. Staff received interest from Mayor Montano to add Joanne Sousa to this request.
28	Staff to create a plan on how to increase the number of local businesses doing business with the City	Chua	4/6/2021	Staff is tracking this local business participation item as part of Council Priority Item 3 in Group 1 on this list; At 8/9/2021 Council meeting, Council voted that this item may have to come back for additional discussion because there may be some legal considerations.
29	Staff to provide information on a landmark policy for the City of Milpitas	Tran	3/16/2021	June 2023 update: Request is being included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
30	Amendment to the existing ordinance for third-party food delivery vendor services to prohibit regulatory response fees	Phan	2/16/2021	June 2023 update: The City Attorney's Office has prepared a confidential memorandum regarding potential legal issues and implementation of a food delivery cap. As stated in that memorandum, should the Council wish to move forward with a cap, the next step will be to authorize the retention of a consultant to determine if a factual basis exists to support the need for a further food delivery cap.
31	Consider Community Museum and Park on Main St.	Phan	8/20/2019	to Rules Subcommittee 8/23/2019. Moved to Specific Plan Community Conversation events.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider Recommendations for Appointments to City Commissions (Contact: Mayor Montano, 408-586-3024)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/3/2023
	<u>Recommendation:</u> Receive recommendations and approve recommendations for appointments to the Community Advisory Commission and Energy and Environmental Sustainability Commission and direct the City Clerk to post the Notice of Unscheduled Vacancy.

Background:

The City of Milpitas has 13 Commissions (including the Measure F Oversight Committee), with members appointed by the Mayor and confirmed by the City Council. The Commissions advise the Milpitas elected officials on a variety of community interest and policy areas.

Any resident interested in serving on a City Commission must complete a Commission Application and submit the form to the City Clerk. Copies of the applications are provided to the Mayor for consideration. Per Government Code 40605, in a general law city where the office of Mayor is an elective office, the Mayor with the approval of the City Council, shall make all appointments to boards, commissions, and committees unless otherwise specifically provided by statute.

Current Alternate Commissioners may seek to be promoted from alternate to full voting member, but promotion to a vacant seat is not automatic. Those Alternate Commissioners seeking promotion must contact the City Clerk and the Mayor to convey their request. Promotion must be recommended by the Mayor and confirmed by the City Council.

Promoting alternate commissioners to full voting member results in a vacancy on that commission. By state law, a Notice of an Unscheduled Vacancy must be posted by the City Clerk to advertise vacant Commission seats. Final appointment to the board, commission, or committee for the Unscheduled Vacancy shall not be made by the legislative body for at least ten working days after the posting of the notice in the Clerk's office.

Analysis:

The following recommendations were made for appointment:

Community Advisory Commission:

1. Appoint Armilyn Quijano to an unexpired term ending January 2026.

Energy and Environmental Sustainability Commission:

1. Promote Frank Bush from alternate to full voting seat with an unexpired term ending October 2025.
2. Appoint Thelma Batilo to a term ending October 2026.
3. Appoint Lisa Oliver to an unexpired term ending October 2024.

All recommended Commissioner appointments have been reviewed and confirmed by the City Clerk's office.

Promoting Alternate Commissioner Frank Bush to full voting member results in a vacancy for the alternate position that must be advertised prior to the vacancy being filled. The Notice of the Unscheduled Vacancy for the Energy and Environmental Sustainability Commission will be posted Wednesday, October 4, 2023 on the City website and in the City Clerk's Office.

Fiscal Impact:

There is no fiscal impact associated with this item.

Recommendation:

Receive recommendations and approve recommendations for appointments to the Community Advisory Commission and Energy and Environmental Sustainability Commission and direct the City Clerk to post the Notice of Unscheduled Vacancy.

Attachments:

1. Applications for Appointments

From: noreply@civicplus.com
To: [City Clerk](#)
Subject: Online Form Submittal: Commission Applications
Date: Friday, September 29, 2023 1:29:54 PM

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Commission Applications

Commission /
Committee Applying
for: Community Advisory Commission

First Name ARMILYN

Last Name QUIJANO

Address Type Residence

Address

City MILPITAS

State CA

Zip Code 95035

Phone Number

Email Address

Present Employer SELF EMPLOYED

Other Phone *Field not completed.*

Business Address
(Optional) 4701 PATRICK HENRY DR bldg 17

City SANTA CALRA

State California

Zip Code 95054

Occupation LIFE INSURANCE AGENT

Education: If Youth COLLEGE DEGREE

Advisory Commission
applicant, indicate your
grade / school:

College, Professional, Vocational, or other schools attended	UC SANTA CRUZ EXTENSION - CLINICAL TRIALS DESIGN AND MANAGEMENT
--	---

Major Subject	MEDICAL TECHNOLOGY
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Degree	BACHELOR OF SCIENCE
--------	---------------------

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization	MILPITAS EXECUTIVE LIONS
----------------------	--------------------------

Member	MEMBER
--------	--------

Name of Organization	FIL AM CHAMBER OF COMMERCE
----------------------	----------------------------

Member	MEMBER
--------	--------

Name of Organization	California Association of Lubang and Looc
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Member	Member
--------	--------

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Branch of Military	<i>Field not completed.</i>
--------------------	-----------------------------

Officer	<i>Field not completed.</i>
---------	-----------------------------

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):	My educational background and leadership experience. I am also part of John Maxwell Leadership Coach and have been in the managerial position in my previous job. I have been pretty active in my voluntary works for MELC. And as an entrepreneur, servant leadership is important to me.
--	--

Upload a File	<i>Field not completed.</i>
---------------	-----------------------------

Date	9/29/2023
------	-----------

By submitting this form, I confirm I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

ARMILYN QUIJANO

Name

Email not displaying correctly? [View it in your browser.](#)

From: [Frank Bush](#)
To: [Carmen Montano](#)
Cc: [Suzanne Guzzetta](#); [Elaine Marshall](#)
Subject: Becoming a full voting member on Energy and Environmental Sustainability Commission
Date: Tuesday, June 6, 2023 2:38:00 PM

CAUTION: EXTERNAL SENDER

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Hello Mayor Montano,

I'm currently Alternate #2 on EESC and would like to become a full voting member. I've been a resident of Milpitas for 28 years and an active member of several civic minded organization, including service on the board of Sunnyhills Neighborhood Association.

I've worked with the Planning Commission providing community input for several projects including Main Street, Metro, the ADU workshop and others. I'm currently working on the Milpitas Zoning Advisory Group committee.

Regards,
Frank

From: noreply@civicplus.com
To: [City Clerk](#)
Subject: Online Form Submittal: Commission Applications
Date: Monday, September 18, 2023 11:17:13 PM

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Commission Applications

Commission /
Committee Applying
for: Energy and Environmental Sustainability Commission

First Name THELMA

Last Name BATILO

Address Type Residence

Address

City Milpitas

State CALIFORNIA

Zip Code 95035

Phone Number

1

Email Address

Present Employer

Retired

Other Phone

Business Address
(Optional)

Field not completed.

City

Field not completed.

State

Field not completed.

Zip Code

Field not completed.

Occupation

Field not completed.

Education: If Youth

Field not completed.

Advisory Commission
applicant, indicate your
grade / school:

College, Professional, Vocational, or other schools attended	Master's in Business Administration MBA, University of San Francisco Bachelor's of Science in Chemical Engineering
--	---

Major Subject	Field not completed.
---------------	----------------------

Degree	Field not completed.
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List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization	Milpitas Executive Lions Club
----------------------	-------------------------------

Member	Past District Governor, counties of Santa Clara, Santa Cruz, Monterey & San Benito
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Name of Organization	Field not completed.
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Member	Field not completed.
--------	----------------------

Name of Organization	Field not completed.
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Member	Field not completed.
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If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Branch of Military	Field not completed.
--------------------	----------------------

Officer	Field not completed.
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Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):	Please see attached resume.
--	-----------------------------

Upload a File	
---------------	--

Date	9/18/2023
------	-----------

By submitting this form, I confirm I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Name

THELMA R BATILO

Email not displaying correctly? [View it in your browser.](#)

SUMMARY

- Supply Chain Management professional with more than thirty years of experience in the areas of materials, purchasing, planning, logistics, commodity & contract manufacturing management and order fulfillment.
- **Managed vendor relations to ensure quality, cost reduction and customer satisfaction levels are met.**
- **Assessed supplier capabilities and performance through direct visits and technical discussions.**
- Reported Supplier Performance, communicated and **resolved quality issues with cross-functional teams.**
- Negotiated and formulated strategic contracts for high technology materials, equipment maintenance, assembly services, capital equipment, spare parts purchases and software license agreements.
- Established, reengineered, implemented businesses processes like purchasing policies and procedures for RFQs, quote analyses, supplier awards, contract review process and disposal of surplus equipments.
- **Extensive knowledge of ERP and other Business Systems** (Oracle, PeopleSoft, Avante, QAD/MfgPro, AskMan, AMAPS, Ariba, **SAP** and Agile). Working knowledge of Adobe, PowerPoint and other software.

EDUCATION AND PROFESSIONAL DEVELOPMENT

- Master of Business Administration MBA, University of San Francisco, San Francisco, CA (1989).
- Bachelor of Science, Chemical Engineering, University of the Philippines, Quezon City (1981).
- University of California Berkeley Extension: ASIC Design Methodology, Semiconductor Fabrication.
- Institute for Supply Management (ISM-NAPM) Seminars: Applied Negotiation Techniques, Bargaining with Vendors & Suppliers, Supply Base Management, Purchasing Legal Essentials, Managing MRO Purchasing, MWBE Programs, ROHS, WEEE, SOX Compliance.
- American Production and Inventory Control Society (APICS) Classes and Certification: Master Planning, World Class Manufacturing, **Total Quality Management TQM**, Materials Requirements Planning (MRP), Manufacturing Resource Planning (MRPII), Enterprise Resource Planning (ERP), Just- In-Time (JIT).

PROFESSIONAL EXPERIENCE**Applied Materials, Inc., Santa Clara, CA****2014-2022****Materials Program Manager, Global Wafers Operations**

Managed wafer supply and demand. Maintained successful Quarterly Physical Audit of \$10M wafer inventory. Continued improvement by streamlining procedure of wafer collection & reclaim program.

Adecco Technical Staffing, San Jose, CA**2008-2014****Manpower, Inc., Fremont, CA**

Bank of America Special Operations: Data Collection, Data Mining, Client Segmentation and Profiling.

U.S. Census 2010 Operations, San Jose, CA

Data Collection Analyst: Directly worked with clients, generated reports and analyzed data.

Best Resource Solutions, Milpitas, CA

Business and Team Development Manager. Worked in the areas of supplier and customer relations. Established and improved business processes.

Armor Domain, San Francisco, CA

International Supply Chain and Marketing Consultant. Continuous work in the areas of supplier and customer relations. Establish and maintain client relationships. Obtain quotes and process orders accordingly. Prepare project reports including cost reduction and performance against budget goals and timelines. Coordinate and managed supply chain processes.

Force10 Networks, Inc., San Jose, CA**2005-2008****Commodity Manager**

Managed raw materials inventory, published and implemented procedures for Cycle Count which resulted in 100% Physical Inventory. Managed successful transition of Security Product Line for immediate build and revenue. Supported more than \$120M revenue with various commodities such as optics, rectifiers, power supplies, DC-DC modules, connectors, sheet metal, chassis and other electromechanical components. Resolved Customer RMA issues, including Supplier Delivery and Quality Performance. Implemented contract with Flextronics to ensure that the terms were met, expectations and customer satisfaction levels were maintained. Managed new vendor selection for new products and commodities as required by Engineering. Implemented major vendor software licensing agreement with Xilinx including royalty forecast for Financial Reporting.

Polycom, Inc., San Jose, CA**2003-2005****Commodity Manager**

Managed various commodities to support more than \$500M revenue operations. Negotiated over \$500k savings on IT and PC-related purchases (Hardware, Cell Phone Programs, Wireless Data Devices and Software Licenses with VoiceAge, Mentor Graphics, Microsoft and HP), Marketing & Sales Agreements, Financial and Facilities Services. Streamlined invoice payment, MWBE Reporting and New Vendor processes. Directed RFQs & Supplier

Award Justifications for PCs, Disaster Recovery Project and WW VoIP deployment. Ensured Sarbanes-Oxley audit compliance.

Item # C5.

Synaptics, Inc., San Jose, CA

2002-2003

Global Planner/Buyer

Managed overseas Contract Manufacturers (CMs) to meet Cost, Quality, Time to Market and Availability for all product lines that generated over \$100 million annual revenue. Trained Hong Kong Team as part of Operations transition from U.S. to Hong Kong within a period of six months.

- Monitored, reviewed and published Build Plan (Production, New Products and Engineering Releases) especially to Apple's major product: iPod.
- Managed CMs to reduce manufacturing lead times resulting in reduced inventory exposure and quicker response time to changes in Sales Forecast and Customer Orders
- Drove cost reduction programs, resulting in greater than 40% gross margins
- Resolved quality issues at CMs, processed documentation for RMA and Board Rework/Scrap
- Reconciled Consigned Inventory to meet accounting objectives.

Cisco Systems, Inc., San Jose, CA

2000-2002

Global Supply Commodity Specialist

Developed ASIC Commodity Strategy and competitive asset management. Collected, analyzed and reported data on risk and technical capabilities to influence business decisions with regards to leading edge technologies.

- Achieved more than \$50M savings/cost avoidance with projects up to \$1B annual spend plan
- Improved Business Unit project margins through continuous quarterly cost reductions
- Launched and managed Cisco's Global ASIC Database, Supplier's IP Database and Technology Roadmap, ASIC Team's shared files which included Suppliers' Business Reviews
- Served in the Semiconductor ISO Audit Team and Cisco's Global Mentor Program
- Drove and supported Design Teams to meet design milestones, average of 20 designs
- Negotiated and implemented license agreements with IBM, LSI, TI and MIPS Technologies

Sun Microsystems, Inc., Sunnyvale, CA

1999-2000

Materials Program Manager

Managed supply chain for ASIC components (Fujitsu, LSI, Lucent, Shinko, TI) and OEM Boards programs (Celestica, Cycle, Mitac, Plexus). Implemented NPI Processes, Lifecycle, and product transitions.

- Achievement Award for two new ASIC Programs (with Shinko, Japan and Mitac, Taiwan)
- Managed as required - Escalations, Allocations, Supplier management and Customer Order Fulfillment activities to achieve revenue and customer satisfaction targets.

Toshiba America Electronic Components, Inc., Sunnyvale, CA

1994-1999

Senior Buyer

Managed implementation of purchasing programs for manufacturing (Fab, Assembly, Test) including Facilities, IT, Export/Import and Office Services. Led Procurement Team (5 people) in the absence of Purchasing Manager.

- Directed purchasing team's performance measurement projects (cycle time reduction, on-time delivery of goods, on-time invoice payments)
- Team Leader for successful implementation of Oracle Business System. Implemented reduction of supply base, Y2K compliance project, ISO9002 certification and ISO14001 (Environmental Management System).

Zilog, Inc., Campbell, CA

1993-1994

Senior New Products Planner

Managed NPI Programs, Lifecycle, Product Transitions, planned U.S. and Asia Fab and Assembly/Test to meet new products and MP Master Production schedules.

Boston Scientific, Inc., (Target Therapeutics) Fremont, CA

1992-1993

Materials Specialist

Supervised buyers, inventory control personnel and managed suppliers for cost-effective materials procurement.

Intel Corporation, Santa Clara, CA

1988-1992

Senior Planner/Buyer

Managed various U.S. and Asia subcontracting programs to supply ASICs for I/O boards, EISA Bus chipsets, OEM 386-based PC system boxes and other PC interface products. Managed Logic, ROM and SRAM/Flash Memory supply and consignment Programs for DRAM/Flash SIMMs assembly plant. Implemented cycle time and cost reduction, demand forecast modeling, production control and inventory management, order maintenance, shipping/logistics process. Resolved returns (RMA), failures (FCAR) and supplier issues.

From: noreply@civicplus.com
To: [City Clerk](#)
Subject: Online Form Submittal: Commission Applications
Date: Friday, June 30, 2023 9:55:37 AM

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Commission Applications

Commission / Committee Applying for: Energy and Environmental Sustainability Commission

First Name Lisa

Last Name Oliver

Address Type Residence

Address

City Milpitas

State CA

Zip Code 95035

Phone Number

Email Address

Present Employer Fremont Unified School District

Other Phone

Business Address (Optional) *Field not completed.*

City *Field not completed.*

State *Field not completed.*

Zip Code *Field not completed.*

Occupation science teacher

Education: If Youth State University of New York at Buffalo

Advisory Commission
applicant, indicate your
grade / school:

College, Professional, Vocational, or other schools attended	Santa Clara University - MS San Jose State University - teaching credentials
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Major Subject	Electrical Engineering
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Degree	Bachelor of Science
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List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization	Citizens Climate Lobby - Silicon Valley East
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Member	2020 to present
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Name of Organization	Climate Reality Project - Silicon Valley Chapter
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Member	2021 to present
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Name of Organization	Silicon Valley Alliance Church
----------------------	--------------------------------

Member	2019 to present
--------	-----------------

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Branch of Military	<i>Field not completed.</i>
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Officer	<i>Field not completed.</i>
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Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):	I became involved in the climate movement in 2019. It has been an intellectual and spiritual journey to understand why the United States delayed climate action for the past 40 years and how to influence decision-making and action at the grassroots and rooftops levels to accelerate the transition to clean energy. I wrote a Climate Resolution for my teachers' union, CTA, which records the climate crisis, outlines what we need to do as a nation to fight climate change, and asserts our common values of a livable planet for all. This resolution is my roadmap for climate activism.
--	---

Upload a File	California Teachers Association - Resolution on a carbon fee and dividend - 07202022.pdf
---------------	--

Date	6/30/2023
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By submitting this form, I confirm I have sufficient time to devote to this

responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Name

Lisa A Oliver

Email not displaying correctly? [View it in your browser.](#)



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Authorizing the Application to the Prohousing Designation Program (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, 408-586-3275)
Category:	Consent Calendar-Community Development
Meeting Date:	10/3/2023
Recommendation:	Adopt a resolution authorizing the application to and participation in the Prohousing Designation Program.

BACKGROUND:

The Prohousing Designation Program was established by the California Department of Housing and Community Development (HCD) through the 2019-2020 Budget Act. The program provides an opportunity for cities and counties to apply to HCD to be designated as a “prohousing” City. This designation can allow the City to be more competitive in future housing related state grant programs and incentives. Applications are accepted on a rolling basis. Staff were encouraged to apply for this designation by the Housing Subcommittee and HCD during the Housing Element review process.

ANALYSIS:

The application has four categories: favorable zoning and land use, acceleration of housing production timeframes, reduction of construction and development costs, and providing financial subsidies. A jurisdiction must demonstrate that they have enacted or proposed at least one policy that significantly contributes to the Acceleration of Housing Production in each of the four categories. To receive a designation, a jurisdiction must have a total of 30 points or more, across all four categories.

Staff from Housing, Planning, and Building and Safety reviewed the categories and have determined that the City of Milpitas meets the threshold. City staff believe the threshold requirements, listed on page 6 of the application (Attachment 1), have been met except for a Resolution. City staff recommend City Council adopt a Formal Resolution (Attachment 2) authorizing staff to submit a Prohousing Designation application to HCD. Note, the Formal Resolution requires the City of Milpitas to acknowledge and agree that it shall be subject to the application, the terms and conditions specified in the program documents, the program regulations, and all other applicable laws.

FISCAL IMPACT:

There is no fiscal impact to note at this time.

California Environmental Quality Act (CEQA):

The action is an organizational or administrative activity of the City government that will not result in direct or indirect physical changes in the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

RECOMMENDATION:

Adopt a resolution authorizing the application to and participation in the Prohousing Designation Program.

Attachment(s):

1. Prohousing Designation Application
2. Prohousing Designation Resolution

Prohousing Designation Program Application



**State of California
Governor Gavin Newsom**

**Lourdes Castro Ramírez, Secretary
Business, Consumer Services and Housing Agency**

**Gustavo Velasquez, Director
Department of Housing and Community Development**

**Megan Kirkeby, Deputy Director
Division of Housing Policy Development**

2020 West El Camino, Suite 500
Sacramento, CA 95833

Website: <https://www.hcd.ca.gov/community-development/prohousing>
Email: ProhousingPolicies@hcd.ca.gov

July 2021

Prohousing Designation Program Application Package Instructions

The applicant is applying for a Prohousing Designation under the Prohousing Designation Program (“**Prohousing**” or “**Program**”), which is administered by the Department of Housing and Community Development (“**Department**”) pursuant to Government Code section 65589.9.

The Program creates incentives for Jurisdictions that are compliant with Housing Element requirements and that have enacted Prohousing Policies. These incentives will take the form of additional points or other preference in the scoring of applications for competitive housing and infrastructure programs. The administrators of each such program will determine the value and form of the preference.

In order to be considered for a Prohousing Designation, the applicant must accurately complete all sections of this application, including any relevant appendices. The Department reserves the right to request additional clarifying information from the applicant.

This application is subject to Government Code section 65589.9, and to the regulations (Cal. Code Regs., tit. 25, § 6600 et seq.) adopted by the Department in promulgation thereof (“**Regulations**”). All capitalized terms in this application shall have the meanings set forth in Section 6601 of the Regulations.

All applicants must submit a complete, signed application package to the Department, in electronic format, in order to be considered for a Prohousing Designation. Please direct electronic copies of the completed application package to the following email address: ProhousingPolicies@hcd.ca.gov.

A complete application will include all items identified in the Application Checklist.

In relation to **Appendix 1**, the Formal Resolution for the Prohousing Designation Program, please use ~~strikethrough~~ and underline if proposing any modifications to the text of the Resolution.

Appendix 2, the Proposed Policy Completion Schedule, applies only if an application includes proposed policies.

Appendix 3, Project Proposal Scoring Sheet and Sample Project Proposal Scoring Sheet, includes a blank template to be completed by the applicant as part of the application, as well as a Sample Project Proposal Scoring Sheet with an example of how this template may be completed.

Appendix 4 lists examples of Prohousing Policies with enhancement factors to aid applicants in understanding how enhancement factors may be applied.

Appendix 5 is where the applicant will include any additional information and supporting documentation for the application.

If you have questions regarding this application or the Program, or if you require technical assistance in preparing this application, please email ProhousingPolicies@hcd.ca.gov.

Application Checklist

	Yes	No
Application Information	☒	☐
Certification and Acknowledgement	☐	☐
The Legislative Information form is completed.	☒	☐
The Threshold Requirements Checklist is completed.	☐	☐
A duly adopted and certified Formal Resolution for the Prohousing Designation Program is included in the application package. (See Appendix 1 for the Formal Resolution for the Prohousing Designation Program (New 04/21) form.)	☐	☐
If applicable, the Proposed Policy Completion Schedule is completed. (See Appendix 2 .)	☒	☐
The Project Proposal Scoring Sheet is completed. (See Appendix 3 for the Project Proposal Scoring Sheet and the Sample Project Proposal Scoring Sheet)	☒	☐
Additional information and supporting documentation (Applicant to provide as Appendix 5)	☒	☐

Application Information

Applicant (Jurisdiction):	City of Milpitas
Applicant Mailing Address:	455 E. Calaveras Blvd. Milpitas, CA 95035
City:	Milpitas
ZIP Code:	95035
Website:	Welcome to the Housing Division – City of Milpitas
Authorized Representative Name	Ned Thomas
Authorized Representative Title:	Acting City Manager
Phone:	(408) 586-3059
Email:	nthomas@milpitas.gov
Contact Person Name:	Robert Musallam
Contact Person Title:	Housing and Neighborhood Services Administrator
Phone:	(408) 586-3275
Email:	rmusallam@milpitas.gov
Proposed Total Score (Based on Appendix 3):	50

CERTIFICATION AND ACKNOWLEDGMENT

As authorized by the Formal Resolution for the Prohousing Designation Program (Resolution No. []), which is attached hereto and incorporated by reference as if set forth in full, I hereby submit this full and complete application on behalf of the applicant.

I certify that all information and representations set forth in this application are true and correct.

I further certify that any proposed Prohousing Policy identified herein will be enacted within two (2) years of the date of this application submittal.

I acknowledge that this application constitutes a public record under the California Public Records Act (Gov. Code, § 6250 et seq.) and is therefore subject to public disclosure by the Department.

Signature: [_____]

Name and Title: [_____]

Date: [_____]

Legislative Information

District	Number	Legislator's Name
Federal Congressional District	17	Congressman Ro Khanna
State Assembly District	24	Assemblymember Alex Lee
State Senate District	10	Senator Aisha Wahab

Applicants can find their respective State Senate representatives at <https://www.senate.ca.gov/>, and their respective State Assembly representatives at <https://www.assembly.ca.gov/>

Threshold Requirements Checklist

The applicant meets the following threshold requirements in accordance with Section 6604 of the Regulations:

	Yes	No
The applicant is a Jurisdiction.	☒	☐
The applicant has adopted a Compliant Housing Element.	☒	☐
The applicant has submitted or will submit a legally sufficient Annual Progress Report prior to designation.	☒	☐
The applicant has completed, on or before the relevant statutory deadlines, any rezone program or zoning that is necessary to remain in compliance with Government Code section 65583, subdivision (c)(1).	☒	☐
The applicant is in compliance, at the time of the application, with applicable state housing law, including, but not limited to, Housing Element Law; "No Net Loss" Law (Gov. Code, § 65863); the Housing Accountability Act (Gov. Code, § 65589.5); State Density Bonus Law (Gov. Code, § 65915 et seq.); laws relating to the imposition of school facilities fees or other requirements (Gov. Code, § 65995 et seq.); Least Cost Zoning Law (Gov. Code, § 65913.1); the Housing Crisis Act of 2019 (Stats. 2019, ch. 654); and antidiscrimination law (Gov. Code, § 65008).	☒	☐
The applicant has duly adopted and certified a Formal Resolution for the Prohousing Designation Program, which is hereby incorporated by reference. (A true and correct copy of the resolution is included in this application package.)	☐	☐

Project Proposal
Category 1: Favorable Zoning and Land Use

Category	Prohousing Policy Description	Points
1A	Sufficient sites, including rezoning, to accommodate 150 percent or greater of the current or draft RHNA, whichever is greater, by total or income category.	3
1B	Permitting missing middle housing uses (e.g., duplexes, triplexes, and fourplexes) by right in existing low-density, single-family residential zones.	3
1C	Sufficient sites, including rezoning, to accommodate 125 to 149 percent of the current or draft RHNA, whichever is greater, by total or income category. These points shall not be awarded if the applicant earns three points pursuant to Category (1)(A) above.	2
1D	Density bonus programs which exceed statutory requirements by 10 percent or more.	2
1E	Increasing allowable density in low-density, single-family residential areas beyond the requirements of state Accessory Dwelling Unit law (e.g., permitting more than one ADU or JADU per single-family lot). These policies shall be separate from any qualifying policies under Category (1)(B) above.	2
1F	Reducing or eliminating parking requirements for residential development as authorized by Government Code sections 65852.2; adopting vehicular parking ratios that are less than the relevant ratio thresholds at subparagraphs (A), (B), and (C) of Government Code section 65915, subdivision (p)(1); or adopting maximum parking requirements at or less than ratios pursuant to Government Code section 65915, subdivision (p).	2
1G	Zoning to allow for residential or mixed uses in one or more non-residential zones (e.g., commercial, light industrial). Qualifying non-residential zones do not include open space or substantially similar zones.	1
1H	Modification of development standards and other applicable zoning provisions to promote greater development intensity. Potential areas of focus include floor area ratio; height limits; minimum lot or unit sizes; setbacks; and allowable dwelling units per acre. These policies must be separate from any qualifying policies under Category (1)(B) above.	1
1I	Establishment of a Workforce Housing Opportunity Zone, as defined in Government Code section 65620, or a housing sustainability district, as defined in Government Code section 66200.	1
1J	Demonstrating other zoning and land use actions that measurably support the Acceleration of Housing Production.	1

Project Proposal
Category 2: Acceleration of Housing Production Timeframes

Category	Prohousing Policy Description	Points
2A	Establishment of ministerial approval processes for a variety of housing types, including single-family and multifamily housing.	3
2B	Establishment of streamlined, program-level CEQA analysis and certification of general plans, community plans, specific plans with accompanying Environmental Impact Reports (EIR), and related documents.	2
2C	Documented practice of streamlining housing development at the project level, such as by enabling a by-right approval process or by utilizing statutory and categorical exemptions as authorized by applicable law (Pub. Resources Code, §§ 21155.1, 21155.4, 21159.24, 21159.25; Gov. Code, § 65457; Cal Code Regs., tit. 14, §§ 15303, 15332; Pub. Resources Code, §§ 21094.5, 21099, 21155.2, 21159.28).	2
2D	Establishment of permit processes that take less than four months. Policies under this Category (2)(D) must address all approvals necessary to issue building permits.	2
2E	Absence or elimination of public hearings for projects consistent with zoning and the general plan.	2
2F	Establishment of consolidated or streamlined permit processes that minimize the levels of review and approval required for projects, and that are consistent with zoning regulations and the general plan.	1
2G	Absence, elimination or replacement of subjective development and design standards with objective development and design standards that simplify zoning clearance and improve approval certainty and timing.	1
2H	Establishment of one-stop-shop permitting processes or a single point of contact where entitlements are coordinated across city approval functions (e.g., planning, public works, building) from entitlement application to certificate of occupancy.	1
2I	Priority permit processing or reduced plan check times for ADUs/JADUs, multifamily housing, or homes affordable to lower- or moderate-income households.	1
2J	Establishment of a standardized application form for all entitlement applications.	1
2K	Practice of publicly posting status updates on project permit approvals on the Internet.	1
2L	Limitation on the total number of hearings for any project to three or fewer. Applicants that accrue points pursuant to Category (2)(E) are not eligible for points under this Category (2)(L).	1
2M	Demonstration of other actions, not listed above, that quantifiably decrease production timeframes or promote the streamlining of approval processes.	1

Project Proposal
Category 3: Reduction of Construction and Development Costs

Category	Prohousing Policy Description	Points
3A	Waiver or significant reduction of development impact fees for residential development.	3
3B	Adoption of ordinances or implementation of other mechanisms that result in less restrictive requirements than Government Code sections 65852.2 and 65852.22 to reduce barriers for property owners to create ADUs/JADUs. Examples of qualifying policies include, but are not limited to, development standards improvements, permit processing improvements, dedicated ADU/JADU staff, technical assistance programs, and pre-approved ADU/JADU design packages.	2
3C	Adoption of other fee reduction strategies separate from Category (3)(A) above, including fee deferrals and reduced fees for housing for persons with special needs.	1
3D	Promoting innovative housing types (e.g., manufactured homes, recreational vehicles, park models) that reduce development costs.	1
3E	Measures that reduce costs for transportation-related infrastructure or programs that encourage active modes of transportation or other alternatives to automobiles. Qualifying policies include, but are not limited to, publicly funded programs to expand sidewalks or protect bike/micro-mobility lanes; creation of on-street parking for bikes; transit-related improvements; or establishment of carshare programs.	1
3F	Adoption of universal design ordinances pursuant to Health and Safety Code section 17959.	1
3G	Establishment of pre-approved or prototype plans for missing middle housing types (e.g., duplexes, triplexes, and fourplexes) in low-density, single-family residential areas.	1
3H	Demonstration of other actions, not listed above, that quantifiably reduce construction or development costs.	1

Project Proposal
Category 4: Providing Financial Subsidies

Category	Prohousing Policy Description	Points
4A	Establishment of local housing trust funds or collaboration on a regional housing trust fund.	2
4B	Provide grants or low-interest loans for ADU/JADU construction affordable to lower- and moderate-income households.	2
4C	A comprehensive program that complies with the Surplus Land Act (Gov. Code, § 54220 et seq.) and that makes publicly owned land available for affordable housing, or for multifamily housing projects with the highest feasible percentage of units affordable to lower income households. A qualifying program may utilize mechanisms such as land donations, land sales with significant write-downs, or below-market land leases.	2
4D	Establishment of an Enhanced Infrastructure Financing District or similar local financing tool that, to the extent feasible, directly supports housing developments in an area where at least 20 percent of the residences will be affordable to lower income households.	2
4E	Directed residual redevelopment funds to affordable housing.	1
4F	Development and regular (at least biennial) use of a housing subsidy pool, local or regional trust fund, or other similar funding source.	1
4G	Prioritization of local general funds for affordable housing.	1
4H	Demonstration of other actions, not listed above, that quantifiably promote, develop, or leverage financial resources for housing.	1

Project Proposal Enhancement Factors

The Department shall utilize enhancement factors to increase the point scores of Prohousing Policies. Each Prohousing Policy will receive extra points for enhancement factors in accordance with the chart below.

Category	Prohousing Policy Description	Points
1	Policy that represents one element of a unified, multi-faceted strategy to promote multiple planning objectives, such as efficient land use, access to public transportation, affordable housing, climate change solutions, and/or hazard mitigation.	2
2	Policies that promote development consistent with the state planning priorities pursuant to Government Code section 65041.1.	1
3	Policies that diversify planning and target community and economic development investments (housing and non-housing) to improve lower opportunity areas. Such areas include, but are not limited to, Low Resource and High Segregation & Poverty areas designated in the most recently updated TCAC/HCD Opportunity Maps, and disadvantaged communities pursuant to California Senate Bill 535 (2012).	1
4	Policies that go beyond state law requirements in reducing displacement of lower income households and conserving existing housing stock that is affordable to lower income households.	1
5	Rezoning and other policies that support high-density development in Location Efficient Communities.	1
6	Rezoning and other policies that result in a net gain of housing capacity while concurrently mitigating development impacts on or from Environmentally Sensitive or Hazardous Areas.	1
7	Zoning policies that increase housing choices and affordability in High Resource and Highest Resource areas, as designated in the most recently updated TCAC/HCD Opportunity Maps.	1
8	Other policies that involve meaningful actions towards affirmatively furthering fair housing pursuant to Government Code section 8899.50, including, but not limited to, outreach campaigns, updated zoning codes, and expanded access to financing support.	1

Project Proposal Scoring Sheet Instructions

The Department shall validate applicants' scores based on the extent to which each identified Prohousing Policy contributes to the Acceleration of Housing Production. The Department shall assess applicants' Prohousing Policies in accordance with Government Code section 65589.9, subdivision (f)(2), and Sections 6605 and 6606 of the Regulations.

The Department shall further assess applicants' Prohousing Policies using the following four scoring categories: Favorable Zoning and Land Use; Acceleration of Housing Production Timeframes; Reduction of Construction and Development Costs; and Providing Financial Subsidies. Applicants shall demonstrate that they have enacted or proposed at least one policy that significantly contributes to the Acceleration of Housing Production in each of the four categories. A Prohousing Designation requires a total score of 30 points or more across all four categories.

Instructions

Please utilize one row of the Scoring Sheet for each Prohousing Policy.

- **Category Number:** Select the relevant category number from the relevant Project Proposal list in this application. Where appropriate, applicants may utilize a category number more than once.
- **Concise Written Description of Prohousing Policy:** Set forth a brief description of the enacted or proposed Prohousing Policy.
- **Enacted or Proposed:** Identify the Prohousing Policy as enacted or proposed. For proposed Prohousing Policies, please complete **Appendix 2: Proposed Policy Completion Schedule**.
- **Documentation Type:** For enacted Prohousing Policies, identify the relevant documentary evidence (e.g., resolution, zoning code provisions). For proposed Prohousing Policies, identify the documentation which shows that implementation of the policy is pending.
- **Web Links/Electronic Copies:** Insert the Web link(s) to the relevant documentation or indicate that electronic copies of the documentation have been attached to this application as **Appendix 5**.
- **Points:** Enter the appropriate number of points using the relevant Project Proposal list in this application.
- **Enhancement Category Number (optional):** If utilizing an enhancement factor for a particular Prohousing Policy, enter the appropriate category number using the relevant Project Proposal list in this application.
- **Enhancement Points (optional):** If utilizing an enhancement factor for a particular Prohousing Policy, enter the point(s) for that Prohousing Policy.
- **Total Points:** Add the enhancement point(s) to the Prohousing Policy's general point score.

Appendix 1: Formal Resolution for the Prohousing Designation Program

Formal Resolution for the Prohousing Designation Program (New 04/21)

RESOLUTION NO. [INSERT RESOLUTION NUMBER]

A RESOLUTION OF THE GOVERNING BODY OF
[INSERT THE NAME OF THE CITY OR COUNTY]
AUTHORIZING APPLICATION TO AND PARTICIPATION IN THE PROHOUSING
DESIGNATION PROGRAM

WHEREAS, Government Code section 65589.9 established the Prohousing Designation Program (“**PDP**” or “**Program**”), which creates incentives for jurisdictions that are compliant with state housing element requirements and that have enacted Prohousing local policies; and

WHEREAS, such jurisdictions will be designated Prohousing, and, as such, will receive additional points or other preference during the scoring of their competitive applications for specified housing and infrastructure funding; and

WHEREAS, the Department of Housing and Community Development (“**Department**”) has adopted emergency regulations (Cal. Code Regs., tit. 25, § 6600 et seq.) to implement the Program (“**Program Regulations**”), as authorized by Government Code section 65589.9, subdivision (d); and

WHEREAS, the [INSERT THE NAME OF THE CITY OR COUNTY] (“**Applicant**”) desires to submit an application for a Prohousing Designation (“**Application**”).

THEREFORE, IT IS RESOLVED THAT:

1. Applicant is hereby authorized and directed to submit an Application to the Department.
2. Applicant acknowledges and confirms that it is currently in compliance with applicable state housing law.
3. Applicant acknowledges and confirms that it will continue to comply with applicable housing laws and to refrain from enacting laws, developing policies, or taking other local governmental actions that may or do inhibit or constrain housing production. Examples of such local laws, policies, and action include moratoriums on development; local voter approval requirements related to housing production; downzoning; and unduly restrictive or onerous zoning regulations, development standards, or

4. ~~permit procedures.~~ Applicant further acknowledges and confirms that it commits itself to affirmatively furthering fair housing pursuant to Government Code section 8899.50.
5. If the Application is approved, Applicant is hereby authorized and directed to enter into, execute, and deliver all documents required or deemed necessary or appropriate to participate in the Program, and all amendments thereto (the “**Program Documents**”).
6. Applicant acknowledges and agrees that it shall be subject to the Application; the terms and conditions specified in the Program Documents; the Program Regulations; and any and all other applicable law.
7. **[INSERT THE TITLE OF THE APPLICANT’S AUTHORIZED SIGNATORY]** is authorized to execute and deliver the Application and the Program Documents on behalf of the Applicant for participation in the Program.

PASSED AND ADOPTED this ____ day of _____, 20__, by the following vote:

AYES: **[Insert #]** NOES: **[Insert #]** ABSENT: **[Insert #]** ABSTAIN: **[Insert #]**

The undersigned, **[INSERT NAME AND TITLE OF NONSIGNATORY]** of Applicant, does hereby attest and certify that the foregoing is a true and full copy of a resolution of the Applicant’s governing body adopted at a duly convened meeting on the date above-mentioned, and that the resolution has not been altered, amended, or repealed.

SIGNATURE: _____

DATE: _____

NAME: _____

TITLE: _____

Appendix 2: Proposed Policy Completion Schedule

Category Number	Concise Written Description of Proposed Policy	Key Milestones and Milestone Dates	Anticipated Completion Date	Notes
1G	Establishing Neighborhood Commercial Mixed-Use Zoning District to allow residential and mixed-use developments in commercial shopping centers	Draft zoning districts in August 2023	Nov-23	
1H	Preparing Gateway-Main St. Specific Plan to increase maximum densities and heights and modify other development standards to allow for higher intensity multifamily residential developments	Draft plan in August 2023	Feb-24	
1J	Housing Opportunity Zones to provide zoning and financial incentives to facilitate market-rate and affordable housing production	Draft incentives in August 2023	Nov-23	

Appendix 3: Project Proposal Scoring Sheet and Sample Project Proposal Scoring Sheet

Project Proposal Scoring Sheet

Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Insert Web Links to Documents <u>or</u> Indicate that Electronic Copies are Attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
1A	2023-2031 Housing Element sites inventory accommodates greater than 150% of remaining RHNA by total and moderate and above-moderate income categories	E	Policy document	2023-2031 Housing Element	3	7	1	4
1B	Adopted SB 9 Ordinance to allow for urban lot splits and two-unit projects in single-family residential zones by-right	E	Resolution and ordinance	SB 9 resolution and ordinance	3	7	1	4
1G	Establishing Neighborhood Commercial Mixed-Use Zoning District to allow residential and mixed-use developments in commercial shopping centers	P	Staff report	Staff report attached in Appendix 5	1	1	2	3

1H	Preparing Gateway-Main St. Specific Plan to increase maximum densities and heights and modify other development standards to allow for higher intensity multifamily residential developments	P	Webpage	Gateway-Main St. Specific Plan	1	1	2	3
1J	Housing Opportunity Zones to provide zoning and financial incentives to facilitate market-rate and affordable housing production	P	Staff report	Staff report attached in Appendix 5	1	7	1	2
2A	Ministerial approval for multifamily residential projects in compliance with Objective Design Standards	E	Policy document	Residential and Mixed-Use Objective Design Standards	3	7	1	4
2B	Adopted 2040 General Plan and Metro Specific Plan and certified associated program-level EIRs	E	CEQA documents	2040 General Plan (https://www.milpitas.gov/planningdepartment/community-and-citywide-plans/general-plan/) and Metro Specific Plan and EIR (https://www.milpitas.gov/p	2	1	2	4

				lanningdepart ment/metro/)				
2C	Residential development permitted by-right in residential zones and staff regularly utilizes CEQA categorical exemptions	E	Zoning Ordinance and CEQA document	Milpitas Zoning Ordinance (https://library.municode.com/ca/milpitas/codes/code_of_ordinances?nodeId=TITXI_ZOPLAN_CH10_ZO) and Class 32 exemption memo attached in Appendix 5	2	7	1	3
2D	All administrative/minister ial planning permits can be approved within 1-2 months and some discretionary permits requiring a public hearing can be	E	Approval letter	Approval letter attached in Appendix 5	2	7	1	3

	approved within 3-4 months							
2G	Milpitas Residential and Mixed-Use Objective Design Standards with ministerial approval process, which apply citywide and supersede all existing subjective design standards	E	Policy document	Residential and Mixed-Use Objective Design Standards	1	1	2	3
2J	Universal Planning Application for all planning applications	E	Permit application	Universal Planning Application attached in Appendix 5	1			1
2K	Development project pipeline on Planning webpage	E	Webpage	Development Project Pipeline	1			1
2M	Educational resources (Development Review Handbook and ADU Toolkit) and web-based tools (Symbium Build) improve applicant participation and decrease permitting timelines	E	Webpages	Development Review Handbook and ADU Toolkit attached in Appendix 5; Symbium Build (https://build.symbium.com/business/milpitas)	1	7	1	2

3B	ADU Mondays with dedicated staff provide technical assistance; the Safe ADU Legalization Program improves permit processing and provides technical assistance	E	web pages	Safe ADU Legalization Program https://www.milpitas.gov/310/Accessory-Dwelling-Units-ADUs	2			
3C	The American Rescue Plan Act provides funding for subsidizing all permit fees for ADU and JADUs	E	web pages	https://www.milpitas.gov/189/ADU-Incentive-Program	1			
3D	Provide expedited plan review for BMR modular construction projects	E	web pages	One-Stop Permit Center	1			
3E	Trail, Pedestrian and Bicycle Master Plan provides policies and funding mechanisms for improved pedestrian/bicycle facilities; Milpitas SMART is a micro-transit program that provides affordable/convenient first/last-mile connections to public transit	E	Policy document	Trail, Pedestrian and Bicycle Master Plan	1			

4C	Former Redevelopment Agency housing asset that was transferred to City of Milpitas Housing Authority. Land was sold with significant write-down to build multi-family affordable housing	E	First Amendment and Restated Disposition and Development Agreement	Appendix 5	2	1	2	4
4F	The City has been allocated grants from the State for multiple subsidy pools, such as the development of a workforce housing rental assistance program and the conversion of motel units into permanent supportive housing with supportive services.	E/P	Resolution with Exhibit +, Regulatory Agreement	Appendix 5	1	1	2	3
4G	City purchase affordability covenant from housing development for \$1.25 M	E	Affordability Covenant	Appendix 5	1	1	2	3

4H	The City has been allocated a number of state and federal grants to develop affordable housing, issue rent and mortgage relief, and create a workforce housing rental assistance program.	E/P	Resolution with Exhibit +, Regulatory Agreement, Affordability Covenants and Restrictions Affecting Real Property	Appendix 5; Rent and Mortgage Relief Program	1	1	2	3
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Sample Project Proposal Scoring Sheet

Note: This is a Sample Project Proposal Scoring Sheet; an actual submission may include more specificity when an applicant completes the “Concise Written Description of Prohousing Policy.”

Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Insert Web Links to Documents <u>or</u> Indicate that Electronic Copies are Attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
1B	Permitted missing middle housing uses by allowing duplexes, and triplexes by right in existing low-density, single-family residential zones.	E	Zoning code	Electronic copy attached	3	6	1	4
1C	Sufficient sites to accommodate 131 percent of the current RHNA with rezoning by total or income category.	P	Resolution	Electronic copy attached	2	1	2	4

Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Insert Web Links to Documents <u>or</u> Indicate that Electronic Copies are Attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
1D	Density bonus program exceeds statutory requirements by 12 percent.	E	Zoning code	Electronic copy attached	2			2
1F	Reduced parking requirements for residential development as authorized by Government Code sections 65852.2.	E	Zoning code	Electronic copy attached	2			2
1G	Zoning that allows mixed uses in one or more light industrial zones.	E	Zoning code	Electronic copy attached	1	1	2	3
1H	Modified development standards/other applicable zoning provisions to promote greater development intensity including floor area ratio and minimum lot or unit sizes.	E	Zoning code	Electronic copy attached	1	1	2	3
1J	Other zoning and land use actions that measurably support the Acceleration of Housing Production.	P	Resolution	Electronic copy attached	1			1
2B	Streamlined program-level CEQA analysis and certification of general plans, community plans, specific plans with accompanying	E	Zoning code	Electronic copy attached	2			2

Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Insert Web Links to Documents <u>or</u> Indicate that Electronic Copies are Attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
	Environmental Impact Reports (EIR), and related documents.							
2G	Absence of subjective development and design standards with objective development and design standards.	E	Zoning code	Electronic copy attached	1			1
2I	Priority permit processing or reduced plan check times for ADUs/JADUs.	P	Resolution	Electronic copy attached	1	1	2	3
2M	Other actions that quantifiably decrease production timeframes.	E	Zoning code	Electronic copy attached	1			1
3A	Waiver of residential development impact fees.	E	Zoning code	Electronic copy attached	3			3
3B	Adopted ordinances that result in less restrictive requirements than Government Code sections 65852.2 and 65852.22.	P	Resolution	Electronic copy attached	2	1	2	4
3E	Measures that reduce costs for transportation-related infrastructure.	E	Zoning code	Electronic copy attached	1			1
3H	Other actions that quantifiably reduce construction or development costs.	E	Zoning code	Electronic copy attached	1			1
4A	Local housing trust funds.	E	Zoning code	Electronic copy attached	2			2

Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Insert Web Links to Documents <u>or</u> Indicate that Electronic Copies are Attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
4C	Surplus Land Act program making publicly owned land available for affordable housing.	E	Zoning code	Electronic copy attached	2	2	1	3
4E	Directed residual redevelopment funds to affordable housing.	E	Zoning code		1			1
4G	Prioritization of local general funds for affordable housing.	E	Zoning code		1			1
4H	Other actions, that leverage financial resources for housing.	E	Zoning code		1			1
TOTAL					31		12	43

Appendix 4: Examples of Prohousing Policies with Enhancement Factors

If a Prohousing Policy incorporates any of the enhancement factors specified in the Project Proposal Enhancement Factors chart, it will receive extra points as indicated therein. Examples of such qualifying Prohousing Policies include the following:

Category 1: Favorable Zoning and Land Use

- Rezoning sufficient sites to accommodate 150 percent or greater of the Regional Housing Needs Allocation by total or income category, including sites in Location Efficient Communities
- Rezoning sufficient sites to accommodate 150 percent or greater of the Regional Housing Needs Allocation by total or income category, including sites in High Resource and Highest Resource areas (as designated in the most recently updated TCAC/HCD Opportunity Maps).
- Rezoning to accommodate 125 to 149 percent of the Regional Housing Needs Allocation in downtown commercial corridors or other infill locations.
- Expanding density bonus programs to exceed statutory requirements by 10 percent or more in Location Efficient Communities.
- Reducing or eliminating parking requirements for residential development as authorized by Government Code section 65852.2 in Location Efficient Communities.
- Increasing allowable density in low-density, single-family residential areas beyond the requirements of state Accessory Dwelling Unit law in High Resource and Highest Resource areas (as designated in the most recently updated TCAC/HCD Opportunity Maps).
- Modification of development standards and other applicable zoning provisions to promote greater development intensity in downtown commercial corridors or other infill locations.
- Coupling rezoning actions with policies that go beyond state law requirements in reducing displacement of lower income households and conserving existing housing stock that is affordable to lower income households.

Category 2: Acceleration of Housing Production Timeframes

- Ministerial approval processes for multifamily housing in High Resource and Highest Resource areas (as designated in the most recently updated TCAC/HCD Opportunity Maps).
- Streamlined, program-level CEQA analysis and certification of specific plans in Location Efficient Communities.
- Documented practice of streamlining housing development at the project level in downtown commercial corridors and other infill locations.
- Expedited permit processing for housing affordable to lower income households in High Resource and Highest Resource areas (as designated in the most recently updated TCAC/HCD Opportunity Maps).

Category 3: Reduction of Construction and Development Costs

- Fee waivers for affordable housing in High Resource and Highest Resource areas (as designated in the most recently updated TCAC/HCD Opportunity Maps).

- Fee waivers or reductions for higher density housing in downtown commercial corridors or other infill locations.
- Measures that reduce costs and leverage financial resources for transportation-related infrastructure or programs in Low Resource and High Segregation & Poverty areas (as designated in the most recently updated TCAC/HCD Opportunity Maps).
- Adoption of universal design ordinances to increase housing choices and affordability for persons with disabilities in High Resource and Highest Resource areas (as designated in the most recently updated TCAC/HCD Opportunity Maps).
- Permitting innovative housing types, such as manufactured homes, recreational vehicles or park models, in High Resource and Highest Resource areas (as designated in the most recently updated TCAC/HCD Opportunity Maps).

Category 4: Providing Financial Subsidies

- Targeting local housing trust funds to acquisition or rehabilitation of existing affordable units, or to affordable units at risk of converting to market rate uses, in Low Resource and High Segregation & Poverty areas (as designated in the most recently updated TCAC/HCD Opportunity Maps).
- Marketing grants and other financial products for ADUs/JADUs in High Resource and Highest Resource areas (as designated in the most recently updated TCAC/HCD Opportunity Maps).
- Utilizing publicly owned land for affordable housing in High Resource and Highest Resource areas (as designated in the most recently updated TCAC/HCD Opportunity Maps).
- Establishment of an Enhanced Infrastructure Financing District or similar local financing tool in a Low Resource or High Segregation & Poverty area (as designated in the most recently updated TCAC/HCD Opportunity Maps).
- Directing residual redevelopment funds or general funds to conservation or preservation of affordable housing in areas at high risk of displacement.

Appendix 5: Additional Information and Supporting Documentation

Category - 1G

ATTACHMENT A

RESO NO. 22-020

**A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE
CITY OF MILPITAS, CALIFORNIA, APPROVING SITE DEVELOPMENT PERMIT NO.
SD22-0009 TO ALLOW THE DEMOLITION OF AN EXISTING ONE-STORY SINGLE
FAMILY RESIDENCE AND DEVELOP AN APPROXIMATELY 2,647 SQUARE-FOOT,
TWO-STORY, SINGLE-FAMILY RESIDENCE WITH A 472-SQUARE FOOT ATTACHED
GARAGE ON A 0.10 ACRE PARCEL AT 193 SILVERA STREET
(APN 022-21-032)**

WHEREAS, On August 22, 2022, Barzin Keyhankkhadiv ("Applicant") on behalf of Vijayakrishna Nadimpalli submitted a Site Development ("SD") permit application to replace an existing single-story residence with a new two-story, single-family residence ("Project") on a 0.10 acre lot located at 193 Silvera Street (APN 022-21-032);

WHEREAS, the property (APN 022-21-032) is located within the Single-Family Residential (R1-6) (C2) zoning district with a Site and Architectural Overlay (-S);

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Zoning Administrator determine this project is categorically exempt; and

WHEREAS, on October 13, 2022, the Zoning Administrator held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Zoning Administrator of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The project is categorically exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15303 (New Construction or Conversion of Smaller Structures), Section 15332 (In-Fill Development Projects) and; as a separate and independent basis, CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). As proposed, the project includes the development of a single-family residence in a residential zone, consistent with the general plan and zoning standards, located within city limits on a site with no value to habitat for endangered species, and adequately served by all utilities.

Section 3: The Milpitas Municipal Code (MMC) requires approval of a Site Development Permit (SDP) for new main buildings (MMC Section XI-10-57.03 (C)(1)(a)).

In order to approve an SDP, the Zoning Administrator must make the following findings, per Municipal Code Section XI-10-57.03(G):

- a) *The development recognizes and respects the nature of the neighborhood and site, development patterns, materials used, and the expectations of those who will see and use the building;*

The development recognizes and respect the nature of the neighborhood and site by designing a single-family residence within a single-family residential district. The proposed residence will be in the center of the lot where the current single-family residence is placed, to limit the amount of new land area required and minimize grading. The traditional design integrates into a neighborhood because the mass is controlled with simple lines, appropriate setbacks, and standard residential materials, such as composition shingle roofing, stucco exterior walls, and metal clad windows. The earth tone colors allow the new residence to blend in with the neighboring residences. Lastly, the hip roof design mimics other two-story residences (i.e. 245 Silvera St.) in the immediate area.

- b) *The development assures that modifications satisfy functional requirements, and are screened with appropriate compatible materials; and*

The The proposed residence satisfies functional requirements because the owners requires more space to grow their family while remaining in Milpitas. The proposed modifications are consistent with the development standards required for the zoning district as demonstrated in the following table.

Table 1: R1-6 Development Standards

Standards	Required	Existing / Proposed	Complies
Lot Area, Minimum	6,000 square feet	6,432 square feet	Yes
Lot Width, Minimum	55 feet	65 feet	Yes
Front Yard Setback	20 feet	24 feet, one inch	Yes
Side Yard Setback	6 feet (left) 7 feet (right)	6 feet (left) 9 feet, 4 inches (right)	Yes
Rear Yard Setback	25 feet	27 feet, three inches	Yes
Parking, Minimum	Four spaces	Four Spaces	Yes
Building Height, Maximum	30 feet	27 feet, 10 inches	Yes

- c) The development assures that the modifications will not interfere with the privacy, quiet enjoyment, or view of the surrounding properties.

The two-story development proposes windows along the front and rear of the residence, where the greatest setbacks occur. This allows the residence to obtain solar access with minimal impact to the neighboring properties, which are located on the sides of the lot. Therefore, the development will not interfere with the privacy, quiet enjoyment and view of the surrounding properties.

Section 4: The Zoning Administrator of the City of Milpitas hereby adopts Resolution No. 22-020 approving P-SD22-0009 to demolish an existing one-story, single-family residence and develop an approximately 2,647 square-foot, two-story single-family residence with a 472-square foot attached garage at 193 Silvera St, subject to the attached Conditions of Approval, based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Zoning Administrator of the City of Milpitas on October 13, 2022.

DocuSigned by:

Ned Thomas

2338583A68C9429...

Ned Thomas, AICP
Planning Director

Oct-13-2022

Date: _____

EXHIBIT 1**CONDITIONS OF APPROVAL:**

1. General Compliance. The applicant, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. This Site Development Permit No. SD22-0009 ("Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed. **(P)**
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit. **(P)**
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following: **(P)**
 - i. Acceptance of this Permit by Permittee; and
 - ii. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project: **(P)**
 - i. Completes a foundation associated with the project; or
 - ii. Dedicates any land or easement as required from the zoning action; or
 - iii. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
6. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the approval of this Permit. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1). **(CA)**

7. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Permit and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to the City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to the City. There is no vesting of any fees or charges with the approval of this Permit. **(P)**
8. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Permit. **(P)**
9. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
10. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit. **(P)**
11. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. **(CA)**
12. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**
13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code. **(P)**

14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable. **(CA)**

15. Permittee shall develop the approved project in conformance with the approved plans (date stamped 08/22/22), approved by the Zoning Administrator in accordance with these Conditions of Approval. **(P)**

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Zoning Administrator or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

16. Fire Department

The project/development shall comply with the requirements of the Fire Department and the California Fire Code. **(F)**

17. Building Department

The project/development shall comply with the requirements of the Building Department and the International Building Code. **(B)**

18. Engineering

The project/development shall comply with the requirements of the Engineering Division and as may be amended by the City of Milpitas. **(LD)**

(P) = Planning

(F) = Fire Prevention

(B) = Building

(LD) = Land Development

(CA) = City Attorney

**CITY OF MILPITAS
AGENDA REPORT
(AR)**

Item Title:	Receive Progress Report on The Work Completed and Existing Conditions Analysis from Raimi and Associates and Staff on the Housing Opportunity Zones, Discuss Project Objectives and Priorities, and Provide Direction on Key Planning Concepts and Land Use Strategies (Staff Contact: Ned Thomas, Planning Director, 408-586-3273 and Jay Lee, Principal Planner, 408-586-3077)
Category:	Community Development
Meeting Date:	8/9/2022
	<u>Recommendation:</u> Receive progress report on the work completed and existing conditions analysis from Raimi and Associates and staff on the Housing Opportunity Zones, discuss Project objectives and priorities, and provide direction on key planning concepts and land use strategies.

Background:

Since 1969, California law has required all cities and counties to plan to meet housing goals for residents at all income levels. Every eight years, the California Department of Housing and Community Development (HCD) and the Association of Bay Area Governments (ABAG) distribute the Regional Housing Needs Allocation (RHNA) to each City and County in the Bay Area. The City is then required to perform a comprehensive update to the Housing Element, which is a chapter in the General Plan. The Housing Element identifies specific programs and policies that the City commits to implement to help realize the City's RHNA goals and respond to related needs.

In the 2019-20 Budget Act, Governor Newsom signed into law a \$250 million allocation for California regional and local jurisdictions to prioritize planning activities to accelerate state-wide housing production as part of a broader mandate to address the State's affordable housing shortage and to end homelessness. This allocation includes \$119 million for the Local Early Action Planning Grant (LEAP) for cities and counties. LEAP provides one-time grant funding for cities and counties to update planning documents and implement process and policy improvements to accelerate housing production. LEAP is a non-competitive grant program and a State strategy to help local governments meet their legal obligation to plan for housing for all residents, including low-income residents, as per the City's RHNA obligations.

On June 29, 2020, the City applied to HCD for grant funding through the LEAP Program to create Housing Opportunity Zones (HOZs) in areas of the City prioritized for housing by the City's General Plan. The HOZs will establish various incentives through an overlay zoning district to facilitate and streamline affordable housing production in the City's two Specific Plan areas, four Neighborhood Commercial Mixed Use (NCMU) areas, and the Town Center Zoning District. Incentives include a supplemental density bonus beyond the State Density Bonus, relaxed development standards, streamlined by-right permitting and environmental review, and financial incentives. On September 2, 2020, HCD informed staff that the City of Milpitas has been awarded \$300,000 in grant funds through the LEAP Program to establish HOZs.

On December 12, 2021, the City Council approved and authorized the City Manager to execute a professional services agreement with Raimi and Associates to prepare the HOZs in close coordination with related efforts underway including the Metro and Gateway Specific Plans, the Housing Element Update, and a separate Assessment of Fair Housing. Per the grant agreement, the HOZs must be completed by June 30, 2024.

Analysis:

As identified in the City's LEAP grant application and scope of work with Raimi and Associates, the key goals of the HOZs are to:

1. Streamline the permitting of housing development to meet the housing goals of the City;
2. Allow by-right approval of housing projects if they meet certain objective criteria;
3. Incentivize development of on-site affordable housing; and
4. Encourage different types of special needs housing, including senior living, housing for persons with disabilities, and workforce housing.

The work completed to date includes:

- **Best Practices Memo:** The memo provides an overview of example HOZs from other cities, especially as they relate to the creation of affordable housing units and housing for special needs populations. Three of the examples focus on affordable housing and one on senior housing. Each precedent study identifies strengths and weaknesses that can inform the consideration and development of new HOZs in Milpitas.
- **Planning Documents and Process Assessment:** The assessment memo reviews and summarizes existing planning documents and ordinances that impact the development of housing across the City and identifies strengths that can be enhanced and weaknesses that can be overcome through HOZs.
- **Existing Conditions Analysis:** The analysis of existing conditions examines each potential HOZ area and estimates the feasible development capacity based on Milpitas' current land use and zoning policies and regulations. Topics covered include the existing land use pattern, parcel size, pipeline projects, access to multimodal transportation options, site constraints, and opportunity sites. Staff will present the analysis in greater detail at a future study session with the City Council.
- **Stakeholder Meetings:** Raimi and Associates and City staff presented an overview of HOZs at the May 2022 Community Development Roundtable and subsequently conducted stakeholder interviews with non-profit and for-profit housing developers to better understand the constraints to building both mixed-income and 100 percent affordable housing projects.

Key findings from the background research and analysis and preliminary community outreach include:

- **Development Standards:** Development standards such as low maximum densities, high parking ratios, and high commercial requirements for mixed-use projects are constraints on development of affordable housing for both for-profit and non-profit housing developers. Adjusting these development standards would allow developers to prioritize affordable housing and spread the subsidized cost of the affordable units over a larger number of market rate units.
- **Permitting Process and Impact Fees:** Development fees are higher in Milpitas compared to other jurisdictions in Santa Clara County owing to high entitlement fees for single-family development and high impact fees for multi-family developments. A streamlined permitting process and reduced impact fees for housing projects in HOZs that meet objective standards would help reduce initial development costs and facilitate both mixed-income and 100 percent affordable housing projects.
- **Affirmatively Furthering Fair Housing (AFFH) Compliance:** HOZs can help a local jurisdiction address the potential issue of having a large concentration of affordable units in certain geographic areas (e.g., specific plan areas), which run counter to AFFH requirements in the Fair Housing Act. The Fair Housing Act requires cities to take meaningful actions to overcome patterns of segregation and foster inclusive communities. HOZs will help the City comply with this federal law by promoting a more equitable distribution of affordable housing throughout Milpitas.
- **General Plan Land Use Designations:** The 2040 General Plan aims to create vibrant commercial neighborhood centers through mixed-use development within the Town Center Zoning District and by establishing the Neighborhood Commercial Mixed-Use (NCMU) land use designation to incentivize the redevelopment of older commercial retail centers. Establishing HOZs for these areas will remove

current constraints on mixed-use development in these areas by modifying current policies and development requirements.

General Plan Implementation

The HOZs will be a critical implementation tool of the 2040 General Plan, which identifies several opportunity areas throughout the City for future housing development. These areas include the two Specific Plan areas (Metro Specific Plan and Gateway-Main St. Specific Plan), four NCMU areas, and the Town Center. The City is currently updating its two Specific Plans, and the HOZs will apply to these areas where much of the future housing development is expected to occur. However, the current policies and requirements of the NCMU and TWC land use designations need to be refined to facilitate and incentivize mixed-use redevelopment.

The NCMU land use designation establishes a ratio of one residential dwelling unit per 1,500 square feet of neighborhood-serving retail and commercial services for new mixed-use developments. While the purpose of this requirement is to incentivize the redevelopment of older strip retail centers into new mixed-use projects, redevelopment is unlikely to occur under the current policy framework. Based on the analysis completed for this HOZ project, the consultant team and staff now favor a clear allowable density range rather than a ratio between residential and nonresidential floor area.

For example, the TWC land use designation allows 40 residential dwelling units per acre for mixed-use developments but requires a high floor area ratio (FAR) of 0.35 for nonresidential uses. While the purpose of the nonresidential FAR requirement is to ensure that the Town Center retains its commercial activity over time, it presents a constraint to redevelopment. The current FAR of the Town Center north of Calaveras Boulevard is well below 0.35 and any redevelopment would require an additional 323,000 square feet of nonresidential floor area, which is highly unlikely in the current economic climate. The HOZs will build upon new General Plan policies for the NCMU and TWC areas by providing a more implementable strategy to achieve the overall goal of creating vibrant mixed-use neighborhoods in key areas throughout the City. The HOZs will adopt a place-based approach to facilitate mixed-use redevelopment of specific sites within these areas while allowing viable commercial centers to remain.

Housing Element Implementation

The HOZs will also be a critical implementation tool of the ongoing Housing Element Update, which must be updated every eight years identify adequate sites for new affordable housing to fulfill the City's RHNA. In the upcoming RHNA cycle (2023-2031), the City of Milpitas has been allocated 6,713 units, which is more than double the allocation from the previous cycle. Furthermore, 3,786 of the units must be affordable (i.e., below market rate) with 2,655 of those units at the low- or very-low-income affordability level, which the City has historically struggled to provide.

To address this challenge, the HOZs will focus on providing practical and effective incentives for developers to build affordable housing, especially at deeper affordability levels. The Housing Element Update will rely on the HOZs as a key program to implement its policies and help the City fulfill its housing goals and needs.

Next Steps

Following the City Council study session, the project team will continue to engage the public through additional stakeholder meetings with property owners, community workshops, and online surveys. The project team will also prepare a series of design studies to test the potential effects of the HOZs and develop several alternatives based on the feedback and direction received from the City Council.

Once the alternatives are established, the project team will return to the City Council for another study session to determine the preferred alternative. The project team will continue to meet with the City Council and Planning Commission as the Draft HOZs are developed to ensure that the project meets the needs of the City and community.

Fiscal Impact:

This is an informational item. As such, there is no fiscal impact.

California Environmental Quality Act:

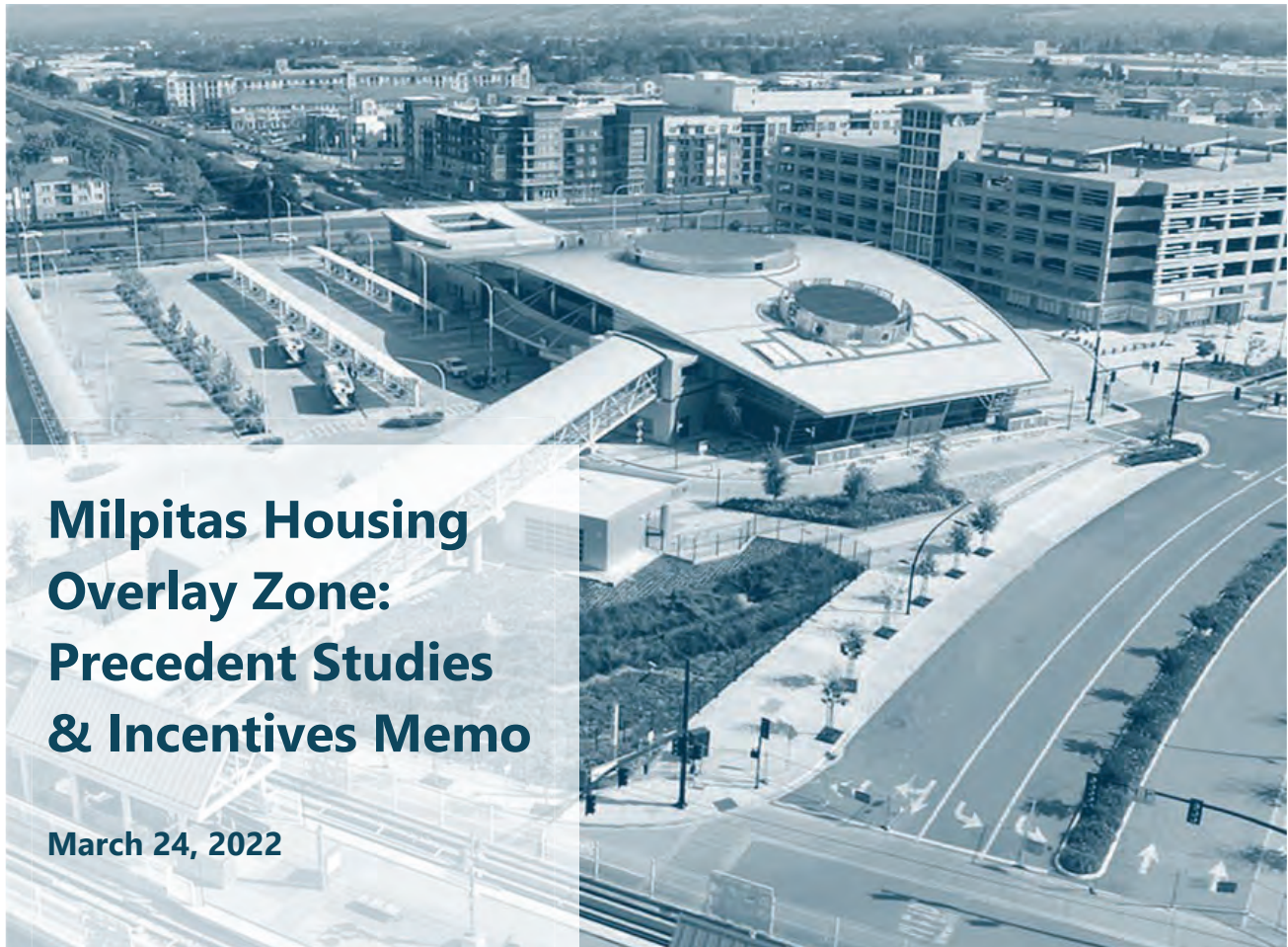
The additional development allowed through the HOZs will be consistent with the Housing Element sites inventory. Therefore, the required environmental review for the HOZs will be completed as part of the environmental review for the Housing Element Update.

Recommendation:

Receive progress report on the work completed and existing conditions analysis from Raimi and Associates and staff on the Housing Opportunity Zones, discuss Project objectives and priorities, and provide direction on key planning concepts and land use strategies.

Attachments:

1. Best Practices Memo
2. Planning Documents and Process Assessment



Milpitas Housing Overlay Zone: Precedent Studies & Incentives Memo

March 24, 2022

1. Introduction

This Precedent Studies & Provisions Memo is intended to provide an overview of example housing overlay zones from other cities, especially as they relate to the creation of affordable housing units and housing for special needs populations.

The memo provides a summary and analysis of four overlay zone frameworks (precedent studies), three focused on affordable housing and one on senior housing. Each precedent study identifies strengths and weaknesses that can inform the consideration and development of a new housing overlay in Milpitas. In addition to the development incentives and bonuses described in each precedent study, the Incentives Structures section of the memo describes the various development incentives and bonuses that could be included in a finalized housing overlay zone and how they interact with existing State housing development incentives. Some incentives can be tied to affordability or age requirements, depending on the population the overlay prioritizes.

2. Precedent Studies

As the City of Milpitas considers a potential new overlay zone designation to align with city-wide housing goals, several precedents have been established both locally in the Bay Area, and at the national scale. Since preserving and promoting affordable housing opportunities has been a priority shared by cities through California and beyond, jurisdictions have taken a number of different approaches to utilizing overlay zones as a regulatory mechanism for nesting standards related to the creation of new affordable units, income levels, construction and design standards, and several other topics. Overlay zones are not limited strictly to frameworks oriented around affordable housing but have also been adapted to address other planning challenges, such as provision of housing for senior residents or special needs populations.

This memo provides a summary and analysis of four overlay zone frameworks:

- Cambridge, MA. Affordable Housing Overlay (zoning)
- Berkeley, CA. Affordable Housing Overlay (Housing Element)
- Menlo Park, CA. Affordable Housing Overlay (zoning)
- Perris, CA. Senior Housing Overlay Zone (zoning)

Links to each precedent and their original language can be found in **6. Appendix**.

Comparative Matrix

The following table summarizes the regulatory language and framework of the four precedents. The information has been condensed in this memo.

Precedent Study	Applicability	Interactions with Underlying Zoning	Affordability Requirements	Deed-restriction or affordability agreement?	Incentives
100% Affordable Housing Overlay Cambridge, MA	- All zoning districts, except Open Space - Standards apply only to 100% affordable housing projects	Underlying zoning impacts density and height bonuses	- At least 80% of units for households with incomes 80% AMI or below - 50% of for-sale units should to households with incomes 80% AMI or below at initial occupancy	Continued affordability agreement	- No maximum FAR - Height bonus - No off-street parking minimums - Minimum of 30% open space to lot area ratio - Lower yard setbacks
100% Affordable Housing Overlay Zone Berkeley, CA (Proposed)	- R3, R4, MU-R, all C-prefixed districts - Potentially R-1, R-1A, R-2, R-2A - High fire risk area and historical landmarks are exempt - Projects must have 100% affordable units		Reserved for Extremely Low-, Very Low-, Low-, and Moderate-income households	Deed-restricted	- No maximum FAR - Density bonus - Height bonus

Affordable Housing Overlay (AHO) Menlo Park, CA	- Menlo Park El Camino Real and Downtown specific plan area; lots zoned R-4-S - Projects must have a mix of affordable and market rate units	Some Specific Plan development standards cannot be superseded by AHO standards	At least 25% of affordable units must be very low and/or extremely low-income, or at least 15% must be extremely low income	Continued affordability agreement (no less than 55 years)	- Density bonus - Height bonus - Parking space requirements per type of affordable unit - Common and/or private open space can be reduced by 50% - Setback reduced to 5' except when more is needed to accommodate increased density and when parcel is next to single-family residential - Possibility of waived processing fees
Senior Housing Overlay (SHO) Zone Perris, CA	- Can be combined with any residential or commercial zone district, and lots must be greater than 2 acres but not more than 75 acres	- Surrounding land uses must be compatible with the environment required by seniors - Level of affordability and percentage of affordable units are dependent on redevelopment area classification	- Minimum 1 household member must be age 55+ - Redevelopment area: at least 30% of units for low- and moderate-income households, at least 50% of the 30% for very low-income - Not redevelopment area: at least 3% of units for low- and moderate-income households, at least 40% of the 3% for very low-income households	Affordability in place for 30 years or how long the redevelopment area agreement specifies (whichever is longer)	- Density bonus (up to 50 units/acre) - Development fees waiver

A. Affordable Housing Overlay. Cambridge, MA

The City of Cambridge adopted the 100% Affordable Housing Zoning Overlay in October 2020. This overlay aims to help affordable housing developers build new, permanently affordable housing throughout the city, especially in areas where there are not enough affordable units, and areas where the current zoning makes it difficult to construct affordable housing projects. The standards and incentives of the overlay can only apply to projects where 100% of the units are affordable and available to households earning up to 100% of the Area Median income (AMI).

1. Development context

The Affordable Housing Overlay (AHO) developed from discussions between the City Council, Housing Committee, and Community Development Department (CDD) regarding how to address the housing crisis and was further mentioned during the "Envision Cambridge" citywide plan process from 2016-2019. CDD developed the overlay and gathered feedback from public hearings, community meetings, and open houses. The AHO was presented as a zoning amendment to the Planning Board and Ordinance Committee, and after several meetings and revisions, they recommended that the City Council adopt the AHO ordinance. The City Council adopted the ordinance on October 5, 2020. To date, approximately 350 new affordable units have been completed under the regulations, with the City currently reviewing projects that could result in additional 300 units.

2. Regulatory Framework

Cambridge's AHO is an amended, new section in the City's Zoning Ordinance. The ordinance contains income and affordability criteria, development and design regulations, and regulatory mechanisms for ensuring the continued affordability of an AHO project's units.

3. Applicability/Area of Influence

The overlay zone applies to all zoning districts of Cambridge, except parcels zoned as Open Space. Regardless of the underlying zoning standards or density requirements, AHO projects can contain single-family, two-family, townhouse, or multi-family dwellings. Projects may also include active, non-residential uses on the ground floor, but only where the underlying zone or an additional overlay district already allow non-residential uses. An AHO project can feature the construction of a new building, or the retrofit of an existing building. The project is permitted "as-of-right" if the project meets all the standards within the overlay and the Design Guidelines established by the CDD.

4. Interaction with underlying zoning

The applicable development and design regulations of an AHO project are determined by the "District Dimensional Standards" of the underlying zoning district. The dimensional standards of the AHO apply in place of the District Dimensional Standards unless the AHO specifies otherwise. As previously stated, the AHO supersedes non-residential underlying zoning districts and allows for the development of housing in districts such as commercial or industrial. In addition, ground floor non-residential uses are allowed in new housing projects where the underlying zoning already allows such uses.

5. Development and Design Regulations

FAR. The floor area ratio (FAR) of an AHO project has no stated maximum or minimum.

- *Exception:* If the standards of the underlying zoning district specify a maximum FAR of less than 1.0, the AHO project cannot exceed an FAR of 2.0.

Lot Area. There is no minimum lot area per dwelling unit requirement for AHO projects.

Height. The height bonus for an AHO project is contingent on the underlying zoning district's allowable building heights.

Underlying zoning district allowable building height	Height Bonus	Exceptions
40 feet or less	Up to 45 feet (no more than 4 stories) if entirely residential; or	
	Up to 50 feet (4 stories above grade) if first floor has active, non-residential use	
Up to 50 feet	Up to 65 feet (no more than 6 stories) if entirely residential; or	• When AHO project is adjacent to a non-residential use, parts of the project within 35 feet of a zoning district that allows a maximum building height of 40' will be limited to the overlay provisions of that type of building (i.e., max build to 45' if residential, 50' if first floor is active non-residential) • When the AHO project parcel extends into that district, then the height limitation only extends 35' from the property line.
	Up to 70 feet (6 stories above grade) if first floor has active, non-residential use	
Greater than 50 feet	Up to 80 feet (no more than 7 stories)	• When AHO project is adjacent to a non-residential use, parts of the project within 35 feet of a district with zoning that allows a maximum building height of 40' will be limited to a maximum height of 60' (a minimum of 5 stories).

		When the AHO project parcel extends into that district, then the height limitation only extends 35' from the property line.
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Parking. AHO projects do not have an off-street parking minimum requirement. However, if a project does not provide off-street parking at a ratio of 0.4 spaces per dwelling unit, the developer must create a Transportation Demand Management program where they:

1. Offer a free annual membership to a bike share program, or a 50% discounted transit combined subway and bus pass for 6 months, to 2 individuals in each household upon their initial occupancy of a unit; and
2. Provide transit information to each household upon their initial occupancy of a unit or provide real-time transit service screen and information in the building lobby.

Open Space. The minimum percentage of open space to lot area of an AHO project is 30%, unless the standards of the underlying zoning district have a less restrictive requirement. This percentage can be lowered to a minimum of 15% if the AHO project includes the protection and preservation of an existing building that is in the State Register of Historic Places. The AHO contains additional guidelines for the placement and characteristics of an AHO project's open space.

Yard Setbacks.

Setback	Requirement	Exceptions
Front	Minimum setback of 15 feet	- The underlying zoning standards have a less restrictive requirement, - The project is on a corner lot (may be reduced to minimum of 10'), or - The developer chooses to reduce the setback to the average of the front yard setbacks of the four nearest pre-existing principal buildings that contain at least 2 stories above grade and directly front the same side of the street as the AHO project. - If there are different underlying zoning standards for residential and non-residential uses, the non-residential front yard setback requirement applies to an AHO project with an active non-residential ground floor.
Side	Minimum setback of 7.5 feet	Unless underlying zoning district's residential requirement is less restrictive.
Rear	Minimum rear setback of 20 feet	Unless the underlying zoning district's residential requirement is less restrictive.

Standards for Existing Buildings. Existing buildings used in an AHO project that do not match the development and design regulations can be altered, reconstructed, relocated, and/or enlarged to conform with the AHO regulations. Below are modification standards that are allowed "as-of-right."

- The addition of gross floor area within the interior of the existing building envelope that could violate FAR limitations set by the AHO
- An increase in the number of dwelling units within the existing building if the number of stories above grade is not greater than the existing number of stories above grade, or the existing height divided by 10 feet
- The relocation, enlargement, or addition of openings to the exterior of the building

- The addition of insulation to improve energy efficiency if the new exterior wall conforms to yard setback requirements, does not intrude more than 8 inches into the existing yard setback, or does not decrease the existing open space by more than 5%
- The addition of exterior features to meet accessibility requirements
- Alterations, additions, repair, reconstruction, or replacement of the existing building and pre-existing nonconforming features that do not violate the dimensional requirements set by the AHO

Building and Site Design Standards for New Development. The AHO contains design standards that apply to new construction and the additions to existing structures. Existing buildings that are a part of an AHO project do not have to follow these design standards if the alterations do not “create a condition that is in greater nonconformance with such standards than the existing condition.” The complete standards are available in **6. Appendix.**

5. Income and Affordability

An AHO Eligible Household has a gross household income upon initial occupancy of no more than 100% of AMI. Rental and for-sale AHO units are available for AHO Eligible Households, with a preference for Cambridge residents and former Cambridge residents who experienced a no-fault eviction in the last 12 months within Cambridge. This local preference can make projects ineligible from certain federal grants that can help finance the development of affordable housing.

Rental AHO dwelling units:

- The gross household income of the AHO Eligible Household at initial occupancy cannot be more than 100% AMI, but a household exceeding this limit after initial occupancy can continue to rent the unit (cannot exceed 120% AMI for more than one year).
- At least 80% of the units in an AHO project must be reserved for households with incomes no more than 80% AMI.
- Rent, utilities, and fees must be approved by the CDD and cannot be more than 30% of the gross household income of the unit occupants.
- The gross household income of an AHO Eligible Household will be verified annually, or at the times required by a CDD-approved housing subsidy program, to determine the household’s continued eligibility and rent.

Owner-occupied AHO dwelling units:

- The gross household income of the AHO Eligible Household at initial occupancy cannot be more than 100% AMI.
- At least 50% of the for-sale units in an AHO project must be reserved for households with incomes no more than 80% AMI.
- The initial sale price of a unit must be approved by the CDD, and the monthly housing payment cannot exceed 30% of the household’s monthly income.

6. Regulatory Mechanisms

Deed Restrictions. AHO units are “created and conveyed subject to recorded covenants approved by CDD” to guarantee the permanent availability of the dwelling units to AHO Eligible Households.

Application process and approval. Each AHO project must follow a review and community engagement process.

- The developer must schedule two design consultations with the Planning Board, who will determine if the project meets the regulations of the overlay.
- The developer must host at least two community meetings for the residents of the neighborhood surrounding the proposed project site. At the first meeting, the developer shares initial analysis and gathers feedback from the community before design begins. At the second meeting, the developer shares preliminary project designs and receives design feedback.

7. Strengths

- **AHO projects must contain 100% affordable units.** By requiring that all units of a project be reserved for household earning up to 80% and 100% of the AMI, the City commits to prioritizing low-income housing construction and ensuring that any additions to the housing stock utilizing the overlay's incentives are affordable units.
- **Application and review process.** The review process includes mandatory community engagement procedures that allow community members to voice their opinions over changes occurring in their neighborhood. Additionally, the advisory design review process is straightforward and thoroughly explained in the AHO ordinance text.
- **Applicability of the overlay zone.** The AHO allows for the creation of affordable housing in zoning districts that have previously not allowed residential uses. In Milpitas, a housing overlay zone with similar regulations would allow areas of the city that are currently zoned and operate as commercial to accommodate new housing construction, without having to undergo a re-zoning process to amend the allowable uses in a commercial district. As an example, if all institutional-zoned parcels in Milpitas could accommodate housing, the City may be able to approve affordable housing projects for teachers and school staff much quicker, and without having to undergo the re-zoning process.

8. Weaknesses

- **100% AMI Standard.** Cambridge's AMI is different from the AMI in Milpitas. Milpitas is located in Santa Clara, a county with high cost of living that can make 80% AMI unattainable for some Milpitas residents. In 2021, 80% AMI for a family of four was \$117,750 and 30% AMI (usually considered extremely low-income) was \$49,700. An overlay in Milpitas may need to use different affordability requirements that are more appropriate to the city's context. Additionally, Cambridge requires the monitoring of income levels for rental and for-sale units. It may be difficult to enforce or monitor income requirements of certain units once they are sold.

- **Applicability of the overlay zone.** The AHO allows for the creation of affordable housing in all zoning districts, except Open Space. The overlay creates near-universal standards for parcels throughout the city, but each has different geographic contexts, transportation accessibility, and proximity to community services and amenities. Not all parcels in a city will be the best locations to place low-income housing and some may even contribute to the historic marginalization of low-income communities.
- **Affordable housing construction in Industrial Zoning Districts.** If AHO projects are constructed in areas with primarily industrial uses, these projects could contribute to the historical, unjust practice of placing low-income housing next to pollution-generating uses. Communities that have higher exposure rates to pollutants can lead to increased negative health impacts. Additionally, industrial zones may have underlying restrictive covenants related to the presence of hazardous waste and materials, which could prohibit the construction of housing. In Milpitas, there may be industrial districts that are more suitable for housing construction than others. A comprehensive study of industrial parcels would be needed to understand the socio-environmental effects of allowing low-income housing in these areas.
- **Modernization of older public housing.** For projects retrofitting existing buildings that already feature affordable housing, Cambridge's AHO standards lack anti-displacement measures to ensure future spaces for existing tenants. Consequently, the responsibility of ensuring housing security is left up to individual developers to voluntarily offer as a form of community benefits. For example, Jefferson Park Federal is a project that is replacing former federal public housing buildings with new fully, affordable housing units. The Cambridge Housing Authority has promised to ensure no permanent displacement of the buildings' original tenants and assisted in relocating the original tenants into other units while construction occurs. This assurance is not a product of a regulatory standard in the AHO, but a key value of the Authority when the project was initially being developed.

B. Affordable Housing Overlay. Berkeley, CA

1. Development context

In November 2021, the City Council of the City of Berkeley recommended the City Manager to consider a 100% Affordable Housing Overlay designation, and to integrate it into the ongoing Housing Element Update process. The implementation of the overlay would require the development of objective design standards, or form-based standards, and the development of an advisory Design Review process that will guide the design of qualifying affordable housing projects. Additionally, General Plan amendments would need to be created that allow 100% affordable housing projects, in order to remain consistent with existing densities described in the General Plan. As of March 2022 however, draft regulatory text has not yet been made publicly available, and the ongoing Housing Element work has not yet engaged fully with the topic of an overlay designation. The proposal that was presented to the City Council and City Manager has been released and contains goals, preliminary standards, and requirements that will be included in the final regulatory text.

2. Regulatory Framework

The overlay proposal includes preliminary requirements and standards for affordable housing projects that would utilize the overlay incentives.

3. Applicability/Area of Influence

The overlay would apply to parcels in the following zoning districts:

- Multiple-family Residential (R3)
- Multi-family Residential (R4)
- Mixed Use-Residential (MU-R)
- Commercial Districts (all C-prefixed districts)

The overlay could also apply to parcels in the following zoning districts, but would require further study to determine project feasibility:

- Single-family Residential (R-1)
- Limited Two-family Residential (R-1A)
- Restricted Two-family Residential (R-2)
- Restricted Multiple-family Residential (R-2A)

Parcels located in CalFire Very High Fire Hazard Severity Zones, City of Berkeley Fire Zones 2 and 3, or are designated City, State, and Federal Historical Landmarks, would be exempt from the overlay.

4. Development and Design Regulations

In R3, R4, MU-R, C-prefixed districts, the following standards and bonuses would apply:

- A local density bonus that reflects the provision of AB 1763 (in addition to any State density bonuses)
- No limits on FAR
- Up to 80% lot coverage

In R-1, R-1A, R-2, R-2A zones, the following standards and bonuses would apply:

- A local bonus inclusive of existing density bonuses
- No limits on FAR
- Up to 80% lot coverage

5. Regulatory Mechanisms

Deed Restrictions and Income Requirements. Units within qualifying 100% affordable housing projects would be deed-restricted for Low, Very Low, Extremely Low-, and Moderate-Income households.

Application process and approval. Projects that comply with the overlay's design standards and income requirements would have ministerial approval. The advisory Design Review process would review if the project met the overlay's guidelines. If the guidelines were not met, the Design board would provide suggested changes to the developer that would allow the project to meet the standards.

6. Strengths

- **Excluding parcels in fire hazard zones.** By not allowing affordable housing development in fire-risk areas, the City is decreasing the potential of low-income family displacement in the event of a wildfire.
- **Overlay as a part of the Housing Element.** The AHO proposal states that it will be a part of the state-mandated Housing Element, which describes the city's plans to accommodate future housing growth. As a part of the Housing Element, it would better ensure that the overlay is implemented.

7. Weaknesses

- **Overlay language not yet finalized.** Berkeley's AHO is still a proposal that will be incorporated into a different regulatory document, and it cannot be thoroughly compared to other overlay zones that have been adopted into zoning codes and ordinances.
- **100% Affordable Units.** Restricting the benefits of an Overlay to 100% affordable housing can be seen as a constraint. By limiting the pool of which types of projects can leverage the incentives can limit the overall production of affordable housing. In addition, constrained availability of public funds and the need for local municipalities to provide matching funds can be a limiting factor.

C. Affordable Housing Overlay. Menlo Park, CA

1. Development context

Menlo Park's Affordable Housing Overlay (AHO) is meant to implement the goals of the Housing Element and encourage the development of affordable housing for low, very low, and extremely low-income households. The AHO was adopted by the City Council in June 2013 as a part of a settlement agreement (*Peninsula Interfaith Action, et al. v City of Menlo Park*) that also required the City to update its 1992 Housing Element. As of March 2022, the City's 2023-2031 Housing Element Update is ongoing and has proposed updating the AHO to include a maximum density bonus of 100 dwelling units/acre for 100% affordable housing projects, extending the AHO coverage area, and modifying the fee waivers and development standards. These updates are not yet final, and the discussion presented below is based on the current, adopted overlay language.

2. Regulatory Framework

Menlo Park's AHO contains income and affordability criteria, development and design regulations, and regulatory mechanisms for ensuring the continued affordability of an AHO project's units.

3. Applicability/Area of Influence

The overlay applies to parcels within the Menlo Park El Camino Real and Downtown Specific Plan area and those zoned as R-4-S (AHO) (high density residential, special – affordable housing overlay). Qualifying projects must have at least 5 units and accommodate a full range of income levels.

4. Interaction with underlying zoning

The overlay has been applied to specific parcels as a zoning classification (R-4-S AHO) and applies to the parcels identified in the El Camino Real and Downtown Specific Plan. The Specific Plan establishes development standards that can be paired with the standards of the AHO, and the AHO identifies the Specific Plan guidelines that cannot be substituted.

- *Exceptions:*
 - o For parcels within the Specific Plan boundaries, the maximum FAR will be limited to the public benefit levels for the area the parcel is in. Each Specific Plan area has a different maximum FAR depending on the parcel's land use and location within the area.
 - El Camino Real North: 1.10, 1.50 FAR
 - El Camino Real South: 1.50, 1.75 FAR
 - Station: 1.75, 2.25 FAR
 - Downtown: 1.0, 2.25 FAR
 - o Front and side setback facing a public right-of-way.
 - o Building facade height.
 - o Massing and modulation standards including major portions of a building facing a street should be parallel to the street, building breaks, building facade modulation, and building profile, and upper story facade length.

5. Development and Design Regulations

Density bonus.

- An AHO project that provides 21% low-income units is entitled to a 36.5% density bonus. With each additional percentage of low-income units above 21% (or the percentage used for low-income units when there is a mix of low and very low-income units), project is entitled to an additional 1.5% density bonus up to a cumulative maximum bonus of 60%.
- An AHO project that provides 12% very low-income units is entitled to a 37.5% density bonus. With each additional percentage of very low-income units above 12% (or the percentage used for very low-income units when there is a mix of low and very low-income units), project is entitled to an additional 2.5% density bonus up to a cumulative maximum of 60%.

FAR. There is no stated maximum or minimum FAR. An AHO project can increase its floor area ratio "by an amount that corresponds to the increase in allowable density" determined by the density bonus guidelines.

- Projects can add an additional 5% or other increase that is "reasonably sufficient to make development of low and very low income multiple-bedroom units and family housing feasible."

Coverage.

- "Any applicable maximum building coverage and/or allowable paving requirement shall be increased by 5% and the minimum open space requirement reduced by 10% from the underlying zoning designation."

Height.

- An AHO project that can have up to a 45% AHO density bonus can have a maximum height of 4 stories (no more than 48').
- An AHO project that can have an AHO density bonus greater than 45% and has at least 50% of its affordable units reserved for very low and extremely low-income households (or 25% of the affordable units reserved for extremely low-income households), can have a maximum of 5 stories (no more than 60').

Parking. The parking requirements of the underlying zoning designation apply to AHO projects. The following guidelines only apply to the affordable units within a project:

Unit Type	Required Parking Space(s)
Studio	0.8
1-bedroom	1
2-bedroom or larger	1.5
Senior housing units	0.8 or less
<i>For projects within the Caltrain station area identified in the Specific Plan, each affordable unit can have a reduction of 0.2 parking spaces from the minimum listed here.</i>	

- AHO projects within the Specific Plan area can conform to the parking requirements listed in the AHO or adhere to the parking requirements of the specific plan, whichever is less.
- Parking spaces for affordable units do not need to be covered or located in a garage or carport.
- Provided long-term bicycle parking should not be more than 0.5 spaces per unit.
- Any requirement for electric vehicle parking or recharging stations can be reduced by 50% or project can provide an equivalent number of car sharing spaces.

Open Space. Common and private open space can be reduced by up to 50% from the underlying zoning requirements, in addition to reductions needed to “physically accommodate the increased density provided for” by the ordinance.

Setbacks. In addition to reductions needed to “physically accommodate the increased density provided for” by the ordinance, required setbacks can be reduced by 5 feet.

- *Exception:* When an AHO project parcel is next to a parcel zoned for single-family residential, the underlying zoning requirement still applies.

Design.

- AHO projects will be reviewed for compliance with adopted objective design standards, and projects within the **Specific Plan area must follow** the architectural control process described in the plan. No other review is required unless the developer requests a variance from the AHO requirements.
- Low and very low-income units must be built at the same time, and to the same quality standard, as market rate units. They must also be integrated into the project.
- The number of bedrooms in low and very low-income units must be consistent with the mix in market rate units.

6. Income and Affordability

To be eligible for bonuses and incentives, AHO projects with more than 5 but less than 100 units must have at a minimum: 21% of all units reserved for low-income households, or 12% of units reserved for very low-income households.

- If the project proposes to have both low and very low-income units, the minimum percentage of units shall be more than necessary to reach a 35% state density bonus.
- The below market rate units a project is required to include due to the City's Below Market Rate Housing Program cannot be counted to reach these AHO requirements.

To be eligible for the density bonuses and incentives, AHO projects with more than 100 units must have at a minimum: 21% of all units reserved for low-income households, or 12% of all units reserved for very low-income households.

- If the project proposes to have both low and very low-income units, the minimum percentage of units shall be more than necessary to reach *more than* a 35% state density bonus.
- The below market rate units a project is required to include due to the City's Below Market Rate Housing Program cannot be counted to reach these AHO requirements.

In addition to the aforementioned income criteria concerning low-income and very-low income households, the AHO also includes a secondary requirement, where:

- 25% of the affordable units must be reserved for very low and/or extremely low-income households, **or**
- 15% of the affordable units must be reserved for extremely low-income households

In practice, a 100-unit project would need to adhere to one of the following methods in order to qualify for the AHO bonuses:

- Method 1a: A minimum of 21 units reserved for low-income households (21% of all 100 units), where 6 of these units (25% of the 21 affordable units, rounded up) are reserved for very-low and/or extremely-low income households

- Method 1b: A minimum of 21 units reserved for low-income households, where 4 of these units (15% of 21 affordable units, rounded up) are reserved for extremely-low income households
- Method 2a: A minimum of 12 units (12% of all 100 units) reserved for very-low income households
- Method 2b: A minimum of 12 units reserved for very-low income households, where 2 of these units (15% of 12 affordable units, rounded up) are reserved for extremely-low income households

A key provision of the AHO is that the low or very low income percentage required to qualify for the AHO shall not include the below market rate units required to be provided by for-sale residential development project and commercial development projects pursuant to the city's below market rate housing program or Inclusionary Housing requirement.

7. Regulatory Mechanisms

Continued affordability.

- Project developers must create an agreement with the city to ensure the continued affordability of the affordable dwelling units for no less than 55 years.

Waivers.

- AHO projects with at least 50% of all project units reserved for low-income households (or 20% for very low-income households) are entitled to a fee waiver for all processing fees related to development applications.
- All AHO projects are entitled to a reduction in all other fees in an amount that corresponds to the increase in allowable density, though the waiving of certain fees is subject to discretionary review by the city council.

8. Strengths

- **Affordability requirements.** The AHO provides incentives to projects with 50% or less affordable units, an affordability percentage that can allow use of more private financing for these projects compared with 100% affordable housing projects.
- **Affordability agreement.** The overlay includes a 55-year continued affordability agreement, which allows the rental price of the unit to stay affordable and can lead to housing security for low-income families.
- **Fee waivers.** Fee waivers incentivize increases in the number of low (or very low) income units.
- **Design quality.** The AHO includes a condition that requires developer to construct affordable units to the same quality standard as market-rate units and for the affordable units to be integrated with the entire project building. This is an important aspect to include in the overlay that ensures that the lower and higher income units are fully integrated.

9. Weaknesses

- **Incentives.** Many of the development standard exceptions can be obtained by using the recently revised State Density Bonus Law provisions.
- **Parking requirements.** The reductions for parking could be higher, making the provision of additional affordable units more financially viable.

D. Senior Housing Overlay Zone. Perris, CA

The Senior Housing Overlay (SHO) Zone from the City of Perris is meant to encourage the development of senior housing in compatible neighborhoods and create more housing opportunities for very low- and moderate-income seniors.

1. Development context

The Senior Housing Overlay Zone was adopted by the City Council of Perris in 2013. Since then, [Perris Station](#) is an example project that made use of the SHO. The 84-unit senior housing project opened in 2015.

2. Regulatory Framework

Perris' SHO contains affordability requirements, density and parking incentives, and detailed building and site design guidelines.

3. Applicability/Area of Influence

The SHO Zone can be applied to a lot that is at least 2 acres, but not larger than 75 acres, in any residential or commercial district. The current and proposed surrounding land uses must be free from health and safety issues and be compatible with the environment required by seniors. SHO projects are allowed to have multifamily residential, attached single-family residential, and detached single-family residential units that can be rentals, condominiums, cooperative, or other fee-simple ownership units.

4. Interaction with underlying zoning

SHO projects can be on parcels in residential or commercial district. Projects must follow the standards of the underlying zone, except when the development and design regulations of the SHO say otherwise. Parts of the City are in a redevelopment area, and SHO projects within that area are subject to different SHO development and design regulations than those outside of the redevelopment area.

5. Development and Design Regulations

Density. The maximum allowable density of an SHO project is 50 dwelling units/acre. This incentive can override the underlying zone density requirements.

Parking. SHO projects must provide 1.15 parking spaces per dwelling unit.

Setback. The setback of the building along all street frontages must be half the length of the building wall but cannot be less than 20 feet.

Building and Site Design Standards. The SHO specifies development criteria that dictates the design of the building, site, accessibility features, circulation, landscaping, open space, and recreational facilities. It also lists security and maintenance considerations. For the full list of standards, refer to the original SHO language (link provided in **6. Appendix**)

6. Income and Affordability

Age requirement:

- At least one household member must be 55 years or older.

Projects within redevelopment area:

- At least 30% of the dwelling units will be reserved and affordable for low- and moderate-income households.
- At least 50% of the 30% mentioned above will be reserved and affordable for very low-income households.
- These dwelling units can be rental and/or for-sale units.
- The City may require more stringent income requirements if it has provided financial assistance to the development project.

Projects outside redevelopment area:

- At least 3% of the dwelling units will be reserved and affordable for low- and moderate-income households.
- At least 40% of the 3% mentioned above will be reserved and affordable for very low-income households.
- These dwelling units can be rental and/or for-sale units.

7. Regulatory Mechanisms

Deed Restrictions. The affordability restrictions must remain in place for 30 years or the time period specified by the land use controls of the redevelopment area, whichever is longer.

Waivers. The City can waive park development fees for qualified SHO projects.

Application process and approval.

- The Planning Commission will host a public hearing to consider the proposed project and determine whether to recommend approval or disapproval to the city council. They will recommend approval if the project meets the requirements of the SHO.
- The City Council will conduct a public hearing to determine whether the SHO should apply to the project. It must meet the following guidelines:
 - o "The proposed project at its specific location is necessary and desirable to provide a facility that will contribute to the general well-being of seniors as well as the local neighborhood, community, and region.
 - o The location of the project and the mix of uses is not detrimental to the health, safety, or welfare of its residents, employees, or those working or residing in the area.
 - o The proposed project will provide a superior community that will support the unique needs and lifestyles of seniors.
 - o That the granting of this permit will not adversely affect the public welfare and will be consistent with the city's general plan and any other relevant plans of any government agency."
- By granting an SHO project permit, the City Council reserves the right to modify the project plans or create conditions the project must meet to ensure public health, safety, and welfare and meet the objectives of the SHO Zone.

8. Strengths

- **Building and site design standards.** The Senior Housing Overlay includes detailed and specific design parameters developers must follow. With these guidelines, the City has clear expectations about the living environment senior housing developments should create and maintain.
- **Affordability agreement.** The overlay includes a 30-year continued affordability agreement, which allows the rental price of the unit to remain affordable.

9. Weaknesses

- **Affordability requirements.** The affordability requirements for projects outside of redevelopment areas of the city are very low and would not produce a substantial amount of affordable senior units or justify the benefits conferred to the project by the SHO. The affordability requirements for projects in redevelopment areas are even not very high given the objectives of this type of special zoning. Developers can see this low requirement as an incentive to prioritize housing construction in non-redevelopment areas, leaving other areas of the city without as much new senior housing. If the City's intention was to spur more senior housing in these other areas, this is unclear.
- **The project approval process is discretionary.** The project approval process is not as streamlined as other cities and it is discretionary to the City Council's interpretations of public health needs. In one way, the City has more oversight over what is built, but it could be seen as a disincentive by developers who would want to develop and construct projects on a faster timeline. Specific public health considerations could have been included in the building and site design standards section.

- **Limited applicability.** The minimum parcel size of 2 acres excludes the potential of projects on smaller sites. There are many examples of successful affordable or mixed-income senior housing projects with 50 units on one acre. The high minimum project size may be adequate in some areas but likely has the unintended consequence of excluding potential projects as infill in many older, more developed neighborhoods.

3. Incentives

It is important to note that Milpitas must also address a significant number of recently adopted state-level legislation and regulatory mechanisms pertaining specifically to affordable housing. Many of these laws establish a variety of incentives whose purpose is to encourage the construction of new housing, and in some instances have already resulted in significant revisions to local planning practices and regulatory language. Examples of relevant state law have been included throughout this section.

A. Streamlined Permitting Process

A streamlined, predictable permitting process can incentivize more developers to construct affordable housing. Many cities require a multistep discretionary review process to ensure a proposed project complies with the City's Zoning Code, and this approval process can extend the project timeline while adding more costs onto the developer. A clear permitting process can lower these initial development costs and expedite affordable housing projects. There are a variety of strategies municipalities can take to streamline their permitting process for affordable housing projects.

By-right/as-of-right approval

By-right (also known as "as-of-right," administrative review, ministerial review) development approval is granted to a project that has conformed to the zoning and building code requirements and qualifies for construction without having to go through a discretionary approval process. The project still needs to apply for permits but by qualifying for by-right development, the developer can cut down the time and money spent on having their proposed project approved. Some cities pair by-right approval with a design review.

For example, Cambridge's Affordable Housing Overlay "as-of-right" approval applies to projects that follow all the regulations and objective design standards of the overlay, go through a two-meeting advisory design review, and host two community engagement meetings. The expectations and requirements of the developer for these meetings are clearly listed in the Overlay ordinance.

In Menlo Park, Affordable Housing Overlay projects outside of the Downtown specific plan area only need a compliance review to determine the project's compliance with adopted objective design standards. Projects within the specific plan area must go through the architectural control process

described in the specific plan. If the developer requests a variance from adopted regulations and design standards, discretionary action will be required.

Milpitas could consider a streamlined permitting process specific to an overlay zone that is complementary and consistent with other existing regulations and state housing laws. Similar to the way that recent state legislation has already introduced mandated streamlined permitting processes related to specific types of development projects (among these, rooftop solar with AB 2188 in 2015 and streamlined residential review with SB 330 and changes to the Housing Accountability Act in 2019), the introduction of a new affordable housing overlay zone could provide a broader definition of projects eligible for a streamlined review.

B. Bonus Development

Density bonuses allow developers that prioritize affordable housing to construct more units to spread the subsidized cost of the affordable units over a larger number of market rate units. Accompanying height bonuses allow for the larger floor area to be accommodated on the site.

Additional Density/FAR Bonuses

Many cities build on the existing state density bonuses to further incentivize affordable housing development. A density bonus allows a project to have an increase in dwelling units per acre. A FAR bonus allows buildings to have an increase in the total floor area. To accommodate additional units allowed by density bonuses, some overlays have removed the maximum FAR limit for applicable projects. For example, Cambridge's overlay does not have a max FAR (unless the underlying zoning specifies a max 1.0 FAR, then applicable projects can have up to 2.0 FAR). Menlo Park also does not specify a max FAR, and notes that the FAR of projects can increase by the amount needed to accommodate increased density.

Beyond their inclusion in overlay zones however, Milpitas should first contend with prevailing state laws regarding density bonuses attributed to affordable housing. AB 1763 (2019) and AB 2345 (2020) constitute the most applicable and comprehensive examples, as they collectively establish several regulations that link ranges of density bonuses with affordability levels. AB 1763 more than doubles the density bonus for eligible projects where all units are affordable to low and very-low income level residents. AB 2345 accommodates density bonuses on a slide scale between 35% and 50%. The bonus is linked to several other conditions and criteria including income criteria, parking, and concessions for provision of senior housing.

For a new overlay zone to be meaningful, any provisions should be written to exceed the stated minimums, especially with regards to the required metrics for very low income- and low income-households; the bonuses in AB 2345 are currently triggered at 15% and 24% respectively.

Additional Height Allocation

Allowing additional building heights or stories in an overlay can incentivize developers to pursue a project because developers can meet “the economy of scale” needed to construct affordable housing. Increased height allowances can enable buildings to have additional uses on the ground floor, whether it be building amenities or community commercial uses. For example, Cambridge’s AHO increases allowable building heights from the underlying zoning’s requirements and allows an additional 5’ when the first floor has an active non-residential use.

Other overlays choose to link the new allowable building heights to the density bonus a project qualifies for and the number of affordable units it includes. In Menlo Park, a project with a 45% density bonus can have up to 4 stories (or 48’), while a project with a 45% density bonus and with 25% of the units reserved for extremely low-income households can have up to 5 stories (or 60’). Milpitas already has two precedents to consider when approaching additional height allocations. The High-Rise (-HR) Overlay District is an existing designation that can be combined with any zoning district along with infill projects located along freeways and expressways. While a new overlay zone oriented around affordable housing may be introduced, the City could first consider expanding the existing -HR designations onto new applicable parcels through a zoning map amendment, rather than nest such language into a new overlay regulation.

With the recent completion of the Milpitas BART station, AB 1763 (2019) also offers a unique perspective on regulating building height increases within an incentive structure. AB 1763 allows eligible 100% affordable housing developments built within a half-mile of a major transit stop an increase in building height by 3 additional stories or 33 feet. The bill allows this additional density to operate *atop* any other density bonuses. The result can be a substantial increase in total development potential, as seen in a recently approved housing development in nearby San Mateo where the application of AB 1763 allowed an initially proposed 164-unit, 5-story project to expand into a 225-unit, 7-story project. Although this stipulation may not apply city-wide, Milpitas could first consider the potential development capacity of parcels within a half-mile radius of the BART station, or other qualifying transit hubs, as an alternative to a new overlay zone.

Building & Site Design

Setback and off-street parking reductions can allow housing projects to increase their size and density, in turn creating more units. Setbacks create distance between a building and the property boundaries, and smaller setback minimum requirements mean that developers can use a greater area of the lot for the building.

Off-street parking requirements are usually met by constructing parking spaces underneath the building, on the ground floor, or in an adjoining parking lot. Reducing the required minimum parking spaces can allow for more development potential ((i.e., community amenities, green spaces, additional units) on a site as well as reduce development costs. With reduced or no minimum parking requirements, a developer can still choose to

provide more parking if needed. Additionally, removing parking minimums can incentivize building occupants to use alternative modes of transportation.

C. Fee Waivers

Development fees, permitting fees, and/or processing fees are typically required from developers when submitting a project proposal. Affordable housing overlays can be structured to waive certain fees for projects that reach specific affordability requirements. For example, Menlo Park waives processing fees for projects that have at least 50% of the units reserved for low-income households or 20% of the units reserved for very low-income households. The City of Perris' Senior Housing Overlay Zone waives the development fees for all projects that qualify under this overlay.

While Milpitas could waive some or all of the fees to incentivize housing projects, the City would need to evaluate how to fund the services that the fees are used to provide. Considerations may include waiving or reducing Planning Entitlement, Transit/Traffic Impact, or Parks fees, or revising the types of projects that are subject to these fees. In particular, the city should carefully assess whether qualifying multifamily projects within a newly proposed overlay zone would be subject to all typical fees – the prospect of a reduced set of mandatory fees could serve as an attractive incentive for developers.

D. Other Incentives

- **100% AHO vs not-100% AHO consideration.** Adopting a 100% Affordable Housing Overlay can incentivize non-profit and affordable housing developers to construct projects in Milpitas as it signals that the City is prioritizing the development of housing for its low-income residents, a demographic that struggles to find housing options that match their incomes. But having a mixed Affordable Housing Overlay allows other types of projects with different income mixes (and a broader variety of financing) to be constructed. Other types of possible incentives will be studied further after consultation with developers in Milpitas area to identify what would make it attractive to build more affordable housing.
- **Socio-economic benefits.** The creation of an affordable housing overlay zone can bring about socio-economic benefits for the city, and for the tenants and owners of affordable units. The Berkeley overlay proposal calls out how the intent of affordable housing overlays is not just to produce more housing, but to promote the more equitable distribution of affordable housing throughout a city. This is especially important in areas that have been shaped by class and racial segregation and where it persists to this day. When affordable housing is allowed to develop in high-opportunity neighborhoods, there are more opportunities than before for lower-income households to live and participate in those neighborhoods. More residents of a city can have the option to live in neighborhoods that typically have greater access to transit, education, and community amenities. Depending on the overlay's provisions, it can also incentivize a greater mix of incomes within individual buildings.

5. Conclusion

A housing overlay that is developed in Milpitas will have to consider the city's housing needs and environmental context to create an overlay that best suits the City's conditions and housing goals. There are a variety of incentives and strategies that an overlay can include to encourage the development of a particular type of housing, but it must be done in conjunction with existing state housing bonuses and incentives.

A few considerations for the city to consider in developing a AHO in Milpitas:

- The extent to which an AHO can build upon the SDBL and other recent State provisions for incentivizing housing production.
- The amount of financial incentives including fee waivers that the City can offer to prioritize the development of affordable housing.
- How to address the potential issue that the concentration of affordable units in certain geographic areas may run counter to AFFH requirements, especially if Housing Element sites are located with the overlay zone.

The precedent examples shall be helpful in informing the development of a Milpitas-specific overlay zone. Next steps include stakeholder interview and further analysis of target areas and applicable regulations.

6. Appendix

Overlay Zone Text and Resources

Cambridge, MA

- Regulatory text: <https://www.cambridgema.gov/-/media/Files/CDD/Housing/Overlay/adoptedahoordinance.pdf>
- Supporting Documentation:
 - o https://www.cambridgema.gov/-/media/Files/CDD/Housing/Overlay/zngamend_aho_designguidelines_20200728v2.pdf
 - o <http://rwinters.com/insideout/2018sept18/OverlayProposal2018Sept13.pdf>
 - o <https://courbanize.com/projects/jeffersonparkfederal/information>
 - o <https://www.wickedlocal.com/story/cambridge-chronicle-tab/2021/08/16/op-ed-cambridges-affordable-housing-overlay-already-producing-350-new-affordable-homes/8129618002/>

Berkeley, CA

- Regulatory text (DRAFT): <https://www.berkeleyside.org/wp-content/uploads/2021/11/2021-11-09-Item-09-Affordable-Housing-Overlay.pdf>

- Supporting Documentation:
 - o <https://www.berkeleyside.org/2021/11/10/affordable-housing-berkeley>
 - o <https://beyondchron.org/berkeleys-next-big-step-a-100-affordable-housing-overlay/>
 - o <https://www.dailycal.org/2021/11/11/berkeley-city-council-approves-affordable-housing-overlay-social-housing-measures/>

Menlo Park, CA

- Regulatory text: <https://www.codepublishing.com/CA/MenloPark/#!/MenloPark16/MenloPark1698.html>
- Supporting Documentation:
 - o El Camino Real and Downtown Specific Plan: <https://www.menlopark.org/DocumentCenter/View/290/Specific-Plan---Complete?bidId=>
 - o <https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/housing-element-update/20220212-housing-element-update-community-meeting-presentation.pdf>
 - o <https://covid19.sccgov.org/sites/g/files/exjcpb766/files/Documents/santa-clara-county-2021-area-median-income-ami-chart.pdf>

Perris, CA

- Regulatory text: https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT19ZO_CH19.86SEHOQVZOSH
- Supporting Documentation:
 - o <https://ktgy.com/work/perris-station-senior-apartments/>

Other sources

- [https://www.planetizen.com/definition/right-development#:~:text=A%20by%20right%20approval%20\(also.construction%20without%20requiring%20discretionary%20approval](https://www.planetizen.com/definition/right-development#:~:text=A%20by%20right%20approval%20(also.construction%20without%20requiring%20discretionary%20approval)

TECHNICAL MEMO

City of Milpitas Planning Documents and Process Assessment

March, 2022



Submitted by Raimi + Associates

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1. Introduction

i. Overview

Several factors have made the goal of creating and preserving housing, especially affordable and special needs housing, a challenge in the City of Milpitas. Along with increasing land and construction costs, current plans and regulations can also severely limit where and how much new affordable housing can be built. Zoning laws may impose standards such as density limits and parking requirements or delays in the permitting process can become burdensome for some housing projects.

This memo reviews and summarizes some of the existing planning documents and ordinances that impact the development of housing and identifies strengths that can be enhanced and weaknesses that can be overcome through the Housing Overlay Zone project. The HOZ aims to address these challenges through relaxing requirements, providing incentives, and streamlining the permitting process to help the City's developers and housing partners access new opportunities and allow for balanced and equitable growth in the city. This memo will help develop recommendations guiding land use, developmental standards, and processes in the next phase of the Housing Overlay Zone project.

ii. Key Takeaways

- The General Plan goals and actions aim to create vibrant commercial neighborhood centers through placemaking strategies and mixed-use development that encourage social gatherings.
- While the current General Plan designations NCMU and TWC allow mixed use, low FAR limits and the bundling of residential development with the amount of commercial space developed considerably limits the scope of constructing mixed use projects.
- The revised density limits in the draft Metro Specific Plan have the potential to be further intensified based on the proposed height limits taking advantage of the State Density Bonus Law. The Zoning Ordinance would need to be amended after the adoption of the Metro Specific Plan.
- Density Bonus and other State laws provide for additional floor area, additional density, and a reduction in parking requirements. The HOZ may need to go significantly beyond state legislation to be effective on properties where state density bonus laws apply.
- The City's current Affordable Housing Ordinance requires a minimum of 15% of units to be affordable, pay an in-lieu fee, or dedicate land. The HOZ could further incentivize inclusionary units, or it will need to relate to projects exceeding the 15% required by the AHO.
- Development Process timelines for Milpitas are in line with surrounding communities and not seen as a significant burden to development.
- Development Fees are higher in Milpitas compared to other jurisdictions in Santa Clara County owing to high entitlement fees for single-family development and high impact fees for multi-family developments. The high impact fees are due to the Transit Area Development Impact fee (TADIF) for sites within the TASP area and high park in lieu fees for sites outside the TASP area.

2. Documents and Policies Reviewed

This memo summarizes relevant planning legislation and processes that regulate the development of housing and will inform the development of the Housing Overlay Zone. Specifically, the following regulatory planning and policy documents have been included in this memo.

Table 2-1 Overview of Plans and Policies Reviewed

Name of Plan/Policy	Adoption Date/Status	Relevance
Milpitas General Plan	Adopted 2021	Outlines city-wide land use goals and actions and provides land use designations including the mix of residential and commercial use.
Milpitas Metro Specific Plan	Public Draft 2021	Proposes redevelopment of industrial uses near the Great Mall area with increased intensities and mix of uses.
Midtown Specific Plan	Adopted March 2002 Updated 2010	Provides a new vision for approximately 1,000 acres with a focus on housing and employment. An update to the plan was initiated in 2021 and is not covered under this memo.
Zoning Code		Establishes zoning districts and defines the type of development, use, densities, height, and parking requirement for each district.
City Density Bonus Ordinance & State of California's Density Bonus Law	City's DBO last amended in 2008	Provides density bonuses on a sliding scale for different affordability criteria.
Affordable Housing Ordinance	July 2018 Amended 2022	Requires all developments with 10+ units to provide 15% affordable units.

3. Planning Review

i. Milpitas General Plan

The Milpitas General Plan, adopted in 2021, includes multiple high-density residential designations, two specific plan areas, and two mixed-use zones. For the HOZ project, this report will review the Town Center (TWC) and Neighborhood Commercial Mixed-Use (NCMU) designations in detail and highlight other potentially relevant designations.

General Plan Goals, Policies, and Actions.

The General Plan Goals, Policies, and Actions set out three main goals for the commercial centers included in the TWC and NCMU plan areas -the first is to support and maintain commercial centers that serve residential neighborhoods, the second is to focus on placemaking in any redevelopment of these commercial centers to create public gather places and opportunities for outdoor uses such as outdoor cafes and other amenities, and the third is to encourage mixed-use development including residential multi-family development to “encourage social interactions.” While these goals reflect the positive outcomes of potential redevelopment and reinvestment in underperforming and aging commercial centers, there are other goals and policies that may be contradictory or limit potential redevelopment. Specifically, the NCMU and TWC designations have requirements that significantly limit the feasibility of mixed-use projects. Generally, the Goals and Policies outline that in the NCMU zone, redevelopment results in “no net loss of viable commercial space.” This language is ambiguous and as the retail market continues to evolve, the viability and type of commercial spaces come into question. In other jurisdictions, a net loss in commercial space is often witnessed when single use shopping centers are redeveloped as mixed-use projects, with commercial FAR ranging between 10% to 25%.

The Actions in the General Plan give direct guidance on the creation of new zoning standards to support the NCMU designation and update the TC zone to reflect the guidance of the TWC designation. The actions also outline research and flexibility in standards to develop a citywide Retail Strategy and update the Zoning Ordinance to help ensure that commercial centers remain competitive and successful, as well as undertake strategic initiatives and flexible development standards for the adaptive re-use of aging centers. These actions allow more flexibility in the ability to meet the goals and policies for redevelopment of the mixed-use centers.

EXCERPT FROM GENERAL PLAN

Goal LU-6 *Support commercial centers that serve residential neighborhoods and provide for a variety of convenient, successful and attractive commercial uses throughout the city.*

LU 6-1 *Ensure new development in Neighborhood Commercial Mixed Use (NCMU) areas includes adequate commercial components to retain commercial uses as the dominant use type, and that the redevelopment of aging centers results in no net loss of viable commercial space. The City Council may consider opportunities to waive commercial requirements in mixed use areas for 100% affordable projects that increase the affordable housing stock within Milpitas for “very low income” and “low income” categories.*

LU 6-2 *As commercial centers are proposed for redevelopment, create a vibrant public realm through placemaking techniques like public gathering places, features and focal elements including outdoor cafes and other outdoor uses and amenities.*

LU 6-3 *Minimize the visual impact of large parking lots by locating them away from public streets and reclaim unneeded and underutilized paved areas that could be converted to neighborhood-enhancing features such as, gathering areas, pocket parks, or other community focused amenities.*

LU 6-4 *Maintain viable neighborhood-serving commercial uses throughout the City in order to serve surrounding neighborhoods and minimize vehicle miles traveled. Encourage a diverse mix of commercial uses including retail, service, office, entertainment, and assembly uses.*

LU 6-5 *Promote reinvestment in strip commercial and shopping centers and maintain, revitalize, and redevelop aging and underperforming centers.*

LU 6-6 *Encourage redevelopment and intensification of mixed-use areas by allowing stand-alone vertical mixed-use, or integrated horizontal mixed-use projects in mixed use areas, consistent with the Land Use Map and policies and actions included in this element.*

CD 9-3 *Encourage the incorporation of publicly accessible spaces, such as plazas and pocket parks, into new and existing commercial, multi-family, and mixed-use developments to encourage social interaction. The spaces should be appropriately scaled and programmed and compliment the characteristics of the district and/or neighborhood and the surrounding development.*

EXCERPT FROM GENERAL PLAN

Action LU-1a *Update the City's Zoning Map as appropriate to ensure consistency with the land use designations shown on Figure LU-1.*

Action LU-1b *Review the Zoning Ordinance and update as appropriate to reflect Land Use goals, policies, and implementation actions included in this Plan. Specific updates include but are not limited to: 1) Creation of specific new zoning standards to support the Neighborhood Commercial Mixed-Use (NCMU) and Neighborhood Commercial (NC) land use designations to ensure that NCMU and NC areas remain primarily neighborhood serving.*

Action LU-6a *Continue to review development applications to ensure land use compatibility as new development applications are brought forward. Where potential impacts are identified seek opportunities to reduce impacts through site planning and design techniques including but not limited to buffering of uses, clustering, or other planning tools as necessary to reduce potential impacts to sensitive receptors.*

Action LU-6b *Monitor emerging trends in retail and other commercial uses, regularly engage representatives of the business community and citizen leaders, and update the Zoning Ordinance to help ensure that commercial centers remain competitive and successful.*

Action ED-1i Develop, implement and update at least every 5 years, a citywide Retail Strategy, to reduce retail vacancies and strengthen the City's retail tax base.

Action ED-1j To encourage redevelopment of underperforming commercial corridors and retail centers (i.e. Serra Center, Main St.), maintain flexible zoning standards allowing both vertical and horizontal mixed uses.

Action ED-3a Encourage the renovation and/or redevelopment of existing outdated facilities that have strong linkages to transit and nearby retail and recreational amenities.

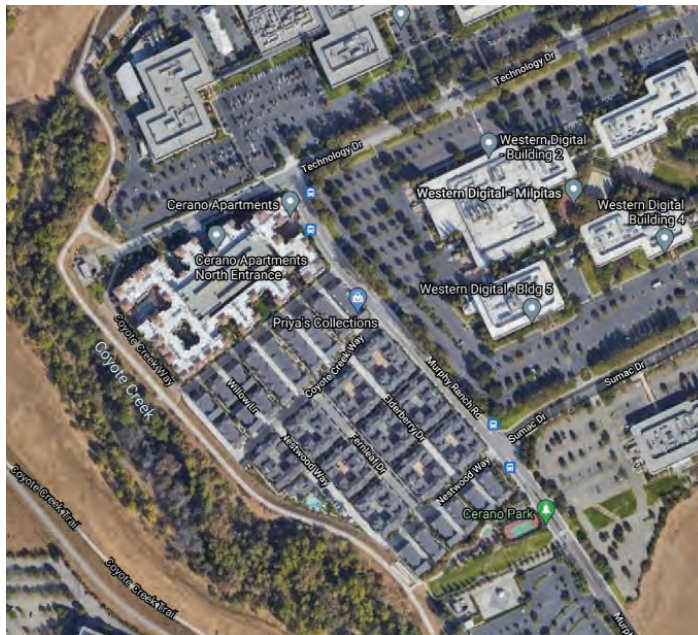
Action ED-3b Undertake strategic initiatives to attract private investment in well-located properties that are currently vacant and/or underutilized.

Action ED-3d Maintain flexible development standards to accommodate a wide range of commercial space needs and facilitate the adaptive reuse of older properties.

General Plan Designations

Residential Designations (LDR, MDR, HDR, VHDR). The residential GP designations are almost exclusively built at the upper end of the density for each designation. They are only relevant to the HOZ if other areas in Milpitas are rezoned to these designations through a Specific Plan or specific project. This seems to be a typical pattern in the City in multiple locations.

QUESTION: What is the history of non-residential properties being rezoned for housing? Should the HOZ look for these types of opportunities? Example: Cerano Apartments, Murphy Ranch Road (Previously zoned Light Industrial or Industrial Park, now zoned Urban Residential)



Neighborhood Commercial Mixed (NCMU). The NCMU designation is a new land use designation in the 2021 General Plan Update. The NCMU designation is located in four areas across the City and includes three different commercial and industrial zoning districts. The new designation allows for the development of housing on properties in the NCMU designation but includes strict limits on the amount of residential that is allowed in relation to the amount of commercial space provided. It is unlikely that a mixed-use project would be feasible if a new zoning district was created that instituted the residential to non-residential ratio requirements of the General Plan designation. The General Plan does not include a density for residential in the NCMU designation. Assuming 1,000 gross square feet per unit on average, the density of the NCMU designation would be 21 dwelling units per acre but would require 0.75 commercial to get to 21 dwelling units per acre. The General Plan does allow for discretionary approval for residential-only projects if the project is 100% affordable to the “low” and “very low” income categories.

“FLOOR AREA RATIO. Floor area ratio, referred to as FAR, is used to express the building intensity for nonresidential uses, such as commercial, industrial, community facilities, and the non-residential component of mixed-use projects. FAR refers to the ratio of the total floor area of a building or buildings on a site, excluding parking structures and outdoor storage areas, to the lot area of the site.”

EXCERPT FROM GENERAL PLAN

NEIGHBORHOOD COMMERCIAL MIXED-USE (NCMU) (FAR UP TO 0.75, AND UP TO 1 UNIT PER 1,500 SQUARE FEET OF NONRESIDENTIAL DEVELOPMENT). The Neighborhood Commercial Mixed-Use (NCMU) designation is intended to accommodate a mix of commercial and residential uses with an emphasis on commercial activity as the primary use, and residential uses, hotel, and office development allowed on a limited basis. The NCMU designation encourages active neighborhood serving uses at the ground level, including grocery stores, specialty retail, restaurants, plazas, or walk-in personal services such as banks and salons at FARs up to 0.75. This designation also provides opportunities for vertical or horizontal mixed-use residential development to provide for area vibrancy and to encourage the redevelopment of aging commercial centers by allowing Multifamily dwelling units at a rate of 1 unit per 1,500 square feet of new or rehabilitated neighborhood-serving retail and commercial services. The City Council may consider the approval of residential-only projects in the NCMU land use designation, provided the project is 100% affordable to the “low” and “very low” income categories, in order to increase the stock of affordable housing in Milpitas. Projects with a residential component are subject to additional policy direction (Policy LU 6-1) to ensure that NCMU areas continue to primarily serve surrounding neighborhoods with commercial services.

If FAR limit does not apply to residential floor area:

Assuming 1,000 gross sf per unit. 1,000 sf residential for every 1,500 sf of commercial. 40% residential:60% commercial. 0.5 FAR residential: 0.75 FAR commercial = 21 dwelling units per acre

Town Center (TWC). The TWC designation updates the previous Town Center designation to allow for residential use to occur within a horizontal or vertical mixed-use project. Residential only projects are not permitted. The purpose for allowing residential is to “increase economic support to the commercial uses.” This designation allows for up to 40 units per acre and requires a minimum of 0.35 FAR for non-residential uses. In our experience, we rarely see a 0.35 FAR in a vertical mixed-use project, the amount of parking needed typically makes this amount of commercial infeasible. A range of 0.10 to 0.20 FAR for commercial. Is more common vertical mixed-use or a mix of vertical and horizontal mixed-use projects. In addition to

the restrictive nature of the minimum commercial FAR requirement, the maximum density of 40 dwelling units per acre is not a typical density for vertical mixed-use projects. In a podium mid-rise building type, 40 dwelling units per acre can generally fit in typically 2 floors of residential, whereas a more typical mixed-use project includes 4 or 5 story residential floors. The above analysis is typical for single projects, the redevelopment of the large format shopping centers will require more analysis and site testing to understand the how the minimum commercial FAR and maximum density would play out in a more horizontally focused mixed-use project with structured or rooftop parking. If the zoning is set per the General Plan guidance, the HOZ may provide the opportunity to increase densities to a more typical building type while providing additional affordable housing above the AHO's 15% requirement. As part of this analysis, a more detailed economic analysis may be beneficial in the Existing Conditions phase of the project.

EXCERPT FROM GENERAL PLAN

TOWN CENTER (TWC) (UP TO 40 UNITS PER ACRE AND FAR UP TO 0.85). This designation provides for a variety of commercial, professional, civic, restaurants, hotels, residential, and entertainment uses. Projects may consist of a wholly non-residential development, or a mixed-use residential project that integrates residential and nonresidential uses vertically or horizontally. Residential-only projects are not permitted. Residential developments up to 40 units per acres may be permitted within the Town Center as part of a mixed-use development project to increase economic support to the commercial uses. Developers wanting to maximize the residential component of the parcel are required to provide a minimum FAR of 0.35 for the non-residential component. Sites developed with a mix of uses, or non-residential uses, must adhere to a FAR maximum of up to 0.85.

ii. Specific Plans

There are two specific plan areas in Milpitas. Both specific plan areas are currently undergoing an update. The Metro Specific Plan, formerly the Transit Area Specific Plan, has a Public Draft available for review. This document does not review content for the Midtown Specific Plan/Main Street Gateway Specific Plan since that update process has just started and new content is not yet available.

Milpitas Metro Specific Plan/Transit Area Specific Plan (2021 Admin Draft)

The Milpitas Metro Specific Plan (Metro plan) creates eight land use classifications and zoning districts that are specific to the Metro plan area. The Metro plan estimates an addition of 5,000 to 7,000 new residential units within its boundaries. The Metro plan does not have a specific affordable housing strategy that is different from city-wide inclusionary housing ordinance.

"The currently calculated draft capacity for additional residential units in Milpitas Metro is 5,000-7,000 total, with 2,000-4,000 units on the Great Mall site, and 3,000 units on other sites. When the Housing Element is developed, the City will determine which sites to include in the Housing Element."

Zoning Districts. Of the eight new zoning designations in the Metro Specific Plan, five districts allow residential development. The plan also identifies "Areas of Change" that include potential development

sites within the plan area since much of the land has been developed in the last 15 years under the TASP plan. Table 3-1 below is excerpted from the draft plan and shows preliminary densities and heights and associated zoning districts. The FAR's and densities are net, excluding required streets and open spaces. The plan also states that the HOZ may allow for increased housing densities in the plan area.

"The City is developing Housing Opportunity Zones (HOZ), which will designate opportunity areas for increased housing densities. Proposed development projects in the HOZ will be eligible for additional densities provided that they comply with City requirements including design standards and affordable housing requirements."

Many sites within the "Areas of Change" are located in the Great Mall site and designated Residential Retail High Density Mixed Use (RRMU) which allows for up to 85 units per acre on a residential only project or up to 2.5 FAR in mixed-use project with upper floor residential up to 85 feet in height. These numbers are in-line with the allowed FAR but a typical mid-rise residential only or mixed-use building with 5 residential floors could produce up to 120 to 140 dwelling units per acre. The difference between allowed density and estimated density per prototypical building type provides an opportunity for the HOZ to create an incentivized structure for additional density that is above what is allowed according to State Density Bonus law. Similarly, the housing densities in the MFH and VHD classifications are artificially low compared to the height limits. The URR classification's density of up to 120 units per acre is more in-line with a prototypical building type at 6 stories with associated affordable housing density bonuses.

Table 3-1 Metro Plan Residential Land Use Designations

Land Use Designation	Density (units per acre)	Maximum Height	Active Use Requirements	Zoning
Residential Retail High Density Mixed Use (RRMU)	Mixed Use ¹ : 1-2.5 FAR Residential Only: 40-85 units/ac	85 feet Within 60 feet of adjacent existing residential zoned parcels, building height shall be stepped down to be the same max height plus 10 feet of the adjacent parcel.	Ground floor retail and active uses are required on 80 percent of the ground floor facade along any Shopping Street.	Metro High Density Mixed Use (MXD2-Metro)
Boulevard Very High Density Mixed Use (BVMU)	Mixed Use ¹ : 2.5-5.0 FAR	275 feet 50 percent of base footprint above 85 feet and 25	Ground floor retail and active uses are required on 80 percent of the ground floor	Metro Very High Density Mixed Use

	Residential Only: 85-250 units/ac	percent of base footprint to a maximum height of 275 feet tall	facade along any Shopping Street.	(MXD3- Metro)
Multi-Family High Density Residential (MFH)	Residential: 30-40 units/ac	75 feet	N/A	Metro Multi- Family High Density Residential (R3-Metro)
Multi-Family Very High Density Residential (VHD)	Residential: 40-85 units/ac	35-85 feet	N/A	Metro Multi- Family Very High Density Residential (R4-Metro)
Urban Residential (URR)	Residential: 70-120 units/ac	6 stories and 75 feet	N/A	Metro Urban Residential (R5-Metro)

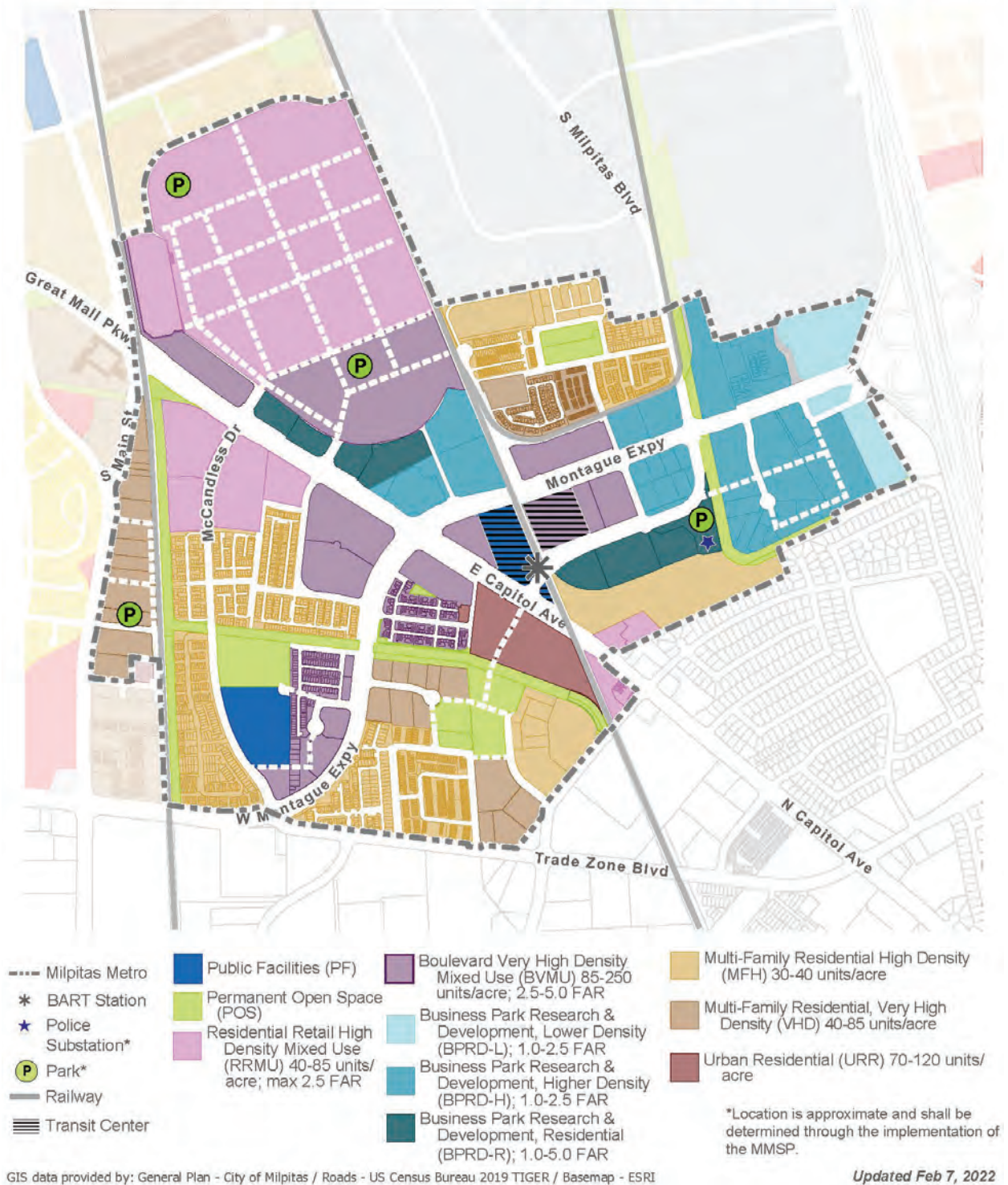
¹ On Housing Element opportunity sites, upper story non-residential uses are prohibited.

Parking. The Metro plan includes a significant reduction in parking requirements from the city-wide zoning code. The Metro plan introduces a maximum allowed parking ratio and a minimum number of spaces per unit without specifying number of bedrooms. In addition to the requirements in the table below, further reductions are possible conditionally.

Table 3-2 Metro Specific Plan Parking Requirement

Land Use	Minimum Requirement	Maximum Requirement
Residential/Lodging	0.5 spaces per unit	1.5 spaces per unit
Non-Residential	1 space per 1,000 sf	2 spaces per 1,000 sf

LAND USE

MILPITAS METRO 

iii. Zoning/Municipal Code

Neighborhood Commercial Mixed-Use (NCMU)

The areas identified in the General Plan NCMU designation include three zoning districts (see table below). These zoning districts do not allow residential uses and have floor area and height limits that would be restrictive to developing residential and mixed-use residential projects. The zoning district will need to be updated within the HOZ process.

Town Center (TWC)

The TWC General Plan designation includes only one zoning district, TC (see table below). The maximum FAR in the zoning district is in line with the TWC designation at 0.85 FAR. The TC Zone does not allow residential uses, but three residential projects have been approved and built within the district. The zoning district will need to be updated during the HOZ process to allow for residential uses per the General Plan designation. As noted in the General Plan review, the maximum density of 40 dwelling units per acre may limit economic feasibility. The existing maximum building height of 35 feet would force projects into a horizontal mixed-use format. To achieve a vertical mixed-use product in the 40 dwelling units per acre density, a minimum of 4 stories and 50 feet of height would be needed. If through the HOZ or through the writing of new zoning greater densities were allowed, vertical mixed-use projects would be more feasible at 6 to 8 stories and up to 85 feet in height.

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

Table 3-3 FAR and Height Requirement by Zoning District

Zone	Floor Area Ratio (FAR)	Building Height
Zoning Districts within NCMU		
Neighborhood Commercial (C1)	0.35 FAR	35 ft/ 2.5 stories
General Commercial (C2)	0.50 FAR	no building height maximum
Industrial Park (MP)	0.5 FAR	35 ft/3 stories
Zoning Districts within TWC		
Town Center (TC)	0.85 FAR	35 ft/3 stories or higher with conditional use permit

Parking

The following tables show minimum requirements for the different land uses in the zoning designations relevant to the HOZ. The zoning code does allow for shared parking through a conditional use permit.

Table 3-4 Parking Requirements for Mixed and Multi-family Zoning Districts

Mixed-Use + Multi-Family	Minimum Parking Spaces Required (parenthesis inclusive of guest parking)
<i>Studio</i>	<i>1 space per unit (1.15)</i>
<i>1 Bedroom</i>	<i>1.5 spaces per unit (1.75)</i>
<i>2-3 Bedroom</i>	<i>2 spaces per unit (2.15)</i>
<i>4 or more</i>	<i>3 spaces + 1 per additional bedroom (3.15)</i>
<i>Senior Housing</i>	<i>1 space per unit + 2 per manager's unit</i>
<i>Guest Parking</i>	<i>15% of the total required (structured)</i> <i>20% of the total required (private garages)</i>
<i>Bicycle Parking</i>	<i>5% of the total required (Residential + Commercial Uses)</i>
<i>Ground Floor Retail</i>	<i>1 per 250 sq. ft.</i>
<i>Office</i>	<i>If building is 1,000 sq. ft. or smaller: 1 per 250 sq. ft.; If building is larger than 1,000 sq. ft.: 3.3 per 1,000 sq. ft.</i>
<i>Other Uses</i>	<i>Refer to specific uses in table</i>

Table 3-5 Parking Requirements for Commercial Zoning Districts

Commercial Use (single-use)	Minimum Parking Spaces Required
<i>Commercial Services ¹ (floral shops, barber shops, dry cleaners, Laundromats, photocopy shops)</i>	<i>1 per 200 sq. ft.</i>
<i>General Retail and Convenience Stores</i>	<i>1 per 200 sq. ft.</i>
<i>Financial institutions (banks, savings and loans, etc.)</i>	<i>1 per 180 sq. ft.</i>
<i>Offices, administrative and business services</i>	<i>1 per 240 sq. ft.</i>
<i>Bars, Drinking Establishments</i>	<i>1 per 30 sq. ft.</i>
<i>Restaurants (Sit Down)</i>	<i>1 per 39 square feet of dining area.</i>
<i>Restaurants (Take Out)</i>	<i>1 per 2.5 seats (indoor/outdoor) plus 1 per 60 sq. ft. GFA for the ordering or take out area.</i>

Shared parking may be applied in the following situations:

1. In mixed-use developments, which include one or more businesses that are complementary, ancillary, or support other activities. A typical mix of uses includes, but is not limited to: residential, office, restaurants, retail, colleges, churches, cinemas, and special event situations if they can demonstrate that demand patterns vary among uses.
2. In shopping centers, when more than twenty percent (20%) of gross leasable area is occupied by dining and entertainment uses, (not including pad restaurants, unless they are located within 300 feet of the main shopping center building) shared parking may be applied.

Required Review. Shared parking proposals may be allowed with the approval of a Conditional Use Permit, in accordance with Subsection 57.04, Conditional Use Permits, of this Chapter.

iv. Density Bonus Ordinance

(Title XI-10-54.15 of the Zoning Code and Sections 65915 – 65918 of
Ca Government Code)

The City of Milpitas' Density Bonus Ordinance (DBO) was last amended in 2008. The State of California's Density Bonus Law (SDBL) explicitly supersedes any local ordinances and takes precedence when there is any conflict between the two, however, a city may provide additional density bonus over the minimum state requirement. The SDBL has been extensively amended over the last five years with multiple State laws. This report will primarily describe the SDBL and only the features of the DBO that are unique and not superseded by state law. The focus of this report is also primarily on aspects relevant to the goals of the HOZ.

Description of relevant City and State Density Bonus Regulations:

The State Density Bonus Law allows developers of projects with five or more dwelling units to obtain more favorable local development requirements in exchange for building or donating land for affordable or senior units. The SDBL (found in California Government Code Sections 65915 – 65918) provides incentives similar to what could be included in a Housing Overlay Zone to encourage the development of housing, including increase in project densities and reduction of parking or development standards depending on the amount of affordable housing or other specified community benefits (Nave, 2021).

Local jurisdictions are required to grant a density bonus and other incentives or concessions to housing projects which contain one of the following:

- At least 5% of the housing units restricted to very low-income residents.
- At least 10% of the housing units restricted to lower income residents.
- At least 10% of the housing units in a for-sale common interest development restricted to moderate income residents.
- 100% of the housing units (other than manager's units) restricted to very low, lower and moderate-income residents (with a maximum of 20% moderate).
- At least 10% of the housing units targeted for transitional foster youth, disabled veterans or homeless persons, with rents restricted at the very low-income level.
- The project donates at least one acre of land to the city for very low-income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing.
- The project is a senior citizen housing development (no affordable units required).

The amount of the density bonus is set on a sliding scale, based upon the percentage of affordable units at each income level. Base density allowed is calculated based on either the zoning district or General Plan land use designation, whichever allows higher density. Affordable projects with as little as 5% Very Low income or 10% Low Income units are eligible for up to 50% increase in density. Projects which have all affordable units are eligible for an 80% increase in density.

In Milpitas, If the housing development meets criteria- at least 5% of the housing units restricted to very low-income residents or at least 10% of the housing units restricted to lower-income residents, the density bonus shall be an increase of 20% over the maximum allowable residential density under the general plan and zoning ordinance. If the housing development meets criterion- Ten percent (10%) of the total dwelling units in a condominium project restricted to moderate income, the density bonus shall be an increase of five (5%) percent over the maximum allowable residential density under the general plan and zoning ordinance.

Parking

Upon the developer's request, the city or county may not require more than the following parking ratios for a density bonus project (inclusive of parking for persons with disabilities):

- Studio or 1 Bedroom – 1 space
- 2 or 3 Bedroom – 1.5 spaces
- 4 Bedroom 2.5 spaces

Even lower parking ratios apply to affordable housing projects that are within specific proximity of transit services and facilities (although local jurisdictions can require higher parking ratios if supported by a parking study).

Concession and Waivers

In addition to the density bonus, the city or county is also required to provide one or more "incentives" or "concessions" to each project which qualifies for a density bonus. A concession or incentive is defined as reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements, or other regulatory incentives or concessions which actually result in identifiable and actual cost reductions. The number of required incentives or concessions is based on the percentage of affordable units in the project, with the larger the percentage of affordable units and the higher.

If any other city development standard would physically prevent the project from being built at the permitted density and with the granted concessions/incentives, the developer may propose to have those standards waived or reduced. The city is not permitted to apply any development standard which physically precludes the construction of the project at its permitted density and with the granted concessions/incentives other than those that would cause a problem for public health, safety, the environment, historical property, or would be contrary to law.

Bonus related to proximity to transit

Height or FAR limits in the local zoning are development standards for which waivers can be requested for a density bonus project. Eligible 100% affordable housing developments built within a half-mile of a major transit stop may increase building height by 3 additional stories or 33 feet over any prescribed zoning standard and have no other limit on density.

The SDBL also requires that cities and counties provide a “development bonus” to commercial developers who partner with affordable housing developers for the construction of affordable housing on the commercial project site, or offsite within the jurisdiction located near schools, employment and a major transit stop. Unlike the primary Density Bonus Law, there is no fixed amount of increased density available. Instead, the development bonus can be any mutually agreeable incentive, including up to a 20% increase in development intensity, floor area ratio, or height limits, up to a 20% reduction in parking requirements, or other exceptions (Meyers Nave, 2021).

Under new amendments effective in 2019, a local jurisdiction is also permitted under the SDBL to grant a floor area ratio bonus rather than a traditional density bonus to certain high density affordable housing projects adjacent to public transit. This option would need to be specifically adopted by the Milpitas City Council as an amendment to the City’s DBO since it is not automatically available. Eligible projects are also entitled to special parking ratios of one-tenth of a parking space per affordable unit and one-half space per market rate unit. To be eligible for the floor area ratio bonus, the project must restrict at least 20 percent of the units to very low-income tenants, must be located within a transit priority area or near a major transit stop, and must be in compliance with local height limits. (Meyers Nave, 2021).

Analysis of how these standards relate to HOZ goals

Milpitas has not had much affordable housing development of any type, so a variety of categories of incentives in the HOZ would be appropriate. The HOZ Existing Conditions Report, and the Housing Element are examining the inventory and pipeline of housing concurrently and the need for different types of housing. It is important to grant additional waivers from zoning standards to facilitate development that provides more affordability: One set of waivers in addition to the SDBL could apply to projects with 50% affordable housing, and a larger waiver could apply to 100% affordable projects. These waivers can exceed SDBL because the amount of affordable housing will exceed what is required in the State law.

In addition to amending the base commercial/mixed use zoning to have FAR density consistent with the NCMU and TWC, there is an opportunity for the HOZ to also consider an additional FAR bonus for residential projects with 50% or 100% Affordable units. This could include an amendment to Section XI-10-54.14 of the Zoning along with the creation of the HOZ section of the code.

v. Affordable Housing Ordinance

(Title XII-Chapter 1 of the Municipal Code – Housing Section)

The City of Milpitas' Affordable Housing Ordinance (AHO) came into effect in July 2018 and was recently amended in February 2022. The AHO sets out the minimum percentage of affordable dwelling units, compared to the SDBL and the HOZ provisions which are optional for developments providing much higher percentages of affordable housing onsite. The AHO requires all new residential projects with ten or more units to develop 15% of the total number of units as affordable units. This Report summarizes the most relevant provisions and identify issues that impact the HOZ goals and objectives.

Description of relevant AHO Regulations:

The required income levels for inclusionary units are very broad: rental developments may provide either very-low or low-income units, and ownership development may provide very-low-, low-, or moderate-income units.

The Ordinance provides incentives to developers to provide affordable housing units on site, however, a developer may satisfy the affordable housing requirement in other ways. All exceptions to the AHO requirement require City Council approval prior to the approval for development of the project.

- **Pay fees in lieu of creation of affordable units.** Ownership housing projects must request and secure approval from the City Council for paying fees in lieu of construction, whereas rental projects do not need special approval for this option. The affordable housing fees are adopted by City Council Resolution and adjusted annually for inflation. This section was updated after initial adoption to make it more likely for ownership projects to provide affordable units on site.
- **Construct affordable units off-site.** With the approval of the City Council, the developer may conditionally construct affordable units at another location within the city.
- **Dedicate land.** The City Council may conditionally permit an applicant to dedicate land to the City or a City-designated local non-profit housing developer in lieu of construction of some or all the required affordable units.
- **Transfer credit.** Affordable unit credits are issued for each additional affordable unit constructed over the required number. The applicant may then use the credits to satisfy the requirements for another project in the City.
- **Transfer equivalent square foot.** The applicant may choose to provide more units in an overall development; however, the gross square footage of the proposed affordable units cannot be less than the square footage of the required affordable units.

Table 3-6 Residential Projects Affordable Housing Fee

Building Permit Application Date	Ownership	Ownership	Ownership	Rental
	Single Family (Fee/Sq Ft)	Townhome (Fee/Sq Ft)	Condominium (Fee/Sq Ft)	Apartment (Fee/Sq Ft)
July 1, 2019 – June 30, 2020	\$33.00	\$33.00	\$33.00	\$33.00
July 1, 2020 – June 30, 2021	\$35.13	\$35.13	\$35.13	\$35.13
July 1, 2021 – June 30, 2022	\$37.11	\$37.11	\$37.11	\$37.11
Each Subsequent Fiscal Year	Adjusted by Rate Index per Affordable Housing Ordinance			

Non-Residential Affordable Housing Impact Fee

Any non-residential development in the City is subject to payment of a non-residential affordable housing impact fee. Some non-residential uses such as day care, nursery, school facilities, hospitals are exempt from this impact fee. Other uses not listed in the ordinance may be exempt if the City Council determines that the development will have a minimal impact upon the demand for affordable housing. The impact fee is calculated on a per square foot basis for net new gross floor area. Thus far, the pipeline non-residential projects have not reached the building permit approval stage, so no impact fee has been collected by the City. The non-residential requirement in the NCMU and TWC zone will lead to higher affordable housing impact fee for new projects in these zones.

Table 3-7 Non-Residential Projects Affordable Housing Impact Fee

Building Permit Application Date	Commercial (Office, Retail and Hotel) (Fee/Sq Ft)	Industrial (R&D, Manufacturing and Warehouse) (Fee/Sq Ft)
July 1, 2019 – June 30, 2020	\$4.00	\$1.00
July 1, 2020 – June 30, 2021	\$6.00	\$3.00

July 1, 2021 – June 30, 2022	\$8.00	\$4.00
Each Subsequent Fiscal Year	Adjusted by Rate Index per Affordable Housing Ordinance	

Incentives to Encourage On-Site Construction of Affordable Units

If an applicant provides affordable units in excess of 20 percent of the total number of units in the project the City provides the following incentives:

1. **Planning waivers:** Director of Planning shall grant up to two of the waivers listed below that help increase the feasibility of the construction of affordable units. The applicant will receive an additional two waivers from the list below for every additional 5 percent of affordable units provided above the 20 percent.

- Priority processing.
- Reduced setback requirements not to exceed 50 percent of the minimum required setback.
- Greater floor area ratio (FAR) not to exceed 50 percent of the maximum FAR for commercial space in mixed use zoning.
- Reduced landscaping requirements.
- Reduced interior or exterior amenities.
- A maximum 20 percent reduction in parking requirements.
- Height restriction waivers not to exceed 20 percent of the maximum zoning height limitations and in no event to exceed the general plan height limitations.

2. Fee deferral:

- **Development Processing Fees.** The City Manager may approve deferred payment of City processing fees applicable to the review and processing of the project. The terms and payment schedule of the deferred fees shall be subject to the approval of the City Manager.
- **Development Impact Fees.** The City Manager may authorize the deferred payment of development impact fees applicable to affordable units. Approval of this incentive requires demonstration by the Applicant that the deferral increases the project's feasibility. The applicant must provide appropriate security to ensure future payment of such fees.

Analysis of how these standards relate to HOZ goals

The AHO is a minimum requirement for projects with ten or more dwelling units, regardless of whether it is residential only or a mixed-use project. This ordinance is also applicable regardless of zoning district. If the income levels and number of affordable housing units meet the requirements for Density Bonus Law, the project would be eligible for the benefits under SDBL or any local density bonus.

vi. SB 35

California Senate Bill 35 (SB 35) is a state law (California Government Code Section 65400 and 65582.1) that streamlines the development review process for affordable housing projects in local jurisdictions that have not made adequate progress toward meeting their Very-Low- and Low-income Regional Housing Needs Allocations (RHNA). Projects in Milpitas with 50% affordable housing (as defined in the California Government Code) are eligible for SB 35 streamlining.

SB 35 requires jurisdictions to review applications within 60 days for developments with 150 or fewer units and within 90 days for developments with over 150 units to determine if the project qualifies for streamlined review. If the application is deemed eligible for streamlined review, the city must then review and approve the project within 90 days after application submittal.

Exemption from CEQA is one of the major benefits for projects using SB 35. However, If HOZ eligible projects are allowed to be approved by-right with no discretionary actions, this may eliminate the CEQA requirement for these regardless of SB 35 eligibility.

The City of Milpitas has not adopted any specific guidance regarding SB 35 projects. **Thus far, the City has only one project (112 below-market-rate, 100% affordable) in the pipeline that qualifies for SB 35 streamlined approval.** Other project details are discussed in the sections below.

Example SB 35 Project

Density Bonus

The City has only one project (112 below-market-rate, 100% affordable) in the pipeline that qualifies for SB 35 streamlined approval. The project site, located within the Transit Area Specific Plan (Milpitas Metro Plan) planning area and within one-half mile of high-quality public transit (Great Mall VTA light rail station), takes advantage of the State Density Bonus Law where there is no maximum density limit if the project is in close proximity to transit. The project is proposed at a density of 117 units per acre where the base density under the General Plan allows 41-60 units per acre. The project site is located in the R4-TOD Multi-family Very High-Density Residential Zoning District with a Transit-Oriented Development Overlay which allows 41-60 dwelling units per acre.

Parking

The proposed project includes no vehicular parking. Pursuant to Government Code Section 65913.4(e)(1)(A), the City is prohibited from imposing automobile parking standards on a project deemed eligible for streamlined review under SB 35 when it is located within ½-mile of public transit.

Concessions and Waivers

Per Density Bonus Law, the applicant requested the maximum four concessions allowed (modifications to Front Yard Setback, Side Yard Setback, Rear Yard Setback, and Residential Open Space) -- resulting in 'actual and identifiable cost reductions.' The applicant also requested two waivers (Private Open Space and On-Street Bicycle Parking) to enable the project to be built at the proposed density.

Development Fees

The project is required to pay the Transit Area Specific Plan Development Impact Fee (TADIF) set at \$44,009 per residential unit. Projects with more than 20 units are required to devote at least one half of one percent of the Building Development Cost towards the purchase and installation of public art at the project site. The project was not exempt from TADIF or the public art requirement.

4. Development Process Review

i. Project Review & Permitting

Standardized and transparent project review and streamlined permit processing are critical steps to assist the development of housing projects in the city. This section reviews the various steps in the project review process and analyzes estimated timelines for approvals to identify barriers or constraints to realize the housing goals stated in the General Plan and the Specific plans including the Housing Element. This review is based on information provided by City staff and the city website and will need to be corroborated and refined with discussions with housing developers. A summary of relevant issues and recommendations will be part of the HOZ Existing Conditions Analysis as well as the Constraints section of the Housing Element after stakeholder meetings with developers, both for-profit and not-for-profit.

Process

Project review in Milpitas is conducted in two phases: the first is the planning/zoning entitlement approval and second is the building permit approval. In the first phase, Planning staff and relevant City departments determine whether the project is consistent with the General Plan, Specific plans, the Zoning ordinance and other relevant regulatory requirements. Uses that are permitted by-right in a zoning district may only require administrative review by Planning staff. More complex development projects or uses that require a Conditional Use Permit are reviewed by the Planning Commission and/or the City Council.

Following the approval of the appropriate planning entitlements, the building permit applications are reviewed by different City departments to check for consistency in the design and requirements for safety and improvements. The developers are expected to pay all the associated planning fees, impact fees and other fees in advance of building permit approval.

The different stages outlined for a developer in the City's Development Review handbook are as follows-

1. **Pre-application Meeting and Review.** The City offers a pre-application meeting and review session to facilitate the processing of development proposals. The pre-application process provides an opportunity for applicants to receive early feedback from City staff before project plans are finalized.
2. **Planning Review and Processing.** After the application is formally submitted, Planning staff and other City Department staff review the submitted materials within 30 days to make sure all necessary information is included. For large projects, meetings with the community and with decision-makers may be recommended to receive feedback for public hearings.
3. **Noticing and Decision Making.** Prior to issuing the approval, Planning staff prepares the required staff report, conditions of approval, and findings of approval. A public hearing is scheduled where the Planning staff present the project to the hearing body with a staff recommendation and answer any questions related to the project.

4. **Permitting.** The Building Safety and Housing Department issues building permits by reviewing construction plans to make sure the project complies with applicable State and local laws. During this stage, other City Departments and Outside Agencies may need to review the project as necessary. The applicant is required to pay all the associated fees during the building permit application submission.
5. **Construction.** After procuring all the necessary planning and building permit, the project moves into the construction and inspection phase with the Milpitas Building Safety and Housing Department to ensure that the construction is as per approval and that the building is safe for occupancy. The Certificate of Occupancy is awarded at the end of this phase.

Timelines

Delays due to permitting can lead to increased project costs which can serve as a constraint to housing production and affordability. Table 4-1 below shows the average processing times for different residential development applications and building permits from 2019. In Milpitas, provided the project is consistent with the City's Zoning Ordinance, General Plan, or any applicable Specific Plan, simple projects' planning application permit reviews are estimated to take about 1 month. For complex projects, without CEQA requirements, the planning permit review process can take up to 6 months and with CEQA can take more than 11 months. The Planning Commission and City Council have two regularly scheduled public meetings every month.

Table 4-1 Processing Times for Applications and Building Permits

Type of Development	Months (Planning Application)*	Months (Building Permit)*
ADU Ministerial (by-right)	0 to 1 month	1 to 6 months
Ministerial (by-right) Includes projects that comply with applicable building, zoning and development regulations.	0 to 1 month	1 to 6 months
Discretionary (Staff) Includes coastal development permits, neighborhood development permits, neighborhood use permits	0 to 1 month	2 to 12 months
Discretionary (Hearing Officer) Includes variances, certain site development permits, and certain conditional use permits	2 to 4 months	6 to 18 months
Discretionary (Planning Commission)	3 to 12 months	12 to 24 months

Includes certain conditional use permits, certain site development permits, and planned development permits		
Discretionary (Planning Commission and City Council)	3 to 12 months	12 to 24 months
Includes tentative maps, condominium conversion maps, easement vacations, public right-of-way vacations, rezoning, and land use plan amendments		
<i>*Based on City of Milpitas submission to Santa Clara County Collaborative</i>		

Milpitas's review and approval timelines are longer than average times taken by other jurisdictions in Santa Clara County. Streamlining the permitting and approval processes further can assist developers and property owners interested in developing housing in Milpitas. Issues and opportunities to improve timelines will be further explored in discussions with developers in the next phase of the project.

California's Housing Accountability Act (HAA) requires local governments to process and review, approve, or disapprove housing developments within very tight timeframes if an applicant requests this (Government Code section 65589.5)

In these cases, a city must review and notify an applicant within 30 days as to whether the application is complete. After completeness, the City must determine if a project is consistent with objective standards (specifically defined) that must be identified and set at the time of Pre-application or Completeness review. The City must provide written notice of inconsistency (if applicable) to the applicant within 30 days of application for projects with 150 or fewer units (60 days for more than that). Any discretionary hearings or internal review must be completed within these timeframes. Projects qualifying for HOZ incentives will almost always qualify under the HAA provisions for "Housing for Very Low, Low- or Moderate-Income Households" which is subject to further streamlining provisions. Based on preliminary data from other cities in Santa Clara County, these processing times do not provide any extraordinary constraint to development but can be further streamlined.

A project meeting the Very Low/Moderate standard may not be disapproved, rejected, or otherwise made infeasible unless extensive findings are made including that the project would "have a specific, adverse impact upon public health or safety and there is no feasible method to mitigate or avoid the impact..." unless the local government has met or exceeded its RHNA, or project denial or conditions are required to comply with specific state or federal law. Compared to these HAA standards, the City of Milpitas' development review times most recently documented would likely need to be accelerated for projects that meet the criteria. The averages shown in the table above are not outside of the range of time frames reported by other cities in Santa Clara County and are not high enough to constitute a significant constraint to the typical development.

ii. Fees

Local governments collect fees from new developments to cover administrative costs and to provide improved infrastructure to serve the residents of that development. These payments are required upfront during the plan review period, however, a deferral may be provided to a developer if they provide on-site affordable units as stated in the AHO.

Table 4-2 Different Fees associated with Residential Developments

Fee Type	Single Family	Multifamily Small (per unit)	Multifamily Large (per unit)
Entitlement Fees	\$17,359	\$3,671	\$367
Building Permit Fees	\$23,110	\$13,111	\$6,616
Engineering Fees	\$25,000	\$5,000	\$1,000
Fire Fees	\$1,120	\$568	\$353
Impact Fees (non TASP)	\$0	\$29,064	\$29,064
Other	\$10,600	\$3,468	\$3,264
TOTAL	\$77,797	\$54,882	\$40,664
Santa Clara County Average*	\$74,831	\$34,752	\$27,563

*Based on Draft Presentation from Santa Clara County Collaborative Meeting March 10, 2022

Compared to other cities in Santa Clara County, Milpitas has higher fees per unit for single and multi-family developments. Milpitas has the highest Entitlement Fees in the County for single family developments and high impact fees for multi-family developments. Impact Fees and other Developmental Fees are explored in detail in the following sections.

Impact Fees

The Calaveras Widening Traffic Impact Fee is collected to widen Calaveras Boulevard to mitigate the traffic impacts caused by new development in the area outside the TASP. Additionally, the Transit Area

Development Impact fee (TADIF) is collected to fund the planning and development of the transit area outlined in the TASP near the Great Mall to support the community with appropriate utilities, parks, services, and roadways. This fee compensates the City for costs of roads and a significant amount of infrastructure that normally would have been paid by developers for off-site improvements required in this area. The different impact fees applicable for residential projects are explained below.

Table 4-3 Different Impact Fees for Residential Developments

Impact Fees	Amount (as of June 2021)	
	In TASP	Not in TASP
Transit Area Development Impact fee (TADIF)	\$44,090 per unit	\$0
Calaveras Widening Traffic Impact Fee (5 or more units)	\$0	\$314 per unit
Public Art Fee	0.5% of construction cost	0.5% of construction cost
Park-in Lieu Fee	\$4,500	\$28,750
Total	~\$48,590	~\$29,064
Based on City of Milpitas submission to Santa Clara County Collaborative		

The average impact fee per unit for a multi-family project in Milpitas in the TASP area is \$48,500 which includes the TADIF which applies to a limited area for very specific required infrastructure. The typical impact fee per unit in other parts of the city would be \$29,064 for traffic impacts and parks. The Park-in Lieu Fee makes up 99% of impact fees outside of the TASP. A comparison of impact across different jurisdictions is shown in the table below.

Table 4-4 Comparison of Impact Fees for Multi-family and Single-family Developments

Unit Type	Milpitas	Santa Clara*	Mountain View*	Fremont**
Multi-family	\$29,064	\$10,750	\$34,000	\$22,331
Single family	\$0	\$54	\$71,347	\$35,334
* Based on Draft Presentation from Santa Clara County Collaborative Meeting March 10, 2022 ** (Turner Center for Housing Innovation, Residential Impact Fees in California, 2019) https://www.hcd.ca.gov/policy-research/plans-reports/docs/impact-fee-study.pdf				

Optional: Other and Development Taxes

Table 4-5 Additional Fees and Taxes for Residential Developments

Type of Dwelling	Amount (as of June 2021)	
	Single Family	Multi-Family
Storm Drain Fee	\$1,100 to \$6,469 based on lot size	\$16,771 per acre
Water Connection Fee	\$1,910	\$1,164
Sewer Connection Fee	\$1,908	\$1,406
Wastewater Treatment Plant	\$880	\$690
School Fee	\$4.08 per sf	
Based on City of Milpitas submission to Santa Clara County Collaborative		

5. References

City of Milpitas General Plan 2040 https://www.ci.milpitas.ca.gov/wp-content/uploads/2021/05/Milpitas-General-Plan-Final_Online-Version.pdf

Milpitas Metro Specific Plan Public Draft October 2021
<https://static1.squarespace.com/static/5e75399ccb15c56a8859a18c/t/6165e2757e009e72675d5bdc/1634067068041/Milpitas+Metro+Specific+Plan+Public+Draft+10122021+%28Reduced+File+Size%29.pdf>

City of Milpitas Zoning Ordinance
https://library.municode.com/ca/milpitas/codes/code_of_ordinances?nodeId=TITXIZOPLAN_CH10ZO_S3Z_ODI

City of Milpitas Affordable Housing Ordinance
https://library.municode.com/ca/milpitas/codes/code_of_ordinances?nodeId=TITXIIHO_CH1AFHOOR

City of Milpitas City Council Meeting Minutes Feb 1, 2022
<https://www.ci.milpitas.ca.gov/pdfs/council/2022/020122/Attachments.pdf>

City of Milpitas Development Review Handbook https://www.ci.milpitas.ca.gov/wp-content/uploads/2022/01/DevReviewHandbook_FINAL_web_1-12.pdf

City of Milpitas Annual Report of Fees and Expenditures for the Fiscal Year ended June 30, 2021
<https://www.ci.milpitas.ca.gov/wp-content/uploads/2021/12/annual-development-fees-expenditures-fy2021.pdf>

Santa Clara County Collaborative Draft Presentation March 10, 2022
<https://storage.googleapis.com/proudcity/santaclaracountycities/uploads/2022/03/Collaborative-Meeting-3.10.22-.pdf>

Residential Impact Fees in California 2019, Turner Center https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/Residential_Impact_Fees_in_California_August_2019.pdf

Meyers Nave, Guide to the California Density Bonus Law, 2021 https://www.meyersnave.com/wp-content/uploads/California-Density-Bonus-Law_2021.pdf

Category - 2D

EXHIBIT 2

CEQA EXEMPTION MEMORANDUM

MEMORANDUM

Planning Department



To: Ned Thomas, AICP, Planning Director, City of Milpitas
From: Kristina Phung, Associate Planner, City of Milpitas
Subject: 612 South Main Street Project Categorical Exemption
Date: February 14, 2023

This memorandum supports the finding that the proposed project at 612 South Main Street "Project" would be exempt from further review pursuant to California Environmental Quality Act (CEQA) Section 15332 (In-Fill Development Projects). The Project site located at 612 South Main Street is a combination of two adjacent parcels: 600 South Main Street (APN 086-25-028) and 612-650 South Main Street (APN 086-25-027) in the City of Milpitas, Santa Clara County. The proposed Project is described in the attached staff report. All supporting technical studies referenced herein are included as Exhibit 3.

Class 32 Infill Exemption, Per CEQA Guidelines Section 15332

Article 19 of the California Environmental Quality Act (CEQA Guidelines Section 15300 to Section 15333) includes a list of classes of projects that have been determined to not have a significant effect on the environment and as a result, are exempt from review under CEQA. Among the classes of projects that are exempt from CEQA review are those projects that are specifically identified as urban in-fill development. CEQA Guidelines Section 15332 (Class 32) consists of projects characterized as in-fill development when meeting the following conditions:

- (a) The Project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; and
- (b) The proposed Project occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; and
- (c) The Project site has no value as habitat for endangered, rare or threatened species; and
- (d) Approval of the proposed Project would not result in any significant effects relating to traffic, noise, air quality or water quality, and
- (e) The site can be adequately served by all required utilities and public services.

The analysis presented in the following section provides substantial evidence that the proposed Project qualifies for an exemption under CEQA Guidelines Section 15332 as a Class 32 urban in-fill development, and would not have a significant effect on the environment. Section 15183(a) of the California Environmental Quality Act (CEQA)



Guidelines states that "...projects which are consistent with the development density established by the existing zoning, community plan, or general plan policies for which an Environmental Impact Report (EIR) was certified shall not require additional environmental review, except as may be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site."

Section 15332 (a): General Plan & Zoning Consistency

Yes	No	The Project is consistent with the applicable General Plan designation and all applicable planning policies and is consistent with the applicable zoning designation and regulations.
X		

As described in the staff report and in Table 1 of Exhibit A, the Project is consistent with the Milpitas 2040 General Plan and policies and meets the majority of the Mixed Use (MXD) zoning designation and regulations under the Midtown Specific Plan. The Project was submitted under SB 330 (Housing Crisis Act of 2019) and as the Project is restricting the sale of more than 10 percent of the housing units to moderate-income residents, the Project qualifies for concessions, waivers, and parking reductions under the mandated State Density Bonus Law. Therefore, the City must grant the requested Project waivers to the front and rear yard setback development standards and allow for parking reductions if those development standards would physically preclude the development from construction and do not cause a public health or safety problem.

Section 15332 (b): Project Location, Size, and Context

Yes	No	The proposed Project occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
X		

The Project is on a site less than five acres at approximately 2.35-acres and is entirely surrounded by urban uses with existing developed lots including a car wash, assembly place, self-storage business, commercial shopping plaza, streets, landscaping, and associated existing infrastructure and utilities.

Section 15332 (c): Endangered, Rare or Threatened Species

Yes	No	The Project site has no value as habitat for endangered, rare or threatened species.
X		

The Project site includes one lot that is vacant and undeveloped and one paved lot with an existing two-story commercial and office building located within a developed urban area. The Project site has no significant riparian corridors, estuaries, marshes, wetlands, or any other potential wildlife habitat that might contain endangered, rare or threatened species as documented by the Biological Constraints Analysis for the 612-630 South Main Street Project prepared by FirstCarbon Solutions dated May 20, 2022. The Project will remove 13 Ordinance-sized trees and will be subject to all bird nesting mitigation measures within the adopted Midtown Specific Plan EIR, as included in the Conditions of Approval. Thus, the Project site has no value as habitat for rare, threatened, or endangered species.

Section 15332 (d): Traffic, Noise, Air Quality, or Water Quality

Yes	No	Approval of the proposed Project would not result in any significant effects related to traffic, noise, air quality or water quality.
X		

Traffic: The proposed Project will result in an increase of 57 units which will have a negligible effect on traffic based on the International Traffic Engineers (ITE) estimates for the Project and credit for the existing school/day care use and gymnastics center use, since the Project would result in a decrease in traffic impacts (changing from commercial and office to residential). As demonstrated by the Trip Generation Study for the Project prepared by TJKM dated April 2, 2022, the proposed Project would not generate any new trips during the daily, a.m. peak hour trips or p.m. peak hour trips and the total net daily trips would be reduced by 115 from its existing condition.

Noise: As substantiated by the Noise Impacts Constraints Analysis for the Project prepared by FirstCarbon Solutions dated May 17, 2022, the introduction of 57 new housing units on the Project site would not result in significant noise impacts upon adjacent uses, because noise emanating from the proposed residences would be typical of the neighborhood and would not result in a significant change or increase in the existing noise environment. The Project will be required to comply with Section 1207 of the California Building Code which requires that the interior noise levels of multi-family units have an interior noise levels of 45 dB DNL or lower. The Project would also have to comply with the City's noise ordinance per Milpitas Municipal Code Chapter V-213-3, restricting construction noise to 7:00 a.m. to 7:00 p.m. on weekday sand weekends and shall be prohibited on federal holidays.

Air Quality: The impact of dust and exhaust generated by grading and excavation of future construction activities is temporary in nature and limited to site preparation and future construction of the new townhomes. The Applicant provided the Air Quality and Greenhouse Gas Emissions Constraints Analysis for the Project prepared by FirstCarbon Solutions dated May 27, 2022, that confirmed the Project will not conflict with the 2017 Clean Air Plan by the Bay Area Air Quality Management District (BAAQMD) and the proposed residential land use is below BAAQMD's construction and operational screening levels for requiring further quantitative criteria air pollutant analysis and would not introduce a new source of odors. Furthermore, the Midtown Specific Plan EIR identified air quality mitigation measures that have been incorporated into the Conditions of Approval the Project must adhere to. As such, the Project would not result in any significant effects related to air quality.

Water Quality: The Project will not violate water quality standards or waste discharge requirements because it will be required to comply with the standard Best Management Practices per the C.3 Stormwater Handbook by the Santa Clara Valley Urban Runoff Pollution Prevention Program which regulates discharge into the City's storm drainage system; and the increase in runoff would not be large enough to cause flooding on- or off-site. All projects of this nature are required to comply with these standards and will be reviewed for compliance by the City's Engineering Department during the building permit review process. Furthermore, the Applicant prepared a Preliminary Stormwater Quality Control Plan dated June 2022 by consultants MacKay & Soms for the Project.

Section 15332 (e): Utilities and Public Services

Yes	No	The site can be adequately served by all required utilities and public services.
X		

The Project site is located in an area surrounded completely by existing development and infrastructure and has been reviewed by all major reviewing Departments including but not limited to Building, Fire, Police, Land Development, Traffic, Water, and Solid Waste Departments. As a result, it has been determined that the site can be adequately serviced to preserve public health, safety, and wellness. The Applicant has also agreed to a number of onsite utility improvements as included in the Conditions of Approval.



Planning Department
455 E. Calaveras Blvd, Milpitas, CA
Phone: (408) 586-3279
Email: planningdepartment@ci.milpitas.ca.gov

Item # C6.

For Staff Use Only

Click or tap to enter a date.

Total Deposit/Fee: \$ _____

PJ#: _____

Universal Planning Application

Permit Number(s): _____

PART I: PROJECT INFORMATION

Project Name: _____

Project Site Address: _____

APN

APN

APN

APN

Brief Project Description: _____

APPLICANT: Name and mailing address of person requesting the filing of this application.

Name: _____

Company: _____

Address: _____

City/State/ZIP: _____

Phone #: (____) _____

Email Address: _____

SIGNATURE: _____

MAIN CONTACT PERSON: Person to be contacted regarding this application.

☐ Same as applicant☐ Different than applicant. Complete below:

Name: _____

Company: _____

Address: _____

City/State/ZIP: _____

Phone #: (____) _____

Email Address: _____

PROPERTY OWNER AUTHORIZATION:

Name: _____

Company: _____

Address: _____

City/State/ZIP: _____

Phone #: (____) _____

Email Address: _____

Upon three days prior notice by City of Milpitas staff, I shall provide access to the subject site for City officials, staff, their agents, and consultants for the purpose of planning and development application review and inspection. Myself or my agent may accompany such persons while they access the site. If I fail to respond to a request for access within three days, City officials, staff, their agents and consultants are authorized to enter onto the site for such review and inspection.

CHOOSE ONE:

- ☐ I am the sole owner and hereby authorize the filing of this application.
- ☐ I own the project site jointly with one or more persons and am empowered to authorize the filing of this application on behalf of my fellow property owners.
- ☐ I own the project site in conjunction with one or more persons who are listed with their acknowledgement and authorization for the filing of this application attached for additional property owner authorization/acknowledgements.

I agree to allow the City of Milpitas to copy and distribute all project plans, materials, and information and post on the official City of Milpitas website, as necessary for the project approval process, including public hearings and public information requests.

SIGNATURE: _____

INDEMNIFICATION AGREEMENT FOR DEVELOPMENT APPLICATIONS

Applicant submitted an application to the City of Milpitas Planning Division on _____, 20__ for the following development approval(s): _____

(the "Project"). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Applicant hereby expressly agrees in connection with the processing of Applicant's Project application(s) to each and every one of the following terms and conditions:

1. Applicant agrees, as part of and in connection with each and any of the application(s), to defend, indemnify, and hold harmless the City of Milpitas ("City") and its officers, contractors, consultants, attorneys, employees and agents from any and all claims(s), action(s), or proceeding(s) (collectively referred to as "proceeding") brought against City or its officers, contractors consultants, attorneys, employees, or agents to challenge, attack, set aside, void, or annul:
 - a. Any approvals issued in connection with any of the above described application(s) by City; and/or
 - b. Any action taken to provide related environmental clearance under the California Environmental Quality Act of 1970, as amended ("CEQA") by City's advisory agencies, boards or commissions; appeals boards or commissions; Planning Commission, or Council.

Applicant's indemnification is intended to include, but not limited to, damages, fees and/or costs awarded against or incurred by City, if any, and costs of suit, claim or litigation, including without limitation attorneys' fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by Applicant, City, and/or parties initiating or involved in such proceeding.

2. Applicant agrees to indemnify City for all of City's costs, fees, and damages incurred in enforcing the indemnification provisions of this Agreement.
3. Applicant agrees to defend, indemnify and hold harmless City, its officers, contractors, consultants, attorneys, employees and agents from and for all

costs and fees incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an environmental impact report, negative declaration, specific plan, or general plan amendment) if made necessary by said proceeding and if Applicant desires to pursue such City approvals and/or clearances, after initiation of the proceeding and that are conditioned on the approval of these documents.

4. In the event that Applicant is required to defend City in connection with such proceeding, City shall have and retain the right to approve:
 - a. The counsel to so defend City; and
 - b. All significant decisions concerning the manner in which the defense is conducted; and
 - c. Any and all settlements, which approval shall not be unreasonably withheld.

City shall also have and retain the right to not participate in the defense, except the City agrees to reasonably cooperate with Applicant in the defense of the proceeding. If City chooses to have counsel of its own to defend any proceeding where Applicant has already retained counsel to defend City in such matters, the fees and expenses of the additional counsel selected by City shall be paid by City. Notwithstanding the immediately preceding sentence, if City's Attorney's Office participates in the defense, all City Attorney fees and costs shall be paid by Applicant.

5. Applicant's defense and indemnification of City set forth herein shall remain in full force and effect throughout all stages of litigation including any and all appeals of any lower court judgments rendered in the proceeding.

After review and consideration of all of the foregoing terms and conditions, Applicant, by its signature below, hereby agrees to be bound by and fully and timely comply with all of the foregoing terms and conditions.

APPLICANT By: _____
(Signature)

Date: _____

(Print)

Its: _____
(Title, if any)

Consultant ListHave consultants been identified to assist with this project? ☐ Yes☐ NoBy: _____
Name of Person Completing this Form Capacity Date

Consultants include, but are not limited to, architects, designers, contractors, landscape architects, engineers, planners, real estate agents, and environmental consultants. This form must be filled out completely. It enables members of the City Council, Planning Commission, and staff to avoid potential conflicts of interest, which could otherwise invalidate your project's approval.

Name: _____ Capacity: _____
 Company: _____ Phone No.: _____
 Address: _____ Email: _____
 Milpitas Business Tax ID# _____

Name: _____ Capacity: _____
 Company: _____ Phone No.: _____
 Address: _____ Email: _____
 Milpitas Business Tax ID# _____

Name: _____ Capacity: _____
 Company: _____ Phone No.: _____
 Address: _____ Email: _____
 Milpitas Business Tax ID# _____

Name: _____ Capacity: _____
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Name: _____ Capacity: _____
 Company: _____ Phone No.: _____
 Address: _____ Email: _____
 Milpitas Business Tax ID# _____

Name: _____ Capacity: _____
 Company: _____ Phone No.: _____
 Address: _____ Email: _____
 Milpitas Business Tax ID# _____

If more room is necessary, you may complete and attach additional copies of this form.

City of Milpitas Municipal Code Title III requires everyone, including consultants, who render services in or from the City of Milpitas to have a valid business tax/license. Don't hesitate to contact the Business Resource Center at 408-586-3100 for instructions on obtaining a Milpitas Business Tax ID number.

Hazardous Waste and Substances Statement

Pursuant to California Government Code Section 65962.5 (AB 3750 – Cortese)

Government Code Section 65962.5 requires that "before a lead agency accepts as complete an application for any development ...the applicant shall consult the [Cortese] list and shall submit a signed statement...indicating whether the project and any alternative are located on a site that is included on [the list]." This form is provided for that purpose.

TO: Planning Department
City of Milpitas
455 East Calaveras Blvd
Milpitas, CA 95035

I have consulted the current Hazardous Waste and Substances Sites List, consolidated by the California Environmental Protection Agency pursuant to Government Code Section 65962.5 at https://www.envirostor.dtsc.ca.gov/public/map/?global_id=60002853 regarding the development project application herewith submitted.

Based on my consultation, the location of the project, shown below,

☐ IS ☐ IS NOT

on a site which is included on the attached most recent Hazardous Waste and Substances Sites List.

Project location:

If located on such a site, print the sources of that information as shown on the list:

I declare under penalty of perjury that the foregoing is true. Executed this

_____ day of _____, 20_____, in
(date) (month) (year)

(City and state)

X _____
Signature of Applicant (or agent)

Print applicant name, with agent name and title, if any

REQUIRED PLANS

A. Plan Set Elements

The following table indicates which elements of the Project Description/Justification, Standard Plan Set, and Map Set are required for various applications. If you have questions about whether an item is required for your application, please contact the Planning Department at planningdepartment@ci.milpitas.ca.gov or (408) 586-3279 to clarify.

● = Always required. ○ = Sometimes required. Refer to next section for instructions. - = Not required.

	Project Description or Justification				Standard Plan Set														Map Set
	Design Statement	Operation Description	Project Justification	Variance Justification	Title Sheet	Site Plan	Existing Conditions	Floor Plan	Elevations	Sections	Boundary Survey	Prelim. Grading Plan	Prelim. Utility plan	Storm Water Plan	Tree Survey	Landscape Plan	Misc. Details		
Amendments/Modifications of Permits	-	-	●	-	●	●	●	●	○	-	-	-	-	○	○	○	○	-	
Appeal	-	-	●	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Conditional Use Permit	-	●	-	-	●	●	●	●	○	-	-	-	-	-	○	○	○	-	
General Plan Amendment	-	-	●	-	●	●	●	○	○	-	-	-	-	-	○	○	○	-	
Lot Combination	●	-	-	-	-	-	-	-	-	-	-	○	○	○	○	-	-	●	
Lot Line Adjustment	●	-	-	-	-	-	-	-	-	-	-	○	○	○	○	-	-	●	
- Urban Lot Splits (SB 9)	●	-	-	-	-	-	-	-	-	-	-	○	○	○	○	-	-	●	
Minor Conditional Use Permit	-	●	-	-	●	●	●	●	-	-	-	-	-	-	-	-	○	-	
Minor Site Development Permit	-	-	●	-	●	●	●	●	○	○	-	-	-	○	○	○	○	-	
- Two Unit Projects (SB 9)	●	-	●	-	●	●	●	●	●	●	●	●	●	●	●	●	●	-	
Planned Unit Development	-	-	●	-	●	●	●	●	●	●	●	●	●	●	●	●	●	-	
Pre-Application Review	-	-	-	-	●	●	●	●	●	-	-	○	-	●	●	●	●	-	
Rezoning	-	-	●	-	●	●	●	-	-	-	-	-	-	-	-	-	-	-	
Site Development Permit	●	●	-	-	●	●	●	●	●	●	●	●	●	●	●	●	●	-	
Specific Plan Amendment	-	-	●	-	●	●	●	○	○	-	-	-	-	-	○	○	○	-	
Tentative Parcel Map	●	-	-	-	-	-	-	-	-	-	-	○	○	○	○	-	-	●	
Tentative Tract Map	●	-	-	-	-	-	-	-	-	-	-	○	○	○	○	-	-	●	
Tree Removal Permit	-	●	-	-	-	●	-	-	-	-	-	-	-	-	●	●	●	-	
Variance	-	-	-	●	●	●	●	●	●	●	-	○	-	-	●	●	●	-	
Zoning Text Amendment	-	-	●	-	●	●	●	○	○	-	-	-	-	-	○	○	○	-	

NON-STANDARD APPLICATIONS

The following applications have their own submittal requirements/checklists. Please visit the links below and/or contact staff for the following application types:

- [Housing Crisis Act \(SB 330\) Preliminary Application](#)
- [Special Event Permit](#)
- Extension of Time
- Zoning Interpretation
- [Urban Lot Split / Two Unit Project \(SB 9\) Projects](#)
- Master Sign Program
- Development Agreement
- [Temporary Promotional Sign Application](#)
- [Tree Removal Permit](#)

***Electronic Submittal Instructions:** Please provide **ALL REQUIRED ITEMS** in PDF file(s) used for review, distribution, and reproduction:

- (a) PDF file(s) suitable for onscreen viewing or posting on the City of Milpitas's website. Use compression, downsampling, and a relatively low resolution to create an Adobe PDF file that is as small as possible; convert all colors to RGB, or to Monitor RGB (if color management is enabled); embed subsets of all fonts used in the file, except for the Base 14 fonts; maintain compatibility with Acrobat 9.0 and later; and optimize files for byte serving **[NOT TO EXCEED 10MB]**
- (b) PDF file(s) suitable for press output from the City of Milpitas's print service provider. The objective is to maintain all of the information in an Adobe PDF file that a commercial printer or service provider will need to print the document correctly. This set of options leaves color unchanged; embeds all fonts used in the file; prints at a higher resolution; and uses other settings to preserve the maximum amount of information contained in the original document.
- (c) **All files are to remain unsecured** to allow subsequent modification as necessary.

I understand that my project review may be delayed if required materials are missing from the submittal package.

Project Applicant Signature

Date

UNIVERSAL SUBMITTAL REQUIREMENTS

The Universal Submittal Requirements are a centralized list of all application components required by the City of Milpitas Planning Department. To determine which submittal requirements are applicable to a specific project, please see Section A. Plan Set Elements. An application is considered to be incomplete if any of the items required per Part VI, and listed this sheet, have not been included. Processing of the application may be delayed until the submittal is deemed complete.

The Universal Submittal Requirements are provided here for information only, and there is no signature or action required to complete this component of the application.

☒ **Universal Planning Application.**

A completed and signed Universal Planning Application form.

☒ **Project Description or Justification.**

All Project Descriptions or Justifications shall be submitted as a separate document from the proposed plan set. Please refer to Part VI to determine which type of Project Description or Justification is required for a specific project.

Type A: Architectural Design Statement

The architectural design statement shall state the purpose of the project, discuss compatibility with surrounding structures, and reference specific design influences.

Type B: Business Operation Description

The business operation description shall include a detailed description of the activities proposed under the project, the proposed hours and days of operation, and the proposed occupancy at different times of day. If the project includes regularly scheduled events or classes, a specific schedule shall be provided. If there are specific management plans proposed as part of the project (e.g. security plans, noise mitigation plans, overflow parking plans, etc.) those plans should be included in the business operations description.

Type C: Project Justification

The project justification shall explain how the proposed project would implement established City goals, as stated in the General Plan. The justification shall explain the benefits of the proposed project in terms of land use pattern, social environment, community appearance, traffic circulation, and economic considerations. Where applicable, the justification shall address how the proposed project will affect public services and other qualities of the local environment.

Type D: Variance Justification

For this type of project justification, the applicant must respond to all of the following prompts:

- Describe the special circumstances applicable to your property (e.g., size, shape, topography, location or surroundings) wherein the strict application of the Planning and Zoning regulations would deprive your property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification.
- Explain how the granting of the variance is necessary for the preservation of a substantial property right possessed by other property in the same vicinity and zone and otherwise denied the subject property.
- Identify any project design features or other conditions/limitations that will assure that the requested variance will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and identical zoning classification.
- Explain how the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
- Explain how the granting of the variance is consistent with the General Plan.

□ Standard Plan Set.

Title Sheet

- Name of project, location of project (street address and existing APN), and description of proposed scope of work
- Existing and proposed Zoning and General Plan designation of the subject property
- Vicinity map showing an aerial view of a half-mile radius from the project site
- Table of contents listing all plan set sheets, their content, and page number
- A preliminary Building Code analysis, including occupancy classification, type of construction, and building area calculations
- For single-family residential projects: Project Statistics, including first story area, second story area, and rear yard encroachment calculation
- For multi-family residential projects: density (dwelling units per net acre), unit breakdown (percentage studio, one-bedroom, two bedrooms, etc.), common open space, private open space, storage
- For all projects: Required Statistics, as indicated in the tables below:

Development Statistics	Allowed/Required	Proposed	Parking Statistics	Required	Proposed
Gross Lot Area			Standard Spaces		
Net Lot Area			Compact Spaces		
Total Floor Area			Percent Compact		
Additional Floor Area (if adding area)			Covered Spaces		
Floor Area Ratio (if nonresidential)			Uncovered Spaces		
Open Space Calculation			Guest Spaces		
Lot Coverage			Handicapped Car Spaces		
Height			Handicapped Van Spaces		
Number of Stories			Motorcycle Spaces		
Front Setback			Car Share Spaces		
Rear Setback			EV Spaces		
Side Yard Setback(s)			EV Handicapped Spaces		
			Short Term Bicycle Parking		
			Long Term Bicycle Parking		

Site Plan

- Property lines, including dimensions of the subject property and dimensions of all existing lot lines
- Use of all adjacent properties, including locations of any buildings and roads within 50 feet of the proposed project
- Location, configuration, and setbacks of all existing and proposed buildings, including occupancy classification and type of construction as defined in the Building Code (existing and proposed buildings are encouraged to be on two separate pages). The proposed removal of any buildings should be clearly delineated on the site plan
- Show the location of the building with fire separation distance specified
- Show the accessible path of travel from public sidewalk and accessible parking/ EV spaces to building entrances
- Proposed off-street parking (including accessible parking spaces and accessible EV spaces), loading, and circulation areas; and driveways. The table shall provide a breakdown of each type of parking spaces provided, i.e. number of regular parking, van accessible parking, standard accessible parking, regular EV spaces, van accessible EV spaces.
- Proposed and existing pedestrian ways and recreation areas
- All existing and proposed easements on the property, and all existing and proposed easements on surrounding properties benefiting the subject property
- Site constraints including known earthquake faults, riparian corridors, and the Crestline
- Adjacent street rights-of-way and proposed street improvements
- Signing and striping of street frontage
- Location of existing and proposed on-site lighting features
- Existing trees with trunk locations and accurate canopy outline shown
- Existing landscaped area
- All fire hydrants within 300 feet of the project site
- If the site has multiple tenants, provide an inventory of all tenant spaces on the property, listing the address, type of business (or other use of the space), and floor area for each tenant space

Existing Conditions Plan/ Demolition Plan

- Topographic survey, contours, spot elevations, existing trees with driplines and elevation at base, tree species and number per arborist report
- Existing improvements including surface and overhead utilities and underground utilities with information (appurtenances, size of pipe, slope and direction of flow)
- Existing improvements to be removed including structures/buildings, hardscape, tree(s), surface and subsurface improvements
- Boundary and abutting property information
- Existing easements per title report
- Remedial grading areas per geotechnical report, if applicable
- All existing fire hydrant locations within 300 feet of the subdivision/site

Building Floor Plans

- Provide a set of preliminary building/structure drawings with a preliminary CA Building Code analysis per Chapter 5 and Chapter 10 (construction type, allowable area, number of stories, exit analysis, etc.) to show that the proposed building/structure is feasible.
- Floor plan(s) showing the intended use of each area
- Floor area and occupant load of each room/area, egress analysis, location and fire rating of fire wall for area separation and fire barrier for occupancy separation
- Location and dimension of exterior doors and windows
- Floor area statistics: total gross floor area of the building and total gross floor area of each story

Building Elevations

- Dimensioned elevations of all exterior walls
- Total height, finished floor height, and floor to ceiling height indicated on all elevations
- Colors and materials for roof, wall, and trim materials. Include the manufacturer's or supplier's names along with the color code and model numbers for each material or color shall be included. For Planning Commission hearings, please provide a separate color and material sample board.

Building Sections

- Two sections through the site and building, including at least one section showing the street frontage
- Total height, finished floor height, and floor to ceiling height indicated on all sections

Preliminary Grading and Drainage Plan

A preliminary grading and drainage plan is required if the project involves over 50 cubic yards of earth movement or requires modifications to an existing drainage. Please note that certain elements of the Preliminary Grading and Drainage Plan are still required even if the plan itself is not required.

- Topographic survey screened with proposed site plan superimposed with grading information
- Existing and proposed grades from existing City benchmark
- Cross sections at the project boundaries
- Estimated grading quantities (cut and fill calculation)
- Finish floor and pad elevation
- Stormwater treatment devices and site design measures
- The location, pipe sizes, slope, invert and grate elevations of any proposed underground storm drain system
- Hydraulic drainage calculations

Preliminary Master Utility Plan

- Location of all on-site existing and proposed water, sanitary sewer, storm sewer and joint trench (electrical, gas, communication, facilities, and appurtenances)
- Minimum acceptable horizontal and vertical clearances between existing and proposed utilities main and services
- Utility capacity calculations, if applicable

Drawings of Proposed Signs

- Illumination type (if proposed). If illumination is not explicitly shown, the sign will be considered to be non-illuminated
- Colored drawings of the proposed signs, and if applicable, the wall face on which the sign will be placed
- Sign Detail providing a scaled color illustration of the proposed sign(s), with sign height/length, letter height/length, color, material, and total sign area dimensions and notes, in both profile (cross-section) and front view.
 - Building Elevations providing a depiction of the proposed sign(s) as shown on the subject building(s).
 - All dimensions of the sign(s), including sign height/length and letter height/length;
 - Indicate which maximum sign area calculation is being used pursuant to MMC Section XI-10-24.03(B). All building dimensions, including length of the tenant space, total building length, building height, fascia height, and parapet height;
 - Height from grade to the bottom of the sign;
 - Height from grade to the uppermost portion of the sign.
- Photographic Renderings providing a simulated depiction of the proposed sign(s) as shown on a photograph of the subject building or property.
- Material/Color Palette providing key-coded representations of colors and materials for signage represented within the Master Sign Plan
- If located in a sign program district, please provide the property owner approval and demonstrate conformance with the site-specific sign program.

Department of Alcoholic Beverage Control (ABC)

The most common types of licenses include on-sale (for consumption on-site) and off-sale (for consumption off-site) licenses for convenience stores, large grocery store, restaurants, beer manufacturer (brewery), wine grower (winery) and bar/taverns, brew pub/micro-brewery, and bar/night clubs. Visit the State of California Alcoholic Beverage Control Website for information on the various types of licenses and application form/process.

A Minor Conditional Use Permit, issued by the Zoning Administrator, is required for any restaurant or similar establishment that serves beer, wine and/or distilled spirits in conjunction with the business, and requires alcoholic beverage license #23, #41, #47 or #75 from ABC.

- Please include in your description of operation the Census Tract your location is listed in (4001.00 example) and the [Census Tract Authorizations](#) (# of on-sale and off-sale). In addition, you will need to provide the [concentration levels](#) in that Census Tract.

Conceptual Storm Water Management Plan

- Drainage management areas (DMA) for the entire project including off-site drainage areas
- Details of all proposed treatment measures tailored to the site
- Data for all proposed DMA including impervious and pervious areas, numerically sized treatment areas and treatment measures in tabular form
- If hydromodification is required, provide preliminary sizing calculations using Bay Area Hydrology Model (BAHM)

Tree Survey Plan

- Plan must be prepared by an International Society of Arboriculture Certified Arborist and shall be included on the project site plan or existing conditions plan or demolition plan.
- Existing and proposed site features, including, but not limited to buildings, walls, paving, grading, etc.
- Tree(s) trunk circumference measured 4.5 feet from the ground located on plan by a licensed surveyor, and with accurate canopy outline
- Trees labeled by number and tagged on-site per ISA standards
- Summary table identifying botanical designation, tree circumference, and elevation of trees at ground level, and whether tree is to be retained or to be removed
- Plan shall identify trees with accurate plots of canopy outlines
- Protection/enhancement measures for each individual tree to be retained
- If no trees exist on the site, then include a note on the landscape plan that "no trees exist on this site"

Landscape Plan

- Location, spacing, size, quantities, and botanical designations of all existing and proposed on-site landscaping
- Required right-of-way planting, identified as such
- All trees, as indicated on the tree survey plan
- Any proposed street tree (the locations, spacing of street trees, and tree species) must conform with all applicable City standards and details
- Landscape planting with botanical designations provided in list form and grouped by type, symbol, and water use
- Design details and section drawings for all landscape architectural features such as wall fences, lighting, paving types and patterns, arbors, benches, fountains and other like features accurately showing size, scale, form, materials, and colors

Miscellaneous Details

- For single-family residential projects, proposed additions or new fencing close to property lines will require a survey
- Details for proposed trash enclosures and mechanical/utility equipment screening
- Details for proposed exterior lighting, with specifications for color and brightness, and a photometric plan
- Details for all proposed fences and walls, including elevations and materials
- Show distance to dead ends, detailed fire apparatus turn around when required, etc.
- Show the fire access road with minimum 26' in width. Contact the Fire Department for possible modifications.
- Disclose the construction material for the fire access road(s). Hard pavement is required per CA Fire Code Section 503.2.3.
- Detail the turning radii movements with dimensions (48'-6" exterior and 28'-0" interior).
- Show fire lane marking where parking is prohibited
- Show Emergency Vehicle Access (EVA) roads, when required
- Ground structures (including landscape) and building projects shall not encroach or impede the fire apparatus access requirements
- Private fire service mains and appurtenances shall be designed and installed in accordance with the City of Milpitas Engineering design guideline requirements and the NFPA 24. Design calculations and all the necessary design information for the water system to meet the domestic and fire flow requirements as per the City of Milpitas Engineering Division water design requirements shall be provided as part of the construction permit process.
 - Provide a preliminary utility plan and show and identify the location and quantity of hydrants throughout the private site and public streets. This applies to the on-site private streets as well as to the public streets.
 - No parking is permitted in front of fire hydrants. Hydrants located on streets (public or private street) shall have an unobstructed clearances of not less than 30 feet per CA Vehicle Code 22514. Provide striping per CA Vehicle Code 22500.1.
- Fire service water laterals for building sprinkler systems.
 - Provide preliminary utility plan and show the fire service water laterals for the automatic fire sprinkler system.
 - Provide and show the anticipated location of the FDC's/PIV's (Fire Department connection/post indicator valve). The devices shall be at a readily visible and accessible location off the fire obstruction.
- If scope of work includes signage, show sign locations, size (including dimensions on elevations), type of sign, types of materials and colors, and lighting method. Provide separate 8.5" x 11" information sheets showing each sign, colored graphics, size (including dimensions), illumination source, materials, and color.

Map Set.

- The tract or parcel map number, obtained from Santa Clara County, if possible
- The engineer's or surveyor's name and license number, on each sheet of the map
- The date, north point, and a written and graphic scale
- A vicinity map at a scale of one thousand feet to the inch, either drawn on or accompanying the tentative map, showing all streets and properties within a half-mile of the proposed subdivision
- Dimensioned boundaries of the proposed subdivision
- The locations, names, and existing widths of adjoining and contiguous streets, highways and ways
- The names and numbers of adjacent tracts and owner names of adjacent unplatted land
- Areas proposed for offer or dedication to the public (if any)
- The approximate boundaries of areas subject to inundation or storm water overflows, and the location, width, and direction of flow of all watercourses, flood control channels, and intermittent streams. If the project is within or adjacent to a flood zone, the flood zone designation, panel number, and outline of the floodplain, as determined from the current FEMA National Flood Insurance Program Flood Insurance Rate Map, shall be shown.
- Areas proposed for offer or dedication to the public (if any)
- The location of historical sites or landmark or primary historic resource trees, as identified by Council adopted resolutions or in the general plan
- The approximate widths, locations, and uses of all existing or proposed easements within the subdivision, including easements for drainage, sewerage, and public utilities. The location of any access restrictions and/or any existing waiver of access rights
- The approximate radius of each curve
- The approximate lot layout and dimensions of each lot and street within the subdivision
- The estimated area of each new or modified lot
- The locations, names, widths, approximate proposed grades and gradients, and a typical cross-section of all streets, trails, and access easements. Typical cross-sections shall be dimensioned and include: pavement, curbs, gutters, sidewalks, and locations of underground utilities. Utility clearances shall be dimensioned on the cross section.
- For subdivisions east of Piedmont Road, Evans Road and Park Victoria extended north of Jacklin Road; the average slope of each proposed lot based on existing contours as shown on Aerial maps on file in the office of the City Engineer.
- A map summary description, either drawn on or accompanying the tentative map, with the following information:
 - The name and address of record owner(s)
 - The name and address of subdivider
 - The name and address of civil engineer or land surveyor preparing the tentative map
 - Total gross acreage within subdivision boundary
 - Total number of lot(s) and/or unit(s)
 - A statement whether the subdivision will be for condominium purposes
 - Minimum lot size in square feet
 - The present general plan land use designations, including residential density where applicable
 - Existing zoning and use(s) of subject property
 - Proposed zoning and use(s) of subject property
 - Number of dwelling units expressed in dwelling units per net acre
 - The existing and proposed floor area ratio (FAR) for each new or modified lot
 - A statement of provisions for water
 - A statement of provisions for sewerage and sewage disposal
 - Floor zone designation

☐ Preliminary Title Report.

A preliminary title report, prepared within the last three months and bearing the current owner's name, is required for any application that proposes new floor area or a change to the General Plan or zoning of a parcel.

☐ Stormwater Control Plan Survey.

All applicants must complete C.3 Stormwater Data Form at http://www.ci.milpitas.ca.gov/pdfs/engDesignGuidelines/eng_dg_xiii_dataForm.pdf prior to application submittal.

☐ Environmental Information Form.

Large projects require the completion of the Environmental Information Form, which assists planners in determining whether any supplemental environmental studies are required for a proposed project. The required questionnaire can be found at <http://www.ci.milpitas.ca.gov/milpitas/departments/applications-forms-checklists/>.

☐ Additional Information.

These reports may be required to expedite the staff review, including environmental review and analysis.

- [Sewer Needs Assessment Form](#)
- Geotechnical/Soils report
- Traffic Impact Analysis
- Flood Study (AO Zone)

☐ Affordable Housing Ordinance Compliance.

All new residential development projects of ten units or more designed and intended for permanent occupancy shall construct 15 percent of the total number of dwelling units within the development as affordable units, except as otherwise provided by Chapter 1 of Title XII of the Milpitas Municipal Code.

- Designate the number of affordable units and their affordability levels on the plans.

For a non-residential development, or a project with a non-residential component, projects shall comply with Section 5 of Chapter 1 of title XII of the Milpitas Municipal Code. The Non-Residential Affordable Housing Impact Fee shall be paid prior to issuance of the building permit.

☐ Urban Lot Splits and Two-Unit Projects (SB 9).

SB 9 requires ministerial (staff-level) approval of certain housing projects and lot splits on a single-family (R1) zoned parcel. The law allows for two new types of development activities that must be reviewed ministerially without any discretion action or public input:

- Urban Lot Splits. A one-time subdivision of an existing, legally subdivided single-family residential (R1) lot into two lots.
- Two-Unit Projects. The development of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit on a legally subdivided lot.

To apply for an Urban Lot Split and/or a Two-Unit Project, please submit the following supplemental documents, in addition to the Universal Planning Application:

- SB 9 Eligibility Checklist
- SB 9 Owner Occupancy Affidavit (must be notarized)
- SB 9 Prior Tenancies Affidavit (must be notarized)
- Draft Deed Restrictions for Urban Lot Splits
- Draft Deed Restritions for Two-Unit Projects

Deed restrictions are required for both Urban Lot Splits and Two-Unit Projects. Please submit a draft of the deed restriction(s) to staff. The deed restriction(s) are required to be recorded with the County of Santa Clara and a copy must be submitted to the Planning Department.

Category - 2M



Development Review

HANDBOOK

Step-by-Step Guides,
Tools, and Resources to help
navigate the Development
Review Process of Milpitas



FOR RESIDENTS, DEVELOPERS, CITY STAFF, DECISION-MAKERS, AND ALL MEMBERS OF THE MILPITAS COMMUNITY



City of Milpitas
Development Review Handbook
www.ci.milpitas.ca.gov/planningdepartment/
 455 East Calaveras Blvd. Milpitas, CA 95035



Prepared for the City of Milpitas by
 Metta Urban Design
 Published 2022

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Section I: Introduction

Section I will orient you to the organization and format of the Development Review Handbook, including icons and interactive elements that will help you use the Handbook effectively. Section I will also introduce the key concepts and types of development review you should understand before continuing to the rest of the Handbook, which explains the development review process in detail.

PURPOSE AND INTENT

Getting a permit from the City can seem like a daunting task if you don't know where to start! The goal of this Handbook is to provide you with a general understanding of the entire process of getting a permit so that you know what to expect at each step of the process. This will streamline the review process and save you time and resources.

WHAT IS THE DEVELOPMENT REVIEW PROCESS?

The Development Review Process is every step that applicants go through in order to receive all the planning, building, engineering, and fire permits needed to build their project. It is important to understand this process to better plan ahead, manage expectations, and do your part in getting through each step.

WHO SHOULD READ THE HANDBOOK?

The Handbook is intended to serve as a guide for Homeowners, Developers, City Staff, Decisions Makers, and our Community as each play a crucial role in the process. Anyone who is interested in making changes to their property needs to understand what is expected of them throughout the process in order to avoid delays and extra costs. In this guide, you will learn how to navigate each step of the process, who the key participants are, and what City Staff and Decision Makers are looking for while reviewing your project.



Handbook Organization:

1. Introduction

- Overview
- Types of Permits & Review
- Timelines & Environmental Review
- Resources

2. The Development Review Process

- Overview of the Process
- 5 Process Steps in Detail

3. Roles and Responsibilities

4. Policies and Regulations

- Introduction to Planning & Zoning
- Planning with the Environment

5. Appendix

- Checklists & Project Tracker

I. INTRODUCTION

HOW TO USE THIS GUIDE

This guide should be used as a starting point for understanding the Development Review Process, which can be complex and vary significantly depending on your project.

The Handbook identifies key topics the applicant should understand in order to successfully move through the process. The Handbook also identifies potential pitfalls, common mistakes, and complicating factors that may prolong the review process or lead to a denial of the project.

Keep an eye out for the following icons to direct your attention to key aspects of the process:



HELPFUL GUIDES WITHIN THE HANDBOOK:



This icon highlights key terms on specific topics within the Development Review Process.



Sometimes an environmental review, known as CEQA, is required for a project. This icon indicates when to consider CEQA in your application.



This icon points out topics that often require a discussion with Planning Staff, and is a reminder to ask for help.



If viewing this document digitally, click on this icon to open the corresponding webpage on your web browser.



If viewing a digital version of this document, click on this icon to "jump" to another page with more information.

TYPES OF PERMITS & REVIEW

TYPES OF PERMITS

A permit is documentation from the City that you can proceed with your construction project. There are many types of permits, however there are two main categories: **Planning and Building Permits.**

- Planning Permits** require a nuanced review, sometimes requiring public hearings and environmental review. *You first need Planning approval of the project design before proceeding with Building approval.*
 - Building Permits** are more straightforward with little room to deviate from the standards required by the City. Building approval ensures the project is built correctly to the city code for safety.
- Engineering Permits** (e.g., Encroachment Permits for off-site improvements) and **Fire Permits** (e.g., Fire Sprinkler and Fire Alarm Permits) may also be required during the Building Review phase of the project.

TYPES OF REVIEW

Most "complex projects" require approval from both **Planning and Building Department reviews prior to construction.** This means you will need to receive a Planning permit and all permits required during the Building Review phase, including Building, Engineering, and Fire Permits.

More details on Complex Projects and Planning and Building Review are highlighted on the following pages.



Planning Review: DESIGN
Focuses on design, minimizing impacts to surrounding neighborhoods, and implementing the community's vision for the City.



Building Review: ENGINEERING DESIGN & CONSTRUCTION
Ensures safe construction.

I. INTRODUCTION



PLANNING REVIEW

Planning Review involves reviewing applications to ensure the proposed project is consistent with adopted planning documents and regulations, including the Milpitas General Plan, Specific Plans, and the Zoning Ordinance for permit approvals.

The main types of Planning Permits for complex projects include a **use permit**, **site development permit**, **tentative map**, and **variance**. Reviewing projects for consistency with planning documents and regulations ensures that the City evolves over time in a way that is in alignment with the community values and City policies.

ENTITLEMENT

In Permit Applications and Planning Documents, you will often see the word “entitlement.” An entitlement is the approval from Planning to develop your property for a desired purpose. Development approvals may be required if you are building a new building, expanding or making changes to an existing building, or changing how you use an existing property.

TABLE 1: PLANNING PERMITS FOR DESIGN PROJECTS

USE PERMIT	Allows properties to be developed with land uses not otherwise permitted within the particular zoning district. Required for when you are changing use of the land.
SITE DEVELOPMENT	Allows for the physical improvement of a site. Required for new buildings and structures, grading, and other site improvements such as parking lot modifications, drainage and street improvements, and landscaping.
TENTATIVE MAP	Allows for the division of land to develop and potentially sell each resulting parcel individually. A Tentative Map shows the design and improvement of a proposed subdivision and the existing condition on and around it.
VARIANCE	Sometimes sites have special physical conditions which make application of certain zoning standards overly burdensome. In situations like this, an exception from a physical standard of development can be granted to allow minor deviations from the Zoning Ordinance.



BUILDING REVIEW

Building Review ensure plans demonstrate that the built project will be “up to code” to ensure the health, safety and welfare of the City of Milpitas citizens. Minimum standards are defined by building codes, engineering standards, state law and other City policies.

Building permits relate to the construction of buildings or parts of buildings, including additions, new construction, or remodels, including upgrades to building systems, such as structural, electrical, mechanical, or plumbing projects.

Engineering Permits (e.g., Encroachment Permits for off-site improvements) and **Fire Permits** (e.g., Fire Sprinkler and Fire Alarm Permits) may also be required during the Building Review phase of the project.

If you are uncertain whether your project requires both planning and building review, ask a Planner!

TABLE 2: BUILDING PERMITS FOR CONSTRUCTION PROJECTS

The following is a sampling of different types of building permits. This list is not complete with all types of building permits.

BUILDING	- Residential Bathroom Remodel - Existing Fireplace Reconstruction - Kitchen Remodel	- Re-Roof - Skylight Installation - Swimming Pool Removal - Photovoltaic (Solar) Panel Installation
MECHANICAL	- Air Conditioning (No Electrical Upgrade) - Air Conditioning & Electrical Upgrade - Furnace (With new or repaired gas line)	
ELECTRICAL	- New Electrical Service Panel - Temporary Power Pole - Electrical Lights, Switches, or Receptacles (no electrical upgrades) - Electrical Lights, Switches, or Receptacles	- Electrical vehicle charging System (ventilation not required) - Electrical vehicle charging System (ventilation required) - Photovoltaic (Solar) Panel Installation
PLUMBING	- Irrigation Sprinklers - Sewer Line - Water Heater	- Water Piping - Water Service Line

More information on Building Permits can be found in the Appendix: Pages 66-69

I. INTRODUCTION

COMPLEX PROJECTS

Complex Projects are the focus of the Handbook and are subject to the full Development Review Process. Complex Projects include multi-step approvals for permits through:

- Departmental Reviews
- Environmental Impact Review (CEQA) 
- A Public Hearing

'COMPLEX PROJECTS' THAT REQUIRE THE DEVELOPMENT REVIEW PROCESS MAY INCLUDE...

- Remodeling a home or a commercial space
- Building a new home
- Building a larger development

This Handbook is your first step towards understanding the Development Review Process for Complex Projects. The following sections of this handbook provide more information regarding the process, key players, and review criteria that apply to your project depending on your project scope.



DETAILED IN SECTION II

Follow the steps in Section II for a detailed overview of Complex Permits and the Development Review Process.

SIMPLE PROJECTS

Simple Projects are different from Complex Projects, as Simple Projects *do not require an applicant to go through the full Development Review Process*. Because Simple Projects are smaller in scope, they can be administratively approved by City staff without a public hearing and are not subject to an environmental review.

SOME EXAMPLES OF 'SIMPLE PROJECTS':

RESIDENTIAL

- Single Story Addition/Remodel
- Garage Conversion/Remodel
- Accessory Dwelling Units (ADUs)
- Fences & Pools
- Re-Roofing
- Interior Renovations



COMMERCIAL/INDUSTRIAL

- Interior Alterations/Modifications for Office, Retail, and Restaurants
- Tenant Improvement Projects
- Demolition Projects
- Small monument signs
- Hazardous waste storage



For more information on Simple Project Permitting & Review and more examples of "Simple Projects" - jump to Appendix: Building Permits; on Pages 66-69 to better understand the process and how this will apply to your project, permit applications, and fees.

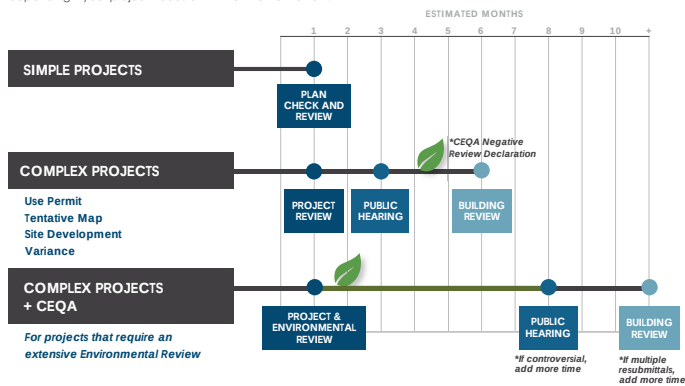


Unsure if your project is considered a Simple or Complex Project type and what permits are required? All questions can be answered by the Planning Department online or in person!

I. INTRODUCTION

HOW LONG WILL MY PROJECT TAKE?

Permitting timelines vary based on the scale and scope of project. Timelines largely depend on how quickly the applicant resubmits, meets all local/regional/state regulations, and addresses staff's comments. It also depends on input and feedback received from citizens, advisory boards, and decision-makers. Project review could involve multiple rounds of submittals and reviews, and public hearing could involve multiple hearings. The following chart shows example timelines based on the type of permit review, and is meant to illustrate relative amount of time needed to reach approval depending if your project needs an Environmental Review.



PERMITTING & CEQA

The California Environmental Quality Act (CEQA) is the State's most important and comprehensive law to protect the environment. The State adopted CEQA in 1970 to establish a higher standard of environmental protection – because it's important we take care of our clean air, water, and earth.

CEQA requires cities to measure, document, and disclose the environmental impacts of development projects and limit or avoid those impacts when possible. CEQA applies to all projects that require a discretionary action (decision that requires the exercise of judgment or deliberation) by a government agency and will impact the environment.

Many small projects are exempt from CEQA. However, projects that aren't exempt require further study to determine if they will have "significant" impacts on the environment. A Negative Declaration or Mitigated Negative Declaration can be prepared if the project will not result in "significant" environmental impacts. However, a full Environmental Impact Report (EIR) is required if impacts cannot be mitigated.

The CEQA process can significantly impact the Development Review Process since it can take months and sometimes over a year to complete. If CEQA analysis is required, cities cannot approve the project without completing the CEQA process and certifying the required CEQA document.



This icon will indicate when CEQA must be considered during each step of the Development Review Process.

Jump to CEQA in Section IV: Page 52 for more detailed information on these criteria.

I. INTRODUCTION

RESOURCES

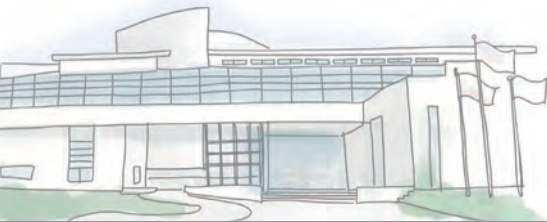
The Development Review Process requires substantial coordination between property owners/applicants, City staff, and outside agencies. **The Planning staff should generally be the first point of contact in the Development Review Process to ensure your project is consistent with the City's zoning and confirm whether a planning permit is required prior to a building permit.** The Building Safety & Housing Department at the Permit Center will be your point of contact once you are ready to start your Building Permit Process.

MILPITAS CITY HALL

455 East Calaveras Blvd.
Milpitas, CA 95035

CITY OF MILPITAS WEBSITE

<https://www.ci.milpitas.ca.gov/>



If using a digital version,
click on any hyperlink
or email address to
open in your browser.



PERMIT CENTER

www.ci.milpitas.ca.gov/one-stop-permit-center-2

The Permit Center is open to apply for and obtain certain types of residential or commercial building permits, schedule inspections, research permits, and see Planning documents. Visit in-person at City Hall or online.

Monday - Friday: 8am - 5pm
Closed Thursday: 8am - 10am
Friday: Virtual Services
PHONE: (408) 586-3240

EMAIL: buildingpermitcenter@ci.milpitas.ca.gov

PLANNING DEPARTMENT

<https://www.ci.milpitas.ca.gov/planningdepartment/>

Monday - Friday: 8am - 5pm
Closed Wednesday from 3pm - 5pm

PHONE: (408) 586-3279

EMAIL: planningdepartment@ci.milpitas.ca.gov

CITY ZONING ORDINANCES

https://library.municode.com/ca/milpitas/codes/code_of_ordinances?nodeId=ITXIZOPLAN_CH10ZO

APPLICATIONS AND FORMS

<https://www.ci.milpitas.ca.gov/milpitas/departments/applications-forms-checklists/>

ENVIRONMENTAL DOCUMENTS (CEQA)

<https://www.ci.milpitas.ca.gov/milpitas/departments/environmentaldocuments/>

DATA, ZONING, AND MAPS

<https://www.ci.milpitas.ca.gov/milpitas/departments/maps/>

ENGINEERING DEPARTMENT

<https://www.ci.milpitas.ca.gov/milpitas/departments/engineering/>

PHONE : (408) 586-3300

ENGINEERING DIRECTOR/CITY ENGINEER : (408) 586-3301

TRAFFIC ENGINEER : (408) 586-3324

CAPITAL IMPROVEMENT PROJECT MANAGER : (408) 586-3355

LAND DEVELOPMENT PRINCIPAL ENGINEER : (408) 586-3316

SENIOR CONSTRUCTION INSPECTOR : (408) 586-3252

LAND DEVELOPMENT SERVICES

<https://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/>

OFFICE OF ECONOMIC DEVELOPMENT

EMAIL: econdev@ci.milpitas.ca.gov

PHONE: (408) 586-3058

BUILDING SAFETY & HOUSING

<https://www.ci.milpitas.ca.gov/milpitas/departments/building-and-safety-department/>

INSPECTION SERVICES

<https://www.ci.milpitas.ca.gov/milpitas/departments/building-and-safety-department/inspection-services/>

PLAN REVIEW SERVICES

<https://www.ci.milpitas.ca.gov/our-government/plan-check-services/>

ONLINE PERMITS

<https://trakit.ci.milpitas.ca.gov/ETRAKIT3/login.aspx?it=public&rd=-/PermitApplication/confirmation.aspx>

ELECTRONIC PLAN SUBMITTAL

<https://www.ci.milpitas.ca.gov/submittal-procedures/>

ONLINE PERMIT FEE PAYMENT

<https://trakit.ci.milpitas.ca.gov/ETRAKIT3/login.aspx?it=public&rd=-/ShoppingCart.aspx>

ONLINE PLAN REVIEW STATUS

<https://trakit.ci.milpitas.ca.gov/ETRAKIT3/Search/permit.aspx> <https://www.ci.milpitas.ca.gov/our-government/plan-check-services/%20%E2%80%8E>

BUILDING PERMIT FEE & SCHEDULE

https://www.ci.milpitas.ca.gov/_pdfs/bld_fee_schedule.pdf

CALIFORNIA BUILDING CODE

<https://www.ci.milpitas.ca.gov/milpitas/departments/adopted-building-municipal-codes/>

FIRE DEPARTMENT

<https://www.ci.milpitas.ca.gov/milpitas/departments/fire/>

FIRE PREVENTION SERVICES

<https://www.ci.milpitas.ca.gov/milpitas/departments/fire/fire-prevention/>

Section II: Development Review Process

This section provides detailed information about the Development Review Process, descriptions of the five major steps of the process, and the people involved in each step.

WHAT IS THE DEVELOPMENT REVIEW PROCESS?

OVERVIEW

The Development Review Process is the entire process applicants go through in order to receive all planning and building permits needed for their project. **It is important to know the Development Review Process to better plan ahead, manage expectations, and navigate complex project timelines.** This process can vary significantly, depending on the complexity of the project.

Complex Projects involve multiple City departments or agencies reviewing the application, performing an environmental review, and a public hearing for approvals.

Simple Projects only require a brief application review (i.e. building permit or administrative planning permit + building permit) with City Departments at the One-Stop Permit Center - and do not require the full Development Review Process (environmental review and public hearing).

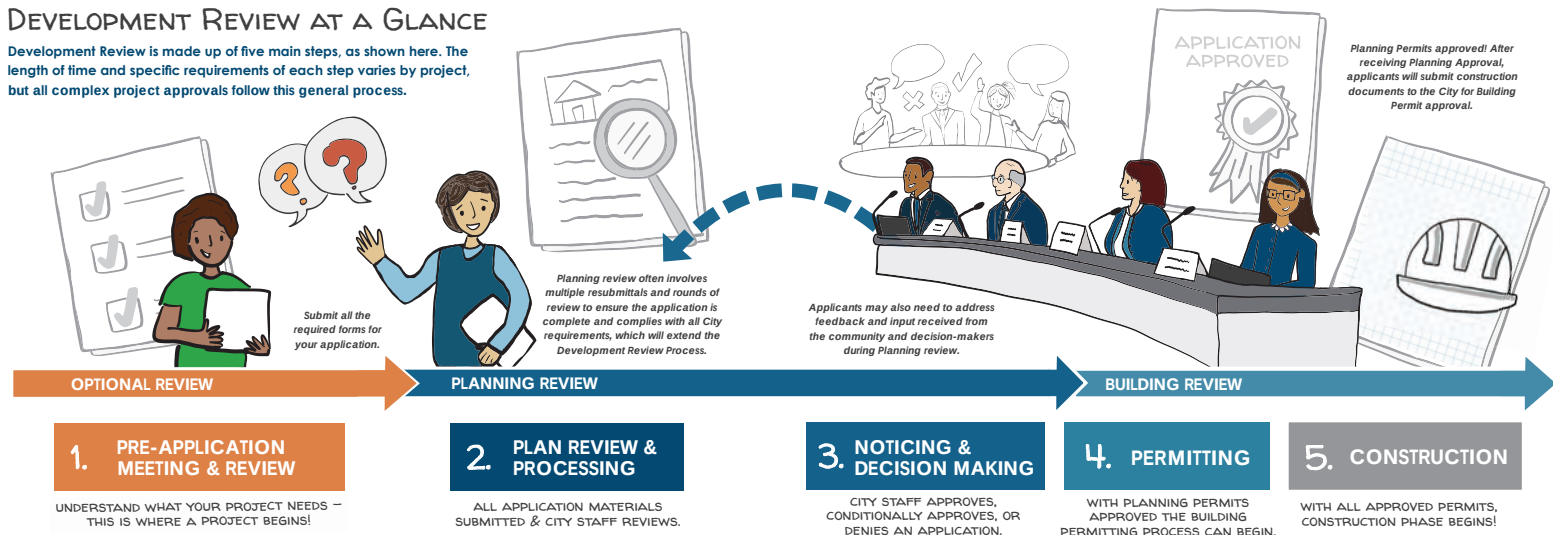
STEPS OF THE DEVELOPMENT REVIEW PROCESS:

1. **PRE-APPLICATION MEETING & REVIEW** (OPTIONAL)
2. **PLAN REVIEW & PROCESSING**
3. **NOTICING & DECISION MAKING**
4. **PERMITTING**
5. **CONSTRUCTION**

II. DEVELOPMENT REVIEW PROCESS

DEVELOPMENT REVIEW AT A GLANCE

Development Review is made up of five main steps, as shown here. The length of time and specific requirements of each step varies by project, but all complex project approvals follow this general process.



II. DEVELOPMENT REVIEW PROCESS

STEP 1: PRE-APPLICATION MEETING

While not required, a Pre-Application meeting allows you to review the application requirements and preliminary plans with a planner prior to formally submitting your application, to understand the City's development standards, requirements, project fees, and the estimated timeline for the entitlement process.

WHAT TO EXPECT

During this meeting, you will go over your plans, a checklist of the application requirements, the City's development standards and requirements, and any specific issues that should be addressed in the application.

KEEP IN MIND...

- Pre-Application meetings are helpful for complex projects.
- Depending on the scope of the project, other city departments also might be involved.
- This step can be instrumental in identifying and addressing problems early on to save time and money in the long-run.
- Although conceptual plans are acceptable at this stage, the more information you provide, the more City staff will be able to conduct a more thorough review and provide more detailed comments.

KEY PLAYERS IN STEP 1:

THE APPLICANT works closely with a member (or members) of the PLANNING STAFF to make sure the application is complete with all required materials before submitting.

LEARN MORE ABOUT THE KEY PLAYERS IN SECTION III: ROLES & RESPONSIBILITIES ON PAGE 32.

APPLICATION REQUIREMENT CHECKLIST

Required items for the Universal Planning Application:

- ☐ Project Description or Justification
- ☐ Standard Plan Set
- ☐ Site Plan
- ☐ Existing Conditions Plan / Demolition Plan
- ☐ Building Floor Plans
- ☐ Building Elevations
- ☐ Building Sections
- ☐ Any other items as required by the Planning Department

www.ci.milpitas.ca.gov/wp-content/uploads/2021/11/Universal-Planning-Applicaion-Revised-Nov-21-pdf-fillable.pdf

? The application submittal requirements vary from project to project depending on the scope of work, so it is important to confirm the items required for your specific project with a Planner prior to submitting an application. Submitting an incomplete application may delay your project.

II. DEVELOPMENT REVIEW PROCESS

STEP 2: PLAN REVIEW & PROCESSING



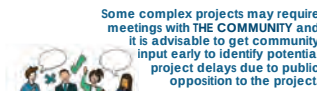
After the application is formally submitted, Planning staff and other City Department staff will review the submitted materials to make sure all necessary information is included. Within 30 days of submitting a complete application, Planning Staff must tell you if your application is complete. If it does, the City will review your project for consistency with plans, policies, and codes. Success of Step 2 depends on how well the applicant works with the City to ensure that the project meets all City requirements and policies and contributes to the health, safety, and welfare of the community.

- ☐ Email your applications to: planningdepartment@ci.milpitas.ca.gov or meet with a planner to go over your application materials and make sure that submittal requirements are met.
- ☐ Application fees are due at the time of submittal.
- ☐ After completeness is determined, prepare for multiple rounds of review, it can be a challenge to meet all requirements and address all comments on the first application.
- ☐ The Planning Department will contact you 30 days after your application was submitted to let you know the planner assigned to your project and if your application is deemed complete or missing any required information.
- ☐ Factor the time it takes to resubmit the application materials and make necessary revisions.
- ☐ For large projects, a study session with decision-makers may be recommended to receive feedback for public hearings.
- ☐ The Engineering Dept. will review how the proposed project will impact the City's right-of-way and existing utility infrastructure, and prepare conditions of approval for the project.

KEY PLAYERS IN STEP 2:



PLANNING STAFF helps applicants with project completeness for development review and coordinates with other city departments.



CITY STAFF TECHNICAL EXPERTS from Engineering, Building Safety & Housing, and Fire & Police assist planning staff in reviewing submitted application materials.



THIS IS THE LONGEST STEP OF THE PROCESS!

Failing to address all the City's comments will result in additional rounds of review, and adds significant time to the review process.

PROJECT "COMPLETENESS"

A term of art and a legal requirement, your application must be "complete" before it can be evaluated. If information is missing, Planning staff will provide a letter with materials you need to submit. Failure to submit the requested materials will prevent your project from being reviewed and deemed complete.

CEQA

If your project requires CEQA review, you will be notified of this Step by a Planner, if not during the Pre-Application Meeting.

FOR MORE INFORMATION ON CEQA SEE SECTION IV: PAGE 52

Applications, Forms, and Checklists
www.ci.milpitas.ca.gov/milpitas/departments/applications-forms-checklists

Pay Permit Fees Online
www.ci.milpitas.ca.gov/milpitas/departments/fees/

II. DEVELOPMENT REVIEW PROCESS

STEP 3: NOTICING & DECISION-MAKING



Project applications must be reviewed by the Zoning Administrator, Planning Commission or City Council during a public hearing on the project. A public hearing is a formal meeting held to receive testimony from all interested parties on a proposed development project, policy, or action taken by an advisory or a decision-making body. All planning permits require the City to provide public notice to neighboring property owners giving them an opportunity to provide input before the City decides on a project.

WHAT TO EXPECT

Once your project is complete and complies with all City requirements, Planning staff will first schedule the date for your public hearing and prepare any required mailings, postings, and publications to notice the hearing in accordance with State law. Planning staff will then prepare the required staff report, conditions of approval, and findings of approval. Finally, at the hearing, Planning staff will present the project to the hearing body with a staff recommendation and answer any questions related to the project.

KEEP IN MIND...

- Projects requiring Planning Commission approval only require one hearing, but projects requiring City Council approval require two hearings.
- While not required, your attendance to the public hearing is strongly encouraged. You will have the opportunity to share the story behind your project and your project objectives. Decision-makers will also sometimes direct questions to the applicant
- The hearing body may approve, approve with changes, deny, or continue the application.
- If additional information is needed, or the hearing body needs more time to make a decision, the hearing body may not make a decision and "continue" the matter for a subsequent hearing.

KEY PLAYERS IN STEP 3:

PLANNING STAFF prepare the required documents, schedule the hearing date, and present the project to the hearing body.



DECISION MAKERS will either approve, conditionally approve, or disapprove an application in accordance with the city codes and vision. Decision makers are the City Council, Zoning Administrator, & the Planning Commission.

See *'Who Decides', ruling actions, and meeting information on the following pages of Step 3: Noticing & Decision-Making.*

CONDITIONS OF APPROVAL

Conditions of Approval are requirements placed on a project by the City, for projects to conform to State, Federal or local laws. These may include regulations enforced by various agencies and departments. Planning Staff will work with internal staff to collect and review draft conditions of approvals, in addition to working with the project applicant to address any concerns and conflicts before finalizing the staff report.

SCHEDULE & NOTICE HEARINGS

When a notice of a public hearing is required, the notice must be given at least 10 days before the hearing date. The notice will be published in the City's local newspaper, posted within the project site, and mailed to neighboring residents. Notice may also be given to the Milpitas Unified School District and any other local agencies that provide important facilities and services to the project.



If a Negative Declaration or Environmental Impact Report was prepared for the project, a public review period of the environmental document ranging from 30 to 60 days, and a public hearing is required. The Planning Commission and/or City Council will consider the environmental document and review the environmental determination of the project before a final decision on the site development and other applications related to the project is made.

FOR MORE INFORMATION ON CEQA SEE SECTION IV, PAGE 52.

II. DEVELOPMENT REVIEW PROCESS

STEP 3: NOTICING & DECISION-MAKING

IF YOUR PLANNING PERMIT IS...

APPROVED

CONTINUE TO STEP 4

You are one step closer! Go to Step 4.

REPEAT STEP 2

NOT APPROVED

Planning staff will work with you to get the project to a place where decision-makers can support it - but if your project is denied, let's try again!

DECISION APPEALS

Any person aggrieved by a final decision of a board, commission, or department head, whether the applicant or member of the public, may appeal the decision to the City Council by filing written notice of the appeal with the City Clerk within 12 calendar days of the date of said decision and paying the required fee. The next higher decision-making body will hear your appeal. However, the City Council's decision is final and cannot be appealed.

WHO DECIDES?

DECISION MAKER ROLES,
RULING ACTIONS,
& MEETING INFORMATION



	PLANNING STAFF	ZONING ADMINISTRATOR	PLANNING COMMISSION	CITY COUNCIL
WHO	Planning Staff (Current Planning)	Approves Site Development Permits, Minor Site Development Permits, Minor Conditional Use Permits and other minor project reviews.	Seven members: Appointed by City Council (Milpitas Citizens and Registered Voters)	Five elected officials, including the Mayor and Vice Mayor
ROLE	"Counter" hours, answer applicant questions.	Enforces land-use code within Milpitas, reviews applications.	Considers the overall project, including building form, color and material, landscaping, use of property, and specific issues related to a project.	Establishes and reviews ordinances and makes policy decisions related to land use applications.
ACTION	Administrative Review (Approve or Deny) Simple Permits at the Permit Center	Takes action on permits requiring a Zoning Administrator Hearing	Takes action late in the Development Review Process and has the authority to approve, deny, or modify a project, and may request more information or studies from the applicant.	For site development permits on the hillside, subdivisions, and any requests to amend a land use plan the City Council makes the final decision on a project after the Planning Commission provides them with a recommendation.
MEETS WHEN	Office hours	9:00 a.m. Second Thursdays	7:00 p.m. Second and Fourth Wednesdays	7:00 p.m. First and Third Tuesdays
MEETS WHERE	Weekly staff meetings			

Council Chambers, Milpitas City Hall
455 E Calaveras Blvd.

II. DEVELOPMENT REVIEW PROCESS

STEP 4: PERMITTING

**Congratulations, your planning permits have been approved!**

You are not quite done yet. You will need to obtain building permits.

The Building Safety and Housing Department issues building permits by reviewing construction plans to make sure the project complies with applicable State and local laws. A review of architectural, structural, plumbing, mechanical, electrical, and life safety systems may be included during this process. At this time, other City Departments and Outside Agencies may need to review the project as well.

If applicable, you will need to obtain Engineering Permits (e.g., Grading Permits and Encroachment Permits for off-site improvements) and Fire Permits (e.g., Fire Sprinkler and Fire Alarm Permits) during this step. The process for obtaining engineering and fire permits is similar to the building permit process.

WHAT TO EXPECT

You will submit construction drawings, application materials, and forms to the Permit Center and pay for plan check fees. Review time depends on the type of project. If your building permit application is approved, you will pay the required building permit fees, and then your permit will be issued.

KEEP IN MIND...

- If a department does not approve the review, comments will be sent to you and you will have to resubmit construction documents with the corrections for review.
- Permit review time and fees depend on the project scope.
- This is when the City collects various development impact fees (e.g. public art fee, school impact fee, utility connection fees, etc.)

BUILDING PERMIT PROCESS:

- **Submit Building Permit Application**
The Permit Technician will process the application and let you know your required plan check fees. Pay your fees online or at the Permit Center.
- **Plan Review**
Plan Reviewers will review your plans and indicate if you need to make any adjustments for building code compliance.
- **Permit Approval**
Your Project Coordinator will alert you that your building permits have been approved or need to be resubmitted.
- **Issuance**
The Permit Technician will let you know what your required permit fees and any pending documents required. Pay fees and provide required documentation to be issued your newly approved building permits.
- **Construction & Inspection, Final Approval, and Certificate of Occupancy**
See Step 5: Construction, on the following pages 30-31.

CONCURRENT REVIEW

Concurrent Review is when Planning and Building permit applications are processed at the same time at the applicants' own risk as managing the fees, applications, and timelines can be challenging. Concurrent review can add a significant amount of time and cost to the Development Review Process if any changes to the project are required. Concurrent Review is usually pursued by Developers and General Contractors and is not recommended for residential homeowners.

KEY PLAYERS IN STEP 4:

APPLICANT submits building permit application & pays fees to the Permit Center.

A PERMIT TECHNICIAN at the Permit Center will review the application for completeness & accepts plan check fees from applicant.

A PROJECT COORDINATOR will be assigned to your project and will be the main contact for the applicant for the plan review process.



PLAN REVIEWERS from Building Safety & Housing, Fire, Land Development & Engineering, & Planning review building permit submittal documents and drawings.

JUMP TO APPENDIX PAGES C6-C9 FOR MORE DETAILED INFORMATION ON BUILDING PERMITS & APPLICATIONS

II. DEVELOPMENT REVIEW PROCESS

STEP 5: CONSTRUCTION

At this stage, you have obtained your Planning and Building permits. You are now entering into the construction and inspection phase of the Building Permit Process with the Milpitas Building Safety and Housing Department. It is now time to begin your construction, schedule inspections, and show up for your inspections. The City will inspect your construction in that you build what was approved and planned. Construction inspections from the City ensures building codes have been met in the field and the site and building are safe for occupancy after construction is completed. The Engineering Dept. also coordinates with inspectors from Public Works to ensure that construction of any required public improvements goes according to plan. Following construction and inspection, inspectors verify that your project has been constructed in compliance with the approved plans, and your building permits will be finalized. You will receive your Certificate of Occupancy, and can now enjoy your finished project!

KEEP IN MIND FOR THE CONSTRUCTION PHASE:

CONDITIONS OF APPROVAL You may have some "Conditions of Approval" that are relevant to this construction phase - make sure that you comply with all the Conditions noted on your approved permits during construction.

REVISION APPLICATION If there are any changes to your building plan or design after you have received your approved permits, you will need to submit a revision application. This revision could trigger another Planning Review or Building Permit Review, which will extend the timeline of your project, and will require additional review and fees.

PRE-CONSTRUCTION MEETING

For Larger Developments and Commercial Projects: A pre-construction meeting will allow the project team to coordinate with the City to understand how the City will work with the project team during construction and give advice on how to make the inspection process before, during, and after project construction go smoothly. Be prepared to discuss the mandatory requirements for the project, including on-and off-site stormwater pollution prevention plan, traffic control, truck access and routes, and any special requirements for the project.

For Residential Projects: A pre-construction meeting is generally not necessary for homeowner applicants and is not required. However, should your General Contractor like to discuss necessary details with the City, they have the option to meet for a pre-construction meeting to address any concerns.

PUBLIC IMPROVEMENTS

When public improvements are required as part of the project, you must submit Public Improvement Plans to the Engineering Department following Construction and Inspection. The Engineering Department ensures that all work that will be done within the City's right-of-way meets the City's Standards and Specifications. Once the plans are approved, the Engineering Department will issue an Encroachment Permit that will allow the applicant to begin construction. The Engineering Department will coordinate with you to obtain as-builts of the public improvements for the City's record, which is then taken to the City Council for acceptance.

CERTIFICATE OF OCCUPANCY

A Certificate of Occupancy, or sometimes referred to as a "C of O" is a confirmation that your project has met all the necessary building codes, inspections, and conditions of approval. Your Certificate will include the intended legal use of the project as a retail, commercial, industrial, or mixed-use building. Engineering and fire permits must be approved prior to receiving a Certificate of Occupancy. This Certificate will be mailed to the applicant after the final inspection is passed, and you are now legal to occupy (move into) your newly constructed project.

Section III: Roles and Responsibilities

This section provides a detailed account of the Roles & Responsibilities of each key player, in addition to what is required of the key players at each step of the process.

ROLES & RESPONSIBILITIES AT A GLANCE

Each key player within the Development Review Process has distinct responsibilities that involve coordination with other people within the process.

THE APPLICANT

This is you! Develop plan, hire professionals, submit applications, materials, & fees. Works closely with Planning Staff.



PLANNING STAFF

Guides you through the permitting process, reviews planning permit applications, and works with city departments, decision makers, and the community for project approvals.



DECISION MAKERS

Approves new developments and planning permits that are in accordance with the city's codes and vision.



OTHER CITY DEPARTMENTS

Ensures all new buildings and developments are safe for the community and adequately served by infrastructure by reviewing applications, issuing permits, inspecting sites, and providing Certificates of Occupancy.



THE COMMUNITY

Provides feedback on proposed projects through public hearings or written statements.



III. ROLES & RESPONSIBILITIES



THE APPLICANT / HOMEOWNER

Responsibility: Project Owner

The project applicant is responsible for coordinating and submitting the project application including plans, technical reports, specifications and fees associated with both the planning and building review in the Development Review Process.

It is crucial for project applicants to allocate adequate time to prepare quality plans and studies for submission to the City to make sure all requirements are met.

Please work closely with your design team, which may include property owners, architects, designers, engineers, contractors, and technical experts in preparing the project applications and studies. Also, meet with nearby residents, businesses, property owners, and neighborhood associations to inform them of the proposed project. Everything moves more quickly and smoothly when applications are complete, thorough and thoughtful.

1. **Pre-Application Meeting & Review (optional)**
 - Review your project with planning staff.
 - Complete a checklist of the application requirements, the City's development standards and requirements, and any specific issues that should be addressed in the application.
2. **Plan Review & Processing**
 - Meet with a planner to go over your application materials and to determine project "completeness."
 - Application fees are due at the time of submittal.
3. **Noticing & Decision Making**
 - Hearing Bodies will either Approve, Conditionally Approve, or Deny your Application.
 - If your application is denied, you must work with Planning Staff and address comments to resubmit your application (Step 2).
4. **Permitting**
 - Submit Building Permit Applications & Pay Fees.
 - Work with the Permit Technician & Project Coordinator.
 - If your Building Permit is not approved, you must address comments and resubmit.
5. **Construction**
 - Begin your construction, keep in touch with the city, and show up for your inspections.
 - Be aware of your Conditions of Approval during construction.

APPLICANT BEST PRACTICES:

Design

- ☐ Select a qualified development team and consultants for the proposed project.
- ☐ Design the proposed project with selected designer/consultant (City staff is not responsible for designing your project)

Coordinate

- ☐ Work with outside utilities to identify points of connection and needed infrastructure (the City does not provide this information).

Revise

- ☐ Refer questions, issues, and revisions associated with a filed project application to the assigned Planning staff.
- ☐ Notify the assigned Planning staff if there is a major change to a proposed project under review.
- ☐ Work collaboratively to identify and propose common solutions.

Research

- ☐ Gather information on the project site, its history and existing conditions.
- ☐ Review the General Plan, Specific Plans, Design Guidelines, Municipal Code and Past Approvals.

Visit

- ☐ Visit the project site at different times of the day (day and night and weekday and weekend) to observe the site and surrounding neighborhoods for patterns in issues like parking, lighting, and noise.

Plan

- ☐ Prepare a plan that is compliant with code and design requirements. A written project description accompanying the preliminary site plan should also be included.
- ☐ Follow City policies, procedures and code regulations associated with the proposed project.
- ☐ Submit complete and accurate project applications.

Talk to Neighbors

- ☐ Meet with nearby residents, businesses, property owners, and neighborhood associations to inform them of the proposed project and listen to their input and suggestions.

III. ROLES & RESPONSIBILITIES



PLANNING STAFF

**Responsibility:
Project Manager**

Planning Staff will help guide you through the Development Review Process and assist in getting your project approved. The planner is the central point of contact to coordinate and communicate comments between other City departments, the applicant, and hearing bodies.

The Planning Department promotes informed decision-making by communicating its analysis and recommendations to decision makers through reports and presentations and when necessary, facilitating community meetings.

1. Pre-Application Meeting & Review (optional for Applicant)

- Identify all materials, drawings, and paperwork necessary for project completeness.
- Show applicant how to access the General Plan, Zoning information, and design guidelines.
- Offer recommendations to streamline application.

2. Plan Review & Processing

- When an application is submitted, assign a member of Planning Staff to the project.
- Distribute the application to other city departments with a request for comments and conditions.
- Review projects for compliance with City codes and policies and the Zoning Ordinance.

3. Noticing & Decision Making

- Prepare documentation for public hearing, schedule public hearing date, and prepare public notices.
- Provides a recommendation to the City Council or Planning Commission to approve, approve with conditions, or deny the project.
- If the project does not comply with the standards of the City, Planning Staff is required to explain that to the hearing body.

4. Permitting

- While Planning Staff is the project manager during Planning Review (Steps 1-3), they play a supporting role to Building Staff during Building Review to ensure that building permit applications comply with the conditions of approval of the planning permit.

5. Construction (n/a)

PLANNING STAFF BEST PRACTICES:

- ☐ Address all Applicant's questions
- ☐ Provide suggestions and advice for project applicants
- ☐ Present projects to the Planning Commission and City Council
- ☐ Communicate with interested community members
- ☐ Review projects for compliance with City's codes and standards
- ☐ Make recommendations based on findings of approval or denial
- ☐ While Planning Staff can approve administrative (i.e., staff-level) planning permits, they are not responsible for getting your discretionary planning permit approved by the Zoning Administrator, Planning Commission, or City Council.

**About the Planning Department**

The Planning Department is responsible for two primary functions related to land use planning and development in Milpitas: **Current and Long-Range Planning**.

Current Planning consists of helping residents, business owners, architects, and developers understand and follow the City's policies and regulations for development and facilitating the Development Review Process.

Long-Range Planning involves preparing, maintaining, and implementing the City's General Plan, associated Specific Plans, and other planning and policy documents that guide development.

Location: City Hall
455 E Calaveras Blvd. Milpitas CA 95035
Phone: (408) 586-3270
Email: planningdepartment@ci.milpitas.ca.gov
Hours: Monday - Friday: 8am - 5pm,



Milpitas Planning Department
<https://www.ci.milpitas.ca.gov/planningdepartment/>

Learn more about the Planning Department's Goals, Documentation, & City coding in Section IV: Planning, Policies, and Regulations 

III. ROLES & RESPONSIBILITIES

CITY DEPARTMENTS

Responsibility: Technical Experts

Other City Departments also play an important role in the Development Review Process. These Departments provide support to the Planning Department by reviewing projects for compliance with the City's non-planning regulations related to building codes, utilities, traffic, fire safety, etc.



ENGINEERING DEPARTMENT

The City of Milpitas has an Engineering Department dedicated to enhancing the quality of life in Milpitas with well-engineered City infrastructure projects and safeguarding the City's resources and the environment.

Responsibilities:

- Reviews Permit Applications.
- Checks feasibility of proposed water, sewer, and garbage plans.
- Checks feasibility of applications with the City's recycled water program, Urgent Drought Ordinance, FEMA, stormwater, solid waste/recycling, and landscaping.
- Checks potential traffic impact.



PUBLIC SAFETY DEPTS. (FIRE AND POLICE)

Dedicated to providing quality and responsive service for the community, the Fire and Police Department's purpose is to serve and protect the community of Milpitas.

Responsibilities:

- Reviews Permit Applications.
- Checks feasibility of new projects with fire code requirements (e.g., fire access, height, stories).
- Ensures projects incorporate crime prevention through environmental design principles (CPTED).



BUILDING SAFETY & HOUSING DEPARTMENT

The Building Safety and Housing Department is committed to fulfilling the needs of our community, to protect the lives and safety of the citizens of Milpitas, to preserve the City quality of life and contribute to the City's economic development.

Responsibilities:

- Reviews applications in compliance with the City's building code requirements.
- Ensures all Building Permits are compliant with City codes.
- Assists applicants in the Building Permit process.
- Point of contact for applicant during the Building Permit Process.

Monday - Friday: 8am - 5pm
Closed Thursday: 8am - 10am | Friday: Virtual Services
PHONE: (408) 586-3240
EMAIL: buildingpermitcenter@ci.milpitas.ca.gov



Building Safety & Housing Department
<https://www.ci.milpitas.ca.gov/milpitas/departments/building-and-safety-department/>

Other City Departments provide comments during Planning Review to flag significant issues early on and help minimize revisions during Building Review. During Building Review, their comments will be more detailed and final. They also provide project conditions of approval during Planning Review.

Step 4: Permitting Roles & Responsibilities

The City Departments involved with the Development Review Process assist in Plan Review through Steps 2 to 3. In Step 4: Permitting, you work directly with these departments to assist in your permit approval process.

Project Coordinator

The Project Coordinator is the applicant's main point of contact during building permit and plan review and coordinates with other departments, sends comment letter to applicant.

Permit Technician

At the Permit Center, the Permit Technician accepts application and fees, determines type of review and assists applicant with building permit process.

Plan Reviewer

Members of City staff will review your plan when you submit your permit applications for your building permits.

III. ROLES & RESPONSIBILITIES

OTHER CITY DEPARTMENTS

Sometimes the Development Review Process requires City staff and developers to coordinate with other City Departments to obtain approvals prior to proceeding with phases of construction work. This part of the process could be time consuming and requires City staff and project applicants to be knowledgeable about each department's requirements, process, and timeline.

- PUBLIC WORKS
- RECREATION SERVICES
- OFFICE OF ECONOMIC DEVELOPMENT

The Office of Economic Development frequently responds to business and real estate development community needs and inquiries regarding the development review process before commencement of the formal permit process. The team has an important role to play in the review process as they often assist various City departments to ensure business activity is happening and benefiting the city. They work collaboratively across departments to identify projects which should be provided additional support or expedited services based upon City priorities, and more generally, to mitigate any permit or development review issues that may be hindering new business activity within the city.

Responsibilities:

- Helps facilitate a smooth development review process, identify pinch points and expedite certain aspects when necessary
- Liaises between businesses, real estate developers, and City departments before and during the permitting process
- Engages in business attraction, expansion, and retention in Milpitas

OUTSIDE AGENCIES

The City has a list of outside agencies City staff and project developers may be required to contact during the development review process and includes the name of the agency, contact information and resources, and general requirements and timeline for each agency. Please contact the Planning Department for more information.

- Milpitas School District
- VTA
- ABC
- Santa Clara Valley Water District (SCVWD)
- Milpitas Chamber of Commerce
- San Francisco Water Department (Hetch-Hetchy)
- Metropolitan Transportation Commission (MTC)
- Association of Bay Area Governments (ABAG)
- CalTrans



THE COMMUNITY

Responsibility: Engage in Project Feedback

All planning permits require the City to provide public notice to neighboring property owners giving them an opportunity to provide input before the City decides on a project. Except for decisions made by Planning staff (refer to Section x page xx), all decisions are made by the Planning Commission or City Council and are only reached after conducting a public hearing on the project.

The Planning Department may provide a variety of opportunities for people to participate in the development review process, and must provide public notice to people living near a project site before making a decision on a project.

COMMUNITY BEST PRACTICES:

Call. Find out what is proposed at a location by calling the Planning Department at 408.586.3279, or visiting the Planning Department website at: www.ci.milpitas.ca.gov/milpitas/departments/development-projects

Research. Learn about the Development Review Process by finding out the type of plan submitted, what issues will be addressed in the plan's review, and how to voice your concerns.

Identify. Find relevant issues such as the project's effect on the neighborhood, environmental impacts, public infrastructure, and traffic.

Coordinate. Talk with neighbors and other groups to coordinate everyone's concerns.

Speak up. Express your concerns in an e-mail, letter, or in-person at a Planning Commission hearing. Find relevant issues such as the project's effect on the neighborhood, environmental impacts, public infrastructure, and traffic.

Understand. Know what the City can and cannot do in regulating development and rely on facts rather than feelings for important issues (e.g., traffic, architecture, noise, etc.).

III. ROLES & RESPONSIBILITIES



DECISION MAKERS

Responsibility: Approve or Deny an Application

Decision makers consider the approval of an application based upon the Planning Staff report including project findings and conditions of approval, the City's code and adopted policies, and community feedback.

City staff, the Planning Commission, the Zoning Administrator, and the City Council make the decision for different land use permits (see following page), and have the authority to entitle an applicant to move forward with a project. The Planning Department staff is able to make a limited set of decisions; all other land use decisions are reached at a public hearing either before the Planning Commission, Zoning Administrator, or City Council depending on the type of project.

BEST PRACTICES:

- ☐ Review every project based on the merits and consistency with the General Plan, specific plans, zoning, and other adopted policies.
- ☐ The Planning Zoning Administrator is the Planning Director or his/her designer has approval authority.
- ☐ Recuse designee from making decisions on matters where there might be a conflict of interest.
- ☐ Treat every project and application the same.
- ☐ Put personal feelings aside, and make decisions that are fair and defensible.

WHO DECIDES?

DECISION MAKER ROLES, RULING ACTIONS, & MEETING INFORMATION



	PLANNING STAFF	ZONING ADMINISTRATOR	PLANNING COMMISSION	CITY COUNCIL
WHO	Planning Staff (Current Planning)	Approves Site Development Permits, Minor Site Development Permits, Minor Conditional Use Permits and other minor project reviews.	Seven members: Appointed by City Council (Milpitas Citizens and Registered Voters)	Five elected officials, including the Mayor and Vice Mayor
ROLE	"Counter" hours, answer applicant questions.	Enforces land-use code within Milpitas, reviews applications.	Considers the overall project, including building form, color and material, landscaping, use of property, and specific issues related to a project.	Establishes and reviews ordinances and makes policy decisions related to land use applications.
ACTION	Administrative Review (Approve or Deny) Simple Permits at the Permit Center	Takes action on permits requiring a Zoning Administrator Hearing	Takes a action late in the Development Review Process and has the authority to approve, deny, or modify a project, and may request more information or studies from the applicant.	For site development permits on the hillside, subdivisions, and any requests to amend a land use plan the City Council makes the final decision on a project after the Planning Commission provides them with a recommendation.
MEETS WHEN	Office hours	9:00 a.m. Second Thursdays	7:00 p.m. Second and Fourth Wednesdays	7:00 p.m. First and Third Tuesdays
MEETS WHERE	Weekly staff meetings		Council Chambers, Milpitas City Hall 455 E Calaveras Blvd.	

Section IV: Planning, Policies & Regulations

This section is an introduction to some of the most commonly cited City regulations or policies that impact whether an application is approved. We will introduce the most common plans, zoning, CEQA, and other regulations that may impact your project.

OVERVIEW

Now that you understand what the Development Review Process, it is important to have a general understanding on what regulations affect how your property can be developed.

THREE MAIN TOPICS OF THIS SECTION:

1. Introduction to Planning

Provides an overview of planning in the City of Milpitas, including the difference between Current Planning and Long Range Planning.

2. Introduction to Zoning

Explains the Code, and introduces zone districts (such as residential vs. non-residential zoning) and how your project's location affects the development and building standards.

3. Planning with the Environment

The protection of California's resources is vital. This section will highlight complicating factors that may impact your development, such as hillside development, CEQA, tree removal, and the management of stormwater on your property.

QUICK LINKS:

-  **Milpitas Planning Department**
<https://www.ci.milpitas.ca.gov/planningdepartment/>
-  **Community & Citywide Plans**
<https://www.ci.milpitas.ca.gov/planningdepartment/community-and-citywide-plans/>
-  **Online Interactive Zoning Map**
<https://www.ci.milpitas.ca.gov/milpitas/departments/maps/>
-  **Environmental Documents**
<https://www.ci.milpitas.ca.gov/milpitas/departments/environmentaldocuments/>
-  **Building Safety Adopted Building Code**
<https://www.ci.milpitas.ca.gov/milpitas/departments/adopted-building-municipal-codes/>

IV. PLANNING, POLICIES & REGULATIONS

INTRODUCTION TO PLANNING

The Planning Department of Milpitas's mission is to prepare and plan for the future of the City, while addressing the immediate concerns and developments of today. These services are described as: Long Range or Current Planning.

Long Range Planning

Is the process of identifying and articulating community vision and values that guide how the city will evolve over a long period of time, often as far out as twenty to thirty years. Long range Planning Staff works with the community to identify a vision, goals, and a growth strategy that will guide future development in the city.

LONG RANGE PLANNING INCLUDES:

- Preparing, maintaining, and updating the General Plan including the Housing Element, Specific Plans, and Design Guidelines and Standards.
- Drafting new zoning ordinances to amend the Zoning Code, keep it up-to-date, and ensure the City has the tools to implement the vision, goals, and policies in the long-range plans.
- Work with other City departments to prepare citywide master plans such as the Climate Action Plan, Utilities Master Plan, Trails, Pedestrian, and Bicycle Master Plan, etc.



Community & Citywide Plans

<https://www.ci.milpitas.ca.gov/planning/department/community-and-citywide-plans/>

Current Planning

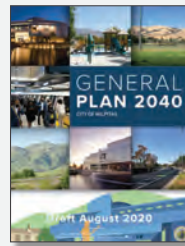
Is the process of "implementing" the vision of the City of Milpitas as it develops. During the Development Review Process, Planning staff reviews applications for consistency with the General Plan, any applicable Specific Plans, design standards, and the zoning code, to ensure that the project is consistent with the vision the community expressed during Long Range Planning. These regulations guide where development can occur, to what degree areas can change, and the use, size, and location of new buildings.

CURRENT PLANNING INCLUDES:

- Facilitating the Development Review Process, which involves: Reviewing applications for consistency with the General Plan, Specific Plans, Zoning Code, and Design Guidelines and Standards; Ensuring projects will not have an adverse impact on the environment through CEQA; Issuing permits for project's meeting all the City's regulations
- Providing counsel to the public, applicants, architects, and developers at the front counter (One-Stop Permits Center), over the phone, and via e-mail.

LONG TERM PLANNING INFLUENCES THE DEVELOPMENT REVIEW PROCESS!

Milpitas General Plan



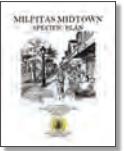
The City of Milpitas General Plan identifies the community's vision for the future and provides a framework that will guide decisions on growth, development, and conservation of open space and resources in a manner that is consistent with the quality of life desired by the city's residents and businesses.

Specific Area Plans

Specific Plans provide recommendations and policies for specific areas of the City and address topics including land use, design guidelines, streetscape design, parks, circulation, and transportation for the specific area.

Milpitas has two specific plans: The Milpitas Gateway/Main St. Specific Plan provides a new vision for Midtown which is the historic commercial and industrial core of the City. The Milpitas Metro Specific Plan (formerly Transit Area Specific Plan) addresses the redevelopment of the southern portion of the City near the Great Mall shopping center and Milpitas Transit Center.

! If your project is located in the areas indicated in the Specific Plans, there will be additional design guidelines and development considerations beyond the base regulations of the Zoning Code.



Zoning Code

The Guidelines, Vision, and Goals from the General Plan for the future of the City are the basis of the Zoning Code, which is categorized into Zoning Districts to further explain various areas of the City. Current Planning applies the Zoning Code, in approving permits and guiding applicants through the Development Review Process.



IV. PLANNING, POLICIES & REGULATIONS

INTRODUCTION TO ZONING

Zoning classifies the City into zoning districts that regulate the type of buildings and land uses allowed on a site and establish appropriate development standards to guide new development.

Milpitas Municipal Code

The Milpitas Zoning Code is part of the Milpitas Municipal Code and describes the legal uses of property in Milpitas, establishes various districts, and defines appropriate regulations for each district regarding building type, height and bulk, parking, land uses, and required open spaces for each district. Compliance with this ordinance is mandatory.

Milpitas Municipal Code Title XI:

Chapter 10: Zoning Code

https://library.municode.com/ca/milpitas/codes/code_of_ordinances?nodeId=TIIXI0PLAN_CH10ZO

TRANSITIONAL ZONING

This applies to areas from the General and Specific Area Plans that are evolving in how the Zone Districts are categorized based on the future goals and vision of the City. Contact a City Planner if you believe this is applied to your Zone District to better understand how development standards are affected.

Zone Districts

Zone districts categorize the types of land uses allowed for a property. Each district has specific standards, allowable uses, and other requirements that guide development on your site. Each Zone District is color coded on the Zoning Map and has a corresponding letter that is described within the Milpitas City Code.

WHAT ZONE DISTRICT IS MY PROPERTY?

To find your property's Zoning District:

1. Open the Zoning Map on the city website;
2. Find your property using a street address or major surrounding street names.
3. Locate the color your property is shaded in the legend to see your Zoning District. This will help show you what types of planning permits you might need to submit for project approval.
4. Visit the One-Stop Building Permit Center, or contact a Planner by phone for assistance.



Online Interactive Zoning Map

<https://www.ci.milpitas.ca.gov/milpitas/departments/maps/>

ZONING MAP OF MILPITAS

TYPES OF ZONE DISTRICTS
& ASSOCIATED LETTER
DESIGNATIONS IN THE CITY CODE

Legend

- Single Family Residential minimum lot size 2,500 s.f. (R1-2.5)
- Single Family Residential minimum lot size 3,000 s.f. (R1-3)
- Single Family Residential minimum lot size 4,000 s.f. (R1-4)
- Single Family Residential minimum lot size 5,000 s.f. (R1-5)
- Single Family Residential minimum lot size 6,000 s.f. (R1-6)
- Single Family Residential minimum lot size 10,000 s.f. (R1-10)
- Single Family with Hillside Combining District (R1-H)
- One or Two Family (R2)
- Multi Family Residential, High Density (R3)
- Multi Family Residential, Very High Density (R4)
- Urban Residential (R5)
- Mixed Use (MXD)
- Mixed Use, High Density (MXD2)
- Mixed Use, Very High Density (MXD3)
- Administrative and Professional Offices (CO)
- Neighborhood Commercial (C1)
- General Commercial (C2)
- Highway Services (HS)
- Town Center (TC)
- Light Industrial (M1)
- Heavy Industrial (M2)
- Industrial Park (MP)
- Institutional (I)
- Agricultural (A)
- Park and Open Space (POS)
- Waterways
- City Boundary

Check the online Zoning Map for the most updated version.

IV. PLANNING, POLICIES & REGULATIONS

INTRODUCTION TO ZONING:

Residential Zone Districts

Below are examples of how Residential Zones of Milpitas are organized based on type, size, and density. Mixed Use Zoning (MXD) are areas where Residential and Commercial uses are shared within a certain zone.



R1 - Single Family Residential
The R1 District is intended for a single, suburban family home.

R2 - One & Two Family Residential
The R2 District is intended for suburban family homes or shared type of housing within the residential structure (i.e. a duplex or townhouses)

R3 - Multiple Family
The R3 District intent is to maximize the intensity of land use (apartments, condos) that provides a suitable environment for family life.

R4 - Multiple Family Very High Density
The R4 District is intended to provide for higher-density residential "villages" structured around transit stations, streets, creek side open spaces, trails and parks.

R5 - Urban Residential
The purpose and intent of this zone is to provide for high-density residential development structured around transit stations.

Non-Residential Zone Districts

These Zones are considered "Non-Residential" - however some zones such as Mixed-Use and Town Center allow for new or existing residential developments and structures.



Mixed Use Zones
MXD Zoning District (Mixed Use Zoning District)
MXD 2 Zoning District (High Density Mixed Use Zoning District)
MXD3 Zoning District (Very High Density Mixed Use Zoning District)

Town Center (Commercial)
TC Zoning District (Town Center Zoning District)

Commercial Zones
CO Zoning District (Administrative and Professional Office Zoning District)
C1 Zoning District (Neighborhood Commercial Zoning District)
C2 Zoning District (General Commercial Zoning District)
HS Zoning District (Highway Service Zoning District)

Industrial Zones
MP Zoning District (Industrial Park Zoning District)
M1 Zoning District (Light Industrial Zoning District)
M2 Zoning District (Heavy Industrial Zoning District)

Overlay Districts
Overlay zoning districts allow jurisdictions to establish special zoning requirements in certain areas for a specific purpose.

Other Types of Non-Residential Zone Districts:

Agricultural (A)

Institutional (I)

Parks & Open Space (POS)

Hillside Combining District (HSD)

IV. PLANNING, POLICIES & REGULATIONS

INTRODUCTION TO ZONING:

Understanding the Zoning Code

1. Find what type of Zoning District your property is located in using the City of Milpitas interactive Zoning Map online.

2. After you identify the Zoning District for your property (e.g., R-1 or MXD2), locate the applicable development standards in the Milpitas Municipal Code under Chapter 10 (Zoning Ordinance).

3. Locate the Use regulations table for your specific Zoning District

Use tables are presented in the Zoning Code and are usually organized by land use categories that share similar physical or operating features. As shown in this example table, you can find your zoning district designation on the column heading of the use table, and then look at the list of uses in the left column of the table that matches your proposed use to find the approval requirement for the use.

USE	R1	R2	R3	R4	R5
1. Commercial					
Commercial Services	NP	NP	C	C	C
2. Professional Offices and related uses					
Offices	NP	NP	C	C	C
3. Public/Quasi-Public and Institutional Uses					
Child care center	C	C	P/C	P	P
Nursing home	NP	C	C	C	C
Park, playground or community center (non-profit)	C	C	C	C	C
Parking lots	C	C	C	C	C
P = Use is Permitted NP = Use is Not Permitted	C = Use is Permitted by issuance of a Conditional Use Permit Q = Use is Subject to an Alternative Review Process				



Online Interactive Zoning Map
<https://www.ci.milpitas.ca.gov/milpitas/departments/maps/>

4. Understand if the project requires a conditional use permit

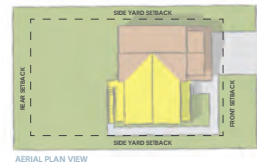
When you see the letter "C" within the Land Use Table, this means that you can proceed with that project but require a Conditional use Permit. A conditional use permit is a zoning exception that allows the property to be developed in a way not otherwise permitted within the particular zoning district.

USE	R1	R2	R3	R4	R5
3. Public/Quasi-Public and Institutional Uses					
Child care center	C	C	P/C	P	P
P = Use is Permitted NP = Use is Not Permitted	C = Use is Permitted by issuance of a Conditional Use Permit Q = Use is Subject to an Alternative Review Process				

For example, if you are proposing to open a child care center in the R1 district, you would find that a conditional use permit would be required. If the use you are proposing is not on the use table, it typically means that the proposed use is not allowed. Contact the Planning Department to check.

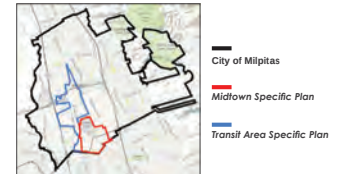
5. Learn the Development Standards for your Zoning District

Each Zoning District has its own set of development standards such as setbacks and building heights. There are also general development standards that apply to all zoning districts such as parking, accessory structures, fences and walls, trash enclosures, and lighting.



6. Determine if your property is subject to special development standards from Specific Plans, overlay Zoning Districts, or planned developments

Identify the applicable Design Guidelines and Standards Projects in the Specific Plan areas are subject to the applicable Specific Plan design guidelines. All multifamily residential developments and mixed-use developments with a residential component are subject to the City's Objective Design Standards.



IV. PLANNING, POLICIES & REGULATIONS

PLANNING WITH THE ENVIRONMENT

CEQA - California Environmental Quality Act

WHAT IS CEQA?

CEQA is a set of regulations that helps govern the protection of California's natural resources - because we must take care of our air, water, and planet. For a development project, CEQA help determine whether an activity is subject to environmental review, what steps are involved in the environmental review process, and the required content of environmental documents. **All projects must comply with CEQA.**

IS MY PROJECT EXEMPT FROM CEQA?

A project may be considered "exempt" from CEQA or may need an extensive review process depending on the project's scale and its potential impact to the environment. Typically, minor projects are exempt from CEQA, and **Categorical Exemption** is determined by Planning staff.

If your project is exempt from CEQA, you can proceed with the Development Review process with no environmental review. Projects that aren't exempt will require further study to determine if the project will have "significant" environmental impacts.

 Check with a City Planner to see if your project qualifies for an exemption from CEQA.

Common exemption categories include existing facilities involving negligible or no expansion of an existing use, replacement or reconstruction of existing structures, new construction or conversion of small structures, minor alterations to land, accessory structures, minor land divisions, and in-fill development projects that meet certain conditions.

Some common examples of exemptions include:

- Interior or exterior alterations such as plumbing and electrical work to existing facilities
- Additions to existing structures if the addition does not result in an increase of more than 2,500 square feet
- Replacement of a commercial structure with a new structure that is the same size, purpose, and capacity;
- Single family homes in a residential zone, or a multi-family structure that has no more than four units
- Accessory structures such as garages, carports, patios, swimming pools, and fences
- Minor lot line adjustments, side yard, and setback variances not resulting in the creation of any new parcel



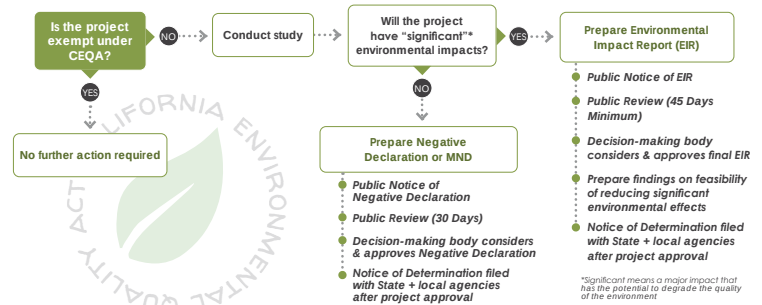
Environmental Documents
<https://www.ci.milpitas.ca.gov/milpitas/departments/environmentaldocuments/>

FURTHER CEQA STUDY REQUIRED IF....

Your project will require a **Negative Declaration or Mitigated Negative Declaration (MND)** if it will not result in significant and unavoidable impacts to the environment. The City will hire an environmental consultant (at your cost) to prepare the required documentation. Following a public review period of 20-30 days, the decision-making body will consider the Negative Declaration or MND along with your project at a public hearing.

Your project will require an **Environmental Impact Report (EIR)** if it will result in significant and unavoidable impacts to the environment even with mitigation. The process for an EIR is similar to a Negative Declaration or MND except the public review period is 30-45 days. Also, a Final EIR to address all comments received and a statement of overriding considerations to explain why a project is approved even with significant and unavoidable impacts are required.

CEQA ROADMAP PROCESS



IV. PLANNING, POLICIES & REGULATIONS

PLANNING WITH THE ENVIRONMENT

Site Considerations

Sometimes certain lots and parcels by natural design or previous construction do not always adhere to existing city codes. Factors such as these can include developing on a hillside or over earthquake fault lines.

SEISMIC ISSUES / FAULT ZONES

The Alquist-Priolo Earthquake Fault Zoning Act (1972) and the Seismic Hazards Mapping Act (1990) directs the State Geologist to delineate regulatory "zones of required investigation" to assist cities, counties, and state agencies in fulfilling their responsibilities for protecting the public safety from the effects of earthquake-triggered ground failure. Check with City staff to confirm if your property is located in a fault zone or any area susceptible to geologic hazards such as liquefaction or landslides. If your property is located in one of these areas, a preliminary geotechnical report with recommended design measures may be required.

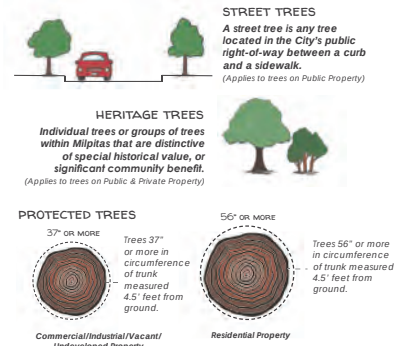
 **Interactive Earthquake Zone Map**
<https://maps.conservation.ca.gov/cgs/ifam/>

HILLSIDE / GEOTECHNICAL LOTS

If the project's location is on a Hillside lot, there are complicating factors that will add more steps, required documentation, and fees to the Development Review Process. CEQA also plays a large role in these types of projects. Projects located in the Hillside Combining District require site and architectural approval by the Planning Commission and City Council and are subject to the City's Hillside Ordinance in addition to the regulations of the base zoning district. The Hillside Ordinance provides requirements related to grading, density, height, floor area, setbacks, open space and landscaping, parking and driveways, fencing, and lighting. These requirements are intended to preserve and minimize impacts to Milpitas' hillsides. Understanding the complexities of Hillside lot development requires additional assistance from the Planning, Building Safety & Housing, and Engineering Departments.

You will know if your property is located in the "Hillside Combining District" on the Milpitas Zoning Map if it is labeled HLD, HVL, or HMD.

Trees



REMOVAL PROCESS (PUBLIC PROPERTY)

The City's Public Works Department is responsible for removing and pruning Street and Heritage trees. It is unlawful for a resident to prune or remove a street tree. If the tree is located on City right-of-way and poses a hazard or nuisance to your property or has become diseased or unsightly, please contact the Public Works Department at (408) 596-2600 or submit a request on the MyMilpitas mobile phone application.

REMOVAL PROCESS (PRIVATE PROPERTY)

Any removal of a protected tree or heritage planting will require a tree removal permit. Please ensure first that the tree to be removed is located on your private property. The removal of any protected tree requires a consultation and memo from a landscape professional. The memo should include the tree type (species), its approximate size, circumference at breast height, health or status, and reason for its removal. The landscape professional must have a business license with the City of Milpitas to provide services.

REMOVAL APPLICATION CHECKLIST (PRIVATE PROPERTY)

- ☐ **Completed Application Form & Fees**
The property owner must complete and sign the form for each removal project. Submit the Application Fee.
- ☐ **Landscape Professional Memo**
A professional should confirm that the removal of the tree is necessary and include every item listed above.
- ☐ **Site Plan and Description**
Clearly describe your reason for removing the tree and include a site plan of your property indicating the location of each tree. This site plan should also include your replacement plan, demonstrating a 2:1 replacement ratio for all trees removed and showing where the new trees will be planted.

 **Residential Tree Removal Application**
<https://www.ci.milpitas.ca.gov/milpitas/departments/applications-forms-checklists/>

IV. PLANNING, POLICIES & REGULATIONS

PLANNING WITH THE ENVIRONMENT

Properties in Flood Zones

Certain areas have been designated by the Federal Emergency Management Agency (FEMA) as Special Flood Hazard Areas (SFHA). **Approximately one-quarter of the City is within these flood zones.** SFHAs are by definition, areas within the 100-year flood boundary as mapped by FEMA. A "100-year flood" refers to a flood level with a 1 percent or greater chance of being equaled or exceeded in any given year. There is a 26% chance that a structure located in an SFHA will be inundated by a 100-year flood during the life of a 30-year mortgage. In comparison, the risk of fire is approximately 5% in the same time period. Smaller floods have a greater chance of occurring in any given year and can still create a significant hazard to life and property.

i In Milpitas, SFHA's are generally located near the following major creeks: Calera, Penitencia, Berryessa, Los Coches, and Tularcitos

FLOOD ZONE MAP

Any proposed development within the Federal Emergency Management Agency's (FEMA) Special Flood Hazard Area, is subject to federal and the City's floodplain management requirements. The City's Engineering Department has an online map tool that allows you find the parcel(s) of your project site and see which flood zone it is in.

 **Interactive Flood Zone Map**
<https://www.ci.milpitas.ca.gov/milpitas/departments/engineering/flood-information/>

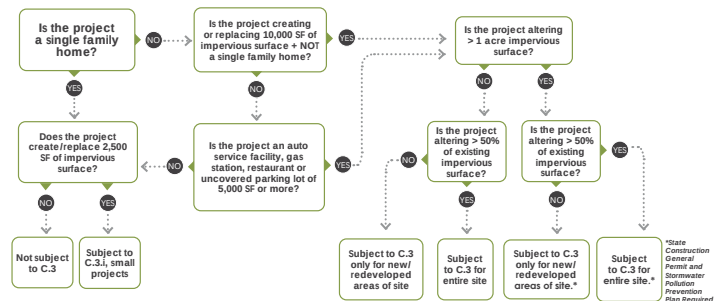
C.3 Stormwater Requirements

Provision C.3 is a stormwater permit that seeks to reduce runoff and pollution through post-construction stormwater management requirements for new development and redevelopment projects.

i Single-family homes, interior remodeling projects, and routine maintenance/repairs such as re-roofing and re-paving are exempt from C.3 Stormwater Requirements

Low Impact Development (LID) designs projects are to help manage stormwater runoff. Examples of LID include green roofs, bioretention gardens, and permeable pavement. This is required for any project that creates/replaces more than 10,000+ sq. ft. of impervious surfaces, any restaurants, auto service facilities, retail gasoline outlets, and uncovered parking lot projects that create and/or replace 5,000 square feet or more of impervious surface. The project applicant must provide application information and hydraulic calculations to the Planning and Engineering departments for review.

C.3 PROVISION ROADMAP



IV. PLANNING, POLICIES & REGULATIONS

BUILDING CODES & REGULATIONS

Building & Safety Adopted Building Code

All projects must adhere to local and state building codes. Speak with a representative at the Permit Center to help identify which codes apply to your building permits for your project.



- California Building Code (CBC)
- California Electrical Code (CEC)
- California Mechanical Code (CMC)
- California Plumbing Code (CPC)
- California Energy Code (CEnc)
- California Fire Code (CFC)
- California Green Building Code (CalGreen)
- Milpitas Municipal Code (MMC)



Building Safety Adopted Building Code
<https://www.ci.milpitas.ca.gov/milpitas/departments/adopted-building-municipal-codes/>

Accessory Dwelling Units (ADUs)



ADUs are known by many names — including accessory dwelling unit, second unit, in-law unit, granny flat, casita, and backyard home. But, no matter what you call them, these are homes located on the same piece of property as another home. They provide a complete and permanent home for at least one person.

An ADU may be established on any lot in any district that allows single-family or multi-family dwelling residential uses. A JADU may be established on any lot in any district that allows single-family residential use.

Refer to the *Milpitas ADU Toolkit* online at our *ADU Corner* for more detailed information about *Accessory Dwelling Unit Projects*.



Milpitas ADU Corner
<https://www.ci.milpitas.ca.gov/adu/>

If you are planning to build an ADU on your property, your project might need to go through the Development Review Process depending if your ADU design does or does not follow certain Design Guidelines.

If your ADU design deviates from the General Requirements (i.e. setback or building height) you will be required to obtain a Minor Site Development Permit through the Development Review Process. Speak to a City Staff representative at the Permit Center to better understand how the Development Review Process will apply to your ADU build.

Check property eligibility for ADUs and get a free report of your ADU options:



Symbium Build
<https://build.symbium.com/>

Appendix: Useful Tips, Checklists and Resources

What does my project need?

Does the project comply with existing General Plan policies?	NO	> If no, your project may not be permitted. See Planning staff about possible amendment.
Does the project comply with applicable Specific Plans and Zoning?	NO	> If no, your project may not be permitted. See Planning staff about possible amendment or variance permit application.
Does the project involve a land division?	YES	> If yes, please apply for a tentative subdivision or parcel map.
Is the intended use a conditional use in existing or proposed zoning district?	YES	> If yes, please apply for a conditional use permit. See Planning staff for more information.
Does the project involve affordable housing?	YES	> If yes, you can request a density bonus. See Planning staff about the application.
Does the project include a new building, parking lot?	YES	> If yes, please apply for a site development permit. See Planning staff for more information.

APPENDIX

Useful tools for your application process...

DEVELOPMENT REVIEW PROCESS CHECKLIST

Planning Application Process:

The following are required items for a complete project submittal:

- ☐ Project Description or Justification
- ☐ Standard Plan Set
- ☐ Site Plan
- ☐ Existing Conditions Plan / Demolition Plan
- ☐ Building Floor Plans
- ☐ Building Elevations
- ☐ Building Sections
- ☐ Any other items as required by the Planning Department

Building Application Process:

Building permits will be issued when the following items are completed:

- ☐ The parcel map, entitlements, and any other easement and license agreements are approved or finalized
- ☐ Building construction documents are approved
- ☐ Plan check and permit fees are paid

 **Building Permits & Resources**
<https://www.ci.milpitas.ca.gov/milpitas/departments/building-and-safety-department/building-permits/>

 **Universal Planning Application**
www.ci.milpitas.ca.gov/wp-content/uploads/2021/11/Universal-Planning-Application-Revised-Nov-21-pdf-fillable.pdf

SUMMARY CHECKLIST BY STEP:

1. PRE-APPLICATION MEETING & REVIEW (OPTIONAL)

- ☐ Did you meet with a planner to go over application requirements and preliminary plans?
- ☐ Did you research and gather information on your project site?
- ☐ Did you go on a site visit?
- ☐ Is your preliminary plan complete and accurate?
- ☐ Did you meet with nearby neighbors and inform them about the project?
- ☐ Do you have a written summary of neighborhood and early review meetings with city staff?

2. PLAN REVIEW & PROCESSING

- ☐ Did you complete the planning and zoning checklist?
- ☐ Did you review the special considerations list in this handbook?
- ☐ Did you meet with a planner when submitting your application?
- ☐ Did you pay all your fees/minimum deposits?
- ☐ If you received an incompleteness letter, have you addressed all of the city's comments and submit them to the planning department?
- ☐ If your project is exempt from CEQA, have you completed and submitted all required documents?
- ☐ If your project is not exempt from CEQA, have you complete additional studies?

3. NOTICING & DECISION MAKING

- ☐ Has Planning staff completed the staff report and environmental documentation for the project?
- ☐ Has Planning staff scheduled the public hearing date?
- ☐ Has Planning staff completed all noticing for the public hearing?
- ☐ Did you attend the public hearing with Planning staff?

4. PERMITTING

- ☐ Did you submit a building permit application?
- ☐ Did you submit all requested information needs to the City during the review period?

APPENDIX

BUILDING PERMITS

Building Permits can be administratively approved at the Milpitas Permit Center. A member of City Staff will review your project scope and determine which building permits are required for your project. They can also help identify if your project requires planning permits before you can apply for building permits.

TYPES OF BUILDING PERMIT REVIEW:

Building Permit Review takes place online or in-person at the Permit Center. Target turnaround time varies depending on the scope of work and will be determined upon submittal. There are four different approval tracks for your building permits once you submit your building permit application:



1. Express Permits

Express permits include permit applications that **do not require a plan review** (e.g. re-roofing or water heater replacement). City Staff can quickly issue the permit and then you can schedule an inspection.



2. Express Plan Review

Express Plan Review applies to simple projects (e.g. kitchen/bathroom remodel or constructing a small shed or patio cover), where you will be **required to show your plans to the city staff member at the Permit Center to review**. This service is provided on a "first come first serve" basis with **no appointment necessary**.



3. Plan Review by Appointment

For projects with limited scope of work, (e.g. small tenant improvement projects) applicants may request a Plan Review by Appointment. **City staff will schedule an appointment to meet with the design team** and perform plan review in the meeting. The entire design team is required to attend the meeting.



4. Standard Plan Review

Typical projects shall be submitted online and the **Permit Center will process and route the submittal documents to various departments for plan review**.

BUILDING PERMIT PROCESS:

Submit building permit application

The Permit Technician will process the application and let you know your required type of permit review and plan check fees. Pay your fees online or at the Permit Center.

Plan Review

Plan Reviewers will review your plans and indicate if you need to make any adjustments for building code compliance.

Permit Approval

Your Project Coordinator will alert you that your building permits have been approved.

Issuance

The Permit Technician will let you know what your required permit fees and any pending documents required for permit issuance. Pay your fees online or at the Permit Center and provide the required documents to be issued with your newly approved building permits.

Construction & Inspection

Your permit card and construction drawings shall be made available at your construction site. Construction may proceed according to the approved plans. Schedule inspections online or by phone.

Final Approval

Following construction and inspection, inspectors verify that your project has been constructed in compliance with the approved plans, your building permits will be finalized.

Certificate of Occupancy

Congratulations! You can now move in!
Learn more about Certificate of Occupancy on Page 31.

For your convenience, the City of Milpitas provides **Expedited Plan Review Service**. Expedited Plan Review Service may be requested if the applicant would like to **reduce the turnaround time by approx. ½ of the target turnaround time** depending on staff availability. Please contact the Permit Center for more information.

Building Permit Application: (408) 586-3240
Building Plan Check: (408) 586-3240
Building Inspection Line: (408) 586-2797
Hours: Monday - Friday: 8am - 5pm



Building Permits & Resources
<https://www.ci.milpitas.ca.gov/milpitas/departments/building-and-safety-department/building-permits/>



See example types of required Building Permits that may qualify for Express Plan Review or Plan Review by Appointment on the following pages 68-69.

APPENDIX

BUILDING PERMITS

EXAMPLES OF BUILDING PERMITS / 'SIMPLE PROJECTS' THAT QUALIFY FOR
[Express Plan Review](#) or [Plan Review by Appointment](#)



Residential

RESIDENTIAL PERMITS:	BY APPOINTMENT:	EXPRESS PLAN CHECK:
ADDITION	First and/or second floor room additions that do not exceed 1,000 sf of combined floor area	Does not exceed 600 sf.
INTERIOR WORK	Interior alterations/modifications that do not require structural changes	Same as "By Appointment"
GARAGE CONVERSION	Alteration of a single-family garage to become living space or any other use	Same as "By Appointment"
PATIO COVER	Patio covers excepting those located on hillside lots	Same as "By Appointment"
ACCESSORY STRUCTURES	New detached garages, carports, sheds, playhouses that do not exceed 1000 sf and that do not require Planning Commission/City Council approval	If less than 600 sf and do not require Planning Commission/City Council approval
ROOF CONVERSION	New roof framing over existing roof	Same as "By Appointment"
MINOR SITE STRUCTURES	Fences, sound walls, and site retaining walls that do not require Planning Commission/City Council approval	Fences that do not require Planning Commission/City Council approval

Commercial/Industrial



PERMITS FOR:	BY APPOINTMENT:	EXPRESS PLAN CHECK:
OFFICE SPACE	Non-structural interior modifications and alterations not exceeding 10,000 sf.	Does not exceed 5,000 sf.
RETAIL SALES	Non-structural interior modifications not exceeding 5,000 sf of improved space. May include new or relocated rooftop units. <i>Verify with Planning that a use permit is not required for proposed retail use</i>	Does not exceed 2,000 sf.
RESTAURANTS	Non-structural interior modifications not exceeding 2,000 sf of improved space without extensive kitchen equipment work. May include new or relocated roof top units. <i>Drawings must be approved by Santa Clara County Department of Environmental Health prior to being reviewed by the City</i>	Does not exceed 1,000 sf.
INDUSTRIAL USES	Non-structural interior modification/alterations not exceeding 10,000 sf of improved space when such areas do not involve storage/use of hazardous materials	Does not exceed 5,000 sf.
NON-HIGH PILED STORAGE RACKS	When top of stored product does not exceed 12 feet in height with max. 2 rack types	Not applicable
EQUIPMENT ANCHORAGE	If equipment does not use hazardous materials and does not exceed 8 pieces of floor-mounted equipment per project	Not applicable
MONUMENT SIGNS	Does not exceed 20 feet in height - <i>Requires Planning Department approval before plan check submittal</i>	Not applicable

APPENDIX

PROJECT TRACKER

These pages are to help you to stay organized with your project! Track your status and time sensitive materials, save information from hearing or meeting notes, or use this space write your questions for Planning Staff.

Contacts & Correspondence

[illegible]

Scheduling & Dates

[illegible]

General Notes

[illegible]



City of Milpitas
Development Review Handbook
www.ci.milpitas.ca.gov/planningdepartment
455 East Calaveras Blvd. Milpitas, CA 95035



City of
MILPITAS *California*



TOOLKIT FOR ACCESSORY DWELLING UNITS

Prepared for the City of Milpitas by Metta Urban Design



ACCESSORY DWELLING UNIT

Toolkit Content

1. ADU Overview

Pages 3-4

Introduction to ADUs, the Milpitas ADU Ordinance, and Quick Link References

2. Types of ADUs

Pages 5-11

ADU Types, Design Standards, Parking Requirements, and more for Detached, Additions, Conversions & JADUs

3. Building an ADU

Pages 12-13

ADU Building Options, Cost Factors, Required Permits, and Building Resources

4. Permits & Review

Pages 14-15

Permit Review Pathways, Resources for Permit Applications, and Information on Legalizing Existing ADUs

5. FAQs & Resources

Pages 16-21

Frequently Asked Questions, Checklists of Design Standards for ADU Types, and ADU Process & Timeline Checklist



Milpitas ADU Ordinance

City of Milpitas Municipal Code
Chapter 10: Section 13.08
(XI-10-13.08 : Accessory Dwelling Units)

In keeping with the City of Milpitas' ongoing commitment to providing a variety of housing opportunities, the City Council approved in 2019 the first step in updating City regulations to make it much easier for single-family homeowners to build accessory dwelling units (ADUs). Following public outreach, as well as comments of both the City Council and the Planning Commission, there was overwhelming support of ADU production and updating the existing policies to allow for an easier and streamlined permitting process with the City. The ordinance helps allow for different placements of ADUs in various housing types: ADU's can be integrated onto any residential property that is considered a single-family lot or multi-family lot (i.e. duplexes or condos).



Accessory Dwelling Units

Accessory Dwelling Units (ADUs) are known by many names, including granny flats, in-law units, second units, and casitas. No matter what you prefer to call them, ADUs are separate, complete homes for at least one person that are located on the same property as another, primary home. In general, ADUs provide complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.

This ADU Toolkit provides resources for homeowners to build an ADU on their residential property.

QUICK LINKS:

Milpitas ADU Home:

<https://www.ci.milpitas.ca.gov/adu/>

ADU Ordinance:

https://library.municode.com/ca/milpitas/codes/code_of_ordinances?nodeId=TITXIZOPLAN_CH10ZO_S13SPUS_XI-10-13.08ACDWUN

ADU Permit Fee Estimate:

<https://www.ci.milpitas.ca.gov/wp-content/uploads/2021/03/Milpitas-ADU-Fee-Table.pdf>

Email ADU Questions:

adu@ci.milpitas.ca.gov

Property ADU Eligibility Check:

<https://build.symbium.com/>

Enter your address on our Symbium Build Tool to see if an ADU can be developed on your property!

Visit www.build.symbium.com

Types of ADUs

You can find the specific Design Standards in this ADU toolkit on the corresponding pages to each type of ADU. The ADU Standards by Type pages highlights the criteria for design, construction, and development standards.



Detached

Detached ADU's are free-standing buildings that are unattached to a proposed or existing primary dwelling with full amenities for the resident.

Conversion

Conversion ADUs are built by converting an existing space of a single-family or multi-family residence (e.g., a garage, pool house, or basement).



Junior ADU's (JADU's)

Junior ADUs are a type of conversion ADU that convert no more than 500 sq. ft. of existing square footage of a single-family home.



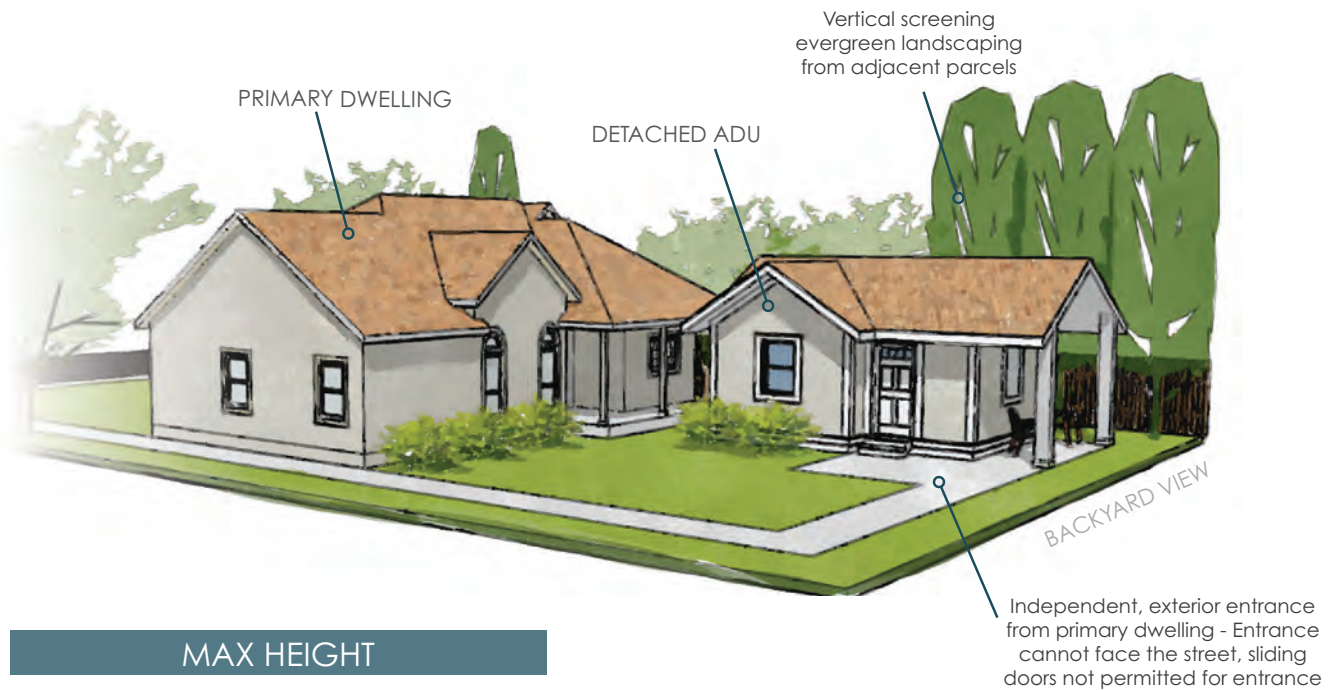
Before

Addition

Addition ADUs are new construction units and must share at least one wall with the proposed or existing primary dwelling.

Detached ADU

Detached ADU's are physically separated from the primary dwelling.



MAX HEIGHT

One-Story Detached



Two-Story Detached ADU



BUILDING SIZE

- ☐ Minimum Floor Area = 220 sq. ft.
- ☐ Maximum Floor Area
 - One Bedroom = 850 sq. ft.
 - Two (or more) Bedrooms = 1,000 sq. ft.
 - Hillside Combining District = 1,200 sq. ft.
- ☐ Maximum Building Height
 - One Story = 16'
 - Two Story = 28'
 - Hillside Combining District = 17' (West Facing)
27' (East Facing)

SETBACKS

- ☐ 4' Side and Rear Setbacks from property lines
- ☐ 6' setback from primary dwelling unit

PARKING

- ☐ One Off-Street Parking Space Required
(See Special Conditions for Parking on Page 11)

SITE CIRCULATION

- ☐ Requires independent, exterior entrance from primary dwelling (Entrance to the ADU cannot face the street, Sliding Doors not allowed as main ADU entrance)
- ☐ The ADU and primary dwelling must use the same driveway to access the street (unless otherwise determined by the fire authority)

DESIGN STANDARDS

- ☐ Vertical screening evergreen landscaping must be planted and maintained between ADU and adjacent parcels
- ☐ Windows and doors of the ADU shall not have a direct line of sight to a neighboring residential property. Fencing, landscaping, or privacy glass may be used to provide screening)

Reference the 'Detached ADU Checklist' on pg. 18 for the full list of Design & Development Standards

One Parking Space Required;
ADU and primary dwelling must use
same driveway to access the street

6' Setback from
Primary Dwelling



Limited Detached Design Standards (Most Streamlined)

Reference the 'Permits & Review for ADUs' on pg. 14 for more information.

"Limited Detached" ADUs qualify for a building permit by ONLY meeting the specific requirements listed to the right. These types are allowed on lots in combination with a Junior ADU (JADU) for multiple ADUs.

- ☐ Maximum Floor Area = 800 sq. ft
- ☐ Only one story allowed (16' Max. Height)
- ☐ 4' Side and Rear Setbacks from property lines

Addition ADU

Addition ADUs are new construction units that share at least one wall with the primary dwelling. These are also called “attached ADUs” in the City’s ADU Ordinance.

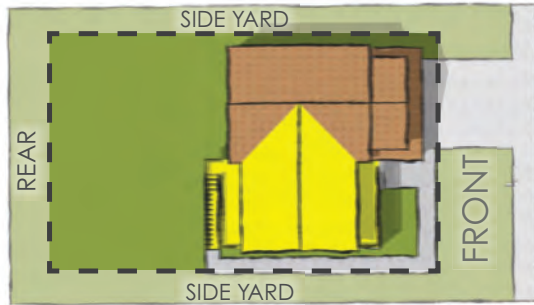


MAX HEIGHT



SETBACKS

- ☐ 4' Front Setback from property line (except in the R1-H District)
- ☐ 4' Side and Rear Setbacks from property lines



SITE CIRCULATION

- ☐ Requires independent, exterior entrance from primary dwelling (Entrance to the ADU cannot face the street, Sliding Doors not allowed as main ADU entrance)
- ☐ The ADU and primary dwelling must use the same driveway to access the street (unless otherwise determined by the fire authority)

PARKING

- ☐ One Off-Street Parking Space Required (Unless Special Conditions are met; See 'Special Conditions for Parking' on Page 11)

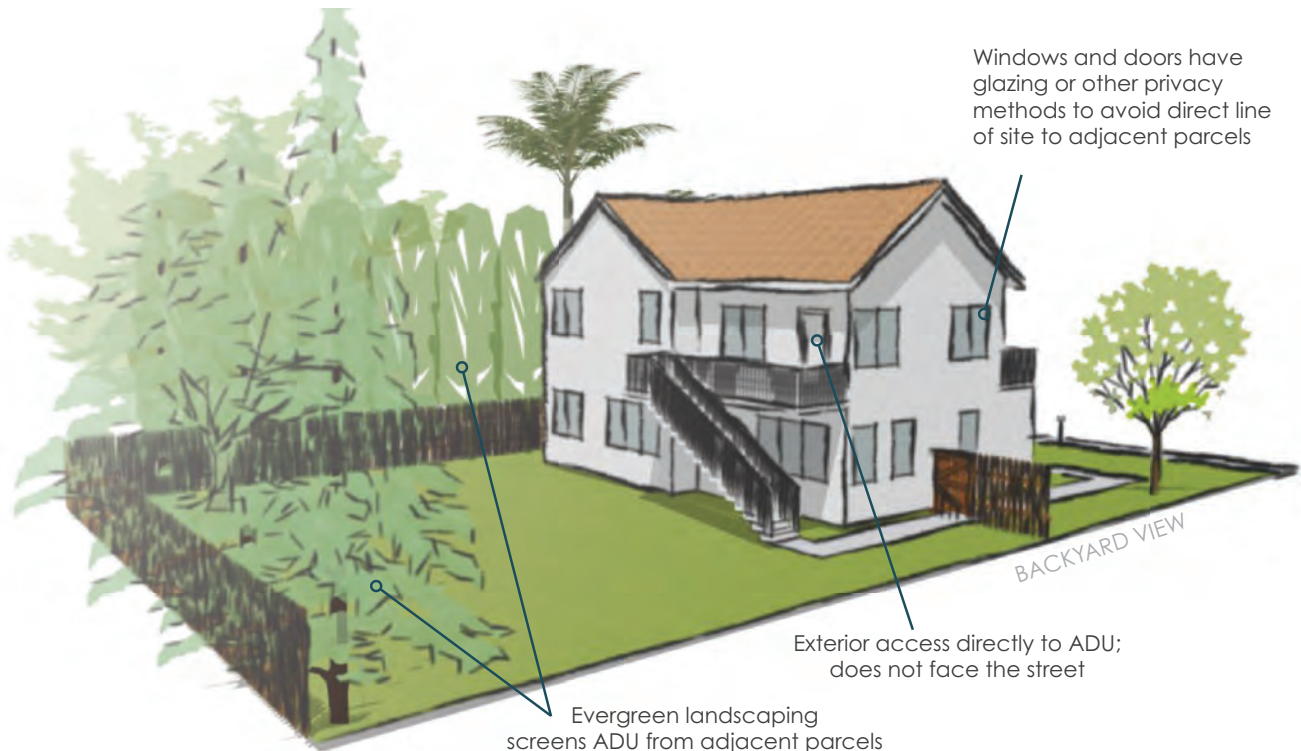
BUILDING SIZE

- ☐ Floor Area of Addition ADU must be 50% or less the area of the existing primary dwelling
- ☐ Only one Attached/Addition ADU allowed (on single-family lot)
- ☐ Minimum Floor Area = 220 sq. ft.
- ☐ Maximum Floor Area
 - One Bedroom = 850 sq. ft.
 - Two (or more) Bedroom = 1,000 sq. ft.
 - Hillside Combining District = 1,200 sq. ft.
- or-
- 50% existing primary dwelling unit sq. ft.
- ☐ Maximum Building Height
 - One Story = 16'
 - Two Story = 28'
 - Hillside Combining District = 17' (West Facing)
27' (East Facing)

DESIGN STANDARDS

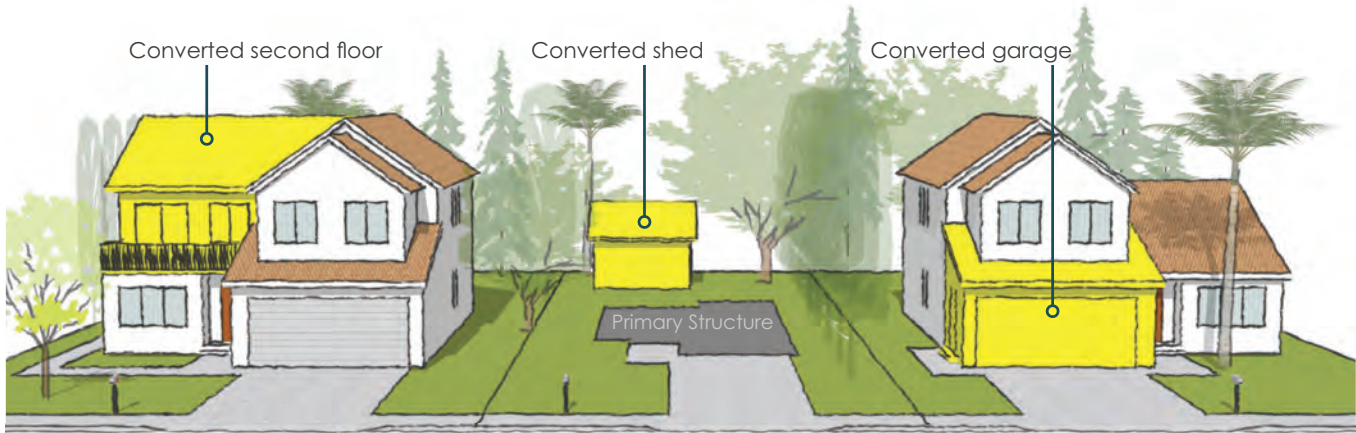
- ☐ Vertical screening evergreen landscaping must be planted and maintained between ADU and adjacent parcels
- ☐ Windows and doors of the ADU may not have a direct line of sight to a neighboring residential property. Fencing, landscaping, or privacy glass may be used to provide screening)

Reference the 'Attached ADU Checklist' on pg. 18 for the full list of Design & Development Standards



Conversion ADU

Conversion ADUs repurpose existing space (e.g. garages, attics, pool house)



Reference the 'Conversion ADU Checklist' on pg. 19 for the full list of Design & Development Standards

Limited Requirements for Converted ADUs (Most Streamlined)

Reference the 'Permits & Review for ADUs' on pg. 14 for more information.

"Limited Converted" ADUs are allowed on residential lots and may be built in combination with a Junior ADU (JADU). Limited Converted ADUs must meet the following standards:

- ☐ Up to 150 sq. ft additional Floor Area allowed for Ingress and Egress
- ☐ Exterior access that is independent of that for the primary dwelling
- ☐ Side and rear setbacks consistent with building and fire codes

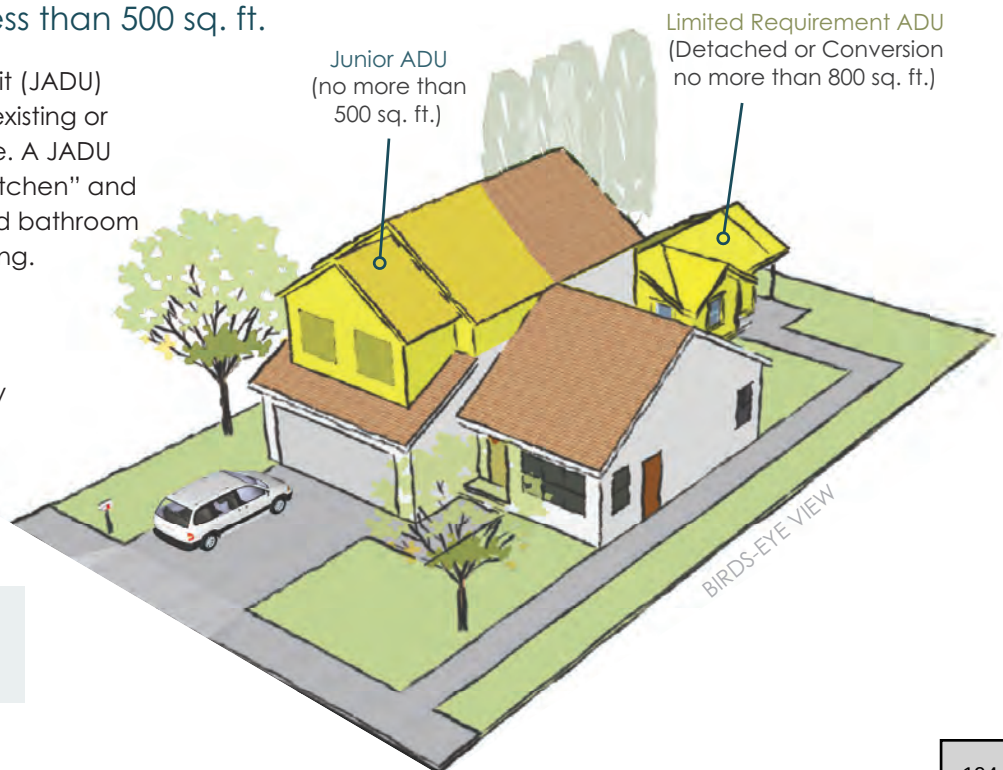
Junior ADU (JADU)

JADUs are small ADUs, less than 500 sq. ft.

A Junior Accessory Dwelling Unit (JADU) is contained entirely within an existing or proposed single-family structure. A JADU requires a smaller, "efficiency kitchen" and may include separate or shared bathroom facilities with the primary dwelling.

Multiple ADUs:

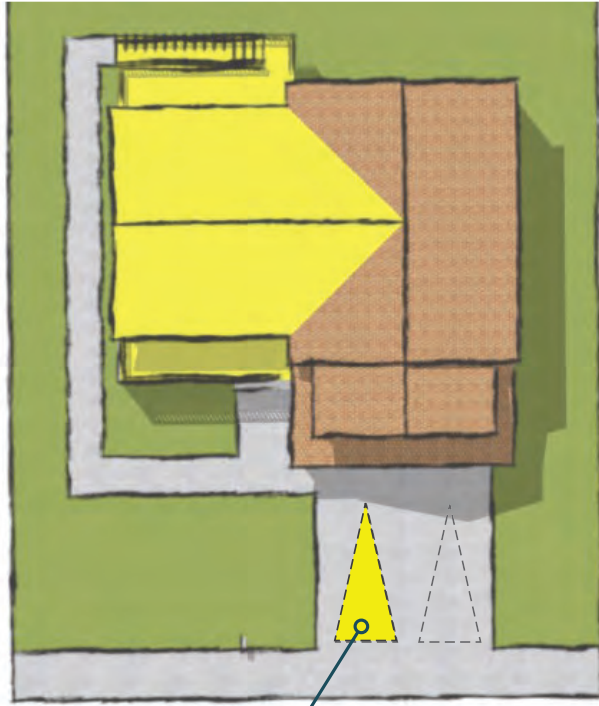
You are only allowed to have multiple ADUs on a single-family lot when you combine a JADU and a "Limited Requirement" Detached or Conversion ADU on your property.



Reference the 'Junior ADU Checklist' on pg. 19 for the full list of Design & Development Standards

Parking Requirements

Generally, one off-street parking space is required for each ADU:



Parking for ADU

However, the rules depend on the type of ADU, and there are special conditions that may eliminate this requirement:



ADU is located within 1/2 mile walking distance of public transit.



ADU is located in an architecturally or historically significant district.



On-street parking permits are required but not offered to the occupant of the ADU.



An established car share vehicle stop is located within one block of the ADU.

If a parking space is required for an ADU, the space may be located within any setback area, in a tandem configuration, or on a mechanical lift. Each unenclosed parking space shall be at least 9 feet wide and 18 feet long. Each parking space that is provided in an enclosed garage shall be at least 10 feet wide and 20 feet long. When a garage, carport, or covered parking structure is converted to an ADU or demolished in conjunction with the construction of an ADU, the off-street parking space or spaces are not required to be replaced.

DETACHED ADU



One off-street parking space required unless special condition is met*.

ADDITION ADU



One off-street parking space required unless special condition is met*.

CONVERSION

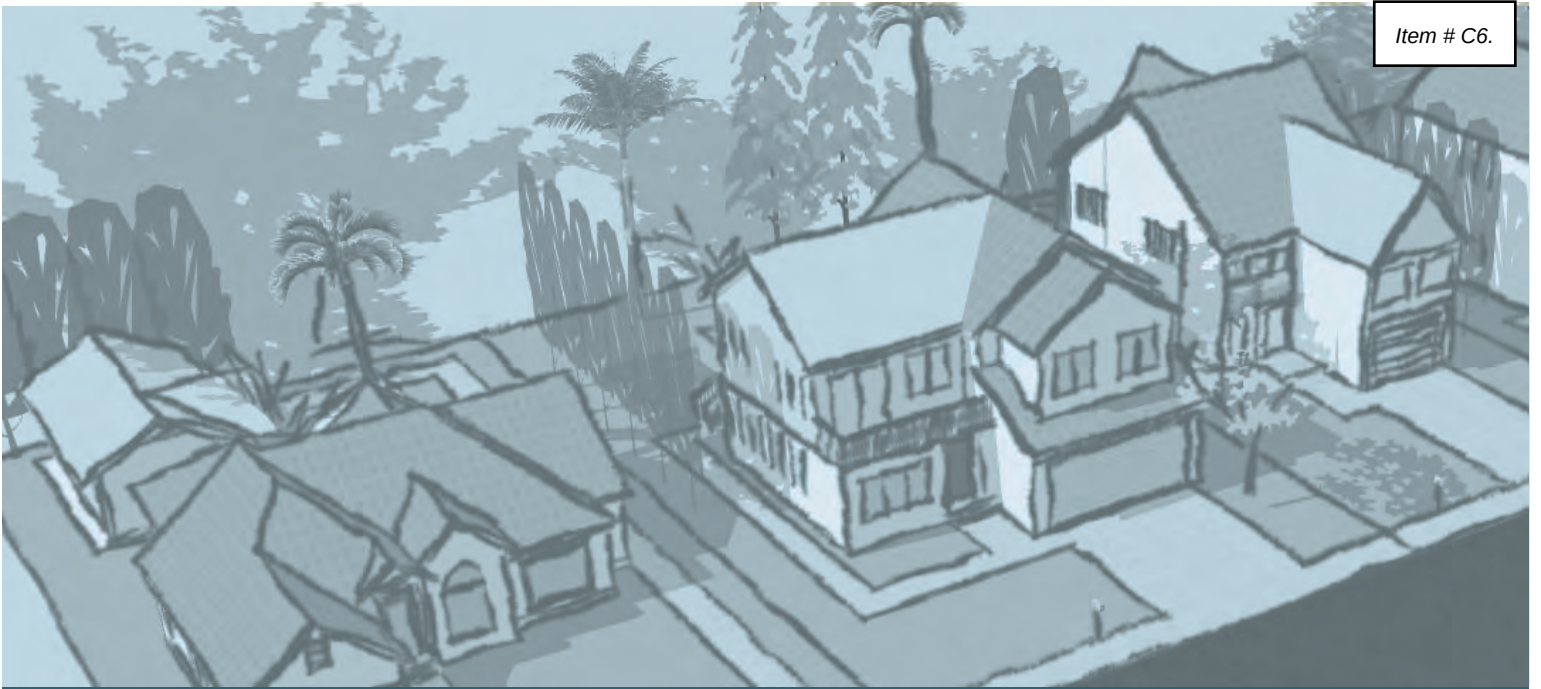


No off-street parking space required; not required to replace garage parking.

JADU



No off-street parking space required.



Building an ADU

What are the options for building an ADU?

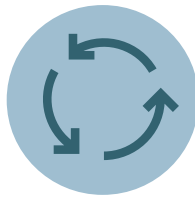
There are three different types of opportunities to establish an ADU and include; constructing a new ADU, converting existing square footage of your property into an ADU, or legalize an existing ADU that might already be part of your property.



NEW CONSTRUCTION

New construction consists of building a new structure on your property.

- New Detached
- New Attached
- Pre-Fabricated ADUs



CONVERSION

Conversion builds are renovating existing sq. ft. of the primary dwelling unit.

- Detached Conversion
- Attached Conversion
- Junior ADU (JADU)



LEGALIZE EXISTING ADU

If you already have an ADU or JADU on your property and would like to legalize it, the City has a Safe ADU Legalization program towards obtaining the correct permits.

See page 15 for more legalization information.

To start your Milpitas ADU project, visit:
www.build.symbium.com

1. Enter your address for ADU eligibility
2. Find and sketch ADU designs
3. Connect with ADU professionals
4. Download a free report for your property



Where can I build an ADU?

An ADU may be established on any residential lot in any district in Milpitas that allows single-family or multi-family dwelling uses. ADUs can be built on new or existing square footage.

What type of permits do I need to build an ADU?

Depending on the type of ADU you plan to build, the necessary permits can vary. All ADUs must comply with local building code requirements.

A member of city staff at the One-Stop Permit center can help you identify which permits are necessary for your build. Additionally, certain permits require different types of City review. This is based on the complexity of your build, the types and number of permits required, and levels of review from various City Departments. *To learn more about applying for Permits & Review Types see the following pages 14-15 on how this will apply to your ADU build.*

Your ADU can require the following permits:

- Planning Permits
- Building Permits
- Utility Permits (e.g. sewer)

How much does an ADU cost to build?



Building Costs

The cost of an ADU depends on a variety of factors, including the size of the ADU, the design of the ADU, whether the ADU is built on-site or ahead of time in a factory, and the cost of materials and labor.

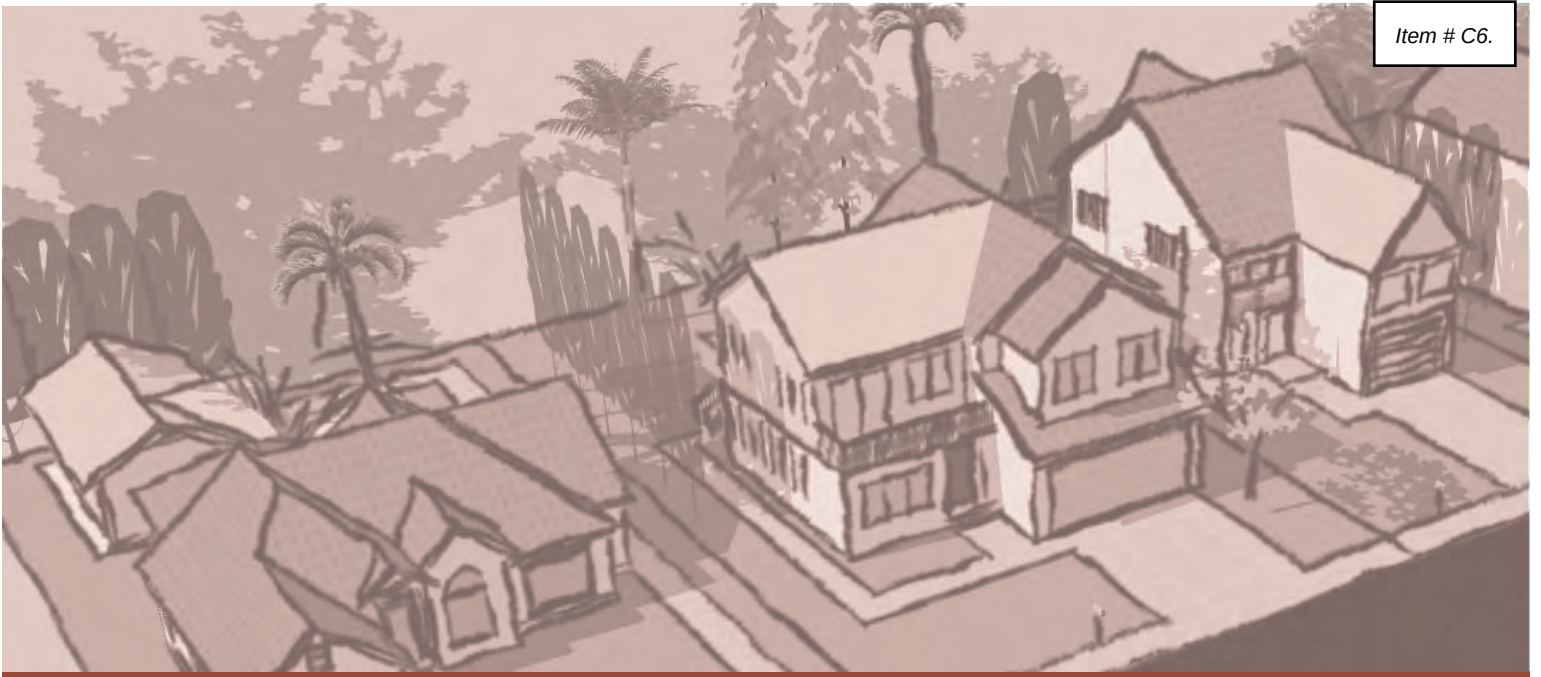
It is recommended that you work with a local architect, general contractor, or find pre-fabricated designs online with the City's Symbium Build tool to help appropriately budget all necessary costs for the specific ADU project on your property.

Permit Costs & Impact Fees

The size and type of your ADU will determine your building permit fees. In addition to the building permit fees, other fees may apply:

- Permit and utility fees are required if your ADU requires any new utility connection lines
- A school impact fee if your ADU project proposes an additional floor area of 750 sq. ft or more.
- If your project involves tree removal, a Tree Removal Permit and fee is required.
- *No impact fees are required for JADU or ADU that is less than 750 ft. in floor area.*

Visit our ADU Corner online for more info and a permit fee estimate: www.ci.milpitas.ca.gov/



Permits & Review for ADUs

Types of Review for ADU

There are three “streamlined” paths for obtaining ADU permits. Your permit review process depends on the complexity of your build, the types and number of permits required, levels of review from various City Departments, and if your ADU plan follows certain design requirements.

1. Most Streamlined

Limited Requirements are a set of basic development standards established by the State of California for all ADUs. Limited Requirements are also the design standards to follow if you are planning to have more than one ADU (Limited Detached/Conversion &

The “**Limited**” and “**Objective**” requirements are the design standards listed on the ADU by Types pages 5-11 (e.g. setbacks, max building height, square footage, etc.) For builds with these types of Development and Design Standards for ADUs, proceed with the building permit process at the Permit Center. This type of review applies to all types of necessary permits for your Limited or Objective ADU build (i.e. permits for building, utilities, etc.)

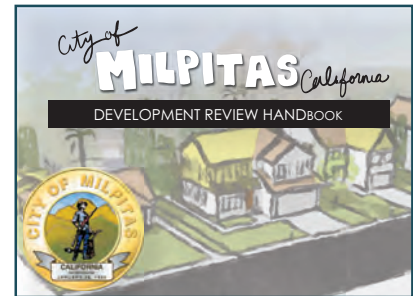
2. Streamlined

Objective Requirements are additional development standards established by the City of Milpitas for ADUs that don't comply with the Limited Requirements. In the context of this toolkit, you will see the Objective Requirements represented as the “General Standards” or “General Requirements.”

The ADU Ordinance in the Milpitas City Code and the Symbium ADU build portal also provides the information necessary on design and building standards.

3. Non-Streamlined

Nonconforming ADUs are ADUs that do not conform to the Limited or Objective Design Standard Requirements due to unique circumstances of potential property constraints or your ADU design (e.g. your ADU exceeds the max sq. ft or extends past the



Nonconforming ADUs will require obtaining a Minor Site Development Permit through the Planning Department's Development Review Process, and this can include multiple rounds of review and a potential review by the Zoning Administrator. Due to the multiple steps of Minor Site Development Permits - refer to the City of Milpitas Development Review Handbook for more information on the Discretionary Review Process as it involves different department approvals and application requirements.

What type of review do my ADU permits need?

Find out with a Milpitas ADU Mondays Appointment!

Schedule Appointment Here: www.ci.milpitas.ca.gov/adu/

It is recommended that you schedule a Milpitas ADU Mondays session where representatives from various City Departments can help identify what type of permit review your ADU project will be categorized as. While not required, making an appointment for a ADU Monday session with City Staff members can help you find out what building permits, design standards, and review type is necessary for your ADU project.

How do I apply for ADU permits?

Visit the Permit Center or Submit Online

www.ci.milpitas.ca.gov/permits/

Visit us in person to discuss with city staff your options for an ADU build, or submit your building permit applications through the above online portal.

455 East Calaveras Blvd.
Milpitas, CA 95035
Phone: (408)-586-3279
Hours: 8:00 a.m. – 5:00 p.m.
Monday-Thursday
Friday: Virtual Service

What is required for legalizing an existing ADU?

The City of Milpitas has a Safe ADU Legalization Program to help homeowners achieve compliance with Planning and Building permits for ADU's. This program also provides waivers for permit fees. Legalizing an unpermitted ADU / JADU requires a review and approval by the Planning Department as well as a building permit. The process of legalization depends on the type of ADU you currently have on your property, if the construction is up to building code, and if you have received any prior code violations. For assistance with this process, please connect with city staff at the Permit Center for the correct forms and submittal documents tailored towards legalizing your Accessory Dwelling Unit.



Resources for ADUs

FAQs, Checklists, and Timelines

Frequently Asked Questions

How long does it take to plan, design, and build an ADU?

Generally, the amount of time it will take will vary based on several factors, including the design selected, whether your ADU is built on-site or built ahead of time in a factory, and the availability of your architect or builder. See the *Process Checklist* on pages 20-21 for more information about estimated timelines of each Stage of the ADU Design, Permitting, and Build.

Can ADUs be rental properties?

Yes, your ADU can be rented out, although Milpitas and most other cities don't allow short-term rentals of ADUs. This means you can only rent your ADU out for a period of month or longer.

Does the owner need to live on the property the ADU is located?

Generally, the property owner will only have to live on the property if a JADU is built on it.

Can an ADU be sold separately from a primary residence?

Sale Prohibited. No ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multi-family lot).

Does building an ADU impact property value?

An ADU will increase the value of your property. The exact amount is difficult to predict, but a very rough estimate is that your property value will increase by 100 times the ADU's monthly rental value. Meaning, if you can rent out your ADU by \$1,500/month, your property value will increase by roughly \$150,000.

Does building an ADU impact property taxes?

Your property taxes will slightly increase based on the added value of the ADU. The base value of your property will not be reassessed. As an example, if an ADU will add \$100,000 in value to your property, and your property tax rate is 1.1%, then your property tax would increase by \$1,100 (\$100,000 x 1.1%).

Do I require a deed restriction?

A deed restriction is required only for JADUs. Prior to obtaining a building permit for a JADU, a deed restriction, approved by the City Attorney, must be recorded with the County Recorder's office. A copy of the recorded deed shall be submitted to the Planning Department prior to building permit approval or issuance.

Do I require a separate utility connection?

Utility connections originally were required for all non-converted ADUs in Milpitas. However, new utility line connections are no longer a requirement in the Milpitas ADU Ordinance. The City now provides an additional option of upsizing an existing utility connection to comply with fire, water, and sewer design standards if necessary for your specific ADU project.

What if I want to build an ADU and an addition onto my existing home at the same time?

The ADU and addition may be reviewed under the same Building Permit application by the Building Department, but the addition will be reviewed separately by the Planning Department and will require a separate discretionary Minor Site Development Permit application.

Can I build a "prefab", factory-built or "tiny home" ADU?

If you are proposing an ADU that is otherwise "Subject to Limited Requirements (Most Streamlined)" (page 14), then yes, these types of ADUs are permitted. If you are proposing an ADU that is otherwise "Subject to Additional Objective Requirements (Streamlined)" (page 14), then no, you may not construct such a unit. If you are proposing an ADU that doesn't fall within either of these categories, you require a Minor Site Development Permit from the Planning Department subject to discretionary review. Note that all ADUs, no matter the type, must have a permanent foundation.

What are setbacks?

A setback is the distance a building needs to be located away from the property lines. No minimum setback is required for newly constructed ADUs built in the same location and with the same dimensions as a previously existing structure. For all other ADUs, a minimum setback of 4' from side and rear lot lines and 6' from the main dwelling unit is required.

General Requirement Checklists

Detached



- ☐ Minimum Floor Area = 220 sq. ft.
- ☐ Maximum Floor Area
 - One Bedroom = 850 sq. ft.
 - Two (or more) Bedroom = 1,000 sq. ft.
 - Hillside Combining District = 1,200 sq. ft.
- ☐ Maximum Building Height
 - One Story = 16'
 - Two Story = 28'
 - Hillside Combining District = 17' (W) 27' (E)
- ☐ 4' Side and Rear Setbacks from property lines
- ☐ 6' setback from primary dwelling unit
- ☐ Requires separate, Full Kitchen from primary dwelling unit (*Permanent Range, Counters, Refrigerator, Sink*)
- ☐ Requires separate, full Bathroom from primary dwelling unit (*Sink, Toilet, Shower/Bath*)
- ☐ One Off-Street Parking Space Required
- ☐ Requires independent, exterior entrance from primary dwelling (*Entrance to the ADU cannot face the street, Sliding Doors not allowed as main ADU entrance*)
- ☐ The ADU and primary dwelling must use the same driveway to access the street (*unless otherwise determined by the fire authority*)
- ☐ Architectural style and materiality of Addition must match the primary dwelling
- ☐ Detached ADU requires insulation, lighting, ventilation, and heating systems
- ☐ Central systems for the ADU (heating & A/C) are independent from the primary dwelling
- ☐ Separate access to ADU electrical panels independent from the primary dwelling
- ☐ Detached ADUs must meet all building codes
- ☐ Vertical screening evergreen landscaping must be planted and maintained between ADU and adjacent parcels
- ☐ Windows and doors of the ADU may not have a direct line of sight to a neighboring residential property. *Fencing, landscaping, or privacy glass may be used to provide screening*
- ☐ May require upsizing an existing utility connection to comply with fire, water, and sewer design standards
- ☐ Fire rated wall and opening are required on either the existing house wall or on the ADU wall if the separation distance between the two structures is less than 10'

Addition



- ☐ Minimum Floor Area = 220 sq. ft.
- ☐ Maximum Floor Area
 - 50% of floor area of primary dwelling -or-
 - One Bedroom = 850 sq. ft.
 - Two (or more) Bedroom = 1,000 sq. ft.
 - Hillside Combining District = 1,200 sq. ft.
- ☐ Maximum Building Height
 - One Story = 16'
 - Two Story = 28'
 - Hillside Combining District = 17' (W) 27' (E)
- ☐ 4' Front, Side and Rear Setbacks from property lines
- ☐ Requires Separate Kitchen from primary dwelling unit (*Permanent Range, Counters, Refrigerator, Sink*)
- ☐ Requires Full Bathroom from primary dwelling unit (*Sink, Toilet, Shower/Bath*)
- ☐ One Off-Street Parking Space Required
- ☐ Requires independent, exterior entrance from primary dwelling (*interior entrance from primary dwelling not allowed; exterior entrance to the ADU cannot face the street; sliding doors not allowed*)
- ☐ No doorways or openings between ADU and the primary dwelling
- ☐ The ADU and primary dwelling must use the same driveway to access the street (*unless otherwise determined by the fire authority*)
- ☐ Architectural style and materiality of Addition must match the primary dwelling
- ☐ Requires independent lighting, ventilation, and heating from the primary dwelling
- ☐ Requires fire rated and sound rated wall separating from the primary dwelling
- ☐ Central systems for the ADU (heating & A/C) are independent from the primary dwelling
- ☐ Separate access to ADU electrical panels independent from the primary dwelling
- ☐ Addition ADUs must meet all building codes
- ☐ Vertical screening evergreen landscaping must be planted and maintained between ADU and adjacent parcels
- ☐ Windows and doors of the ADU may not have a direct line of sight to a neighboring residential property. *Fencing, landscaping, or privacy glass may be used to provide screening*
- ☐ May require upsizing an existing utility connection to comply with fire, water, and sewer design standards

Conversion



- ☐ Existing Primary Dwelling structure must be built to code and have legal permits
- ☐ Minimum Floor Area = 220 sq. ft.
- ☐ Maximum Floor Area*
One Bedroom = 850 sq. ft.
Two (or more) Bedroom = 1,000 sq. ft.
Hillside Combining District = 1,200 sq. ft.
*If conversion is Detached, a 150 sq. ft. addition to the existing accessory building (e.g., pool house) is allowed to facilitate entry into and exit from the ADU.
- ☐ Building Height and Side & Rear Setbacks are determinate on the existing primary dwelling and Zoning District (*established by Building, Fire, and Safety Depts.*)
- ☐ Requires Separate Kitchen from the primary dwelling (*Range, Counters, Cabinets, Refrigerator, Sink*)
- ☐ Requires Full Bathroom from the primary dwelling (*Sink, Toilet, Shower/Bath*)
- ☐ Off-Street Parking Space Not Required
- ☐ Requires independent, exterior entrance from primary dwelling (*interior entrance from primary dwelling not allowed; exterior entrance to the ADU cannot face the street; sliding doors not allowed*)
- ☐ No doorways or openings between ADU and the primary dwelling
- ☐ The ADU and primary dwelling must use the same driveway to access the street (*unless otherwise determined by the fire authority*)
- ☐ Architectural style and materiality of conversion must match the primary dwelling
- ☐ Requires independent lighting, ventilation, and heating from the primary dwelling
- ☐ Requires fire rated and sound rated wall separating from the primary dwelling
- ☐ Central systems for the ADU (heating & A/C) are independent from the primary dwelling
- ☐ Separate access to ADU electrical panels independent from the primary dwelling
- ☐ Conversion ADU must meet all building codes
- ☐ Garage Conversions: require vapor retarder over existing garage slab
- ☐ May require upsizing an existing utility connection to comply with fire, water, and sewer design standards

Junior ADU



- ☐ Existing Primary Dwelling structure must be built to code and have legal permits
- ☐ Minimum Floor Area = 220 sq. ft.
- ☐ Maximum Floor Area = 500 sq. ft.
- ☐ Owner-occupancy requirement (property owner must permanently reside in either the primary dwelling or the JADU)
- ☐ Shares at least one wall with primary dwelling
- ☐ May have separate or shared bathroom facilities with the primary dwelling (*Sink, Toilet, Shower/Bath*)
- ☐ Requires an efficiency kitchen
- ☐ Shares 'central systems' with primary dwelling (*i.e. water, sewer, electric*)
- ☐ Off-Street Parking Space Not Required
- ☐ Requires independent, exterior entrance from primary dwelling (*Entrance to the JADU cannot face the street, Sliding Doors not allowed, Door to be 36" wide*)
- ☐ The JADU must use the same driveway to access the street as primary dwelling (*unless otherwise determined by the fire authority*)
- ☐ Requires sound rated wall separating from the primary dwelling
- ☐ Central Heating and A/C systems for the JADU are independent from the primary dwelling
- ☐ Separate access to JADU electrical panels independent from the primary dwelling
- ☐ Architectural style and materiality of the JADU must match the primary dwelling
- ☐ No Impact Fees Required
- ☐ Building Height and Setbacks subject to primary dwelling
- ☐ JADUs must meet all building codes
- ☐ Vertical screening evergreen landscaping must be planted and maintained between JADU and adjacent parcels
- ☐ Garage JADUs: require vapor retarder over existing garage slab
- ☐ May require upsizing an existing utility connection to comply with fire, water, and sewer design standards

ADU Process Checklist & Timeline



STEP 1: RESEARCH

~1 MONTH

Schedule a Milpitas ADU Mondays Appointment

Sign up for an ADU Mondays session online to meet with City staff and ask questions. Find out which building permits, design standards, and review type is necessary for your ADU project.

To make an appointment:

www.ci.milpitas.ca.gov/adu/

Get your ADU project started with Symbium Build:

- Enter your address for ADU eligibility
- Find and sketch ADU designs
- Connect with ADU professionals
- Download a free report for your property

www.build.symbium.com

☐ 1. Confirm you can add an ADU to your property in Milpitas

An ADU may be established on any residential lot in any district in Milpitas that allows single-family or multi-family dwelling uses. Enter your address into our online Symbium Build Tool or reference the [Milpitas Zoning Map](#) to see if your property is eligible.

☐ 2. Decide which type of ADU is right for your property

ADUs can be built on new or existing square footage. There are three different options for establishing an ADU:

NEW CONSTRUCTION ADU: New Detached, Attached Addition, Pre-Fabricated ADUs
Consists of building a new structure on your property.

CONVERSION ADU: Conversion, Junior ADU (JADU)

Renovating existing sq. ft. of an attached or detached space of the primary dwelling unit.

LEGALIZE EXISTING ADU: If you already have an ADU or JADU on your property and would like to legalize it, the City has a Safe ADU Legalization program towards obtaining the correct permits.

STEP 2: DESIGN & PLAN

1-3 MONTHS

☐ 3. Understand the ADU Design Standards

Design Standards indicate where the ADU can be located on a property, building heights, proximity to the primary dwelling, and site requirements like parking and landscaping, etc. You can find the specific Design Standards in this ADU Toolkit on pages 5-11 for each type of ADU. Design Standards may vary based on your property's zoning and location - there are separate regulations involved for those building on a Hillside Combining District.

Limited Requirements: are a set of basic design standards for all ADUs established by the State of California.

Objective Requirements: are ADU design standards established by the City (referenced as "General Standards")

Nonconforming ADU: Nonconforming ADUs are ADU designs that do not conform to the Limited or Objective Design Standard Requirements.

☐ 4. Design the ADU & Create your plans

Work with a local architect and general contractor to create your plans, or find pre-fabricated designs online with our Symbium Build tool to get your ideas solidified into legible plans and construction documents. All ADU plans must follow City codes for neighborhood development and building safety.

STEP 3: PERMITTING

1-6 MONTHS

Visit the Permit Center or Submit Online

All permit forms are located online to help get you started. You can pay fees and submit your application [here at this portal](#), or visit us in person to connect with city staff about your ADU questions.

455 East Calaveras Blvd. Milpitas, CA 95035
(408)-586-3279 | Hours: 8:00 a.m. – 5:00 p.m., M-Th
<https://www.ci.milpitas.ca.gov/permits/>

☐ 5. Know which type of permit review your ADU needs:

There are two options for obtaining ADU permits, and your permit review process depends on the complexity of your build, the types and number of permits required, and levels of review from various City Departments.

MOST STREAMLINED & STREAMLINED = Administrative Permits

For builds that follow the “Limited” or “Objective” Requirements for the building design standards, proceed with the building permit process at the Permit Center.

NON-STREAMLINED = Minor Site Development Permit

For builds that are considered “Nonconforming” you are required to obtain a Minor Site Development Permit through the Planning Department’s Development Review Process (this can include multiple rounds of review). *If this applies to you at this stage, refer to the Milpitas Development Review Process Handbook for how to obtain permits.*

☐ 6. Submit ADU Application & Permit Forms

[Begin your application online](#) or in person at the Permit Center. Prepare to include your plans with your application. After you apply, we will send you a confirmation email with your application information. We will review your application and email you within 2 weeks and tell you what your initial fee is.

☐ 7. Pay for Permits & Impact Fees

Pay your fees online at the Permit Center. The size of your ADU will determine your building permit fees.

In addition to the building permit fees, other fees may apply:

- Permit and utility fees are required if you opt to provide separate utility connection lines to the ADU (i.e., water, sewer, gas)
- A school impact fee if your ADU project proposes an additional floor area of 750 sq. ft or more.
- If your project involves tree removal, a Tree Removal Permit and fee is required.
- *No impact fees are required for JADU or ADU that is less than 750 ft. in floor area.*

☐ 8. Resubmit Plans (if required) & Receive Permits

We will send you instructions. Respond to plan review comments. You may need to make changes to your plans and resubmit them. The City will approve and issue the building permit once it meets all code requirements, is approved by all reviewers, and all fees are paid.

STEP 4: CONSTRUCTION

2-12 MONTHS

☐ 9. Begin building your ADU!

You must have your approved construction document before you can start construction. Post your construction document at the construction site. Call or email us to schedule the appropriate inspections during your construction project. The City will finalize the permit once construction is complete and done in accordance with the plans.



ACCESSORY DWELLING UNIT

<http://www.ci.milpitas.ca.gov/adu/>

Prepared for the City of Milpitas by Metta Urban Design



Category 4C

**FIRST AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT**

by and between the

THE CITY OF MILPITAS HOUSING AUTHORITY

and

SOUTH MAIN SENIOR LIFESTYLES, LLC

Initially Executed: August 18, 2009

Amended: October 18, 2011

First Amended and Restated: November 19, 2013

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Exhibits

- A Legal Description of the Property
- A-1 Legal Description of the Phase One Parcel
- A-2 Legal Description of the Phase Two Parcel
- A-3 Legal Description of the Public Use Parcels
- B Scope of Development—Project Description
- C [Intentionally Omitted]
- D Schedule of Performance
- E-1 Financing Plan for Phase One Development
- E-2 Financing Plan for Phase Two Development
- F Form of Grant Deed
- G Form of Memorandum of Disposition and Development Agreement
- H-1 Form of Phase One Regulatory Agreement
- H-2 Form of Phase Two Regulatory Agreement
- I Form of Certificate of Completion

THIS FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**"), initially executed as of August 18, 2009, as amended October 18, 2011, and as herein fully amended and restated as of November 19, 2013 ("**Amendment Effective Date**"), is entered into by and between the City of Milpitas Housing Authority ("**Housing Authority**"), a public body, corporate and politic, and South Main Senior Lifestyles, LLC, a California limited liability company ("**Developer**"). Housing Authority is authorized by the City Council ("**City Council**") of the City of Milpitas ("**City**") to conduct business pursuant to the California Housing Authorities Law (Health and Safety Code Section 34200 et seq.) ("**Housing Authorities Law**"), and to serve as "housing successor" to the former Redevelopment Agency of the City of Milpitas ("**Agency**") pursuant to Health and Safety Code 34176(b). Housing Authority and Developer are hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**."

RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.) ("**CRL**") and prior to its dissolution as described below, the Agency had the responsibility to implement the redevelopment plan adopted in 1976 (as subsequently amended, "**Redevelopment Plan**") by the City Council of the City for the Milpitas Redevelopment Project Area No. 1 ("**Project Area**") as more particularly described in the Redevelopment Plan.

B. The Agency sought, and the Housing Authority now continues to seek, development of the property containing approximately 5.94 gross acres known as Santa Clara County Assessor's Parcel Nos. 086-22-027, 086-22-028, 086-22-046, 086-22-047, and 086-22-048 located at 1504-1620 South Main Street and more particularly described in Exhibit A attached hereto ("**Property**"). The Property is located within the Project Area and the area governed by the City's Midtown Specific Plan ("**Specific Plan**"). The Agency purchased the Property on November 23, 2009 using funds from its Low and Moderate Income Housing Fund ("**Housing Fund**") in accordance with the requirements of the CRL. As further provided in Recital K and in accordance with Section 1.3.5.2 hereof, the Property is intended to be subdivided prior to conveyance, resulting in the assignment of new Assessor's Parcel numbers.

C. To accomplish development of the Property consistent with the CRL, the Redevelopment Plan and the Specific Plan, the Agency and the Developer entered into a Disposition and Development Agreement dated as of August 18, 2009, as amended by a First Amendment dated October 18, 2011 (collectively, "**Initial Agreement**"). The Initial Agreement provided for disposition of the Property to the Developer and development thereon by the Developer of a two-phased residential complex containing approximately three hundred eighty-seven (387) residential units, a new City street and other City rights-of-way, common use facilities, parking, landscaping and related on- and off-site improvements ("**Initial Project**").

D. Pursuant to ABx1 26 enacted effective June 28, 2011, as clarified and amended by AB 1484 effective June 27, 2012 (collectively, "**Redevelopment Dissolution Law**");

1. The Agency, together with every redevelopment agency in California, was dissolved as of February 1, 2012; and

2. Housing Authority, City Council, and Agency adopted joint resolution HA3/8151/RA426 on January 4, 2012, whereby (a) the City, acting in a separate legal capacity and as a separate legal entity, elected to be the successor agency ("**Successor Agency**") to the dissolved RDA for purposes of paying the obligations, unwinding the affairs, and liquidating specified assets of the dissolved Agency; and (b) the City selected the Housing Authority and the Housing Authority elected to take on the responsibility of performing the housing functions of the dissolved Agency.

E. The Property constitutes a "housing asset" of the Agency that transferred to the Housing Authority pursuant to the provisions of Health and Safety Code Section 34176, as confirmed by:

1. A letter of August 31, 2012 from the California Department of Finance to the Housing Authority;

2. The Housing Fund Due Diligence Review report submitted by the County of Santa Clara Finance Agency dated October 2, 2012 as prepared in accordance with Health and Safety Code Section 34179.5; and

3. The Agreed Upon Procedures report submitted by the County of Santa Clara Finance Agency dated October 10, 2012 as prepared in accordance with Health and Safety Code Section 34182(a).

F. Within the meaning of Health and Safety Code Section 34176, the Initial Agreement constitutes:

1. A "housing obligation" and a "housing duty" of the dissolved Agency in that it commits Agency to convey the Property (which is a housing asset of the dissolved Agency, as described in Recital E) to Developer and to provide specified financial assistance from its Housing Fund to Developer;

2. A "housing asset" of the dissolved Agency, in that the Initial Agreement includes an express obligation of Developer to develop and operate specified affordable housing units in the Initial Project for the benefit of the dissolved Agency's affordable housing program; and

3. A "housing function" of the dissolved Agency, in that the Initial Agreement directs the Agency to perform various functions and actions with respect to the above described housing obligations, duties, and assets in order to facilitate development of the Initial Project on the Property and provision of specified affordable housing units using moneys from the Housing Fund.

G. For the foregoing reasons, and in accordance with the requirements of Health and Safety Code Section 34177(g) calling for Successor Agency to transfer the housing functions and assets of the dissolved Agency to Housing Authority, Successor Agency and Housing Authority entered into an Assignment and Assumption Agreement dated of even date herewith, whereby Successor Agency assigned and delegated its rights and obligations under the Initial Agreement to Housing Authority.

H. The Parties now desire to modify the terms of the Initial Agreement in the form of this Agreement to better reflect current market, financial, statutory and planning circumstances, and to enable feasible development of the Property in furtherance of the CRL, the Redevelopment Plan, the Specific Plan, the Agency's most recent five-year Implementation Plan ("**Implementation Plan**"), and the Housing Authorities Law. As part of such modification, the Parties desire to make certain modifications to the Initial Project in the form of the proposed project ("**Project**") that is further summarized below and detailed throughout this Agreement.

I. The proposed Project that is the subject of this Agreement is generally described in the Scope of Development ("**Scope of Development**") attached hereto as Exhibit B. As further described and depicted in the Scope of Development, the Project will include the following two sequential phases:

1. The first phase residential development ("**Phase One Development**") consisting of a one hundred ninety-nine (199) unit "continuum of care" senior (62 years of age and older) housing rental development and related amenities, parking, landscaping, and public street, utility and infrastructure improvements. The Phase One Development will include ten (10) residential units available at affordable housing cost to income-qualified very low income households ("**Phase One Affordable Units**", as more fully described in the Phase One Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("**Phase One Regulatory Agreement**"), the form of which is attached hereto as Exhibit H-1).

2. The second phase residential development ("**Phase Two Development**") consisting of one hundred ninety (190) apartment units for active, independent seniors (62 years of age and older), and related amenities, parking, landscaping and public street, utility, and infrastructure improvements. The Phase Two Development will include thirty-eight (38) residential units available at affordable housing cost to income-qualified very low income households ("**Phase Two Affordable Units**", as more fully described in the Phase Two Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("**Phase Two Regulatory Agreement**"), the form of which is attached hereto as Exhibit H-2). The Phase One Affordable Units and the Phase Two Affordable Units are collectively referred to herein as "**Affordable Units**".

As used in this Agreement, the term "**Development Phase**" means the Phase One Development or the Phase Two Development, as applicable.

J. The Property received certain land use entitlements pursuant to a City Council resolution of February 5, 2008. Those entitlements, including a vesting tentative map remain applicable to the Property through June 24, 2014 (the "**Current VTM**"). To facilitate the development of the Project, the Developer will seek a new set or amended set of land use entitlements from the City (the "**Entitlements**") in accordance with Section 1.3.5.1. The nature and scope of the anticipated Entitlements to be sought by the Developer are summarized in the Scope of Development (Exhibit B), and include revisions to the Current VTM. The Current VTM, as may be revised pursuant to a new application of the Developer and approval of the City Council, is referred to herein as the "**Revised VTM**."

K. To further facilitate the development of the Project, the Developer, with the cooperation of the Housing Authority as provided in Section 1.3.5.2, will seek to cause the

subdivision of the Property in accordance with the State Subdivision Map Act and City Subdivision Ordinance ("**Final Map**") to establish the following parcels within the Property:

1. A private development parcel of approximately 1.94 net acres in the southern portion of the Property, generally as delineated in the attached Exhibit B, Attachment 1 (as such parcel boundaries are finally established pursuant to the approved Revised VTM and the Final Map, "**Phase One Parcel**"), upon which the Phase One Development will be constructed and operated;

2. A private development parcel of approximately 2.86 net acres in the northern portion of the Property, generally as delineated in the attached Exhibit B, Attachment 1 (as such parcel boundaries are finally established pursuant to the approved Revised VTM and the Final Map, "**Phase Two Parcel**"), upon which the Phase Two Development will be constructed and operated; and

3. Public use parcels to be dedicated in fee or by easement to the City comprising the approximately 1.14-net acre balance of the Property, generally as delineated in the attached Exhibit B, Attachment 1, (as such parcel boundaries are finally established pursuant to the approved Revised VTM and the Final Map, "**Public Use Parcels**"), which will contain the right-of-way for various public streets (i.e., Cedar Way and Costas Street), utilities, and related infrastructure improvements.

As used in this Agreement, the term "**Development Parcel**" means the Phase One Parcel or the Phase Two Parcel, as applicable. Exhibit A includes an illustrative plat map that will be subject to refinement in preparing the Final Map.

L. On March 19, 2002, the City Council certified a Program Environmental Impact Report ("**EIR**") for the Specific Plan (SCH #2000092027). Based on an environmental assessment for this Agreement, it has been determined that this Agreement is within the scope of the program of activities for which the environmental impacts were adequately addressed by the EIR. As a result, no new environmental document is required with respect to this Agreement pursuant to the California Environmental Quality Act ("**CEQA**"), as provided in Section 15168(c)(2) of the State CEQA Guidelines, and this Agreement is also exempt from CEQA pursuant to California Government Code Section 65457. The parties acknowledge and agree that, in connection with consideration of Developer's application for the Entitlements and other approvals pursuant to Section 1.3.5, Developer will provide substantially greater detail with respect to the site specific activities and physical characteristics of the proposed Project; that evaluation of the site specific activities and physical conditions of the proposed Project will be conducted by the City pursuant to CEQA as provided in State CEQA Guidelines Section 15168(c)(4) or 15168(d)(1); and that mitigation measures required as part of the EIR that are applicable to the Project and any other mitigation measures deemed necessary as a result of such further City review (collectively, "**Project Mitigation Measures**") have been incorporated in this Agreement as requirements for development of the Project pursuant to Section 5.3, and will be incorporated by the City into the Entitlements or other Project approvals.

M. By action of October 23, 2013, the Planning Commission of the City determined, in accordance with Government Code Section 65402(c), that the disposition of the Property by

Housing Authority and the development of the Project by Developer pursuant to this Agreement conforms to the Specific Plan and the City's General Plan.

N. As housing successor of the dissolved Agency, the Housing Authority has inherited all of the rights, powers, assets, duties and obligations of the Agency in connection with the disposition of the Property pursuant to this Agreement, including the power and duty to dispose of the Property consistent with the disposition requirements of the CRL that formerly applied to the Agency. In compliance with these powers and duties, City Council and Housing Authority have each approved the disposition of the Phase One Parcel and the Phase Two Parcel as set forth in this Agreement, have followed all requisite procedures, and have adopted all requisite findings in connection with the foregoing, including without limitation the requirements of Sections 33431 and 33433 of the CRL.

O. The purpose of this Agreement is to effectuate the Redevelopment Plan, the Specific Plan, the Implementation Plan, the CRL and the Housing Authorities Law by providing for the disposition and development of the Property as more particularly set forth herein, including the provision of the Affordable Units. The Housing Authority has determined that the development of the Property pursuant to this Agreement is consistent with the Specific Plan, the Redevelopment Plan and the Implementation Plan for the Project Area, will be of benefit to the Project Area, and will further the goals of the Redevelopment Plan, the Specific Plan, the Implementation Plan, the CRL and the Housing Authorities Law.

P. It is the Parties' intention that, as of the Amendment Effective Date, this Agreement shall amend, restate, and supersede the Initial Agreement in its entirety.

NOW THEREFORE, the Parties hereby agree as follows.

ARTICLE 1.

REPRESENTATIONS; CONDITIONS PRECEDENT TO PROPERTY CONVEYANCE

Section 1.1 Developer's Representations. Developer represents and warrants to Housing Authority as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.1 not to be true, Developer shall immediately give written notice of such fact or condition to Housing Authority. Developer acknowledges that Housing Authority shall rely upon Developer's representations made herein, notwithstanding any investigation made by or on behalf of Housing Authority.

1.1.1 Authority; Limited Liability Company. Developer is a limited liability company duly organized and in good standing under the laws of the State of California. Developer has full right, power and authority to undertake all obligations of Developer as provided herein, and the execution, performance and delivery of this Agreement by Developer has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Developer have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Developer.

The sole members of Developer are James R. Burns II ("**Burns**"), Harry G. Burrowes ("**Burrowes**"), Joseph W. Callahan, Jr. ("**Callahan**"), Deborah L. Clausen ("**Clausen**"), and Therese A. Freeman ("**Freeman**"), each an individual. Callahan and Burns are the co-managing members of Developer. Burns, Burrowes, Callahan, Clausen, and Freeman are herein collectively referred to as the "**Developer Principals**" and individually referred to as a "**Developer Principal**."

1.1.2 No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

1.1.3 No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

1.1.4 No Developer Bankruptcy. Developer is not the subject of a bankruptcy proceeding.

Section 1.2 Housing Authority Representations. Housing Authority represents and warrants to Developer as follows, and Housing Authority covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.2 not to be true, Housing Authority shall immediately give written notice of such fact or condition to Developer. Housing Authority acknowledges that Developer shall rely upon Housing Authority's representations made herein, notwithstanding any investigation made by or on behalf of Developer.

1.2.1 Authority. Housing Authority is a public entity duly organized and in good standing under the laws of the State of California. Housing Authority has full right, power and authority to undertake all obligations of Housing Authority as provided herein, and the execution, performance and delivery of this Agreement by Housing Authority have been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Housing Authority have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Housing Authority.

1.2.2 No Conflict. Housing Authority's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Housing Authority is a party or by which it is bound.

1.2.3 No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Housing Authority to perform its obligations under this Agreement.

1.2.4 No Bankruptcy. Housing Authority is not the subject of a bankruptcy proceeding.

Section 1.3 Conditions Precedent. As a condition precedent to Housing Authority's obligation to convey the Property to Developer, Developer must satisfy each of the requirements

set forth below to the Housing Authority's satisfaction and within the times set forth in the Schedule of Performance attached hereto as Exhibit D ("**Schedule of Performance**"), unless such time is extended by the mutual agreement of Developer and Housing Authority acting in the discretion of its Executive Director (or waived by Housing Authority acting in the discretion of its Executive Director):

(a) Housing Authority's Board approval of a Financing Plan for the Phase One Development in accordance with Section 1.3.1; and

(b) Submittal by Developer of the evidence of availability of funds for the Phase One Development in accordance with Section 1.3.3; and

(c) City approval of the Entitlements for the Project in accordance with Section 1.3.5.1 and issuance of any other City approvals necessary for construction of the Phase One Development in accordance with Section 1.3.5; and

(d) In cooperation with Housing Authority, recordation of the Revised VTM and the Final Map with respect to the entire Property in accordance with Section 1.3.5.2, provided Developer shall only be required to bond for the public improvements to be constructed as part of Phase 1 prior to the recordation of the Final Map for the entire Property; and

(e) Payment by Developer of all City fees and charges required to be paid at or prior to Closing in accordance with Section 1.3.5.3; and

(f) City approval of the Construction Plans for the Phase One Development in accordance with Section 1.3.5.4; and

(g) Housing Authority approval of the Operator and the Operations Agreement for the Phase One Development in accordance with Section 1.4.1; and

(h) Housing Authority approval of the Services Plan for the Phase One Development in accordance with Section 1.4.2; and

(i) Developer execution and delivery of the Housing Authority Documents in accordance with Section 1.5; and

(j) Submittal by Developer of evidence of required insurance for the Phase One Development in accordance with Section 1.6; and

(k) Payment into escrow by Developer of the Purchase Price in accordance with Section 3.2 and of specified Closing costs in accordance with Section 3.4; and

(l) Satisfaction or waiver of the Closing conditions in accordance with Section 3.7.

As a condition precedent to Developer's commencement of construction of the Phase Two Development on the Phase Two Parcel, Developer must satisfy each of the requirements set forth below to the Housing Authority's satisfaction with respect to the Phase Two Parcel and the Phase Two Development (collectively, "**Phase Two Development Commencement**":

Requirements") within the times set forth in the Schedule of Performance (Exhibit D) unless such time is extended by the mutual agreement of Developer and Housing Authority acting in the discretion of its Executive Director (or waived by Housing Authority acting in the discretion of its Executive Director):

(a) Housing Authority's Board approval of a Financing Plan for the Phase Two Development in accordance with Section 1.3.1; and

(b) Submittal by Developer of the evidence of availability of funds for the Phase Two Development in accordance with Section 1.3.3; and

(c) City issuance of any City approvals necessary for construction of the Phase Two Development in accordance with Section 1.3.5; and

(d) Payment by Developer of all City fees and charges required to be paid prior to commencement of construction of the Phase Two Development in accordance with Section 1.3.5.3; and

(e) City approval of the Construction Plans for the Phase Two Development in accordance with Section 1.3.5.4; and

(f) Submittal by Developer of evidence of required insurance for the Phase Two Development in accordance with Section 1.6;

Developer and Housing Authority, acting in the discretion of its Executive Director, may revise the Schedule of Performance from time to time by Operating Memorandum (as defined and described in Section 10.20) without formal amendment of this Agreement.

1.3.1 Financing Plan. Within the time period set forth in the Schedule of Performance, Developer shall submit for Housing Authority's Board review and approval Developer's plans for financing the acquisition of each Development Parcel and the construction and permanent financing of each Development Phase ("**Financing Plan**"). A separate Financing Plan shall be submitted for each Development Phase. The Financing Plan for each Development Phase shall indicate all sources of funds necessary to pay, when due, the estimated costs of development of that Development Phase, including without limitation hard and soft construction costs, and shall be accompanied by evidence that all such funds have been firmly committed by Developer, equity investors or lending institutions, subject only to commercially reasonable conditions. The Financing Plan for each Development Phase shall include development and operating pro formas which set out in detail Developer's plan for financing the costs of construction and operation of the applicable Development Parcel/Development Phase, including the substantial reserves required by lenders and contingencies to cover unanticipated cost overruns. The pro formas will also include a flow of funds showing sources and timing of disbursements to cover projected construction and operating costs. Developer anticipates that a substantial portion of the investor equity will be invested upfront, prior to the funding of the construction loan, to pay predevelopment costs, and to fund the lender-mandated reserves and project cost contingencies.

As of the Amendment Effective Date, it is the Parties' expectation, and the Parties acknowledge and agree, that the first mortgage debt financing for the Phase One Development and the Phase Two Development may consist of a Federal Housing Administration ("FHA") Section 232 program and Section 221(d)(4) program insured loan, respectively, although Developer may also explore and include other forms of debt financing in the Financing Plan it submits for each Development Phase. In the event Developer's proposed Financing Plan for the Phase Two Development as approved by Housing Authority provides for issuance of tax-exempt bonds ("**Phase Two Tax-Exempt Bonds**") to provide debt financing for the Phase Two Development and to enable procurement of accompanying low income housing tax credit equity, Housing Authority agrees to serve as issuer of the Phase Two Tax-Exempt Bonds and to use diligent good faith efforts to cause issuance of such bonds and delivery of the net bond proceeds for development of the Phase Two Development, consistent with all applicable laws, statutes, rules and regulations; provided that in no way whatsoever shall Housing Authority be responsible, obligated, or liable for the payment of any such bonds other than and exclusively from funds provided by Developer or from designated bond proceeds.

Housing Authority staff shall promptly review and submit each proposed Financing Plan to Housing Authority Board for Board's consideration of approval, and Housing Authority shall approve such plan in writing within thirty (30) business days following receipt provided that the plan conforms to the requirements of this Section 1.3.1. If Housing Authority does not approve a Financing Plan, Housing Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer shall thereafter submit a revised Financing Plan that addresses the reasons for disapproval, and Housing Authority shall grant Developer a reasonable extension of the time deadlines set forth in this Agreement as required to restructure the Financing Plan, subject to the outside time limits for completion set forth in Section 5.1 below. Developer acknowledges and agrees that (i) Housing Authority's approval of a Financing Plan for the Phase One Development shall be a condition precedent to Housing Authority's obligation to convey the Property to Developer; and (ii) the Financing Plans for Phase One and Phase Two are subject to the Housing Authority's review and approval. Housing Authority's approval of a Financing Plan for the Phase Two Development shall be a condition precedent to commencement of construction of the Phase Two Development by Developer. The approved Financing Plans for the Phase One Development and the Phase Two Development shall be attached hereto as Exhibit E-1 and Exhibit E-2, respectively.

1.3.2 Amendment of Previously Approved Financing Plan. Developer shall submit any material revision to an approved Financing Plan to the Housing Authority for its review and approval. Housing Authority staff shall promptly review each proposed revised Financing Plan, and acting through Housing Authority's Executive Director, Housing Authority shall approve a revised Financing Plan in writing within thirty (30) business days following receipt provided that the revised Financing Plan conforms to the requirements of this Section. If Housing Authority does not approve a revised Financing Plan, Housing Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer may thereafter submit a revised Financing Plan that addresses the reasons for disapproval. Any revised Financing Plan that is approved by Housing Authority shall thereafter constitute the approved Financing Plan for the applicable Development Phase, and a copy of such approved revised Financing Plan shall be attached hereto as a new Exhibit E-1 or Exhibit E-2, as applicable. Until a revised Financing Plan for a particular Development Phase is approved by

Housing Authority, the previously approved Financing Plan shall govern the financing of that Development Phase.

1.3.3 Evidence of Availability of Funds. No later than the date shown in the Schedule of Performance for each Development Phase, Developer shall submit to the Housing Authority evidence reasonably satisfactory to Housing Authority that:

(a) all conditions to the release and expenditure of the initial draw of funds described in the approved Financing Plan for the applicable Development Phase as the source of construction financing for that Development Phase have been met (or, with respect to the Phase One Development, will be met upon conveyance of the Property to Developer, and, with respect to the Phase Two Development, will be met upon commencement of construction by Developer), and that such initial draw of funds will be available upon conveyance of the Property to Developer with respect to the Phase One Development, and will be available upon commencement of construction by Developer with respect to the Phase Two Development;

(b) all approvals, permits, and authorizations which are conditioned upon conveyance of the Property with respect to the Phase One Development, and commencement of construction with respect to the Phase Two Development, will be received promptly after conveyance or commencement of construction, as applicable; and

(c) all construction financing (including draws subsequent to the initial draw of funds) with respect to the applicable Development Phase will be available at the times and subject to the terms and conditions of the financing sources set forth in the applicable approved Financing Plan.

Submission by Developer, and approval by Housing Authority, of such evidence of funds availability and evidence of issuance of all required approvals, permits and authorizations for the Phase One Development shall be a condition precedent to Housing Authority's obligation to convey the Property in its entirety to Developer. Submission by Developer, and approval by Housing Authority, of such evidence of funds availability and evidence of issuance of all required approvals, permits and authorizations for the Phase Two Development shall be a condition precedent to commencement of construction of the Phase Two Development by Developer.

1.3.4 Scope of Development. Prior to the Housing Authority's consideration of this Agreement, Developer submitted to Housing Authority a proposed Scope of Development for the Project in the form attached as Exhibit B. The Scope of Development describes and depicts the general location of the Phase One Development, the Phase Two Development, and related public improvements, including the location of the residential units, parking, open space, common areas, landscaping, street, and sidewalks. By execution of this Agreement, Housing Authority hereby approves the general concept of the Scope of Development, subject to subsequent City review and approval through the regular Entitlements process. The parties acknowledge and agree that the Scope of Development represents a starting point and framework for Developer's application for the Entitlements pursuant to Section 1.3.5.1, but that any actual Entitlements granted by the City shall incorporate refinements and revisions to the Scope of Development as determined pursuant to the City's application review process for the Entitlements.

1.3.5 Land Use Approvals; Cooperation. Developer acknowledges and agrees that the execution of this Agreement by Housing Authority does not relieve Developer from the obligation to apply for and to obtain from City all necessary approvals, entitlements, and permits for the development of the Project (including without limitation approval of the Project in compliance with CEQA), nor does it limit in any manner the discretion of the City in the approval process. Prior to conveyance of the Property to Developer, Developer shall obtain all permits, licenses and approvals required for development of the Phase One Development, including without limitation, building permits. Prior to commencement of construction of the Phase Two Development by Developer, Developer shall obtain all permits, licenses and approvals required for development of the Phase Two Development, including without limitation, building permits. Housing Authority staff shall work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for development of the Project. The conditions of approval imposed by the City in connection with any permits or approvals for the Project, including, without limitation, in connection with any grant of the Entitlements as described in Section 1.3.5.1 below or the subdivision of the Property as described in Section 1.3.5.2 below, are hereinafter referred to as the "**Conditions of Approval.**"

Developer further acknowledge and agrees that, in connection with consideration of Developer's application for the Entitlements and other approvals pursuant to Section 1.3.5, Developer will provide substantially greater detail with respect to the site specific activities and physical characteristics of the proposed Project; that evaluation of the site specific activities and physical conditions of the proposed Project will be conducted by the City pursuant to CEQA as provided in State CEQA Guidelines Section 15168(c)(4) or 15168(d)(1); and that mitigation measures required as part of the EIR that are applicable to the Project, and any other mitigation measures deemed necessary as a result of such review, will be incorporated into the Entitlements or other Project approvals.

1.3.5.1 Entitlements. Within the time set forth in the Schedule of Performance, Developer shall submit an application to the City to obtain City consideration of the Entitlements, including, without limitation, a planned district zoning for the Property, a site development permit, a density bonus, a use permit, the Revised VTM, the Final Map, and any other entitlements deemed necessary by the City. The application for the Entitlements sought by Developer shall be reasonably consistent with the Scope of Development (Exhibit B); provided, however, that the parties acknowledge and agree that any actual Entitlements granted by the City shall incorporate refinements and revisions to the Scope of Development as determined pursuant to the City's application review process for the Entitlements. In addition, at Developer's election, the application for the Entitlements may include (and if granted by the City the term "Entitlements" shall be deemed to also include) a development agreement for the Project in accordance with California Government Code Section 65864 *et seq.* The parties further acknowledge and agree that, in addition to the contractual requirements set forth in the Phase One Regulatory Agreement and the Phase Two Regulatory Agreement that each Development Phase be operated as senior housing with the Affordable Units, the Entitlements granted by City for the Project will include a land use restriction that each Development Phase be operated as senior housing consistent with applicable federal and state laws and regulations with the Affordable Units. City approval of the Entitlements shall be a condition precedent to the Housing Authority's obligation to convey the Property to Developer.

1.3.5.2 Subdivision of Property. Provided that the City has approved the Entitlements, including, without limitation, the Revised VTM and the Final Map, and provided that all other conditions precedent to conveyance of the Property in its entirety to Developer related to the Phase One Parcel and the Phase One Development have been satisfied or waived, Housing Authority shall record, prior to conveyance of the Property in its entirety to Developer and at the Developer's expense, the Revised VTM and the Final Map for the entire Property. Upon filing and recording of the Final Map, the legal descriptions of the Phase One Parcel, the Phase Two Parcel, and the Public Use Parcels shall be attached to this Agreement as Exhibit A-1, Exhibit A-2, and Exhibit A-3, respectively.

1.3.5.3 Permits and Fees. Developer shall be obligated to pay when due all customary City fees and charges in connection with the processing of City permits and approvals.

1.3.5.4 Construction Plans. Prior to conveyance of the Property to Developer, City shall have approved the Construction Plans for the Phase One Development pursuant to Article 5. Prior to commencement of construction of the Phase Two Development by Developer, City shall have approved the Construction Plans for the Phase Two Development pursuant to Article 5.

1.3.5.5 Public Improvement Costs. The Scope of Development (Exhibit B) provides, and it is anticipated that the Entitlements will provide, for the preponderance of on-site and off-site public improvements needed for the development of both the Phase One Parcel and the Phase Two Parcel to be installed and initially paid for by Developer as part of the development of the Phase One Development. Housing Authority acknowledges and agrees that Developer with respect to the Phase One Development may seek reimbursement from Developer with respect to the Phase Two Developer (if different) for an allocable fair share of the on-site and off-site public improvements installed and initially paid for by Developer as part of the Phase One Development; provided that Housing Authority shall have no obligation with respect to any such reimbursement.

Section 1.4 Operator, Operations Agreement, and Services Plan For Phase One Development.

1.4.1 Operator and Operations Agreement. Within the time set forth in the Schedule of Performance, Developer shall submit for Housing Authority review and approval the proposed operator to operate the Phase One Development ("**Operator**"), and the proposed agreement between Developer and the Operator for the operation of the Phase One Development ("**Operations Agreement**"). In connection with such submission, Developer shall provide sufficient information, as determined by Housing Authority, to enable Housing Authority to reasonably determine the Operator's financial capacity and operating experience in operating similar "continuum of care" facilities.

Housing Authority staff shall promptly review the identity and qualifications of the Operator and the terms of the Operations Agreement, and acting through Housing Authority's Executive Director, Housing Authority shall approve such Operator and Operations Agreement in writing within thirty (30) business days following receipt provided that the following requirements are satisfied. Housing Authority shall approve the proposed Operator if, in

Housing Authority Executive Director's determination, based on the information provided by Developer, such Operator has the necessary financial capacity and experience to satisfactorily operate the Phase One Development as a "continuum of care" facility in the manner contemplated by the Housing Authority Documents. Housing Authority shall approve the proposed Operations Agreement if, in Housing Authority Executive Director's determination, such Operations Agreement provides for the Operator to operate the Phase One Development as a "continuum of care" facility in the manner contemplated by the Housing Authority Documents, including providing the types of services and amenities to residents, without regard to income level, generally as described in the Scope of Development (Exhibit B) and any then approved Services Plan (as defined and described in Section 1.4.2) and providing the Affordable Units pursuant to and in accordance with the Phase One Regulatory Agreement.

If Housing Authority does not approve the Operator and/or the Operations Agreement, Housing Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer shall thereafter submit revised information about the Operator or shall proposed a different Operator and/or a shall submit a revised Operations Agreement, as applicable, that addresses the reasons for disapproval, and Housing Authority shall grant Developer a reasonable extension of the time deadlines set forth in this Agreement as required to make such revised submission(s), subject to the outside time limit for completion set forth in Section 5.1 below. Housing Authority's approval of the Operator and the Operations Agreement shall be a condition precedent to Housing Authority's obligation to convey the Property to Developer.

Developer shall submit the identity and qualifications of any proposed new Operator, and/or any material revision to the approved Operations Agreement to Housing Authority for its review and approval. Housing Authority staff shall promptly review the proposed new Operator and/or revised Operations Agreement, and acting through Housing Authority's Executive Director, Housing Authority shall approve the new Operator and/or the revised Operations Agreement in writing within thirty (30) business days following receipt provided that the new Operator and/or the revised Operations Agreement conforms to the requirements of this Section. If Housing Authority does not approve the new Operator and/or the revised Operations Agreement, Housing Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer may thereafter submit additional information about the new Operator or a different new Operator, and/or a revised Operations Agreement that addresses the reasons for disapproval. Any new Operator that is approved by Housing Authority shall thereafter be the Operator with respect to the Phase One Development. Any revised Operations Agreement that is approved by Housing Authority shall thereafter constitute the approved Operations Agreement for the Phase One Development. Until a new Operator and/or a revised Operations Agreement for the Phase One Development is approved by Housing Authority, the previously approved Operator and/or Operations Agreement shall remain and govern with respect to the operation of the Phase One Development. Notwithstanding the prior terms of this paragraph, so long as the Phase One Development is encumbered by a mortgage, deed of trust, or other security instrument permitted by this Agreement, the approval by the holder of such mortgage, deed of trust or other security instrument of a proposed new Operator and/or revised Operations Agreement shall be deemed to constitute approval by Housing Authority as well without need for further action or approval by Housing Authority

1.4.2 Services Plan. Within the time set forth in the Schedule of Performance, Developer shall submit for Housing Authority review Developer's plans for the provision of support services and amenities to the residents of the Phase One Development ("**Services Plan**"). The Services Plan shall be generally consistent with the framework of services to residents of the Phase One Development that is summarized in the Scope of Development (Exhibit B) and shall describe the nature of the congregate care and assisted living services to be provided to residents of the Phase One Development. As set forth in Exhibit B, these services are expected to include meals, housekeeping, scheduled transportation in the community shuttle bus, programmed activities and events, health, fitness, recreational and educational programs and assistance with the activities of daily living such as assistance with medication management, grooming, mobility and other personal care and services. By Operating Memoranda prepared and approved in accordance with Section 10.20, the Parties may incorporate such changes to the framework of resident services as set forth in Exhibit B as they deem mutually appropriate.

Housing Authority staff shall promptly review the proposed Services Plan, and acting through Housing Authority's Executive Director, Housing Authority shall approve such plan in writing within thirty (30) business days following receipt provided that the plan conforms to the requirements of this Section 1.4.2. If Housing Authority does not approve the Services Plan, Housing Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer shall thereafter submit a revised Services Plan that addresses the reasons for disapproval, and Housing Authority shall grant Developer a reasonable extension of the time deadlines set forth in this Agreement as required to restructure the Services Plan, subject to the outside time limit for completion set forth in Section 5.1 below. Housing Authority's approval of the Services Plan shall be a condition precedent to Housing Authority's obligation to convey the Property in its entirety to Developer.

Developer shall submit any material revision to the approved Services Plan to Housing Authority for its review and approval. Housing Authority staff shall promptly review the proposed revised Services Plan, and acting through Housing Authority's Executive Director, Housing Authority shall approve the revised Services Plan in writing within thirty (30) business days following receipt provided that the revised Services Plan conforms to the requirements of this Section. If Housing Authority does not approve the revised Services Plan, Housing Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer may thereafter submit a revised Services Plan that addresses the reasons for disapproval. Any revised Services Plan that is approved by Housing Authority shall thereafter constitute the approved Services Plan for the Phase One Development. Until a revised Services Plan for the Phase One Development is approved by Housing Authority, the previously approved Services Plan shall govern with respect to the provision of support services for the Phase One Development.

Section 1.5 Execution and Delivery of Documents. Developer shall execute, acknowledge as applicable, and deliver to Housing Authority this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation the Phase One Regulatory Agreement, the Phase Two Regulatory Agreement, a Notice of Affordability Restrictions On Transfer of Property for the Phase One Affordable Units (a "**Phase One Notice of Affordability**") prepared in accordance with Health and Safety Code Section 33334.3(f)(3)(B), and a Notice of Affordability Restrictions On Transfer of Property for the Phase Two Affordable Units (a "**Phase Two Notice of Affordability**") prepared in

accordance with Health and Safety Code Section 33334.3(f)(3)(B) . This Agreement, the Phase One Regulatory Agreement, the Phase Two Regulatory Agreement, the Phase One Notice of Affordability, the Phase Two Notice of Affordability, the Grant Deed (as defined in Section 3.1 below) for the Property, and the Memorandum (as defined in Section 1.7 below) are hereinafter referred to collectively as the "**Housing Authority Documents.**"

Section 1.6 Insurance. Prior to and as a further condition of Housing Authority conveyance of the Property to Developer, Developer shall provide evidence reasonably satisfactory to Housing Authority that Developer has obtained insurance coverage meeting the requirements set forth in Section 5.11.1 with respect to the Phase One Parcel and the Phase One Development. Prior to and as a further condition of commencement of construction of the Phase Two Development by Developer, Developer shall provide evidence reasonably satisfactory to Housing Authority that Developer has obtained insurance coverage meeting the requirements set forth in Section 5.11.2 with respect to the Phase Two Parcel and the Phase Two Development.

Section 1.7 Memorandum. Developer and Housing Authority shall execute and acknowledge a Memorandum of this Agreement ("**Memorandum**") substantially in the form attached hereto as Exhibit G, and Housing Authority shall cause the Memorandum to be recorded in the Official Records of Santa Clara County promptly following the Amendment Effective Date.

ARTICLE 2.

[INTENTIONALLY OMITTED]

ARTICLE 3.

DISPOSITION OF THE PROPERTY

Section 3.1 Purchase and Sale of Property. Provided that all conditions precedent set forth in this Agreement to conveyance of the Property related to development of the Phase One Development on the Phase One Parcel have been satisfied or waived, Housing Authority shall sell to Developer, and Developer shall purchase from Housing Authority, the fee interest in the entire Property in accordance with and subject to the terms, covenants and conditions of this Agreement, free and clear of all recorded and unrecorded liens, encumbrances, restrictions, easements, assessments, leases and taxes except: (a) the provisions and effect of the Redevelopment Plan, (b) the provisions and effects of the Housing Authority Documents that are applicable to the particular Development Parcel, (c) applicable building and zoning laws and regulations, (d) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed for the Property, and (e) those additional title exceptions identified in that certain preliminary title report issued by Old Republic Title Company dated October 3, 2013 (Order Number 1117012669-JM). All of the foregoing are collectively hereinafter referred to as the "**Permitted Exceptions.**" Conveyance of the Property shall be effectuated by grant deed substantially in the form attached hereto as Exhibit F (the "**Grant Deed**").

Section 3.2 Purchase Price. The purchase price for the Property ("**Purchase Price**") shall be Two Dollars (\$2.00), consisting of One Dollar (\$1.00) attributable to the purchase of the Phase One Parcel portion of the Property and One Dollar (\$1.00) attributable to the purchase of the Phase Two Parcel portion of the Property. The Purchase Price shall be payable in cash by Developer to Housing Authority at and through the Closing (described and defined in Section 3.3 below).

Section 3.3 Escrow. Within the time set forth in the Schedule of Performance, Housing Authority and Developer shall open escrow at the office of Old Republic Title Company located in Oakland, California, or such other title company as the Parties may agree upon ("**Title Company**" or "**Escrow Agent**") in order to consummate the conveyance of the Property in its entirety to Developer and the closing of escrow ("**Closing**") for the transaction contemplated hereby.

Section 3.4 Costs of Closing and Escrow. Developer shall pay all title insurance premiums for policies Developer elects to purchase in connection with the acquisition of the Property and the financing of each Development Phase and all conveyance and recording fees, transfer taxes, escrow fees and closing costs incurred in connection with the conveyance of the Property and the financing of each Development Phase. Property taxes and assessments shall be prorated as of the date of Closing for the Property in its entirety ("**Closing Date**").

Section 3.5 Escrow Instructions; Deposit of Funds; Recordation of Documents. Housing Authority and Developer shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as Housing Authority or Developer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by Housing Authority and Developer, shall serve as escrow instructions for the conveyance of the Property in its entirety to Developer.

Section 3.6 Closing Date. Within the time period set forth in the Schedule of Performance, Developer shall deposit into escrow the Purchase Price, the balance of any other funds Developer is obligated to pay to Housing Authority pursuant to this Agreement with respect to the Closing, and the Housing Authority Documents, executed and acknowledged as applicable. Provided that all conditions precedent set forth in this Agreement to conveyance of the Property related to development of the Phase One Development on the Phase One Parcel have been satisfied or waived, Housing Authority shall deposit into escrow the executed Grant Deed and executed copies of the other Housing Authority Documents to which Housing Authority is a party for the Property. On the Closing Date the Escrow Agent shall cause the Grant Deed for the Property and the other Housing Authority Documents to be recorded in the Official Records of Santa Clara County.

The Closing Date for the Property shall be a date no later than twenty-four (24) months after the Amendment Effective Date ("**Closing Deadline**") which is mutually acceptable to the Parties, and which shall occur within thirty (30) days following the Developer's satisfaction of all conditions precedent to conveyance of the Property related to the development of the Phase One Development on the Phase One Parcel as set forth in Articles 1 and 3. The Closing Deadline may be extended by Operating Memorandum executed by the Parties in accordance with Section 11.20.

Section 3.7 Conditions to Closing. In addition to the conditions precedent to Closing set forth in Articles 1 and 3, the Closing for conveyance of the Property is conditioned upon the satisfaction of the terms and conditions set forth in Sections 3.7.1 and 3.7.2.

3.7.1 Housing Authority's Conditions to Closing. Housing Authority's obligation to proceed with the Closing for conveyance of the Property is subject to Developer's satisfaction or Housing Authority's waiver of the following conditions:

(a) No Default. There shall exist no condition, event or act which would constitute a material breach or default under this Agreement or any other Housing Authority Document, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

(b) Representations. All representations and warranties of Developer contained herein or in any other Housing Authority Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Closing for the Property.

(c) Execution and Recordation of Documents. Developer shall have executed and acknowledged the Memorandum, shall have acknowledged the Grant Deed, and shall have executed and acknowledged as applicable and delivered to escrow all other documents required in connection with the transactions contemplated by the Housing Authority Documents for the Property, including execution and delivery for recordation of the Revised VTM and the Final Map for the entire Property.

(d) Authorization. Developer shall have provided Housing Authority with certified copies of resolutions authorizing Developer's execution of the Housing Authority Documents and such additional certificates as Housing Authority shall reasonably require.

(e) Satisfaction of Conditions Precedent. Developer shall have satisfied all of Developer's obligations set forth in Article 1 and 3 with respect to the Phase One Parcel and the Phase One Development to the Housing Authority's satisfaction.

3.7.2 Developer's Conditions to Closing. Developer's obligation to proceed with the Closing for conveyance the Property is subject to satisfaction or Developer's waiver of the following conditions:

(a) No Default. Housing Authority shall not be in default under the terms of this Agreement, and all representations and warranties of Housing Authority contained herein shall be true and correct in all material respects.

(b) Execution of Documents. Housing Authority shall have executed and acknowledged the Housing Authority Documents and any other documents required hereunder with respect to conveyance of the Property, and shall have delivered such documents into escrow.

(c) Title Policy. The Title Company shall, upon payment of the premium therefore, be ready to issue an ALTA Owner's Title Insurance Policy for the benefit and

protection of Developer ("**Title Policy**") showing title to Property vested in Developer, subject only to Permitted Exceptions.

(d) Available Funding. The Developer has obtained the evidence of availability of all funds necessary to develop the Phase One Development on the Phase One Parcel, as further provided in Section 1.3.3.

(e) Entitlements/Approvals. The City has granted the Entitlements for the Project and all other permits and approvals necessary to develop the Phase One Development, as further provided in Section 1.3.5, and provision has been made for delivery and recordation of the Final VTM and the Final Map for the entire Property, concurrently with the Closing for conveyance of the Property to Developer.

ARTICLE 4.

CONDITION OF THE SITE; ENVIRONMENTAL MATTERS

Section 4.1 Access to Site; Inspections. Housing Authority shall provide Developer and Developer's representatives with access to the Property for the purpose of conducting surveys, obtaining data and making tests necessary to investigate the soils and environmental condition of the Property and the condition of the existing improvements. Housing Authority may require Developer to execute a right of entry agreement and obtain insurance satisfactory to Housing Authority prior to entry onto the Property for such purpose. Developer's inspection, examination, survey and review of the Property shall be at Developer's sole expense. Developer shall provide Housing Authority with copies of all reports and test results promptly following completion of such reports and testing. Developer shall repair, restore and return the Property to its condition immediately preceding Developer's entry thereon at Developer's sole expense. Developer shall at all times keep the Property free and clear of all liens and encumbrances affecting title to the Property. Without limiting any other indemnity provisions set forth in this Agreement, Developer shall indemnify, defend (with counsel approved by Housing Authority) and hold City and Housing Authority and their respective elected and appointed officers, officials, employees, agents and representatives (all of the foregoing, collectively hereinafter the "**Indemnitees**") harmless from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) (all of the foregoing, collectively hereinafter "**Claims**") resulting from or arising in connection with entry upon the Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section 4.1; provided, however, that Developer shall not have a liability or indemnification obligation to the extent any Claim arises merely from discovery by Developer of an existing fact or conditions related to the Property so long as Developer does not exacerbate the condition. Developer's indemnification obligations set forth in this Section 4.1 shall survive the Closing for the Property and the termination of this Agreement.

Section 4.2 AS-IS Sale. Developer acknowledges and agrees that: (i) prior to the Closing Date, in Developer's discretion, Developer shall inspect the Property and the improvements located thereon, and shall examine the legal, environmental, zoning, land use, seismic, title, survey and physical characteristics and condition thereof; (ii) by acquiring the

Property, Developer shall be deemed to have approved of all such characteristics and conditions; and (iii) the Property and the improvements thereon are to be conveyed to, and accepted by Developer in their present condition "AS IS," "WHERE IS" AND WITH ALL FAULTS with no warranty expressed or implied regarding the condition of the soil, its geology, or the presence of known or unknown faults or Hazardous Materials, and no patent or latent defect or deficiency in the condition of the Property or the improvements thereon whether or not known or discovered, shall affect the rights of either Housing Authority or Developer hereunder. Developer shall rely solely upon its own independent investigation concerning the physical condition of the Property and its compliance with applicable statutes, ordinances, rules and regulations. Housing Authority shall have no responsibility for site preparation, demolition, or any other removal or replacement of improvements on the Property.

If following conveyance of the Property, the condition of the Property is not in all respects entirely suitable for the uses to which the Property will be put pursuant to this Agreement, then it shall be the sole responsibility and obligation of Developer to correct any soil, subsurface or structural conditions, demolish any improvements, and otherwise put the Property in a condition suitable for the Project to be constructed pursuant to this Agreement. Developer hereby waives any right to seek reimbursement from Housing Authority for costs Developer incurs in connection with the correction of any physical condition on the Property.

Section 4.3 Release of Claims. Developer hereby waives, releases and discharges forever Indemnitees from all present and future Claims arising out of or in any way connected with the condition of the Property, any Hazardous Materials on, under, in or about the Property, or the existence of Hazardous Materials contamination due to the generation of Hazardous Materials from the Property, however they came to be placed there, except that arising out of the gross negligence or willful misconduct of Indemnitees.

Developer is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR

As such relates to this Section 4.3, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.


Developer Initials

Section 4.4 Developer's Post-Closing Obligations; Environmental Indemnification.

4.4.1 Developer's Covenants. Developer hereby covenants and agrees that:

(a) Developer shall not knowingly permit the Project or the Property or any portion of either to be a site for the use, generation, treatment, manufacture, storage, disposal or

transportation of Hazardous Materials or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Project or the Property with the exception of cleaning supplies and other materials customarily used in construction, rehabilitation, use or maintenance of residential property and used, stored and disposed of in compliance with Hazardous Materials Laws.

(b) Developer shall keep and maintain the Project and the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Hazardous Materials Laws.

(c) Upon receiving actual knowledge of the same, Developer shall immediately advise Housing Authority in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer, the Project, or the Property pursuant to any applicable Hazardous Materials Laws; (ii) any and all claims made or threatened by any third party against the Developer, the Project or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Project or the Property; or (iv) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Property pursuant to any Hazardous Materials Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "**Hazardous Materials Claims**". Housing Authority and/or City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim, and to have its reasonable attorney's fees in connection therewith paid by Developer.

(d) Without Housing Authority's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, Developer shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the Housing Authority agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim.

4.4.2 Environmental Indemnity. Developer shall indemnify, defend (with counsel approved by Housing Authority) and hold Indemnitees harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the failure of Developer, Developer's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws.

4.4.3 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 4.4.2 above, are in no way limited or otherwise affected by any information Housing Authority or City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the Housing Authority or the City obtained such information from the Developer or from its own investigations.

4.4.4 Definitions.

(a) Hazardous Materials. As used herein, "**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, Housing Authority or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq., as the foregoing statutes and regulations now exist or may hereafter be amended.

(b) Hazardous Materials Laws. As used herein "**Hazardous Materials Laws**" means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 4.4.4.1, as they may be amended from time to time.

(c) Project and Property. For the limited and exclusive purposes of this Section 4.4, the terms "Project" and "Property" shall not include the Public Use Parcels, because Developer will not control or be responsible for operating and maintaining the Public Use Parcels.

ARTICLE 5.

DEVELOPMENT OF THE PROJECT

Section 5.1 Schedule of Performance. Developer shall commence and complete construction of each Development Phase and shall satisfy all other obligations of Developer

under this Agreement within the time periods set forth in the Schedule of Performance except as such time periods may be extended upon mutual written consent of Housing Authority and Developer or by operation of Section 10.2. Developer and Housing Authority, acting in the discretion of its Executive Director, may revise the Schedule of Performance from time to time by Operating Memorandum (as defined and described in Section 10.20) without formal amendment of this Agreement. Without limiting the foregoing, Developer shall commence construction of each Development Phase within the respective times set forth in the Schedule of Performance, and shall diligently prosecute to completion the construction of each Development Phase sufficient to allow City issuance of a final certificate of occupancy within the time periods set forth in the Schedule of Performance, subject to the operation of Section 10.2. Each Party shall use diligent and commercially reasonable efforts to perform the obligations to be performed by such Party pursuant to this Agreement within the times periods set forth herein, and if no such time is provided, within a reasonable time, designed to permit issuance of a final certificate of occupancy for each Development Phase by the times specified in this Section 5.1.

Section 5.2 Cost of Acquisition and Construction. Except as expressly set forth herein, Developer shall pay all of Developer's direct and indirect costs and expenses incurred in connection with the acquisition of the Property, including without limitation appraisal fees, title reports and any environmental assessments Developer elects to undertake. Except as expressly set forth herein, all costs of designing, developing and constructing the Project and compliance with the Project approvals, including without limitation all off-site and on-site improvements required by City in connection therewith, shall be borne solely by Developer and shall not be an obligation of Housing Authority. Without limiting the generality of the foregoing, Developer shall design and construct at Developer's expense any lateral connections to public utilities which are necessary to provide water, sewer and storm drain service to the Property.

Section 5.3 Construction Plans. Developer shall submit to City's Building Department detailed construction plans for each Development Parcel (the "**Construction Plans**") within the time period specified in the Schedule of Performance. As used herein, "**Construction Plans**" means all construction documentation upon which Developer and Developer's contractors shall rely in constructing the applicable Development Phase (including landscaping, parking, common and public areas) and shall include, without limitation, final architectural drawings, the site development plan, landscaping plans and specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the approved Entitlements, the other approvals for the applicable Development Phase including the Conditions of Approval and the Project Mitigation Measures imposed by the City in connection with the Entitlements (which Conditions of Approval and Project Mitigation Measures as imposed by the City are incorporated in this Agreement by this reference and are hereby made requirements for the development of each Development Phase), and any other plans or development approvals issued by the City, and shall not materially deviate therefrom without the express written consent of Housing Authority. Provided that the Construction Plans for a Development Phase are consistent with the requirements of this Agreement, approval of the Construction Plans by City shall be deemed approval thereof by Housing Authority.

Section 5.4 Permits and Approvals. Within thirty (30) days following Developer's receipt of City approval of the Construction Plans for each Development Phase, Developer shall apply for and make commercially reasonable efforts to obtain issuance of all necessary building

permits for that Development Phase. Housing Authority staff shall render all reasonable assistance to Developer to obtain such building permits. Developer shall pay City's usual and customary plan check, development impact, and permit fees. Developer shall be responsible for acquisition and maintenance of all permits, licenses and other authorizations required in connection with construction of each Development Phase.

Section 5.5 Construction Plans Must Be Approved; Construction in Accordance with Plans and Approvals. Developer shall not commence construction of a Development Phase until Developer has received written approval of the Construction Plans for that Development Phase by the City Building Department. Developer shall construct each Development Phase in accordance with the approved Construction Plans and all other permits and approvals granted by City and/or Housing Authority pertaining to development of that Development Phase. Developer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental Housing Authority having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

Section 5.6 Change in Construction Plans. If Developer desires to make any material change in the Construction Plans for a Development Phase, Developer shall submit the proposed changes to the Housing Authority and City for approval, which approval shall not be unreasonably withheld, conditioned or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement, the Scope of Development, the Entitlements, and the Conditions of Approval. Unless such proposed change is rejected within thirty (30) days, Housing Authority shall be deemed to have approved such change. If rejected within such time period, the previously approved Construction Plans shall continue to remain in full force and effect.

Any change in the Construction Plans required in order to comply with applicable law shall be deemed approved, so long as such changes do not substantially, nor materially, change the architecture, design, function, use, or other amenities of the applicable Development Phase as shown on the latest approved Construction Plans for that Development Phase.

Section 5.7 Defects in Plans. Neither Housing Authority nor City shall be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Developer shall indemnify, defend (with counsel approved by Housing Authority) and hold harmless the Indemnitees from and against any Claim for damage to property or injury to or death of any person arising out of or in any way relating to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section 5.7 shall survive the termination of this Agreement and the recordation of a Certificate of Completion for the applicable Development Phase. It is further agreed that Housing Authority and City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Housing

Authority or City, or Developer's deposit with Housing Authority of any of the insurance policies described in this Agreement.

Section 5.8 Equal Opportunity. During construction of the Project there shall be no discrimination on the basis of race, religion, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction of the Project. Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

Section 5.9 Prevailing Wages. Developer shall carry out and shall cause its contractors to carry out the construction of the Project in conformity with all applicable laws and regulations, including without limitation, all applicable federal and state labor laws and standards. To the extent applicable to the Project, Developer and its subcontractors and agents, shall comply with California Labor Code Section 1720 et seq. and regulations adopted pursuant thereto ("**Prevailing Wage Laws**") and shall be responsible for carrying out the requirements of such provisions.

Developer shall, and hereby agrees to indemnify, defend (with counsel approved by Housing Authority), protect and hold harmless the Indemnitees from and against any and all Claims whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Housing Authority, City or Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Housing Authority and City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Housing Authority or City, or Developer's deposit with Housing Authority of any of the insurance policies described in this Agreement.

Section 5.10 Performance and Payment Bond(s).

5.10.1 Basic Requirement. Within the time specified in the Schedule of Performance for each Development Phase, Developer shall deliver to Housing Authority copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of that Development Phase. The bonds shall name Housing Authority and City as co-obligees.

5.10.2 Alternative Compliance. In lieu of such performance and payment bonds, Developer may submit evidence satisfactory to Housing Authority of Developer's ability to commence and complete construction of the applicable Development Phase in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of Housing Authority required for any withdrawal, a completion guaranty in a form and from a guarantor

acceptable to Housing Authority, or Subguard Insurance from a general contractor. Such evidence must be submitted in approvable form in sufficient time to allow the Housing Authority to review and approve the information within the time specified in the Schedule of Performance.

Section 5.11 Insurance Requirements.

5.11.1 Phase One Development. The insurance requirements for the Phase One Parcel and the Phase One Development shall be as set forth in Exhibit B to the Form of Phase One Regulatory Agreement (which is attached hereto as Exhibit H-1), except as otherwise provided in Section 6.7 of the Form of Phase One Regulatory Agreement.

5.11.2 Phase Two Development. The insurance requirements for the Phase Two Parcel and the Phase Two Development shall be as set forth in Exhibit B to the Form of Phase Two Regulatory Agreement (which is attached hereto as Exhibit H-2), except as otherwise provided in Section 6.6 of the Form of Phase Two Regulatory Agreement.

Section 5.12 Certificate of Completion. Promptly after completion of construction of a particular Development Phase in accordance with this Agreement and upon City's issuance of a certificate of occupancy for that Development Phase, upon request of Developer, Housing Authority shall provide an instrument so certifying in substantially the form attached hereto as Exhibit I ("**Certificate of Completion**"). Such Certificate of Completion shall constitute conclusive determination of satisfactory completion of construction of the applicable Development Phase. Such Certificate of Completion for a Development Phase shall be in such form as will enable it to be recorded among the official records of Santa Clara County. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance that Development Phase or any part thereof, shall not be deemed a notice of completion under the California Civil Code, and shall not be deemed a determination that the obligations of Developer which continue beyond the completion of construction (including without limitation the obligations imposed pursuant to Article 6 hereof) have been fulfilled.

Section 5.13 Compliance with Laws. Developer shall carry out the construction of the Project in conformity with all applicable state, local and federal laws, ordinances, rules and regulations, including all applicable state and federal labor laws and standards, applicable provisions of the California Public Contracts Code, the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq. and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

Section 5.14 Indemnity. Developer shall defend (with counsel approved by Housing Authority), indemnify and hold harmless the Indemnitees from and against any and all present and future Claims arising from or in connection with Developer's failure to comply with all applicable laws and regulations relating to the construction of the Project, including, without limitation, all applicable federal and state labor laws and standards, or in any other manner relating to development of the Project, or Developer's activities or performance under this Agreement whether such activities or performance be by Developer or by anyone directly or

indirectly employed or contracted with by Developer and whether such Claim shall accrue or be discovered before or after termination of this Agreement. Developer's indemnity obligations under this Section 5.14 shall not extend to Claims resulting solely from Indemnitees' gross negligence or willful misconduct.

Section 5.15 Liens and Stop Notices. Until the expiration of the term of the Phase One Regulatory Agreement with respect to the Phase One Development and the Phase One Parcel, and until expiration of the Phase Two Regulatory Agreement with respect to the Phase Two Development and the Phase Two Parcel, Developer shall not allow to be placed on the applicable Development Parcel or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Developer. If a claim of a lien or stop notice is given or recorded affecting a particular Development Parcel within the applicable period set forth in the preceding sentence, Developer shall within twenty (20) days of such recording or service: (a) pay and discharge the same; (b) effect the release thereof by recording and delivering to the party entitled thereto a surety bond in sufficient form and amount or provide other assurance satisfactory to Housing Authority that the claim of lien or stop notice will be paid or discharged; or (c) contest in good faith the lien or stop notice.

Section 5.16 Right of Housing Authority to Satisfy Liens on the Property. After the conveyance of the Property, if Developer fails to satisfy, discharge or contest any lien or stop notice on the applicable portion of the Property pursuant to Section 5.15 above, Housing Authority shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense and without further notice to Developer. In such event Developer shall be liable for and shall immediately reimburse Housing Authority for such paid lien or stop notice. Alternatively, Housing Authority may require Developer to immediately deposit with Housing Authority the amount necessary to satisfy such lien or claim pending resolution thereof. Housing Authority may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the applicable Development Phase for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the applicable Development Parcel or Development Phase. Housing Authority may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the Housing Authority deems necessary or desirable to protect its interest in the Property and the improvements thereon.

Section 5.17 Housing Authority Rights of Access. Developer shall permit Housing Authority through its officers, agents, or employees, during normal business hours, and accompanied by a representative of Developer, to enter into the Project following 24-hours written notice from Housing Authority (except in the case of emergency in which case Housing Authority shall provide such notice as may be practical under the circumstances) (a) to inspect the works of construction to determine that the same is in conformity with the requirements of this Agreement and the Housing Authority Documents, and (b) following completion of construction, to inspect the ongoing operation and management of the Project to determine that the same is in conformance with the requirements of this Agreement.

Section 5.18 Housing Authority Disclaimer. Developer acknowledges that the Housing Authority is under no obligation, and Housing Authority neither undertakes nor assumes any responsibility or duty, to Developer or to any third party to in any manner review, supervise, or

inspect the progress of construction or the operations of the Project. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by Housing Authority is solely for the purpose of determining whether Developer is properly discharging its obligations to Housing Authority, and shall not be relied upon by Developer or any third party as a warranty or representation by Housing Authority as to the quality of the design or construction of the Improvements or otherwise.

ARTICLE 6.

USE OF THE PROPERTY

Section 6.1 Uses. Developer covenants and agrees for itself and its successors and assigns that each Development Parcel shall be used for the purposes specified in the Redevelopment Plan, the Specific Plan, this Agreement, and the Phase One Regulatory Agreement, or the Phase Two Regulatory Agreement, as applicable. Except as provided otherwise in this Agreement, the conditions set forth in this Agreement with respect to each Development Parcel shall apply until a Certificate of Completion is issued for that Development Parcel; provided however, (a) the covenants against discrimination specified in Section 6.5 of this Agreement shall be perpetual, (b) the covenants pertaining to use and maintenance of each Development Parcel and each Development Phase shall be in effect for the duration of the Redevelopment Plan, (c) the covenants regarding provision of the Phase One Affordable Units and the other provisions regarding the Phase One Development specified in the Phase One Regulatory Agreement shall remain in effect for a term of fifty-five (55) years, commencing upon the issuance of a final certificate of occupancy for the Phase One Development, (d) the covenants regarding provision of the Phase Two Affordable Units and the other provisions regarding the Phase Two Development specified in the Phase Two Regulatory Agreement shall remain in effect for a term of fifty-five (55) years, commencing upon the issuance of a final certificate of occupancy for the Phase Two Development, and (e) the conditions set forth in the Entitlements for the Property shall be perpetual or as otherwise specifically indicated in the Entitlements.

Section 6.2 Affordable Senior Housing. For a term of fifty-five (55) years commencing upon the issuance of a final certificate of occupancy for the Phase One Development, the Phase One Parcel and the Phase One Development shall be used solely for a senior housing project in which the Phase One Affordable Units shall be available as affordable residential units pursuant to and in accordance with the Phase One Regulatory Agreement. For a term of fifty-five (55) years commencing upon the issuance of a final certificate of occupancy for the Phase Two Development, the Phase Two Parcel and the Phase Two Development shall be used solely for a senior housing project in which the Phase Two Affordable Units shall be available as affordable residential units pursuant to and in accordance with the Phase Two Regulatory Agreement.

Section 6.3 Maintenance. Developer shall maintain each Development Parcel and each Development Phase, including related landscaping and common areas, in accordance with

the Milpitas Municipal Code in a manner consistent with community standards, and shall comply with all applicable federal, state and local laws and regulations pertaining thereto. Developer covenants that prior to completion of each Development Phase, the applicable Development Parcel undergoing construction shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards. Developer shall maintain each Development Parcel and each Development Phase in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, and landscaping, and from time to time make all necessary and proper repairs, renewals and replacements.

In the event that there arises at any time prior to the expiration of the term of the Phase One Regulatory Agreement with respect to Phase One Parcel and Phase One Development, or prior to the expiration of the term of the Phase Two Regulatory Agreement with respect to the Phase Two Parcel and the Phase Two Development, a condition in contravention of the above maintenance standard, then Housing Authority shall notify Developer in writing of such condition, giving Developer thirty (30) days from receipt of such notice to cure, or commence to cure and thereafter diligently prosecute to completion the cure of, such condition. In the event Developer fails to cure or commence to cure the condition within the time allowed, Housing Authority shall have the right to perform all acts necessary to cure such condition, or to pursue such other remedy available to Housing Authority and to receive from Developer the Housing Authority's cost in taking such action. The Parties further mutually understand and agree that the rights conferred upon Housing Authority expressly include the right to enforce or establish a lien or other encumbrance against the Phase One Parcel or the Phase Two Parcel, as applicable. The foregoing provisions shall be a covenant running with the land until the expiration of the respective period for each Development Parcel as set forth in the first sentence of this paragraph, enforceable by Housing Authority, its successors and assigns. Nothing in the foregoing provisions shall preclude Developer from making any alterations, additions, or other changes to a particular Development Phase, provided that such changes comply with this Agreement and the approved Construction Plans, and with all necessary land use, building permits, and other approvals from the City.

Section 6.4 Taxes and Assessments. Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Development Parcels, or payable by Developer, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the applicable Development Parcel; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 6.5 Non-Discrimination and Mandatory Language in All Subsequent Deeds, Leases and Contracts. Developer covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project or the Property, nor shall Developer or any person claiming under or through

Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. The foregoing covenants shall run with the land. All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property or the improvements therein shall contain the following language:

6.5.1 In Deeds:

"(a) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a)."

6.5.2 In Leases:

"(a) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

6.5.3 In Contracts:

"(a) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

ARTICLE 7.

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

Section 7.1 Identity of Developer; Changes Only Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project on the Property pursuant to this Agreement. The qualifications, experience, financial capability and expertise of Developer and its principals are of particular concern to Housing Authority. It is because of those qualifications, experience, financial capability and expertise that Housing Authority has entered into this Agreement with Developer. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers under this Agreement, except as hereinafter provided.

Section 7.2 Prohibition on Transfer and Significant Change of Ownership. Prior to the expiration of the term of the Phase One Regulatory Agreement (with respect to the Phase One Parcel and the Phase One Development), or the Phase Two Regulatory Agreement (with respect to the Phase Two Parcel and the Phase Two Development), Developer shall not, except as expressly permitted by this Agreement, the Phase One Regulatory Agreement (with respect to the Phase One Parcel and the Phase One Development), or the Phase Two Regulatory Agreement (with respect to the Phase Two Parcel and the Phase Two Development):

(a) Directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively "**Transfer**") of the whole or any part of the Property, the Project, or this Agreement without the prior written approval of Housing Authority which the Housing Authority may withhold in its sole and absolute discretion. Any such attempt to assign this Agreement without Housing

Authority's consent shall be null and void and shall confer no rights or privileges upon the purported assignee.

(b) Undergo any Significant Change of Ownership without the prior written approval of Housing Authority. For purposes of this Agreement, a "**Significant Change of Ownership**" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis.

(c) As used in this Agreement, the Phase One Regulatory Agreement, and the Phase Two Regulatory Agreement, the term "Transfer" shall include a Significant Change of Ownership.

Section 7.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent the following transactions, and the following transactions are hereby authorized and permitted (collectively, the "**Permitted Transfers**"):

(a) The granting of temporary easements or permits to facilitate development of the Project;

(b) The dedication of any property required pursuant to this Agreement or the Project approvals, including without limitation the Entitlements and the Conditions of Approval;

(c) the lease of individual residences to tenants for occupancy as their principal residence;

(d) Assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or any portion thereof pursuant to the applicable approved Financing Plan (subject to the requirements of Article 8) or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; provided, however, that in no event shall a security interest in connection with financing for the Phase Two Development be placed upon or encumber the Phase Two Parcel prior to the date that all of the Phase Two Development Commencement Requirements set forth in Section 1.3 have been satisfied by Developer or waived by Housing Authority;

(e) Assignments creating security interests in a Development Parcel and Development Phase following issuance of a Certificate of Completion for that Development Parcel and Development Phase or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest;

(f) A Significant Change of Ownership consisting of an adjustment of the membership ownership percentages among the Developer Principals, or of the assignment and transfer of the ownership interest of one or more Developer Principals to a wholly owned affiliate of the Developer Principal(s) making such assignment and transfer;

(g) A Significant Change of Ownership consisting of the admission of one or more additional members in Developer so long as:

1. each such member is admitted either as an equity investor in Developer consistent with the applicable approved Financing Plan, or as an operator for the Phase One Development or the Phase Two Development;

2. one or more of the Developer Principals remain as managing member or co-managing members of Developer; and

3. Developer notifies Housing Authority not less than sixty (60) days prior to the proposed Significant Change in Ownership of such change, and Housing Authority's Executive Director approves such Significant Change of Ownership, which approval shall not be unreasonably withheld, conditioned or delayed, and which approval shall be deemed granted unless disapproved in writing (stating with specificity the reasons for such disapproval) within thirty (30) days of receipt of Developer's notice.

(h) With respect to the Phase One Parcel and the Phase One Development only, any Transfer consistent with Section 8.1 or Section 8.2 of the Form of Phase One Regulatory Agreement attached hereto as Exhibit H, regardless of whether such Transfer occurs prior to or following execution and recordation of the Phase One Regulatory Agreement.

(i) With respect to the Phase Two Parcel and the Phase Two Development, any Transfer consistent with Section 8.1 or Section 8.2 of the form of Phase Two Regulatory Agreement attached hereto as Exhibit H-1, regardless of whether such Transfer occurs prior to or following execution and recordation of the Phase Two Regulatory Agreement.

(j) With respect to the Phase Two Parcel and the Phase Two Development, any Transfer to a limited liability company or other legal entity in which the members (owners) consist of at least at least three of the Development Principals or wholly owned affiliate(s) of at least three of the Developer Principal(s).

(k) Any Transfer occurring after expiration of the Phase One Regulatory Agreement (with respect to the Phase One Parcel and the Phase One Development), or after the expiration of the Phase Two Regulatory Agreement (with respect to the Phase Two Parcel and the Phase Two Development).

Upon request of Developer, Housing Authority shall provide confirmation in form reasonably acceptable to Developer that a particular Permitted Transfer meeting the requirements and conditions of this Section 7.3 has occurred and is recognized as a Permitted Transfer under this Agreement.

Section 7.4 Requirements for Other Proposed Transfers. Housing Authority may, in the exercise of its sole discretion, approve a Transfer of this Agreement, the Property or portion thereof only if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Permitted Transfers described in Section 7.3):

(a) The proposed transferee demonstrates to Housing Authority's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the Housing Authority to competently complete construction of the

Project (or applicable portion thereof) and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(b) Developer and the proposed transferee shall submit for Housing Authority review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee's qualifications and development capacity as the Housing Authority may reasonably request.

(c) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under the Housing Authority Documents which are applicable to the Transfer arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations).

(d) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the Housing Authority in form recordable in the Official Records of Santa Clara County.

Consent to any proposed Transfer pursuant to this Section 7.4 may be given by the Housing Authority's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the Housing Authority's governing board.

Section 7.5 Effect of Transfer without Housing Authority Consent.

7.5.1 In the absence of specific written agreement by the Housing Authority, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement.

7.5.2 If, in violation of this Article 7, Developer Transfers all or any part of the Property or the improvements thereon prior to the recordation of the Certificate of Completion for the applicable Development Parcel and Development Phase, Housing Authority shall be entitled to receive from Developer the amount by which the consideration payable for such Transfer exceeds the sum of (a) the Purchase Price paid by Developer to Housing Authority for the applicable Development Parcel, and (b) the costs incurred by Developer in connection with the improvement and development of the applicable Development Phase, including carrying charges, interest, fees, taxes, assessments and escrow fees. Such excess consideration shall belong to and be paid to Housing Authority by Developer and until so paid, Housing Authority shall have a lien on the applicable Development Parcel and Development Phase for such amount. The provisions of this Section 7.5.2 have been agreed upon so as to discourage land speculation by Developer; accordingly, these provisions shall be given a liberal interpretation to accomplish that end. Following recordation of the Certificate of Completion for the applicable Development Parcel and Development Phase, the provisions of this Section 7.5.2 shall have no further force and effect.

7.5.3 Without limiting any other remedy Housing Authority may have under this Agreement, or under law or equity, this Agreement may be terminated by Housing Authority with respect to the affected Development Parcel and Development Phase if, in violation of this

Article 7, Developer assigns or Transfers this Agreement or the Property prior to the Housing Authority's issuance of a Certificate of Completion for such Development Parcel and Development Phase.

ARTICLE 8.

FINANCING AND RIGHTS OF MORTGAGEES

Section 8.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust or any other reasonable security instrument are permitted to be placed on a Development Parcel prior to issuance of the Certificate of Completion with respect to that Development Parcel, but only for the purpose of securing loans approved pursuant to the applicable approved Financing Plan for the purpose of financing the costs of the design and construction and other expenditures necessary for development and permanent financing of the applicable Development Phase pursuant to this Agreement, including (to the extent provided in the applicable Financing Plan) payments to equity investors in the applicable Development Phase. Developer covenants and agrees, on behalf of itself and its successors and assigns, that it shall not enter into any conveyance for such financing prior to issuance of the Certificate of Completion with respect to a Development Parcel without the prior written approval of Housing Authority's Executive Director, which approval shall not be unreasonably withheld, conditioned or delayed if such financing is consistent with the applicable approved Financing Plan. As used herein, the terms "mortgage" and "deed of trust" shall mean all other appropriate security interests used in financing real estate acquisition, construction and land development.

Following issuance of the Certificate of Completion with respect to a particular Development Parcel and Development Phase, the limitations on encumbrances of that Development Parcel and that Development Phase set forth in the preceding paragraph shall no longer apply.

8.1.1 Memorandum to be Senior to Mortgages. Developer covenants and agrees that the Memorandum of this Agreement shall be senior in priority to any mortgage or other security instrument recorded against the Property, and that if any such instrument has been recorded against the Property prior to recordation of the Memorandum, Developer shall promptly secure execution of such subordination agreements as may be necessary to ensure that Housing Authority's reversionary interest in the Property shall not be defeated as a result of foreclosure of any such instrument.

Section 8.2 Holder Not Obligated to Construct Improvements. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated to construct or complete the applicable Development Phase or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to or be construed to permit or authorize any such holder to devote the applicable Development Parcel to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

Section 8.3 Notice of Default; Right to Cure. Whenever Housing Authority delivers any notice of default or demand to Developer with respect to the commencement, completion, or

cessation of the construction of a Development Phase, Housing Authority shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the applicable Development Parcel, provided that Housing Authority has been provided an address for such notices. Housing Authority shall have no liability to any such holder for any failure by the Housing Authority to provide notice to such holder. Each such holder shall have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the copy of the notice, to cure or remedy or, if the default is of a nature that it cannot be cured within such time period, to commence to cure or remedy any default hereunder. In the event possession of the applicable Development Parcel (or portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within ninety (90) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the applicable Development Phase (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing Developer's obligations to Housing Authority under this Agreement with respect to that Development Phase. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the Development Phase to which the lien or title of such holder relates. Any such holder properly completing the improvements shall be entitled to a Certificate of Completion for the applicable Development Phase upon compliance with the requirements of this Agreement.

Section 8.4 Failure of Holder to Complete Improvements. In any case where six (6) months after occurrence of a Developer Event of Default (as defined and described in Section 9.3 below) in completion of construction of a particular Development Phase, the holder of record of any mortgage or deed of trust has not exercised its option to construct that Development Phase, or having first exercised its option to construct, has not proceeded diligently with such construction, Housing Authority shall be afforded those rights against such holder it would otherwise have against the Developer under this Agreement. In addition, Housing Authority shall have the right prior to foreclosure or transfer of deed in lieu of foreclosure to purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest and other charges properly payable under the mortgage or deed of trust. If the ownership of a particular Development Parcel has vested in the holder, Housing Authority shall have the right for sixty (60) days after such vesting to acquire that Development Parcel from the holder upon payment of an amount equal to the sum of the following:

- (a) The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (b) All expenses with respect to foreclosure;
- (c) The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent ownership or management of that Development Parcel (or portion thereof);

(d) The costs of any improvements for the applicable Development Phase made by such holder; and

(e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Housing Authority.

Section 8.5 Right of Housing Authority to Cure Defaults. In the event of a breach or default by Developer under a mortgage or deed of trust secured by a particular Development Parcel, and the holder of any mortgage or deed of trust has not exercised its option to cure the default, Housing Authority may cure the default, without acceleration of the subject loan, following prior notice thereof to Developer. In such event, Developer shall be liable for, and Housing Authority shall be entitled to reimbursement from Developer for all costs and expenses incurred by Housing Authority associated with and attributable to the curing of the default or breach. Housing Authority shall also be entitled to record a lien upon the applicable Development Parcel to the extent of such incurred costs and disbursements.

Section 8.6 Holder to be Notified. For each deed of trust or mortgage creating a security right or interest in a Development Parcel prior to issuance of the Certificate of Completion for that Development Parcel, the provisions of this Article 8 shall be incorporated into the relevant deed of trust or mortgage to the extent deemed necessary by, and in form and substance reasonably satisfactorily to Housing Authority, or shall be acknowledged by the holder of such instrument prior to its creating any security right or interest in the applicable Development Parcel.

Section 8.7 Estoppel Certificates. Either Developer or Housing Authority may, at any time, and from time to time, deliver written notice to the other Party requesting such party to certify in writing that, to the knowledge of the certifying party (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, such notice shall describe the nature and amount of any such default. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. Housing Authority Executive Director is authorized to execute any certificate requested by Developer hereunder.

Section 8.8 Modifications: FHA-Required Provisions. If a lender with respect to debt financing described in the approved Financing Plan for a Development Phase should, as a condition of providing financing for development of all or a portion of that Development Phase, request any modification of this Agreement in order to protect its interests in the Development Phase or this Agreement, Housing Authority shall consider and act upon such request in good faith and within a reasonable time period.

ARTICLE 9.

DEFAULTS AND REMEDIES

Section 9.1 Termination Without Fault. The occurrence of any of the following constitutes a basis for either Party to terminate this Agreement (to the extent set forth below) without fault of the other Party:

(a) Developer, despite good faith and diligent efforts, is unable to satisfy all of the conditions precedent to Housing Authority's obligation to convey the Property to Developer, set forth in Articles 1 and 3, by not later than the Closing Deadline established pursuant to Section 3.6;

(b) Developer, despite good faith and diligent efforts, is unable to satisfy all of the conditions precedent to commencement of construction of the Phase Two Development by Developer, set forth in Articles 1 and 3, by not later than the deadline set forth in the Schedule of Performance for such construction commencements;

(c) Housing Authority, despite good faith and diligent efforts, is unable to convey the Property to Developer, and Developer is otherwise entitled to such conveyance;

(d) After undertaking an inspection of the environmental conditions on, under, about and above the Property, the Developer concludes in the reasonable exercise of its discretion that the Property is or is likely to be contaminated by Hazardous Materials and, as a result of the contamination, the proposed development of the Property in accordance with this Agreement cannot be undertaken successfully without excessive financial risk to the Developer; provided, however, that this Agreement may only be terminated pursuant to this subsection if the Developer notifies the Housing Authority in writing of such determination no later than one hundred eighty (180) days from the Amendment Effective Date.

Except as otherwise provided in the following paragraph, upon the occurrence of any of the above-described events, and at the election of either Party, this Agreement may be terminated by written notice to the other Party. After termination, neither Party shall have any rights against or liability to the other Party under this Agreement, except that the indemnification provisions of Sections 4.1, 4.4.2, 5.7, 5.9, 5.14, 10.1 and 10.19 shall survive such termination and remain in full force and effect.

Notwithstanding the foregoing, in connection with an event described in paragraph (b) above, this Agreement may be terminated by either Party upon written notice to the other Party only as this Agreement relates to the rights and obligations of the Parties with respect to the Phase Two Parcel and the Phase Two Development, and after such limited termination this Agreement shall remain in full force and effect as it relates to the rights and obligations of the Parties with respect to the Phase One Parcel and the Phase One Development.

Section 9.2 Fault of Housing Authority. Except as to events constituting a basis for termination under Section 9.1, and provided further that the Developer has satisfied its obligations hereunder, the following events shall constitute a "**Housing Authority Event of Default**":

(a) Housing Authority, without good cause, fails to convey the Property to Developer within the time and in the manner set forth in Article 3, and Developer is otherwise entitled by this Agreement to such conveyance; or

(b) Housing Authority breaches any other material provision of this Agreement and fails to cure such breach within any applicable cure period.

Upon the occurrence of either of the above-described events, Developer shall first notify Housing Authority in writing of its purported breach or failure, giving Housing Authority thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event Housing Authority does not then so cure within thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, Housing Authority fails to commence to cure within thirty (30) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then such failure shall constitute a Housing Authority Event of Default and the Developer shall be afforded all of its rights at law or in equity, by taking all or any of the following remedies: (1) terminating this Agreement by delivery of written notice to Housing Authority (provided, however, that the indemnification provisions of Sections 4.1, 4.4.2, 5.7, 5.9, 5.14, 10.1 and 10.19 shall survive such termination); (2) terminating this Agreement only with respect to the Development Parcel and accompanying Development Phase to which the Housing Authority Event of Default applies, while maintaining this Agreement in full force and effect with respect to the other Development Parcel and accompanying Development Phase; and (3) prosecuting an action for specific performance. Notwithstanding anything to the contrary contained herein, in no event shall damages be awarded against City or Housing Authority upon the occurrence of a Housing Authority Event of Default or upon termination of this Agreement.

Section 9.3 Fault of the Developer. Except as to events constituting a basis for termination under Section 9.1, and provided further that Housing Authority has satisfied its obligations hereunder, the following events shall each constitute a "**Developer Event of Default**":

(a) Developer fails to exercise good faith and diligent efforts to satisfy, within the time and in the manner set forth in Article 1 and Article 3, one or more of the conditions precedent to the Housing Authority's obligation to convey the Property to the Developer;

(b) Developer fails to exercise good faith and diligent efforts to satisfy, within the time and in the manner specified in Article 1 and Article 3, one or more of the conditions precedent to commencement of construction of the Phase Two Development by Developer;

(c) Developer refuses to accept conveyance of the Property within the time periods and under the terms set forth in Article 3;

(d) An Event of Default arises under any Housing Authority Document other than this Agreement and remains uncured beyond any applicable cure period;

(e) An Event of Default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any

applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(f) Developer fails to commence or complete construction of a Development Phase within the times set forth in Article 5 or abandons or suspends construction of a Development Phase prior to completion of all construction for a period of sixty (60) days after written notice of such abandonment or suspension;

(g) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 7;

(h) Developer fails to maintain insurance on the Property and the Project as required pursuant to the Housing Authority Documents;

(i) Subject to Developer's right to contest the following charges pursuant to the Housing Authority Documents, if Developer fails to pay taxes or assessments due on a Development Parcel or Development Phase or fails to pay any other charge that may result in a lien on that Development Parcel or Development Phase;.

(j) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the Housing Authority or the City in connection with this Agreement or in any other Housing Authority Document proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to Housing Authority or City;

(k) A court having jurisdiction shall have made or entered any decree or order (1) adjudging Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for either of Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of Developer;

(l) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(m) Developer shall have voluntarily suspended its business or Developer's partnership shall have been dissolved or terminated; or

(n) If Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.3 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default

after the date upon which Housing Authority shall have given written notice of the default to Developer; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, a Developer Event of Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than one hundred twenty (120) days after receipt of notice of the default.

Upon Developer's default under this Agreement, Housing Authority shall provide written notice of the purported breach, and unless a shorter cure period is specified above or in the case of a Developer Event of Default arising under clauses (d) through (n) above, Developer shall have thirty (30) days after the date upon which Housing Authority shall have given written notice of the default to Developer to cure such default; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, a Developer Event of Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than one hundred twenty (120) days after receipt of notice of the default.

Section 9.4 Legal Actions. Upon the occurrence of a default and the expiration of the applicable cure period, the non-defaulting Party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement; provided, however, as further set forth in Section 9.2, in no event shall damages be awarded against City or Housing Authority upon the occurrence of an Housing Authority Event of Default or upon termination of this Agreement. Any such legal actions shall be filed in the Superior Court of Santa Clara County, California or in the Federal District Court for the Northern District of California. Notwithstanding anything herein to the contrary, a Party's right to recover damages in the event of a default shall be limited to recovery of actual damages and shall exclude consequential damages.

Section 9.5 Remedies Cumulative; No Waiver. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties hereunder are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either Party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default. Failure or delay by either Party in providing a notice of default shall not constitute a waiver of any default.

Section 9.6 Special Remedies Prior To Phase One Development Certificate of Completion.

9.6.1 Right of Reverter. If following conveyance of the Property to Developer and prior to the time Developer is entitled to issuance of a Certificate of Completion for the Phase One Development, Developer: (i) fails to begin construction of the Phase One Development within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; (ii) abandons or suspends construction of the Phase One Development for a period of sixty (60) days after written notice from Housing Authority; (iii) fails to complete construction of the Phase One Development by the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; or (iv) directly or indirectly, voluntarily or involuntarily Transfers the Property (or any portion thereof)

or this Agreement in violation of Article 7, Housing Authority may re-enter and take possession of Property or any portion thereof with all improvements thereon without payment or compensation to Developer, and revert in Housing Authority the estate theretofore conveyed to the Developer. The interest created pursuant to this Section 9.6.1 shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from Housing Authority's option to purchase the Property under the same or similar conditions specified in Section 9.6.2. Housing Authority's rights pursuant to this Section 9.6.1 shall not defeat, render invalid or limit any mortgage or deed of trust permitted by this Agreement or any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Parties shall accomplish the re-entry, possession, and revesting contemplated by this Section 9.6.1 in the manner specified in Section 9.12.

Upon revesting in Housing Authority of title to the Property or any portion thereof as provided in this Section 9.6.1, Housing Authority shall use its best efforts to resell the Property or applicable portion thereof and as soon as possible, in a commercially reasonable manner to a qualified and responsible party or parties (as determined by Housing Authority) who will assume the obligation of making or completing the Project in accordance with the uses specified for such Property in this Agreement and in a manner satisfactory to Housing Authority. Upon such resale of the Property or any portion thereof the sale proceeds shall be applied as follows:

(a) First, to reimburse Housing Authority for all costs and expenses incurred by Housing Authority, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture and resale of the Property; all taxes and assessments payable prior to resale, and all applicable water and sewer charges; any payments necessary to discharge any encumbrances or liens on the Property at the time of revesting of title thereto in Housing Authority or to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Project or any part thereof on the Property; and any other amounts owed to the Housing Authority by Developer and its successors or transferee.

(b) Second, to reimburse Housing Authority for damages to which it is entitled under this Agreement by reason of Developer's default.

(c) Third, to reimburse Developer, its successor or transferee, up to the amount equal to:

1. The Purchase Price paid to Housing Authority for the Property;
plus
2. The fair market value of the improvements Developer has placed on the Property or applicable portion thereof; less
3. Any gains or income withdrawn or made by Developer from the Property or applicable portion thereof or the improvements thereon.

Notwithstanding the foregoing, the amount calculated pursuant to this subsection (c) shall not exceed the fair market value of the Property or applicable portion thereof, together with the improvements thereon as of the date of the default or failure which gave rise to Housing Authority's exercise of the right of reverter.

(d) Any balance remaining after such reimbursements shall be retained by Housing Authority.

The rights established in this Section 9.6.1 are to be interpreted in light of the fact that Housing Authority will convey the Property to Developer for development as specified herein and not for speculation. The rights established in this Section 9.6.1 shall terminate and be of no further force and effect upon the date that Developer is first entitled to issuance of a Certificate of Completion for the Phase One Development.

9.6.2 Option to Purchase, Enter and Possess. Housing Authority shall have the additional right at its option to purchase, enter and take possession of the Property or any portion thereof owned by Developer with all improvements thereon (the "**Property Repurchase Option**"), if after conveyance of the Property and prior to the time Developer is entitled to issuance of a Certificate of Completion for the Phase One Development, Developer: (i) fails to begin construction of the Phase One Development within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; (ii) abandons or suspends construction of the Phase One Development for a period of sixty (60) days after written notice from Housing Authority; (iii) fails to complete construction of the Phase One Development by the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; or (iv) directly or indirectly, voluntarily or involuntarily Transfers the Property (or portion thereof) or this Agreement in violation of Article 7. The rights established in this Section 9.6.2 shall terminate and be of no further force and effect upon the date that Developer is first entitled to issuance of a Certificate of Completion for the Phase One Development.

To exercise the Property Repurchase Option, the Housing Authority shall pay to the Developer cash in an amount equal to:

(a) The Purchase Price paid to Housing Authority by Developer for the Property; plus

(b) The fair market value of any new improvements existing on the Property at the time of exercise of the Property Repurchase Option; less

(c) Any gains or income withdrawn or made by the Developer from the Property or the improvements thereon; less

(d) The value of any liens or encumbrances on the Property which Housing Authority assumes or takes subject to; less

(e) Any damages to which Housing Authority is entitled under this Agreement by reason of Developer's default.

In order to exercise the Property Repurchase Option, Housing Authority shall give Developer notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide Housing Authority with a summary of all of Developer's costs incurred as described in this Section. Within thirty (30) days of Housing Authority's receipt of such summary, Housing Authority shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 9.6.2, and Developer shall execute and deposit into such escrow a grant deed transferring to Housing Authority all of Developer's interest in the Property, or portion thereof, as applicable and the improvements located thereon; provided, however, that Developer may contest by appropriate legal action Housing Authority's determination of the amount of all sums owing to Developer pursuant to this Section 9.6.2.

Section 9.7 Special Remedies Prior To Phase Two Development Certificate of Completion.

9.7.1 Special Option to Purchase, Enter and Possess Upon Failure to Timely Commence Phase Two Development. Housing Authority shall have the additional right at its option to purchase, enter and take possession of the Phase Two Parcel or any portion thereof owned by Developer with all improvements thereon ("**Special Phase Two Repurchase Option**"), if following the time Developer is entitled to issuance of a Certificate of Completion for the Phase One Development and prior to the date Developer commences construction of the Phase Two Development, Developer: (i) fails to satisfy or obtain a waiver from Housing Authority for all conditions precedent and set forth in Articles 1 and 3 to commencement of construction of the Phase Two Development by Developer within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; (ii) fails to begin construction of the Phase Two Development within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; or (iii) directly or indirectly, voluntarily or involuntarily Transfers the Phase Two Parcel or this Agreement in violation of Article 7. The rights established in this Section 9.7.1 shall terminate and be of no further force and effect upon the date that Developer commences construction of the Phase Two Development.

In order to exercise the Special Phase Two Repurchase Option, Housing Authority shall give Developer notice of such exercise. Within thirty (30) days after Developer's receipt of Housing Authority's notice of exercise of the Special Phase Two Repurchase Option, Housing Authority shall pay into an escrow established for such purpose cash in the amount of One Dollar (\$1.00), representing the portion of the Purchase Price paid by Developer attributable to the Phase Two Parcel, and Developer shall execute and deposit into such escrow a grant deed transferring to Housing Authority all of Developer's interest in the Phase Two Parcel.

In no event shall the Special Phase Two Repurchase Option provided in this Section 9.7.1 affect or apply in any manner whatsoever to the Phase One Parcel and the Phase One Development.

9.7.2 Right of Reverter. If following the time Developer is entitled to issuance of a Certificate of Completion for the Phase One Development and prior to the time Developer is entitled to issuance of a Certificate of Completion for the Phase Two Development, Developer: (i) fails to satisfy or obtain a waiver from Housing Authority for all conditions precedent and set forth in Articles 1 and 3 to commencement of construction of the Phase Two Development by

Developer within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; (ii) fails to begin construction of the Phase Two Development within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; (iii) abandons or suspends construction of the Phase Two Development for a period of sixty (60) days after written notice from Housing Authority; (iv) fails to complete construction of the Phase Two Development by the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; or (v) directly or indirectly, voluntarily or involuntarily Transfers the Phase Two Parcel, the Phase Two Development or this Agreement in violation of Article 7, Housing Authority may re-enter and take possession of the Phase Two Parcel or any portion thereof with all improvements thereon without payment or compensation to Developer, and revert in Housing Authority the estate theretofore conveyed to the Developer. The interest created pursuant to this Section 9.7.2 shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from Housing Authority's option to purchase the Phase Two Parcel under the same or similar conditions specified in Sections 9.7.1 and 9.7.3. Housing Authority's rights pursuant to this Section 9.7.2 shall not defeat, render invalid or limit any mortgage or deed of trust permitted by this Agreement or any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Parties shall accomplish the re-entry, possession, and revesting contemplated by this Section 9.7.2 in the manner specified in Section 9.12.

Upon revesting in Housing Authority of title to the Phase Two Parcel or any portion thereof as provided in this Section 9.7.2, Housing Authority shall use its best efforts to resell the Phase Two Parcel or applicable portion thereof and as soon as possible, in a commercially reasonable manner to a qualified and responsible party or parties (as determined by Housing Authority) who will assume the obligation of making or completing the Phase Two Development in accordance with the uses specified for such property in this Agreement and in a manner satisfactory to Housing Authority. Upon such resale of the Phase Two Parcel or any portion thereof the sale proceeds shall be applied as follows:

(a) First, to reimburse Housing Authority for all costs and expenses incurred by Housing Authority, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture and resale of the Phase Two Parcel; all taxes and assessments payable prior to resale, and all applicable water and sewer charges; any payments necessary to discharge any encumbrances or liens on the Phase Two Parcel at the time of revesting of title thereto in Housing Authority or to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Phase Two Development or any part thereof on the Phase Two Parcel; and any other amounts owed to Housing Authority by Developer and its successors or transferee.

(b) Second, to reimburse Housing Authority for damages to which it is entitled under this Agreement by reason of the Developer's default.

(c) Third, to reimburse Developer, its successor or transferee, up to the amount equal to:

1. The Purchase Price paid to Housing Authority for the Phase Two Parcel; plus
2. The fair market value of the improvements Developer has placed on the Phase Two Parcel or applicable portion thereof; less
3. Any gains or income withdrawn or made by the Developer from the Phase Two Parcel or applicable portion thereof or the improvements thereon.
4. Notwithstanding the foregoing, the amount calculated pursuant to this subsection (c) shall not exceed the fair market value of the Phase Two Parcel or applicable portion thereof, together with the improvements thereon as of the date of the default or failure which gave rise to the Housing Authority's exercise of the right of reverter.
5. Any balance remaining after such reimbursements shall be retained by Housing Authority.

The rights established in this Section 9.7.2 are to be interpreted in light of the fact that Housing Authority will convey the Phase Two Parcel to the Developer for development as specified herein and not for speculation. The rights established in this Section 9.7.2 shall terminate and be of no further force and effect on the date Developer is first entitled to issuance of a Certificate of Completion for the Phase Two Development. In no event shall the right of reverter provided in this Section 9.7.2 affect or apply in any manner whatsoever to the Phase One Parcel and the Phase One Development.

9.7.3 General Option to Purchase, Enter and Possess. Housing Authority shall have the additional right at its option to purchase, enter and take possession of the Phase Two Parcel or any portion thereof owned by Developer with all improvements thereon ("**General Phase Two Repurchase Option**"), if after the time Developer has commenced construction of the Phase Two Development and prior to the time Developer is entitled to issuance of a Certificate of Completion for the Phase Two Development, Developer: (i) abandons or suspends construction of the Phase Two Development for a period of sixty (60) days after written notice from Housing Authority, (ii) fails to complete construction of the Phase Two Development by the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof, or (iii) directly or indirectly, voluntarily or involuntarily Transfers the Phase Two Parcel or this Agreement in violation of Article 7. The rights established in this Section 9.7.3 shall terminate and be of no further force and effect upon the date that Developer is first entitled to issuance of a Certificate of Completion for the Phase Two Development.

To exercise the General Phase Two Repurchase Option, Housing Authority shall pay to the Developer cash in an amount equal to:

- (a) The Purchase Price paid to Housing Authority by Developer for the Phase Two Parcel; plus
- (b) The fair market value of any new improvements existing on the Phase Two Parcel at the time of exercise of the Phase Two Parcel Repurchase Option; less

(c) Any gains or income withdrawn or made by Developer from the Phase Two Parcel or the improvements thereon; less

(d) The value of any liens or encumbrances on the Phase Two Parcel which Housing Authority assumes or takes subject to; less

(e) Any damages to which Housing Authority is entitled under this Agreement by reason of Developer's default.

In order to exercise the General Phase Two Repurchase Option, Housing Authority shall give Developer notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide Housing Authority with a summary of all of Developer's costs incurred as described in this Section. Within thirty (30) days of Housing Authority's receipt of such summary, Housing Authority shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 9.7.3, and Developer shall execute and deposit into such escrow a grant deed transferring to Housing Authority all of Developer's interest in the Phase Two Parcel, or portion thereof, as applicable and the improvements located thereon; provided, however, that Developer may contest by appropriate legal action Housing Authority's determination of the amount of all sums owing to Developer pursuant to this Section 9.7.3.

In no event shall the General Phase Two Repurchase Option provided in this Section 9.7.3 affect or apply in any manner whatsoever to the Phase One Parcel and the Phase One Development.

Section 9.8 Memorandum of Right of Reverter/Option to Purchase. The Parties shall cause a memorandum or memoranda of the rights granted Housing Authority in Sections 9.6 and 9.7 of this Agreement to be recorded in the official records of Santa Clara County at the time of the Closing for conveyance of the Property in its entirety to Developer. In lieu of such memorandum, the rights afforded Housing Authority pursuant to Sections 9.6 and 9.7 may be described in the Grant Deed for the Property.

Section 9.9 Construction Plans. If this Agreement is terminated pursuant to Section 9.1, Developer, at no cost to Housing Authority, shall deliver to Housing Authority copies of any construction plans and studies in Developer's possession or in the possession of Developer's consultants related to development of the Project on the Property (or the portion thereof that is the subject of such termination), subject to the rights of third parties. In the event Housing Authority utilizes the construction plans or studies, the Housing Authority shall indemnify Developer for any claims arising from the use of construction plans or studies by the Housing Authority pursuant to this Section 9.9.

Section 9.10 Rights of Mortgagees. Any rights of Housing Authority under this Article 9 shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments. Any conveyance or reverter of the Property (or portion thereof) to the Housing Authority pursuant to this Article 9 shall be subject to mortgages and deeds of trust permitted by this Agreement.

Section 9.11 Additional Provisions Regarding Options to Purchase. With respect to the Property Repurchase Option granted in Section 9.6.2, the Special Phase Two Repurchase Option granted in Section 9.7.1, and the General Phase Two Repurchase Option granted in Section 9.7.3 (collectively, "**Repurchase Options**"), Developer acknowledges and agrees that:

(a) Housing Authority has paid and provided valid and sufficient independent consideration for the grant by Developer of the Repurchase Options in the form of the duties and obligations to which Housing Authority has bound itself by execution of this Agreement;

(b) Housing Authority shall have the right and remedy, among any other available rights and remedies, to seek and obtain specific performance of the Repurchase Options in accordance with their respective terms;

(c) Developer expressly waives its right to contest a Housing Authority request to a court of competent jurisdiction to seek specific performance of one or more Repurchase Option(s) on the basis that the Repurchase Options are not subject to the remedy of specific performance (provided, however, that nothing in this Agreement shall prevent Developer from contesting Housing Authority's right to specific performance on the separate basis that the terms of this Agreement allowing Housing Authority to exercise one or more Repurchase Option(s) have not been met); and

(d) Housing Authority would not have entered into this Agreement without Housing Authority's right to enforce the Repurchase Options in accordance with their terms, including, without limitation, the right to obtain specific performance of the Repurchase Options.

Section 9.12 Mechanics of Revesting. The Parties shall implement the following procedures in the circumstances in which Housing Authority is authorized and desires to exercise the rights and remedies set forth in Section 9.6.1 or Section 9.7.2 ("**Revesting Rights**").

(a) Housing Authority shall provide written notice to Developer and to any holder of a security financing instrument for financing authorized by this Agreement with respect to the portion(s) of the Property to which the Revesting Rights apply ("**Holder**"), which notice shall state in reasonable detail the nature of Developer's alleged default and the manner in which Developer or Holder can cure the default. Developer or Holder shall have a period of twenty (20) business days after receipt of written notice (the "**Notice Period**") to cure such default. During the Notice Period, Developer or Holder shall have the right to cure any such default; provided, however, if a default is of a nature which cannot reasonably be cured within the Notice Period, Developer or Holder shall be deemed to have timely cured such default for purposes of this Section if Developer or Holder commences to cure the default within the Notice Period and prosecutes the same to completion within a reasonable time thereafter.

(b) Upon the failure to cure a default as described above, Housing Authority may exercise its Revesting Rights by delivering notice thereof in writing to Developer and any Holder and recording such notice ("Notice of Exercise"). The delivery and recording of the Notice of Exercise shall apply to re-vest in Housing Authority, or its successors or assigns, the portion(s) of the Property to which the Revesting Rights apply together with any and all improvements thereon and rights or interests appurtenant thereto on the terms and conditions set forth in this Section and Section 9.6.1 or Section 9.7.2, as applicable.

(c) Within ten (10) business days of Housing Authority delivering the Notice of Exercise, an escrow ("**Revesting Escrow**") shall be opened by Housing Authority with an escrow company selected by Housing Authority ("**Revesting Escrow Agent**") to evidence the re-vesting of fee title to Housing Authority of the portion(s) of the Property to which the Revesting Rights apply. Housing Authority and Developer shall execute any additional escrow instructions required by Revesting Escrow Agent.

(d) Fee title to the portion(s) of the Property to which the Revesting Rights apply shall revert to Housing Authority free of any and all liens, covenants, restrictions, easements, reservations, or encumbrances, except for (1) those of record existing prior to the conveyance of the Property to Developer, and (2) those permitted by this Agreement ("**Permitted Liens**"), including, without limitation, those liens, covenants, restrictions, easements, reservations, or encumbrances that constitute Permitted Transfers in accordance with Section 7.3. Any and all other liens, covenants, restrictions, easements, reservations, or encumbrances other than the Permitted Liens ("**Unpermitted Liens**") shall be removed by Developer at its sole cost and expense, prior to the applicable portion(s) of the Property reverting to Housing Authority. For any avoidance of doubt, it is understood that Housing Authority's Revesting Rights have first priority over any and all Unpermitted Liens and the applicable portion(s) of the Property shall automatically and without further action of Housing Authority re-vest to Housing Authority clear and free of any Unpermitted Liens. Furthermore, fee title shall revert to Housing Authority at no cost or expense to Housing Authority, including no reimbursement of any kind or payment to Developer or any other party, or any other consideration whatsoever, except as provided in Section 9.6.1 or Section 9.7.2, as applicable.

(e) Within thirty (30) calendar days following the open of the Revesting Escrow, Developer shall deliver to Revesting Escrow Agent an executed and acknowledged Grant Deed ("**Revesting Deed**") approved by Housing Authority for the portion(s) of the Property to which the Revesting Rights apply in favor of Housing Authority.

(f) Revesting Escrow Agent shall record the Revesting Deed upon written notice from Housing Authority that the Revesting Deed is acceptable to Housing Authority and the portion(s) of the Property to which the Revesting Rights apply is/are free and clear of all Unpermitted Liens.

(g) Developer shall cause Revesting Escrow Agent to issue, immediately upon recording the Revesting Deed, a CLTA title insurance policy, or, if requested by Housing Authority an ALTA extended coverage form of title insurance policy, with liability in an amount reasonably specified by Housing Authority insuring title to the portion(s) of the Property to which the Revesting Rights apply as vested in Housing Authority subject only to the Permitted Liens and any other matters agreed upon pursuant to the provisions of this Agreement. Except as otherwise provided herein, Developer shall pay all closing costs in connection with any exercise of the Revesting Rights.

Section 9.13 Mediation. Prior to exercising any right or remedy pursuant to Article 9, the Party that is considering a remedy shall notify the other Party, and the Parties shall mutually seek to conduct a non-binding mediation of the violation or alleged default that is at issue. The Parties shall conduct such mediation with a mediator and under such procedures as they mutually agree for a period not to exceed thirty (30) days, or such longer period as the Parties may agree

in writing. The Parties shall share equally any costs of such mediation process. Following the mediation process, if the mediation does not resolve the matter at issue, the Party that initiated the mediation may proceed to exercise its rights and remedies in accordance with Article 9.

ARTICLE 10.

MISCELLANEOUS PROVISIONS

Section 10.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the Closing for the Property and the expiration or earlier termination of this Agreement.

Section 10.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of City or any other public or governmental agency or entity (other than the acts or failures to act of Housing Authority which shall not excuse performance by Housing Authority), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement, including the Schedule of Performance (Exhibit D), may also be extended in writing by the mutual agreement of Developer and Housing Authority (acting in the discretion of its Executive Director unless he or she determines in his or her discretion to refer such matter to the governing board of the Housing Authority) pursuant to an Operating Memorandum (as defined and described in Section 10.20) without formal amendment of this Agreement.

Housing Authority and Developer acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the work of the applicable Development Phase shall not constitute grounds of enforced delay pursuant to this Section; provided, however, that Housing Authority shall accept as a ground of enforced delay with respect to procurement of loan financing consistent with the approved Financing Plan for the applicable Development Phase any delay in the lender's completion of its standard loan approval or funding procedures beyond the reasonable control of Developer, and under such circumstance

Housing Authority shall not unreasonably deny or delay its approval of an amendment to the Schedule of Performance (Exhibit D) to extend the time for obtaining such lender approval and delivery of loan funding consistent with the approved Financing Plan (and to extend the corresponding Closing Deadline with respect to Phase One Development, or the deadline for commencement of construction with respect to Phase Two Development, as applicable, under the Schedule of Performance (Exhibit D)). Except as set forth in the preceding proviso, each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Amendment Effective Date.

Section 10.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (a) personal delivery, in which case notice is effective upon delivery;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Housing Authority: City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

Developer: South Main Senior Lifestyles, LLC
c/o Callahan Property Company, Inc.
5674 Stoneridge Drive, #212
Pleasanton, CA 94588
Attention: Joseph W. Callahan, Jr.

With a copy to: Collaborative Design Architects Inc.
6114 LaSalle Avenue
Oakland, CA 94611
Attention: James R. Burns II

Section 10.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

Section 10.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

Section 10.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article 7, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

Section 10.7 Provisions Not Merged With Deeds; Survival. None of the provisions, terms, representations, warranties and covenants of this Agreement are intended to or shall be merged by any grant deed conveying either of the Development Parcels to Developer or any successor in interest, and neither such grant deed nor any other document shall affect or impair the provisions, terms, representations, warranties and covenants contained herein. All representations made by Developer and Housing Authority hereunder and Developer's and Housing Authority's respective indemnification obligations pursuant to Sections 4.1, 4.4.2, 5.7, 5.9, 5.14, 11.1 and 11.19 shall survive the expiration or termination of this Agreement and the issuance and recordation of any Certificate of Completion.

Section 10.8 Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

Section 10.9 Action or Approval. Whenever action and/or approval by Housing Authority is permitted or required under this Agreement, Housing Authority's Executive Director or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Executive Director determines in his or her discretion that such action or approval requires referral to Housing Authority's Board for consideration.

Section 10.10 Entire Agreement. This Agreement, including Exhibits A through I attached hereto and incorporated herein by this reference, together with the other Housing Authority Documents, contains the entire agreement between the Parties with respect to the

subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

Section 10.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

Section 10.12 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

Section 10.13 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

Section 10.14 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 10.15 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of Housing Authority or City shall be personally liable to Developer or its successors in interest in the event of any default or breach by Housing Authority or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

Section 10.16 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

Section 10.17 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

Section 10.18 Inspection of Books and Records. Upon request, Developer shall permit the Housing Authority to inspect at reasonable times and on a confidential basis those books, records and all other documents of Developer necessary to determine Developer's compliance with the terms of this Agreement.

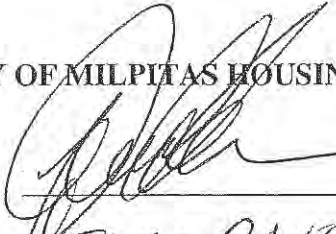
Section 10.19 General Indemnification. Developer shall indemnify, defend (with counsel approved by Housing Authority) and hold harmless Indemnitees from all Claims (including without limitation, attorneys' fees) arising in connection with any claim, action or proceeding to attack, set aside, void, or annul any approval by City or Housing Authority or any of its agencies, departments, commissions, agents, officers, employees or legislative body concerning the Project or this Agreement. Housing Authority will promptly notify Developer of any such claim, action or proceeding, and will cooperate fully in the defense. Housing Authority and City may, within the unlimited discretion of each, participate in the defense of any such claim, action or proceeding, and if Housing Authority or City chooses to do so, Developer shall reimburse Housing Authority and City for reasonable attorneys' fees and expenses incurred.

Section 10.20 Operating Memoranda. The Parties acknowledge that the provisions of this Agreement required a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "Operating Memorandum", and collectively, "Operating Memoranda") approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

Operating Memoranda may be executed on Housing Authority's behalf by its Executive Director, or the Executive Director's designee. Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 10.5, and must be approved by Housing Authority's Board.

IN WITNESS WHEREOF, Housing Authority and Developer have executed this Agreement effective as of the date first written above.

CITY OF MILPITAS HOUSING AUTHORITY

By: 

Name: Thomas C. Williams

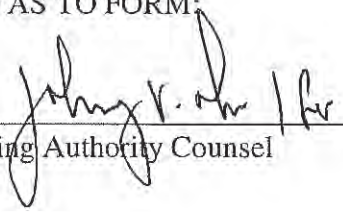
Executive Director

ATTEST:

By: 

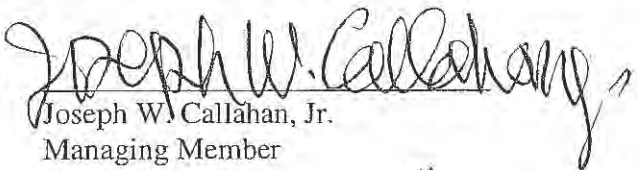
Housing Authority Secretary

APPROVED AS TO FORM:

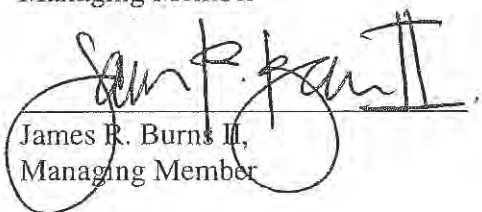
By: 

Housing Authority Counsel

SOUTH MAIN SENIOR LIFESTYLES, LLC
a California limited liability company

By: 

Joseph W. Callahan, Jr.
Managing Member

By: 

James R. Burns II,
Managing Member

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

ORDER NO. : 1117012669-JM

EXHIBIT A

The land referred to is situated in the County of Santa Clara, City of Milpitas, State of California, and is described as follows:

PARCEL ONE:

Parcels 1 and 2 as shown on that certain Parcel Map recorded January 11, 1995 in Book 662 of Maps, at Pages 5 and 6, together with a portion of Parcel A and a portion of Parcel B as described in Resolution No. 7208, a Lot Line Adjustment filed August 28, 2002 as Document No. 16444465, Records of Santa Clara County, California, and as described in the Lot Line Adjustment recorded March 22, 2013, Instrument No. 22142701 of Official Records, more particularly described as follows:

Beginning at the northwest corner of said Parcel 2; thence along the northerly line of said Parcel 2 and the easterly prolongation thereof, South 83° 39' 02" East, a distance of 427.71 feet; thence along a line drawn parallel to and 46.00 feet westerly, measured at right angles to the east line of said Parcel B, South 02° 30' 31" East, a distance of 194.14 feet to the south line of said Parcel B; thence along the south line of Parcel B, Parcel A and Parcel 1, North 83° 39' 02" West, a distance of 466.52 feet to the west line of said Parcel 1; thence along said west line along the arc of a non-tangent curve to the right having a radius of 1,952.00 feet, the center of which bears South 83° 10' 27" East, through a central angle of 02° 57' 55", an arc distance of 101.02 feet; thence North 09° 47' 28" East, a distance of 91.04 feet to the Point of Beginning.

EXCEPTING FROM that portion described as Parcel 2 (662 PM 5) above: all oil, gas, petroleum, other hydrocarbon substances and minerals lying 500 feet or more below the surface of the herein described land, without however, the right to enter upon the surface of said described land or within 500 feet of the subsurface thereof for the purposes of producing or development of such reserved substances, as reserved by Kaiser Aluminum and Chemical Corporation, a corporation in the Deed recorded March 31, 1972 in Book 9768 Page 368 Official Records.

EXCEPTING FROM that portion described as Parcel 1 (662 PM 5) above: all oil, gas, petroleum, other hydrocarbon substances and minerals lying 500 feet or more below the surface of the herein described land, without however, the right to enter upon the surface of said described land or within 500 feet of the subsurface thereof for the purpose of producing or development of such reserved substances.

EXCEPTING FROM that portion described as parcel A above: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

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EXCEPTING FROM that portion described as parcel B above: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

APN: 086-22-046

(Underlying APN'S: 086-22-033; 086-22-034; Portion APN: 086-22-041
Portion APN: 086-22-042)

PARCEL TWO:

A strip of land 46.00 feet in width, being a portion of Parcel B as described in Resolution No. 7208, a Lot Line Adjustment filed August 28, 2002 as Document No. 16444465, Records of Santa Clara County, California, more particularly described as follows:

Beginning at a point on the east line of said Parcel B, distant thereon south 83° 39' 02" west, a distance of 474.27 feet from the northwest corner of Parcel 2 of Parcel Map Book 662, Page 5 & 6; thence along the east line of said Parcel B south 02° 30' 31" east, a distance of 194.14 feet to the southeast corner of said Parcel B; thence along the south line of said Parcel B, north 83° 39' 02" west, a distance of 46.56 feet; thence north 02° 30' 31" west, a distance of 194.14 feet to the easterly prolongation of said Parcel 2; thence south 83° 39' 02" east, a distance of 46.56 feet to the point of beginning.

EXCEPTING THEREFROM: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

APN: 086-22-047 (underlying APN: portion 086-22-042)

PARCEL THREE:

A strip of land 50.00 feet in width being a portion of Parcels A and B as described in Resolution No. 7208, a Lot Line Adjustment filed August 28, 2002, as Document No. 16444465, Records of Santa Clara County, California, more particularly described as follows:

Beginning at a point on the west line of said Parcel A, said point being coincident with the northwest corner of Parcel 2 as shown on the Parcel Map in Book 662 of Maps, pages 5 and 6; thence along the common line between Parcel A and Parcel 2 and the easterly prolongation thereof, south 83° 39' 02" east, a distance of 474.27 feet to the east line of said Parcel B; thence along the east of said Parcel B, north 02° 32' 31" west, a distance of 50.61 feet to the

northeast corner of said Parcel B; thence along the north line of Parcel B, north 83° 39' 02" west, a distance of 463.44 feet to the northwest corner of said Parcel B; thence along the west line of said Parcels A and B, south 09° 47' 28" west, a distance of 50.10 feet to the point of beginning.

EXCEPTING FROM that portion described as parcel A above: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

EXCEPTING FROM that portion described as parcel B above: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

APN: 086-22-048
(underlying APN's: portion 086-22-041 & 042)

PARCEL FOUR:

BEGINNING AT A POINT IN THE EASTERLY LINE OF SAN JOSE-MILPITAS ROAD AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 0.54 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J.H. GUERRERO, ET AL TO PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED JULY 13, 1956 IN BOOK 3549, OF OFFICIAL RECORDS, AT PAGE 403, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING, SOUTH 84° 28' EAST ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE TRACT 465.57 FEET TO THE NORTHEASTERLY CORNER THEREOF IN THE WESTERLY-LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY RIGHT-OF-WAY; THENCE NORTH 3° 22' WEST ALONG THE WESTERLY LINE OF SAID RIGHT-OF-WAY 114.76 FEET TO THE NORTHEASTERLY CORNER OF THAT CERTAIN 1.718 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J.H. GUERRERO, ET AL TO J.H. GUERRERO, ET AL, RECORDED MAY 11, 1949, IN BOOK 1785 OF OFFICIAL RECORDS, AT PAGE 484, SANTA CLARA COUNTY RECORDS; THENCE NORTH 84° 28' WEST ALONG THE NORTHERLY LINE OF SAID 1.718 ACRE TRACT 437.00 FEET TO THE NORTHWESTERLY CORNER THEREOF IN THE SAID EASTERLY LINE OF SAN JOSE-MILPITAS ROAD; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF SAN JOSE-MILPITAS ROAD ALONG AN ARC OF A CURVE TO THE RIGHT, WITH A RADIUS OF 2033.00 FEET FROM WHICH THE CENTER POINT BEARS NORTH 80° 35' 30" WEST FOR AN ARC DISTANCE OF 114.10 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE CITY OF MILPITAS IN DEEDS RECORDED IN BOOK 5383, PAGE 29 AND IN BOOK 8420, PAGE 188, OFFICIAL RECORDS.

APN: PORTION 086-22-027

PARCEL FIVE:
PARCEL FIVE-A

A STRIP OF LAND 12 FEET WIDE WHICH IS THE WESTERLY 12 FEET OF THAT CERTAIN 1.178 ACRE PARCEL DESCRIBED IN DEED FROM J. H. GUERRERO ET AL TO THOMAS E. CARDOZA, ET UX, AND RECORDED JULY 15, 1959 IN BOOK 4481, PAGE 251 SANTA CLARA COUNTY OFFICIAL RECORDS WHICH 12 FOOT STRIP IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF SAN JOSE-MILPITAS ROAD AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 0.54 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J. H. GUERRERO ET AL TO PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED JULY 13, 1956 IN BOOK 3549, PAGE 403 SANTA CLARA COUNTY OFFICIAL RECORDS; THENCE FROM SAID POINT OF BEGINNING SOUTH 84° 28' EAST ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE TRACT 12.13 FEET TO AN IRON PIPE; THENCE NORTHERLY ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 2045 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 77° 25' 05" WEST, THROUGH A CENTRAL ANGLE OF 3° 11' 47" AN ARC DISTANCE OF 114.09 FEET TO AN IRON PIPE; THENCE NORTH 84° 28' WEST ALONG THE NORTHERLY LINE OF SAID 1.178 ACRE PARCEL OF LAND A DISTANCE OF 12.03 FEET TO A POINT IN THE EASTERLY LINE OF THE SAN JOSE-MILPITAS ROAD AND THE NORTHWESTERLY CORNER OF SAID 1.178 ACRE PARCEL; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF THE SAN JOSE-MILPITAS , ROAD ALONG AN ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 2033 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 80° 35' 30" WEST, THROUGH A CENTRAL ANGLE OF 3° 12' 56" AN ARC DISTANCE OF 114.10 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF LAND LYING WESTERLY OF THE EASTERLY LINE OF SOUTH MAIN STREET AS DESCRIBED IN THE DEED RECORDED SEPTEMBER 16, 1985 IN BOOK J458 OF OFFICIAL RECORDS AT PAGE 1705, SANTA CLARA COUNTY RECORDS.

PARCEL FIVE-B:

BEGINNING AT A POINT IN THE EASTERLY LINE OF SAN JOSE-MILPITAS ROAD AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 0.54 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J. H. GUERRERO ET AL, TO PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED JULY 13, 1956 IN BOOK 3549 AT PAGE 403, SANTA CLARA COUNTY OFFICIAL RECORDS; THENCE SOUTH 84° 28' EAST ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE TRACT, 12.13 FEET TO AN IRON PIPE IN THE SOUTHEASTERLY CORNER OF THAT CERTAIN 0.03 ACRE PARCEL OF LAND CONVEYED TO THE CITY OF MILPITAS BY DEED RECORDED NOVEMBER 30, 1961 IN BOOK OF OFFICIAL RECORDS NUMBERED 5383, AT PAGE 29 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE FROM SAID TRUE POINT OF BEGINNING ALONG THE EASTERLY LINE OF SAID 0.03 ACRE PARCEL OF LAND, NORTHERLY ALONG AN ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 2045 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 77° 25' 05" WEST, THROUGH A CENTRAL ANGLE OF 3° 11' 47", AN ARC DISTANCE OF 114.09 FEET TO THE NORTHEASTERLY CORNER OF SAID 0.03 ACRE PARCEL OF LAND IN THE NORTHERLY LINE OF THAT CERTAIN 1.178 ACRE PARCEL OF LAND CONVEYED TO THOMAS E. CARDOZA,

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ET UX, RECORDED JULY 15, 1959 IN BOOK 4481, PAGE 251, OF OFFICIAL RECORDS; THENCE ALONG THE NORTHERLY LINE OF SAID 1.178 ACRE PARCEL OF LAND SOUTH 84° 28' EAST, .05 FEET; THENCE LEAVING SAID NORTHERLY LINE 8° 57' 21" WEST 113.75 FEET TO THE NORTHERLY LINE OF SAID 0.54 ACRE PARCEL CONVEYED TO PACIFIC GAS AND ELECTRIC ABOVE REFERRED TO; THENCE ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE PARCEL OF LAND NORTH 84° 28' WEST 4.06 FEET TO THE TRUE POINT OF BEGINNING, AND BEING A PORTION OF THE MILPITAS RANCHO.

PARCEL FIVE-C:

BEGINNING AT THE NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY THE DEED RECORDED JULY 15, 1959 IN BOOK 4491 AT PAGE 251, OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE NORTHWESTERLY EXTENSION LINE OF THE NORTHEASTERLY LINE OF SAID PARCEL NORTH 83° 39' 47" WEST, 1.86 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SOUTH MAIN STREET AS DESCRIBED IN THE DOCUMENT RECORDED SEPTEMBER 16, 1985 IN BOOK 3458, PAGE 1705 OF OFFICIAL RECORDS; THENCE ALONG SAID RIGHT OF WAY LINE OF SOUTH MAIN STREET SOUTH 9 46' 43" WEST, 72.81 FEET TO A POINT OF CUSP WITH A CURVE TO THE LEFT TO WHICH POINT A RADIAL LINE BEARS SOUTH 77° 43' 56" EAST; THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND CONVEYED IN SAID DEED RECORDED IN BOOK 4491 AT PAGE 251 OF OFFICIAL RECORDS, ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 2° 03' 21" HAVING A RADIUS OF 2033.00 FEET AN ARC LENGTH OF 72.95 FEET TO THE POINT OF BEGINNING.

APN: PORTION 086-22-027

PARCEL SIX:
PARCEL SIX-A:

PORTION OF THE MILPITAS RANCH DESCRIBED AS FOLLOWS:

BEGINNING ON THE EASTERLY LINE OF MAIN STREET, ALSO KNOWN AS THE STATE HIGHWAY LEADING FROM SAN JOSE TO MILPITAS, DISTANT THEREON SOUTH 8° 38' 30" WEST, 202.70 FEET FROM THE WESTERLY CORNER OF THE 1 ACRE TRACT OF LAND CONVEYED TO ANGELO TORRES, ET UX, BY DEED RECORDED MAY 24, 1929, BOOK 468, OFFICIAL RECORDS, PAGE 50; THENCE FROM SAID POINT OF BEGINNING SOUTH 8° 58' 30" WEST ALONG SAID LINE OF MAIN STREET, 201.31 FEET TO A CONCRETE MONUMENT; THENCE CONTINUING ALONG SAID LINE OF MAIN STREET ALONG A TANGENT CURVE TO THE RIGHT, WITH A RADIUS OF 2033 FEET, FOR AN ARC DISTANCE OF 16.10 FEET TO AN IRON PIPE; THENCE SOUTH 84° 28' EAST PARALLEL WITH THE SOUTHERLY LINE OF SAID 1 ACRE TRACT OF LAND, 437 FEET TO AN IRON PIPE ON THE WESTERLY LINE OF THE LANDS OR RIGHT OF WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE NORTH 3° 22' WEST ALONG SAID WESTERLY LINE 215.31 FEET TO A POINT FROM WHICH THE SOUTHEASTERLY CORNER OF SAID 1 ACRE TRACT OF LAND BEARS NORTH 3° 22' WEST 208.10 FEET; THENCE WESTERLY IN A DIRECT LINE, 393 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

PARCEL SIX-B:

BEGINNING AT THE NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY THE DEED RECORDED APRIL 15, 1981 IN BOOK G023, AT PAGE 734, DOCUMENT NO. 7031783 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL SOUTH $9^{\circ} 46' 43''$ WEST, 201.31 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $0^{\circ} 27' 13''$ HAVING A RADIUS OF 2033 FEET AN ARC LENGTH OF 1610 FEET; THENCE ALONG THE NORTHWESTERLY EXTENSION LINE OF THE SOUTHWESTERLY LINE OF SAID PARCEL NORTH $83^{\circ} 39' 47''$ WEST, 1.86 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SOUTH MAIN STREET AS DESCRIBED IN THE DOCUMENT RECORDED SEPTEMBER 16, 1985 IN BOOK 3458, PAGE 1705 OF OFFICIAL RECORDS; THENCE ALONG SAID RIGHT OF WAY LINE OF SOUTH MAIN STREET NORTH $9^{\circ} 46' 43''$ EAST, 217.42 FEET TO THE NORTHWESTERLY EXTENSION LINE OF THE NORTHEASTERLY LINE OF SAID PARCEL OF LAND CONVEYED IN SAID DEED RECORDED IN BOOK G023 AT PAGE 734 OF OFFICIAL RECORDS; THENCE ALONG SAID NORTHWESTERLY EXTENSION LINE SOUTH $83^{\circ} 10' 39''$ EAST, 1.92 FEET TO THE POINT OF BEGINNING.

APN: 086-22-028



EXHIBIT A-1

LEGAL DESCRIPTION OF PHASE ONE PARCEL

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.5.2.]

EXHIBIT A-2

LEGAL DESCRIPTION OF PHASE TWO PARCEL

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.5.2.]

EXHIBIT A-3

LEGAL DESCRIPTION OF PUBLIC USE PARCELS

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.5.2.]

EXHIBIT B

SCOPE OF DEVELOPMENT—PROJECT DESCRIPTION

This Exhibit B sets forth the proposed Scope of Development and project description for the Project. Attachment 1 to this Exhibit B provides a general depiction of the proposed Project described below, including showing the general location and scope of proposed on-site and off-site public improvements to be developed by Developer as part of the Project, and as further described below.

Capitalized terms used below have the meanings given in the Agreement to which this Exhibit B is attached.

A. Location.

The Property upon which the proposed Project will be developed is located at 1504-1620 South Main Street, Milpitas, California (APN's 086-22-027, 028, 046, 047, and 048) on the east side at its intersection of Cedar Way (see Attachment 1). The Property's gross land area is approximately 5.942 acres. The Property is subject to the Current Entitlements under Resolution No. 7734 as approved by the City Council on February 5, 2008. The Current Entitlements allow a 387-unit condominium project in three four-story buildings. The Property is located within the "R4-TOD-S" Multi Family Very High Density with a Transit Oriented Development Overlay in the Midtown Specific Plan Area.

B. Proposed Project.

The proposed Project is a two phase Continuum of Care Retirement Community providing a total of 389 units of mixed income, age restricted (62 years of age and older) rental senior housing. There are 199 units of congregate care and assisted living senior units in the Phase One Development on the Phase One Parcel (approximately 1.94 net developable acres), and 190 units of independent living senior housing in the Phase Two Development on the Phase Two Parcel (approximately 2.86 net developable acres). Three hundred fifty-six (356) units are allowed in "R-4-TOD-S." With 12.34% of the units restricted to occupancy by very low income households (whose income does not exceed 50% of the Area Median Income) for 55 years, the Project qualifies for a 35% density bonus, bringing the total number of units allowed on the site to 480 units. The Project's total of 389 units falls well below this cap.

1. Phase One Development.

(a) Overview.

The Phase One Development will consist of 199 units of rental "Continuum of Care Senior Housing," including 10 Affordable Units for very low income-qualified households (50% AMI) and 189 units at "Fair Market" unrestricted rental rates. The Phase One Development will be

located on the southern portion of the Property on the approximately 1.94 net developable acres Phase One Parcel. The Phase One Development will provide congregate care and assisted living services, and a full range of amenities, to the residents. The design construction standards for the project will be Type 1B and the units will be designed to be handicapped accessible enabling residents to age in place. The Phase One Development will be a "podium" design with the habitable structure located on a subterranean Type IA garage structure.

The building will provide approximately 221,542 habitable square feet, including 63,200 square feet for common areas and 158,342 gross square feet for resident units integrated around exterior courtyards, plus a 67,228 square foot subterranean parking structure. Superior junior one-bedroom, one-bedroom and two-bedroom units will meet the demand for larger living spaces with an abundance of storage area. Interior upgrades will include a full kitchen as well as a stacked washer and dryer in each unit.

The anticipated unit mix and sizes of the senior apartment units in the Phase One Development will be as follows:

Unit Type	# of Units	%	Net Rentable Sq. Ft.
Jr. 1 bedroom*	3	2%	500
Jr. 1 bedroom	8	5%	500
Jr. 1 bedroom	6	3%	601
1 bedroom	4	2%	642
1 bedroom	6	3%	670
1 bedroom	48	24%	701
1 bedroom	16	8%	726
1 bedroom	26	13%	737
1 bedroom	25	13%	744
2 bedroom	57	29%	1,046
Total	199	100%	158,342

*As defined in the Phase One Regulatory Agreement.

The ten units restricted to occupancy by very low income senior households will be of the junior one-bedroom (8 units) and one-bedroom (2 units) unit types.

(b) The Phase One Development will be a single structure in an "H" configuration:

- (i) The configuration allows three distinctive exterior courtyards allowing use by both residents and members of the community and providing approximately 16,000 s.f. of private outdoor landscaped courtyards. The courtyards will be finished with concrete pavers with integrated planter landscaping allowing the project to

integrate "C-3 water treatment" mitigation. One courtyard will have "alfresco dining" for the dining room and bistro areas. The center courtyard will have a swimming pool and outdoor spa and space for exercise programs and the third courtyard will have areas for private relaxation as well as additional area for exercise programs. Three of the exterior elevations are fronting public streets while the South elevation presents itself to a 20' wide "green" emergency access easement on the Southern property line constructed of concrete pavers that allow grass while maintaining and allowing a drivable surface for emergency vehicles.

(c) The Phase One Development will be 4 stories above subterranean parking:

- (i) The subterranean parking garage (67,228 sf) area will have approximately 150 parking spaces, plus resident storage, mechanical support areas and a commercial laundry service for the complex. The parking will be accessed from Costas Street. The level of parking provided has been determined by historical data of projects of similar occupancy mix. It is anticipated that initial resident occupancy will be 65% congregate and 35% assisted living. As residents age in place this ratio is expected to reach 50% - 50%. The parking requirement for the proposed senior project is less than family housing, due to the age and non-ambulatory status of many residents. The parking provided in the garage is based on 0.7 parking space per congregate unit (130 DU at initial resident occupancy) or 91 parking spaces, plus staff parking of 40 spaces equating to 131 spaces. The balance of 19 spaces in the subterranean garage is allocated for visitor parking. No parking is provided for assisted living residents who are no longer capable of driving. There is additional visitor parking along Costas Street and Cedar Way.
- (ii) The first floor main entry will have a "Porte Cochere" accessible from Cedar Way located outside the public-right-of way (which public right-of-way will be subject to refinement during the Entitlements process), allowing residents and visitors to have a protected vehicular drop off and "queing area" for resident activities and van pick up. As one enters the building, a vast lobby will have a "Reception Desk" and a "Concierge Station." An expanse of glass will open unto the main courtyard with a water feature center piece. A "Bistro" style café, gaming and activity areas, a library and the main dining area will be on the first floor East Wing. The kitchen, support areas, pick-up and deliveries and garbage pick-up will be off of Costas Street (East Wing). Administrative areas and an elevator core will be in the center of the building. Residential areas will comprise all of the West Wing of the first floor.

- (iii) Floors 2 through 4 will be all residential units with the required support areas. A total of three elevators will be provided enabling resident and staff access from the parking structure to all floors in the building.
 - (iv) The Phase One Development will be 4 stories of steel frame construction (Type IB Construction) above a reinforced concrete (Type IA Construction) subterranean parking garage. The street level (first floor-floor podium) will be constructed of reinforced concrete, designed to all current codes for structural, occupancy, fire separation, area separations and other miscellaneous code compliance separation from the habitable areas on floors 1 through 4.
- (d) Public Improvements Associated with Phase One Development:

The following public street, utility and infrastructure improvements will be constructed by Developer as part of the Phase One Development in accordance with all applicable City standards and requirements (see Attachment No. 1):

- (i) On-Site.
 - o Construction and public dedication of Cedar Way (56' ROW) from S. Main Street to Costas Street.
 - o Construction and public dedication of Costas Street (anticipated 44' ROW) from the southern boundary of the property (Aspen Villages) to northern curb return of Cedar Way.
 - o Storm drain, C.3 stormwater treatment measures, sanitary sewer, water line, and joint utility trench within Cedar Way and the Phase One portion of Costas Street.
 - o 12' sound wall along eastern property boundary adjacent to railroad.
 - o All weather emergency access easement (EVA) (20' width) and improved pedestrian connection along the southern property boundary of the Phase One Development.
- (ii) Off-Site.
 - o South Main Street frontage improvements including:
 - Curb, gutter, sidewalk removal and replacement;
 - Repair failed pavement and 2" AC overlay of Main Street frontage including signage and striping per S. Main Street plan line;
 - Connection of utilities to existing services (storm, water, irrigation, sanitary sewer, dry utilities);

- Streetlights, tree wells, street trees, irrigation, street furniture, and fire hydrants per S. Main Street plan line from Mihalakis Street north to South Abel Drive;
- New bus turnout and bus stop shelter (Phase Two Development frontage);
- New raised median installation including lights, landscaping and irrigation per S. Main Street plan line from Cedar Way north to South Abel Drive.
- o Modification and upgrade of the existing traffic signal at S. Main Street and Cedar Way intersection per Midtown Specific Plan and South Main Street Plan line.
- o Replacement of The Pines sound wall on the east side of S. Main Street along the entire frontage of The Pines between the southerly limits of Jerry's Market to Cedar Way and from Cedar Way to the northerly limits of the adjacent parcel to the south.

(e) Overview of Phase One Development Services and Amenities:

The facility will accommodate a range of seniors, from those who are healthy and active (Congregate Living residents) to those who are more frail (Assisted Living residents).

- (i) Congregate Living - For residents who are ambulatory or semi-ambulatory, alert, and physically and mentally capable of independent management of daily activities.
- (ii) Assisted Living - For ambulatory or semi-ambulatory residents who need limited and higher levels of assistance with daily living activities such as medications, grooming, mobility and other personal care and services. This program is designed to enable continued residency in the retirement community as residents age. No dementia, Alzheimer's or skilled nursing care will be offered at the Phase One Development.

This "continuum of care" approach allows residents to age within a home environment minimizing the discomfort of multiple moves. The facility will have a full service dining room, a "Bistro" dining option, a fitness center and indoor pool, a recreation center, a hair salon, an outdoor recreational area and a number of other amenities. The "lifestyle" created for the residents includes restaurant-style dining, housekeeping, scheduled transportation on the community shuttle bus, continuing education, programmed off campus events and "outings", a varied selection of health, fitness and recreational programs, and a unique approach to a "Northern California Style". Many of the programs for seniors will be open to the senior public for a fee, bringing added vitality to the community.

The services and amenities to be provided to residents of the Phase One Development will be provided by a professional staff, including departments for culinary services, health and wellness, housekeeping, administration, maintenance, and programs.

2. Phase Two Development.

(a) Overview.

The Phase Two Development will consist of 190 mixed income, age restricted (62 years of age and older), rental housing units for active, independent living seniors. The Phase Two Development will be located on the northern portion of the Property on the approximately 2.86 net developable acre Phase Two Parcel. The Phase Two Development residential structure will provide approximately 207,000 square feet of habitable area, including 41,000 square feet of common area and 166,000 square feet for the residential units. A four-story, 101,000 square foot, above grade parking structure will provide approximately 252 parking spaces (1.33 spaces/unit) for resident use. While less parking than a general market apartment project (1.7 spaces/unit), senior residents typically have only one car per unit.

The anticipated unit mix and sizes of the Phase Two Development senior independent living housing units will be as follows:

Unit Type	# of Units	%	Sq. Ft.
Jr. 1 bedroom*	28	15%	600
1 bedroom	44	23%	700
1 bed deluxe	44	23%	850
2 bed/2bath	32	17%	1,025
2 bed/2 bath deluxe	42	22%	1,150
	190	100%	166,100

*As defined in the Phase Two Regulatory Agreement.

The Phase Two Development will provide twenty-eight (28) affordable junior one-bedroom units for very low income senior households (50% AMI) and ten (10) affordable one-bedroom units for very low income senior households (50% AMI).

(b) The Phase Two Development will be three structures (see Site Development Plan attached):

- (i) There will be two habitable Type V wood frame structures in the project totaling approximately 207,000 gross square feet. The four-story, 202,000 square foot residential community/building,

including approximately 37,000 square feet of common areas, will accommodate the 190 residential units in 166,000 habitable square feet (874 square feet / unit average). There will be an approximately 5,000 square foot, two-story administration and resident recreation building at the southwest corner of the property. The third structure will be the 101,000 square foot, Type IA, four-story above grade parking structure. The residential units will be located in wings off the parking structure with the wings separated by landscaped courtyards. The majority of units will have private exterior balconies.

- (ii) The four-story, above grade parking structure will provide approximately 252 parking spaces, miscellaneous resident storage and mechanical support areas. The parking will be accessed via Costas Street to the northerly east-west emergency vehicle access easement between Costas and South Main streets.
- (iii) The Community Center/Business Center, a two-story, 5,000 square foot structure will front onto Cedar Way. The structure will be a wood frame (Type V, A Construction), stucco exterior with detailing and color integrated into the overall complex. It will provide administrative offices, a resident gym, resident recreation and meeting areas and a visitor center.

The overall Phase Two Development design will be based on the "Texas Wrap" design concept, and will complement the design of the Phase One Development.

(c) Public Improvements Associated with Phase Two Development:

The following public street, utility and infrastructure improvements are proposed to be constructed by Developer as part of the Phase Two Development in accordance with all applicable City standards and requirements (see Attachment No. 1):

- (i) On-Site.
 - o Construction of Costas Street from the northern Cedar Way curb return to the northern property line (which may be a private street at City's discretion).
 - o Construction and public dedication of a twenty (20) foot east/west street EVA from S. Main Street to Costas Street.
 - o Storm drain, sanitary sewer, water line, landscaping, irrigation, lights and joint utility trench within the Phase Two portion of Costas Street and the EVA.
- (ii) Off-Site.

- Street conforms and associated signing and striping revisions associated with the connection of the EVA intersection with S. Main Street.

3. Proposed Revisions to Current Entitlements.

Following is a summary of some key features of the proposed Project that represent differences and changes from the previous project that had been entitled for the Property under a prior set of entitlements granted by City Council Resolution No. 08-004 of February 5, 2008. As detailed in Recital J and Section 1.3.5.1 of the Agreement, the Developer will be seeking a new set of Entitlements for the proposed Project that will be subject to Planning Commission and City Council review and approval in accordance with all required local procedures.

(a) Use:

The use would be changed to the housing description described in this Exhibit B, from the previously entitled use of 387 condominium family housing units all at market rate. As detailed in this Exhibit B and the Schedule of Performance (Exhibit D), and as will be specified in the phased Revised VTM, the Project would be built in two sequential phases.

(b) Site Utilization/Circulation:

The proposed Project requires the following modifications to site circulation from that shown in the previous entitlements:

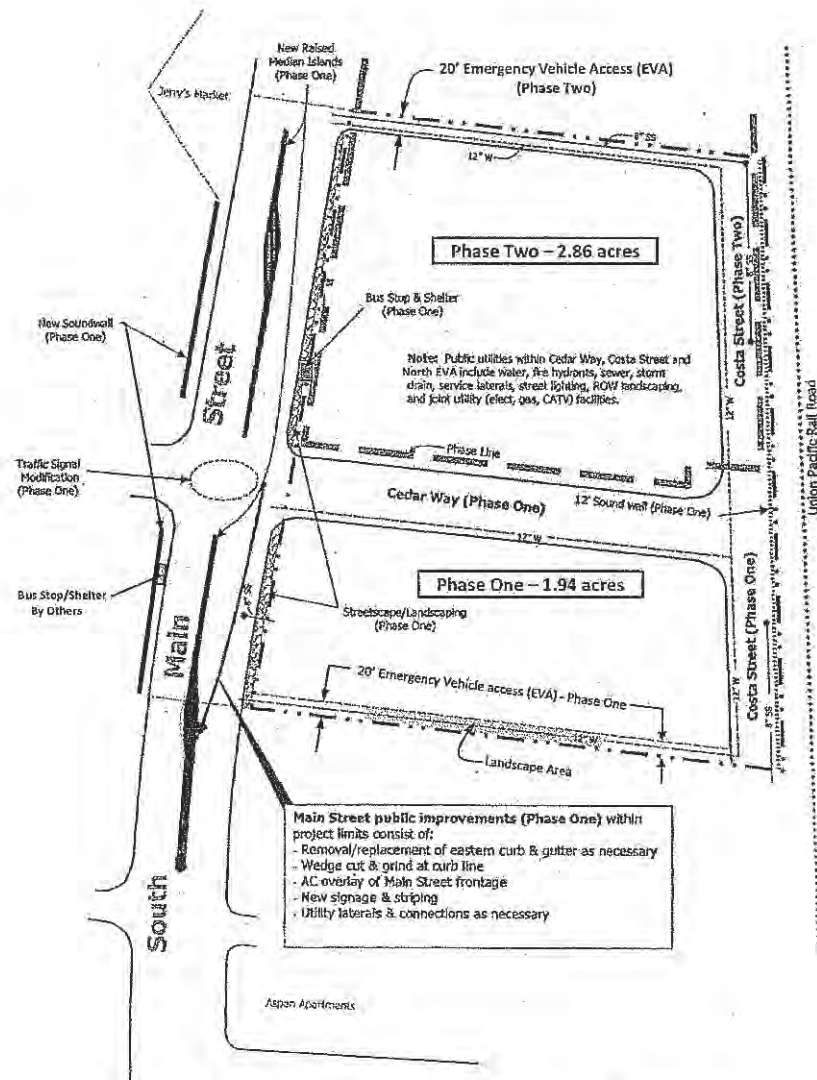
- (i) Diaz Street would be removed.
- (ii) Access road right of way on the north of the Property would be reduced to a twenty (20) foot emergency vehicle access easement from the current 37' proposed public street right of way with the intent that the adjacent parcel to the north would have an additional thirty-six (36) foot public right of way condition at the time that parcel is developed, thus completing a total of a fifty-six (56) foot public street right of way.
- (iii) An emergency access easement (EVA) and pedestrian connection of 20' width would be recorded and improved with a driving landscape surface acceptable to the Fire Department along the south property line of the Phase One Parcel (with all required fire and emergency access criteria). Final design of the EVA and pedestrian connection is subject to review and approval of the Planning Department.
- (iv) A 12' decorative sound wall will be installed along the eastern property boundary adjacent to the railroad in lieu of an 8' sound wall required under the current entitlements

(c) Density Bonus:

A density bonus will be sought for the proposed Project that differs from Density Bonus No. DB2008-0001 that had previously applied to the Property as follows:

- (i) A density bonus of 33 units would be provided in exchange for the Project's provision of 48 units for very low income (50% AMI) senior households, and three (3) incentives or concessions would be granted that result in identifiable, financially sufficient and actual cost reductions for the Project.
- (ii) A transfer of affordability rights from the developer of the Aspen Apartment project will not be required due to the proposed Project's inclusion of affordability as described above and earlier in this Exhibit B.
- (iii) The obligation under the previous entitlements to provide the Aspen Apartment project approximately One Million Dollars (\$1,000,000.00) would not apply as an "obligation" of the proposed Project due to the inclusion of the 48 Affordable Units in the Project.

EXHIBIT B Attachment 1



South Main Senior Lifestyle Project

EXHIBIT C

[INTENTIONALLY OMITTED]

EXHIBIT D

SCHEDULE OF PERFORMANCE

This Schedule of Performance summarizes the schedule for various activities under the Agreement to which this Exhibit is attached. The description of items in this Schedule of Performance is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. Section references herein to the Agreement are intended merely as an aid in relating this Schedule of Performance to other provisions of the Agreement and shall not be deemed to have any substantive effect. Times for performance are subject to Force Majeure, as further provided in Section 10.2 of the Agreement.

Whenever this Schedule of Performance calls for the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the Housing Authority or other applicable governmental entity within the time set forth herein. Prior to the time set forth for each particular submission, Developer shall consult with Housing Authority staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

As provided in Section 1.3 of the Agreement, this Schedule of Performance may be modified by Operating Memoranda executed in accordance with Section 10.20 of the Agreement. In addition, the Parties shall cooperate to monitor and implement the scheduling of activities to achieve the milestones set forth in this Schedule of Performance.

	Section Reference	Action	Due Date/Status
A. General Conditions			
1		Amendment Effective Date.	Assumed 11/19/2013. Other specific calendar dates below are premised on this assumed Amendment Effective Date.
2	1.3.4	Scope of Development approved by Housing Authority.	Completed 11/19/2013.
3	1.7	Execution and recordation of Memorandum of Agreement.	Promptly following the Amendment Effective Date upon date mutually chosen by parties.
4	3.3	Open escrow for conveyance of Property.	Prior to Closing for the Property.
5	1.3.5.1	Developer submits application for Revised Entitlements.	7 months prior to anticipated Closing Date.
6	1.3.5.1	City in its discretion approves Revised	Prior to Closing.

	Section Reference	Action	Due Date/Status
		Entitlements.	
B. Phase One Development			
1.	1.3.1	Developer submits Financing Plan.	Within 60 days after receipt of lender commitment for construction and permanent financing.
2.	1.3.1	Housing Authority approves Financing Plan.	Within 30 days after receipt from Developer.
3.	1.3.3	Developer submits evidence that construction funds are available, all permits and approvals ready to be issued.	Prior to Closing.
4.	1.3.5	Developer obtains all approvals for Phase One Development, including CEQA review.	Prior to Closing.
5.	1.4.1	Developer submits Operator and Operating Agreement.	Not less than 60 days prior to anticipated Closing Date.
6.	1.4.1	Housing Authority approves Operator and Operating Agreement.	Within 30 business days after receipt from Developer.
7.	1.4.2	Developer submits Services Plan.	Not less than 60 days prior to anticipated Closing Date.
8.	1.4.2	Housing Authority approves Services Plan.	Within 30 business days after receipt from Developer.
9.	5.3	Developer submits Construction Plans including final drawings, plans, and specifications to City Building Department.	Within 90 days after lender commitment for construction and permanent financing.
10.	5.4	Developer applies for building permits.	Within 30 days after City approval of Construction Plans.
11.	1.3.5.3	Developer payment for permits and fees.	As required by City.
12.	5.10.1	Developer delivers copies of performance and payment bonds.	Prior to Closing.

	Section Reference	Action	Due Date/Status
13.	5.11, 1.6	Developer provides evidence of insurance, endorsement naming Housing Authority and City as additional insureds; copies of policies.	Prior to Closing.
14.	1.5	Execution and recordation of Phase One Regulatory Agreement and Phase Two Regulatory Agreement.	At Closing.
15.	1.3.5.1	Housing Authority records Final Map against Property, and Developer posts necessary public improvement bonds in connection therewith.	60 days prior to Closing.
16.	3.6	Closing. All conditions to Closing satisfied or waived.	By not later than Closing Deadline (24 months after Amendment Effective Date, or later agreed date). Based on an assumed 11/19/13 Amendment Effective Date, the Closing Deadline is currently 11/19/15.
17.	5.1	Commencement of Construction.	By the earlier of (a) 30 days after the Closing Date, or (b) 12/19/15.
18.	5.1	Completion of Construction.	By the earlier of (a) 24 months after commencement of construction, or (b) 12/19/17.
19.	5.12	Housing Authority issues Certificate of Completion.	Promptly following completion of construction and City issuance of Certificate of Occupancy.
C. Phase Two Development			
1.	1.3.1	Developer submits Financing Plan.	Within 60 days of receipt of California Debt Limit Allocation Committee bond allocation for Phase Two Tax-Exempt Bonds or lender commitment for conventional financing.
2.	1.3.1	Housing Authority approves Financing Plan.	Within 30 days after receipt from Developer.

	Section Reference	Action	Due Date/Status
3.	1.3.3	Developer submits evidence that construction funds are available, all permits and approvals ready to be issued.	Prior to commencement of construction.
4.	1.3.5	Developer obtains all approvals for Phase Two Development, including CEQA review.	Prior to commencement of construction.
5.	5.3	Developer submits Construction Plans including final drawings, plans, and specifications to City Building Department.	Not less than 7 months prior to anticipated commencement of construction.
6.	5.4	Developer applies for building permits.	Within 30 days after City approval of Construction Plans.
7.	1.3.5.3	Developer payment for permits and fees.	As required by City.
8.	5.10.1	Developer delivers copies of performance and payment bonds.	Prior to commencement of construction.
9.	5.11, 1.6	Developer provides evidence of insurance, endorsement naming Housing Authority and City as additional insureds; copies of policies.	Prior to commencement of construction.
10.	5.1	Commencement of Construction.	Unless a later date is agreed upon, by the earlier of (a) 24 months after issuance of Certificate of Completion for Phase One Development, or (b) 12/19/19.
11.	5.1	Completion of Construction.	By the earlier of (a) 24 months after the commencement of construction, or (b) 12/19/21.
12.	5.12	Housing Authority issues Certificate of Completion.	Promptly following completion of construction and City issuance of Certificate of Occupancy for Phase Two Development.

EXHIBIT E-1
FINANCING PLAN
FOR PHASE ONE DEVELOPMENT

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.1]

EXHIBIT E-2
FINANCING PLAN
FOR PHASE TWO DEVELOPMENT

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.1]

EXHIBIT FFORM OF GRANT DEED

**Recording Requested by
and when Recorded, return to:**

City of Milpitas Housing Authority
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

GRANT DEED

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City of Milpitas Housing Authority, a public body, corporate and politic (the "**Grantor**"), hereby grants and conveys to South Main Senior Lifestyle, LLC, a California limited liability company (the "**Grantee**"), the real property (the "**Property**") described in Exhibit A attached hereto and incorporated in this grant deed ("**Grant Deed**") by this reference.

1. The Property is conveyed subject to that certain Amended and Restated Disposition and Development Agreement entered into by and between the Grantor and the Grantee dated as of November 19, 2013 (the "**DDA**"). The Grantor and the Grantee have executed a Memorandum of Disposition and Development Agreement dated as of November 19, 2013 (the "**Memorandum**") which shall be recorded in the Official Records of Santa Clara County ("**Official Records**") substantially concurrently herewith.

2. Pursuant to the DDA, the Property has been subdivided into various parcels, including:

(a) An approximately 1.94 acre parcel (the "**Phase One Parcel**") upon which a seniors "continuum of care" residential rental development (the "**Phase One Development**") will be constructed and operated, and which is the subject of the Phase One Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "**Phase One Regulatory Agreement**"); and

(b) An approximately 2.86 acre parcel (the "**Phase Two Parcel**") upon which a seniors "independent living" residential rental development (the "**Phase Two Development**") will be constructed and operated, and which is the subject of the Phase Two Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "**Phase Two Regulatory Agreement**").

The Property is further conveyed subject to certain title conditions, including without limitation the Phase One Regulatory Agreement and the Phase Two Regulatory Agreement (collectively, the "**Regulatory Agreements**"). The Regulatory Agreements shall be recorded substantially concurrently herewith.

3. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that the Grantee and such successors and assigns shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the Phase One Development and the Phase Two Development in accordance with the DDA, including without limitation the provisions of the DDA that specify time periods for commencement and completion of construction.

Promptly following completion of the Phase One Development in accordance with the DDA and the issuance of a certificate of occupancy for the Phase One Development, the Grantor will furnish the Grantee with an instrument so certifying (a "**Phase One Certificate of Completion**"). Promptly following completion of the Phase Two Development in accordance with the DDA and the issuance of a certificate of occupancy for the Phase Two Development, the Grantor will furnish the Grantee with an instrument so certifying (a "**Phase Two Certificate of Completion**", and together with the Phase One Certificate of Completion, the "**Certificates of Completion**"). Such Certificates of Completion shall constitute conclusive determination of satisfactory completion of construction of the Phase One Development or the Phase Two Development, as applicable, and compliance with the covenants in the DDA and in this Grant Deed regarding the dates for the commencement and completion of such construction.

4. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter until the expiration of the term of the Phase One Regulatory Agreement with respect to the Phase One Development, and the expiration of the term of the Phase Two Regulatory Agreement with respect to the Phase Two Development, the Grantee shall devote the Property, the Phase One Development, and the Phase Two Development thereon only to the uses specified in the DDA and the respective Regulatory Agreements.

5. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall operate and maintain the Property, the Phase One Development, and the Phase Two Development in compliance with all requirements for operation and maintenance set forth in the DDA and the respective Regulatory Agreements.

6. The Grantee covenants and agrees, for itself and its successors and assigns that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, disability, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, the Phase One Development and the Phase Two Development, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property, the Phase One Development, and the Phase Two Development.

All deeds, leases or contracts made relative to the Property and the Phase One Development or any part thereof, shall contain or be subject to substantially the following non-discrimination clauses:

(a) In deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the

transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

7. The Grantee covenants, represents and agrees that the Property, the Phase One Development, and the Phase Two Development will be used for the purposes of timely redevelopment as set forth in the DDA and not for speculation in landholding. The Grantee further recognizes that Grantor entered into the DDA with Grantee and agreed to convey the Property to Grantee in reliance on the qualifications and identity of Grantee, and that the qualifications of Grantee are of particular concern to Grantor, particularly in view of the importance of the redevelopment of the Property to the general welfare of the community, the financial and other assistance provided by Grantor to facilitate development of the Property, and the reliance by Grantor upon the unique qualifications and ability of the Grantee to serve as the catalyst for development of the Property. Grantee covenants, for itself and its successors and assigns, that there shall be no sale, transfer, assignment, conveyance, lease, pledge or encumbrance of the DDA or the Property, the Phase One Development, or the Phase Two Development thereon or any part thereof, or of any ownership interest in the Grantee in violation of the DDA or the Phase One Regulatory Agreement with respect to the Phase One Parcel and Phase One Development, or the Phase Two Development with respect to the Phase Two Parcel and the Phase Two Development. No voluntary or involuntary successor in interest of the Grantee shall acquire any rights or powers under this Grant Deed or the DDA except as expressly set forth in this Grant Deed or the DDA.

8. The covenants contained in Sections 3 regarding construction shall remain in effect until the issuance pursuant to the DDA of a Phase One Certificate of Completion with respect to the Phase One Development, and the Phase Two Certificate of Completion with respect to the Phase Two Development. The covenants in Section 4 and 5 regarding use, operation and maintenance and Section 7 regarding prohibited sales, transfers, assignments, conveyances, leases, pledges and encumbrances shall remain in effect for the life of the Phase One Regulatory Agreement with respect to the Phase One Parcel and the Phase One Development, and the life of the Phase Two Regulatory Agreement with respect to the Phase Two Parcel and the Phase Two Development. The covenants against discrimination contained in Section 6 shall remain in effect in perpetuity.

9. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA; provided, however, that any successor of Grantee to the Property, the Phase One Development, or the Phase Two Development, as applicable, shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

10. The covenants contained in Sections 3, 4, 5, 6 and 7 of this Grant Deed, without regard to technical or legal classification or designation specified in this Grant Deed or otherwise, shall to the fullest extent permitted by law and equity, be binding upon Grantee and any successor in interest to the Property, the Phase One Development, and the Phase Two Development or any part thereof, for the benefit of Grantor, and its successors and assigns, and such covenants shall run in favor of and be enforceable by the Grantor and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and its successors and assigns shall have the right to exercise all rights and remedies available under law or in equity to enforce the curing of such breach.

11. Subject to and in accordance with the procedures and provisions of Section 9.6.1 of the DDA, the Grantor shall have the right, at its option, to re-enter and take possession of the Property, or portion thereof, with all improvements thereon, and revert in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.6.1 of the DDA.

12. Subject to and in accordance with the procedures and provisions of Section 9.6.2 of the DDA, the Grantor shall have the right, at its option, to repurchase and take possession of the Property, or portion thereof, with all improvements thereon, and revert in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.6.2 of the DDA.

13. Subject to and in accordance with the procedures and provisions of Section 9.7.1 of the DDA, the Grantor shall have the right, at its option, to repurchase and take possession of the Phase Two Parcel, or portion thereof, with all improvements thereon, and revert in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.7.1 of the DDA.

14. Subject to and in accordance with the procedures and provisions of Section 9.7.2 of the DDA, the Grantor shall have the right, at its option, to re-enter and take possession of the Phase Two Parcel, or portion thereof, with all improvements thereon, and revert in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.7.2 of the DDA.

15. Subject to and in accordance with the procedures and provisions of Section 9.7.3 of the DDA, the Grantor shall have the right, at its option, to repurchase and take possession of the Phase Two Parcel, or portion thereof, with all improvements thereon, and revert in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.7.3 of the DDA.

16. The Grantor shall have the right to institute such actions or proceedings as it may deem desirable to effectuate the purposes of Sections 11, 12, 13, 14, and 15 hereof. Any delay by the Grantor in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights hereunder shall not operate as a waiver of or limitation on such rights, nor operate to deprive Grantor of such rights, nor shall any waiver made by the Grantor with respect to any specific default by the Grantee, its successors and assigns, be considered or treated as a waiver of Grantor's rights with respect to any other default by the Grantee, its successors and assigns, or with respect to the particular default except to the extent specifically waived.

17. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Property, the Phase One Development, or the Phase Two Development, as applicable, shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Grant Deed or to subject the Property, the Phase One Development, or the Phase Two Development, as applicable, to additional covenants, easements, or other restrictions. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property, the Phase One Development, or the Phase Two Development, as applicable, in fee title, and not to include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property, the Phase One Development, or the Phase Two Development, as applicable.

18. In the event there is a conflict between the provisions of this Grant Deed and the DDA, it is the intent of the parties that the DDA shall control.

19. This Grant Deed may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Grant Deed as of this ____ day of _____, 201__.

GRANTOR:

THE CITY OF MILPITAS HOUSING AUTHORITY,
a public body, corporate and politic

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Secretary

APPROVED AS TO FORM:

By: _____
Counsel

SIGNATURES CONTINUE ON FOLLOWING PAGE

GRANTEE:

SOUTH MAIN SENIOR LIFESTYLES, LLC
a California limited liability company

By: _____

Joseph W. Callahan, Jr.
Managing Member

By: _____

James R. Burns II,
Managing Member

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public,
personally appeared _____, proved to me on the basis
of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public,
personally appeared _____, proved to me on the basis
of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
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Notary Public

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personally appeared _____, proved to me on the basis
of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
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authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT A

PROPERTY

Real property in the City of Milpitas, County of Santa Clara, State of California,
described as follows:

[To Be Inserted]

EXHIBIT G

FORM OF MEMORANDUM OF
DISPOSITION AND DEVELOPMENT AGREEMENT

**Recording Requested by
and when Recorded, return to:**

City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attn: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

This Memorandum of Disposition and Development Agreement (this "**Memorandum**") dated as of November 19, 2013, is entered into by and between the City of Milpitas Housing Authority, a public body, corporate and politic ("**Housing Authority**"), and South Main Senior Lifestyle, LLC, a California limited liability company ("**Developer**").

1. For the purposes fully set forth therein, Housing Authority and Developer have entered into that certain Amended and Restated Disposition and Development Agreement, dated as of the date hereof (the "**DDA**"), pursuant to which Housing Authority has agreed to convey to Developer and Developer has agreed to develop certain real property (the "**Property**") located at 1504-1620 South Main Street, Milpitas, California, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference. Capitalized terms used but not defined in this Memorandum have the meanings given in the DDA.

2. Among other conditions, the DDA provides that Developer shall develop a two-phased seniors residential complex on portions of the Property generally as follows: (i) the Phase One Development on the Phase One Parcel portion of the Property, containing an approximately one hundred ninety-nine (199) unit continuum of care senior housing residential rental development, including ten (10) affordable rental units, as fully set forth in the Phase One Regulatory Agreement to be recorded in the Official Records of Santa Clara County substantially concurrently herewith; and (ii) the Phase Two Development on the Phase Two Parcel portion of the Property, containing an approximately one hundred ninety (190) unit independent living senior housing residential rental development, including thirty-eight (38) affordable rental units, as fully set forth in the Phase Two Regulatory Agreement to be recorded in the Official Records of Santa Clara County substantially concurrently herewith.

3. The DDA further provides that (i) except as permitted by the DDA, Developer shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance,

assignment or lease of the whole or any part of the Property or the improvements located thereon without the prior written approval of the Housing Authority; and (ii) any transferee of all or part of the Property shall be subject to and shall expressly assume all of the covenants, obligations and restrictions of the DDA which pertain to the portion of the Property transferred, including without limitation, the affordability restrictions imposed by the DDA, the Phase One Regulatory Agreement, and the Phase Two Regulatory Agreement, as applicable.

4. Developer and Housing Authority have executed and recorded this instrument to give notice of the DDA, the Phase One Regulatory Agreement (with respect to the Phase One Parcel only), the Phase Two Regulatory Agreement (with respect to the Phase Two Parcel only), and the respective rights of Developer and Housing Authority thereunder, including without limitation, the Housing Authority's reversionary interests in the Property in its entirety or the Phase Two Parcel only, as applicable, in the event of certain defaults under the DDA. Copies of the unrecorded DDA are available at the offices of the Housing Authority, 455 East Calaveras, Milpitas California, and such document is incorporated by reference in its entirety in this Memorandum. In the event of any inconsistency between this Memorandum and the DDA, the DDA shall control.

5. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws.

6. The DDA shall bind and inure to the benefit of the Developer and the Housing Authority and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first set forth above.

HOUSING AUTHORITY:

**HOUSING AUTHORITY OF THE
CITY OF MILPITAS**, a public body, corporate and politic

By: _____

Name: _____

Its: _____

Attest:

Housing Authority Secretary

Approved as to Form:

Housing Authority Counsel

SIGNATURES CONTINUE ON FOLLOWING PAGE

DEVELOPER:

SOUTH MAIN SENIOR LIFESTYLES, LLC
a California limited liability company

By: _____
Joseph W. Callahan, Jr., Managing Member

By: _____
James R. Burns II, Managing Member

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public,
personally appeared _____, proved to me on the basis
of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.
I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA
COUNTY OF _____

On _____, before me, _____, Notary Public,
personally appeared _____, proved to me on the basis
of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
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foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA

)

COUNTY OF _____

)

)

On _____, before me, _____, Notary Public,
 personally appeared _____, proved to me on the basis
 of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
 instrument and acknowledged to me that he/she/they executed the same in his/her/their
 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
 the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the
 foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 Notary Public

EXHIBIT A

PROPERTY

Real property in the City of Milpitas, County of Santa Clara, State of California,
described as follows:

[To Be Inserted]

EXHIBIT H-1FORM OF PHASE ONE REGULATORY AGREEMENT

**Recording requested by and when recorded
mail to:**

City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(Space above this line for Recorder's use.)

**PHASE ONE
AFFORDABLE HOUSING REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

by and between

THE CITY OF MILPITAS HOUSING AUTHORITY

and

SOUTH MAIN SENIOR LIFESTYLES, LLC

This Phase One Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 201__ (the "**Effective Date**") by and between the City of Milpitas Housing Authority, a public body, corporate and politic (the "**Housing Authority**"), and South Main Senior Lifestyles, LLC, a California limited liability company ("**Owner**"). Housing Authority and Owner are hereinafter collectively referred to as the "**Parties**."

RECITALS

A. Owner has purchased an approximately 5.94 acre parcel of real property from the Housing Authority located at 1504-1620 South Main Street, Milpitas (the "**Property**") pursuant to the terms of an Amended and Restated Disposition and Development Agreement dated as of November 19, 2013 by and between the Housing Authority and Owner (the "**DDA**"), a memorandum of which has been recorded substantially concurrently herewith in the Official Records of Santa Clara County.

B. The Property was purchased by the former Redevelopment Agency of the City of Milpitas (the "**Former RDA**") using funds from its Low and Moderate Income Housing Fund (the "**Housing Fund**") in accordance with the requirements of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (the "**CRL**"). Upon dissolution of the Former RDA pursuant to ABx1 26 (as amended by AB 1484, the "**Redevelopment Dissolution Law**") as of February 1, 2012, the Housing Authority was designated to perform the housing functions and administer the housing assets of the Former RDA, which housing assets include the Property, as more fully described in the recitals of the DDA. In accordance with the DDA and the requirements imposed upon the Housing Authority pursuant to the Redevelopment Dissolution Law and the CRL, the Housing Authority has required that specified units of affordable housing be developed and operated by Owner on the Property.

C. In accordance with the DDA, the Property has been subdivided into various parcels, including the parcel of real property more particularly described in Exhibit A attached hereto (the "**Phase One Parcel**").

D. Also in accordance with the DDA, Owner intends to construct, own and operate on the Phase One Parcel a one hundred ninety-nine (199)-unit "continuum of care" senior housing rental development (the "**Phase One Development**"), including specified units for very low-income households as set forth in this Agreement. The Phase One Development will provide congregate care or assisted living services to its residents, as appropriate for each resident. Care for Alzheimer's and dementia, and skilled nursing care, will not be available.

E. Specifically, the DDA and this Agreement provide that ten (10) of the residential units in the Phase One Development shall be affordable to and occupied by or available for occupancy by very low-income senior households for a period of not less than fifty-five (55) years.

F. Pursuant to the DDA, and to facilitate the financially feasible provision of the units of affordable housing as set forth in this Agreement, the Housing Authority agreed to

convey the Phase One Parcel to Owner for its "fair reuse value" of One Dollar (\$1.00), as authorized by the CRL to facilitate such affordability (the "**Affordable Housing Facilitated Purchase Price**").

G. In recognition that the Property, including the Phase One Parcel, was purchased by the Former RDA with Housing Funds, and as a condition to its agreement to convey the Phase One Parcel to Owner at the Affordable Housing Facilitated Purchase Price, the Housing Authority requires the Phase One Parcel to be subject to the conditions, restrictions, reservations and rights of the Housing Authority set forth herein.

H. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Phase One Development's Restricted Units (as defined below) for the benefit of the Phase One Development's occupants. The covenants in this Agreement are intended to run with the land and be binding on Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Definitions.** The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"Adjusted Income" means the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, the Housing Authority shall provide the Owner with a reasonably similar method of calculation of adjusted income as provided in said Section 6914.

"Area Median Income" or "AMI" means the area median income for Santa Clara County, California, adjusted for household size, determined periodically by the California Department of Housing and Community Development ("**HCD**") as published in Section 6932 of Title 25 of the California Code of Regulations ("**Regulations**") or successor provision published pursuant to California Health and Safety Code Section 50093(c). If HCD ceases to make such determination, Area Median Income shall be the median income applicable to Santa Clara County, with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Milpitas that HUD may hereafter adopt in connection with such Act.

"Assisted Living Supportive Services Fees" means the total of monthly payments by the tenants of a Restricted Unit for the following assisted living supportive services: three(3) meals daily; scheduled transportation on the community shuttle bus; weekly housekeeping; social, cultural, physical fitness and educational programs; twenty-four (24) hour emergency system monitoring; and assistance with activities of daily living such as medications, bathing, dressing, mobility needs and other health care and personal care needs.

"Assumed Household Size" means one (1) person for each studio apartment unit (including each Junior One Bedroom Unit) that is a Restricted Unit, and means two (2) persons for each One Bedroom Unit that is a Restricted Unit.

"Congregate Care Supportive Services Fee" means the total monthly payment by the tenants of a Restricted Unit for the following congregate care supportive services: two (2) meals daily; scheduled transportation on the community shuttle bus; weekly housekeeping; social, cultural, physical fitness and educational programs; and twenty-four (24) hour emergency system monitoring.

"Eligible Household" means a Very Low-Income Household that also meets the requirements set forth in Section 2.1.

"Junior One Bedroom Unit" means a unit in the Phase One Development containing less than 625 net rentable square feet.

"One Bedroom Unit" means a one bedroom unit in the Phase One Development containing 625 or more rentable square feet.

"Qualifying Rent" has the meaning given in Section 2.4.

"Rent" means the total of monthly payments by the tenants of a dwelling unit for the following: use and occupancy of the unit and land and associated facilities; any separately charged fees or service charges assessed by Owner which are required of all tenants, except as otherwise provided in the following sentence; the cost of electricity, gas, water and sewer, and garbage collection, which shall be paid by Owner; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the tenant. "Rent" shall not include cable and telephone service (which shall be paid by tenants), Congregate Care Supportive Services Fees and Assisted Living Supportive Services Fees, and security deposits.

"Restricted Unit" means a dwelling unit which is reserved for occupancy at a Qualifying Rent by a Very Low-Income Household in accordance with and as set forth in Sections 2.2, 2.3, and 2.4.

"Very Low-Income Household" means a household that meets the requirements set forth in Section 2.1 and that has an annual Adjusted Income that is less than or equal to fifty percent (50%) of AMI.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that during the term of this Agreement the Phase One Parcel shall be used solely for the construction and operation of the Phase One Development, consisting of a one hundred ninety-nine (199)-unit "continuum of care" multifamily rental housing development in compliance with the DDA, the development approvals granted by the City of Milpitas, and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent

of Housing Authority. Notwithstanding the foregoing or anything to the contrary contained herein, if the terms of financing for the Phase One Development require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

2.1. Senior Housing. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Phase One Development, all one hundred ninety-nine (199) of the dwelling units in the Phase One Development shall be restricted for occupancy by households in which each household member is a person sixty-two (62) years of age or older. Residency by other persons in such dwelling units shall be in compliance with Section 51.3 of the California Civil Code.

2.2. Affordability Requirements In General. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Phase One Development, ten (10) of the dwelling units in the Phase One Development shall be Restricted Units occupied (or if vacant, available for occupancy) by Eligible Households with incomes as set forth in Section 2.3, and rented at Qualifying Rents as set forth in Section 2.4.

2.3. Eligible Households Occupancy of Restricted Units. The Restricted Units shall be occupied (or if vacant, available for occupancy) as follows:

(a) Eight (8) of the Junior One Bedroom Units shall be occupied (or if vacant, available for occupancy) by Eligible Households, each of whose members receive congregate care or assisted living supportive services provided by the Phase One Development; and

(b) Two (2) of the One Bedroom Units shall be occupied (or if vacant, available for occupancy) by Eligible Households, each of whose members receive congregate care or assisted living supportive services provided by the Phase One Development.

2.4. Rents for Restricted Units. Rents for the Restricted Units shall be limited to Rent that does not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size (the "**Qualifying Rent**").

2.5. Increased Income of Households. In the event that recertification of an Eligible Household's income indicates that the household's Adjusted Income exceeds one hundred twenty percent (120%) of the qualifying income for a Very Low-Income Household, then (a) such household's dwelling unit shall still be considered a Restricted Unit, (b) the Qualifying Rent for such unit shall remain at one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size, and (c) Owner shall rent the next available dwelling unit of the applicable unit size and type (i.e., a Junior One Bedroom Unit if the applicable over-income household is occupying a Junior One Bedroom Unit, or a One Bedroom Unit if the applicable over-income household is occupying a One Bedroom Unit) to an Eligible Household to comply with the requirement of Section 2.3. Once the next available unit has been rented to an Eligible Household in accordance with clause (c) above, the Rent for the over-income household may be increased to market rate rent.

2.6. Unit Sizes, Design and Preferences. The Restricted Units shall consist of Junior One Bedroom Units and One Bedroom Units. Each member of an Eligible Household occupying a Restricted Unit shall receive congregate care or assisted living supportive services provided by the Phase One Development for a fee in addition to the Qualifying Rent. In renting Restricted Units, Owner shall give first preference to Eligible Households in which at least one member lives or works in the City of Milpitas, second preference to Eligible Households in which at least one member is the parent of a person who lives or works in the City of Milpitas, and third preference to Eligible Households in which at least one member lives or works in the County of Santa Clara, unless compliance with the foregoing criteria is prohibited by law or by state or federal sources of financing for the Phase One Development.

2.7. No Condominium Conversion. Owner shall not convert the Phase One Development to condominium or cooperative ownership or sell condominium or cooperative rights to the Phase One Development during the term of this Agreement.

2.8. Non-Discrimination; Compliance with Fair Housing Laws.

2.8.1. Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Phase One Development. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.8.2. Non-Discrimination. Owner covenants for and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry, disability or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Phase One Parcel or the Phase One Development, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Phase One Development. The foregoing covenant shall run with the land. All deeds, leases or contracts made or entered into by Owner, its successors or assigns, as to any portion of the Phase One Parcel or the Phase One Development shall contain the following language:

(a) In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In Contracts.

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of

the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

3. Reporting Requirements.

3.1. Tenant Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as Housing Authority may reasonably require:

- (a) The identity and age of the resident who is age sixty-two (62) or older;
- (b) The identity and age of each other member of the household or such other information reasonably required to demonstrate compliance with Section 2.1 above; and
- (c) Total household income.

Owner shall retain such certificates for not less than three (3) years, and upon Housing Authority's request, shall make the originals available for inspection by Housing Authority and shall provide copies of such certificates to Housing Authority.

3.2. Annual Report; Inspections. Owner shall submit an annual report ("**Annual Report**") to Housing Authority in form satisfactory to Housing Authority, together with a certification that the Phase One Development is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each Restricted Unit in the Phase One Development: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Upon Housing Authority's request, Owner shall include with the Annual Report the following documentation for each Restricted Unit: an income recertification for each household, documentation verifying tenant eligibility, and such additional information as Housing Authority may reasonably request from time to time in order to show compliance with this Agreement. The Annual Report shall conform to the format requested by Housing Authority; provided however, during such time that the Phase One Development is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing Housing Authority with a copy of compliance reports required in connection with such financing.

Owner shall permit representatives of Housing Authority to enter and inspect the Phase One Parcel and the Phase One Development during reasonable business hours in order to monitor compliance with this Agreement upon 24-hours advance notice of such visit to Owner or to Owner's management agent.

4. Term of Agreement.

4.1. Term of Restrictions. This Agreement shall remain in effect through the (fifty-fifth) 55th anniversary of the issuance of the final certificate of occupancy for the Phase One Development.

4.2. Effectiveness Succeeds Conveyance of Phase One Parcel. This Agreement shall remain effective and fully binding for the full term hereof regardless of any sale, assignment, transfer, or conveyance of the Phase One Parcel or the Phase One Development or any part thereof or interest therein, unless this Agreement is terminated earlier by Housing Authority in a recorded writing.

4.3. Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge the terms of this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Phase One Parcel and the Phase One Development to the covenants and restrictions set forth in this Agreement. The Housing Authority and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and Housing Authority, regardless of any sale, assignment, conveyance or transfer of the Phase One Parcel, the Phase One Development or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Phase One Parcel or the Phase One Development (other than the tenants of the individual dwelling units within the Phase One Development) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Phase One Parcel or the Phase One Development or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to Housing Authority an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Phase One Parcel and the Phase One Development in favor of Housing Authority.

6. Property Management; Repair and Maintenance; Marketing.

6.1. Management Responsibilities. Owner shall be responsible for all management functions with respect to the Phase One Parcel and the Phase One Development,

including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Except as Housing Authority may otherwise agree in writing, Housing Authority shall have no responsibility for management or maintenance of the Phase One Parcel or the Phase One Development.

6.2. Management Entity. Housing Authority shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Phase One Development (the "**Operator**") in the manner set forth in Section 1.4.1 of the DDA. The Housing Authority hereby approves _____ as the initial Operator for the Phase One Development. The contracting of management services to an Operator shall not relieve Owner of its primary responsibility for proper performance of management duties.

6.3. Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Phase One Parcel and the Phase One Development in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Phase One Parcel and the Phase One Development (including without limitation, the residential units, common meeting rooms, common areas, landscaping, driveways and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Phase One Parcel or at the Phase One Development. Owner shall prevent and/or rectify any physical deterioration of the Phase One Parcel and the Phase One Development and shall make all repairs, renewals and replacements necessary to keep the Phase One Parcel and the Phase One Development in good condition and repair. Owner shall provide adequate security services for occupants of the Phase One Development.

6.3.1. Housing Authority's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and Owner fails, within ten (10) days after written notice from Housing Authority (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from Housing Authority (with respect to landscaping, building improvements and general maintenance), to cure or commence to cure and thereafter diligently pursue to completion the cure of such default then Housing Authority, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Phase One Parcel and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Phase One Parcel. All costs expended by Housing Authority in connection with the foregoing, shall constitute an indebtedness, and shall be paid by Owner to Housing Authority upon demand. All such sums remaining unpaid thirty (30) days following delivery of Housing Authority's invoice therefor shall bear interest at the rate of ten percent (10%) per annum.

6.4. Services Plan; Marketing and Management Plan.

6.4.1. Services Plan. Owner shall submit and obtain Housing Authority approval of a services plan for the provision of support services and amenities to residents of the Phase One Development (the "**Services Plan**"), and any subsequent material revisions to a

previously approved Services Plan, within the time and in the manner set forth in Section 1.4.2 of the DDA. As of the Effective Date, Housing Authority has approved the initial Services Plan. Owner shall abide by the terms of the approved Services Plan in providing support services and amenities to residents of the Phase One Development.

6.4.2. Marketing and Management Plan. Not later than one hundred eighty (180) calendar days following the issuance of the first building permit for the Phase One Development, Owner shall submit for Housing Authority review and approval, a plan for marketing and managing the Restricted Units in the Phase One Development ("**Marketing and Management Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's selection criteria for Eligible Households, and how Owner plans to certify the eligibility of Eligible Households. The Marketing and Management Plan shall also describe the management team and shall address the division of responsibilities between the Owner and the Operator in the management and maintenance of the Phase One Parcel and the Phase One Development. The Marketing and Management Plan shall include the proposed form of rental agreement that Owner proposes to enter into with Phase One Development Eligible Households. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Phase One Parcel and the Phase One Development, and throughout the term of this Agreement, shall submit proposed modifications to Housing Authority for its review and approval.

6.5. Approvals. If Housing Authority has not responded to any submission of the Services Plan or the Management and Marketing Plan in accordance with Section 6.4, the proposed Operator in accordance with Section 6.2, or a proposed amendment or change to any of the foregoing within thirty (30) days following Housing Authority's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by Housing Authority.

6.6. Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies, including without limitation possessory interest taxes, if applicable, imposed by any public authority or utility company with respect to the Phase One Parcel or the Phase One Development, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest.

6.7. Insurance Coverage. Prior to issuance of a building permit for the Phase One Development, and continuing throughout the term of this Agreement Owner shall comply with the requirements set forth in Exhibit B, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit B; provided however, during such time that lenders or equity investors providing financing for the Phase One Development impose insurance requirements that are inconsistent with the requirements set forth in Exhibit B, Owner may satisfy the requirements of this Section by meeting the requirements of such lenders or investors. Notwithstanding the foregoing, throughout the term hereof, Owner shall comply with the provisions of Exhibit B pertaining to (i) provision to Housing Authority of proof of insurance for

the Phase One Development, (ii) naming of Housing Authority and the City of Milpitas as additional insureds, and (iii) provision to Housing Authority of notice of cancellation or reduction in coverage.

6.8. Property Damage or Destruction. If any part of the Phase One Development is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed within one year thereafter, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or equity investors providing financing for the Phase One Development impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Santa Clara County. Owner hereby represents, warrants and covenants that with the exception of the Housing Authority Documents (as defined in the DDA) and easements of record, absent the written consent of Housing Authority, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Phase One Parcel or the Phase One Development. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Phase One Development in position superior to this Agreement, upon the request of Housing Authority, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as Housing Authority may reasonably request. Notwithstanding the foregoing, Housing Authority shall not unreasonably withhold, delay or condition its consent to subordination of the lien of this Agreement to a lien or encumbrance required by a lender or governmental entity in connection with financing for the Phase One Development consistent with the approved Financing Plan (as defined and described in Section 1.3.1 of the DDA).

8. Transfer and Encumbrance.

8.1. Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the DDA or this Agreement, Owner shall not make or permit the occurrence of any Transfer (as defined in the DDA) of the Phase One Development or the Phase One Parcel without the prior written consent of the Housing Authority; provided however, that none of the following Transfers shall require Housing Authority consent and each of the following Transfers shall be permitted: (a) a Transfer by Owner to a limited partnership, limited liability company, or other joint venture entity (collectively, "**Joint Venture Entity**") in which Owner is the managing general partner, managing member, or other managing entity of the Joint Venture Entity, which Transfer is undertaken (1) for purposes of creating an ownership structure to obtain equity for development of the Phase One Development consistent with the Financing Plan approved by Housing Authority pursuant to Section 1.3.1 of the DDA, or (2) for purposes of providing an ownership interest in Owner to an Operator (or affiliate of the Operator) approved pursuant to Section 1.4.1 of the DDA; (b) the admission of an equity investor or an approved Operator (or an affiliate of an approved Operator) to such Joint Venture

Entity; and/or (c) the transfer by the investor to an entity in which an affiliate is the general partner or managing member.

8.2. Permitted Transfers. In addition to Transfers otherwise permitted pursuant to the DDA and Section 8.1 above, the Housing Authority shall not withhold, delay or condition its consent to the following Transfers: (i) a transfer from the Joint Venture Entity to an entity which is controlled by or is under common control with the Joint Venture Entity's managing general partner (a "**Controlled Affiliate**"); (ii) a transfer of the initial equity investor's interest into an investor limited partner or partners, or subsequent transfers of such interests by the equity investor(s); (iii) a transfer from an equity investor to the Joint Venture Entity's managing general partner or a Controlled Affiliate; (iv) a transfer of the managing general partner's interest in the Joint Venture Entity to a Controlled Affiliate; or (v) a transfer to the construction or permanent lender for the Phase One Development or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Phase One Development or to any subsequent transfer by such lender or third party following such foreclosure, deed in lieu of foreclosure or comparable conversion; provided that: (a) prior to any of the foregoing Transfers (other than to a third party following foreclosure), Owner, the Joint Venture Entity or the proposed owner shall provide Housing Authority with a copy of the transferee's organizational documents and the final form of the agreement effectuating such transfer, (b) the Phase One Development is and shall continue to be operated in compliance with this Agreement, and (c) the transferee executes all documents reasonably requested by the Housing Authority with respect to the assumption of the Owner's or the Joint Venture Entity's obligations under this Agreement, and upon reasonable request of Housing Authority, delivers to the Housing Authority an opinion of transferee's counsel to the effect that this Agreement is the valid, binding and enforceable obligation of such transferee.

In addition, Housing Authority shall not withhold, delay or condition its consent to the sale, transfer or other disposition of the Phase One Parcel and the Phase One Development, in whole or in part, provided that (1) the Phase One Development is and shall continue to be operated in compliance with this Agreement; (2) the transferee expressly assumes all obligations of Owner imposed by this Agreement; (3) the transferee executes all documents reasonably requested by the Housing Authority with respect to the assumption of the Owner's obligations under this Agreement, and upon Housing Authority's request, delivers to the Housing Authority an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three (3) years' experience in the ownership, operation and management of a "continuum of care" senior rental housing project that includes very low-income tenants and that is of similar size to that of the Phase One Development, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or (B) the transferee agrees to retain a property management firm with the experience and record described in subclause (A).

In the event a general partner, managing member, or other managing entity of Owner or the Joint Venture Entity is removed by the equity investor thereof for cause following default under the applicable Joint Venture partnership or operating agreement, Housing Authority hereby approves the transfer of the general partner or managing member interest to another party that is selected by the equity investor and approved by Phase One Development

lender(s); provided that (i) following such transfer, the Phase One Development shall continue to be operated in compliance with this Agreement, and (ii) such party meets the requirements of clause (4) of the preceding paragraph.

8.3. Encumbrances. Owner agrees to use best efforts to ensure that any deed of trust secured by the Phase One Development for the benefit of a lender other than Housing Authority ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to Housing Authority a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner (provided however, the failure to do so shall not impair such Third-Party Lender's rights and remedies); (ii) Housing Authority shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure; (iii) Housing Authority shall have the right to exercise any remedies afforded to it under the Housing Authority Documents (as defined in the DDA) in connection with any default declared by the Third-Party Lender, provided that Housing Authority has cured any default under Third-Party Lender's deed of trust and other loan documents; and (iv) if Housing Authority acquires the Phase One Parcel and Phase One Development, Housing Authority shall have the right to transfer the Phase One Parcel and Phase One Development without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Phase One Development in accordance with this Agreement, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to Housing Authority a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.4. Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Phase One Development or the Phase One Parcel, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, Housing Authority shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Phase One Development or the Phase One Parcel that such violation has occurred.

8.5. Modifications; FHA-Required Provisions. If a lender with respect to debt financing described in the approved Financing Plan (as defined and described in Section 1.3.1 of the DDA) for the Phase One Development should, as a condition of providing financing for development of all or a portion of the Phase One Development, request any modification of this Agreement in order to protect its interests in the Phase One Development, Housing Authority shall consider and act upon such request in good faith and within a reasonable time period.

9. Default and Remedies.

9.1. Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) The occurrence of a Transfer in violation of Section 8 hereof;

(b) Owner's failure to maintain insurance on the Phase One Parcel and the Phase One Development as required hereunder, and the failure of Owner to cure such default within 10 days of receipt of written notice from Housing Authority of such default.

(c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Phase One Parcel or the Phase One Development or failure to pay any other charge that may result in a lien on the Phase One Parcel or the Phase One Development, and Owner's failure to cure such default within 10 days of receipt of written notice from Housing Authority of such default.

(d) Owner's default in the performance of any term, provision or covenant under this Agreement or under any other Housing Authority Document (other than an obligation enumerated in this Subsection 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which Housing Authority shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than one hundred twenty (120) days from receipt of the notice of default.

The equity investors of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner. Provided that Housing Authority has been given written notice of the address for delivery of notices to the equity investors, Housing Authority shall provide any notice of default hereunder to the equity investors concurrently with the provision of such notice to Owner, and as to the equity investors, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Section 11.4.

9.2. Remedies. If within the applicable cure period, Owner fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, Housing Authority may proceed with any of the following remedies:

(a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(b) For violations of obligations with respect to Qualifying Rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;

(c) Pursue any other remedy allowed at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The Housing Authority may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnification. Notwithstanding the insurance coverage required hereunder, Owner shall defend, indemnify and hold the Housing Authority and its officials, officers, directors, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as a result of (1) Owner's failure to perform any obligation as and when required by this Agreement; (2) any failure of Owner's representations or warranties to be true and complete in all material respects when made; or (3) any act or omission by Owner, or any of Owner's contractors, subcontractors, agents, employees, licensees or suppliers with respect to the Phase One Development or the Phase One Parcel, except to the extent that such losses are caused by the gross negligence or willful misconduct of such Indemnified Party. Owner shall pay immediately upon an Indemnified Party's demand any amounts owing under the indemnity provided under this Section. The duty of Owner to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising in connection with the Phase One Development or the Phase One Parcel with counsel reasonably approved by Housing Authority. Owner's duty to indemnify the Indemnified Parties shall survive the expiration or earlier termination of this Agreement.

11. Miscellaneous.

11.1. Reserved.

11.2. Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.3. No Waiver. Any waiver by Housing Authority of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by Housing Authority to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by Housing Authority at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.4. Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (a) personal delivery, in which case notice is effective upon delivery;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;
- (c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Housing Authority: City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

Owner: South Main Senior Lifestyles, LLC

Attention: _____

Equity Investor: _____

Attention: _____

11.5. Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.6. Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.7. Action by the Housing Authority. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Housing Authority is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Housing Authority Executive Director or by any person who shall have been designated by the Housing Authority Executive Director, without further approval by the governing board of the Housing Authority.

11.8. Non-Liability of Housing Authority and Housing Authority Officials, Employees and Agents. No member, official, employee or agent of the Housing Authority or the City of Milpitas shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the Housing Authority, or for any amount of money which may become due to Owner or its successor or for any obligation of Housing Authority under this Agreement.

11.9. Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

11.10. Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.11. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.12. Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.13. Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.14. Entire Agreement; Exhibits. This Agreement, together with the Housing Authority Documents (as defined in the DDA) contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. The exhibits attached hereto are incorporated herein by this reference.

11.15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have executed this Phase One Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

**SOUTH MAIN SENIOR LIFESTYLES, LLC,
a California limited liability company**

By: _____
Joseph W. Callahan, Jr., Managing Member

By: _____
James R. Burns II, Managing Member

THE CITY OF MILPITAS HOUSING AUTHORITY

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Housing Authority Secretary

APPROVED AS TO FORM:

By: _____
Housing Authority Counsel

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA

)

COUNTY OF _____

)

)

On _____, before me, _____, Notary Public,
 personally appeared _____, proved to me on the basis
 of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
 instrument and acknowledged to me that he/she/they executed the same in his/her/their
 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
 the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the
 foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 Notary Public

STATE OF CALIFORNIA

)

COUNTY OF _____

)

)

On _____, before me, _____, Notary Public,
 personally appeared _____, proved to me on the basis
 of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
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STATE OF CALIFORNIA

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COUNTY OF _____)
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WITNESS my hand and official seal.

 Notary Public

EXHIBIT A

PHASE ONE PARCEL

Real property in the City of Milpitas, County of Santa Clara, State of California,
described as follows:

[To Be Inserted]

H-1-A-1

EXHIBIT B

INSURANCE REQUIREMENTS

Except as otherwise provided in Section 6.7 of the Agreement to which this Exhibit is attached, prior to issuance of building permits for the Phase One Development and throughout the term of this Agreement, Owner shall obtain and maintain, at Owner's expense, the following policies of insurance.

A. Property Insurance. Insurance for the risks of direct physical loss, with minimum coverage being the perils insured under the standard Causes of Loss - Special form (ISO Form CP 10 30) or its equivalent, covering all improvements, all fixtures, equipment and personal property, located on or in, or constituting a part of, the Phase One Parcel or the Phase One Development, in an amount equal to one hundred percent (100%) of the full replacement cost of all such property. The insurance shall (a) cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Phase One Parcel, and (b) cover floods if the Phase One Parcel is in a Special Hazard Area, as determined by the Federal Emergency Management Housing Authority or as shown on a National Flood Insurance Program flood map. The insurance required hereunder shall be in amounts sufficient to prevent Owner from becoming a co-insurer under the terms of the applicable policies, with not more than a Ten Thousand Dollars (\$10,000) deductible (or such higher deductible approved by the Housing Authority, which approval shall not be unreasonably withheld) from the loss payable for any casualty. The policies of insurance carried in accordance with this Paragraph A shall contain a "replacement cost endorsement" and an "increased cost of construction endorsement."

B. Liability Insurance. Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in or about the Phase One Parcel and the Phase One Development. The limits of liability under this Paragraph B shall be not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence, with a deductible no greater than Ten Thousand Dollars (\$10,000) or such higher deductible as may be approved by Housing Authority, which approval shall not be unreasonably withheld.

The insurance shall also include coverage for:

(i) liability for bodily injury or property damage arising out of the use, by or on behalf of Owner, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations conducted in connection with the Phase One Development or the Phase One Parcel;

(ii) premises and operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Phase One Parcel or the Phase One Development on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways;

(iii) broad form property damage liability;

(iv) additional insured and primary insured endorsements protecting the Housing Authority, the City of Milpitas and their respective elected and appointed officials, officers, employees and agents;

(v) personal injury endorsement.

C. Workers' Compensation Insurance. Workers' compensation insurance, in the amount required under then applicable state law, covering Owner's employees, if any, at work in or upon the Phase One Parcel or engaged in services or operations in connection with the Phase One Development or the Phase One Parcel. Owner shall require that any contract entered into by Owner with regard to work to be undertaken on the Phase One Parcel include a contractual undertaking by the contractor to provide worker's compensation insurance for its employees in compliance with applicable state law.

D. Course of Construction Insurance. Course of construction insurance in the same amount as required in Paragraph A above for property insurance, covering all construction activities on the Phase One Parcel.

E. General Insurance Provisions. All policies of insurance provided for in this Exhibit shall be provided under valid and enforceable policies, in such forms and amounts as hereinbefore specified, issued by insurers licensed to do business in the State of California (or approved to do business in California and listed on the California Department of Insurance list of Eligible Surplus Lines Insurers or successor listing) and having a rating of A-VII or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Prior to the issuance of building permits for the Phase One Development, and thereafter, not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this Exhibit B, Owner shall deliver to Housing Authority certificates evidencing the insurance required to be carried by Owner under this Exhibit B. If requested by Housing Authority, Owner shall deliver within ten (10) days following such request, certified, complete copies of the insurance policies required hereunder. Insurance policies to be provided hereunder shall meet the following requirements:

(a) Each policy of insurance obtained pursuant to this Agreement, other than worker's compensation insurance, shall contain endorsements which provide (i) a waiver by the insurer of the right of subrogation against Housing Authority, the City of Milpitas, Owner or any tenant of the Phase One Development for negligence of any such person, (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy, and (iii) a provision that no act or omission of Owner which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained.

(b) By endorsements, Housing Authority and the City of Milpitas, and their respective elected and appointed officials, officers, employees and agents shall be named as additional insured under the liability insurance required to be maintained by Owner hereunder. Housing Authority shall be named as loss payee on the property insurance policies required to be maintained hereunder.

(c) Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior written notice by registered or certified mail to Housing Authority.

(d) All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the listed insureds.

(e) Any certificate of insurance applicable to course of construction insurance to be maintained shall be deposited with Housing Authority prior to commencement of construction of the Phase One Development.

(f) Each policy shall contain an endorsement that provides that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability.

(g) Each policy shall be written as a primary policy not contributing with and not in excess of coverage that Housing Authority may carry.

(h) Each policy shall expressly provide that Housing Authority shall not be required to give notice of accidents or claims and that Housing Authority shall have no liability for premiums.

F. Blanket Policies. Any insurance provided for in this Exhibit B may be placed by a policy or policies of blanket insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Phase One Parcel and the Phase One Development shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Agreement.

G. Waiver of Subrogation. To the extent permitted by law and the policies of insurance required to be maintained hereunder, and without affecting such insurance coverage, Housing Authority and Owner each waive any right to recover against the other (a) damages for injury or death of persons, (b) damage to property, (c) damage to the Phase One Parcel or the Phase One Development or any part thereof, or (d) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims are covered (and only to the extent of such coverage) by insurance actually carried by either Housing Authority or Owner. This provision is intended to restrict each party (as permitted by law) to recover against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier.

H. Compliance with Policy Requirements. Owner shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Phase One Parcel, and Owner shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing shall be willing to write or to continue such insurance.

EXHIBIT H-2FORM OF PHASE TWO REGULATORY AGREEMENT

**Recording requested by and when recorded
mail to:**

City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(Space above this line for Recorder's use.)

PHASE TWO
AFFORDABLE HOUSING REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF MILPITAS HOUSING AUTHORITY

and

SOUTH MAIN SENIOR LIFESTYLES, LLC

This Phase Two Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 201__ (the "**Effective Date**") by and between the City of Milpitas Housing Authority, a public body, corporate and politic (the "**Housing Authority**"), and South Main Senior Lifestyles, LLC, a California limited liability company ("**Owner**"). Housing Authority and Owner are hereinafter collectively referred to as the "**Parties**."

RECITALS

A. Owner has purchased an approximately 5.94 acre parcel of real property from the Housing Authority located at 1504-1620 South Main Street, Milpitas (the "**Property**") pursuant to the terms of an Amended and Restated Disposition and Development Agreement dated as of November 19, 2013 by and between the Housing Authority and Owner (the "**DDA**"), a memorandum of which has been recorded substantially concurrently herewith in the Official Records of Santa Clara County.

B. The Property was purchased by the former Redevelopment Agency of the City of Milpitas (the "**Former RDA**") using funds from its Low and Moderate Income Housing Fund (the "**Housing Fund**") in accordance with the requirements of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (the "**CRL**"). Upon dissolution of the Former RDA pursuant to ABx1 26 (as amended by AB 1484, the "**Redevelopment Dissolution Law**") as of February 1, 2012, the Housing Authority was designated to perform the housing functions and administer the housing assets of the Former RDA, which housing assets include the Property, as more fully described in the recitals of the DDA. In accordance with the DDA and the requirements imposed upon the Housing Authority pursuant to the Redevelopment Dissolution Law and the CRL, the Housing Authority has required that specified units of affordable housing be developed and operated by Owner on the Property.

C. In accordance with the DDA, the Property has been subdivided into various parcels, including the parcel of real property more particularly described in Exhibit A attached hereto (the "**Phase Two Parcel**").

D. Also in accordance with the DDA, Owner intends to construct, own and operate on the Phase Two Parcel a one hundred ninety (190) unit "independent living" senior housing rental development (the "**Phase Two Development**"), including specified units for very low-income households as set forth in this Agreement.

E. Specifically, the DDA and this Agreement provide that thirty-eight (38) of the residential units in the Phase Two Development shall be affordable to and occupied by or available for occupancy by very low-income senior households for a period of not less than fifty-five (55) years.

F. Pursuant to the DDA, and to facilitate the financially feasible provision of the units of affordable housing as set forth in this Agreement, the Housing Authority agreed to convey the Phase Two Parcel to Owner for its "fair reuse value" of One Dollar (\$1.00), as

authorized by the CRL to facilitate such affordability (the "**Affordable Housing Facilitated Purchase Price**").

G. In recognition that the Property, including the Phase Two Parcel, was purchased by the Former RDA with Housing Funds, and as a condition to its agreement to convey the Phase Two Parcel to Owner at the Affordable Housing Facilitated Purchase Price, the Housing Authority requires the Phase Two Parcel to be subject to the conditions, restrictions, reservations and rights of the Housing Authority set forth herein.

H. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Phase Two Development's Restricted Units (as defined below) for the benefit of the Phase Two Development's occupants. The covenants in this Agreement are intended to run with the land and be binding on Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Definitions.** The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"Adjusted Income" means, except as provided in the following sentence, the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, the Housing Authority shall provide the Owner with a reasonably similar method of calculation of adjusted income as provided in said Section 6914. If any federal statute or regulations applicable to the Phase Two Development use an alternative definition of household income in determining household income qualification, such federally-mandated household income definition shall be used instead of the definition provided above.

"Area Median Income" or "AMI" means the area median income for Santa Clara County, California, adjusted for household size, determined periodically by the California Department of Housing and Community Development ("**HCD**") as published in Section 6932 of Title 25 of the California Code of Regulations ("**Regulations**") or successor provision published pursuant to California Health and Safety Code Section 50093(c). If HCD ceases to make such determination, Area Median Income shall be the median income applicable to Santa Clara County, with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Milpitas that HUD may hereafter adopt in connection with such Act.

"Assumed Household Size" means one (1) person for each studio apartment unit (including each Junior One Bedroom Unit) that is a Restricted Unit, and means two (2) persons for each One Bedroom Unit that is a Restricted Unit; provided, however, that if any federal statute or regulations applicable to the Phase Two Development use alternative household size

assumptions in calculating affordable rents, such federally-mandated household size assumptions shall be used instead of the assumptions provided above.

"Eligible Household" means a Very Low-Income Household that also meets the requirements set forth in Section 2.1.

"Junior One Bedroom Unit" means a unit in the Phase Two Development containing less than 625 net rentable square feet.

"One Bedroom Unit" means a one bedroom unit in the Phase Two Development containing 625 or more rentable square feet.

"Qualifying Rent" has the meaning given in Section 2.4.

"Rent" means the total of monthly payments by the tenants of a dwelling unit for the following: use and occupancy of the unit and land and associated facilities; any separately charged fees or service charges assessed by Owner which are required of all tenants, but excluding security deposits; the cost of an adequate level of service for utilities paid by the tenant, pursuant to the tenant-paid utility allowances published by the Santa Clara County Housing Authority, including sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the tenant.

"Restricted Unit" means a dwelling unit which is reserved for occupancy at a Qualifying Rent by a Very Low-Income Household in accordance with and as set forth in Sections 2.2, 2.3, and 2.4.

"Very Low-Income Household" means a household that meets the requirements set forth in Section 2.1 and that has an annual Adjusted Income that is less than or equal to fifty percent (50%) of AMI.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that during the term of this Agreement the Phase Two Parcel shall be used solely for the construction and operation of the Phase Two Development, consisting of a one hundred ninety (190) unit "independent living" multifamily rental housing development in compliance with the DDA, the development approvals granted by the City of Milpitas, and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of Housing Authority. Notwithstanding the foregoing or anything to the contrary contained herein, if the terms of financing for the Phase Two Development require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

2.1. Senior Housing. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Phase Two Development, all one

hundred ninety (190) of the dwelling units in the Phase Two Development shall be restricted for occupancy by households in which each household member is a person sixty-two (62) years of age or older. Residency by other persons in such dwelling units shall be in compliance with Section 51.3 of the California Civil Code.

2.2. Affordability Requirements In General. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Phase Two Development, thirty-eight (38) of the dwelling units in the Phase Two Development shall be Restricted Units occupied (or if vacant, available for occupancy) by Eligible Households with incomes as set forth in Section 2.3, and rented at Qualifying Rents as set forth in Section 2.4.

2.3. Eligible Households Income Limits. The Restricted Units shall be occupied (or if vacant, available for occupancy) as follows:

(a) Twenty-eight (28) Junior One Bedroom Units shall be occupied (or if vacant, available for occupancy) by Eligible Households; and

(b) Ten (10) One Bedroom Units shall be occupied (or if vacant, available for occupancy) by Eligible Households.

2.4. Rents for Restricted Units. Rents for the Restricted Units shall be limited to Rent that does not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size (the "**Qualifying Rent**").

2.5. Increased Income of Households. In the event that recertification of an Eligible Household's income indicates that the household's Adjusted Income exceeds one hundred twenty percent (120%) of the qualifying income for a Very Low-Income Household, then (a) such household's dwelling unit shall still be considered a Restricted Unit, (b) the Rent for such unit shall remain at one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size, and (c) Owner shall rent the next available dwelling unit of the applicable size (i.e., a Junior One Bedroom Unit of the applicable over-income household is occupying a Junior One Bedroom Unit, or a One Bedroom Unit if the applicable over-income household is occupying a One Bedroom unit) to an Eligible Household to comply with the requirement of Section 2.3. Once the next available unit has been rented to an Eligible Household in accordance with clause (c) above, the Rent for the over-income household may be increased to market rate rent. Notwithstanding the foregoing provisions of this Section 2.5, if any federal statute or regulations applicable to the Phase Two Development use alternative requirements with respect to treatment of Eligible Households whose incomes exceed qualifying incomes upon recertification, such federally-mandated requirements shall be used instead of the requirements provided above.

2.6. Unit Sizes, Design and Preferences. The Restricted Units shall consist of Junior One Bedroom Units and One Bedroom Units. In renting Restricted Units, Owner shall give first preference to Eligible Households in which at least one member lives or works in the City of Milpitas, second preference to Eligible Households in which at least one member is the parent of a person who lives or works in the City of Milpitas, and third preference to Eligible Households in which at least one member lives or works in the County of Santa Clara, unless

compliance with the foregoing criteria is prohibited by law or by state or federal sources of financing for the Phase Two Development.

2.7. No Condominium Conversion. Owner shall not convert the Phase Two Development to condominium or cooperative ownership or sell condominium or cooperative rights to the Phase Two Development during the term of this Agreement.

2.8. Non-Discrimination; Compliance with Fair Housing Laws.

2.8.1. Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Phase Two Development. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.8.2. Non-Discrimination. Owner covenants for and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry, disability or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Phase Two Parcel or the Phase Two Development, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Phase Two Development. The foregoing covenant shall run with the land. All deeds, leases or contracts made or entered into by Owner, its successors or assigns, as to any portion of the Phase Two Parcel or the Phase Two Development shall contain the following language:

(c) In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(d) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(e) In Contracts.

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

3. Reporting Requirements.

3.1. Tenant Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary

thereafter, a written certificate containing all of the following in such format and with such supporting documentation as Housing Authority may reasonably require:

- (a) The identity and age of the resident who is age sixty-two (62) or older;
- (b) The identity and age of each other member of the household or such other information reasonably required to demonstrate compliance with Section 2.1 above; and
- (c) Total household income.

Owner shall retain such certificates for not less than three (3) years, and upon Housing Authority's request, shall make the originals available for inspection by Housing Authority and shall provide copies of such certificates to Housing Authority.

3.2. Annual Report; Inspections. Owner shall submit an annual report ("Annual Report") to Housing Authority in form satisfactory to Housing Authority, together with a certification that the Phase Two Development is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each Restricted Unit in the Phase Two Development: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Upon Housing Authority's request, Owner shall include with the Annual Report the following documentation for each Restricted Unit: an income recertification for each household, documentation verifying tenant eligibility, and such additional information as Housing Authority may reasonably request from time to time in order to show compliance with this Agreement. The Annual Report shall conform to the format requested by Housing Authority; provided however, during such time that the Phase Two Development is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing Housing Authority with a copy of compliance reports required in connection with such financing.

Owner shall permit representatives of Housing Authority to enter and inspect the Phase Two Parcel and the Phase Two Development during reasonable business hours in order to monitor compliance with this Agreement upon 24-hours advance notice of such visit to Owner or to Owner's management agent.

4. Term of Agreement.

4.1. Term of Restrictions. This Agreement shall remain in effect through the (fifty-fifth) 55th anniversary of the issuance of the final certificate of occupancy for the Phase Two Development.

4.2. Effectiveness Succeeds Conveyance of Phase Two Parcel. This Agreement shall remain effective and fully binding for the full term hereof regardless of any sale, assignment, transfer, or conveyance of the Phase Two Parcel or the Phase Two Development or any part thereof or interest therein, unless this Agreement is terminated earlier by Housing Authority in a recorded writing.

4.3. Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge the terms of this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Phase Two Parcel and the Phase Two Development to the covenants and restrictions set forth in this Agreement. The Housing Authority and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and Housing Authority, regardless of any sale, assignment, conveyance or transfer of the Phase Two Parcel, the Phase Two Development or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Phase Two Parcel or the Phase Two Development (other than the tenants of the individual dwelling units within the Phase Two Development) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Phase Two Parcel or the Phase Two Development or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to Housing Authority an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Phase Two Parcel and the Phase Two Development in favor of Housing Authority.

6. Property Management; Repair and Maintenance; Marketing.

6.1. Management Responsibilities. Owner shall be responsible for all management functions with respect to the Phase Two Parcel and the Phase Two Development, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Except as Housing Authority may otherwise agree in writing, Housing Authority shall have no responsibility for management or maintenance of the Phase Two Parcel or the Phase Two Development.

6.2. Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Phase Two Parcel and the Phase Two Development in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Phase Two Parcel and the Phase Two Development (including without limitation, the residential units, common meeting rooms, common areas, landscaping, driveways and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Phase Two Parcel or at the Phase Two Development. Owner shall prevent and/or rectify any physical deterioration of the Phase Two Parcel and the Phase Two Development and shall make all repairs, renewals and replacements necessary to keep the Phase Two Parcel and the Phase Two Development in good condition and repair. Owner shall provide adequate security services for occupants of the Phase Two Development.

6.2.1. Housing Authority's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.2, and Owner fails, within ten (10) days after written notice from Housing Authority (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from Housing Authority (with respect to landscaping, building improvements and general maintenance), to cure or commence to cure and thereafter diligently pursue to completion the cure of such default, then Housing Authority, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Phase Two Parcel and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Phase Two Parcel. All costs expended by Housing Authority in connection with the foregoing, shall constitute an indebtedness, and shall be paid by Owner to Housing Authority upon demand. All such sums remaining unpaid thirty (30) days following delivery of Housing Authority's invoice therefor shall bear interest at the rate of ten percent (10%) per annum.

6.3. Marketing and Management Plan. Not later than one hundred eighty (180) calendar days following the issuance of the first building permit for the Phase Two Development, Owner shall submit for Housing Authority review and approval, a plan for marketing and managing the Restricted Units in the Phase Two Development ("**Marketing and Management Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's selection criteria for Eligible Households, and how Owner plans to certify the eligibility of Eligible Households. The Marketing and Management Plan shall also describe the management team and shall address the division of responsibilities between Owner and the Operator in the management and maintenance of the Phase Two Parcel and the Phase Two Development. The Marketing and Management Plan shall include the proposed form of rental agreement that Owner proposes to enter into with Phase Two Development Eligible Households. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Phase Two Parcel and the Phase Two Development, and throughout the term of this Agreement, shall submit proposed modifications to Housing Authority for its review and approval.

6.4. Approvals. If Housing Authority has not responded to any submission of the Management and Marketing Plan in accordance with Section 6.3 or a proposed amendment or change to a Management and Marketing Plan within thirty (30) days following Housing Authority's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by Housing Authority.

6.5. Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies, including without limitation possessory interest taxes, if applicable, imposed by any public authority or utility company with respect to the Phase Two Parcel or the Phase Two Development, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest.

6.6. Insurance Coverage. Prior to issuance of building permits for the Phase Two Development, and continuing throughout the term of this Agreement Owner shall comply with the requirements set forth in Exhibit B, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit B; provided however, during such time that lenders or equity investors providing financing for the Phase Two Development impose insurance requirements that are inconsistent with the requirements set forth in Exhibit B, Owner may satisfy the requirements of this Section by meeting the requirements of such lenders or investors. Notwithstanding the foregoing, throughout the term hereof, Owner shall comply with the provisions of Exhibit B pertaining to (i) provision to Housing Authority of proof of insurance for the Phase Two Development, (ii) naming of Housing Authority and the City of Milpitas as additional insureds, and (iii) provision to Housing Authority of notice of cancellation or reduction in coverage.

6.7. Property Damage or Destruction. If any part of the Phase Two Development is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed within one year thereafter, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or equity investors providing financing for the Phase Two Development impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Santa Clara County. Owner hereby represents, warrants and covenants that with the exception of the Housing Authority Documents (as defined in the DDA) and easements of record, absent the written consent of Housing Authority, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Phase Two Parcel or the Phase Two Development. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Phase Two Development in position superior to this Agreement, upon the request of Housing Authority, Owner hereby covenants and agrees to promptly undertake all action necessary to

clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as Housing Authority may reasonably request. Notwithstanding the foregoing, Housing Authority shall not unreasonably withhold, delay or condition its consent to subordination of the lien of this Agreement to a lien or encumbrance required by a lender or governmental entity in connection with financing for the Phase Two Development consistent with the approved Financing Plan (as defined and described in Section 1.3.1 of the DDA).

8. Transfer and Encumbrance.

8.1. Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the DDA or this Agreement, Owner shall not make or permit the occurrence of any Transfer (as defined in the DDA) of the Phase Two Development or the Phase Two Parcel without the prior written consent of the Housing Authority; provided however, that none of the following Transfers shall require Housing Authority consent and each of the following Transfers shall be permitted: (a) a Transfer by Owner to a limited partnership, limited liability company, or other joint venture entity (collectively, "**Joint Venture Entity**") in which Owner is the managing general partner, managing member, or other managing entity of the Joint Venture Entity, which Transfer is undertaken (1) for purposes of creating an ownership structure to obtain equity for development of the Phase Two Development consistent with the Financing Plan approved by Housing Authority pursuant to Section 1.3.1 of the DDA, or (2) for purposes of providing an ownership interest in Owner to the operator (or an affiliate of the operator) retained by Owner to operate the Phase Two Development; (b) the admission to such Joint Venture Entity of an equity investor or an operator (or an affiliate of the operator) retained by Owner to operate the Phase Two Development; and/or, (c) the transfer by the investor to an entity in which an affiliate is the general partner or managing member.

8.2. Permitted Transfers. In addition to Transfers otherwise permitted pursuant to the DDA and Section 8.1 above, the Housing Authority shall not withhold, delay or condition its consent to the following Transfers: (i) a transfer from the Joint Venture Entity to an entity which is controlled by or is under common control with the Joint Venture Entity's managing general partner (a "**Controlled Affiliate**"); (ii) a transfer of the initial equity investor's interest into an investor limited partner or partners, or subsequent transfers of such interests by the equity investor(s); (iii) a transfer from an equity investor to the Joint Venture Entity's managing general partner or a Controlled Affiliate; (iv) a transfer of the managing general partner's interest in the Joint Venture Entity to a Controlled Affiliate; or (v) a transfer to the construction or permanent lender for the Phase Two Development or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Phase Two Development or to any subsequent transfer by such lender or third party following such foreclosure, deed in lieu of foreclosure or comparable conversion; provided that: (a) prior to any of the foregoing Transfers (other than to a third party following foreclosure), Owner, the Joint Venture Entity or the proposed owner shall provide Housing Authority with a copy of the transferee's organizational documents and the final form of the agreement effectuating such transfer, (b) the Phase Two Development is and shall continue to be operated in compliance with this Agreement, and (c) the transferee executes all documents reasonably requested by the Housing Authority with respect to the assumption of the Owner's or the Joint Venture Entity's obligations under this Agreement, and upon reasonable request of Housing Authority, delivers to the Housing Authority an opinion

of transferee's counsel to the effect that this Agreement is the valid, binding and enforceable obligation of such transferee.

In addition, Housing Authority shall not withhold, delay or condition its consent to the sale, transfer or other disposition of the Phase Two Parcel and the Phase Two Development, in whole or in part, provided that (1) the Phase Two Development is and shall continue to be operated in compliance with this Agreement; (2) the transferee expressly assumes all obligations of Owner imposed by this Agreement; (3) the transferee executes all documents reasonably requested by the Housing Authority with respect to the assumption of the Owner's obligations under this Agreement, and upon Housing Authority's request, delivers to the Housing Authority an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three (3) years' experience in the ownership, operation and management of an "independent living" senior rental housing project that includes very low-income tenants and that is of similar size to that of the Phase Two Development, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or (B) the transferee agrees to retain a property management firm with the experience and record described in subclause (A).

In the event a general partner, managing member, or other managing entity of Owner or the Joint Venture Entity is removed by the equity investor thereof for cause following default under the applicable Joint Venture partnership or operating agreement, Housing Authority hereby approves the transfer of the general partner or managing member interest to another party that is selected by the equity investor and approved by Phase Two Development lender(s); provided that (i) following such transfer, the Phase Two Development shall continue to be operated in compliance with this Agreement, and (ii) such party meets the requirements of clause (4) of the preceding paragraph.

8.3. Encumbrances. Owner agrees to use best efforts to ensure that any deed of trust secured by the Phase Two Development for the benefit of a lender other than Housing Authority ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to Housing Authority a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner (provided however, the failure to do so shall not impair such Third-Party Lender's rights and remedies); (ii) Housing Authority shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure; (iii) Housing Authority shall have the right to exercise any remedies afforded to it under the Housing Authority Documents (as defined in the DDA) in connection with any default declared by the Third-Party Lender, provided that Housing Authority has cured any default under Third-Party Lender's deed of trust and other loan documents; and (iv) if Housing Authority acquires the Phase Two Parcel and Phase Two Development, Housing Authority shall have the right to transfer the Phase Two Parcel and Phase Two Development without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Phase Two Development in accordance with this Agreement, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to Housing Authority a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.4. Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Phase Two Development or the Phase Two Parcel, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, Housing Authority shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Phase Two Development or the Phase Two Parcel that such violation has occurred.

8.5. Modifications; FHA-Required Provisions. If a lender with respect to debt financing described in the approved Financing Plan (as defined and described in Section 1.3.1 of the DDA) for the Phase Two Development should, as a condition of providing financing for development of all or a portion of the Phase Two Development, request any modification of this Agreement in order to protect its interests in the Phase Two Development, Housing Authority shall consider and act upon such request in good faith and within a reasonable time period.

9. Default and Remedies.

9.1. Events of Default. The occurrence of any Two or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) The occurrence of a Transfer in violation of Section 8 hereof;
- (b) Owner's failure to maintain insurance on the Phase Two Parcel and the Phase Two Development as required hereunder, and the failure of Owner to cure such default within 10 days of receipt of notice from Housing Authority of such default.
- (c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Phase Two Parcel or the Phase Two Development or failure to pay any other charge that may result in a lien on the Phase Two Parcel or the Phase Two Development, and Owner's failure to cure such default within 10 days of receipt of notice from Housing Authority of such default..
- (d) Owner's default in the performance of any term, provision or covenant under this Agreement or under any other Housing Authority Document (other than an obligation enumerated in this Subsection 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which Housing Authority shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than one hundred twenty (120) days from receipt of the notice of default.

The equity investors of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner. Provided that Housing

Authority has been given written notice of the address for delivery of notices to the equity investors, Housing Authority shall provide any notice of default hereunder to the equity investors concurrently with the provision of such notice to Owner, and as to the equity investors, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Section 11.4.

9.2. Remedies. If within the applicable cure period, Owner fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, Housing Authority may proceed with any of the following remedies:

(a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(b) For violations of obligations with respect to Qualifying Rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;

(c) Pursue any other remedy allowed at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The Housing Authority may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnification. Notwithstanding the insurance coverage required hereunder, Owner shall defend, indemnify and hold the Housing Authority and its officials, officers, directors, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as a result of (1) Owner's failure to perform any obligation as and when required by this Agreement; (2) any failure of Owner's representations or warranties to be true and complete in all material respects when made; or (3) any act or omission by Owner, or any of Owner's contractors, subcontractors, agents, employees, licensees or suppliers with respect to the Phase Two Development or the Phase Two Parcel, except to the extent that such losses are caused by the gross negligence or willful misconduct of such Indemnified Party. Owner shall pay immediately upon an Indemnified Party's demand any amounts owing under the indemnity provided under this Section. The duty of Owner to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising in connection with the Phase Two Development or the Phase Two Parcel with counsel reasonably approved by Housing Authority. Owner's duty to indemnify the Indemnified Parties shall survive the expiration or earlier termination of this Agreement.

11. Miscellaneous.

11.1. Reserved.

11.2. Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.3. No Waiver. Any waiver by Housing Authority of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by Housing Authority to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by Housing Authority at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.4. Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (a) personal delivery, in which case notice is effective upon delivery;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;
- (c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Housing Authority: City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

Owner: South Main Senior Lifestyles, LLC

Attention: _____

Equity Investor: _____

Attention: _____

11.5. Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.6. Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.7. Action by the Housing Authority. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Housing Authority is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Housing Authority Executive Director or by any person who shall have been designated by the Housing Authority Executive Director, without further approval by the governing board of the Housing Authority.

11.8. Non-Liability of Housing Authority and Housing Authority Officials, Employees and Agents. No member, official, employee or agent of the Housing Authority or the City of Milpitas shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the Housing Authority, or for any amount of money which may become due to Owner or its successor or for any obligation of Housing Authority under this Agreement.

11.9. Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

11.10. Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.11. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.12. Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.13. Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.14. Entire Agreement; Exhibits. This Agreement, together with the Housing Authority Documents (as defined in the DDA) contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. The exhibits attached hereto are incorporated herein by this reference.

11.15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the Parties have executed this Phase Two Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

SOUTH MAIN SENIOR LIFESTYLES, LLC,
a California limited liability company

By: _____
Joseph W. Callahan, Jr., Managing Member

By: _____
James R. Burns II, Managing Member

THE CITY OF MILPITAS HOUSING AUTHORITY

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Housing Authority Secretary

APPROVED AS TO FORM:

By: _____
Housing Authority Counsel

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, Notary Public,
 personally appeared _____, proved to me on the basis
 of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
 instrument and acknowledged to me that he/she/they executed the same in his/her/their
 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
 the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the
 foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 Notary Public

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, Notary Public,
 personally appeared _____, proved to me on the basis
 of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
 instrument and acknowledged to me that he/she/they executed the same in his/her/their
 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
 the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the
 foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 Notary Public

STATE OF CALIFORNIA)

COUNTY OF _____

)
)

On _____, before me, _____, Notary Public,
 personally appeared _____, proved to me on the basis
 of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
 instrument and acknowledged to me that he/she/they executed the same in his/her/their
 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
 the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the
 foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 Notary Public

EXHIBIT A

PHASE TWO PARCEL

Real property in the City of Milpitas, County of Santa Clara, State of California,
described as follows:

[To Be Inserted]

H-2-A-1

EXHIBIT B

INSURANCE REQUIREMENTS

Except as otherwise provided in Section 6.6 of the Agreement to which this Exhibit is attached, prior to issuance of building permits for the Phase Two Development and throughout the term of this Agreement, Owner shall obtain and maintain, at Owner's expense, the following policies of insurance.

A. Property Insurance. Insurance for the risks of direct physical loss, with minimum coverage being the perils insured under the standard Causes of Loss - Special form (ISO Form CP 10 30) or its equivalent, covering all improvements, all fixtures, equipment and personal property, located on or in, or constituting a part of, the Phase Two Parcel or the Phase Two Development, in an amount equal to one hundred percent (100%) of the full replacement cost of all such property. The insurance shall (a) cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Phase Two Parcel, and (b) cover floods if the Phase Two Parcel is in a Special Hazard Area, as determined by the Federal Emergency Management Housing Authority or as shown on a National Flood Insurance Program flood map. The insurance required hereunder shall be in amounts sufficient to prevent Owner from becoming a co-insurer under the terms of the applicable policies, with not more than a Ten Thousand Dollars (\$10,000) deductible (or such higher deductible approved by the Housing Authority, which approval shall not be unreasonably withheld) from the loss payable for any casualty. The policies of insurance carried in accordance with this Paragraph A shall contain a "replacement cost endorsement" and an "increased cost of construction endorsement."

B. Liability Insurance. Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in or about the Phase Two Parcel and the Phase Two Development. The limits of liability under this Paragraph B shall be not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence, with a deductible no greater than Ten Thousand Dollars (\$10,000) or such higher deductible as may be approved by Housing Authority, which approval shall not be unreasonably withheld.

The insurance shall also include coverage for:

(i) liability for bodily injury or property damage arising out of the use, by or on behalf of Owner, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations conducted in connection with the Phase Two Development or the Phase Two Parcel;

(ii) premises and operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Phase Two Parcel or the Phase Two Development on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways;

(iii) broad form property damage liability;

(iv) additional insured and primary insured endorsements protecting the Housing Authority, the City of Milpitas and their respective elected and appointed officials, officers, employees and agents;

(v) personal injury endorsement.

C. Workers' Compensation Insurance. Workers' compensation insurance, in the amount required under then applicable state law, covering Owner's employees, if any, at work in or upon the Phase Two Parcel or engaged in services or operations in connection with the Phase Two Development or the Phase Two Parcel. Owner shall require that any contract entered into by Owner with regard to work to be undertaken on the Phase Two Parcel include a contractual undertaking by the contractor to provide worker's compensation insurance for its employees in compliance with applicable state law.

D. Course of Construction Insurance. Course of construction insurance in the same amount as required in Paragraph A above for property insurance, covering all construction activities on the Phase Two Parcel.

E. General Insurance Provisions. All policies of insurance provided for in this Exhibit shall be provided under valid and enforceable policies, in such forms and amounts as hereinbefore specified, issued by insurers licensed to do business in the State of California (or approved to do business in California and listed on the California Department of Insurance list of Eligible Surplus Lines Insurers or successor listing) and having a rating of A-VII or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Prior to the issuance of building permits for the Phase Two Development, and thereafter, not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this Exhibit B, Owner shall deliver to Housing Authority certificates evidencing the insurance required to be carried by Owner under this Exhibit B. If requested by Housing Authority, Owner shall deliver within ten (10) days following such request, certified, complete copies of the insurance policies required hereunder. Insurance policies to be provided hereunder shall meet the following requirements:

(a) Each policy of insurance obtained pursuant to this Agreement, other than worker's compensation insurance, shall contain endorsements which provide (i) a waiver by the insurer of the right of subrogation against Housing Authority, the City of Milpitas, Owner or any tenant of the Phase Two Development for negligence of any such person, (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy, and (iii) a provision that no act or omission of Owner which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained.

(b) By endorsements, Housing Authority and the City of Milpitas, and their respective elected and appointed officials, officers, employees and agents shall be named as additional insured under the liability insurance required to be maintained by Owner hereunder. Housing Authority shall be named as loss payee on the property insurance policies required to be maintained hereunder.

(c) Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior written notice by registered or certified mail to Housing Authority.

(d) All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the listed insureds.

(e) Any certificate of insurance applicable to course of construction insurance to be maintained shall be deposited with Housing Authority prior to commencement of construction of the Phase Two Development.

(f) Each policy shall contain an endorsement that provides that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability.

(g) Each policy shall be written as a primary policy not contributing with and not in excess of coverage that Housing Authority may carry.

(h) Each policy shall expressly provide that Housing Authority shall not be required to give notice of accidents or claims and that Housing Authority shall have no liability for premiums.

F. Blanket Policies. Any insurance provided for in this Exhibit B may be placed by a policy or policies of blanket insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Phase Two Parcel and the Phase Two Development shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Agreement.

G. Waiver of Subrogation. To the extent permitted by law and the policies of insurance required to be maintained hereunder, and without affecting such insurance coverage, Housing Authority and Owner each waive any right to recover against the other (a) damages for injury or death of persons, (b) damage to property, (c) damage to the Phase Two Parcel or the Phase Two Development or any part thereof, or (d) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims are covered (and only to the extent of such coverage) by insurance actually carried by either Housing Authority or Owner. This provision is intended to restrict each party (as permitted by law) to recover against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier.

H. Compliance with Policy Requirements. Owner shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Phase Two Parcel, and Owner shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing shall be willing to write or to continue such insurance.

EXHIBIT IFORM OF CERTIFICATE OF COMPLETION

NOTE: The following form of Certificate of Completion has been prepared for the Phase One Development. With appropriate changes in parcel and phase designation, the same form of Certificate of Completion will be used for the Phase Two Development.

**Recording requested by
and when recorded mail to:**

City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(Space above this line for Recorder's use.)

CERTIFICATE OF COMPLETION

This Certificate of Completion (the "**Certificate**") is made by the City of Milpitas Housing Authority, a public body, corporate and politic (the "**Housing Authority**") effective as of _____, 20__.

RECITALS

A. Housing Authority and South Main Senior Lifestyle, LLC, a California limited liability company (the "**Developer**") entered into that certain Amended and Restated Disposition and Development Agreement (the "**DDA**"), dated as of November 19, 2013, concerning the redevelopment of certain real property located in the City of Milpitas, California, including that certain parcel more fully described in Exhibit A attached hereto (the "**Phase One Parcel**"). A Memorandum of the DDA was recorded in the Official Records of Santa Clara County as Instrument No. _____, Book _____, Page _____. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the DDA.

B. Pursuant to Section 5.12 of the DDA, the Housing Authority is required to furnish the Developer or its successors with a Certificate of Completion upon completion of construction of the Phase One Development on and in the vicinity of the Phase One Parcel in accordance with the DDA and issuance by the City of Milpitas of a Certificate of Occupancy for the Phase One Development.

C. The Housing Authority has determined that the Phase One Development has been satisfactorily completed in accordance with the DDA.

NOW, THEREFORE, Housing Authority hereby certifies as follows:

1. The Phase One Development has been satisfactorily completed in conformance with the DDA.

2. All use, maintenance and nondiscrimination covenants contained in the DDA shall remain in effect and enforceable in accordance with the DDA. This Certificate does not constitute evidence of Developer's compliance with those covenants in the DDA that survive the issuance of this Certificate, including without limitation, compliance with the Phase One Regulatory Agreement entered into pursuant to the DDA.

3. This Certificate does not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance the Phase One Development or any part thereof and does not constitute a notice of completion under California Civil Code Section 3093.

4. Nothing contained in this instrument shall modify any provisions of the DDA or any other document executed in connection therewith.

IN WITNESS WHEREOF, Housing Authority has executed and issued this Certificate of Completion as of the date first written above.

THE CITY OF MILPITAS HOUSING AUTHORITY

By: FORM-DO NOT SIGN

Name: _____
Executive Director

ATTEST:

By: FORM- DO NOT SIGN
Housing Authority Secretary

APPROVED AS TO FORM:

By: FORM-DO NOT SIGN
Housing Authority Counsel

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT A

PHASE ONE PARCEL

(Attach legal description.)

Category - 4F + 4H

****This document was electronically submitted
to Santa Clara County for recording****

24719858

Item # C6.

Regina Alcomendras

Santa Clara County - Clerk-Recorder
11/23/2020 10:38 AM

Titles: 1 Pages: 20

Fees: \$0.00

Tax: \$0

Total: \$0.00

FREE RECORDING REQUESTED PURSUANT TO GOVERNMENT CODE SECTION 27383

Recording Requested by and when
Recorded return to:

County of Santa Clara
Office of Supportive Housing
Attn: HCD Division Director
2310 N. First St., Suite 201
San Jose, CA 95131

With a copy to:

County of Santa Clara
Office of County Counsel
70 W. Hedding Street, 9th Floor
San Jose, CA 95110

**Project: 1000 Hillview
APN(s): 028-26-003**

(Space above this line for Recorder's Use)

AFFORDABILITY COVENANTS AND RESTRICTIONS AFFECTING REAL PROPERTY

AHB-21-01

Exempt from fee per GC 27388.1 (a)(2);
recorded concurrently " in connection with"
a transfer subject to the imposition of
documentary transfer tax (DTT).

This Affordability Covenants and Restrictions Affecting Real Property (the "Agreement") is made and entered into for reference purposes only as of November 1, 2020, by and between the County of Santa Clara, a political subdivision of the State of California ("County"), and JHC-Hillview LLC, a California limited liability company (the "Borrower").

RECITALS

1. The California Department of Housing and Community Development ("HCD") has awarded the Borrower and the County, as joint recipients, \$29,200,000 from the State of California's Homekey Program (the "Homekey Program") to be used for the acquisition of the former Extended Stay America Hotel, located at 1000 Hillview Court, Milpitas, California (the "Property") to house persons in need of shelter during the COVID-19 crisis. The County and Borrower have executed an HCD Standard Agreement, dated November 6, 2020, governing the receipt and use of such funds (the "HomeKey Standard Agreement").
2. On October 6, 2020, the Santa Clara County Board of Supervisors ("Board") approved a loan of up to Twenty-One Million Nine Hundred Thousand Dollars (\$21,900,000) (the "County Loan") from the proceeds of the County's 2017 Series A issuance of general obligation bonds authorized by an election of the registered voters of the County of Santa Clara on November 8, 2016 ("Measure A Housing Bond")

to financially assist the acquisition of the Property for use in the HomeKey Program and the subsequent redevelopment of the Property into permanent supportive housing for chronically homeless individuals and families (the "Renovation").

3. Borrower shall be applying to the Housing Authority (as defined below) for One Hundred Seven (107) Section 8 project-based vouchers ("Section 8 Rental Subsidies"). In connection therewith, the County's Office of Supportive Housing shall provide referrals and supportive services under its Chronically Homeless Direct Referral Program for the persons using the Section 8 Rental Subsidies pursuant to a Second Amended and Restated Memorandum of Understanding with the Housing Authority, dated February 6, 2018 ("Housing Authority MOU"), as more particularly described in the Housing Authority MOU.
4. In addition, Borrower is applying for Twenty-Five (25) Housing and Urban Development Veterans Affairs Supportive Housing ("HUD-VASH") project-based vouchers ("PBVs") for the Project.
5. Prior to Borrower's receipt of the Section 8 Rental Subsidies and any HUD-VASH PBVs, the County shall provide Borrower with a minimum of Seventy-Eight (78) tenant referrals to the Project for tenants using tenant-based vouchers under either the County's Permanent Supportive Housing scattered sites housing program (CCP Placement Project) funded through a Continuum of Care Grant or a partnership with the Housing Authority using Housing Choice Vouchers through a Chronically Homeless Direct Referral Program (the "Tenant-Based Vouchers"; the terms, Tenant-Based Vouchers, Section 8 Rental Subsidies and HUD-VASH PBVs, may be referred to separately or collectively as "Rental Subsidies").
6. The County will also enter into a Memorandum of Understanding with Borrower ("MOU") to establish the County's and Borrower's responsibilities relating to referrals provided to the Project by the County for supportive services, tenant selection and service coordination.
7. The County Loan is conditioned on the Borrower maintaining and operating the Project in accordance with restrictions concerning affordability, operation, and maintenance of the Project, as specified in this Agreement and the Loan Documents.
8. In consideration of receipt of the County Loan at an interest rate below the market rate and deferred payments of principal and interest under the Loan Documents, and in consideration of receipt of the funds from the HomeKey Program, Borrower warrants, represents, covenants and agrees to observe all the terms and conditions of this Agreement and the Loan Documents.

THEREFORE, the County and the Borrower hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions

- a. "Adjusted Gross Income" - the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor California housing program that utilizes a reasonably similar method of calculation of

- adjusted income. In the event that no such program exists, the Borrower shall provide a reasonably similar method of calculation of adjusted income as provided in said Section 6914.
- b. "Affordable Rent" - shall have the meaning ascribed to it in California Health and Safety Code Section 50053 as in effect as of the date of this Agreement. For purposes of this Agreement, the term "adjusted for family size appropriate to the unit" shall be calculated based on the assumed household size pursuant to TCAC regulations.
 - c. "Agreement" - this Affordability Covenants and Restrictions Affecting Real Property.
 - d. "Area Median Income" or "AMI" - the median gross yearly income, adjusted for family size, for the County of Santa Clara, California, as determined from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County will provide the Borrower with other income determinations which are substantially similar with respect to methods of calculation to those previously published by HUD and the State of California.
 - e. "Affordable Units" - 132 Units (or prior to Renovation, 146 Units), to be occupied by, or if vacant, available for occupancy by income-eligible households or individuals who qualify under the affordability and use restrictions imposed on the Project pursuant to this Agreement.
 - f. "Assisted Units" shall mean the Affordable Units as described and defined in Section 2.1 that shall be made available to Permanent Supportive Housing Eligible Residents.
 - g. "Borrower" - JHC-Hillview, a California limited liability company, and its successors-in-interest.
 - h. "County" - the County of Santa Clara, a political subdivision of the State of California.
 - i. "County Loan" - the County's acquisition loan to Borrower in the maximum principal amount of \$21,900,000.
 - j. "County Note" - that certain Promissory Note from the Borrower to the County evidencing the County Loan and secured by the Deed of Trust.
 - k. "Deed of Trust" - Deed of Trust encumbering the Project which secures repayments of the County Loan and the performance of this Agreement.
 - l. "Disbursement Agreement" - the Disbursement Agreement between Borrower and County.
 - m. "HUD" - the United States Department of Housing and Urban Development
 - n. "Loan Agreement" - the Loan Agreement between the County and Borrower for the County Loan.
 - o. "Loan Documents" - the Loan Agreement, the Note, this Agreement, the Disbursement Agreement, the Memorandum of Option, and the Deed of Trust.
 - p. "Memorandum of Option" - the Memorandum of Option on the Property to be recorded concurrently with the Deed of Trust in the Official Records of the County of Santa Clara.
 - q. "MOU" - the Memorandum of Understanding, to be entered into between the Borrower and the County that establishes the process and requirements related to, among other things, case management, referrals, subsidy and relocation assistance for the Permanent Supportive Housing Eligible Residents.
 - r. "Permanent Supportive Housing Eligible Resident" - an individual or household who is a program participant of the County and is referred to the property through the County's Chronically Homeless Direct Referral Program, the CCP Placement Project, [the HUD-VASH program], or such other equivalent County direct referral program.
 - s. "Project" - as defined in Recitals above.
 - t. "Property" - as defined in Recitals above.
 - u. "Rent" - the total of monthly payments by the Tenant of an Affordable Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately

charged fees or service charges assessed by the Borrower which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Borrower, and paid by the Tenant. Rent shall not include other charges including repair fees, reasonable cleaning and key charges, overdraft fees and other similar fees.

- v. "Rental Subsidies" – as defined in the Recitals above.
- w. "Tenant" - a household occupying a Unit.
- x. "Term" - the term of this Agreement, as set forth in Section 1.2.
- y. "Units" – the 134 units (or prior to Renovation, 146 units), to be operated on the Property. A "Unit" shall refer to one of the Units. The Units include the 2 unrestricted staff unit and the 132 Affordable Units.

All capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

1.2 Term.

This Agreement commences on the date this Agreement is recorded in the Official Records of the County of Santa Clara ("Effective Date") and shall continue for fifty-seven (57) years ("Term"), even if the County Loan is paid in full or otherwise satisfied, or the Deed of Trust is reconveyed, prior to the end of the Term.

ARTICLE 2

AFFORDABILITY AND OCCUPANCY COVENANTS

In consideration of the County Loan provided by the County and receipt of the funds from the HomeKey Program, Borrower agrees to and accepts the restrictions, obligations and conditions contained in this Agreement, including without limitation, the occupancy and rent requirements set forth in this Article 2, as follows:

- **2.1 Occupancy Requirements.**

- a. **Occupancy.**

- a. Prior to the ninetieth (90th) day after the Effective Date, Borrower shall have housed at the Property at least 73 unhoused persons earning 30% of AMI or less who are in need of shelter during the COVID-19 crisis.
 - b. 29 Affordable Units shall be rented to and occupied by or, if vacant, available for occupancy by, households earning 15% of AMI or less and 103 Affordable Units (or 117 prior to Renovation) shall be rented to and occupied by or, if vacant, available for occupancy by, households earning 30% of AMI or less, subject to the requirements set forth in subsection (b) below, all as set forth in the Schedule of Affordable Units attached hereto and incorporated herein as **Exhibit B**.

- b. County's Direct Referral Program.** Subject to compliance with all applicable laws and regulations, including fair housing laws, all of the Affordable Units shall be made available for occupancy to a Permanent Supportive Housing Eligible Resident (such Affordable Units may also be referred to as "Assisted Units"). Pursuant to the terms of the MOU, when County receives notice from Borrower that an Assisted Unit will become vacant, the County will have 30 days to provide: 1) up to 5 referrals at a time from its direct referral program to fill the vacant unit, or 2) notice that County does not immediately have a proposed Permanent Supportive Housing Eligible Resident but will reserve said unit for up to an additional thirty (30) days. **If this does not occur, the vacant unit will then be made available to an income-qualifying applicant from Borrower's waiting list who does not need to qualify as a Permanent Supportive Housing Eligible Resident.** Notwithstanding anything to the contrary contained herein, Borrower shall not be required to comply with the Permanent Supportive Housing Eligible Resident requirements unless and until County and Borrower have executed a mutually agreed upon MOU, and shall only be required to comply with the Permanent Supportive Housing Eligible Resident requirements during the period of time in which the MOU remains in full force and effect.

2.2 Allowable Rent.

Subject to the provisions of Section 2.3 below and notwithstanding the income levels set in Section 2.1 above, the Rent charged to Tenants of any of the Affordable Units shall not exceed one-twelfth of thirty percent (30%) of such household's Adjusted Gross Income.

2.3 Increased Income of Tenants.

If, upon recertification of the income of a Tenant of an Affordable Unit, the Borrower determines that such Tenant has an income exceeding the maximum qualifying income for the Affordable Unit as required in this Article 2, such Tenant shall be permitted to continue to occupy the Unit and such Tenant's Rent may be increased to one-twelfth of thirty percent (30%) of the household's Adjusted Gross Income, upon thirty (30) days written notice to the Tenant. The Borrower will rent the next available Affordable Unit to a household that qualifies under the income limits set forth in Section 2.1 above.

2.4 Affordability Adjustments.

Notwithstanding anything to the contrary contained herein, in the event of a foreclosure or deed in lieu of foreclosure under the Deed of Trust or other lien securing a senior loan, or in the event of a loss, nonrenewal, or reduction of Rental Subsidies, the maximum household income of all Affordable Units in the case of a foreclosure or deed in lieu of foreclosure or the number of Assisted Units affected by a loss, nonrenewal or reduction of Rental Subsidies shall be increased up to 60% of Area Median Income, adjusted for household size appropriate to the unit, but only to the extent necessary for the Project to operate at a debt-service coverage ratio of 1:1.30, as reasonably determined by the Borrower, and the maximum Rent for any Affordable Unit shall in no event exceed 30% of 60% of Area Median Income, as adjusted for household size appropriate to the unit as published by TCAC regulations (collectively, the "Affordability Adjustments"). So long as the MOU remains in effect, Borrower will continue to make the Assisted Units available for occupancy to the County's Permanent Supportive Housing Eligible Residents

as described in Section 2.1(b) above, subject to the Affordability Adjustments and reducing the time frame for the County to refer a Permanent Supportive Housing Eligible Resident to no more than 30 days after County receives notice from Borrower that an Assisted Unit will become vacant. If the County does not refer a Permanent Supportive Housing Eligible Resident in this time frame, the vacant unit will then be made available to an income-qualifying applicant from Borrower's waiting list who does not need to qualify as a Permanent Supportive Housing Eligible Resident. With respect to loss or reductions in Rental Subsidies only, the Affordability Adjustments shall continue only until Borrower has secured a substantially similar rental subsidy from the County or other sources.

ARTICLE 3

INCOME CERTIFICATION AND REPORTING

Borrower covenants, warrants, represents and agrees that:

3.1 Income Certification.

The Borrower will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Units. Copies of Tenant income certifications shall be available to the County upon request. The Borrower shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process:

- a. Obtain a pay stub for the most recent pay period;
- b. Obtain an income tax return for the most recent tax year;
- c. Conduct a credit agency or similar search;
- d. Obtain income verification from the applicant's current employer;
- e. Obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies;
- f. If the applicant is unemployed and has no such tax return, obtain another form of independent verification.

3.2 Annual Report to County.

- a. The Borrower shall submit to the County (i) not later than May 1st of each year, or such other later date as may be reasonably requested by the County, a statistical report, including income and rent data for all units, setting forth the information reasonably required by the County to determine compliance with these Restrictive Covenants, and (ii) within fifteen (15) days after receipt of a written request, any other information or completed forms reasonably requested by the County.

- b. Annually, Borrower shall submit to the County an independently audited financial statement for the Borrower detailing Operating Revenues and Operating Expenses as those terms are defined in the Note.

3.3 Additional Information.

The Borrower shall provide any additional information reasonably requested by the County. The County shall have the right to examine and make copies of all books, records or other documents of the Borrower which pertain to the Project, at reasonable times and with not less than 72 hours' prior written notice.

3.4 Records.

The Borrower shall maintain complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the County to inspect records, including records pertaining to income and household size of Tenants, at reasonable times and with not less than 72 hours' prior written notice. All Tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Borrower and shall be maintained as reasonably required by the County, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the County, upon not less than 72 hours' prior written notice to Borrower. The Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least three (3) years.

3.5 On-site Inspection.

The County has the right to perform an on-site inspection of the Project at least one time per year at a reasonable time and upon not less than three (3) business days prior written notice to Borrower. The Borrower agrees to cooperate in such inspection.

ARTICLE 4

Borrower covenants, warrants, represents and agrees that:

4.1 Residential Use.

The Project shall be operated for residential use, but this shall not prohibit home businesses otherwise allowed by law and use of a portion of the project as community space.

4.2 Compliance with Loan Documents.

Borrower shall comply with all the terms and provisions of the Loan Documents.

4.3 Taxes and Assessments.

Borrower shall pay all real and personal property taxes, payment in lieu of taxes, assessments and charges and all other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Borrower shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the proceeding or contest, shall immediately pay or discharge any

decision or judgment rendered against it, together with all costs, charges and interest. Nothing in this Section 4.3 shall prevent Borrower from applying for welfare exemption under Section 214(g) of the California Tax and Revenue Code.

ARTICLE 5

PROPERTY MANAGEMENT AND MAINTENANCE

Borrower covenants, warrants, represents and agrees that:

5.1 Management Responsibilities.

The Borrower is responsible for all management functions with respect to the Project, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, and replacement of capital items. The County will have no responsibility over management of the Project. The Borrower shall retain a professional property management company approved by the County in its reasonable discretion (pursuant to Section 5.2) to perform its management duties hereunder. A resident manager will also be required if management does not have an onsite presence 24 hours per day, seven days a week.

5.2 Management Agent.

The Project will at all times be managed by an experienced management agent with demonstrated ability to operate residential facilities like the Project in a manner that will provide decent, safe, and sanitary housing (the "Management Agent"). Borrower shall submit for the County's information and records, the identity of any proposed Management Agent and such additional information regarding the background, experience and financial condition of any proposed Management Agent as is reasonably necessary to validate Borrower's selection of such agent.

5.3 Performance Review.

The County reserves the right to conduct an annual (or more frequent, if deemed necessary by the County in the County's reasonable discretion) review of the management practices and financial status of the Project. The purpose of each periodic review is to enable the County to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement. The Borrower shall reasonably cooperate with the County in such reviews.

5.4 Replacement of Management Agent.

All rights of the County stated in this Section 5.4 are subject to prior written approval of Borrower. If, as a result of a periodic review, the County determines in its reasonable judgment that the Project is not being operated and managed in accordance with any of the material requirements and standards of this Agreement due to the actions of the Management Agent, the County shall deliver notice of such determination to Borrower. Within fifteen (15) days of receipt by Borrower of such written notice, County staff and the Borrower shall meet in good faith to consider methods for improving the

financial and operating status of the Project, including, without limitation, replacement of the Management Agent.

If, after such meeting, County staff recommends in writing the replacement of the management agent, subject to prior approval of Borrower's senior lender and limited partner (applicable only at such time, if any, as Borrower's rights and obligations hereunder are assigned to a limited partnership), Borrower will promptly dismiss the then Management Agent pursuant to the terms of the management agreement, and shall appoint as the management agent a person or entity meeting local industry standards for a Management Agent, subject to the reasonable approval of the County.

5.5 Property Maintenance.

The Borrower shall, for the entire Term, maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition), ordinary wear and tear excepted, and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

The County places prime importance on quality maintenance to protect its investment and to ensure that all County and County-assisted affordable housing projects within the County are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Project will be acceptable to the County assuming the Borrower agrees to provide all necessary improvements to assure the Project is maintained in good condition. The Borrower shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

5.6 Survival and Indemnity

- a. Nothing in this Agreement shall relieve the Borrower, its successors and assigns, of any prior, existing or continuing obligation(s) to comply in all respects with any and all applicable statutes and regulations, including but not limited to California Health and Safety Code Section 52080 et seq. (e.g. affordability obligations and/or relocation assistance for tenants) and California Government Code Sections 65863.10 through and including 65863.13 (e.g., notice to tenants).
- b. County does not waive its right(s) to act in its regulatory or enforcement capacity as a governmental or regulatory body, including but not limited to its ability, obligation or right (discretionary or otherwise) to seek enforcement of, or take any other action pertaining to, any applicable laws in relation to any party to this Agreement, or respective successors or assigns, or any tenant rights.
- c. Those terms and conditions contained herein which by their nature should survive termination, cancelation or expiration of this Agreement shall so survive including but not limited to those recitals and terms pertaining to Borrower's continuing obligations and responsibilities.
- d. Indemnity. Borrower represents, warrants and agrees to defend, indemnify and hold harmless the County, its officers, elected and appointed officials, employees and agents (collectively and

each a "County Agent") from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with this Agreement, or Borrower's failure to comply with any applicable laws, excepting only such loss or damage to the extent caused by the active negligence or willful misconduct of the County or any County Agent. The Borrower will conduct all defenses for which it is responsible pursuant to this paragraph at its sole cost and expense and the County shall reasonably approve selection of Borrower's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of Borrower, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of Borrower, its affiliates or other parties are not a limitation upon the obligation of the Borrower including without limitation the amount of indemnification to be provided by the Borrower.

ARTICLE 6

MISCELLANEOUS

Borrower covenants, warrants, represents and agrees that:

6.1 Lease Provisions.

Leases used by the Borrower shall not contain any provision which is prohibited by law. The form of Tenant lease for Units must comply with all requirements of this Agreement as follows:

- a. Provide for termination of the lease and consent by the Tenant to immediate eviction (subject to applicable laws) for failure to:
 1. Provide any information required by the terms of this Agreement or reasonably requested by the Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Project in accordance with the standards set forth in this Agreement, or
 2. Initially qualify as an eligible low income household as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification; and
- b. Any termination or refusal by the Borrower to renew the lease shall be in conformance with applicable federal, state and local law.

6.2 Nondiscrimination and Confidentiality.

- a. Borrower and Borrower's Management Agent shall comply with all applicable Federal, State and local laws and regulations, including the County of Santa Clara's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Borrower shall not discriminate

against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor will Borrower discriminate in provision of services provided by this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

- b. Borrower and Borrower's Management Agent shall comply with all applicable federal, state, and local laws pertaining to the operation and management of the Project. Borrower and its Management Agent shall not discriminate in the sale, lease, sublease transfer, use, occupancy, tenure or enjoyment of the Project nor shall the Borrower or any person claiming under or through Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees in their Project. The foregoing covenants shall run with the land.
- c. Borrower and Borrower's Management Agent shall comply with all applicable state and federal law governing confidentiality of medical and health information including, but not limited to, California Welfare & Institutions Code section 5328, et seq., and the HIPAA, 45 C.F.R. parts 160 and 164.

6.3 Section 8 Program Participants.

The Borrower will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal rent subsidies pursuant to the program pursuant to Section 8 of the United States Housing Act, or its successor. The Borrower shall not apply selection criteria to Section 8 program participants that are more burdensome than criteria applied to all other prospective Tenants, nor will the Borrower apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of units by such prospective Tenants.

6.4 Covenants to Run With the Land.

- a. The County and the Borrower hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and touch and concern the Property and the Project in that Borrower's legal interest in the Property and the Project is rendered less valuable thereby. The benefit of the restrictive covenants set forth in this Agreement touch and concern the land by providing housing opportunities for Low Income Tenants and their households, the intended beneficiaries of such covenants and restrictions.
- b. This Agreement binds all successors-in-interest to Borrower's legal interest in the Property and the Project. Each and every contract, deed or other instrument hereafter executed covering, or conveying or otherwise transferring Borrower's legal interest in the Property or any portion thereof, will be held conclusively to have been executed,

delivered and accepted subject to such covenants and restrictions. The foregoing applies regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, and regardless of whether the terms of this Agreement are actually known to such other party or parties unless the County expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.5 Corrective Action Procedure Upon Default.

- a. Borrower's failure to perform any term or provision of this Agreement will be considered an "Event of Default". Upon occurrence of an Event of Default, the County will give written notice to the parties identified in the manner provided in Section 6.11. Notwithstanding anything to the contrary herein, any cure of any default or Event of Default made or tendered by a County shall be deemed to be a cure by Borrower and shall be approved or rejected on the same basis as if made or tendered by Borrower.
- b. If the Borrower does not correct the Event of Default to the reasonable satisfaction of the County within thirty (30) days after the date Borrower receives the notice, or, if the breach cannot reasonably be cured within thirty (30) days, the Borrower shall have such longer period as is reasonably necessary so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days, the County may, without further notice proceed with any and all remedies available under rules of law or equity, including specific performance, subject to the non-recourse provision in the Note.
- c. Notwithstanding anything to the contrary in this Agreement or in any of the other Loan Documents, upon such time, if any, as Borrower's rights and obligations hereunder are assigned to a limited partnership, County shall give the Borrower's limited partner the following notice and cure rights:
 - (a) County will give the limited partner a copy of any notice (at the limited partner's address provided in a notice by Borrower to County) that County gives to Borrower under this Agreement, provided that Borrower has provided the address and contact information for the investor limited partner in writing to County;
 - (b) County will give the limited partner thirty (30) days after the limited partner's receipt of such notice to cure a non-payment of any sum due under this Agreement;
 - (c) County will give the limited partner sixty (60) days after the limited partner's receipt of such notice to cure any other default under this Agreement;
 - (d) If a non-monetary default is incapable of being cured within sixty (60) days, County will give the limited partner up to ninety (90) additional days as is reasonably necessary to cure such default provided the limited partner has commenced to cure such default and is diligently proceeding to cure such default through the end of such period; and

(e) If the limited partner makes any such payment or otherwise cures such default, the County will accept such action as curing such default as if such payment or cure were made by Borrower.

6.6 Intentionally Deleted.

6.7 Recording and Filing.

The County and the Borrower will cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Santa Clara.

6.8 Governing Law.

This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including mediation or other alternative dispute resolution proceedings, shall be brought only in Santa Clara County, California. **EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.**

6.9 Waiver of Requirements.

Any of the requirements of this Agreement may be expressly waived by the County in writing, but no waiver by the County of any requirement of this Agreement will, or will be deemed to, extend to or affect any other provision of this Agreement.

6.10 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Santa Clara.

6.11 Notices.

All notices, demands or other communications of any type under this Agreement shall be in writing and shall be (a) delivered in person, in which event the notice shall be deemed received when delivery is actually made; (b) sent by overnight courier for next business day delivery, in which event the notice shall be deemed received on the first business day after delivery to, and acceptance for delivery by, the courier; or (c) sent by registered mail or certified mail, postage prepaid, return receipt requested, through the United States Postal Service, in which event the notice shall be deemed received at the time of personal delivery or on the first attempted delivery on a business day. All such notices shall be sent to the following addresses:

County: County of Santa Clara
Office of Supportive Housing
2310 N. First St., Suite 201
San Jose, CA 95131
Attention: HCD Division Manager

Borrower: JHC-Hillview LLC
c/o Jamboree Housing Corporation
17701 Cowan Avenue, Suite 200
Irvine, CA 92614
Attention: Michael Massie

With a copy to: Rutan & Tucker, LLP
18575 Jamboree Road 9th Floor
Irvine, CA 92612
Attention: Patrick D. McCalla

Such addresses may be changed by notice to the other party given in the same manner as provided above.

6.14 Severability.

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement will not in any way be affected or impaired thereby.

6.15 Survival.

Those terms and conditions which by their nature should survive termination, expiration or cancellation of this Agreement, shall so survive.

6.16 EXECUTION AND COUNTERPARTS.

This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the County and the Borrower have executed this Agreement by duly authorized representatives, all on the date first written above.

County:

County of Santa Clara,
a political subdivision of the State of California

By: Signed in counterpart
Consuelo Hernandez, Acting Director, Office of
Supportive Housing

APPROVED AS TO FORM AND LEGALITY:

Signed in counterpart
Karen M. Willis, Deputy County Counsel

Borrower:

JHC-Hillview LLC,
a California limited liability company

By: Jamboree Housing Corporation,
a California nonprofit public benefit corporation

Its: Manager

By: Laura Archuleta
Laura Archuleta, President and CEO

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Orange)

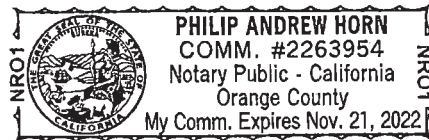
On 11/19/2020 before me, Philip Andrew Horn, Notary Public, personally appeared, Laura Archuleta, proved to me the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~ their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Phil Horn



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____, Notary Public, personally appeared, _____, proved to me the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

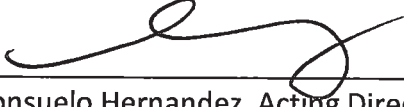
WITNESS my hand and official seal.

Signature _____

IN WITNESS WHEREOF, the County and the Borrower have executed this Agreement by duly authorized representatives, all on the date first written above.

County:

County of Santa Clara,
a political subdivision of the State of California

By: 
Consuelo Hernandez, Acting Director, Office of
Supportive Housing

APPROVED AS TO FORM AND LEGALITY:


Karen M. Willis, Deputy County Counsel

Borrower:

JHC-Hillview LLC,
a California limited liability company

By: Jamboree Housing Corporation,
a California nonprofit public benefit corporation

Its: Manager

By: Signed in counterpart
Laura Archuleta, President and CEO

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

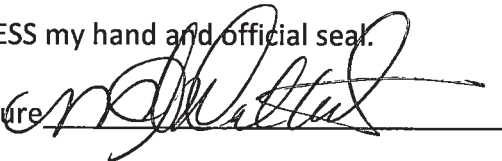
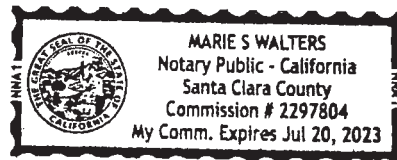
County of Santa Clara)

On 11/18/2020 before me, Marie S. Walters, Notary Public, personally appeared, Consuelo Hernandez, proved to me the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____, Notary Public, personally appeared, _____, proved to me the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A TO REGULATORY AGREEMENT
PROPERTY DESCRIPTION

The Land referred to herein is situated in the State of California, County of Santa Clara, City of Milpitas, and described as follows:

PARCEL ONE:

Parcel 4 as shown upon that certain Map entitled "Parcel Map", being a Subdivision of all of Lot 2 as shown on the Parcel Map recorded October 22, 1985 in Book 550 of Maps, at Pages 50 and 51, which Map was filed for record on January 9, 1986 in Book 554 of Maps, at Pages 27 and 28, Santa Clara County Records.

EXCEPTING THEREFROM all oil, gas, minerals and other hydrocarbon substances in and under or that may be produced from a depth below 500 feet from the surface of said land, without right of entry upon the surface of said land for the purpose of mining, drilling, exploring or extracting such oil, gas, minerals and other hydrocarbon substances or other use of or rights in or to any portion of the surface of said land to a depth of 500 feet below the surface thereof, as reserved in the Deeds recorded October 18, 1968 in Book 8302, Page 713, and recorded October 18, 1968 in Book 8302, Page 727, of Official Records.

PARCEL TWO:

A non-exclusive easement (CC & F Easement) over all walkways, paved common areas and paved parking areas in the Woolley/Sweeney Property for purposes of ingress and egress by vehicular and pedestrian traffic and for vehicle parking, as conveyed to C. C. & F. Investment Company Limited Partnership, a Delaware limited partnership, by instrument recorded November 14, 1985 in Book J520, at Page 6, of Official Records of Santa Clara County, the easement area is more particularly described as follows:

All of Lot 1, except that area occupied by the building, as said Lot 1 is shown on the Parcel Map recorded October 22, 1985 in Book 550 of Parcel Maps, Pages 50 and 51, in the Official Records of Santa Clara County.

PARCEL THREE:

All appurtenant easements and rights appurtenant to the above-described real property which easements and rights are set forth in that certain agreement captioned "Reciprocal Easement Agreement" between FIMSA, Inc., a Colorado corporation and Union Bank, a California corporation recorded December 24, 1991 in Book L979, Page 0683, of Official Records.

PARCEL FOUR:

A non-exclusive easement for storm drain purposes as set forth in an instrument entitled Easement Agreement and Declaration of Covenants, dated April 18, 1997, by and between UCLD Properties, LLC, a California limited liability company and ESA 0898, INC., a Delaware corporation, upon the terms therein provided recorded April 18, 1997 as Instrument No. 13677847, of Official Records.

APN: 028-26-003

EXHIBIT B TO REGULATORY AGREEMENT

**Schedule of Affordable Units:
Income Limits by Unit Size**

Number of Units	Income Limit	Unit Size
29	15% AMI	Studio
103 (or 117 prior to Renovation)	30% AMI	Studio
2	Manager Unit	Studio
Total: 134 (or 146 prior to Renovation)		

RESOLUTION NO. 9196**A RESOLUTION OF THE CITY OF MILPITAS AUTHORIZING THE APPLICATION AND ADOPTING THE PERMANENT LOCAL HOUSING ALLOCATION (PLHA) PROGRAM**

WHEREAS, the State of California, Department of Housing and Community Development (Department) is authorized to provide upto \$195 million to Cities and Counties for assistance under the Senate Bill (SB) 2 Permanent Local Housing Allocation (PLHA) Program Entitlement Jurisdiction Component from the Building Homes and Jobs Trust Fund (as described in Health and Safety Code section 50470 et seq. (Chapter 364, Statutes of 2017 (SB 2)));

WHEREAS, the Department issued Permanent Local Housing Allocation Final Guidelines (PLHA Program Guidelines) in October 2019; and **WHEREAS**, the State of California, Department of Housing and Community Development (HCD) issued a Notice of Funding Availability (NOFA) dated August 17, 2022, under the Permanent Local Housing Allocation Program;

WHEREAS, the City of Milpitas is an eligible Local government to receive allocations of PLHA funds and may apply for program funds to administer one or more eligible activities, or a Local and Regional Housing Trust Fund to whom an eligible Local government delegated its PLHA formula allocation;

WHEREAS, the Department may approve funding allocations for the PLHA Program, subject to the terms and conditions of the PLHA Program Guidelines, NOFA, Program requirements, the Standard Agreement, and other contracts between the Department and PLHA grant recipients;

WHEREAS, the City of Milpitas has complied with all application requirements, including but not limited to, public notice, public comment, and public hearing requirements.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF MILPITAS AS FOLLOWS:

1. If the City of Milpitas receives a grant of PLHA funds from the Department pursuant to the above referenced PLHA NOFA, it represents and certifies that it will use all such funds in a manner consistent and in compliance with all applicable state and federal statutes, rules, regulations, and laws, including without limitation all rules and laws regarding the PLHA Program, as well as any and all contracts the City of Milpitas may have with the Department.

2. The City of Milpitas is hereby authorized and directed to receive a PLHA grant, in an amount not to exceed the five-year estimate of the PLHA formula allocations, as stated in Appendix C of the current NOFA, \$1,431,570, in accordance with all applicable rules and laws.

3. The City of Milpitas hereby agrees to use the PLHA funds for eligible activities as approved by the Department and in accordance with all Program requirements, Guidelines, other rules and laws, as well as in a manner consistent and in compliance with the Standard Agreement and other contracts between the City of Milpitas and the Department.

4. Pursuant to Section 302(c)(4) of the Guidelines, City of Milpitas' PLHA five-year Plan for the 2019-2023 Allocations is attached as Exhibit A to this resolution, and the City of Milpitas hereby adopts this PLHA five-year Plan and certifies compliance with all public notice, public comment, and public hearing requirements in accordance with the Guidelines.

5. The City of Milpitas agrees to inform the Department of changes made to the five-year Plan in each succeeding year of the term of the Plan.

6. Pursuant to the City of Milpitas' certification in this resolution, the PLHA funds will be expended only for eligible activities and consistent with all program requirements.

7. The City of Milpitas shall be subject to the terms and conditions as specified in the Standard Agreement, the PLHA Program Guidelines and any other applicable SB 2 Guidelines published by the Department.

8. City Manager and/or designee is/are authorized to execute the PLHA Program Application, the PLHA Standard Agreement and any subsequent amendments or modifications thereto, as well as any other documents which are related to the Program or the PLHA grant awarded to the City of Milpitas, as the Department may deem appropriate.

9. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

10. The City of Milpitas hereby adopts the PLHA five-year Plan for the not to exceed five-year (2019-2023) estimate of the PLHA formula allocations as attached to this resolution (Exhibit A).

11. The City of Milpitas is authorized to submit an allocation and administer its PLHA 2019, 2020, and 2021 entitlement of \$1,017,554.

PASSED AND ADOPTED this 1st day of November 2022, by the following vote:

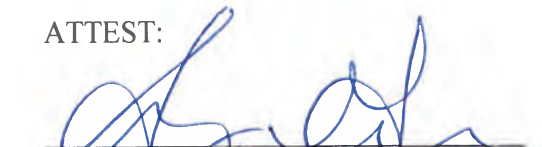
AYES: (5) Mayor Tran, Vice Mayor Montano, Councilmembers Chua, Dominguez, and Phan

NOES: (0) None

ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:


Suzanne Guzzetta, City Clerk

APPROVED:


Rich Tran, Mayor

APPROVED AS TO FORM:


Michael Mutalipassi, City Attorney

Attachment 2, Exhibit A of Resolution Five-Year Plan

§302(c)(4) Plan

Rev. 2/16/22

§302(c)(4)(A) Describe the manner in which allocated funds will be used for eligible activities.

The City of Milpitas will use the PLHA funds for the eligible activity identified below. The City of Milpitas currently has a contract with the County of Santa Clara, Office of Supportive Housing, to provide homeless outreach, assessment, and street-based case management services through the County's Homeless Engagement and Access Team. City staff are recommending using a portion of its entitlement to extend its contract with the County of Santa Clara Office of Supportive Housing's Homeless Engagement and Access Team (HEAT) and the remainder of its funding to go to the creation of a Workforce Housing Rental Assistance Program.

§302(c)(4)(B) Provide a description of the way the Local government will prioritize investments that increase the supply of housing for households with incomes at or below 60 percent of Area Median Income (AMI).

We are allocating 100% of our funding to eligible activity 6, assisting persons who are experiencing or at risk of homelessness. Therefore, our PLHA funds will not be used for increasing the supply of housing for households.

§302(c)(4)(C) Provide a description of how the Plan is consistent with the programs set forth in the Local Government's Housing Element.

The Housing Element must plan for housing needs among certain groups that tend to have particular challenges with respect to securing appropriate affordable housing. These groups are defined as groups with special housing needs and includes extremely- low income households, and individuals and families experiencing homelessness. One of the City of Milpitas' Housing Element 2015-2023 goals is supporting housing diversity and affordability. Under that goal, the Housing Element specifies "the City will continue to support emergency services and housing resources consistent with the City's ongoing commitment to and participation in the Santa Clara County Continuum of Care Plan." The Continuum of Care is a group of stakeholders dedicated to ending and preventing homelessness in Santa Clara County. Both the Homeless Engagement and Access Team and the Workforce Housing Rental Assistance Program support the City of Milpitas' Housing Element 2015-2023 goal of supporting housing diversity and affordability.

Activities Detail (Activities Detail (Must Make a Selection on Formula Allocation Application worksheet under Eligible Activities, §301))**§301(a)(6)** Assisting persons who are experiencing or At risk of homelessness, including, but not limited to, providing rapid rehousing, rental assistance, supportive/case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers and emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.**§302(c)(4)(E)(i)** Provide a detailed and complete description of how allocated funds will be used for the proposed Activity.

City staff are recommending using the PLHA entitlement for supportive case management and workforce housing rental assistance. City staff are recommending the designation of 20% of its entitlement to extending its contract with the County of Santa Clara Office of Supportive Housing's Homeless Engagement and Access Team (HEAT). The HEAT team conducts homeless outreach, assessment, and street-based case management services. City staff recommend the remaining 80% of its funding to go to the creation of a Workforce Housing Rental Assistance Program (WHRAP) for individuals at or below 30% of the Area Median Income. WHRAP would function similar to a voucher system in that these funds would be used to offset a specific amount of rent paid by the tenant for 24 months. Staff would utilize a lottery system with preferences for individuals who work in the Milpitas Unified School District, the City of Milpitas, and the Hospitality Industry.

Complete the table below for each proposed Activity to be funded with 2019-2023 PLHA allocations. If a single Activity will be assisting households at more than one level of Area Median Income, please list the Activity as many times as needed to capture all of the AMI levels that will be assisted, but only show the percentage of annual funding allocated to the Activity one time (to avoid double counting).

Funding Allocation Year	2019	2019	2020	2020	2021	2021	2022	2022	2023	2023					
Type of Activity for Persons Experiencing or At Risk of Homelessness	Supportive/ Case Management Services	Rental Assistance (term of six months)	Supportive /Case Management Services	Rental Assistance (term of six months)	Supportive /Case Management Services	Rental Assistance (term of six months)	Supportive /Case Management Services	Rental Assistance (term of six months)	Supportive /Case Management Services	Rental Assistance (term of six months)					
§302(c)(4)(E)(i) Percentage of Funds Allocated for the Proposed Activity	20.00%	80.00%	20.00%	80.00%	20.00%	80.00%	20.00%	80.00%	20.00%	80.00%					
§302(c)(4)(E)(ii) Area Median Income Level Served	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%					TOTAL
§302(c)(4)(E)(ii) Unmet share of the RHNA at AMI Level Note: complete for years 2019, 2020, 2021 only	0	0	0	0	0	0									0
§302(c)(4)(E)(ii) Projected Number of Households Served	50	20	50	20	50	20	50	20	50	20					350
§302(c)(4)(E)(iv) Period of Affordability for the Proposed Activity (55 years required for rental housing projects)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A					

§302(c)(4)(E)(iii) A description of major steps/actions and a proposed schedule for the implementation and completion of the Activity.

If approved by Milpitas City Council, the City will consider amending its contract end date or entering into a new contract with the County of Santa Clara Office of Supportive Housing to continue funding the Homeless Engagement and Access Team (HEAT). The City is currently drafting a contract with the County of Santa Clara with an expected termination date of September 30, 2023. The City anticipates to get formal approval from City Council for HEAT funding in mid-2023. City staff will need to establish the program parameters of the Workforce Housing Rental Assistance Program and go through the City's process to fund a program administrator to issue rental assistance. This may include a Request for Proposals (RFP) or Milpitas City Council may choose to designate the service provider who is currently administering the City of Milpitas' Rent and Mortgage Relief Program. City staff anticipates releasing the RFP or designating the service provider in early 2023 and issuing funding by mid-2023.

Category 4G

EXI

23991755Regina Alcomendras
Santa Clara County - Clerk-Recorder

07/27/2018 11:43 AM

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO**City Manager
City of Milpitas
455 East Calaveras Blvd
Milpitas, CA 95035**Titles: 1 Pages: 10**Fees: \$0.00
Taxes: \$0
Total: \$0.00To be recorded without fee
(Gov. Code Sec. 6103 & 27383)

(Space above for Recorder's use only)

**MEMORANDUM OF AGREEMENT FOR
PURCHASE OF AFFORDABILITY COVENANTS**

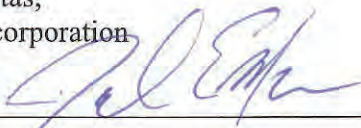
This Memorandum of Agreement (the "Memorandum") is made as of the date of the latter signature below by and among City of Milpitas, a municipal corporation ("City"), and Sunnyhills Investors LLC, a California limited liability company ("Owner").

City and Owner entered into an Agreement for Purchase of Affordability Covenants (the "Agreement") on the last date of execution thereof, for an initial term of five (5) years

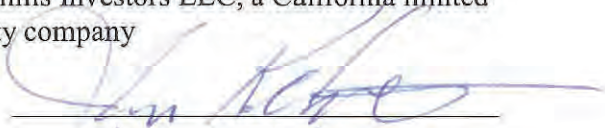
The terms, covenants and provisions of the Agreement, the terms of which are hereby incorporated by reference into this Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of City and Owner

IN WITNESS WHEREOF, City and Owner have caused this Memorandum to be duly executed on the date last written below.

City
City of Milpitas,
a municipal corporation

By: Name: JULIE EDMONDS-MARESTitle: CITY MANAGERDate: 5/17/18

Owner
Sunnyhills Investors LLC, a California limited
liability company

By: Name: John KehriotisTitle: ManagerDate: 11/3/17

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara)

On May 17, 2018 before me, Rachelle CURRIE, Notary Public
(insert name and title of the officer)

personally appeared Julie Edmonds-Mares,
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~
subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in
~~his/her/their~~ authorized capacity~~(ies)~~, and that by ~~his/her/their~~ signature~~(s)~~ on the instrument the
person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)



For: Memorandum of Agreement for Purchase of Affordability Covenants related to Sunnyhills
Investors LLC

OWNER ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
 COUNTY OF SANTA CLARA)

On Nov. 3, 2017 before me, J Burkhardt, Notary Public, personally appeared John Kehrwitz, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



J Burkhardt
 Notary Public

(Seal)

AGREEMENT FOR PURCHASE OF AFFORDABILITY COVENANTS

THIS AGREEMENT FOR PURCHASE OF AFFORDABILITY COVENANTS ("Agreement") is made this 26 day of October, 2017 ("Effective Date"), by and between the City of Milpitas, a municipal corporation (the "City"), and Sunnyhills Investors LLC, a California limited liability company (the "Owner"). City and Owner sometimes individually are referred to hereinafter as a "Party" and, together as the "Parties."

RECITALS

WHEREAS, the City is committed to retaining affordable housing throughout the City, given the lack of readily available affordable housing units both in the City and the region;

WHEREAS, Owner owns the real property located at 1724 Sunnyhills Drive, Milpitas, CA (APN No. 026-06-009) ("Property"), which has supplied 149 affordable housing units to the City through Housing and Urban Development (HUD) project-based housing vouchers over the last 30 years;

WHEREAS, the City understands Owner would prefer to redevelop the Property or potentially build additional housing units on the Property, and that development scenarios will take some time to plan, engage the public, determine the level of environmental review required under the California Environmental Quality Act (CEQA), and obtain the requisite entitlements and permits;

WHEREAS, the City is also aware that Owner is required to provide notice to HUD by October 27, 2017 regarding whether Owner intends to renew the existing project-based housing voucher contract with HUD, which will expire on February 28, 2018;

WHEREAS, due to this time constraint and because the City would like to retain the existing affordable housing units, the City is prepared to assist Owner with the preservation of affordable housing units by providing monetary contributions intended to meet any shortfall associated with operations and maintenance of the Property that may not already be covered by the existing HUD housing voucher program. The City's monetary contribution will be in the form of a purchase from Owner of a Covenant in the Property requiring Owner to renew a contract with HUD for a minimum of 5 years to ensure the continued affordability of the existing units at the Property in the HUD housing voucher program ("HUD Covenant")

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the mutual covenants listed herein, the Parties agree as follows:

1. Recitals. The Recitals set out above are true and correct.

2. Owner's Obligations:

- a. The Owner shall renew its existing HUD Covenant with HUD for an additional 5 years to the date ending February 28, 2023 and shall at all times remain in compliance with that HUD Covenant.
- b. Owner shall record the extension of the HUD Covenant against the title to the Property and reasonably provide evidence of such to the City.
- c. In the event that the HUD Covenant expires, for whatever reason, Owner agrees to use best efforts to record another document that is acceptable to the City, to ensure the continued affordability of the existing units at the Property for the 5 years contemplated in Section 2 a. above.
- d. Owner shall provide City with an annual certification of compliance with the HUD Covenant.
- e. Owner agrees to record a "Memorandum of Agreement", a form of which is attached hereto as Exhibit A, against the Property.
- f. Owner shall comply with all applicable requirements of local, state and federal law.

3. City Obligations:

- a. If the HUD Covenant is renewed for 5 years to the date ending February 28, 2023, and Owner is at all times in compliance with the HUD Covenant, then the City would commit to pay Owner up to the total amount of \$1.25 Million.
- b. With evidence acceptable to the City that the HUD Covenant is in effect, Memorandum of Agreement recorded against the Property, certification of compliance with the HUD Covenant, City shall pay Owner \$250,000 per year by

January 15th of each year for five years, ending January 15, 2023, to reimburse capital improvements and repairs.

- c. City shall comply with all applicable requirements of local, state and federal law.
- d. City agrees to execute the "Memorandum of Agreement".
- e. Upon receipt of a formal application, the City is prepared to diligently process a development application for the consideration of up to 45 new residential units on the Property along with a development agreement.

4. Term of Agreement; Early Termination; Refund of Payment.

This Agreement shall terminate upon the expiration of the HUD Covenant or sooner if Owner is not in compliance with the terms of the provisions of this Agreement. In the event that Owner is not in compliance with this Agreement, or in the event that the HUD Covenant does not extend for the period of 5 years ending February 28, 2023, then Owner agrees to refund any payments made by City to Owner pursuant to this Agreement. The City shall have the right to terminate this Agreement based on any unforeseen financial constraints or any action by Owner that is adverse to the preservation of the Property for affordable housing.

5. Notice.

All notices given or required to be given hereunder shall be in writing and addressed to the Parties set out below, or to such other address as may be noticed under and pursuant to this paragraph. Any such notice shall be considered served when actually received by the Party intended, whether personally served or sent postage prepaid by registered or certified mail, return receipt requested.

City: City Manager
City of Milpitas
455 East Calaveras Blvd
Milpitas, CA 95035

With copy to: City Attorney
City of Milpitas
455 East Calaveras Blvd
Milpitas, CA 95035

Owner: Sunnyhills Investors LLC
 Attn: John Kehriotis
 100 Saratoga Ave, Suite 300
 Santa Clara, CA 95051

With copy to: _____

6. Limitations of this Agreement.

This Agreement does not commit the City to anything other than the transactions outlined above.

7. Miscellaneous:

a. Exemption from CEQA.

The approval of this Agreement does not constitute a project under CEQA nor is any additional environmental review required at this time as there is no impact on the environment.

b. Entire Agreement; Integration. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Owner with respect to the subject matter of this Agreement. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

c. Waiver. No waiver of any term or condition of this Agreement shall be a continuing waiver thereof.

d. Amendments to Agreement. Any amendment to this Agreement shall be in writing and signed by the appropriate authorities of the Parties.

e. No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the Parties. No other persons or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the Parties' obligations under this Agreement.

f. Counterparts. This Agreement may be executed in counterparts, each of which

shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

g. Indemnification; Hold Harmless. Upon the Effective Date of this Agreement, the Owner, on behalf of itself and its successors and assigns, shall indemnify, defend (with Counsel acceptable to the City), hold harmless City and its respective members, officers, employees, agents, contractors and consultants, from any and all claims, debts, liabilities, obligations, and causes of action, whether known or unknown, suspected or unsuspected, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) caused by or in any way arising out of or relating to this Agreement, including state or federal prevailing wage laws. This provision shall survive termination of this Agreement.

h. Further Assurances. Each of the parties hereto shall execute and deliver such additional papers, documents and other assurances in each case as are reasonably necessary, and shall do any and all acts and things in each case as are reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this Agreement.

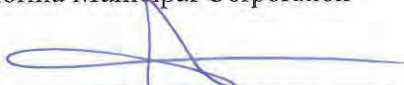
i. Financing. The Parties do not intend for this Agreement to impact Owner's ability to use the Property for financing. If this Agreement and the recordation of the Agreement creates such issues, the Parties agree to meet to discuss the issue.

j. Attorney Fees; Governing Law; Venue. In the event of the bringing of any action or lawsuit by either Party against the other in connection with this Agreement, including but not limited to an alleged uncured material breach of this Agreement, the prevailing Party shall be entitled to have and recover of and from the other Party all costs and expenses of the action or lawsuit including, without limitation, actual attorneys' fees and other professional fees resulting therefrom. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California, with venue in the Superior Court of Santa Clara, California.

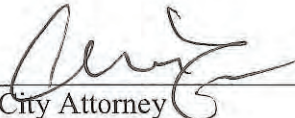
k. The Parties have participated jointly in the negotiation and drafting of this Agreement and had the opportunity and right to have this Agreement reviewed by their respective legal counsel. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized officers, have caused this Agreement to be executed as of the Effective Date.

CITY OF MILPITAS,
a California Municipal Corporation

BY: 
ITS: INTERIM CITY MANAGER

APPROVAL AS TO FORM:

By: 
City Attorney

APPROVAL AS TO FORM

By: 
Director of Financial Services

Sunnyhills Investors LLC,
a California limited liability company

BY: 
ITS: Manager

Exhibit "A"

Real property in the City of Milpitas,
County of Santa Clara,
State of California, described as follows:

APN: _____

**FREE RECORDING REQUESTED
PURSUANT TO GOVERNMENT CODE
SECTION 27383**

Recording Requested by and when
Recorded return to:

Milpitas Housing Authority
455 E. Calaveras Blvd.
Milpitas, CA 95035

**Project: Sango Court Apartments
APN(s): 086-36-013**

(Space above this line for Recorder's Use)

**AFFORDABILITY COVENANTS AND RESTRICTIONS AFFECTING
REAL PROPERTY**

AHB-18-07

This Affordability Covenants and Restrictions Affecting Real Property (this "**Agreement**") is made and entered into for reference purposes only as of February 1, 2022, by and between the City of Milpitas Housing Authority, a political subdivision of the State of California ("**Authority**"), and Sango Court, L.P., a California limited partnership (the "**Borrower**").

RECITALS

1. On or about the date hereof, the Authority and the Borrower have entered into a Loan Agreement pursuant to which the Authority is providing a loan to the Borrower in the principal amount of \$6,500,000 (the "**Authority Loan**") to financially assist Borrower in the development of a 102 unit affordable housing project that will consist of 102 units of affordable housing including one (1) unrestricted staff unit, seventy-one (71) units that will provide permanent housing affordable to extremely low income households with incomes at or below 30% of Area Median Income, and thirty (30) units that will provide permanent housing affordable to low income households with incomes at or below 60% of Area Median Income (the "**Project**"). The property is located at the street address 355 Sango Court, Milpitas, California (APN No. 086-36-013) and is more fully described in Exhibit A attached hereto (the "**Property**").
2. Borrower has secured an award from the Santa Clara County Housing Authority for forty (40) Section 8 Project Based Vouchers ("**Section 8 Rental Subsidies**") for the Project.
3. Furthermore, the parties acknowledge that Borrower has been awarded seven (7) project-based vouchers from the Housing and Urban Development Veterans Affairs Supportive Housing department ("**HUD-VASH**"), which shall be administered by HUD-VASH (the "**VASH PBVs**").

4. The Authority Loan is conditioned on the Borrower maintaining and operating the Project in accordance with this Agreement.

In consideration of receipt of the Authority Loan at an interest rate below the market rate and deferred payments of principal and interest under the Loan Documents, the Borrower warrants, represents, covenants and agrees to observe all the terms and conditions of this Agreement, and the Authority and the Borrower hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions

- a. **"Adjusted Gross Income"** - the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor California housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, the Borrower shall provide a reasonably similar method of calculation of adjusted income as provided in said Section 6914.
- b. **"Affordable Rent"** – shall have the meaning ascribed to it in California Health and Safety Code Section 50053 as in effect as of the date of this Agreement. For purposes of this Agreement, the term "adjusted for family size appropriate to the unit" shall be calculated based on the assumed household size pursuant to TCAC regulations.
- c. **"Affordable Units"** - shall mean: the one hundred one (101) Units to be occupied by, or if vacant, available for occupancy by income-eligible households or individuals who qualify under the affordability and use restrictions imposed on the Project pursuant to this Agreement.
- d. **"Agreement"** - this Affordability Covenants and Restrictions Affecting Real Property.
- e. **"Area Median Income" or "AMI"**- the median gross yearly income, adjusted for family size, for the County of Santa Clara, California, as determined from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the Authority will provide the Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD and the State of California.
- f. **"Borrower"** – Sango Court, L.P., a California limited partnership.
- g. **"Certificate of Occupancy"** shall mean final unconditional certificates of occupancy issued by the City or its equivalent.
- h. **"County"** - the County of Santa Clara, a political subdivision of the State of California.
- i. **"Deed of Trust"** – the Leasehold Construction and Permanent Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing encumbering the Project which secures repayment of the Authority Loan and the performance of this Agreement.

- j. **"Disbursement Agreement"** – the Disbursement Agreement between Borrower and Authority.
- k. **"HUD"** – the United States Department of Housing and Urban Development.
- l. **"Loan Agreement"** – the Construction and Permanent Loan Agreement between Authority and Borrower for the Authority Loan.
- m. **"Loan Documents"** – this Agreement, the Note, the Loan Agreement, and the Deed of Trust, and all other instruments and agreements required to be executed by Borrower in connection with the Authority Loan.
- n. **"Note"** – the Promissory Note from the Borrower to the Authority evidencing the Authority Loan and secured by the Deed of Trust.
- o. **"Project"** – as defined in the Recitals above.
- p. **"Property"** – as defined in the Recitals above.
- q. **"Rent"** – the total of monthly payments by the Tenant of an Affordable Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by the Borrower which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Borrower, and paid by the Tenant. Rent shall not include other charges including repair fees, reasonable cleaning and key charges, overdraft fees and other similar fees.
- r. **"Section 8 Rental Subsidies"** – as defined in the Recitals above.
- s. **"TCAC"** – State of California Tax Credit Allocation Committee.
- t. **"Tenant"** – a household occupying a Unit.
- u. **"Term"** – the term of this Agreement, as set forth in Section 1.2.
- v. **"Units"** – the one hundred two (102) Units to be operated on the Property. A **"Unit"** shall refer to one of the Units. The Units include the one unrestricted staff unit and the Affordable Units.

All capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Loan Agreement or the other Loan Documents, as applicable.

1.2 Term. This Agreement commences on the date the Deed of Trust is recorded in the Official Records of the County of Santa Clara (**"Effective Date"**) and shall continue until the earlier of fifty-five

(55) years from receipt of all Certificates of Occupancy for the Project or December 31, 2079 ("Term") even if the Authority Loan is paid in full or otherwise satisfied, or the Deed of Trust is reconveyed, prior to the end of the Term.

ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

In consideration of the Authority Loan, Borrower agrees to and accepts the restrictions, obligations and conditions contained in this Agreement, including without limitation, the occupancy and rent requirements set forth in this Article 2, as follows:

2.1 Occupancy Requirements.

- a. **Occupancy.** At all times during the Term, the Affordable Units shall be rented to and occupied by or, if vacant, available for occupancy, by households earning income as follows: thirty one (31) Affordable Units available to households earning 30% of AMI or less, forty (40) Affordable Units available to special needs households earning 30% of AMI or less, and thirty (30) Affordable Units available to households earning 60% of AMI or less as set forth in the Schedule of Affordable Units in Exhibit B.
- b. **Density Bonus.** Notwithstanding anything to the contrary contained herein, the development, construction, use and operation of the Project shall comply with all conditions of approval set forth in any and all permits approved for the development of the Property, including without limitation all planning conditions related to Government Code Section 65915 and the City of Milpitas Municipal Code Section XI-L0-54.15, as amended, or, respectively/ any successor statute and ordinance thereto.

2.2 [Intentionally Omitted].

2.3 Authority Affordability Adjustment. Notwithstanding anything to the contrary contained herein, in the event of a foreclosure or deed in lieu of foreclosure under the senior deed of trust, or in the event of a loss or reduction of Section 8 Rental Subsidies and/or the VASH PBVs, the maximum household income of all Affordable Units shall be increased up to 60% of Area Median Income, adjusted for household size appropriate to the unit, but only to the extent necessary for the Project to operate at a break-even net cash flow, as reasonably determined by the Authority, and the maximum Rent for any Affordable Unit shall in no event exceed 30% of 60% of Area Median Income, as adjusted for household size appropriate to the unit (collectively, the "Affordability Adjustments"). With respect to loss or reductions in Section 8 Rental Subsidies and/or the VASH PBVs only, the Affordability Adjustments shall continue only until Borrower has secured a substantially similar rental subsidy from the County or other sources. For purposes of this Section 2.3, the term "break-even net cash flow" means that all gross receipts of the Project equals or exceeds all of the eligible expenditures of any kind made or to be made with respect to the operation of the Project.

2.4 Increased Income of Tenants

If, upon recertification of the income of a Tenant of an Affordable Unit, the Borrower determines that such Tenant has an income exceeding the maximum qualifying income for the Affordable Unit as required in this Article 2, such Tenant shall be permitted to continue to occupy the Unit and such Tenant's Rent may be increased the maximum amount permitted by TCAC for such Tenant, upon thirty (30) days written notice to the Tenant. The Borrower will rent the next available Affordable Unit to a household that qualifies under the income limits set forth in Section 2.1 above.

ARTICLE 3 INCOME CERTIFICATION AND REPORTING

Borrower covenants, warrants, represents and agrees that:

3.1 Income Certification.

The Borrower will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Affordable Units. Copies of Tenant income certifications shall be available to the Authority upon request. The Borrower shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process:

- a. Obtain a pay stub for the most recent pay period;
- b. [Intentionally omitted];
- c. Conduct a credit agency or similar search;
- d. Obtain income verification from the applicant's current employer;
- e. Obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies;
- f. If the applicant is unemployed and has no such tax return, obtain another form of independent verification.

Notwithstanding anything to the contrary in this Section 3.1, Borrower shall be deemed to be complying with this Section 3.1 if it is meeting the requirements of Section 42 of the Internal Revenue Code and the related rules and regulations.

3.2 Annual Report to Authority.

- a. The Borrower shall submit to the Authority (i) not later than May 1st of each year, or such other later date as may be requested by the Authority, a statistical report, including income and rent data for all units, setting forth the information reasonably required by the Authority to determine compliance with this Agreement, and (ii) within thirty (30) days after receipt of a written request, any other information or completed

forms reasonably requested by the Authority.

- b. Annually, Borrower shall submit to the Authority an independently audited financial statement for the Borrower detailing Project Gross Receipts and Project Permitted Expenses as those terms are defined in the Note.

3.3 Additional Information.

The Borrower shall provide any additional information reasonably requested by the Authority. The Authority shall have the right to examine and make copies of all books, records or other documents of the Borrower which pertain to the Project, at reasonable times and with reasonable notice.

3.4 Records.

The Borrower shall maintain complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the County to inspect records, including records pertaining to income and household size of Tenants, at reasonable times and with reasonable notice. All Tenant lists, applications and waiting lists relating to the Project (other than in regard to the 30% AMI Units) shall at all times be kept separate and identifiable from any other business of the Borrower and shall be maintained as required by the Authority, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Authority. The Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Affordable Units for a period of at least three (3) years.

3.5 On-site Inspection.

The Authority has the right to perform an on-site inspection of the Project at least one time per year at a reasonable time and upon reasonable notice to Borrower. The Borrower agrees to cooperate in such inspection.

ARTICLE 4 OPERATION OF THE PROJECT

Borrower covenants, warrants, represents and agrees that:

4.1 Residential Use.

The Project shall be operated for residential use, but this will not prohibit home businesses otherwise allowed by law and use of the ground floor portion of the Project as a community service facility space or other commercial space, if applicable.

4.2 Taxes and Assessments.

Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Borrower shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the

proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest. Nothing in this Section 4.3 shall prevent Borrower from applying for a welfare exemption under Section 214(g) of the California Tax and Revenue Code.

ARTICLE 5

PROPERTY MANAGEMENT AND MAINTENANCE

Borrower covenants, warrants, represents and agrees that:

5.1 Management Responsibilities.

The Borrower is responsible for all management functions with respect to the Project, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Authority will have no responsibility over management of the Project. The Borrower shall retain a professional property management company approved by the Authority in its reasonable discretion (pursuant to Section 5.2) to perform its management duties hereunder.

5.2 Management Agent.

The Project will at all times be managed by an experienced management agent with demonstrated ability to operate residential facilities like the Project in a manner that will provide decent, safe, and sanitary housing (the “**Management Agent**”). Borrower shall submit for the Authority’s information and records, the identity of any proposed Management Agent and such additional information regarding the background, experience and financial condition of any proposed Management Agent as is reasonably necessary to validate Borrower’s selection of such agent.

5.3 Performance Review.

The Authority reserves the right to conduct an annual (or more frequent, if deemed reasonably necessary by the Authority) review of the management practices and financial status of the Project. The purpose of each periodic review is to enable the Authority to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement. The Borrower shall cooperate with the Authority in such reviews.

5.4 Replacement of Management Agent.

All rights of the Authority stated in this Section 5.4 are subject to prior written approval of lenders identified as approved Sources of Funding in the Loan Agreement, Borrower’s limited partner, and Borrower. If, as a result of a periodic review, the Authority determines in its reasonable judgment that the Project is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the Authority shall deliver notice of such determination to Borrower. Within fifteen (15) days of receipt by Borrower of such written notice, Authority staff and the Borrower, together with consultation with Limited Partner, shall meet in good faith to consider methods for improving the financial and operating status of the Project, including, without limitation,

replacement of the Management Agent.

If, after such meeting, Authority staff recommends in writing the replacement of the Management Agent, Borrower will promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting local industry standards for a Management Agent, subject to the approval of the Authority, Borrower's limited partner and the lenders identified as approved Sources of Funding in the Loan Agreement.

5.5 Property Maintenance.

The Borrower shall, for the entire Term, maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

The Authority places prime importance on quality maintenance to protect its investment and to ensure that all Authority and Authority-assisted affordable housing projects within the Authority are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Project will be acceptable to the Authority assuming the Borrower agrees to provide all necessary improvements to assure the Project is maintained in good condition. The Borrower shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

5.6 Survival and Indemnity

- a. Nothing in this Agreement shall relieve the Borrower, its successors and assigns, of any prior, existing or continuing obligation(s) to comply in all respects with any and all applicable statutes and regulations, including but not limited to California Health and Safety Code Section 52080 et seq. (e.g. affordability obligations and/or relocation assistance for tenants) and California Government Code Sections 65863.10 through and including 65863.13 (e.g., notice to tenants).
- b. Authority does not waive its right(s) to act in its regulatory or enforcement capacity as a governmental or regulatory body, including but not limited to its ability, obligation or right (discretionary or otherwise) to seek enforcement of, or take any other action pertaining to, any applicable laws in relation to any party to this Agreement, or respective successors or assigns, or any tenant rights.
- c. Those terms and conditions contained herein which by their nature should survive termination, cancellation or expiration of this Agreement shall so survive including but not limited to those recitals and terms pertaining to Borrower's continuing obligations and responsibilities.
- d. Indemnity. Borrower represents, warrants and agrees to defend, indemnify and hold harmless the Authority, its officers, elected and appointed officials, employees and agents (collectively and each a "**Authority Agent**") from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and

reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with this Agreement, or Borrower's compliance or failure to comply with any applicable laws, excepting only such loss or damage which is directly caused by the sole gross negligence or willful misconduct of the Authority or any Authority Agent. The Borrower will conduct all defenses at its sole cost and expense and the Authority shall reasonably approve selection of Borrower's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of Borrower, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of Borrower, its affiliates or other parties are not a limitation upon the obligation of the Borrower including without limitation the amount of indemnification to be provided by the Borrower.

ARTICLE 6 MISCELLANEOUS

Borrower covenants, warrants, represents and agrees that:

6.1 Lease Provisions.

Leases used by the Borrower shall not contain any provision which is prohibited by law. The form of Tenant lease for Affordable Units must comply with all requirements of this Agreement as follows:

- a. Provide for termination of the lease and consent by the Tenant to immediate eviction (subject to applicable laws) for failure to:
 1. Provide any information required by the terms of this Agreement or reasonably requested by the Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Project in accordance with the standards set forth in this Agreement, or
 2. Qualify as an eligible resident as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification; and
- b. Any termination or refusal by the Borrower to renew the lease shall be in conformance with applicable federal, state and local law, including Section 42 of the Internal Revenue Code.

6.2 Nondiscrimination and Confidentiality.

- a. Borrower and Borrower's Management Agent shall comply with all applicable federal, state and local laws and regulations, including the Authority's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. Borrower shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental

disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor will Borrower discriminate in provision of services provided by this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

- b. Borrower and Borrower's Management Agent shall comply with all applicable federal, state, and local laws pertaining to the operation and management of the Project. Borrower and its Management Agent shall not discriminate in the sale, lease, sublease transfer, use, occupancy, tenure or enjoyment of the Project nor shall the Borrower or any person claiming under or through Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees in their Project. The foregoing covenants shall run with the land.
- c. Borrower and Borrower's Management Agent shall comply with all applicable state and federal law governing confidentiality of medical and health information including, but not limited to, California Welfare & Institutions Code section 5328, et seq., and the HIPAA, 45 C.F.R. parts 160 and 164.

6.3 Section 8 Program Participants.

The Borrower will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal rent subsidies pursuant to the program pursuant to Section 8 of the United States Housing Act, or its successor. The Borrower shall not apply selection criteria to Section 8 program participants that are more burdensome than criteria applied to all other prospective Tenants, nor will the Borrower apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of units by such prospective Tenants.

6.4 Covenants to Run With the Land.

- a. The County and the Borrower hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and touch and concern Borrower's legal interest in the Property and the Project in that Borrower's legal interest in the Property and the Project is rendered less valuable thereby. The benefit of the affordability and use restrictions imposed on the Project pursuant to this Agreement touch and concern the land by providing housing opportunities for low-income Tenants, the intended beneficiaries of such covenants and restrictions.
- b. This Agreement binds all successors-in-interest to Borrower's legal interest in the Property and the Project. Each and every contract, deed or other instrument hereafter executed covering, or conveying or otherwise transferring Borrower's legal interest in the Property or any portion thereof, will be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions. The foregoing

applies regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, and regardless of whether the terms of this Agreement are actually known to such other party or parties unless the Authority expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.5 Corrective Action Procedure Upon Default.

- a. If an event of default occurs under the terms of this Agreement, Authority will give Borrower written notice of such default. Borrower's failure to perform any material term or provision of this Agreement, following all applicable notice and cure periods, will be considered an **"Event of Default"**. Upon occurrence of an Event of Default, the Authority will give written notice to the parties identified in the manner provided in Section 6.12.
- b. If the Borrower does not correct the Event of Default to the reasonable satisfaction of the Authority within thirty (30) days after the date Borrower receives the notice, or, if the breach cannot be cured within thirty (30) days, the Borrower shall have such longer period as is reasonably necessary so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days, the Authority may, without further notice, pursue any remedies available under rules of law or equity, including, without limitation, declaring all sums due under the Note immediately due and payable, and proceeding with any and all remedies available under the Loan Documents, subject to the non-recourse provision in the Note. Any limited partner of the Borrower shall have the right, but not the obligation, to cure an Event of Default by the Borrower provided that such cure shall occur within the same period afforded for the Borrower's cure of an Event of Default. The Authority shall accept any cure offered by the limited partner of the Borrower as if the same were made by the Borrower.

6.6 Attorneys Fees and Costs.

In any action brought to enforce this Agreement, the prevailing party is entitled to all costs and expenses of suit, including but not limited to reasonable attorneys' fees.

6.7 Recording and Filing.

The Authority and the Borrower will cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Santa Clara against Borrower's leasehold interest in the Property.

6.8 Governing Law.

This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including mediation or other alternative dispute resolution

proceedings, shall be brought only in Santa Clara County, California. **EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.**

6.9 Waiver of Requirements.

Any of the requirements of this Agreement may be expressly waived by the Authority in writing, but no waiver by the Authority of any requirement of this Agreement will, or will be deemed to, extend to or affect any other provision of this Agreement.

6.10 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Santa Clara.

6.11 Notices.

All notices, demands or other communications of any type under this Agreement shall be in writing and shall be (a) delivered in person, in which event the notice shall be deemed received when delivery is actually made; (b) sent by overnight courier for next business day delivery, in which event the notice shall be deemed received on the first business day after delivery to, and acceptance for delivery by, the courier; or (c) sent by registered mail or certified mail, postage prepaid, return receipt requested, through the United States Postal Service, in which event the notice shall be deemed received at the time of personal delivery or on the first attempted delivery on a business day. All such notices shall be sent to the following addresses:

PARTIES:

Authority:	Milpitas Housing Authority Attn: Housing Authority Administrator 455 E. Calaveras Blvd. Milpitas, CA 95035
Borrower:	Sango Court, L.P. c/o Resources for Community Development 2220 Oxford Street Berkeley, CA 94704 Attn: Executive Director
With a copy to:	Gubb & Barshay, LLP 505 14th St #450, Oakland, CA 94612 Attn: Nicole Kline
With a copy to:	Wincopin Circle LLLP c/o Enterprise Community Asset Management, Inc. 70 Corporate Center

11000 Broken Land Parkway, Suite 700
Columbia, MD 21044
Attention: General Counsel

and

Gallagher Evelius & Jones LLP
218 N. Charles Street, Suite 400
Baltimore, Maryland 21201
Attention: Kenneth S. Gross, Esq.

Such addresses may be changed by notice to the other party given in the same manner as provided above.

6.12 Severability.

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement will not in any way be affected or impaired thereby

6.13 Survival.

Those terms and conditions which by their nature should survive termination, expiration or cancellation of this Agreement, shall so survive.

6.14 Multiple Originals; Counterparts

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

6.15 Assignment of Authority's Rights

The Authority retains the right, at its sole discretion, to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of the Borrower's duties and obligations hereunder. In addition, the Authority may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions thereof.

6.16 Binding of Successors

This Agreement shall bind, and benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in interest, and assigns, provided, however, that the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the Authority.

a. **Third Party Beneficiaries.** This Agreement does not confer any rights or remedies upon any person or entity other than the parties. Except as otherwise expressly stated herein, there are no third-party beneficiaries to this Agreement.

6.18 Restrictions on Transfer and Other Acts.

Except for leases to Tenants in the ordinary course of business and the deeds of trust securing the Sources of Financing permitted under the Loan Agreement, the Borrower shall not make, or allow, any assignment, conveyance, transfer or other disposition of the Project or any of its interest therein, except with the prior written approval of the Authority which approval will not be unreasonably withheld, conditioned or delayed, except a transfer of the Project to Borrower's general partner or an affiliate thereof following the expiration of the Tax Credit Period and provided Borrower has provided prior written notice to the Authority of the proposed transfer. The Authority may approve a transfer or conveyance provided that all of the following conditions are met:

- a) the Borrower is in compliance with this Agreement, or the transfer or conveyance will result in the cure of any existing violations of the Agreement;
- b) the successor-in-interest to the Borrower agrees to assume all obligations of the Borrower pursuant to this Agreement;
- c) any terms of the transfer or conveyance shall not threaten the Authority's security or repayment of the Loan; and
- d) any successor-in-interest demonstrates to Authority's satisfaction that it has the management and financial capacity to own and operate the Project.

The Authority shall grant its approval for a transfer or conveyance subject to such terms and conditions as may be necessary in Authority's sole discretion to ensure compliance with this Agreement.

Notwithstanding the foregoing, without obtaining the prior written approval of the Authority (a) the Borrower's limited partner may transfer its limited partnership interests in Borrower to any limited partnership or limited liability company in which Enterprise Community Asset Management, Inc., or an affiliate thereof is the general partner or managing member; (b) the transfer of limited partnership interests or non-managing membership interest in the Borrower's limited partner shall be permitted hereunder, and (c) the Borrower's limited partner may remove and replace the general partner of the Borrower in accordance with the Borrower's First Amended and Restated Agreement of Limited Partnership following a default by the general partner thereunder.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the Authority and the Borrower have executed this Agreement by duly authorized representatives, all on the dates set forth below.

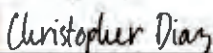
Authority:

City of Milpitas Housing Authority,
a political subdivision of the State of California



Executive Director, Steven G. McHarris

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:


9B363A8B3E3946B
Authority Counsel, Christopher J. Diaz

Borrower:

Sango Court, L.P.,
a California limited partnership

By: RCD GP III LLC,
a California limited liability company,
its general partner

By: Resources for Community Development,
a California nonprofit public benefit
corporation,
its sole member/manager

By: _____
Daniel Sawislak,
Executive Director

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

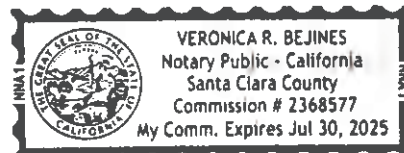
On February 1, 2022 before me, Veronica R. Bejines, Notary Public
(insert name and title of the officer)

personally appeared Steven G. McHarris
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Veronica R. Bejines (Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____, Notary Public, personally appeared, _____, proved to me the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____, Notary Public, personally appeared, _____, proved to me the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

PROPERTY DESCRIPTION

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL 5, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 22, 1974 IN BOOK 338 OF MAPS, AT PAGE(S) 42.

APN: 086-36-013

EXHIBIT B

**Schedule of Affordable Units:
Income Limits by Unit Size**

Number of affordable units	Income Limit	Unit Size
23	30%	Studio
32	30%	1 bedroom
12	30%	2 bedroom
4	30%	3 bedroom
8	60%	1 bedroom
14	60%	2 bedroom
8	60%	3 bedroom
Total: 101		

Category 4H

Execution Version

**AMENDED AND RESTATED COMMUNITY DEVELOPMENT BLOCK GRANT
LOAN AGREEMENT
(Sango Court Project)**

This Loan Agreement (the "**Agreement**") is made as of February 1, 2022 ("**Effective Date**"), by and between the CITY OF MILPITAS, a California municipal corporation (the "**City**"), and SANGO COURT, L.P., a California limited partnership ("**Borrower**"). This Agreement is consented and agreed to by the City of Milpitas Housing Authority (the "**Housing Authority**"), as referenced in Recital D below.

RECITALS

A. Borrower has entered into an agreement to acquire a leasehold interest in that certain real property located generally at 355 Sango Court, Milpitas, California, more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference (the "**Property**"). The Property is currently developed with a commercial use, and Borrower intends to acquire the Property, demolish the existing improvements (the "**Existing Improvements**") on the Property, and develop a 102-unit (each a "**Unit**" and collectively, the "**Units**") affordable rental housing development, and all appurtenant improvements and facilities, to be rented to qualified persons, including veterans of the United States military, (the "**Housing Project**"). All of the Units in the Housing Project will be rented to extremely-low and very-low income households (the "**Qualifying Tenants**").

B. The City is an entitlement jurisdiction in the Community Development Block Grant Program (**CDBG**) and was awarded an allocation of funds from the U.S. Department of Housing and Urban Development ("**HUD**") for the 2018-19 program year.

C. The City Council of the City of Milpitas ("**City Council**"), on August 7, 2018, approved the allocation of a portion of its CDBG Funds in the amount of Two Hundred Ninety-Nine Thousand Ninety-Seven Dollars (\$299,097.00) (the "**CDBG Loan**") received in fiscal year 2018-19 to be used to provide a loan to Resources for Community Development ("**RCD**"), an affiliate of Borrower, for the acquisition of the Property for development of the Housing Project, and authorizing the City Manager to execute agreements with approved recipients of the CDBG Funds.

D. On August 1, 2017, the Housing Authority approved a loan commitment, and RCD and the Housing Authority subsequently entered into a Predevelopment Loan Agreement, dated November 29, 2017, (the "**Predevelopment Loan Agreement**"), pursuant to which the Housing Authority provided a loan of One Hundred Fifty Thousand Dollars (\$150,000.00) (the "**Predevelopment Loan**") from the Milpitas Housing Authority Fund to pay certain predevelopment costs necessary for the development of the Housing Project. The Predevelopment Loan was previously dispersed. The Predevelopment Loan will be repaid to City at the closing for the Property, and a new Promissory Note and Deed of Trust will be executed by Borrower in favor of City for this Agreement.

E. The City and Borrower desire to enter into this Agreement to establish the terms and conditions for the loan of CDBG Funds as authorized by the City for the 2018-19 program year, in the amount as set forth herein.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the Loan described below, the Borrower and City hereby agree as follows:

AGREEMENTS

ARTICLE 1. LOAN TERMS

1.1 Loan.

(a) The City agrees to loan and the Borrower agrees to borrow an amount not to exceed TWO HUNDRED NINETY-NINE THOUSAND NINETY-SEVEN AND 00/100 DOLLARS (\$299,097.00) (the "**CDBG Loan**"), subject to the conditions and terms of this Agreement. The Loan shall be evidenced by and repayable in accordance with a promissory note (the "**Note**") in substantially the form attached hereto as **Exhibit B** and incorporated herein by reference, and shall be secured by a deed of trust (the "**Deed of Trust**") to be recorded against the Borrower's leasehold interest in the Property in substantially the form attached hereto as **Exhibit C**. So long as the Borrower is not in default hereunder, the Loan shall bear deferred interest at the rate of three percent (3%) per annum, simple interest.

(i) It is the intent of the City and Borrower that the CDBG Loan shall be repaid in accordance with the Note and the other terms and conditions set forth in this Agreement. Accordingly, the Borrower shall execute and deliver the revised Note and the revised Deed of Trust to the City prior to and as a condition of closing for the Property.

(ii) The City acknowledges that it is aware of that certain Loan Agreement (the "**County Loan Agreement**") between Borrower and the County of Santa Clara (the "**County**") pursuant to which the County is providing a predevelopment and construction loan to Borrower in the amount of \$9,100,000 (the "**County Loan**"). The County Loan Agreement provides an option to the County to acquire the Property, and then lease the Property to Borrower for development of the Housing Project. In such event, City and Borrower agree to cooperate to prepare and execute such documents as may be necessary to provide that the Deed of Trust shall be recorded against the Borrower's leasehold interest in the Property, subject only to those liens and other matters as may be approved by the City.

(b) Prior to and as a condition precedent to disbursement of CDBG Loan proceeds, the Borrower shall execute, in recordable form, and deliver to the City, a Rent Limitation and Regulatory Agreement (the "**Regulatory Agreement**"), in substantially the form attached hereto and incorporated herein as **Exhibit D** and incorporated herein by reference, which shall regulate the Units to be developed as part of the Housing Project to insure that the Units are occupied by and affordable to Qualifying Tenants. The Regulatory Agreement shall be

recorded against the Borrower's leasehold interest in the Property, in the Official Records of the County of Santa Clara (the "**County**"). The term of the Regulatory Agreement shall commence upon recordation of the Regulatory Agreement and shall remain in full force and effect through and including the date which is fifty-five (55) years following the date of such recordation.

(c) The CDBG Loan shall be used only in accordance with Section 1.3, below. The City shall disburse the CDBG Loan funds to or for the benefit of the Borrower, as set forth in Section 1.5, provided that all of the following conditions precedent have been satisfied:

(i) The Borrower shall have executed, in recordable form where applicable, and delivered into escrow, to be recorded in the official records of the County upon close of escrow for acquisition of the Property by the Borrower, the Note (**Exhibit B**), the Deed of Trust (**Exhibit C**), and the Regulatory Agreement (**Exhibit D**);

(ii) Delivery of a binding commitment by a title insurance company acceptable to the City to issue a lender's policy of Title Insurance with any endorsements the City may reasonably require, insuring the City in the principal amount of the Loan, of the validity and priority of the Deed of Trust and the Regulatory Agreement upon the Property, subject only to liens and matters of record approved by the City in writing, and showing fee simple title to the Housing Project in the name of the Borrower;

(iii) The Borrower shall be diligently proceeding with the preparation of plans, drawings and related documents, and obtaining approvals and any permits that may be required to secure the approval of entitlements for the demolition of the Existing Improvements on the Property, and for the development of the Housing Project;

(iv) The Borrower shall have provided the City with a resolution of Borrower approving and authorizing execution of this Agreement and all documents contemplated hereby on behalf of Borrower and with such other documentation required by the City regarding Borrower's creation, status and authority to enter into this transaction;

(v) The Borrower shall have provided City with a certificate showing it to be in good standing under the laws of the State of California;

(vi) The Borrower shall have satisfied all of the applicable terms and conditions set forth in this Agreement;

(vii) The Borrower shall have executed and acknowledged, where necessary, all documents and shall be in a position to close escrow on the Property;

(viii) All representations and warranties made by the Borrower in this Agreement, the Note and any other related documents shall be true and correct as of the date of the proposed disbursement; and

(ix) The Borrower shall not be in default under this Agreement or any other agreement relating to the Housing Project.

1.2 Term of Agreement. The term of this Agreement ("**Term**") shall commence upon the Effective Date and, unless earlier terminated as provided herein, shall remain in full force and effect for a period of fifty-five (55) years from the date of receipt of the certificate of occupancy, or (b) by acceleration of the loan following a default, subject to all applicable notice and cure periods; but in all events no later than December 31, 2079.

1.3 Use of Funds. The Borrower shall use the proceeds of the CDBG Loan only to pay a portion of the purchase price, closing costs other costs directly related to the acquisition of the Property by the Borrower and demolition of the Existing Improvement on the Property. The Borrower shall comply with all of the conditions to use of the funds, including without limitation the following:

(a) No funds paid by City hereunder shall be used directly or indirectly by Borrower for any lobbying or political activity whatsoever.

(b) Borrower shall use CDBG Loan funds received pursuant to this Agreement in conformity with the applicable provisions of 24 CFR Part 570, issued by HUD.

(c) CDBG Program income shall be used only for the purposes set forth in this Section 1.3; financial records shall document the receipt and expenditure of such funds, and Borrower is responsible for submitting documentation required to ensure compliance as set forth in 24 CFR 570.504(c).

(d) All loan funds received hereunder must be deposited in a non-interest bearing account with a minimum time lapsing between the transfer of funds from City and the disbursement by Borrower.

(e) There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of this Agreement.

(f) No funds shall be required or used by Borrower for housing acquisition or construction until an Environmental Assessment in accordance with 24 CFR 570.604 is completed, if applicable.

1.4 Compliance with City, State and Federal Laws and Regulations. Borrower agrees at all times to observe and comply with, and to cause all of its employees, agents, subcontractors, or others working for or under Borrower to observe and comply with all local, state and federal laws and regulations that pertain to the construction, health and safety, labor, fair employment practices, equal opportunity and all other matters applicable to the Borrower, its subcontractors, and any work to be performed by Borrower on the Property.

1.5 Disbursement of Loan Funds. The City shall deposit the CDBG Loan funds into an escrow account established with North American Title Company for the acquisition of the Property by Borrower. The CDBG Loan funds shall be used to pay a portion of the purchase price, closing costs, and other costs directly related to the acquisition of the Property by Borrower and demolition of the Existing Improvements on the Property.

1.6 City Not Liable. In no event shall the City be liable to Borrower or any other party, including but not limited to any lender, contractor or subcontractor, for any damage whatsoever which may result in whole or in part from any action or inaction of the City hereunder, including without limitation, failure or delay in funding any proceeds of the CDBG Loan, except to the extent of the City's gross negligence or willful misconduct.

1.7 Repayment of Loan. The Loan shall be repaid in accordance with the terms and conditions set forth in the Note (**Exhibit B**).

ARTICLE 2. GENERAL REQUIREMENTS

2.1 Records. Borrower shall maintain all necessary books and records, including property, personnel, and financial records, in accordance with requirements prescribed by HUD or the City with respect to all matters covered by this Agreement. Except as otherwise authorized by HUD, such records shall be maintained for a period of not less than four (4) years after receipt of the final payment under this Agreement. Upon reasonable prior notice to Borrower, the City shall have the right to inspect any and all records in connection with the acquisition of the Property by Borrower and demolition of the Existing Improvements on the Property.

Borrower shall document all expenditures under this Agreement with properly executed payroll, time records, invoices, contracts, vouchers, or other official documentation evidencing in appropriate detail the nature and propriety of the charges. All checks, payroll, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

2.2 Report to City. Borrower shall comply with all applicable reporting requirements as set forth in this Agreement and in the Regulatory Agreement (**Exhibit D**).

2.3 City Review and Inspections.

(a) Upon reasonable prior notice to the Borrower, but not less than fifteen (15) calendar days, the City may at any time during the term of this Agreement, inspect all accounting records pertaining to the acquisition of the Property and demolition of the Existing Improvements on the Property.

(b) The City may request any other information that it reasonably deems necessary to monitor compliance with the requirements set forth in this Agreement. Such information shall be promptly provided by the Borrower.

(c) Authorized representatives of HUD and City shall have the opportunity to monitor Borrower's performance under this Agreement. Such monitoring may include validation of source data used in preparation of reports to City, and administrative activities in support of this Agreement.

2.4 Audit.

(a) All records, accounts, documentation and other materials deemed by the City to be relevant to the acquisition of the Property and demolition of the Existing Improvements shall be accessible during normal business hours to the authorized representatives of the City for the purpose of examination or audit.

(b) Any expenditure from the Loan proceeds that is not authorized by this Agreement or that cannot be adequately documented shall be disallowed and must be reimbursed to the City or its designee by the Borrower. Expenditures not described in this Agreement shall be deemed authorized if the performance of such activities is approved in writing by the City prior to their commencement. Absent fraud or mistake on the part of the City, the determination by the City of the allowability of any expenditures shall be final.

(c) Borrower shall comply with the Single Audit Act of 1984, as amended, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, issued by the Office of Management and Budget Guidance. Borrower shall comply and/or cause compliance with all audit reports required by the City and in conformity with 2 CFR 200.501. et seq., to the extent the CDBG funds granted to Borrower by the City under this Agreement exceed \$750,000.00 in federal funds.

2.5 Insurance and Indemnity.

(a) Indemnity. The Borrower and its successors and assigns shall defend, indemnify, protect and hold harmless the City and its elective and appointed boards, and its officers, attorneys, agents, volunteers and employees, from and against any and all liability, damages, costs, losses, claims, causes of action or expenses (the "**Claims**"), however caused, resulting from the gross negligence or willful misconduct of the Borrower (including any contractor or subcontractor of Borrower or any person or persons employed by or acting as agent for Borrower, its contractor or subcontractor) in connection with the performance of this Agreement or Borrower's (or subcontractor or any person or persons employed by or acting as agent for Borrower or subcontractor) demolition or construction work on the Property; except to the extent that any Claim arises out of the City's gross negligence or willful misconduct. Borrower shall pay all reasonable costs of any necessary legal defense and all reasonable attorneys' fees of counsel approved by the City incurred in defending any Claim, whether or not actually filed in any court.

(b) Liability and Property Damage. As applicable, the Borrower, at its own costs and expense, shall at all times cause the Housing Project to be insured against loss by fire, casualties, liabilities and contingencies, and in such amounts and for such periods as are reasonably acceptable to the City. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement. Such policies must also cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement. Borrower, at its own costs and expense, shall also maintain automobile bodily injury and property damage insurance, including all owned, hired and non-owned automobiles with combined bodily injury and

property damage liability of \$1,000,000. The City, its officers and employees shall be named as additional insured and loss payee on all insurance policies. During any period of demolition or construction, Borrower shall also maintain or cause each and every contractor to maintain a builder's risk form of policy. Borrower shall not be required to maintain earthquake insurance.

(c) Workers' Compensation Insurance. As applicable, Borrower shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Divisions 4 and 5 of the California Labor Code and all amendments thereto, and all similar applicable state or federal acts or laws; and shall indemnify, defend, protect and hold harmless the City, and its respective agents, officers and employees from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including attorney's fees and costs presented, brought or recovered against the City, and its respective agents, officers and employees, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by Borrower under this Agreement.

(d) All insurance policies and renewals thereof shall be issued by carriers and under forms of policies and with carriers satisfactory in all respects to the City. The policies shall cover on an occurrence basis, and shall stipulate that this insurance will operate as primary insurance and that no insurance held by the City will be called upon to contribute to a loss suffered by Borrower hereunder.

(e) Borrower agrees to furnish any certificates of insurance evidencing the above-described policies as requested by the City. Borrower shall provide City with immediate notice upon Borrower's receipt of notice of cancellation or a material change in any insurance policy. Borrower shall promptly file with the City a certified copy of the required new or renewal policy, and certificates for such policy.

(f) If, at any time during the term of this Agreement or any extension hereof, Borrower fails to maintain the required insurance in full force and effect, any such failure shall constitute an event of Default.

(g) If any injury occurs to any employee of Borrower for which the employee, or his or her dependents in the event of death, is entitled to compensation from City, City may retain out of sums due Borrower under this Agreement an amount sufficient to cover such compensation as fixed by said Act, until such compensation is paid or until it is determined that no compensation is due. If City is compelled to pay such compensation, it will deduct and retain from the sums due Borrower the amount so paid.

(h) Use of Insurance Proceeds. As applicable, any proceeds Borrower receives from insurance policies issued to Borrower and/or covering the Housing Project, and any proceeds received from any governmental agency due to a partial or complete condemnation of the Housing Project, shall be applied as follows: If Borrower collects insurance proceeds arising from a fire or other casualty, then the insurance proceeds shall be applied to restore, repair, or rebuild the damage to the Housing Project caused by such casualty if such restoration, repair or rebuilding is economically feasible. If such insurance proceeds are insufficient for such purposes, the City shall not make up the deficiency. If Borrower does not make repairs or cause

such repairs to be made to restore the Housing Project to its pre-casualty condition, then any insurance proceeds collected for such damage or destruction shall be used to repay the Loan, subject to the rights of senior lenders approved by the City. If the Housing Project is subject to a partial condemnation or taking, then the proceeds received therefrom shall be applied to restore the Housing Project taken, provided the City determines that such restoration is economically feasible and no Default exists under the Loan, this Agreement, the Note or the Regulatory Agreement following the expiration of all applicable cure periods. If the Housing Project is subject to a total condemnation, or if the City determines that restoration of the Housing Project is not feasible following a partial condemnation, or if a Default exists then the proceeds from any condemnation award or claim for damages shall be used first to repay the Loan, with the excess, if any, paid to Borrower, subject to the rights of senior lenders approved by the City.

2.6 Restrictions on Sale, Encumbrance, and Other Acts. Borrower shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance or transfer (collectively, "**Transfer**") in any form of all or any part of, or any interest in, this Agreement, the Property or the Housing Project, except with the prior written approval of the City, which shall not be unreasonably withheld, conditioned or delayed or the transfer of partnership interests in connection with the syndication of tax credits and construction closing. Borrower shall deliver to the City notice of intent to Transfer within thirty (30) business days of receipt of such notice, the City shall approve or deny any such proposed Transfer. Borrower shall give the City at least thirty (30) days' prior written notice of any desired transfer and of the proposed terms of such transfer. The City Manager shall have the authority to approve or deny any transfer. Notwithstanding the foregoing, without obtaining the prior written approval of the City (a) the Borrower's limited partner may transfer its limited partnership interests in Borrower to any limited partnership or limited liability company in which Enterprise Community Asset Management, Inc., or an affiliate thereof is the general partner or managing member; (b) the transfer of limited partnership interests or non-managing membership interest in the Borrower's limited partner shall be permitted hereunder, (c) the Borrower's limited partner may remove and replace the general partner of the Borrower in accordance with the Borrower's First Amended and Restated Agreement of Limited Partnership ("**Partnership Agreement**") following a default by the general partner thereunder, and (d) Borrower or its general partner may exercise the option or right of first refusal granted under the Partnership Agreement and transfer the Project or the limited partner interests in Borrower to the general partner or an affiliate thereof pursuant to the terms of the option or right of first refusal.

2.7 State Labor Standards. Borrower is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 1600 *et seq.* ("**State Prevailing Wage Laws**"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects, unless the Project qualifies for an exemption. If the Services are being performed pursuant to this Agreement as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Borrower agrees to fully comply with such State Prevailing Wage Laws. City shall provide Borrower with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Borrower shall make available to interested parties upon request, copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services, and shall post copies at the Borrower's principal place

of business and at the Housing Project site. Borrower shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement and from any claim or liability arising out of any failure or alleged failure to comply with the State Prevailing Wage Laws.

2.8 Federal Labor Standards. Borrower and all subcontractors engaged under contracts in excess of Two Thousand Dollars (\$2,000) for the demolition, construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement, agree to comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, (the “**Federal Labor Standards**”), to the extent applicable, governing the payment of wages and the ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve Borrower of its obligations, if any, to require payment of the higher rates. Borrower shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of the Federal Labor Standards Provision. No award of the contracts covered under this section of the Agreement shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulations of the Department of Labor to receive an award of such contract.

(a) Borrower will furnish all information, prepare all reports, and be responsible for all monitoring activities to assure compliance with the regulations of the Department of Labor under the Federal Labor Standards.

(b) City shall provide all documents, reports and technical assistance necessary to Borrower to ensure compliance with the Federal Labor Standards.

2.9 [INTENTIONALLY OMITTED.]

2.10 Flood Disaster Protection. This Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234), and the implementing regulations adopted pursuant thereto. No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Disaster Protection

Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

2.11 Relocation. This Agreement is subject to the requirements of Title II (Uniform Relocation Assistance) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD implementing regulations at 24 CFR Part 24 and Section 570.606. Borrower shall not undertake any of the work contemplated under this Agreement if relocation is involved without first obtaining written approval from City. Borrower shall inform affected persons of the relocation assistance policies and procedures set forth in the regulations at 24 CFR 42 and Section 570.606. The City acknowledges that the Property is owner occupied at the time of acquisition and neither the Seller nor its business is entitled to relocation benefits. The Seller will lease-back the Property for business operations which will not entitle it to relocation benefits.

2.12 Section 3 Clause. This Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, the HUD regulations issued pursuant thereto at 24 CFR Part 135, and any applicable rules and orders of HUD issued thereunder prior to the HUD authorization of the Funding Approval. Borrower shall cause or require to be inserted in full in all subcontracts for work financed in whole or in part with assistance provided under this Agreement, the Section 3 Clause.

2.13 Lead Based Paint. Any demolition or other work performed by Borrower for the construction or rehabilitation of residential structures, if any, with assistance provided under this Agreement shall be made subject to the provisions of the Lead-Based Paint Poisoning Prevention Act (42 USC 4831(b)), and the provisions for the elimination of lead-based paint hazard under 24 CFR Part 570. Borrower shall be responsible for the inspections and certifications required under Section 35.24 thereof.

2.14 Fidelity Bond. Any officers, employees and agents of Borrower handling or having access to funds or authorization to sign or countersign checks shall be covered by a blanket fidelity bond in the amount of the Loan and issued by a corporate surety authorized to do business in the State of California. Said bond shall not be cancelled or modified except upon thirty (30) days written notice to City.

2.15 Architectural Barriers Act. Borrower shall comply with the Architectural Barriers Act of 1968, 42 USC Section 4151, and the standards prescribed thereunder. City will be responsible for conducting inspections to insure compliance with these specifications by Borrower.

2.16 Compliance with Air and Water Acts. This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 U.S.C. Chapter 85, the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.

In compliance with said regulations, Borrower shall cause or require to be inserted in full in all contracts and subcontracts with respect to any non-exempt transaction hereunder funded with assistance provided under this Agreement, the following requirements:

(a) A stipulation by the contractor or subcontractor that any facility to be utilized in the performance of any non-exempt contract or subcontract is not on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

(b) Agreement by the contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued hereunder.

(c) A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration for placement on the EPA List of Violating Facilities.

(d) Agreement by the contractor that he or she will include or cause to be included the criteria and requirements in paragraph (a) through (d) of this section in every non-exempt subcontract and requiring that the contractor will take such action as the government may direct as a means of enforcing such provisions.

In no event shall any amount of the assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

2.17 Bonds. If the demolition or other work requires bidding of contracting or subcontracting for construction or facility improvements, the following bonds shall be procured by Borrower.

(a) Bid Guaranty. The bid must be accompanied by a bidder's bond, certified check, or cashier's check in an amount not less than ten percent (10%) of the amount bid. The bidder's bond must be executed in favor of City, and the certified check or cashier's check must be made payable to City. Such sums shall be forfeit from said bond or certified check or cashier's check as are necessary to reimburse City for any costs it incurs should the successful bidder fail to enter into a contract. The amount of said bond or certified check or cashier's check shall not be deemed to constitute a penalty or liquidated damages. City shall not be precluded by such bond or certified check or cashier's check from recovering from the defaulting bidder, damages in excess of the amount of said bond or certified check or cashier's check incurred as a result of failure of the successful bidder to enter into a contract.

(b) Contract Bonds. As a part of the execution of the contract, Borrower's contractor shall furnish corporate surety bonds to the benefit of City of a surety company acceptable to City and authorized to do business in the State of California, as follows:

(1) Faithful Performance Bond - in a sum not less than one hundred percent (100%) of the total contract price as set forth in the Agreement, to guarantee the faithful performance of all covenants and stipulations of the contract. The bond shall contain a provision that the surety thereon waives the provision of Section 2819 of the Civil Code of the State of California.

(2) Payment Bond - in a sum not less than one hundred percent (100%) of the total contract price as set forth in the Agreement to guarantee the payment of wages and of bills contracted for materials, supplies, or equipment used in the performance of the contract. The bond shall be in accordance with the provisions of Sections 3225 to 3228, inclusive, and Sections 3247 to 3252, inclusive, of the Civil Code of the State of California, and any acts amendatory thereof, and shall, by its terms, inure to the benefit of all persons, companies or corporations entitled to file claims under Section 3181 of the Civil Code of the State of California. Said bond shall also contain a provision that the surety thereon waives the provisions of Section 2819 of the Civil Code of the State of California. Section 18806 of the State of California Revenue and Taxation Code shall also be applicable.

Subcontractors big guaranty and contract bonds may be waived if the total contract is less than ten thousand dollars (\$10,000.00).

2.18 Contractor Licensing. Borrower's attention is directed to Business and Professions Code Sections 7000 et seq. concerning the licensing of contractors. At the time Borrower enters into a contract and all times any demolition or other work is being performed, all contractors and subcontractors shall have a valid license issued by the Contractors State License Board in the classification stated in the Special Provisions. Contractors and all subcontractors shall be licensed in accordance with the laws of this State and any contractor or subcontractor not so licensed is subject to penalties imposed by such laws.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A LATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF BORROWER

3.1 Representations and Warranties. The Borrower hereby represents and warrants to the City as follows:

(a) Organization. Resources for Community Development is a duly organized, validly existing California nonprofit corporation and is in good standing under the laws of the State of California.

(b) Authority of Borrower. The Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver this Agreement, the Note, the Deed of Trust, the Regulatory Agreement, and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement, the Note and all other documents or instruments executed and delivered, or to be executed and delivered, by the Borrower pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Borrower, and all actions required under the Borrower's respective organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement, the Note and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken (to the extent such actions are required as of the date of the executions and delivery of the above-named documents).

(d) Valid Binding Agreements. This Agreement, the Note, the Deed of Trust, the Regulatory Agreement, and all other documents or instruments which have been executed and delivered by the Borrower pursuant to or in connection with this Agreement constitute, or if not yet executed or delivered, will constitute when so executed and delivered, legal, valid and binding obligations of the Borrower enforceable by and against it in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and general principals of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement, the Note, the Deed of Trust or Regulatory Agreement by the Borrower or of any other documents or instruments executed and delivered, or to be executed and delivered by the Borrower, pursuant to this Agreement, nor the performance by the Borrower of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever, to the knowledge of Borrower, binding on the Borrower, or any provision of the organizational documents of the Borrower, or will conflict with or constitute a breach of or a default under any agreement to which the Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of the Borrower, other than liens established pursuant hereto.

(f) Compliance with Laws; Consents and Approvals. The demolition and all other work performed with respect to the Housing Project will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency as applicable. Borrower shall, at its sole cost and expense, comply with all applicable municipal, county, state, and federal

requirements including but not limited to all regulations relating to financial and contractual procedures, now in force, or which may hereafter be in force, pertaining to any and all activities contemplated under this Agreement, including but not limited to the regulations set forth in 24 CFR Part 570 and 2 CFR Part 200.

(g) Pending Proceedings. The Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower, or the Housing Project, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Borrower, materially and adversely affect the Borrower's ability to repay the Loan.

(h) Financial Information. All financial data and information made available by the Borrower to the City fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of the Borrower from that shown by any financial data or information provided to the City.

(i) Sufficient Funds. With this Loan, the Borrower will use best efforts to hold or secure sufficient funds and/or binding commitments for sufficient funds to pay expenses and costs for the acquisition of the Property and the demolition of the Existing Improvements on the Property, and any other work to be performed on the Property.

ARTICLE 4. DEFAULTS AND REMEDIES

4.1 Event of Default. The following shall constitute an event of default ("Default"):

(i) a representation or warranty made or given in this Agreement, the Note, the Deed of Trust or the Regulatory Agreement proves to be false or misleading; or (ii) material failure or delay by Borrower to perform any covenant, condition or provision of, or in the event of any other Default under, this Agreement, the Note, the Regulatory Agreement, the Deed of Trust, or any other document affecting the Housing Project within the timeframes required by this Agreement.

(a) Borrower shall be in Default under this Agreement if it fails to perform any material term or condition of, or in the event of any other Default under, this Agreement, the Note, the Deed of Trust or the Regulatory Agreement, and after receipt of written notice of such failure to perform, fails to cure the breach within thirty (30) days of receipt of said notice, or in the event such breach cannot be cured within thirty (30) days, fails to immediately commence and diligently prosecute such cure until said breach has been fully remediated. If Borrower Defaults with regard to any provision of this Agreement, and such Default has not been cured as provided above, the City may terminate this Agreement and Borrower shall be liable to the City for repayment of all amounts due and owing under the Note and Deed of Trust plus any damages caused by such Default.

(b) Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies or deprive either such party of its

rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

(c) The City shall give any limited partner of the Borrower written notice of any Default hereunder concurrently with written notice to the Borrower. Any limited partner of the Borrower shall have the right, but not the obligation, to cure a Default by the Borrower provided that such cure shall occur within the same period afforded for the Borrower's cure of a Default. The City shall accept any cure offered by the limited partner of the Borrower as if the same were made by the Borrower. Neither giving nor failing to give Notice to any limited partner pursuant to this section will affect the validity of any Notice given by City to limited partner.

4.2 Remedies. Upon the happening of an event of Default, the non-defaulting party may pursue any remedy allowed at law or in equity, including but not limited to, accelerating payment under the Note or applying to any State court for specific performance of this Agreement. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative; and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Default or any other Default by the other party.

ARTICLE 5. MISCELLANEOUS PROVISIONS

5.1 Conflict of Interest.

(a) In accordance with 24 CFR 570.611, Borrower certifies that no member, officer, or employee of Borrower, or its designees or agents, who exercises any functions or responsibility with respect to the program during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. Individuals associated with Borrower are prohibited from using positions with City for purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(b) In accordance with 24 CFR 570.611, Borrower shall incorporate, or cause to be incorporated, in all subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

(c) Borrower is responsible to notify City in writing immediately in regard to any conflict or potential conflict of interest. City shall review on a case-by-case basis to determine if a conflict or potential conflict exists, and any resulting exception requests for conflict of interest.

5.2 Civil Rights Covenant. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and HUD regulations with respect thereto including the regulations under 24 CFR Part 1. In the sale, lease, or other transfer of and acquired, cleared, or improved with assistance provided under the Agreement, Borrower shall

cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that City and the United States are beneficiaries of and entitled to enforce such covenant. Borrower, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

5.3 No Discrimination. Borrower shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, religion, sex, sexual preference, national origin, ancestry or physical or mental handicap, as more specifically set forth in Section 570.602 of the aforesaid HUD Regulations. During the performance of this contract Borrower agrees as follows.

(a) No person in the United States shall, on the grounds of race, color, religion, national origin, sex, sexual preference, ancestry, or physical or mental handicap be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this agreement and agrees to comply with the City's Anti-Discrimination Policy.

(b) Borrower will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual preference, national origin, ancestry, or physical or mental handicap. Borrower shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual preference, national origin, ancestry, or physical or mental handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause.

(c) Borrower will, in all solicitations or advertisements for employees placed by or on behalf of Borrower, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual preference, national origin, ancestry, or physical or mental handicap.

(d) Borrower will send to each labor union or representative of workers with which it has collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers representatives of Borrower's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) Borrower shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) Borrower will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Department of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.

(g) In the event of Borrower's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated or suspended in whole or in part, and Borrower may be declared ineligible for further government contracts or federally assisted construction contract procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) Borrower will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Borrower will take such actions with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event Borrower becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Department, Borrower may request the United States to enter into such litigation to protect the interests of the United States.

(i) Borrower will refrain from entering into any subcontract subject to Executive Order 11246 of September 24, 1965, (and the provisions of 24 CFR. Part 570.609, 24 CFR. Part 5.105(c) for procurement activities and 2 CFR. 2424 for non-procurement activities) with a subcontractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violations of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Department or Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. If Borrower fails or refuses to comply with these undertakings, City may take any or all of the following actions: cancel, terminate or suspend in whole or in part the grant; refrain from extending any further assistance to the Borrower under the program with respect to which the failure or refusal occurred until satisfactory assurance of the future compliance has been received from such Borrower; and refer the case to the Department of Justice for appropriate legal proceedings.

5.4 Debarment or Suspension. Borrower must certify in form and content satisfactory to City that neither it nor any of its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the funds pursuant to this Agreement on the Effective Date. In addition, Borrower will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of One Hundred Thousand Dollars (\$100,000.00) is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities in addition to obtaining the certification of each contractor or subcontractor whose bid is accepted.

5.5 No Member Liability. No member, official, director, employee or agent of the City shall be personally liable to Borrower in the event of any Default or breach by the City or for any amount which may become due to Borrower or on any obligations under the terms of this Agreement.

5.6 Legal Actions.

(a) In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions shall be instituted in the Superior Court of Santa Clara County, State of California.

(b) In the event that any legal action is commenced by the Borrower against the City, service of process on the City shall be made by personal service upon the City Manager or City Clerk, or in such other manner as may be provided by law. In the event that any legal action is commenced by the City against the Borrower, service of process on the Borrower shall be made in such manner as may be provided by law.

5.7 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative; and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Default or any other Default by the other party.

5.8 Assignment. This Agreement is not assignable by Borrower, either in whole or in part, without the City's prior written consent.

The City retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of the Borrower's duties and obligations hereunder. In addition, the City may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

The terms, conditions and provisions herein contained shall, subject to the provisions as to assignments, apply to and bind the successors, executors, administrators and assigns of all the parties hereto

ARTICLE 6. GENERAL

6.1 Notices. Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below:

Borrower: Sango Court, L.P.
2220 Oxford Street
Berkeley, CA 94704
Attn: Executive Director

With a copy to: Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD 21044
Attn: General Counsel

Gallagher Evelius & Jones LLP
218 N. Charles Street, Suite 400
Baltimore, MD 21201
Attn: Kenneth S. Gross, Esq.

City: City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035
Attn: City Manager

6.2 No Waiver. No failure to enforce or delay in enforcing or exercising any right or remedy available under this Agreement shall impair the exercise of such right or remedy or the exercise of a similar right or remedy on a subsequent occasion.

6.3 Severability. Should any provision of this Agreement be found invalid by a court or other body of competent jurisdiction, said invalidity or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force to the maximum extent possible.

6.4 Titles and Headings. The titles and headings in this Agreement are for convenience only and shall not be construed to affect the meaning or construction of any provision of this Agreement.

6.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6.6 Attorneys' Fees. The prevailing party shall be entitled to receive the amount of its legal expenses, including reasonable attorneys' fees, expert legal fees and other legal costs and expenses, in the event of any legal action brought under or to enforce the provisions of this Agreement.

6.7 Signs; Publicity. During the demolition and construction period, the City may place or require to be placed signs at the site of the Housing Project stating the City is providing financing. The signs shall indicate in a typeface and size commensurate with its funds that the City is a source of financing.

Any publicity generated by Borrower for the demolition and other work funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of City in making the Housing Project possible. The words "City of Milpitas" will be explicitly stated in any and all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interview, and newspaper articles

6.8 Force Majeure. In addition to specific provisions of this Agreement, performance by either party shall not be deemed to be in Default where delays or Defaults are due to war, acts of terrorism, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation or any other similar causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause set forth in this Section will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) business days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) business days of receipt of the notice.

6.9 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by the City, the City Manager or his or her designee is authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise.

6.10 Certificate of Drug-Free Workplace. Borrower shall complete and submit to the City the Certificate for a Drug-Free Workplace (HUD form 50070), and comply with the provisions set forth in said document.

6.11 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

6.12 Complete Agreement; Amendments.

(a) This Agreement, the exhibits and the documents referenced in this Agreement constitute the entire understanding and agreement of the parties, and supersede all negotiations or previous agreement between the parties with respect to all or any party of the subject matter hereof.

(b) This Agreement may be amended only by a writing signed by authorized representatives of the City and the Borrower; the City Manager shall be authorized to act on behalf of the City.

6.13 Exhibits.

LIST OF EXHIBITS

- EXHIBIT A: Description of the Property
- EXHIBIT B: Form of Promissory Note
- EXHIBIT C: Form of Deed of Trust
- EXHIBIT D: Form of Rent Limitation and Regulatory Agreement

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City and the Borrower have executed this Agreement as of the date first set forth above.

CITY:

CITY OF MILPITAS

Dated: 2/1/22

BY: 
Steven G. McHarris, City Manager

ATTEST

BY: 
Wendy Wood, City Clerk

APPROVED AS TO FORM AND CONTENT

BY: 
Christopher J. Diaz, City Attorney

BORROWER:

SANGO COURT, L.P.,
a California limited partnership

By: RCD GP III LLC,
a California limited liability company,
its general partner

By: RESOURCES FOR
COMMUNITY DEVELOPMENT,
a California nonprofit public
benefit corporation,
its sole member/manager

By: _____
Daniel Sawislak,
Executive Director

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

On February 1, 2022 before me, Veronica R. Bejines, Notary Public
(insert name and title of the officer)

personally appeared Steven G. McHarris
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Veronica R. Bejines (Seal)

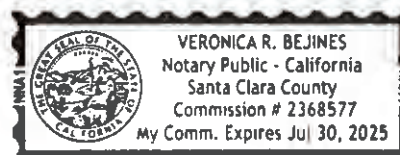


EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL 5, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 22, 1974 IN BOOK 338 OF MAPS, AT PAGE(S) 42.

APN: **086-36-013**

Exhibit A

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EXHIBIT B
FORM OF PROMISSORY NOTE
[CDBG LOAN]

(Sango Court Project)

\$299,097.00

February 1, 2022
Milpitas, California

For value received, SANGO COURT, L.P., a California limited partnership ("Borrower" or "Maker"), promises to pay the CITY OF MILPITAS, or order ("City" or "Payee"), the total cumulative amount not to exceed TWO HUNDRED NINETY-NINE THOUSAND NINETY-SEVEN AND 00/100 DOLLARS (\$299,097.00) (the "Loan"), or so much as may be disbursed by the City from time to time pursuant to Section 1.5 of the Agreement (defined in Section 1, below) for the acquisition of the Property and demolition of the Existing Improvements, up to a maximum cumulative principal amount not to exceed the Loan amount set forth above. So long as Borrower is not in default under the Agreement or this Note, interest shall accrue under this Note at the rate of three percent (3%) per annum, simple interest.

1. City and Borrower entered into that certain Loan Agreement, dated _____, 2022 (the "Agreement") whereby the City agreed to advance to the Borrower \$299,097.00 in CDBG funds to pay for costs associated with the acquisition of that certain property described in the Loan Agreement as the Property, and demolition of the Existing Improvements on the Property, for the construction and development of a 102-unit (each a "Unit" and collectively, the "Units") affordable rental housing facility to be rented to qualified families, which may include veterans of the United States military (the "Housing Project"). All of the Units in the Housing Project will be rented to extremely-low and very-low income households. The terms and conditions of the Agreement, which, among other things, allow for acceleration of this Note upon the occurrence of certain events of default, are hereby incorporated by reference. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

2. Loan. This promissory note (this "Note") evidences the total Loan in the amount not to exceed TWO HUNDRED NINETY-NINE THOUSAND NINETY-SEVEN DOLLARS (\$299,097.00), representing funds advanced to the Borrower under the Agreement.

3. Deed of Trust. Payment of this Note is secured by a deed of trust, assignment of rents, security agreement and fixture filing (the "Deed of Trust") from Borrower to City upon the Housing Project.

4. Affordable Housing Project. The Housing Project shall be maintained and operated in accordance with an Rent Limitation and Regulatory Agreement by and between the City and Borrower, to be recorded against the Borrower's leasehold interest in the Property upon acquisition of the Property by Borrower ("Regulatory Agreement").

Exhibit B

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5. Maturity Date. All principal and interest due hereunder shall be due and payable in full upon the earlier of (i) the occurrence of any Default under the Agreement, the Note, the Deed of Trust, or the Regulatory Agreement that remains uncured after the expiration of the applicable notice and cure periods, or (ii) Borrower's abandonment of the Housing Project, or (iii) sale or transfer of its interest in the Agreement or the Housing Project, other than a transfer permitted under the Agreement or the Regulatory Agreement; or (iv) fifty-five (55) years after the date of receipt of the certificate of occupancy but in all events no later than December 31, 2079 (the "Maturity Date").

6. Repayment. Beginning at the end of Borrower's first fiscal year following the date of this Promissory Note, Borrower shall make annual payments of principal and interest, if any, to the City in an amount equal to the Residual Receipts Payment defined herein. The payments described hereinabove shall be paid to City no later than one hundred twenty (120) days after the end of Borrower's fiscal year. Residual Receipts Payments received by City shall be credited first to accrued but unpaid interest, then to current interest due and owing, and lastly to principal.

A. The "Residual Receipts Payment" shall equal a proportional share of the Residual Receipts, as described more fully below. The Residual Receipts Payment as set forth herein constitutes the cumulative annual payment due to the City under this Note. "Residual Receipts" shall equal net Cash Flow, as defined below.

B. For the purposes of this Note, "Cash Flow" shall mean Project Gross Receipts less Project Permitted Expenses:

i. "Project Gross Receipts" is defined as all income derived from the Housing Project (excluding loan proceeds, insurance proceeds [other than those described below], capital contributions, tenant security deposits, and any interest earned on said deposit), and includes, without limitation:

1. All rents (including rent on commercial or common space within the Housing Project) and rent subsidies, if any;
2. interest on reserves, unless such interest remains in the applicable reserve account;
3. receipts from laundry, parking, or other services for which a fee is charged; and
4. insurance proceeds or condemnation awards received by Borrower after casualty to or condemnation of the Housing Project; provided, however, Borrower shall not be deemed to have "received" (nor shall Project Gross Receipts include) all or any portion of insurance proceeds or condemnation award that is applied by Borrower or a senior lender of Sources of Funding (as defined in the Housing Authority Construction and Permanent Loan Agreement), towards

Exhibit B

payment of costs and expenses or in payment of outstanding principal, interest, and/or charges under the senior lender's loan or deed of trust securing the loan.

ii. "Project Permitted Expenses" is defined as all reasonable and actual costs and expenses of operating, managing and maintaining the Housing Project, including without limitation:

1. debt service payments and fees currently due or payable on a non-optional basis on any Sources of Funding including, without limitation, on the JPMorgan Chase Construction Loan, the State HCD MHP Loan, the Housing Trust Silicon Valley Loan, and the approved Administrative Fees payable in connection therewith.
2. payments for supportive services to Project residents, including without limitation the salary of on-site service coordinators and supervision of such service staff and any other costs related to any services required by any regulatory agreement or similar document or as approved by the City;
3. payments for property management staffing, including without limitation the salary of on-site property managers and supervision of such managers and any other costs related to any property management function required by any regulatory agreement or similar document or as approved by the City;
4. property management, service management, and accounting and administration fees, and reimbursements in amounts in accordance with industry standards for similar developments, which shall include tax credit shortfall payments;
5. deposits to operating, replacement, transition reserve, or any other reserve accounts which are either (i) commercially reasonable, or (ii) required by the lenders of the Sources of Funding or as required under the Borrower's Partnership Agreement;
6. costs of restoring the Housing Project after damage, destruction or condemnation;
7. Housing Project organizational costs (e.g., annual franchise tax payments) and direct costs associated with accounting, tax preparation and legal fees of Borrower incurred in the ordinary course of business;
8. any extraordinary costs or expenses approved by City;
9. maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting, and decorating,

Exhibit B

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cleaning, common systems repairs, general repairs, janitorial supplies, and others, and costs of restoring the Housing Project after damage, destruction or condemnation;

10. Housing Project real estate taxes (if property tax welfare exemption become ineligible) and other taxes, assessments and impositions that are not exempt under the welfare exemption;
 11. reasonable advertising, marketing and promotional expenses or disbursements connected with the rental of the units;
 12. current and accrued partnership management fee with annual earnings in the amount of \$33,168 increasing by 3.5% annually, and current and accrued limited partner asset management fee with annual earnings in the amount of \$5,000 increasing by 3.5% annually, in the first year of the Housing Project operations following the Commencement Date; payment of any credit adjusters due to the Limited Partner pursuant to the Partnership Agreement; repayment of any limited partner loans and general partner operating deficit loans pursuant to the Partnership Agreement, any advances by partners required under the Partnership Agreement, if applicable, of Borrower and any fees to partners required under the Partnership Agreement of the Borrower;
 13. Current and accrued tenant supportive services fees, billed quarterly in the annual amount of \$203,422 and increasing by no more than 2.5% each calendar year, or as otherwise amended in writing;
 14. utility services not paid for directly by the tenants, including but not limited to water, sewer, trash collection, gas and electricity;
 15. payment of transit passes for residents;
 16. the Cash Developer Fee and the Priority Deferred Developer Fee (as such terms are defined in the Promissory Note associated with the County Loan;
 17. premiums for property damage and liability insurance and other insurance required by the lenders of the Sources and Funding; and
 18. ground lease rent payable pursuant to the Ground Lease.
- iii. "Project Permitted Expenses" do not include the following items (or, to the extent that such items have been included in Project Permitted Expenses, the following items shall be subtracted out; for example, if funds are withdrawn from operating reserves and spent on operating expenses, either those expenses would not be included in Project Permitted Expenses or those expenses would be offset by a deduction for the amount withdrawn from

reserves): (a) non-cash expenses, including without limitation, depreciation; (b) funds expended from reserves, except to the extent such reserves have previously been included in Project Gross Receipts; (c) any penalties or interest resulting from Borrower's failure to pay when due any sums that Borrower is obligated to pay to third parties (e.g., penalties and interest for late payment of real property taxes); and (d) Deferred Developer Fee (as defined in the County Loan Agreement) amounts.

(a) Payment of any fees or expenses or of any portion of the Cash Flow to Borrower, excepting the allowable property management fee and partnership management and asset management fees payable to the general partner and investor limited partner of the Borrower, which is deductible in computing Cash Flow;

(b) Income taxes imposed upon Borrower's income; and

(c) Payment of interest on any indebtedness of Borrower to any affiliate of Borrower (individual or entity) or to any other third-party lender or partner not otherwise approved by City;

(d) Depreciation, cost recovery, amortization and similar items which do not involve the expenditure of cash.

C. City acknowledges that Borrower will be making other separate promissory notes, in favor of the County of Santa Clara, in the original principal amount of \$9,100,000 (the "County Note"), in favor of the City of Milpitas Housing Authority, in the original principal amount of \$6,500,000 (the "Housing Authority Note"), in favor of the California Department of Housing and Community Development ("HCD") in the original principal amount of \$5,000,000 (the "Home Note") and in favor of HCD in the original principal amount of \$14,549,907 (the "MHP Note") which promissory notes are intended to be paid out of Residual Receipts: The County Note, Housing Authority Note, Home Note, MHP Note and this Note are collectively referred to as the "Residual Receipts Notes." The Residual Receipts Payment shall be allocated to payments required under the Residual Receipts Notes on a proportional basis, based on the original principal amount of each of said Residual Receipts Notes, provided that the MHP Note and Home Note shall share proportionately with the County Note, Housing Authority Note and this Note in the first 50% of Residual Receipts and the County Note, Housing Authority Note and this Note shall share proportionately in an additional 16.67% of Residual Receipts. Upon the repayment in full of any one of the Residual Receipts Notes, the Residual Receipts Payment allocated to such Note that has been repaid shall be allocated to payments under the remaining unpaid Residual Receipts Notes until such time that all Residual Receipts Notes have been repaid in full.

7. Maker shall deliver quarterly balance sheets showing all revenues and expenses of the Project. An audited financial statement shall be delivered within 120 days of the end of each fiscal year of the Housing Project along with payment of the Residual Receipts Payment due to Holder. Holder shall have the right to inspect and audit the books and records concerning the

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calculation of the Residual Receipts Payment and to object within 90 days from receipt of the audited financial statement. Failure to timely object shall be deemed acceptance. If Holder does object, Holder shall specify the reasons for disapproval. Maker shall have 30 days to reconcile any disapproved item. If Maker and Holder cannot agree on the amount of the Residual Receipts Payment, an independent auditor mutually selected by Maker and Holder shall resolve any disputed items. The cost of the auditor shall be shared equally by Maker and Holder.

8. Maker shall prepare and submit to Holder a proposed annual operating budget for the management and operation of the Project no later than 60 days preceding the effective year of such budget. The proposed budget shall include a line item showing the projected Cash Flow from the Housing Project for the year. Holder will review the proposed budget and, if acceptable, approve it, which approval shall not be unreasonably withheld. If the budget is not acceptable, Holder shall specify the reasons for disapproval. The intent of this section is to provide Holder an opportunity to disapprove any unreasonable expenses which would diminish the Cash Flow from the Housing Project. Once approved, any changes to the budget which exceed 10% of the total budget shall require Holder's prior written consent, which consent shall not be unreasonably withheld

9. Borrower may prepay all or any part of this Note, without penalty, at any time during the term of this Note.

10. Payment Location. Payment shall be made in lawful money of the United States to the City at 455 E. Calaveras Blvd., Milpitas, CA 95035. The place of payment may be changed from time to time as the City may from time to time designate in writing.

11. Borrower hereby covenants and agrees that it shall maintain, or cause to be maintained, the Housing Project in a manner consistent with the applicable provisions set forth therefore in the City's Municipal Code, and shall keep the Housing Project reasonably free from any accumulation of debris or waste materials prior to, during and after construction. If, at any time, Borrower fails to maintain the Housing Project (reasonable wear and tear excepted), and has either failed to commence to cure such condition, or to diligently prosecute to completion the condition or the condition is not corrected after expiration of thirty (30) days from the date of written notice from City to Borrower, City may perform the necessary corrective maintenance, and Borrower shall pay such costs as are reasonably incurred for such maintenance. The City shall have the right to place a lien on the property should Borrower not reimburse City for such costs within sixty (60) days following City's written demand to Borrower for reimbursement of such costs. Borrower, on behalf of itself its heirs, successors and assigns, hereby grants to City and its officers, employees and agents, an irrevocable license to enter upon the Housing Project property to perform such maintenance during normal business hours after receipt of written notice from City as hereinabove described and Borrower's failure to cure or remedy such failure within thirty (30) days of such notice. Any such entry shall be made only after reasonable notice to Borrower, and City shall indemnify and hold Borrower harmless from any claims or liabilities pertaining to any such entry by City. Failure by Borrower to maintain the Housing Project in the condition provided in this Section 9 shall constitute a default under this Note and the Deed of Trust.

Exhibit B

12. The occurrence of any of the following shall constitute an event of default under this Note: (i) Borrower fails to pay any amount due hereunder within fifteen (15) days of its due date; (ii) Any other default by Borrower under this Note, or any default by Borrower under the Deed of Trust, the Loan Agreement, or the Regulatory Agreement after the expiration of applicable notice and cure periods, including default under the transfer and assignment restrictions; (iii) Any default by Borrower under any other loan document affecting the Housing Project or the property after the expiration of applicable notice cure periods provided; (iv) The refinance of any senior loan without City's prior written consent; (v) Borrower becomes insolvent or the filing or initiation of bankruptcy or insolvency proceedings by or against Borrower, whether voluntary or involuntary that is not dismissed within thirty (30) days of initiation, or if Borrower makes a general assignment for the benefit of creditors or states its inability to pay its debts as they mature; or (v) Borrower dissolves or liquidates.

13. Upon the occurrence of any event of default, following expiration of applicable notice and cure periods, or at any time thereafter, at the option of the City and without notice, the entire unpaid principal and interest owing on this Note shall become immediately due and payable. However, this option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of City's option. City's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. City's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof. City agrees that in the event any such default is cured by a general partner or limited partner of Borrower within the times set forth herein, it shall accept such cure as a cure of the default under this Note.

14. Default Interest Rate. At all times when Borrower is in Default hereunder by reason of Borrower's failure to pay principal due under this Note or any amounts due under the Deed of Trust securing this Note, the interest rate on the sums as to which Borrower is in Default (including principal, if City has elected to declare it immediately due and payable), shall be the lower of (i) two percent (2%) over the prime interest rate announced by Wells Fargo Bank, N.A., as of the date of the default, or (ii) the highest rate then allowed by law, commencing as of the date of the Default until paid in full, or until the Default has been cured, whichever is applicable.

15. Waivers. Borrower and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

16. Costs. Borrower agrees to pay immediately upon demand all reasonable costs and expenses of City including without limitation reasonable attorneys' fees:

(i) if after Default and the expiration of all notice and cure periods this Note is placed in the hands of an attorney or attorneys for collection;

Exhibit B

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(ii) if after a Default hereunder or under the Agreement, the Deed of Trust or the Regulatory Agreement, City finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Borrower, any guarantor or any other party liable therefor or to the protection of its rights under this Note, the Agreement, the Deed of Trust, the Regulatory Agreement or other loan document executed in connection with the Housing Project;

(iii) if Borrower seeks to have the Housing Project abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of this Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court; or

(iv) if Borrower shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental entity, affecting the Housing Project or the title thereto or the interest of the City under the Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, City shall be reimbursed by Borrower immediately upon demand for all reasonable costs, charges and reasonable attorneys' fees incurred by City in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Housing Project.

17. Notices. Any notice required or authorized under this Note shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below, or at any other address as that party may later designate by notice.

Borrower: Sango Court, L.P.
2220 Oxford Street
Berkeley, CA 94704
Attn: Executive Director

With a copy to: Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD 21044
Attn: General Counsel

Gallagher Evelius & Jones LLP
218 N. Charles Street, Suite 400
Baltimore, MD 21201
Attn: Kenneth S. Gross, Esq.

City: City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035
Attn: City Manager

18. Successors. This Note shall be binding upon Borrower, its successors, and assigns.

19. Governing Law. This Note shall be construed in accordance with and be governed by the laws of the State of California.

20. Severability. If any provision of this Note shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

21. No previous waiver and no failure or delay by Borrower in acting with respect to the terms of this Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this Note, the Deed of Trust or the obligations secured thereby. A waiver of any term of this Note, the Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the loan evidenced by this Note, the terms of this Note shall prevail.

22. In any action brought to enforce the obligations of Borrower under this Note, the Deed of Trust or any other instrument or agreement evidencing, securing or relating to the indebtedness evidenced by this Note, the judgment or decree shall be enforceable against Borrower only to the extent of its interest in the Property as defined in the Deed of Trust or its interest in any other security granted by Borrower as security for this Note, and City shall not

Exhibit B

seek any deficiency judgment against the Borrower or its partners. The foregoing provisions shall not prevent recourse to the collateral security for the loan or constitute a waiver, release or discharge of or otherwise affect the obligation to pay, any indebtedness evidenced by the loan documents or limit the right of any person to name the Borrower or any other person claiming an interest in or right to such collateral as party defendant in any action or suit for judicial foreclosure or in the exercise of any other remedy, including injunctive or other equitable relief, under any of the loan documents so long as no deficiency judgment shall be sought against the Borrower or its partners.

23. The foregoing limitation shall not apply to any and all loss, damage, liability, action, cause of action, cost or expense (including without limitation, reasonable attorneys' fees and expenses) incurred by City as a result of any (i) fraud or material misrepresentation under or in connection with the Loan, any Loan Document or amendment to any Loan Document; (ii) intentional bad faith waste of the Property; (iii) losses resulting from Borrower's failure to maintain insurance as required under the Deed of Trust; or (iv) misappropriation of any rents, security deposits, insurance proceeds, condemnation awards derived from the collateral security. If any of the foregoing events listed in (i) through (iv) occurs, City shall have the right to proceed directly against Borrower to recover any and all loss, damage, liability, action, cause of action, cost or expense (including without limitation, reasonable attorneys' fees and expenses) incurred by City.

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first written above.

BORROWER:

SANGO COURT, L.P.,
a California limited partnership

By: RCD GP III LLC,
a California limited liability company,
its general partner

By: RESOURCES FOR
COMMUNITY DEVELOPMENT,
a California nonprofit public
benefit corporation,
its sole member/manager

By: _____
Daniel Sawislak,
Executive Director

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EXHIBIT C**When Recorded Mail Document To:**

City of Milpitas
 455 E. Calaveras Blvd.
 Milpitas, CA 95035
 Attn: _____

Exempt from recording fees pursuant to
 Government Code Section 27383

APN: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SHORT FORM LEASEHOLD DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS SHORT FORM LEASEHOLD DEED OF TRUST, together with the **ADDENDUM TO DEED OF TRUST** attached hereto as Exhibit "B" and incorporated herein by this reference, both made as of February 1, 2022, between

SANGO COURT, L.P., a California limited partnership, herein called **TRUSTOR**, whose address is 2220 Oxford Street, Berkeley, CA 94704,

DOMA Title of California, Inc., a California corporation, herein called **TRUSTEE**, and

the CITY OF MILPITAS, a municipal corporation, herein called **BENEFICIARY**, whose address is 455 E. Calaveras Blvd., Milpitas, CA 95035.

WITNESSETH: That Trustor **IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS** to TRUSTEE IN TRUST, WITH POWER OF SALE, TRUSTOR'S LEASEHOLD INTEREST IN that **PROPERTY** in Santa Clara County, California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and apply such rents, issues and profits.

For the Purpose of Securing: 1. Performance of each agreement of Trustor incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by that certain Promissory Note, dated as of February 1, 2022, and any extension or renewal thereof, in the principal sum not to exceed **Two Hundred Ninety-Nine Thousand Ninety-Seven Dollars (\$299,097.00)** executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

To Protect the Security of this Deed of Trust, Trustor Agrees: By the execution and delivery of this Deed of Trust and the Promissory Note secured hereby, that provisions (1) to (14),

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inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County October 18, 1961, and in all other counties October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	435	684	Kings	792	833	Placer	895	301	Sierra	29	335
Alpine	1	250	Lake	362	39	Plumas	151	5	Siskiyou	468	181
Amador	104	348	Lassen	171	471	Riverside	3005	523	Solano	1105	182
Butte	1145	1	Los Angeles	T2055	899	Sacramento	4331	62	Sonoma	1851	689
Calaveras	145	152	Madera	810	170	San Benito	271	383	Stanislaus	1715	456
Colusa	296	617	Marin	1508	339	San Bernardino	5567	61	Sutter	572	297
Contra Costa	3978	47	Mariposa	77	292	San Francisco	A332	905	Tehama	401	289
Del Norte	78	414	Mendocino	579	530	San Joaquin	2470	311	Trinity	93	366
El Dorado	568	456	Merced	1547	538	San Luis	1151	12	Tulare	2294	275
Fresno	4626	572	Modoc	184	851	Obispo			Tuolumne	135	47
Glenn	422	184	Mono	52	429	San Mateo	4078	420	Ventura	2062	386
Humboldt	657	527	Monterey	2194	538	Santa Barbara	1878	860	Yolo	653	245
Imperial	1091	501	Napa	639	86	Santa Clara	5336	341	Yuba	334	486
Inyo	147	598	Nevada	305	320	Santa Cruz	1431	494			
Kern	3427	60	Orange	5889	611	Shasta	684	528			
						San Diego	Series 2 Book 1961. Page 183887				

[NEED TO CONFIRM/INSERT NORTH AMERICAN TITLE COMPANY SHORT FORM DOT]

which provisions, identical in all counties, (printed on the attached unrecorded pages) are hereby adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that Trustor will observe and perform said provisions; and that the references to property, obligations and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

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The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

TRUSTOR:

SANGO COURT, L.P.,
a California limited partnership

By: RCD GP III LLC,
a California limited liability company,
its general partner

By: RESOURCES FOR
COMMUNITY DEVELOPMENT,
a California nonprofit public
benefit corporation,
its sole member/manager

By: _____
Daniel Sawislak,
Executive Director

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ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____, Notary Public
(insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

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DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious deed of trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep said property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

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DO NOT RECORD

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such, rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

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DO NOT RECORD

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash of lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the proceeding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and pages where this Deed is recorded and the name and address of the new Trustee.

(13) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of

DO NOT RECORD

pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

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DO NOT RECORD

EXHIBIT A TO DEED OF TRUST

PROPERTY LEGAL DESCRIPTION

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL 5, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 22, 1974 IN BOOK 338 OF MAPS, AT PAGE(S) 42.

APN: 086-36-013

Exhibit A

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EXHIBIT B**ADDENDUM TO DEED OF TRUST**

This Addendum to Deed of Trust is part of the Deed of Trust dated February 1, 2022, to which it is attached, by and between SANGO COURT, L.P., a California limited partnership, as “**Trustor**,” and the CITY OF MILPITAS, a municipal corporation, as “**Beneficiary**.” The following provisions are made a part of the Deed of Trust:

1. **No Discrimination.** The Trustor covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

2. **Subordination.** Beneficiary agrees that the terms and conditions of this Deed of Trust shall be subject to and subordinate to the terms and conditions of financing approved by City, obtained by Trustor through a lender reasonably acceptable to Beneficiary pursuant to the terms of such subordination agreement executed by Beneficiary and such lender; provided the total aggregate amount of financing secured by the Trustor together with the indebtedness secured by this Deed of Trust shall not exceed the total appraised value of the Property.

3. **Default.** Notwithstanding any other provisions in this Deed of Trust, the occurrence of any of the following shall constitute an event of default under the Promissory Note secured by this Deed of Trust and this Deed of Trust, and a default may be declared under this Deed of Trust solely upon the occurrence of any of the following: Any failure by Trustor to (i) pay any amount due or perform any obligation under the Promissory Note within fifteen (15) days of its due date; (ii) perform any of the terms or conditions of that certain Rent Limitation and Regulatory Agreement, recorded concurrently herewith, by and between Trustor and Beneficiary, after expiration of applicable notice and cure periods; or (iii) perform any of the terms or conditions of that certain Community Development Block Grant Loan Agreement, dated February 1, 2022, by and between Trustor and Beneficiary after any applicable notice and cure periods. The Beneficiary shall give any limited partner of the Trustor written notice of any default hereunder concurrently with written notice to the Borrower. Any limited partner of the Trustor shall have the right, but not the obligation, to cure a default by the Borrower provided that such cure shall occur within the same period afforded for the Trustor’s cure of a default. The Beneficiary shall accept any cure offered by the limited partner of the Trustor as if the same were made by the Trustor. Neither giving nor failing to give Notice to any limited partner pursuant to this section will affect the validity of any Notice given by Beneficiary to limited partner.

4. **Casualty.** Beneficiary acknowledges and agrees that Trustor shall have the absolute right, subject to the rights of any senior lienholders, to prosecute, settle, and adjust any insurance claims, and use the proceeds thereof, provided Trustor holds and applies any insurance

Exhibit C

proceeds following a casualty toward the restoration or rebuilding of the improvements on the Property.

5. Hazardous Substances.

(a) As used in this Section 5, the following terms shall have the following meanings:

(i) “Environmental Laws” means all statutes, ordinances, orders, rules, regulations, plans, policies or decrees and the like now or hereafter in effect relating to (A) Hazardous Substance Activity or Hazardous Substances; (B) the generation, use, storage, transportation or disposal of Hazardous Substances, or solid waste; or (C) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health, safety or welfare, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) (“CERCLA”); the Hazardous Material Transportation Act (49 U.S.C. Section 180 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); the Clean Air Act (42 U.S.C. Section 740 et seq.); the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); the Occupational Safety and health Act (29 U.S.C. Section 651 et seq.); the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); the Porter-Cologne Water Quality Control Act (California Water Code Section 13020 et seq.); the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health & Safety Code Section 25249.5 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.); the Hazardous Waste Control Act (California Health & Safety Code Section 25100 et seq.); The California Environmental Quality Act (California Public Resources Code Section 2100 et seq.); and the rules, regulations and ordinances of the City of Milpitas or any applicable federal, state and local agencies or bureaus, as amended from time to time.

(ii) “Foreclosure Transfer” means the transfer of title to all or any part of the Property or the Trust Estate at a foreclosure sale under the Deed of Trust, either pursuant to judicial decree or the power of sale contained in the Deed of Trust, or by deed in lieu of such foreclosure.

(iii) “Hazardous Substances” means (A) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a “hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “acutely hazardous waste,” “radioactive waste,” “infectious waste,” “biohazardous waste,” “toxic substance,” “pollutant,” “toxic pollutant,” “contaminant” as well as any other formulation not mentioned herein intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “EP toxicity” or “TCLP toxicity”; (B) petroleum, natural gas, natural gas liquids, liquified natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) and ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (C) “hazardous substance” as defined in Section 2782.6(d)

Exhibit C

of the California Civil Code; (D) "waste" as defined in Section 13050(d) of the California Water Code; (E) asbestos in any form; (F) urea formaldehyde foam insulation; (G) polychlorinated biphenyls (PCBs); (H) radon; and (I) any other chemical, material, or substance that, because of its quantity, concentration, or physical or chemical characteristics, exposure to which is limited or regulated for health and safety reasons by any governmental authority, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

(iv) "Hazardous Substance Activity" means any actual, proposed, or threatened use, storage, holding, existence, location, release (including, without limitation, any spilling, leaking, leaching, pumping, pouring, emitting, emptying, dumping, disposing into the environment, and the continuing migration into or through soil, surface water, groundwater or any body of water or the air), discharge, deposit, placement, generation, processing, construction, treatment, abatement, removal, disposal, disposition, handling, or transportation of any Hazardous Substance from, under, in, into, or on the Property, including without limitation, the movement or migration of any Hazardous Substances from surrounding property, surface water, groundwater or any body of water, or the air under, in, into or onto the Property and any residual Hazardous Substances contamination in, on, or under the Property.

(v) "Losses" means all charges, losses, liabilities, damages (whether actual, consequential, punitive, or otherwise denominated), costs, fees, demands, claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, causes of action, assessments, fines, penalties, costs, and expenses of any kind or character, foreseeable and unforeseeable, liquidated and contingent, proximate and remote, including, without limitation, the following: (A) the reasonable fees and expenses of outside legal counsel; (B) the reasonable fees and expenses of accountants, third-party consultants, and other independent contractors retained by an Beneficiary; (C) costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions or any clean-up, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any non-governmental entity or person that is required by Environmental Laws or administrative ruling or directive because of the presence, suspected presence, release or suspected release of Hazardous Substances in violation of Environmental Laws in the air, soil, surface water or groundwater at the Property; (D) any and all diminution in value of the Property, loss of use or damage to the Property, or loss of profits or loss of business opportunity; and (E) reasonable costs and expenses of enforcing this Section 6.

(vi) "Environmental Losses" means Losses rising out of or as a result of: (A) the occurrence of any Hazardous Substance Activity; (B) any violation of any applicable Environmental laws relating to the Property or to the ownership, use, occupancy or operation thereof; (C) any investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity; or (D) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which directly or indirectly relates to, arises from or is based on any of the matters described in clauses (A), (B), or (C), or any allegation of any such matters.

(b) Trustor represents and warrants to Beneficiary that, to the best of Trustor's actual knowledge, no portion of the Property is being used or has ever been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Substances, nor have any Hazardous Substances migrated onto or from the Property; provided, however, that as of the date hereof, Trustor has not conducted an investigation or inquiry with respect to such matters. Neither the Property nor Trustor is in violation of or subject to any existing, pending or threatened investigation by any governmental authority under any Environmental Law. Trustor's prior and intended use of the Property will not result in the disposal or release of any Hazardous Substances on, under, about or to the Property or the migration of any Hazardous Substances from the Property. The foregoing representations and warranties shall be continuing and shall be true and correct for the period from the date hereof to the release of this Deed of Trust (whether by payment of the indebtedness secured hereby or foreclosure or action in lieu thereof), and these representations and warranties shall survive such release.

(c) Trustor represents and warrants to Beneficiary that Trustor has complied with all recommendations by any engineers retained by Trustor and all requirements of any applicable department of environmental resources, environmental protection agency or similar governmental agency, and there are no recommendations by said engineers or requirements ordered by said agency or any other governmental body for environmental investigation or cleanup with respect to the Property.

(d) On and after the date hereof, Trustor shall not (a) allow any Hazardous Substances to be installed, used, introduced, stored, treated, disposed of, generated, manufactured, discharged, dumped, transported or brought in, upon or over the Property in violation of applicable law; (b) allow any soil or ground water contamination or pollution with any Hazardous Substances on the Property in violation of applicable law; (c) allow any Hazardous Substances to migrate from the Property in violation of applicable law; (d) allow any Hazardous Substances to migrate onto the Property from any adjacent properties in violation of applicable law; or (e) allow or cause the Property to be in violation of, or to trigger a duly initiated and prosecuted investigation of the Property by any governmental authority under applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules or timetables contained in any local, state and/or federal laws, regulations, codes, ordinances, plans, administrative or judicial orders, decrees, judgments, notices or demand letters issued, entered, promulgated or approved thereunder relating to the environment, land use, water and air quality and Hazardous Substances ("**Environmental Requirements**").

(e) If the presence of any Hazardous Substances on the Property caused or permitted by Trustor results in any contamination of the Property, Trustor shall promptly take all actions, at its sole expense, as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Substances to the Property; provided that Beneficiary's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Property.

(f) At any time after the occurrence and during the continuance of any default under this Section 6, Beneficiary shall have the following rights and remedies, in addition to any other rights and remedies Beneficiary has under this Deed of Trust:

Exhibit C

(i) As provided in California Code of Civil Procedure Section 564, Beneficiary or its employees, acting by themselves or through a court appointed receiver may do any of the following: (i) enter upon, possess, manage, operate, dispose of, and contract to dispose of the Property or any part thereof; (ii) take custody of all accounts; (iii) negotiate with governmental authorities with respect to the Property's environmental compliance and remedial measures; (iv) take any action necessary to enforce compliance with environmental provisions, including spending Rent Payments to abate any environmental problem; (v) make, terminate, enforce or modify leases of part or all of the Property; (vi) contract for goods and services, hire agents, employees, and counsel, make repairs, alterations, and improvements to the Property necessary in Beneficiary's judgment to protect or enhance the security hereof; and/or (vii) take any and all other actions which may be necessary or desirable to comply with Trustor's obligations hereunder and under the Loan Documents. All sums realized by the receiver or Beneficiary under this subparagraph, less all costs and expenses incurred by either of them under this subparagraph, including attorneys' fees, and less such sums as Beneficiary or the receiver deems appropriate as a reserve to meet future expenses under this subparagraph, shall be applied on any indebtedness secured hereby in such order as Beneficiary shall determine. Neither application of said sums to said indebtedness, nor any other action taken by Beneficiary or the receiver under this subparagraph shall cure or waive any default or notice of default hereunder, or nullify the effect of any such notice of default. Beneficiary, or any employee or agent of Beneficiary, or a receiver appointed by a court, may take any action or proceeding hereunder without regard to the adequacy of the security for the indebtedness secured hereunder, the existence of a declaration that the indebtedness secured hereby has been declared immediately due and payable, or the filing of a notice of default.

(ii) With or without notice, and without releasing Trustor from any obligation hereunder, to cure any default of Trustor or in connection with any such default, Beneficiary or its agents, acting by themselves or through a court-appointed receiver, may enter upon the Property or any part thereof and perform such acts and things as Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the security hereof, including of any of Beneficiary's other rights: (i) to obtain a court order to enforce Beneficiary's right to enter and inspect the Property under California Civil Code Section 2929.5 (in respect of which the decision of Beneficiary as to whether there exists a release or threatened release of hazardous substance, as defined therein, onto the Property shall be deemed reasonable and conclusive as between the parties hereto); and (ii) to have a receiver appointed under California Code of Civil Procedure Section 564 to enforce Beneficiary's right to enter and inspect the Property for hazardous substances as defined therein. All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations which Beneficiary or its agents or employees may conduct, including the fees of engineers, laboratories, contractors, consultants, and attorneys, shall be paid by Trustor. All costs and expenses incurred by Trustee and Beneficiary pursuant to this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Note Rate, from the date they are incurred until said sums have been paid."

(iii) Beneficiary may seek a judgment that Trustor has breached its covenants, representations and/or warranties with respect to the environmental matters set forth above in this Section 5, by commencing and maintaining an action or actions in any court of

Exhibit C

competent jurisdiction for breach of contract pursuant to California Code of Civil Procedure Section 736, whether commenced prior to foreclosure of the Property or after foreclosure of the Property, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Beneficiary or advanced by Beneficiary (collectively, the “**Environmental Costs**”) relating to the cleanup, remediation or other response action required by applicable law or which Beneficiary believes necessary to protect the Property, it being conclusively presumed between Beneficiary and Trustor that all such Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remediation, or other response action respecting the Property were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Note Rate, from the date of expenditure until said sums have been paid. Beneficiary shall be entitled to bid, at any sale of the Property held hereunder, the amount of said costs, expenses and interest in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash.

(iv) As provided in California Code of Civil Procedure Section 726.5, Beneficiary may waive its lien against the Property or any portion thereof, to the extent such property is found to be environmentally impaired as defined therein, and to exercise any and all rights and remedies of an unsecured creditor against Trustor and all of Trustor’s assets and property for the recovery of any deficiency and Environmental Costs, including seeking an attachment order under California Code of Civil Procedure Section 483.010. Beneficiary and Trustor each represents and warrants for itself that it has no actual knowledge of any release of any Hazardous Substance (as defined in Section 726.5) on, to or under the Property. As between Beneficiary and Trustor, for purposes of California Code of Civil Procedure Section 726.5, Trustor shall have the burden of proving that Trustor or any related party (or any affiliate or agent of Trustor or any related party) did not cause or contribute to, and was not in any way negligent in permitting, any release or threatened release of the Hazardous Substance.

(v) Trustor acknowledges and agrees that notwithstanding any term or provision contained herein or in the Loan Documents, the Environmental Costs and all judgments and awards entered against Trustor pursuant to Section 5(f)(iv) above shall be exceptions to any nonrecourse or exculpatory provision of the Loan Documents, and Trustor shall be fully and personally liable for the Environmental Costs and such judgments and awards and such liability shall not be limited to the original principal amount of the obligations secured by this Deed of Trust, and Trustor’s obligations shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance, or any other transfer of the Property or this Deed of Trust.

(g) Trustor hereby agrees to indemnify, defend and hold harmless Beneficiary from and against any and all Environmental Losses.

Exhibit C

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TRUSTOR:

SANGO COURT, L.P.,
a California limited partnership

By: RCD GP III LLC,
a California limited liability company,
its general partner

By: RESOURCES FOR
COMMUNITY DEVELOPMENT,
a California nonprofit public
benefit corporation,
its sole member/manager

By: _____
Daniel Sawislak,
Executive Director

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____, Notary Public
(insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit C

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EXHIBIT D**When Recorded Mail Document To:**

City of Milpitas
 455 E. Calaveras Blvd
 Milpitas, CA 95035
 Attn: _____

Exempt from recording fees pursuant to
 Government Code Section 27383

APN: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**AMENDED AND RESTATED RENT LIMITATION AND REGULATORY
 AGREEMENT**

**CDBG AGREEMENT
 (SANGO COURT PROJECT)**

This Amended and Restated Rent Limitation and Regulatory Agreement (the "Agreement") is entered into as of February 1, 2022, by and between the City of Milpitas, a municipal corporation (the "City"), and Sango Court, L.P., a California limited partnership (the "Owner") (collectively the "Parties"), with reference to the following facts:

RECITALS

A. City has received funds from HUD under Title I of the Housing and Community Development Act of 1974, as amended (the "CDBG Funds"). The CDBG Funds must be used by the City in accordance with 24 CFR Part 570.

B. City and Owner have entered into that certain Amended and Restated CDBG Loan Agreement (the "CDBG Loan Agreement") whereby City has agreed to make a loan of CDBG Funds to Owner the "CDBG Loan") in the amount of Two Hundred Ninety-Nine Thousand Ninety-Seven and no/100 Dollars (\$299,097.00). The Loan shall be used to pay costs to acquire that certain property defined in Exhibit A hereto (the "Property") and demolish the existing improvements on the Property, for development of a 102-unit (each a "Unit" and collectively, the "Units") affordable rental housing facility to be rented to qualified tenants, including veterans of the United States military (the "Housing Project"). All of the Units in the Housing Project shall be rented to extremely-low and very-low income households (the "Qualifying Tenants"), in accordance with all applicable laws, rules, and regulations regarding the use of CDBG Funds for the benefit of low income persons and in compliance with this Regulatory Agreement. The Loan is secured by a Promissory Note (the "CDBG Note") and Deed of Trust (the "CDBG Deed of Trust") of even date herewith executed by Owner in favor of the City. The CDBG Loan Agreement, the CDBG Note and the CDBG Deed of Trust are referred to herein as the "CDBG Loan Documents." The CDBG Loan Documents will be Amended and Restated and recorded against Owner's leasehold interest in the Property.

Exhibit D

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C. The City has agreed to make the CDBG Loan on the condition that the Housing Project be constructed and maintained and operated in accordance with the restrictions concerning occupancy, operation, and maintenance of the Property that are set forth in this Agreement and in the CDBG Loan Documents.

D. The purpose of this Agreement is to regulate and restrict the rents and occupancy of the Units in the Housing Project to extremely-low and very-low income households in accordance with the requirements of the CDBG Loan Agreement. The covenants in this Agreement are intended to run with the land and be binding on the Owner and its successors and assigns in the Property.

NOW, THEREFORE, it is mutually agreed by and between the Parties as follows:

ARTICLE 1. DEFINITIONS AND EXHIBITS

1.1 Definitions. In addition to those terms defined in the Recitals, the terms listed here have the following meanings in this Agreement:

- (a) "Actual Household Size" means the actual number of persons in the household.
- (b) "Annual Household Income" means the total anticipated annual gross income of all adult persons living in a household, as calculated in accordance with TCAC policies and regulations, or a successor State or City housing program that uses a reasonably similar method.
- (c) "Assumed Household Size" means, for purposes of rent or housing cost calculations, an assumed household size of one person in a studio unit, two persons in a one bedroom unit, three persons in a two-bedroom unit, and four persons in a three-bedroom unit, except that during any period in which a TCAC regulatory agreement is recorded against the Project, Owner may use the occupancy assumptions used by TCAC in accordance with Section 2.3c below.
- (d) "CDBG" means HUD's Community Development Block Grant Program, as set forth at 24 CFR Part 570, as it may be amended from time to time.
- (e) "CDBG Assisted Units" means the units assisted and restricted in compliance with the CDBG program.
- (f) "CDBG Loan" has the meaning set forth in Paragraph B of the Recitals.
- (g) "CDBG Loan Agreement" has the meaning set forth in Paragraph B of the Recitals.

Exhibit D

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(h) "CDBG Loan Documents" has the meaning set forth in Paragraph B of the Recitals.

(i) "City" has the meaning set forth in first Paragraph of this Agreement.

(j) "Housing Project" has the meaning set forth in Paragraph B of the Recitals.

(k) "Extremely-Low Income Household" means a household with income not exceeding the 30% of area median income limit as calculated and based on the income data established periodically for Santa Clara County by HUD or any successor agency, published in the Federal Register, and adjusted for household size.

(l) "Low Income Household" means a household with income not exceeding the 60% of area median income limit as calculated and based on the income data established periodically for Santa Clara County by HUD or any successor agency, published in the Federal Register, and adjusted for household size.

(m) "Median Income" means the median income applicable to Santa Clara County and adjusted for household size, published annually by HUD.

(n) "Owner" has the meaning set forth in the first Paragraph of this Agreement.

(o) "Property" has the same meaning as set forth in Paragraph B of this Agreement.

(p) "Qualifying Tenant" means an Extremely-Low Income Household, a Very-Low Income Household, or Low Income Household, as applicable, earning no more than the maximum permissible annual income level allowed for the applicable Unit as set forth in Section 2.2 of this Agreement at initial occupancy, and legally occupying the applicable Unit pursuant to a valid rental agreement with Owner and in compliance with this Agreement.

(q) "Rent" means the total of monthly payments by the Tenants to the Owner for the following: use and occupancy of the Units and land and associated facilities, including parking; any separately charged fees, utility charges, or service charges assessed by the Owner and payable by the Tenant (not including security deposits and fees and charges resulting from any default by the Tenant or damage caused by the Tenant); and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Owner, and paid by the Tenant.

(r) "TCAC" means the California Tax Credit Allocation Committee.

(s) "Term" means the term of this Agreement, which is set forth in Section 5.8 of this Agreement.

Exhibit D

(t) “Unit” or “Units” means individually, or collectively as applicable, the 102 units of multifamily rental housing that are located in the Housing Project, all of which are to be affordable to Extremely-Low, Very-Low and Low Income Households, and one of which is set aside as a manager’s unit.

(u) “Very-Low Income Household” means a household with income not exceeding the 50% of area median income limit as calculated and based on the income data established periodically for Santa Clara County by HUD or any successor agency, published in the Federal Register, and adjusted for household size.

1.2 Exhibits. The following Exhibit is attached and incorporated into this Agreement:

(a) Exhibit A Legal Description of the Property

ARTICLE 2.

AFFORDABILITY AND LEASING RESTRICTIONS

2.1 Term of Leasing Restrictions. Owner acknowledges and agrees that the covenants and other leasing restrictions set forth in this Article will remain in full force and effect: (a) for the Term, and survive the prior repayment or other satisfaction of the CDBG Loan, termination of the CDBG Loan Agreement, or reconveyance of the CDBG Deed of Trust; (b) with respect to any Unit occupied by a Qualifying Tenant at expiration of the Term, until the Qualifying Tenant voluntarily vacates his/her Unit or is evicted lawfully for just cause. The requirements to comply with the provisions of Internal Revenue Code Section 42, including Section 42(h)(6)(E)(ii), are hereby acknowledged.

2.2 Income Restrictions for Units.

(a) Subject to the provisions to Section 2.3 below, the Annual Household Income of the Qualifying Tenants shall not exceed the following “Maximum Income Levels”:

(i) For 71 of the Units, thirty percent (30%) of Area Median Income, adjusted for Actual Household Size.

(ii) For 20 of the Units, fifty percent (50%) of Area Median Income, adjusted for Actual Household Size.

(iii) For 10 of the Units, sixty percent (60%) of Area Median Income, adjusted for Actual Household Size.

(iv) One (1) 2- bedroom Unit shall be set aside as a manager’s unit and shall not be income restricted so long as said Unit is occupied by an on-site property manager.

Exhibit D

(b) A Tenant who is a Qualifying Tenant at initial occupancy may not be required to vacate the Unit due to subsequent rises in household income, except as provided in Section 2.3. After the over-income Tenant vacates the Unit, the vacant Unit must be rented only to Qualifying Tenants to meet the requirements as provided in subparagraph 2.2(a).

2.3 Rent Restrictions.

(a) Maximum Rent charged to each Qualifying Tenant shall not exceed one-twelfth (1/12) of thirty percent (30%) of the Maximum Income Level for the Extremely-Low Income Household or Very-Low Income Household, as applicable to the Unit, adjusted for Assumed Household Size. Notwithstanding the foregoing, maximum Rent for Qualifying Tenants or Units for which Housing Choice Voucher/Section 8 assistance is available is the fair market rent established by Milpitas Housing Authority and HUD or other Governmental Agency with jurisdiction over the rental subsidy program.

(b) Unless prohibited under any applicable Law and/or the requirements of any tax credit or bond programs or the requirements of any other public lender providing financing to the Housing Project, each residential lease must provide for termination of the lease upon 120 days' prior written notice in the event that Owner's annual income certification indicates that the Tenant's household income exceeds 120 percent of Median Income.

(c) Subject to Section 2.3(d), annual Rent increases for Units will be limited as follows:

(i) for Units with Housing Choice Voucher/Section 8 or similar rental assistance, annual Rent increases may be up to the maximum amount approved by HUD and/or the Milpitas Housing Authority, for as long as rental assistance is available; and

(ii) for all other Units, except as permitted under Sections 2.3(c)(iii) and 2.3(d) below, annual Rent increases will be limited to the lesser of: (A) the amount which would result in a rent equal to the maximum rent permitted for the Unit under Section 2.3(a) or (B) the amount which corresponds to the percentage of the annual increase in Median Income published by HUD pursuant to Section 8 of the United States Housing Act of 1937; and,

(iii) for Units occupied by over-income Tenants, rent charged may not exceed thirty percent (30%) of the over-income Tenant's Annual Household Income, adjusted for Actual Household Size.

(d) Notwithstanding anything to the contrary contained herein, in the event of a foreclosure or deed in lieu of foreclosure under the senior deed of trust, or in the event of a loss or reduction of Section 8 Rental Subsidies and/or the VASH PBV's, the maximum household income of all Affordable Units shall be increased up to 60% Area Median Income, adjusted for household size appropriate to the unit, but only to the extent necessary for the Project to operate at a break-even net cash flow, as reasonably determined by the Authority, and the Maximum Rent for any Affordable Unit shall in no event exceed 30% of 60% Area Median income, as adjusted for household size appropriate to the unit (collectively, the "Affordability

Adjustments”). With respect to loss or reductions in Section 8 Rental Subsidies and/or the VASH PBVs only, the Affordable Adjustments shall continue only until Borrower has secured a substantially similar rental subsidy from the County or other sources. For purposes of this Section 2.3, the term “break-even net cash flow” means that all gross receipts of the Project equals or exceeds all of the eligible expenditures of any kind made or to be made with respect to the operation of the Project.

2.4 Certification.

(a) As a condition to initial occupancy, each person who desires to be a Qualifying Tenant in the Housing Project must be required to sign and deliver to Owner a certification in a form satisfactory to the City in which the prospective Qualifying Tenant certifies that he/she or his/her household qualifies as a Qualifying Tenant. In addition, each person must be required to provide any other information, documents or certifications deemed necessary by the City to substantiate the prospective Tenant’s income. Certifications provided to and accepted by the Milpitas Housing Authority will satisfy this requirement.

(b) Each Qualifying Tenant in the Housing Project must recertify to Owner on an annual basis his/her household income.

(c) Income certifications with respect to each Qualifying Tenant who resides in a Unit or resided therein during the immediately preceding calendar year must be maintained on file at Owner’s principal office, and Owner must file or cause to be filed copies thereof with the City promptly upon request by the City.

2.5 Form of Lease. The form of lease for Tenants must provide for termination of the lease and consent to immediate eviction for failure to qualify as a Qualifying Tenant if the Tenant has made any material misrepresentation in the initial income certification. The form of lease must also comply with 24 CFR § 92.253.

2.6 Nondiscrimination. Owner agrees not to discriminate against or permit discrimination against any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the operation and use of the Housing Project except to the extent permitted by law or required by any other funding source for the Housing Project. Owner agrees not to discriminate against or permit discrimination against Tenants using Section 8 certificates or vouchers or assistance through other rental subsidy programs.

2.7 Security Deposits. Security deposits may be required of Tenants only in accordance with applicable federal regulations state law and this Agreement. Any security deposits collected must be segregated from all other funds of the Housing Project in an account held in trust for the benefit of the Tenants and disbursed in accordance with California law. The balance in the trust account must at all times equal or exceed the aggregate of all security deposits collected plus accrued interest thereon, less any security deposits returned to Tenants.

2.8 Additional Information. The Owner shall provide any additional non-legally privileged or confidential information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records, or other documents of the Owner which pertain to the affordability and occupancy of the Units.

2.9 Records and Monitoring. The Owner shall maintain complete, accurate, and current records pertaining to the Units, including records pertaining to income and household size of Qualifying Tenants. All Qualifying Tenant lists, applications, and waiting lists relating to the Housing Project shall be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City, in a reasonable condition for proper audit. Owner shall retain all records related to compliance with obligations under this Agreement for a period not less than five (5) years from the date of origination of such records, and make them available to the City for inspection and copying of the City's expense and during normal business hours on five (5) business days' written notice. Owner shall permit the City to inspect the Property to monitor compliance with this Agreement following two (2) business days' written notice to Owner.

ARTICLE 3.

PROPERTY MANAGEMENT AND MAINTENANCE

3.1 Owner's Responsibilities.

(a) Subject to the rights set forth in Section 3.2, Owner will be specifically and solely responsible for causing all maintenance, repair and management functions performed in connection with the Housing Project, including selection of tenants, recertification of income and household size, evictions, collection of rents, routine and extraordinary repairs and replacement of capital items. Owner must maintain or cause to be maintained the Housing Project, including the Units and common areas, in a safe and sanitary manner in accordance with local health, building and housing codes, California Health and Safety Code 17920.10 and the applicable provisions of 24 CFR Part 35 and all applicable federal requirements.

(b) Owner must take prudent measures to ensure the security of the Site. Measures may include erecting a fence; covering and securing all openings in any vacant building and hiring security guards, as appropriate for the circumstances.

3.2 Contracting With Management Agent.

(a) Owner may contract or permit contracting with a management agent for the performance of the services or duties required in Section 3.1(a), subject to the City's prior written approval of both the management agent and, at the City's discretion, the management contract between Owner and the management agent, *provided, however*, that the arrangement will not relieve Owner of responsibility for performance of those duties. Any management contract must contain a provision allowing Owner to terminate the contract without penalty upon

Exhibit D

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no more than thirty (30) days' notice. The City approves the John Stewart Company as the initial Management Agent.

(b) The City will provide written notice to Owner of any determination that the contractor performing the functions required in Section 3.1(a) has failed to operate and manage the Housing Project in accordance with this Agreement. If the contractor has not cured the failure within a reasonable time period as determined by the City (not less than 30 days), Owner must exercise its right of termination immediately and make immediate arrangements for continuous and continuing performance of the functions required in Section 3.1(a), subject to the City's approval.

3.3 Owner Management. Owner may manage the Housing Project itself only with the City's prior written approval. The City will provide written notice to Owner of any determination that Owner has failed to operate and manage the Housing Project in accordance with this Agreement, in which case if such failure is not cured within a reasonable time period as determined by the City (not less than 30 days), if the Owner does not cure said deficiencies within a reasonable period of time, the City may require Owner to contract or cause contracting with a management agent to operate the Housing Project, or to make other arrangements the City deems necessary to ensure performance of the functions required in Section 3.1.

ARTICLE 4.

DEFAULT AND REMEDIES

4.1 Default. Owner shall be in default under this Agreement if Owner fails to perform or observe any term, covenant or agreement contained in this Agreement, and the failure continues for thirty (30) days after Owner's receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, Owner fails for sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* Owner commences to cure the default within the 30-day period and diligently pursues the cure to completion. In the event of a default under this Agreement, the City may exercise any and all remedies available to it under State law, the City Municipal Code, the CDBG Loan Documents, and otherwise. The City shall give any limited partner of the Owner written notice of any default hereunder concurrently with written notice to the Owner. Any limited partner of the Owner shall have the right, but not the obligation, to cure a default by the Owner provided that such cure shall occur within the same period afforded for the Owner's cure of a default. The City shall accept any cure offered by the limited partner of the Owner as if the same were made by the Owner. The City's remedies for a default include but are not limited to:

(a) withholding, conditioning, suspending or revoking any permit, license, subdivision approval or map, or other entitlement for the Housing Project, including without limitation final inspections for occupancy and/or certificates of occupancy;

(b) instituting against the Owner or other parties a civil action for declaratory relief, injunction, specific performance or any other equitable relief, or relief at law, including

Exhibit D

without limitation an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation;

(c) any other remedies authorized under the CDBG Deed of Trust, the City Municipal Code, and state or federal law. Neither giving nor failing to give Notice to any limited partner pursuant to this section will affect the validity of any Notice given by City to limited partner.

4.2 Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement or the CDBG Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such document, or by any statute or otherwise against Owner and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 5.

GENERAL PROVISIONS

5.1 Compliance with Program Requirements. The Owner agrees that at all times, and at its sole cost and expense, Owner and the Housing Project shall comply with all provisions of the CDBG Program Regulations promulgated at 24 C.F.R. Part 570, et seq. (the "CDBG Regulations") as they may be amended from time to time; all other applicable federal and state statutes, rules, and regulations; such additional regulations, orders, rulings, interpretations, and directives for the CDBG Program as may be promulgated or issued by HUD from time to time. The Owner acknowledges and agrees that it is familiar with all applicable provisions of the CDBG Regulations, and has been professionally advised to the extent necessary for the purpose of enabling the Owner to fully comply with such provisions. To the extent that there are any conflicts or inconsistencies between the provisions of this Agreement and the CDBG Regulations, the CDBG Regulations shall govern.

5.2 Appointment of Other Entities. At its sole discretion, the City may designate any other public agency, for-profit, or non-profit entity to perform the City's obligations under this Agreement.

5.3 Hold Harmless. Owner will indemnify and hold harmless the City and its elected officials, officers, employees and agents in their official capacity (collectively "Indemnitees") from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of any and all claims, demands, suits, actions, judgments and executions for damages allegedly arising out of the operation, maintenance, rental of the Units or Owner's performance or non-performance under this Agreement, and shall defend Indemnitees, except to the extent caused by the gross negligence, willful misconduct or unlawful actions of any

Exhibit D

Indemnitee. The provisions of this section shall survive termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement.

5.4 Covenants to Run With the Land. The City and the Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, unless the Agreement is terminated by mutual consent of the Parties, or the City releases part or all of the property from the burdens of this Agreement.

5.5 Attorneys' Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

5.6 Notices. All notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the Party to receive such notice at the address set forth below:

Borrower: Sango Court, L.P.
2220 Oxford Street
Berkeley, CA 94704
Attn: Executive Director

With a copy to: Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD 21044
Attention: General Counsel

Gallagher Evelius & Jones LLP
218 N. Charles Street, Suite 400
Baltimore, Maryland 21201
Attention: Kenneth S. Gross, Esq.

City: City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035
Attn: City Manager

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

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5.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties and no modification hereof shall be binding unless reduced to writing and signed by the Parties.

5.8 Term and Amendment of Agreement. This Agreement shall remain in effect for fifty-five (55) years from the date of recordation of this Agreement in the official records of Santa Clara County (the "Term"). This Agreement may be amended only upon the written consent of the City Manager or his or her designee, who shall have authority in his or her discretion to approve or disapprove an amendment on behalf of the City.

5.9 Applicable Law and Venue. The laws of the State of California shall govern this Agreement. Venue for any dispute arising out of this Agreement shall be Santa Clara County, California.

5.10 Waivers. Any waiver by the City of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Owner or to pursue any remedy allowed under this Agreement or applicable law. Consent by the City to any act or omission by Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

5.11 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience only and shall be disregarded in interpreting any part of the Agreement's provisions.

5.12 Recording of Agreement. The Owner shall cause this Agreement to be recorded against the Borrower's leasehold interest in the Property in the Official Records of the County of Santa Clara.

5.13 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by any court of competent jurisdiction, the validity, legality, and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

5.14 Amendment and Restatement of Existing Regulatory Agreement. This Agreement amends and restates in its entirety that certain Rent Limitation and Regulatory Agreement recorded January 29, 2019 as instrument No. 24105213 in the Official Records of Santa Clara County.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY:

CITY OF MILPITAS
A municipal corporation

Dated: 2/1/22

BY: 
City Manager

ATTEST

BY: 
City Clerk

APPROVED AS TO FORM

BY: _____
City Attorney

APPROVED AS TO CONTENT

BY: _____

OWNER:

SANGO COURT, L.P.,
a California limited partnership

By: RCD GP III LLC,
a California limited liability company,
its general partner

By: RESOURCES FOR
COMMUNITY DEVELOPMENT,
a California nonprofit public
benefit corporation,
its sole member/manager

By: _____
Daniel Sawislak,
Executive Director

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ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

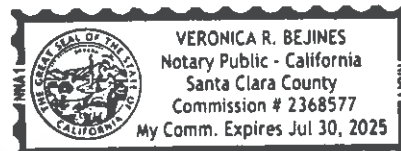
State of California
County of Santa Clara

On February 1, 2022 before me, Veronica R. Bejines, Notary Public
(insert name and title of the officer)

personally appeared Steven G. McHarris,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Veronica R. Bejines (Seal)

EXHIBIT A
DESCRIPTION OF THE PROPERTY

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL 5, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 22, 1974 IN BOOK 338 OF MAPS, AT PAGE(S) 42.

APN: **086-36-01**

Exhibit A
1

Exhibit D
1

38077.01007134724164.6

RESOLUTION NO. _____

A RESOLUTION OF THE GOVERNING BODY OF CITY OF MILPITAS AUTHORIZING THE APPLICATION TO AND PARTICIPATION IN THE PROHOUSING DESIGNATION PROGRAM

WHEREAS, Government Code section 65589.9 established the Prohousing Designation Program (“**PDP**” or “**Program**”), which creates incentives for jurisdictions that are compliant with state housing element requirements and that have enacted Prohousing local policies; and

WHEREAS, such jurisdictions will be designated Prohousing, and, as such, will receive additional points or other preference during the scoring of their competitive applications for specified housing and infrastructure funding; and

WHEREAS, the Department of Housing and Community Development (“**Department**”) has adopted emergency regulations (Cal. Code Regs., tit. 25, § 6600 et seq.) to implement the Program (“**Program Regulations**”), as authorized by Government Code section 65589.9, subdivision (d); and

WHEREAS, the **CITY OF MILPITAS** desires to submit an application for a Prohousing Designation (“**Application**”).

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF MILPITAS AS FOLLOWS:

1. The City of Milpitas is hereby authorized and directed to submit an Application to the Department.
2. The City of Milpitas acknowledges and confirms that it is currently in compliance with applicable state housing law.
3. The City of Milpitas acknowledges and confirms that it will continue to comply with applicable housing laws and to refrain from enacting laws, developing policies, or taking other local governmental actions that may or do inhibit or constrain housing production. Examples of such local laws, policies, and action include moratoriums on development; local voter approval requirements related to housing production; downzoning; and unduly restrictive or onerous zoning regulations, development standards.
4. The City of Milpitas further acknowledges and confirms that it commits itself to affirmatively furthering fair housing pursuant to Government Code section 8899.50.
5. If the Application is approved, the City of Milpitas is hereby authorized and directed to enter into, execute, and deliver all documents required or deemed necessary or appropriate to participate in the Program, and all amendments thereto (the “**Program Documents**”).
6. The City of Milpitas acknowledges and agrees that it shall be subject to the Application; the terms and conditions specified in the Program Documents; the Program Regulations; and any and all other applicable law.
7. **City Manager and/or Designee** is authorized to execute and deliver the Application and the Program Documents on behalf of the City of Milpitas for participation in the Program.

PASSED AND ADOPTED this _ day of _ 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Item # C6.

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize the Acting City Manager to Enter into a Master Professional Services Agreement with Asquare, Inc. for Temporary IT Staffing Services (Staff Contact: Nick Raisch, Human Resources Director, 408-586-3086; and Daniel Nam, Information Technology Director, 408-586-2712)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	10/3/2023
	<u>Recommendation:</u> Authorize the Acting City Manager to enter into a two-year Master Professional Services Agreement with Asquare, Inc. for Temporary IT Staffing Services for the not-to-exceed amount of \$250,000.

BACKGROUND:

From time to time, the City requires temporary staffing services during times of recruitment for vacancies, staff absences due to illness or injury, in times of peak workloads or unanticipated increases in work volume. In order to streamline this process and gain access to a larger pool of candidates, the City entered into three Master Professional Services Agreements with three different temporary staffing agencies: 1) Tryfacta, Inc., 2) Infojini, Inc, and 3) Cynet Systems, Inc. in July and August of 2022. These agencies have provided limited support for the needs of the Information Technology (IT) department, but they do not specialize in IT staffing services.

ANALYSIS:

The City has an ongoing need for skilled technical IT support across all areas of service. This need is only going to grow as more City systems moved to cloud based offerings and the threats related to Cyber Security increase. In order to efficiently and effectively meet these growing needs and cover for vacancies or leaves, staff recommends entering into a multi-year professional services agreement for temporary IT Analysts. Of the four IT analyst positions that were vacant at the start of this fiscal year, the City has hired one full time employee and one additional temporary staff to fill the critical needs in the interim. IT Analysts play a critical role in supporting the technology needs of all City departments. For example, IT Analysts support City's core network, maintain cybersecurity systems, and implement and maintain technology systems that support critical City functions such as public safety, development services, public works, finance, and human resources.

There is a high demand for these positions in both the public and private sector in this region. Additionally, unlike the private sector, the City needs to hire staff that are not just specialized in one area but can support a variety of systems and applications. The City is also not able to match compensation and benefits offered by many private technology companies. Thus, it has been challenging to recruit qualified IT Analysts. The City is continuing targeted recruiting efforts; however, it is important to have qualified staff to support essential City functions and provide services to the community in the interim. Additionally, temporary staff may choose to apply for the permanent positions, and historically, this has proved to be an effective strategy for accessing qualified IT professionals, including with the hiring of the most recent IT Analyst.

Staff is recommending Council approval to enter into a two-year Master Professional Services Agreement (PSA) with Asquare, Inc., for the not-to-exceed amount of \$250,000. Temporary staffing services from Asquare are needed during recruitment due to their unique specialization in filling IT positions. Asquare, Inc. is a leading technology consultant and staffing agency managed by technology professionals. They have provided full-cycle recruiting and contingent workforce staffing to clients since 1998.

Staff is not seeking additional funding for FY23-24. The two-year contract is a Master PSA and funding will only be required if temporary staffing services are needed to address expanded workloads when vacancies exist within that department.

The proposed agreement with Asquare, Inc. mirrors the agreements with Tryfacta, Infojini, and Cynet Systems, except that it specifically calls out filling temporary IT Analyst positions. The hourly rates charged by Asquare, Inc., are higher than other temporary staffing agencies because of the specialized services provided. The hourly rates include the costs of benefits and the contractor's overhead. Additionally, if any temporary staff from Asquare is hired by the City for a full-time permanent position, the City will not be charged a separate placement fee but agrees not to hire temporary staff until after nine months of service to the City.

POLICY ALTERNATIVE(S):

Alternative 1: Do not approve and authorize the City Manager to execute the agreement for temporary IT staffing services with Asquare, Inc.

Pros: Existing department funding would not be utilized for these services

Cons: Without temporary staffing services, the City will not be able to adequately meet the City's critical technology needs.

Reason Not Recommended: By entering into a multi-year Master Professional Services Agreement with Asquare, Inc., the IT Department will have access to the type of skilled staffing resources, on a temporary basis, needed to effectively cover the IT needs of the City. Additionally, temporary staff may also serve as potential candidates for the full-time permanent positions. Although the City is continuing its efforts to recruit and fill full-time permanent positions, without the use of temporary staffing services, the City will not be able to adequately meet its technology needs in the interim.

FISCAL IMPACT:

The IT Department will use funding from the IT Department's FY 2023-24 operating budget to cover the cost of the first year of a multi-year contract. No additional funds are being requested.. If temporary staffing is needed in future years to cover staffing vacancies, the corresponding existing IT Department funding will be used to cover the costs of those services.

California Environmental Quality Act (CEQA):

Approval of the recommendation is not an activity defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b)(3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

RECOMMENDATION:

Authorize the City Manager to enter into a four-year Master Professional Services Agreement with Asquare, Inc. for Temporary IT Staffing Services, not to exceed \$250,000.

Attachment(s):

1. Master Professional Services Agreement with Asquare, Inc.

**MASTER SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND ASQUARE, INC.**

This Agreement is made and entered into as of _____ (“Effective Date”) by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”), and **Asquare, Inc.**, a stock corporation with its principal place of business at **4675 Stevens Creek Blvd., Suite 131. Santa Clara, CA 95051** (hereinafter referred to as “Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

On-Call Temporary Personnel Services
(hereinafter referred to as “the Project”).

B. Contractor submitted its qualifications to City to provide **On-Call Temporary Personnel Services** on an as-needed basis and is one of several Contractors selected by City to provide services

C. Contractor is duly licensed and has the necessary qualifications to provide such services.

D. The Parties desire by this Agreement to establish the terms for City to retain Contractor to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Services.**

Contractor shall provide the City with the services described in the Scope of Services attached hereto as Exhibit A. City will notify Contractor when it needs services that it believes Contractor is qualified to provide. Nothing herein obligates City to notify Contractor about every temporary staffing need. City reserves the right to solicit the services described in Exhibit A from any provider or no provider at all.

2. **Compensation.**

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the rates set forth in the Schedule of Charges set forth in Exhibit B. Each month, Contractor shall furnish to the City a statement of the work performed for compensation during the preceding month. All work is subject to City review and approval prior to payment.

b. In no event shall the total amount paid for services rendered by Contractor under this Agreement exceed the sum of **Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Contractor for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Contractor or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Contractor with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred and services provided shall be maintained by Contractor and made available at all reasonable times during the Agreement term and for three (3) years from the date of final payment under the Agreement for inspection by City.

5. Term.

The term of this Agreement shall be from **date first written above** through **June 30, 2025**, unless earlier terminated as provided herein. The City reserves the right to review the Contractor's performance at the end of each year and cancel all or part of the Agreement.

6. Delays in Performance.

a. Neither City nor Contractor shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Contractor shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Contractor shall assist the City, as requested, in obtaining and maintaining all permits required of Contractor by federal, state and local regulatory agencies.

c. If applicable, Contractor is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care.

Contractor's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Sub-Contractor.

Contractor shall not assign, sublet, transfer, or subcontract this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

10. Independent Contractor.

Contractor is retained as an independent contractor and is not an employee of City. No employee or agent of Contractor shall become an employee of City, except as set forth in Exhibit A section 1.1.. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance.

Contractor shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit D (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification.

a. To the fullest extent permitted by law, Contractor shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, Contractors or agents in connection with the performance of the Contractor's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor, the City, its officials, officers, employees, agents, or volunteers.

b. If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents (\$1,000.00) or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be

mandatory upon the Contractor and all sub-Contractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all sub-Contractors performing such services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any sub-Contractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all sub-Contractors and sub-Contractors to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

16. Termination or Abandonment.

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Contractor. City shall pay Contractor the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Contractor of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Contractor shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work. If City experiences performance issues with the selected candidate and terminates the temporary employee, the Contractor will provide a replacement employee to City, also at no additional charge.

b. Contractor may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Contractor.

c. The Contractor understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Milpitas City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of Agreement term. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. City budget decisions are subject to the discretion of the Mayor and City Council. Contractor's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement.

17. Documents.

Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization.

Contractor shall assign **Kalpana Guha** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035
Attn: City Manager

CONTRACTOR:

Asquare, Inc
4675 Stevens Creek, Suite 131
Santa Clara, CA 95051
Attn: Sanjiv Sahay

and shall be effective upon receipt thereof.

21. Third-Party Rights.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Contractor.

22. Equal Opportunity Employment.

Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age

or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement.

This Agreement, with its exhibits, represents the entire understanding of City and Contractor as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence.

Time is of the essence for each and every provision of this Agreement.

28. City's Right to Employ Other Contractors.

City reserves its right to employ other Contractors, including engineers, in connection with this Project or other projects.

29. Prohibited Interests.

Contractor warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

30. Wage Theft Prevention.

a. Contractor, and any sub-Contractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

b. BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

c. If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or a sub-Contractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Contractor or its sub-Contractor(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Contractor or its sub-Contractor is subject to a payment or other alternative plan, the Contractor or its sub-Contractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

d. For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

e. Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

f. Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR MASTER SERVICES AGREEMENT
BETWEEN THE
CITY OF MILPITAS AND ASQUARE, INC**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:

Ned Thomas, Acting City Manager

Date

Approved As To Form:

Michael Mutalipassi, City Attorney

Approved:

Lauren Lai, CPA, MPA
Finance Director / Risk Manager

Approved As To Content:

Nick Raisch, Human Resources
Director

ASQUARE, INC.

Signature

Name

Title

Date

EXHIBIT A

Scope of Services

The scope of services described herein is the minimum necessary to meet the City's objectives. They shall be able to provide **some or all** services as laid out below in this scope of services and provide personnel who are competent and capable of performing the necessary tasks generally associated with the job classification types specified in **Exhibit B**.

1. The scope of services by the Contractor shall include, but is not limited to:
 - a. Providing temporary staffing for administrative, clerical, and technical categories.
 - b. The ability to provide a pool of personnel sufficient to meet the CITY's temporary staffing needs with a minimum notice of **forty-eight hours**.
 - c. Comparing job requirements with worker qualifications and submitting resumes of temporary staff as requested.
 - d. Conducting background and reference checks, and drug screening of personnel, at no additional cost to the City.
 - e. Ensuring temporary staff have been vaccinated for COVID-19, annually or as otherwise required by the City.
 - f. Identifying prior CalPERS membership of all temporary staff to be assigned to the City to assist in ensuring the City adheres to CalPERS enrollment guidelines. If temporary staff has prior CalPERS membership, identify the number of hour previously worked in the fiscal year (July 1 - June 30).
 - g. Administering and maintaining all employment and payroll records, payroll processing, and payment of payroll checks and taxes, including the deductions required by state, federal and local laws such as social security and withholding taxes for personnel employed by Contractor.
 - h. Making all unemployment compensation contributions to Contractor's employee(s) as required by federal and state law and process claims.
 - i. Covering all costs related to Consultant's employee(s) responsibilities for workers' compensation coverage required by federal and state law and process claims.
 - j. Arranging for the CITY, if requested by CITY staff, to meet with the temporary staffing candidate, at the Contractor's expense, for a period of up to one (1) hour. *The City would like the option for the department to be able to interview an employee prior to placement to ensure a good fit.*
 - k. If staff have inadequate performance or other performance or behavioral issues, Contractor must be able to provide for a replacement within 2 weeks.
 - l. Contractor will allow City the option of converting temporary employees to permanent hires after nine months of work as a temporary employee.

CONTRACTOR RESPONSIBILITIES

- a. **Work Order Process:** Contractor will only accept work orders for temporary personnel from the designated City of Milpitas (COM) HR Department employee.
- b. **Minimum Qualification Review:** Contractor must screen and test all personnel referred to COM for temporary assignments, pursuant to COM's test criteria and pre-employment standards, before placement is made.

- c. **Recruitment Search, Advertising, Networking, Screening:** Contractor will identify three to five candidates from their own network, within five business days of the request, to be interviewed by a COM hiring manager. Contractor will pay for any necessary advertising and marketing to procure finalists. Contractor will ensure availability and interests of candidates, and review credentials of each applicant based on resume, referral sources, and telephone interviews. Contractor will require that all candidates complete a background check which includes education, work and criminal history at Contractor's cost, prior to their start date with COM. Candidates will also be required to go through the livescan (fingerprinting) process at the City's expense. The City will have the final say as to the suitability of the candidate with respect to their background clearance.
- d. **Final Reference Checks:** Contractor will complete a detailed reference check of each of the finalist candidates. A minimum of three references must be checked for each finalist, one of which must have had a supervisory relationship to the employee.
- e. **Timecards:** Contractor must submit timecards to COM on a weekly basis for approval. Contractor must provide computerized billings on a monthly basis. A copy of the approved timecards must be submitted with the monthly billing. Billing must specify employee name, hours worked and department.
- f. **Termination of Candidate's Employment:** : If COM experiences performance issues with the selected candidate and terminates the temporary employee, the Contractor will provide a replacement employee to COM at no additional charge other than the standard billing rate for the replacement employee.
- g. **Status Reports:** Contractor will provide COM with status reports on a monthly (or other agreed upon) basis, in a format approved by COM. Status reports must include the date the request was made; the date of placement; length of placement; cost of placement; job title of placement; hourly billing rate paid; department where placement was made and the name of the requestor.
- h. **Selecting a Temporary Employee:** The agency will initiate the applicable background checks on the selected candidate. The HR Department will confirm what types of background checks are required per position.
- i. **Invoicing:** The agency is responsible for including on the invoices the following information:
 - 1. The total year-to-date hours worked by each contracted employee
 - 2. The employee's hourly pay rate
 - 3. The hourly bill rate to the City
 - 4. Agency shall provide individual invoices per temporary staff.

CITY RESPONSIBILITIES

The City will assign a Project Manager, or designee who will coordinate City activities with the activities of the Contractor. All contracts within the City must be arranged through the Project Manager, or designee.

EXHIBIT B**Schedule of Charges/Payments**

Contractor will invoice City on a monthly cycle. Contractor will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Contractor will inform City regarding any out-of-scope work being performed by Contractor. This is a time-and-materials Agreement.

Breakdown Of Cost

The billing rate for each temporary employee shall be finalized prior to the start of work. Billing rate ranges:

- IT Analyst: \$105.00 - \$115.00 per hour plus \$5.00/hour in lieu of conversion fee, with no other charges for conversion to FTE at end of nine months
- Senior IT Analyst: \$115.00 - \$125.00 per hour plus \$5.00/hour in lieu of conversion fee, with no other charges for conversion to FTE at end of nine months

EXHIBIT C
Activity Schedule
[RESERVED]

EXHIBIT D

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. **Those that have an “X” indicated in the space before the requirement apply to Contractor’s or Contractor’s Agreement.**

Contractor or Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Contractor, its agents, representatives, employees or subcontractors.

Contractor or Contractor shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Contractor shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor’s or Contractor’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

 Coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

X Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

 Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

X Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 combined single limit for bodily injury and property damage.

 Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 combined single limit for bodily injury and property damage.

____ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Contractor, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

 X Insurance appropriates to the Contractor or Contractor's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

____ (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

____ Insurance appropriates to the Contractor or Contractor's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

 X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Contractor provides written verification it has no employees)*

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Builder's Risk (Course of Construction):

____ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Contractor's or Contractor's Pollution Legal Liability:

____ Contractor's or Contractor's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Contractor or Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Cyber Liability Insurance

 X Cyber Liability Insurance with limits not less than \$1,000,000 per claim.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor or Contractor in this Agreement and shall include, but not be limited to, claims involving infringement of

intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

Surety Bonds:

Contractor shall provide the following Surety Bonds:

____ Bid Bond
 ____ Performance Bond
 ____ Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

X Additional Insured Status and Primary/Non-Contributory Language:

Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed to add the City and its elected and appointed officials, officers, attorneys, agents employees and volunteers as additional insureds under such policies using Insurance Services Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an endorsement providing completed operations coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

____ Loss Payee Status – Builder's Risk/Course of Construction Insurance (applicable to Construction Contracts only)

Contractor or Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

X Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

X Waiver of Subrogation:

Contractor or Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Contractor, its employees, agents and subcontractors.

____ Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Contractor

must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.

4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor’s Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor’s work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Contractor’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor’s or Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

Exhibit E

Item # C7.

SAMPLE TEMPORARY STAFFING REQUEST FORM

(Sample request form, information subject to change)

The Contractor hereby agrees to perform the Services authorized herein in accordance with all the terms and conditions of the Contract. The Contractor shall furnish the necessary professional and technical personnel and materials required to complete this work.

Task Order No. _____ (HR to provide)

Contractor: _____ Requesting Department: _____

Term: Effective: ____/____/____ and continue in effect through ____/____/____

Job Classification : _____

Shift Days: _____ **Shift Hours/Per Week:** _____

Shift Hours: _____

Hourly Rate to be Billed to the City: \$ _____

Funding Source

Fund: _____ Function: _____ Object Code: _____

Personnel: *attach Resume*

Approvals

Project Manager: _____ Department Head: _____

Executed by:

City of Milpitas

Contractor Name

Signature Date

Signature Date

Printed Name & Title

Printed Name & Title



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution to Approve Sole Source Procurement of Police Vehicles from Duval Ford, LLC, and Authorize the Acting City Manager to Execute a Purchase Agreement with a Total Not-to-Exceed Amount of \$701,953.92 for the Purchase of Up to 12 Police Vehicles (Staff Contact: Jared Hernandez, Chief of Police, 408-586-2406 and Christian Di Renzo, Public Works Director, 408-586-2602)
Category:	Consent Calendar-Public Safety
Meeting Date:	10/3/2023
	<u>Recommendation:</u> 1. Adopt a resolution to approve sole source procurement of police vehicles from Duval Ford, LLC, and authorize the Acting City Manager to execute a purchase agreement with a total not-to-exceed amount of \$701,953.92 for the purchase of up to 12 police vehicles. 2. In the event the City is unable to procure the vehicles from Duval Ford LLC, the City Manager is authorized to select another vendor and execute a purchase agreement with a total not-to-exceed amount of \$701,953.92 for the purchase of up to 12 police vehicles.

BACKGROUND:

In fiscal year 2021-22, two police patrol vehicles were severely damaged and could no longer be used for service. Council approved the replacement of these vehicles on March 1, 2022.

On June 7, 2022, and June 6, 2023, as part of the fiscal year 2022-23 and 2023-24 operating budgets respectively, City Council approved the purchase of a total of ten Police patrol vehicles for the Police Department. This purchase is intended to replace existing Police Department vehicles consistent with Section 30.00 of the Memorandum of Understanding between the City and the Milpitas Police Officers Association, which states in part that “reasonable efforts shall be made to replace Police patrol vehicles before such vehicles have acquired 75,000 miles, provided that if said vehicles are safe and suitable for patrol purposes after 75,000 miles, they may remain in service for another 15,000 miles or a total of 90,000 miles.” All ten vehicles recommended for replacement have exceeded the MOU maximum mileage threshold.

Subsequently, City Council approved the sole source purchase of replacement vehicles through cooperative agreement on December 20, 2022, and August 15, 2023. The Police Department ordered the five fiscal year 2022-23 patrol vehicles in January 2023 by way of cooperative purchase through Sourcwell Contract 091521-NAF from National Auto Fleet Group (NAFG). In addition, the department anticipated ordering the five fiscal year 2023-24 patrol vehicles by way of the same Sourcwell contract once the ordering window was opened (estimated in October). However, the department has since been notified by NAFG that the existing and future orders are not likely to be fulfilled, due to inventory production delays, circumstances outside of the City’s and NAFG’s control. Given production delays experienced over the past three years, staff has continuously reviewed alternative options and contacted potential providers. In late September of 2023, staff finally identified a single vendor, Duval Ford LLC, with twelve suitable patrol vehicles in production with an estimated delivery within 6 months. The department now requests to purchase the vehicles from this vendor to alleviate further delays in vehicle replacements.

Municipal Code Section I-2-3.03 titled “Procurements where competitive methods are not practicable” provides that the City is not required to engage in competitive procurement as authorized by the City Council to be “in the best interest of the City”.

ANALYSIS:

As a result of on-going supply chain issues, the Police Department is currently utilizing vehicles that meet the vehicle replacement criteria. Two vehicles were severely damaged beyond repair, and ten vehicles meet the replacement criteria of 90,000 miles and the manufacturer's warranty of five years or 100,000 miles for our patrol fleet. This replacement criteria aligns with industry standards for public safety vehicles. Replacing these vehicles based on the established criteria will help reduce maintenance costs and minimize the impact to the department's ability to provide essential services to the community.

Typically, the City purchases vehicles using a Sourcewell cooperative agreement such as the National Auto Fleet Group (NAFG) one of the largest cooperative vehicle suppliers in the country. The use of cooperative agreements, which are a result of competitive solicitations, is typically more efficient than a competitive procurement process. However, purchases through these agreements are severely impacted by the current supply shortage of vehicles in the automobile market and have an extended delivery period.

There are currently no patrol vehicles in-stock, scheduled for production, nor currently available for government wholesale purchase through NAFG. NAFG has had five patrol vehicles (Council approved for FY 2022-23 Capital Outlay replacement) on order for Milpitas Police Department since January 2023, they have been unable to fulfill the order to date. Additionally, NAFG anticipates the order will be cancelled by their distributor due to circumstances outside of the City's and NAFG's control, therefore the pending order of the FY 2023-24 vehicles approved through the FY 2023-24 operating budget are not likely to be fulfilled either.

Furthermore, local dealerships do not have inventory of vehicles suitable for police patrol fleet. Staff confirmed with Mission Valley Ford (San Jose) in September 2023 that they could not fulfill an order for any number of police patrol vehicles due to lack of inventory. However, staff identified a vendor based out of state, Duval Ford, that has twelve suitable patrol vehicles in production. These vehicles are expected to ship from Los Angeles, California via open-trailer truck transport within six months.

Duval Ford will offer the City their lowest possible price for the vehicles, as quoted, and time is of the essence as the vendor has other interested buyers. Therefore, as all other viable options have been exhausted, staff requests Council authority to purchase the twelve police patrol vehicles approved as part of the fiscal year 2021-22, 2022-23 and 2023-24 operating budgets directly from Duval Ford, which has available inventory, consistent with Municipal Code Section 1-2-3.03(d). With this authority, staff will be able to replace the vehicles as soon as possible to meet contractual obligations and to support effective police operations.

The total amount of the purchase not-to-exceed \$701,953.92 includes the total purchase price of twelve police patrol vehicles at \$58,496.16 per unit and all associated costs including California sales tax and transportation fees. The total amount not-to-exceed \$701,953.92 does not exceed the dollar amounts approved by Council in prior purchase approval for the twelve vehicles.

POLICY ALTERNATIVE(S):**Alternative 1: Purchase the Police vehicles under the existing cooperative procurement contract with National Auto Fleet**

Pros: A cooperative purchase allows for economies of scale by bringing together multiple organizations and their purchasing requirements, allow for more buying and negotiating power, and enables the City to obtain a better commercial deal than through a City RFP process.

Cons: National Auto Fleet does not have the needed vehicles in stock, nor have they been able to fulfill the order due to production and/or other delays unknown to the City. The continued substantial delay in waiting for the fulfillment of these orders would mean the Police Department would not have enough vehicles for effective operations.

Reason for Not Recommending: The replacement of these vehicles have already been approved by Council. Due to supply chain and the priority of public safety, the Police Department needs to replace these vehicles as soon as possible.

FISCAL IMPACT:

The total cost for the purchase of the twelve (12) Police patrol vehicles from Duval Ford is \$701,953.92. The total amount appropriated is sufficient to cover the cost.

California Environmental Quality Act (CEQA):

The action being requested is not a project as defined by CEQA (CEQA Guidelines exemption 15378(b)(2)).

RECOMMENDATION:

1. Adopt a resolution to approve sole source procurement of police vehicles from Duval Ford, LLC, and authorize the Acting City Manager to execute a purchase agreement with a total not-to-exceed amount of \$701,953.92 for the purchase of up to 12 police vehicles.
2. In the event the City is unable to procure the vehicles from Duval Ford LLC, the Acting City Manager is authorized to select another vendor and execute a purchase agreement with a total not-to-exceed amount of \$701,953.92 for the purchase of up to 12 police vehicles.

Attachment(s):

1. Resolution
2. Sole Source Justification
3. Duval Ford Quotation

RESOLUTION NO. _____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING A
SOLE SOURCE WITH DUVAL FORD LLC AND AUTHORIZING THE CITY MANAGER TO
EXECUTE A PURCHASE AGREEMENT TO PURCHASE TWELVE (12) POLICE PATROL
VEHICLES**

WHEREAS, Milpitas Municipal Code Section I-2-3.06 (“Sole Source Procurement”) authorizes the City Council to award contracts without competition delivery, and terms. A written statement of the basis for the sole source determination and the period of the sole source approval shall be placed in the contract file; and

WHEREAS, the Purchasing Agent has determined that Duval Ford LLC is the sole source due to available inventory for the purchase of twelve (12) police patrol vehicles; and

WHEREAS, the City Council approves a sole source with Duval Ford LLC and authorizes the City Manager to execute purchase agreements with the Duval Ford LLC for not-to-exceed amount of \$701,953.92 to provide the necessary flexibility to meet the vehicle replacement schedule.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council approves Duval Ford LLC as the sole source dealership for purchasing twelve (12) police patrol vehicles.
3. The City Manager is authorized to execute purchase agreement and purchase order with Duval Ford LLC for a total amount not-to-exceed \$701,953.92.
4. In the event the City is unable to procure the vehicles from Duval Ford LLC, the City Manager is authorized to select another vendor and execute a purchase agreement for the purchase of up to twelve (12) police patrol vehicles for a total amount not-to-exceed \$701,953.92.

PASSED AND ADOPTED this day of , 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Multalipassi, City Attorney



CITY OF MILPITAS SOLE SOURCE OR STANDARDIZATION (SOLE BRAND) REQUEST

THIS FORM MUST BE COMPLETED AND APPROVED
PRIOR TO ANY PROCUREMENT

When a request is made for a sole source procurement or to restrict procurement to a specific brand (standardization) for the acquisition of supplies, equipment and materials or services (except for consultant services or contracts with other governmental agencies), as applicable, the requesting department must complete this form consistent with [Section I-2-3.06 - Sole Source Procurement](#) or [Section I-2-3.14 - Standardization](#).

Per the aforementioned Municipal Code section, a sole source contract is authorized when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that only one viable source exists for the required supplies, material, equipment, or general service, or that there is a compelling reason for using only one source. The detailed information you are providing will facilitate such a determination.

Per the aforementioned Municipal Code section, a standardization of supplies, materials or equipment, including information and communication technology products and services and subsequent sole brand procurement is authorized, when the Purchasing Agent has determined that it is required for the health, safety or welfare of the people or employees of the City, or that cost savings have been demonstrated. Among the factors that may be considered in determining to standardize on a single brand or trade name are that:

- a) In order to acquire a specific product(s) for the purpose of conducting a field test or experiment to determine the product's suitability for use by the City.
- b) When it is required for proper operation or function to match other products with respect to the repair or expansion or completion of a system or program already in use by the City, including, but not limited to, technology purchases required to achieve interoperability with existing hardware, software, systems or programs.
- c) In order to achieve significant cost savings based upon consideration of the following cost factors: (1) Timeliness and quality of installation, repair and maintenance; (2) Quality of user training; (3) Supplies and replacement parts; (4) Modification of existing equipment, materials or systems; (5) Future upgrades and updates; (6) Estimated amount and cost of reasonably foreseeable future purchases of equipment that would be required to be compatible or functional with the product which is the subject of the standardization determination; and/or (7) Administrative costs.

This form is not necessary for contracting for professional services or contracting with other governmental agencies.

Please answer in the space provided, or in an attachment address by specific reference, each question listed below in your justification. Be sure to answer each part of each question as each must be addressed; no response can be not applicable. Failure to respond fully to any of the questions may result in delay or rejection of the request due to inadequate justification. If additional information is necessary, please attach additional page(s) and/or documents, as needed.

1. This is a request for a **X** **Sole Source** _____ **Standardization (Sole Brand)**
2. Using appropriate detail, including brand name and model number, ***briefly*** describe the product you wish to procure. In the case of a general service use enough detail to clearly describe to someone not familiar with your department's operation what you are procuring.

Due to limited production of the Ford Utility Interceptors, the City has not been able to meet the vehicle replacement schedule for the past few years. The Ford Utility Interceptor is the standard for the patrol fleet.

As part of the FY 2021/22, FY 2022/23 and FY 2023/24 Vehicle Replacement Schedule, there are a total of 12 patrol vehicles that were scheduled for replacement.

FY	Approved Budget	Purchase Price
21/22	\$60,540.72	\$58,496.16
21/22	\$60,540.72	\$58,496.16
22/23	\$59,514.78	\$58,496.16
22/23	\$59,514.78	\$58,496.16
22/23	\$59,514.78	\$58,496.16
22/23	\$59,514.78	\$58,496.16
22/23	\$59,514.78	\$58,496.16
23/24	\$64,568.05	\$58,496.16
23/24	\$64,568.05	\$58,496.16
23/24	\$64,568.05	\$58,496.16
23/24	\$64,568.05	\$58,496.16
23/24	\$64,568.05	\$58,496.16
Total	\$741,495.59	\$701,953.92

3. Please provide the total not-to-exceed amount of the purchase and/or agreement/contract as well as the requested term. (If buying software, the City's standard term is five years)

Detailed cost breakdown explanation per year:

Year 1: \$701,953.92 for purchase of 12 Ford Utility Interceptors

Year 2: \$

Year 3: \$

Year 4: \$

Year 5: \$

Total Cost: \$ 701,953.52

Term (1-5 years): 1 year

4. For goods: What are the unique performance features of the product/brand requested that are not available in any other product/brand? For services: What unique qualifications, rights, degrees, certifications, licenses and/or experience does this vendor possess?

Due to inventory shortages, staff is recommending a sole source with Duval Ford LLC to meet the FY 2021/22, FY 2022/23 and FY 2023/24 vehicle replacement schedule. Duval Ford currently has the 12 units available.

5. **What other products/services have been examined and rejected, and why? *(Please provide a specific meaningful explanation, one vendor and one feature at a time.*** For products be sure to clearly identify the product by name and model number and **include the name, address, email, and telephone number of the company representative whose product you tested.)**

The Police Department has elected the Ford Utility Interceptor as the standard for the patrol fleet. See vehicle replacement schedule under question 4.

Duval Ford

Bambi Darr

5203 Waterside Dr.

Jacksonville, FL 32210

904-381-6596 | Work

904-387-6816 | fax

Bambi.darr@duvalfleet.com

6. If justification is based on matching and/or intermixing with existing equipment (standardization or sole brand only – (sole brand may only be used by authority of the City Council)), list the quantity, manufacturer, brand, and model of the existing equipment, and identify measurable cost savings consistent with the sole brand requirements identified on page one of the request form (attach calculations as necessary).

See Vehicle Replacement Schedule under question 4.

I HEREBY CERTIFY THAT:

1. I have read and understand the City's requirements for competitive bidding, as well as the criteria for justification for sole source and sole brand procurements.
2. I have gathered the required technical information and have made a concentrated effort to review comparable and/or equal equipment/service.
3. There is validity as to the information contained herein justifying my request for sole source or sole brand procurement and meeting the City's criteria.
4. A sole source or sole brand procurement in this case would withstand a possible audit or a vendor's protest.

Requestor**Department Head**

 Name

 Name

 Date

 Date
PURCHASING DIVISION USE ONLY:
Approved: ____ Yes ____ No
Comments:

Purchasing Agent

 Name

 Date

SOLE SOURCE OR SOLE BRAND REQUEST

A. OVERVIEW

Purchasing recognizes that departments often invest a great deal of time and effort in selecting a source or brand, prior to submitting a requisition to Purchasing. Even though the departmental review process prior to the submittal of a requisition may be sound, it is highly recommended to quickly engage with Purchasing as soon and early in the process as possible to ensure all documentation and justifications for the request are consistent with the Municipal Code.

Likewise, Purchasing can be an effective partner in a competitive review process given adequate time and involvement in your requirement definition.

In an effort to expedite sole source or sole brand requisitions through Purchasing, you are directed to review the Sole Source or Sole Brand Request form herein. If the Department feels the request meets the criteria, follow the instructions in filling out the form and attach it to the requisition. After review, if Purchasing concurs with your sole source or sole brand justification, the requisition may be expedited without the competitive solicitation requirements.

This is an internal City review process. Departments are directed to use discretion in their discussion with vendors so as to not compromise any competitive advantage that Purchasing may utilize; in the event the sole source or sole brand justification is rejected. Rather than merely a shift of the review burden, this process acknowledges the significant effort a department may undertake when identifying a vendor or brand and provides you with the method by which to make requisitioning efforts more efficient adhering to the City's Purchasing Ordinance.

In order for Purchasing to accept a request for sole source/sole brand, the certification form referenced is made a part of the Purchasing Agent's written determination as provided by the Municipal Code must be signed by the Department Head. The completed form will remain on file for audit purposes.

Sole Source Requests Over \$100,000

Sole Source requests over \$100,000 require submission of an Agenda Report [Sample - Sole Source Agenda Report](#) and approval by City Council and require submission of a resolution as in the [Sample - Sole Source Resolution](#). If you are making a second sole source purchase, over \$100,000, within the five-year life of the original sole source purchase you are still required to submit an AR to City Council, and at a minimum, the report should confirm the findings in the prior sole source resolution are still accurate and that nothing has changed in the marketplace or elsewhere. If anything has changed, then a new resolution is required. If nothing has changed, then the Department can rely on the prior resolution but should include language in the AR indicating that all previous findings and conclusions are still accurate, and staff is not aware of any new information that would change those findings or conclusions in the prior sole source resolution.

B. PROCEDURE Sole source or sole brand procurements are an exception to competitive solicitation requirements and, therefore, require a detailed justification. In processing sole source or sole brand requests for supplies, equipment and/or services (except for consultant services or contracts with other governmental agencies) , Purchasing adheres to and is governed by the principles set forth in City of [Milpitas Municipal Code Section I-2-3.06 - Sole Source Procurement](#) or [Section I-2-3.14 - Standardization](#) as approved by the City Council.

If the requesting Department is requesting a particular vendor, brand or product, staff must make this fact clear on your requisition. If approved, the request will then be restrictive and non-competitive and will fall into a sole source or sole brand category.

Such a request should not be made unless Department staff is confident that the request is reasonable and appropriately justified to meet the City's requirements and withstand any possible audit or scrutiny. The City's requirements and the format for submitting such requests are contained herein.

The following factors DO NOT apply to sole source requests and should not be included in any sole source and/or sole brand justification request. They will not be considered and only tend to confuse the evaluation process and delay the procurement.

1. Personal preference or experience with or for a particular product or vendor.
2. Cost, vendor performance, and/or local service (these are generally considered award factors in competitive bidding).
3. Features which exceed the minimum department requirements.
4. Explanation of the need and/or basic use for the equipment, unless the information relates to a request for "unique factors" (refer to question three from the Sole Source/Sole Brand Request form). In other words, it is not appropriate to only state the Department is requesting a specific tree trimmer so staff can trim trees, instead explain why this particular trimmer with these exact performance specifications is the only one that will meet the Department's need(s).
5. A request for "no substitution" submitted without justification. This is just a sole source or sole brand request without justification and will be rejected.

Milpitas CA

Prepared for:		Contract Holder		DATE:
Milpitas CA PAT HOPE		DUVAL FORD Bambi Darr (Work) 904-381-6596 (Fax) 904-381-6816 bambidarr@duvallfleet.com 5703 Waterside Dr. Jax, FL 32210		9/22/2023
PLEASE CONFIRM RECEIPT OF QUOTE VIA EMAIL				
We appreciate your interest and the opportunity to quote. If you have any questions regarding this quote please call!				
Label	Code	Equipment	Price	
0	K8A	2023 FORD POLICE INTERIOR SUV AWD	\$	52,844.00
0	99B.44U	3.3L V6 GAS ENGINE	INCL	
0	500A	POLICE EQUIPMENT GROUP	INCL	
0	INCL	POWER WINDOWS & DOOR LOCKS	INCL	
0	55F	KEYLESS ENTRY- INCLUDES 4 KEYS & FOBS	INCL	
0	17A	Rear Air	INCL	
0	51V	Dual LED Spotlights	INCL	
0	90E	Dual Ballistic Panels Level III+	INCL	
0				
0				
0				
0				
0				
0				
0				
0	Delivery			\$550
0	Taxes	9.38%	\$	5,102.16
0				
0	UM	EXTERIOR: BLACK	NC	
0	96	INTERIOR: EBONY CLOTH FRONT SEATS/ REAR VINYL	NC	
0		VINYL FLOOR	NC	
0				
VENDOR COMMENTS		PLEASE CLEARLY NOTATE ON YOUR PURCHASE ORDER WHERE DUVAL FORD IS TO SHIP YOUR VEHICLE, HOW THE VEHICLE IS TO BE TITLED, AND WHERE THE INVOICE IS TO BE MAILED.		
UNIT COST			\$	58,496.16
TOTAL QUANTITY			1	
TOTAL PURCHASE			\$	58,496.16

12 UNITS @ \$58,496.16 FOR A TOTAL PURCHASE OF \$701,953.92

Paul JAMM TUNNEL PUBLIC WORKS MANAGER



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive an Update on the Emergency Repairs to the HVAC System and Equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	10/3/2023
Recommendation:	<u>Recommendation:</u> (1) Receive an update on the emergency repairs to the HVAC system and equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings; and (2) Determine by a four-fifths vote that the condition continues to constitute an emergency.

Background:

Pursuant to Public Contract Code section 22050 and the attached [Council Resolution No. 9134](#), the Director of Public Works, in the case of emergency, may authorize a repair of a public facility and procure the work without giving notice for bids. An emergency is defined as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.” Additionally, State law requires the Public Works Director, as the City official with delegated authority to take emergency action, to report any emergency authorization and the reason(s) for the authorization to the City Council not later than seven days after the action, or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action. Further, the Public Works Director is required to report why the emergency would not permit a delay resulting from a competitive solicitation for bids and the City Council is required to review the emergency action at every regularly scheduled meeting thereafter until the emergency repair is completed. The City Council shall continue to review the emergency action at every regularly scheduled meeting thereafter until the action is terminated. At each review, the City Council shall determine, by a four-fifths vote, whether there is a need to continue the action.

Consistent with applicable State law and Council Resolution, on April 27, 2023, the Public Works Director declared an emergency and authorized the City to contract with its existing HVAC maintenance contractor, Environmental Systems Inc. (ESI), for the emergency repairs to the HVAC system at City Hall and the Public Works, Information Technology and Police Department buildings. The [Information Memorandum](#) issued on that date outlined the various equipment issues and provided a cost estimate of \$ 899,300.

Project Update:

Below is a current update on the status of emergency repairs to the HVAC systems at City Hall and the Public Works, Information Technology and Police Department Buildings.

City Hall

The scope of work authorized repairs to the boiler, air handlers, and variable air volume (VAV) boxes to the City Hall building.

The new boilers were craned onto the 4th floor on Friday, September 22. Staff is working with the contractor for the building permitting process and to finalize the installation plan. The contractor is still working on repairs for the VAV boxes. All repairs are expected to be completed by early December.

Public Works/Information Technology/Police Department

At this facility, the Building Management System (BMS), boiler pumps and VAV boxes were identified as in need of emergency repairs.

The new boiler and chiller pumps are being installed with an expected completion of early October. Staff is working with the contractor and Department staff to finalize the repair plan for the VAV boxes since this work will take place in the ceiling above staff workstations. The next phase will include the update to the BMS system to finalize the emergency repairs for this building, which is expected to be completed by early December.

Fiscal Impact:

Funding for these repairs is available in the City's Capital Improvement Program (CIP) budget and has been fully encumbered CIP Project 3499 - HVAC Systems Repairs funded \$620,000 for the upgrades to the Building Management System (BMS) and Variable Air Flow (VAV) boxes at both buildings. The remaining repairs were funded by CIP Project 3406 – City Building Improvements in the amount of \$279,300.

California Environmental Quality Act:

The emergency repair work is exempt from CEQA, per CEQA Guidelines Section 15301, Existing Facilities and 15302, Replacement or Reconstruction.

Recommendations:

1. Receive an update on the emergency repairs to the HVAC system and equipment for City Hall and the Public Works, Information Technology and Police Department buildings.
2. Determine by a four-fifths vote that the condition continues to constitute an emergency.

Attachment:

None



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider Two Fee Waiver Requests from FAREPA Silicon Valley and the Joseph Bettencourt Foundation and One Donation Request from Korean Language and Culture Foundation (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	10/3/2023
	Recommendation: (1) Approve a Fee Waiver of \$945.00 for the Joseph Bettencourt Foundation Fundraiser at the Milpitas Community Center on October 20, 2023; (2) Approve a Fee Waiver of \$1,500 for the FAREPA Silicon Valley Unity in Diversity event at the Milpitas Community Center on October 12, 2023; and (3) Approve Donation request of \$500 for the Korean Language and Culture Foundation Alphabet event at the Milpitas Library on October 1, 2023.

BACKGROUND:

On September 18, 2023, staff received a Donation and Fee Waiver/Reduction Policy request from the Joseph Bettencourt Foundation (Foundation) for their fundraiser event at the Milpitas Community Center Auditorium on October 20, 2023. The request is for a \$945 fee waiver for the auditorium rental fees.

On September 20, 2023, staff received a Donation and Fee Waiver/Reduction Policy request from the Filipino American Real Estate Professionals Association Silicon Valley (FAREPA) for their Unity in Diversity event at the Milpitas Community Center Auditorium on October 12, 2023. The request is for a \$1,500 fee waiver for the auditorium rental fees.

On September 26, 2023, staff received a Donation and Fee Waiver/Reduction Policy request from the Korean Language and Culture Foundation for their Annual Alphabet Day event at the Milpitas Library on October 1, 2023. The request is for a \$500 donation for materials and giveaways for the attendees.

ANALYSIS:

Three Donation and Fee Waiver/Reduction Policy request applications were received by the Recreation and Community Services Department on September 18, 20, and 26, 2023.

Fee Waivers

Both the Foundation and FAREPA submitted their respective required application and documentation for a non-profit fundraising event:

- Indoor Space Rental Application for Milpitas Community Center Auditorium
- City Council Donation and Fee Waiver/Reduction Policy request
- Non-profit status letter

The Foundation is requesting that the City Council waive eligible fees for the auditorium hourly rental fees in the amount of \$945. FAREPA is requesting that the City Council waive eligible fees for the auditorium hourly rental fees in the amount of \$1,500. Fees ineligible for waiver include the rental application fee of \$30 and refundable security/damage deposit of \$500. Refundable security/damage deposits are refunded within 30 days of the rental.

Donation

The Korean Language and Culture Foundation submitted their required application and documentation for their cultural language event:

- City Council Donation and Fee Waiver/Reduction Policy request
- Non-profit status letter

The Korean Language and Culture Foundation is requesting that the City Council donate \$500 to costs associated with presenting the event.

Milpitas City Council adopted an updated "City Council Donation and Fee Waiver/Reduction Policy" on June 21, 2022. Per the policy, eligible organizations can request City fees to be waived up to \$1,500 or a donation amount up to \$500 to be granted upon request. Eligible organizations are defined as "a non-profit organization as described by the Internal Revenue Section such as 501(c)(3) or an intergovernmental agency; Non-discriminatory, and non-political in nature." Fee Waiver or Donation requests for events must provide a community benefit within the City of Milpitas proper. Applying organizations must provide proof of non-profit status from the federal Internal Revenue Service or the state Franchise Tax Board.

As required, all three non-profit organizations provided copies of their determination letter from the Internal Revenue Service stating they are tax-exempt organizations. All applicants meet the requirements as outlined in the Council adopted Donation and Fee Waiver/Reduction Policy.

POLICY ALTERNATIVE(S):

Alternative: Do not approve any or all fee waiver and donation applications as requested.

Pros: The City's General Fund will not incur the costs of the fees waived.

Con: Denial of the request may not allow the non-profit organizations to hold their events.

Reason not recommended: This request is consistent with the Council approved Policy.

FISCAL IMPACT:

\$25,000 was approved and included in the FY 2023-24 City budget for City Council's Unallocated Community Promotions with a current balance of \$25,000. If these requests are approved by the City Council, then \$22,055 would remain in that line item of the current year's budget.

RECOMMENDATION:

- 1) Approve a Fee Waiver of \$945 for the Joseph Bettencourt Foundation at the Milpitas Community Center on October 20, 2023
- 2) Approve a Fee Waiver of \$1,500 for the Filipino American Real Estate Professionals Association Silicon Valley Unity in Diversity event at the Milpitas Community Center on October 12, 2023
- 3) Approve Donation request of \$500 for the Korean Language and Culture Foundation Alphabet event at the Milpitas Library on October 1, 2023.

Attachment(s):

1. Joseph Bettencourt Foundation Application
2. Joseph Bettencourt Foundation Internal Revenue Service (IRS) non-profit letter
3. Filipino American Real Estate Professionals Association Silicon Valley Application
4. Filipino American Real Estate Professionals Association Silicon Valley Internal Revenue Service (IRS) non-profit letter
5. Korean Language and Culture Foundation Application
6. Korean Language and Culture Foundation Internal Revenue Service (IRS) non-profit letter
7. City Council Donation and Fee Waiver/Reduction Policy

#12

Name of Organization	Joseph Bettencourt Foundation
Is there a Milpitas Branch or Affiliation?	- Yes
Organization Address (as listed on your 501 (c) 3)	██████████ Milpitas, California 95035 United States
Organization Web Site	http://www.JosephBettencourtFoundation.org
Organization Contact Name	Juliette Gomez
Organization Contact Phone	██████████
Organization Contact Email	██████████
Request Type	- Fee Waiver (up to \$1,500)
Requested Amount (request types cannot be combined or exceed maximum listed amounts)	\$945.00
Description of Use of Funds/Fees to be Waived	MCC Auditorium space rental
Event Name	Halloween Costume Party
Event Date(s)	Oct 20, 2023
Event Location (Facility Name and Address)	Milpitas Community Center
Is your Event Open to the Public	Yes
What is the purpose of the Event? It's a fundraiser for the Joseph Bettencourt Foundation. We help families who need a helping hand with sports registration fees, uniforms, equipment, and safety gear.	
How will the Milpitas Community Benefit from this Event? We have already paid for travel expenses to the National Junior Olympics, Milpitas Knights Cheer, Football, and Soccer. We've paid for a Milpitas resident, a soccer player, travel expenses for her and her mom, airfare, hotel, and tournament fees to Long Beach this past summer. This is our very first sports season, with the help of the City we will continue to grow and help more families!	
What is you anticipated Event attendance?	100
What percentage of your event fundraising proceeds will benefit the Milpitas Community?	60% or more
How will the City's contribution (if approved) be recognized in event media and publicity? We will give thanks to the City of Milpitas in all of our marketing material.	
Upload your Entity Status Letter (Entity Name listed on this application must match the Entity Status Letter Name)	IRS Determination Letter - Joseph Bettencourt Foundation.pdf

Within 60 days after completion of the event for which a donation was received or a fee waiver was granted by the City of Milpitas, your organization will provide a report to the Director of Recreation and Community Services to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

A handwritten signature in black ink, appearing to be 'J. Ma', is written over a large, empty rectangular box intended for the signature.

Failure to abide by the rules and procedures set forth in the City Council Donation/Fee Waiver Policy will result in the organization being denied for funding and/or fee waiver in the future. Draw your signature into the box below.



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
P.O. Box 2508
Cincinnati, OH 45201

JOSEPH BETTENCOURT FOUNDATION
C/O SONIA MEDINA-ASHBY
[REDACTED]
MILPITAS, CA 95035

Date:
06/30/2022
Employer ID number:
[REDACTED]
Person to contact:
Name: Customer Service
ID number: 31954
Telephone: 877-829-5500
Accounting period ending:
December 31
Public charity status:
170(b)(1)(A)(vi)
Form 990 / 990-EZ / 990-N required:
Yes
Effective date of exemption:
April 07, 2022
Contribution deductibility:
Yes
Addendum applies:
No
DLN:
26053567002022

Dear Applicant:

We're pleased to tell you we determined you're exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3). Donors can deduct contributions they make to you under IRC Section 170. You're also qualified to receive tax deductible bequests, devises, transfers or gifts under Section 2055, 2106, or 2522. This letter could help resolve questions on your exempt status. Please keep it for your records.

Organizations exempt under IRC Section 501(c)(3) are further classified as either public charities or private foundations. We determined you're a public charity under the IRC Section listed at the top of this letter.

If we indicated at the top of this letter that you're required to file Form 990/990-EZ/990-N, our records show you're required to file an annual information return (Form 990 or Form 990-EZ) or electronic notice (Form 990-N, the e-Postcard). If you don't file a required return or notice for three consecutive years, your exempt status will be automatically revoked.

If we indicated at the top of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

For important information about your responsibilities as a tax-exempt organization, go to www.irs.gov/charities. Enter "4221-PC" in the search bar to view Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, which describes your recordkeeping, reporting, and disclosure requirements.

Sincerely,

Stephen A. Martin

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

#13

Name of Organization	FAREPA Silicon Valley Inc.
Is there a Milpitas Branch or Affiliation?	- No
Organization Address (as listed on your 501 (c) 3)	2211 Moorpark Ave. Ste 140 San Jose, CA 95128 United States
Organization Web Site	http://www.farepa.org
Organization Contact Name	Anne Ramirez
Organization Contact Phone	[REDACTED]
Organization Contact Email	[REDACTED]
Request Type	- Fee Waiver (up to \$1,500)
Requested Amount (request types cannot be combined or exceed maximum listed amounts)	\$1,500
Description of Use of Funds/Fees to be Waived	Venue fee 10 hours
Event Name	FAREPA Installation Unity in Diversity
Event Date(s)	Oct 12, 2023
Event Location (Facility Name and Address)	MCC Auditorium Milpitas Community Ctr
Is your Event Open to the Public	No
What is the purpose of the Event?	
It is for the induction of FAREPA-SV 2023-2024 Board Members. We will have special speakers to present on current real estate industry updates and how we as a team can better serve our community to help with affordable housing needs.	
How will the Milpitas Community Benefit from this Event?	
FAREPA-SV provides advocacy and resources to its members and affiliates. Our Executive Officers and Board of Directors have established projects such as housing fairs, first-time homebuyer program, Accessory Dwelling Unit (ADU) education, partnership outreach and events. We participated in the Multicultural Real Estate Summit Conference with the National Association of Realtors® (NAR) and the California Association of Realtors® (CAR) to address real estate policy issues to better serve our members.	
What is you anticipated Event attendance?	150
What percentage of your event fundraising proceeds will benefit the Milpitas Community?	Less than 60%

How will the City's contribution (if approved) be recognized in event media and publicity?

Through this event, we are raising awareness to other trade organizations and professionals. We support the City of Milpitas and its residents to help with education and updates of the real estate industry.

Upload your Entity Status Letter (Entity Name listed on this application must match the Entity Status Letter Name)

[FinalLetter_82-1664367_FAREPASILICONVALLEYINC_02022022_00.pdf](#)
[FAREPA SV CA TAX EXEMPT STATUS 2022-1.pdf](#)

Within 60 days after completion of the event for which a donation was received or a fee waiver was granted by the City of Milpitas, your organization will provide a report to the Director of Recreation and Community Services to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

Anne Ramirez

**Failure to abide by the rules and procedures set forth in the City Council Donation/Fee Waiver Policy will result in the organization being denied for funding and/or fee waiver in the future.
 Draw your signature into the box below.**



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
P.O. Box 2508
Cincinnati, OH 45201

FAREPA SILICON VALLEY INC
2211 MOORPARK AVE STE 140
SAN JOSE, CA 95128

Item # C10.

Date:
07/18/2022
Employer ID number:
[REDACTED]
Person to contact:
Name: Customer Service
ID number: 31954
Telephone: (877)-829-5500
Accounting period ending:
June 30
Form 990/990-EZ/990-N required:
Yes
Effective date of exemption:
February 2, 2022
Contribution deductibility:
No
Addendum applies:
No
DLN:
29053039309002

Dear Applicant:

We're pleased to tell you we determined you're exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(6). This letter could help resolve questions on your exempt status. Please keep it for your records.

Donors cannot deduct contributions they make to you under IRC Section 170(c)(2).

If we indicated at the top of this letter that you're required to file Form 990/990-EZ/990-N, our records show you're required to file an annual information return (Form 990 or Form 990-EZ) or electronic notice (Form 990-N, the e-Postcard). If you don't file a required return or notice for three consecutive years, your exempt status will be automatically revoked.

If we indicated at the top of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

For important information about your responsibilities as a tax-exempt organization, go to www.irs.gov/charities. Enter "4221-NC" in the search bar to view Publication 4221-NC, Compliance Guide for Tax-Exempt Organizations (Other than 501(c)(3) Public Charities and Private Foundations), which describes your recordkeeping, reporting, and disclosure requirements.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

#14

Name of Organization	Korean Language and Culture Foundation
Is there a Milpitas Branch or Affiliation?	- Yes
Organization Address (as listed on your 501 (c) 3)	[REDACTED] Milpitas, CA 95035 United States
Organization Web Site	https://www.facebook.com/klacfsf
Organization Contact Name	Eun Hee Koo
Organization Contact Phone	[REDACTED]
Organization Contact Email	info@klacf.org
Request Type	- Donation (up to \$500)
Requested Amount (request types cannot be combined or exceed maximum listed amounts)	\$500
Description of Use of Funds/Fees to be Waived	We will use this to prepare for materials and gifts for the audience of the event.
Event Name	Korean Alphabet Day Celebration
Event Date(s)	Oct 01, 2023
Event Location (Facility Name and Address)	Milpitas Library Auditorium, 160 N Main St, Milpitas, CA 95035
Is your Event Open to the Public	Yes
What is the purpose of the Event? To celebrate the 580th Korean Alphabet Day and let City of Milpitas citizens experience Korean culture	
How will the Milpitas Community Benefit from this Event? They will experience Korean culture including Korean traditional games, Korean custom and printing system.	
What is you anticipated Event attendance?	120
What percentage of your event fundraising proceeds will benefit the Milpitas Community?	None, this is not a fundraiser
How will the City's contribution (if approved) be recognized in event media and publicity? It will be announced on the program and at the event and press release after the event.	
Upload your Entity Status Letter (Entity Name listed on this application must match the Entity Status Letter Name)	IRS tax exempt status -KLACF.pdf

Within 60 days after completion of the event for which a donation was received or a fee waiver was granted by the City of Milpitas, your organization will provide a report to the Director of Recreation and Community Services to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.

Eun Hee Koo

Failure to abide by the rules and procedures set forth in the City Council Donation/Fee Waiver Policy will result in the organization being denied for funding and/or fee waiver in the future. Draw your signature into the box below.



Entity Status Letter

Date: 9/26/2023

ESL ID: 2512656380

Why You Received This Letter

According to our records, the following entity information is true and accurate as of the date of this letter.

Entity ID: 3431277

Entity Name: KOREAN LANGUAGE AND CULTURE FOUNDATION.

- ☒ 1. The entity is in good standing with the Franchise Tax Board.
- ☐ 2. The entity is **not** in good standing with the Franchise Tax Board.
- ☒ 3. The entity is currently exempt from tax under Revenue and Taxation Code (R&TC) Section 23701 d.
- ☐ 4. We do not have current information about the entity.
- ☐ 5. The entity was administratively dissolved/cancelled on _____ through the Franchise Tax Board Administrative Dissolution process.

Important Information

- This information does not necessarily reflect the entity's current legal or administrative status with any other agency of the state of California or other governmental agency or body.
- If the entity's powers, rights, and privileges were suspended or forfeited at any time in the past, or if the entity did business in California at a time when it was not qualified or not registered to do business in California, this information does not reflect the status or voidability of contracts made by the entity in California during the period the entity was suspended or forfeited (R&TC Sections 23304.1, 23304.5, 23305a, 23305.1).
- The entity certificate of revivor may have a time limitation or may limit the functions the revived entity can perform, or both (R&TC Section 23305b).

Connect With Us

Web: **ftb.ca.gov**
Phone: 800-852-5711 from 7 a.m. to 5 p.m. weekdays, except state holidays
916-845-6500 from outside the United States

California

Relay Service: 711 or 800-735-2929 (For persons with hearing or speech impairments)



CITY OF MILPITAS

Item # C10.

Revision	Date
Original	04/16/2013
	6/21/2022

CITY COUNCIL POLICY

Policy No: Click or tap here to enter text.	DONATION AND FEE WAIVER/ REDUCTION POLICY	Effective Date: 6/21/2022
Revision No: 1	Policy Administrator: Recreation and Community Services	Next Review Due: As needed
Related Policies and Procedures: Click or tap here to enter text.	Approved by: Click or tap here to enter text. Council meeting date, agenda item #, and vote	Date Approved: 6/21/2022

1. PURPOSE

- 1.1. The City recognizes the value of partnership with other agencies and organizations in providing services that benefit the community and its residents.
- 1.2. The City may provide a donation or grant a reduction and/or waiver of fees to intergovernmental agencies or non-profit organizations that provide Milpitas community benefit.

2. POLICY

- 2.1. The City shall have the sole authority and the City Council shall have the final authority to approve Donations and Fee Waiver/Reduction requests.
- 2.2. The City Council shall evaluate donation and fee waiver/reduction requests at a scheduled City Council meeting.
- 2.3. Any requests for donation or fee waiver/reduction must be submitted in writing using the provided application form by the Recreation and Community Services Department.
- 2.4. In order for an organization to be eligible for a donation or fee waiver / reduction, the following criteria have to be met:
 - 2.4.1. The applying organization must be:
 - 2.4.1.1 A non-profit organization as described by the Internal Revenue Section such as 501(c)(3) or an intergovernmental agency;
 - 2.4.1.2 Non-discriminatory, and non-political in nature;
 - 2.4.2. Events must provide a community benefit within the City of Milpitas proper.
- 2.5. If the event requested for fee waiver is a fundraiser, the organization must demonstrate that at least 60% of fund raised will be of general benefit to the Milpitas community.
- 2.6. If the request for donation or fee waiver/reduction is for a community event, the event must be advertised, open to the public and no entrance fee shall be charged for the event.
- 2.7. Fee waivers/reductions only apply to services provided by the City during its regular course of business. Such fees may include rental fees for the City's facilities or equipment, building permit fees or fire permit fees. Any deposits and/or City staff overtime costs required due to the event cannot be waived.
- 2.8. The City Council may grant donation or fee waiver/reduction to each organization once annually, regardless of how many branches or affiliations it may have.



Revision	Date
Original	04/21/2006
	6/21/2022

CITY COUNCIL DONATION AND FEE WAIVER/REDUCTION POLICY / POLICY

- 2.9. The fee waiver/reduction amount is subject to \$1,500 maximum per fiscal year and the donation amount is subject to \$500 maximum annually for each organization. A fee waiver/reduction request cannot be combined with a donation request.
- 2.10. To the extent possible, the City's contribution should be recognized in the event fliers and/or advertising with the following statement, "This event made possible, in part, by the City of Milpitas."
- 2.11. Within 60 days after completion of the event in which a donation was received or a fee waiver/reduction was granted by the City, the organization will provide a written report to the Director of Recreation and Community Services to include at minimum: number of participants, copies of all publicity of the event, any benefit to the community, amount of funds raised and an accounting of how the proceeds of the event will be dispersed.
- 2.12. Failure to abide by the rules and procedures as set forth in this document will result in the organization being denied for funding and/or fee waiver/reduction in the future.

3. PROCEDURE

- 3.1. The Recreation and Community Services Department shall maintain an application for Donation and Fee Waiver/Reduction Requests.
- 3.2. Upon receipt of an application, the Recreation and Community Services Department shall determine eligibility for a Donation and/or Fee Waiver/Reduction consistent with this Policy and inform the applicant of its determination in writing.
- 3.3. If eligibility is determined, the Director of Recreation and Community Services shall bring requests for donation or fee waiver/reductions to Council for approval at any regular or special meeting.
- 3.4. If ineligibility is determined, the applicant can appeal the Director of Recreation and Community Services' determination to the City Manager. A request for appeal must be made, in writing, and delivered to the City Manager's Office within seven (7) days of the applicant's receipt of the determination of ineligibility. The request for appeal must state, in writing, the basis for the appeal and must contain all written documentation supporting each basis for appeal. The City Manager shall issue a decision, in writing, without hearing based on the documents presented.
- 3.5. Donation and Fee Waiver Budget
 - 3.5.1. With each budget cycle, the City Council will establish an annual budget amount for donations or fee waivers/ reductions for unspecified community events. Except for extraordinary circumstances, donations and or fee waivers/reductions will not be granted once the budgeted amount has been allocated.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Provide Feedback and Guidance on the Proposed Workforce Housing Rental Assistance Program Approve an Additional Appropriation of \$28,389.76 from the Affordable Housing Community Benefit Fund to FORWARD for the Administration of the Workforce Housing Rental Assistance Program, and Direct the Use of an Allocation from the State Budget for Homelessness Prevention and Unhoused Services (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046; and Robert Musallam, Housing Division Manager, 408-586-3275)
Category:	Community Development
Meeting Date:	10/3/2023
Recommendation:	(1) Receive a recommendation from the Housing Subcommittee and staff to provide rental assistance for up to 50 households over 24 months through a Workforce Housing Rental Assistance Program. (2) Approve and Authorize Acting City Manager, or designee, to allocate an additional Approve and Authorize the Acting City Manager, or designee, to allocate an additional appropriation of \$28,389.76 from the Affordable Housing Community Benefit Fund to FORWARD for the administration of the Workforce Housing Rental Assistance Program. (3) Provide feedback and guidance on the use of an allocation from the State Budget for Homelessness Prevention and Unhoused Services for the Workforce Housing Rental Assistance Program.

BACKGROUND:

This Agenda Report focuses on two separate unhoused services funding awards totaling approximately \$3,000,000. The purpose of the Permanent Local Housing Allocation (PLHA) of approximately \$1,500,000 is to develop housing-related projects and programs that assist in addressing the unmet housing needs of Milpitas. The purpose of the \$1,500,000 in one-time state funding awarded through the Office of Assemblymember Alex Lee is to continue to serve those at risk of homelessness and the unhoused population.

Permanent Local Housing Allocation (PLHA)

In 2017, Governor Brown signed a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. This included Senate Bill 2 Building Homes and Jobs Act (SB-2), which created a recording fee on real estate documents to increase the supply of affordable homes in California. SB-2 established that 70% of the revenue collected, beginning in calendar year 2019, will go to locally administered affordable housing, otherwise known as Permanent Local Housing Allocation (PLHA).

The California Department of Housing and Community Development (HCD) released the 2022 Notice of Funding Availability (NOFA) on August 17, 2022. The allocation spans five years, 2019-2023. HCD requirements state that applicants must submit a five-year plan for the period of 2019-2023 and cannot apply for more than three years of allocation in one year. On November 1, 2022, City Council adopted a Resolution authorizing the 2019, 2020, and 2021 funding application and approving a five-year (2019-2023) plan.

In February 2023, the City received its award letter from HCD (Attachment 1). In July 2023, the City received its executed Standard Agreement for PLHA from HCD. The City was approved to designate 5% to program administration. The remaining balance will be split with approximately 20% of the remaining funding allocated to fund the City's homeless outreach and assessment services for an additional three fiscal years, and the remaining 75% for a Workforce Housing Rental Assistance Program (WHRAP). Preliminary information regarding the

WHRAP was presented to the City Council on [November 1, 2022](#), and [April 4, 2023](#). Staff has developed a more detailed explanation of WHRAP which is provided below.

Office of Assemblymember Alex Lee funding for Homelessness Prevention and Unhoused Services

In March 2022, the City requested support of one-time funding as part of the fiscal year 2022-2023 State budget through Assemblymember Alex Lee's Office. The funding request included establishing a Milpitas resource center as a 2-year pilot program (\$500,000), supporting the continuation and expansion of the City's mobile shower and laundry services, twice a week, for a period of 3 years (\$300,000), and providing rent relief to vulnerable Milpitas residents (\$700,000). In fall 2022, the City received notification of the award of state funding, through Assemblymember Lee's Office, in the amount of \$1,500,000 for housing related programs and services, which was incorporated into the City's Fiscal Year 2023-2024 Budget. The City received the funding in March 2023.

Housing Subcommittee

At the August 22, 2023 meeting, the Housing Subcommittee provided staff with feedback and recommendations regarding the PLHA and Office of Assemblymember Alex Lee state funding. Under PLHA, the City's award consists of two components: homeless outreach and assessment, and a Workforce Housing Rental Assistance Program (WHRAP). The Housing Subcommittee's feedback consisted of ensuring outreach and assessment included individuals who were at risk of homelessness. The Housing Subcommittee also recommended to both fund 50 households for 24 months and expressed support for FORWARD to serve as the program administrator as they are currently administering the City's Rent and Mortgage Relief Program, and this will ensure the onset of WHRAP to be launched as possible. In addition, the Housing Subcommittee expressed support for utilizing the Office of Assemblymember Alex Lee's state funding for the continuation of the original allocation of \$700,000 for rent relief and to consider safe parking as another viable option for the remaining funds. A consensus was reached by the Housing Subcommittee to have the City Council consider a safe parking program at the next prioritization item conversation. The staff recommendations in this Agenda Report reflect the direction provided by the Housing Subcommittee at the August 2023 meeting.

ANALYSIS:

The report provides information and seeks input related to both state funding programs.

Permanent Local Housing Allocation

Per PLHA guidelines, rental assistance must help individuals who are at or below 30% of the area median income (AMI). The table below provides the income limits by household size. PLHA guidelines also require any individual receiving rental assistance with the PLHA grant be funded for a minimum of six months.

Household Size	1	2	3	4	5	6
30% AMI	\$37,450	\$42,800	\$48,150	\$53,500	\$57,800	\$62,100

Workforce Housing Rental Assistance Program (WHRAP)

In accordance with the PLHA funding requirements, WHRAP would provide a rental subsidy to Milpitas residents and members of the local workforce whose income is at or less than 30% AMI, defined by HCD as extremely low income. WHRAP would function similarly to a Section 8 voucher system in that the funds would be provided directly to the landlord and would be used to offset a specific amount of rent paid by the tenant, but not the entire rent.

Staff recommends utilizing PLHA funding to provide rental assistance for individuals who work and/or live in Milpitas. More information regarding preferences will be presented further in this report.

Given the income levels, individuals who are likely to be assisted with this program are as follows:

- Select Milpitas Unified School District employees
- Hospitality industry
- Personal care and service sector
- Office and administrative support
- Installation, maintenance, and repair occupations

WHRAP Program Administration

The City was awarded a total grant of \$1,017,554 for 2019, 2020, and 2021 PLHA funds. Five percent (5%) of the total grant, or \$50,877.70, is allocated for program administration. The use of these funds was previously approved by Council and HCD. The Housing Division will oversee the WHRAP, however, a third-party administrator will be required to facilitate the initial tenant selection and monthly rental assistance distribution. If approved by the City Council, Housing staff will work closely with the program administrator to ensure compliance with program guidelines, and Building Safety will provide a housing inspector to pre-inspect any unit that will receive WHRAP funding. While unit inspections are not required, HCD recommends making sure the units leased by recipients of rental assistance are decent, safe, and sanitary, through inspections.

Although the City's five-year plan was approved by HCD, only the 2019, 2020, and 2021 funds have been awarded. Each of the three awarded years has different award amounts and usage deadlines. The table below reflects this data:

Allocation Years	Amount Awarded	Expenditure Deadline
Year 1 (2019)	\$ 238,595	4/30/2024
Year 2 (2020)	\$ 370,850	4/30/2025
Year 3 (2021)	\$ 408,109	4/30/2026
Total	\$1,017,554	

As shown in the table above, the 2019 usage deadline is April 30, 2024. Typically, the City would conduct a request for proposal (RFP), which may take 3-6 months to procure a program administrator. Given the deadline for the 2019 funds to be spent is approximately 6 months away, staff is recommending awarding the program administration of the WHRAP to FORWARD (formerly LiveStories). FORWARD responded to the initial ARPA Milpitas Small Business Grant Program RFP and was awarded as the fiscal administrator in 2021. In addition, FORWARD is currently administering the ARPA funded Rent and Mortgage Relief Program, and the City Council recently approved the use of FORWARD's services for the CDBG funded Microenterprise Grant Program, which is forthcoming. FORWARD has the technology and human resources to expedite the needs of the City and staff has established a great working relationship with FORWARD.

The total cost to administer the program is \$79,267.46. Of this figure, PLHA allows for up to 5%, or \$50,877.70, to be used towards an administrative fee. To fund the administration of the program, staff is requesting the remaining \$28,389.76 be funded from the Affordable Housing Community Benefit Fund. The table below displays the breakdown of the funding source and the amount required from each source to fund the administration fee.

Funding Source	Amount
PLHA Administrative Fee Allowance	\$50,877.70
Affordable Housing Community Benefit Fund	\$28,389.76
Total Administration Fee Required	\$79,267.46

It is important to note that the PLHA administrative funding source has already been approved by the City Council at the [November 1, 2022](#), meeting and HCD and cannot be used for any other purpose.

WHRAP Selection Process

In an effort to develop a program that assists the City in addressing unmet housing needs locally, staff recommends utilizing a tiered selection system to ensure prioritization for Milpitas residents. There are three tiers of applicants the City Council may consider, which are listed below:

1. A household where at least one adult both lives and works in Milpitas.
2. A household where at least one adult lives in Milpitas and does not work in Milpitas.
3. A household where at least one adult works in Milpitas but does not live in Milpitas.

The intention of the program is to primarily serve Milpitas residents who also work in Milpitas. The Economic Development Strategy adopted by the City Council in May 2020 included an analysis of employed Milpitas residents and workforce, and it was determined that only 12% of Milpitas residents also work in Milpitas (Strategic Economics 2019/ Longitudinal Household Employment Dynamics, 2017). Since the percentage of the workforce that both lives and works in Milpitas is low, staff is inclined to extend the assistance to residents of Milpitas who are an important part of the regional workforce and who may also benefit from the WHRAP. And finally, if there is still available funding, staff would select households where one adult works in Milpitas but does not live in Milpitas.

Eligible households must comply with the following:

- Households who make 30% AMI or less
- Must be renting
- Must occupy the entire unit, no shared living arrangements
- Tenant in good standing

The PLHA rental assistance program requires providing rent relief for a minimum period of six months. The household benefit amount and individuals assisted will be dependent on the City Council direction. The table below displays a breakdown of projected assistance to benefit between 20-50 households. The first table shows the staff recommended 24 month period. Option A (18 months) and Option B (12 months) provide alternative recommendations for City council consideration. The figures below are meant to illustrate the potential benefit per month. The final numbers are subject to change as staff finalizes the funding arrangement with HCD, but a significant change is not anticipated.

Staff Recommendation 2019, 2020, and 2021 Combined Entitlement (24 months)			
PLHA Allocation	Households Assisted	Months Assisted	Benefit Per Month
\$773,341.04	20	24	\$1,611.13
\$773,341.04	30	24	\$1,074.08
\$773,341.04	40	24	\$805.56
\$773,341.04	50	24	\$644.45

Option A 2019, 2020, and 2021 Combined Entitlement (18 Months)			
PLHA Allocation	Households Assisted	Months Assisted	Benefit Per Month
\$773,341.04	20	18	\$2,148.17
\$773,341.04	30	18	\$1,432.11
\$773,341.04	40	18	\$1,074.08
\$773,341.04	50	18	\$859.27

Option B 2019, 2020, and 2021 Combined Entitlement (12 Months)			
PLHA Allocation	Households Assisted	Months Assisted	Benefit Per Month

\$773,341.04	20	12	\$3,222.25
\$773,341.04	30	12	\$2,148.17
\$773,341.04	40	12	\$1,611.13
\$773,341.04	50	12	\$1,288.90

In order to better understand the impact of the potential benefit on our Milpitas families, staff researched the average rental cost for a one-, two-, and three-bedroom units in Milpitas. The table below displays the current average rent for each unit size.

Unit Size	Avg Rent*
1BR	\$2,288
2BR	\$3,316
3BR	\$3,568

*Source: Zillow

As an example, a 24-month program benefiting 50 households with \$644.45 per month, could result in a 28% reduction in housing cost for the average one-bedroom occupant, a 19% reduction for the average two-bedroom occupant, and a 18% reduction for the average three-bedroom occupant. This example uses the lowest possible benefit per month. If the City Council votes to use a term less than 24 months or to cap the households assisted below 50, then the benefit per month would increase.

The Housing Subcommittee and staff recommends assisting 50 households for 24 months to ensure the program can provide stability to the beneficiary. The Housing Subcommittee also requested that staff develop a thorough outreach plan to enhance awareness of the program to Milpitas residents.

Office of Assemblymember Alex Lee funding for Homelessness Prevention and Unhoused Services

The initial allocation request (Attachment 2) aimed to establish a Milpitas resource center as a 2-year pilot program (\$500,000), support the continuation and expansion of the City's mobile shower and laundry services, twice a week, for a period of 3 years (\$300,000), and provide rent relief to vulnerable Milpitas residents (\$700,000) was accepted by the City Council in Fiscal Year 2022-2023.

Staff has prepared preliminary research on the various homelessness prevention and unhoused services options to meet the intent of the initial funding request. Staff seeks City Council guidance before proceeding on the unused funds originally for the City's mobile shower and laundry services, allocating any amount of rent relief funds, and ensuring the navigation center is still the City Council's request. Below is a summary of the research and requests for guidance.

1. Milpitas Resource Center:

The original request allocated \$500,000 for a resource center. A resource center was one of the options brought to Council by the Homelessness Task Force in February 2022. The City Council has had ongoing discussions surrounding how to support homeless residents. During the Task Force recommendation discussions in February 2022, the City Council elected to not move forward with a resource center, navigation center, day worker center, and/or safe parking. However, the City Council is scheduled to re-consider whether to re-prioritize a safe parking program in Milpitas at the October 17, 2023 City Council meeting. As the City received State funding for a resource center, staff is providing definitions below for clarity on some of the options the City Council may want to consider.

A **day worker/help center** is a clearinghouse and **resource center** that connects day workers to short-term jobs from residents and businesses. The facility would also function as a community and support center for clients with training classes and employment services. No overnight accommodations would be provided. Day worker centers in other cities predominately serve clients who already have housing.

and are pre-screened for employment. A help center can be expanded to support the unhoused population with added services or referrals to other service providers. Currently, the nearby cities with similar centers are Mountain View who has a day worker center and Fremont, who has both a help/resource center for unhoused individuals and a navigation center, administered by the City's Human Services Department.

A **navigation center** is a rapid rehousing facility for the unhoused population with case management and wrap-around services to transition clients from homelessness to stable housing. The City Council has decided not to pursue this option through the recent prioritization projects voting on [June 20, 2023](#).

A **Safe parking program** consists of sites for temporary parking of RVs (overnight only or 24-hours) to provide a secure and alternate location to on-street or off-street parking. Case management and supportive services are often, but not always, provided to transition clients to stable housing. The viability of this option depends on the number of individuals living in RVs, their willingness to participate in the program, and space availability. A half-acre site can accommodate about 15 RVs depending on the size of vehicles with allowance for on-site facilities, vehicle separation, and emergency access. As an alternative, the City Council could also consider a safe parking program that accommodates both RVs and passenger vehicles. The cities that currently have this option include San Jose, Morgan Hill, Mountain View, Palo Alto, and Fremont. The City Council will be discussing this option at the next quarterly prioritization meeting.

Tiny Home Villages are rapid rehousing models for unhoused individuals to live in individual or duplex modular shelters. They often include case management and wrap-around services to transition clients from homelessness to stable housing. A Tiny Home Village was one of the [final recommendations](#) from the Homelessness Taskforce. Per City Council direction, staff contracted with a consultant to conduct a Tiny Home Village Feasibility Study. The consultants are currently drafting the Feasibility Study, which is expected to be presented to City Council in late fall 2023. Funds from the state budget could be used to fund a potential Tiny Home Village, however, more research would be required to determine the true fiscal impact of such a project including ongoing operations and maintenance expenses.

As the original budget request was \$500,000, staff seeks City Council guidance on the use of these funds as discussed further below.

2. Mobile Shower and Laundry Services:

The original budget request for \$300,000 was meant to provide funding for this service for three fiscal years and increase service frequency from once a week to twice a week. There was no subsequent direction from the City Council regarding increasing the frequency to twice a week. Hence the Adopted FY 23-24 Budget includes funding for three years at a frequency of once per week. The City entered into a contract with WeHOPE on July 5, 2023, to continue mobile shower and laundry services until June 30, 2026, with a total-not-to exceed amount of \$150,000.

As the original budget request was \$300,000, staff seeks City Council guidance on the remaining \$150,000 that was not allocated to the mobile shower and laundry services 3-year contract.

3. Rent Relief:

As noted above, the City Council requested and was approved for \$700,000 in rent relief from the Office of Assemblymember Alex Lee. These funds will be added to the existing Rent and Mortgage Relief Program.

Unlike the existing allocation for rent relief, which was funded by ARPA, the State's budget does not require a COVID-19 hardship to allocate funds for rental assistance. Staff recommend eliminating the COVID-19 hardship requirement for the rent relief money received from the State's budget as this w

allow for an expansion of assistance coverage. The COVID-19 hardship requirement will still be in place for eligible applicants who access the remaining ARPA funded rent relief. The Housing Subcommittee recommended continuing with the initial request of \$700,000 for rent relief, however, Council may elect to re-allocate these funds to other activities that fall within the scope of homelessness prevention and unhoused services.

Remaining Funds - \$650,000

For the remaining \$650,000 of the overall \$1,500,000 of the Office of Assemblymember Alex Lee's funding, the Housing Subcommittee recommended that the City Council be made aware there is no expenditure deadline and consider these funds under a possible safe parking program at the subsequent prioritization conversation.

Staff has sought clarification over the past year from state representatives on whether there is flexibility in using the funds to support other homelessness prevention and unhoused services than the ones initially requested. Recently, the Office of Assemblymember Alex Lee has requested a letter from staff that illustrates outcomes of the clarification sought as well as specifically what the City is looking for in terms of direction. It is important to note that staff is operating under the assumption that if the funding is used to support similar goals as the original funding request, i.e., to prevent homelessness and provide services to the unhoused, alternate funding options may be eligible.

FISCAL IMPACT

The City's receipt of the 2019, 2020, and 2021 PLHA grant would be in an amount not to exceed \$1,017,554, in accordance with all applicable rules and laws. Any subsequent HCD entitled allocations will be incorporated into the annual budget development or separately for the City Council's consideration.

Should the City Council approve FORWARD as the WHRAP administrator, an additional program administration cost will be required due to the \$50,877.70 maximum allowed by PLHA. The additional amount of \$28,389.76 will be paid from the Affordable Housing Community Benefit Fund (Fund 216).

City Council accepted the homelessness prevention and unhoused services grant awarded by the Office of Assemblymember Alex Lee through the fiscal year 2022-2023 State budget on [September 6, 2022](#). The award is in the amount not to exceed \$1,500,000, in accordance with all applicable rules and laws. Any program requiring additional funding will come back to the City Council for consideration.

CEQA

The action is a fiscal activity of the City government or an action to create a City government funding mechanism that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378. The action is an organizational or administrative activity of the City government that will not Result in direct or indirect physical changes in the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

RECOMMENDATIONS:

1. Receive a recommendation from the Housing Subcommittee and staff to provide rental assistance for up to 50 households over 24 months through a Workforce Housing Rental Assistance Program.
2. Approve and Authorize Acting City Manager, or designee, to allocate an additional Approve and Authorize the Acting City Manager, or designee, to allocate an additional appropriation of \$28,389.76 from the Affordable Housing Community Benefit Fund to FORWARD for the administration of the Workforce Housing Rental Assistance Program.
3. Provide feedback and guidance on the use of an allocation from the State Budget for Homelessness Prevention and Unhoused Services for the Workforce Housing Rental Assistance Program.

ATTACHMENTS:

1. PLHA Award Letter
2. One-Time State Funding Request letter for Homelessness Prevention and Unhoused Services
3. Budget Change Form

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF STATE FINANCIAL ASSISTANCE**

2020 W. El Camino Avenue, Suite 670, 95833
P. O. Box 952054
Sacramento, CA 94252-2054
(916) 263-2771
www.hcd.ca.gov



February 15, 2023

Steven G. McHarris, Interim City manager
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Dear Steven G. McHarris:

**RE: Award Announcement – Permanent Local Housing Allocation Program
Round 3, Notice of Funding Availability, Fiscal Year 2022/2023
City of Milpitas
Contract No. 22-PLHA-17661**

The California Department of Housing and Community Development (Department) is pleased to announce that the City of Milpitas has been awarded a Permanent Local Housing Allocation (PLHA) program award in the amount of \$1,017,554. This letter constitutes notice of the designation of PLHA program funds for use in Santa Clara County for the following activities:

- Rental Assistance
- Supportive/Case Management Services

The City of Milpitas will be required to enter into a Standard Agreement that will set forth conditions for funding and milestones that are required to be met. Reimbursement of eligible expenses are subject to the terms outlined in Section 304(d) of the PLHA adopted program guidelines.

Congratulations on your successful application. For further information, please contact Doniell Cummings, PLHA Program Manager, Program Design and Implementation Branch, at (916) 695-9006 or Doniell.Cummings@hcd.ca.gov.

Sincerely,

Jennifer Seeger
Deputy Director
Division of State Financial Assistance



CITY OF MILPITAS

OFFICE OF MAYOR RICH TRAN

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
 PHONE: 408-586-3059, www.ci.milpitas.ca.gov

March 28, 2022

Honorable Assemblymember Alex Lee
 1313 North Milpitas Boulevard
 Suite #255
 Milpitas, CA 95035

via E-mail:
Anurag.Pal@asm.ca.gov

RE: City of Milpitas' One-Time State Funding Requests

Honorable Assemblymember Lee,

Per our conversation, and on behalf of the City of Milpitas, I am requesting your support of one-time funding as part of the FY 2022-23 State budget for the following three projects.

Cardoza Park Softball Fields Improvement

The Milpitas North Valley Police Athletic League Softball League, formerly known as Milpitas North Valley Bobby Sox, has offered inclusive softball activities for 400 Milpitas youth annually for 24 years focusing on giving young girls in our community the confidence and leadership skills to succeed in life, while also being active and healthy using the fundamentals of athletics. For most of the program's life, it was held at the Russell Middle School Bobby Sox fields, owned by the Milpitas Unified School District (MUSD). In 2021, MUSD started to renovate the Russell Middle School fields for multi-use play with a track, soccer field, and small softball field. To support the continuation of softball league activities, the City temporarily transitioned the PAL Softball Program to Dixon Landing Park Sports fields. Aside from the youth players and their families, thousands of interleague players and spectators stretching from San Lorenzo to the Central Valley, visit Milpitas for team play, scrimmages, and tournaments.

In December 2021, the City Council approved the City's Parks Master Plan, which provides for four softball fields to ensure a permanent home for Milpitas softball activities. As part of the FY 2023-2027 Capital Improvement Program, the City Council will allocate \$500,000 to fund the design of the project. The cost for construction is estimated at \$7 million. The City requests support for all or a portion of the estimated construction cost.

Bike Lane Facilities Enhancement

The City Council is scheduled to approve the City of Milpitas Climate Action Plan in June 2022. In 2019, approximately 60% of Green House Gas emissions were related to on-road vehicle traffic. To encourage greater mode shift from motorized vehicle travel, the city desires improving existing bicycle facilities to promote multi-modal nature of roadways and increase bicyclist comfort. The City maintains stripping for approximately 26 miles of bike lanes (Class II bike lanes); however, the vast majority of these lanes do not have the green-colored pavement

identifying potential areas of conflict, which are typically close to intersections, or other protective measures.

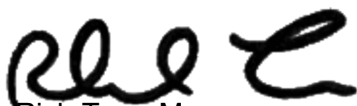
In order to support safer bicycle traffic, the City requests funding in the amount of \$1,000,000. This allocation would support upgrading existing bike lane infrastructure with green-colored pavement at intersections and through conflict areas, establish green-colored intersection bike boxes, buffered bike lanes, and/or separated bikeways marked with bollards, posts, or on-street parking.

Homelessness Prevention and Unhoused Services

Affordable Housing policies and programs and services for the unhoused are a high priority for the City Council. On March 1, 2022, the City Council provided input on the recently completed Homelessness Task Force report and individual members of the Council expressed interest in several items such as a homelessness help center, safe parking areas, prevention programs, a day worker center, a feasibility study for a navigation center, a dumpster or trash cans and expansion of the City's mobile shower and laundry services. The City also contracts with Santa Clara County to provide outreach and assessment services to the unhoused population in Milpitas. Some of the services currently funded by the City draw upon various one-time funding sources. In order to continue to serve those at risk of homelessness and the unhoused population, the City requests funding in the amount of \$1,500,000. This allocation would support continuing and expanding the City's mobile shower and laundry services, twice a week, for a period of 3 years (\$300,000), establish a Milpitas Resource Center as a 2-year pilot program (\$500,000), and provide rent relief to vulnerable Milpitas residents (\$700,000).

On behalf of the City of Milpitas and its residents, I appreciate your consideration and support for the three funding requests. For questions regarding these requests, please contact Ashwini Kantak, Assistant City Manager, at akantak@ci.milpitas.ca.gov or 408-586-3053 or Walter C. Rossmann, Deputy City Manager, at wrossmann@ci.milpitas.ca.gov or 408-586-3012.

Sincerely,



Rich Tran, Mayor
City of Milpitas

C: Milpitas City Council
Steve McHarris, City Manager
Ashwini Kantak, Assistant City Manager
Walter C. Rossmann, Deputy City Manager

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From (Credit)		To (Debit)	
	Account	Amount	Account	Amount
Check one: ☒ Budget Appropriation ☐ Budget Transfer	216-2909	\$28,390	216-536-4237	\$28,390

Recommendation:

- (a) Provide input on Housing Subcommittee and staff recommendation to provide rental assistance to 50 households over 24 months through a Workforce Housing Rental Assistance Program.
- (b) Approve and Authorize Acting City Manager, or designee, to allocate an additional appropriation of \$28,389.76 to FORWARD for the administration of the Workforce Housing Rental Assistance Program from the Affordable Housing Community Benefit Fund.
- (c) Provide feedback and guidance on the proposed Workforce Housing Rental Assistance Program and the State Budget for Homelessness Prevention and Unhoused Services.

BACKGROUND:

This Agenda Report focuses on two separate unhoused services funding awards totaling approximately \$3,000,000. The purpose of the Permanent Local Housing Allocation (PLHA) of approximately \$1,500,000 is to develop housing-related projects and programs that assist in addressing the unmet housing needs of Milpitas. The purpose of the \$1,500,000 in one-time state funding awarded through the Office of Assemblymember Alex Lee is to continue to serve those at risk of homelessness and the unhoused population.

Permanent Local Housing Allocation (PLHA)

In 2017, Governor Brown signed a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. This included Senate Bill 2 Building Homes and Jobs Act (SB-2), which created a recording fee on real estate documents to increase the supply of affordable homes in California. SB-2 established that 70% of the revenue collected, beginning in calendar year 2019, will go to locally administered affordable housing, otherwise known as Permanent Local Housing Allocation (PLHA).

The California Department of Housing and Community Development (HCD) released the 2022 Notice of Funding Availability (NOFA) on August 17, 2022. The allocation spans five years, 2019-2023. HCD requirements state that applicants must submit a five-year plan for the period of 2019-2023 and cannot apply for more than three years of allocation in one year. On November 1, 2022, City Council adopted a Resolution authorizing the 2019, 2020, and 2021 funding application and approving a five-year (2019-2023) plan.

In February 2023, the City received its award letter from HCD (Attachment 1). In July 2023, the City received its executed Standard Agreement for PLHA from HCD. The City was approved to designate 5% to program administration. The remaining balance will be split with approximately 20% of the remaining funding allocated to fund the City's homeless outreach and assessment services for an additional three fiscal years, and the final 80% for a Workforce Housing Rental Assistance Program (WHRAP). Preliminary information regarding the WHRAP was presented to the City Council on [November 1, 2022](#), and [April 4, 2023](#). Staff has developed a more detailed explanation of WHRAP which is provided below.

Office of Assemblymember Alex Lee funding for Homelessness Prevention and Unhoused Services

In March 2022, the City requested support of one-time funding as part of the fiscal year 2022-2023 State budget through Assemblymember Alex Lee's Office. The funding request included establishing a Milpitas resource center as a 2-year pilot program (\$500,000), supporting the continuation and expansion of the City's mobile shower and laundry services, twice a week, for a period of 3 years (\$300,000), and providing rent relief to vulnerable Milpitas residents (\$700,000). In fall 2022, the City received notification of the award of state funding, through Assemblymember Lee's Office, in the amount of \$1,500,000 for housing related programs and services, which was incorporated into the City's Fiscal Year 2023-2024 Budget.

Housing Subcommittee

At the August 22, 2023 meeting, the Housing Subcommittee provided staff with feedback and recommendations regarding the PLHA and Office of Assemblymember Alex Lee state funding. Under PLHA, the City's award consists of two components: homeless outreach and assessment, and a Workforce Housing Rental Assistance Program (WHRAP). The Housing Subcommittee's feedback consisted of ensuring outreach and assessment included individuals who were at risk of homelessness. The Housing Subcommittee also recommended to both fund 50 households for 24 months and expressed support for FORWARD to serve as the program administrator as they are currently administering the City's Rent and Mortgage Relief Program, and this will ensure the onset of WHRAP to be launched as possible. In addition, the Housing Subcommittee expressed support for utilizing the Office of Assemblymember Alex Lee's state funding for the continuation of the original allocation of \$700,000 for rent relief and to consider safe parking as another viable option for the remaining funds. A consensus was reached by the Housing Subcommittee to have the City Council consider a safe parking program at the next prioritization item conversation. The staff recommendations in this Agenda Report reflect the direction provided by the Housing Subcommittee at the August 2023 meeting.

ANALYSIS:

The report provides information and seeks input related to both state funding programs.

Permanent Local Housing Allocation

Per PLHA guidelines, rental assistance must help individuals who are at or below 30% of the area median income (AMI). The table below provides the income limits by household size. PLHA guidelines also require any individual receiving rental assistance with the PLHA grant be funded for a minimum of six months.

Household Size	1	2	3	4	5	6
30% AMI	\$37,450	\$42,800	\$48,150	\$53,500	\$57,800	\$62,100

Workforce Housing Rental Assistance Program (WHRAP)

In accordance with the PLHA funding requirements, WHRAP would provide a rental subsidy to Milpitas residents and members of the local workforce whose income is at or less than 30% AMI, defined by HCD as extremely low income. WHRAP would function similarly to a Section 8 voucher system in that the funds would be provided directly to the landlord and would be used to offset a specific amount of rent paid by the tenant, but not the entire rent.

Staff recommends utilizing PLHA funding to provide rental assistance for individuals who work and/or live in Milpitas. More information regarding preferences will be presented further in this report.

Given the income levels, individuals who are likely to be assisted with this program are as follows:

- Select Milpitas Unified School District employees
- Hospitality industry
- Personal care and service sector
- Office and administrative support
- Installation, maintenance, and repair occupations

WHRAP Program Administration

The City was awarded a total grant of \$1,017,554 for 2019, 2020, and 2021 PLHA funds. Five percent (5%) of the total grant, or \$50,877.70, is allocated for program administration. The use of these funds was previously approved by Council and HCD. The Housing Division will oversee the WHRAP, however, a third-party administrator will be required to facilitate the initial tenant selection and monthly rental assistance distribution. If approved by the City Council, Housing staff will work closely with the program administrator to ensure compliance with program guidelines, and Building Safety will provide a housing inspector to pre-inspect any unit that will receive WHRAP funding. While unit inspections are not required, HCD recommends making sure the units leased by recipients of rental assistance are decent, safe, and sanitary, through inspections.

Although the City's five-year plan was approved by HCD, only the 2019, 2020, and 2021 funds have been awarded. Each of the three awarded years has different award amounts and usage deadlines. The table below reflects this data:

Allocation Years	Amount Awarded	Expenditure Deadline
Year 1 (2019)	\$ 238,595	4/30/2024
Year 2 (2020)	\$ 370,850	4/30/2025
Year 3 (2021)	\$ 408,109	4/30/2026
Total	\$1,017,554	

As shown in the table above, the 2019 usage deadline is April 30, 2024. Typically, the City would conduct a request for proposal (RFP), which may take 3-6 months to procure a program administrator. Given the deadline for the 2019 funds to be spent is approximately 6 months away, staff is recommending awarding the program administration of the WHRAP to FORWARD (formerly LiveStories). FORWARD responded to the initial ARPA Milpitas Small Business Grant Program RFP and was awarded as the fiscal administrator in 2021. In addition, FORWARD is currently administering the ARPA funded Rent and Mortgage Relief Program, and the City Council recently approved the use of FORWARD's services for the CDBG funded Microenterprise Grant Program, which is forthcoming. FORWARD has the technology and human resources to expedite the needs of the City and staff has established a great working relationship with FORWARD.

The total cost to administer the program is \$79,267.46. Of this figure, PLHA allows for up to 5%, or \$50,877.70, to be used towards an administrative fee. To fund the administration of the program, staff is requesting the remaining \$28,389.76 be funded from the Affordable Housing Community Benefit Fund. The table below displays the breakdown of the funding source and the amount required from each source to fund the administration fee.

Funding Source	Amount
PLHA Administrative Fee Allowance	\$50,877.70
Affordable Housing Community Benefit Fund	\$28,389.76
Total Administration Fee Required	\$79,267.46

It is important to note that the PLHA administrative funding source has already been approved by the City Council at the [November 1, 2022](#), meeting and HCD and cannot be used for any other purpose.

WHRAP Selection Process

In an effort to develop a program that assists the City in addressing unmet housing needs locally, staff recommends utilizing a tiered selection system to ensure prioritization for Milpitas residents. There are three tiers of applicants the City Council may consider, which are listed below:

1. A household where at least one adult both lives and works in Milpitas.
2. A household where at least one adult lives in Milpitas and does not work in Milpitas.
3. A household where at least one adult works in Milpitas but does not live in Milpitas.

The intention of the program is to primarily serve Milpitas residents who also work in Milpitas. The Economic Development Strategy adopted by the City Council in May 2020 included an analysis of employed Milpitas residents and workforce, and it was determined that only 12% of Milpitas residents also work in Milpitas (Strategic Economics 2019/

Longitudinal Household Employment Dynamics, 2017). Since the percentage of the workforce that both lives and works in Milpitas is low, staff is inclined to extend the assistance to residents of Milpitas who are an important part of the regional workforce and who may also benefit from the WHRAP. And finally, if there is still available funding, staff would select households where one adult works in Milpitas but does not live in Milpitas.

Eligible households must comply with the following:

- Households who make 30% AMI or less
- Must be renting
- Must occupy the entire unit, no shared living arrangements
- Tenant in good standing
- At least one adult in the household must be employed in Milpitas (to initially qualify)

The PLHA rental assistance program requires providing rent relief for a minimum period of six months. The household benefit amount and individuals assisted will be dependent on the City Council direction. The table below displays a breakdown of projected assistance to benefit between 20-50 households, and through 12-, 18-, and 24-month periods. The figures below are meant to illustrate the potential benefit per month. The final numbers are subject to change as staff finalizes the funding arrangement with HCD, but a significant change is not anticipated.

2019, 2020, and 2021 Combined Entitlement (24 months)			
PLHA Allocation	Households Assisted	Months Assisted	Benefit Per Month
\$773,341.04	20	24	\$1,611.13
\$773,341.04	30	24	\$1,074.08
\$773,341.04	40	24	\$805.56
\$773,341.04	50	24	\$644.45

2019, 2020, and 2021 Combined Entitlement (18 Months)			
PLHA Allocation	Households Assisted	Months Assisted	Benefit Per Month
\$773,341.04	20	18	\$2,148.17
\$773,341.04	30	18	\$1,432.11
\$773,341.04	40	18	\$1,074.08
\$773,341.04	50	18	\$859.27

2019, 2020, and 2021 Combined Entitlement (12 Months)			
PLHA Allocation	Households Assisted	Months Assisted	Benefit Per Month
\$773,341.04	20	12	\$3,222.25
\$773,341.04	30	12	\$2,148.17
\$773,341.04	40	12	\$1,611.13
\$773,341.04	50	12	\$1,288.90

As to the number of participants, staff researched the average rental cost for a one-, two-, and three-bedroom units in Milpitas. The table below displays the current average rent for each unit size.

Unit Size	Avg Rent*
1BR	\$2,288
2BR	\$3,316
3BR	\$3,568

*Source: Zillow

As an example, a 24-month program benefiting 50 households with \$644.45 per month, could result in a 28% reduction in housing cost for the average one-bedroom occupant, a 19% reduction for the average two-bedroom occupant, and a 18% reduction for the average three-bedroom occupant. This example uses the lowest possible benefit per month. If the City Council votes to use a term less than 24 months or to cap the households assisted below 50, then the benefit per month would increase.

The Housing Subcommittee and staff recommends assisting 50 households for 24 months to ensure the program can provide stability to the beneficiary. The Housing Subcommittee also requested that staff develop a thorough outreach plan to enhance awareness of the program to Milpitas residents.

Office of Assemblymember Alex Lee funding for Homelessness Prevention and Unhoused Services

The initial allocation request (Attachment 2) aimed to establish a Milpitas resource center as a 2-year pilot program (\$500,000), support the continuation and expansion of the City's mobile shower and laundry services, twice a week, for a period of 3 years (\$300,000), and provide rent relief to vulnerable Milpitas residents (\$700,000) was accepted by the City Council in Fiscal Year 2022-2023.

Staff has prepared preliminary research on the various homelessness prevention and unhoused services options to meet the intent of the initial funding request. Staff seeks City Council guidance before proceeding on the unused funds originally for the City's mobile shower and laundry services, allocating any amount of rent relief funds, and ensuring the navigation center is still the City Council's request. Below is a summary of the research and requests for guidance.

1. Milpitas Resource Center:

The original request allocated \$500,000 for a resource center. A resource center was one of the options brought to Council by the Homelessness Task Force in February 2022. The City Council has had ongoing discussions surrounding how to support homeless residents. During the Task Force recommendation discussions, the City Council elected to not move forward with a resource center, navigation center, day worker center, and/or safe parking. As the City received State funding for a resource center, staff is providing definitions below for clarity on some of the options the City Council may want to consider.

A **day worker/help center** is a clearinghouse and **resource center** that connects day workers to short-term jobs from residents and businesses. The facility would also function as a community and support center for clients with training classes and employment services. No overnight accommodations would be provided. Day worker centers in other cities predominately serve clients who already have housing and are pre-screened for employment. A help center can be expanded to support the unhoused population with added services or referrals to other service providers. Currently, the nearby cities with similar centers are Mountain View who has a day worker center and Fremont, who has both a help/resource center for unhoused individuals and a navigation center, administered by the City's Human Services Department.

A **navigation center** is a rapid rehousing facility for the unhoused population with case management and wrap-around services to transition clients from homelessness to stable housing. The City Council has decided not to pursue this option through the recent prioritization projects voting on [June 20, 2023](#).

A **Safe parking program** consists of sites for temporary parking of RVs (overnight only or 24-hours) to provide a secure and alternate location to on-street or off-street parking. Case management and supportive services are often, but not always, provided to transition clients to stable housing. The viability of this option depends on the number of individuals living in RVs, their willingness to participate in the program, and space availability. A half-acre site can accommodate about 15 RVs depending on the size of vehicles with allowance for on-site facilities, vehicle separation, and emergency access. As an alternative, the City Council could also consider a safe parking program

that accommodates both RVs and passenger vehicles. The cities that currently have this option include San Jose, Morgan Hill, Mountain View, Palo Alto, and Fremont. The City Council will be discussing this option at the next quarterly prioritization meeting.

Tiny Home Villages are rapid rehousing models for unhoused individuals to live in individual or duplex modular shelters. They often include case management and wrap-around services to transition clients from homelessness to stable housing. A Tiny Home Village was one of the [final recommendations](#) from the Homelessness Taskforce. Per City Council direction, staff contracted with a consultant to conduct a Tiny Home Village Feasibility Study. The consultants are currently drafting the Feasibility Study, which is expected to be presented to City Council in late fall 2023. Funds from the state budget could be used to fund a potential Tiny Home Village, however, more research would be required to determine the true fiscal impact of such a project including ongoing operations and maintenance expenses.

2. Mobile Shower and Laundry Services:

The original budget request for \$300,000 was meant to provide funding for this service for three fiscal years and increase service frequency from once a week to twice a week. There was no subsequent direction from the City Council regarding increasing the frequency to twice a week. Hence the Adopted FY 23-24 Budget includes funding for three years at a frequency of once per week. The City entered into a contract with WeHOPE on July 5, 2023, to continue mobile shower and laundry services until June 30, 2026, with a total-not-to exceed amount of \$150,000. As the original budget request was \$300,000, staff seeks City Council guidance on the remaining \$150,000 that was not allocated to the mobile shower and laundry services 3-year contract.

3. Rent Relief:

As noted above, the City Council requested and was approved for \$700,000 in rent relief from the Office of Assemblymember Alex Lee. These funds will be added to the existing Rent and Mortgage Relief Program.

Unlike the existing allocation for rent relief, which was funded by ARPA, the State's budget does not require a COVID-19 hardship to allocate funds for rental assistance. Staff recommend eliminating the COVID-19 hardship requirement for the rent relief money received from the State's budget as this will allow for an expansion of assistance coverage. The COVID-19 hardship requirement will still be in place for eligible applicants who access the remaining ARPA funded rent relief. The Housing Subcommittee recommended continuing with the initial request of \$700,000 for rent relief, however, Council may elect to re-allocate these funds to other activities that fall within the scope of homelessness prevention and unhoused services.

Remaining Funds - \$650,000

For the remaining \$650,000 of the overall \$1,500,000 of the Office of Assemblymember Alex Lee's funding, the Housing Subcommittee recommended that the City Council be made aware there is no expenditure deadline and consider these funds under a possible safe parking program at the subsequent prioritization conversation.

Staff has sought clarification over the past year from state representatives on whether there is flexibility in using the funds to support other homelessness prevention and unhoused services than the ones initially requested. Recently, the Office of Assemblymember Alex Lee has requested a letter from staff that illustrates outcomes of the clarification sought as well as specifically what the City is looking for in terms of direction. It is important to note that staff is operating under the assumption that if the funding is used to support similar goals as the original funding request, i.e., to prevent homelessness and provide services to the unhoused, alternate funding options may be eligible.

FISCAL IMPACT

The City's receipt of the 2019, 2020, and 2021 PLHA grant would be in an amount not to exceed \$1,017,554, in accordance with all applicable rules and laws. Any subsequent HCD entitled allocations will be incorporated into the annual budget development or separately for the City Council's consideration.

Should the City Council approve FORWARD as the WHRAP administrator, an additional program administration cost will be required due to the \$50,877.70 maximum allowed by PLHA. The additional amount of \$28,389.76 will be paid from the Affordable Housing Community Benefit Fund (Fund 216).

City Council accepted the homelessness prevention and unhoused services grant awarded by the Office of Assemblymember Alex Lee through the fiscal year 2022-2023 State budget on [September 6, 2022](#). The award is in the amount not to exceed \$1,500,000, in accordance with all applicable rules and laws. Any program requiring additional funding will come back to the City Council for consideration.

RECOMMENDATIONS:

1. Provide input on Housing Subcommittee and staff recommendation to provide rental assistance to 50 households over 24 months through a Workforce Housing Rental Assistance Program.
2. Approve and Authorize Acting City Manager, or designee, to allocate an additional appropriation of \$28,389.76 to FORWARD for the administration of the Workforce Housing Rental Assistance Program from the Affordable Housing Community Benefit Fund.
3. Provide feedback and guidance on the proposed Workforce Housing Rental Assistance Program and the State Budget for Homelessness Prevention and Unhoused Services.

ATTACHMENTS:

1. PLHA Award Letter
2. One-Time State Funding Request letter for Homelessness Prevention and Unhoused Services
3. Budget Change Form

☐ Check if City Council Approval required.

Meeting: October 3, 2023

Requested by:	Department Head: Alex Andrade	Date: October 3, 2023
Reviewed by:	Finance Director: Lauren Lai	Date: October 3, 2023
Approved by:	Acting City Manager: Ned Thomas	Date: October 3, 2023
Date approved by City Council, if required:		Confirmed by:



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive a Progress Report and Provide Direction to Staff on the Work Completed to Date on Phase 1 of the Comprehensive Zoning Ordinance Update, Including the Background and Recommendations Report, Draft New Zoning Districts (Business Park, Research and Development and Metro Area Zoning Districts), and Draft Updated Citywide Zoning Map (Staff Contact: Jay Lee, Interim Planning Director, 408-586-3077; and Holly Pearson, Senior Special Projects Associate, 408-609-0072)
Category:	Community Development
Meeting Date:	10/3/2023
	<u>Recommendation:</u> Receive a progress report and provide direction to staff on the work completed to date on Phase 1 of the Comprehensive Zoning Update, including the Background and Recommendations Report, draft new zones (Business Park Research and Development and Metro Area Zones), and draft updated Citywide Zoning Map.

BACKGROUND:

The City of Milpitas recently launched an effort to comprehensively update the Zoning Ordinance (Milpitas Municipal Code Title XI, Chapter 10), which is the primary implementation tool for the City's General Plan with regard to land use and urban development. Zoning regulations are a tool to implement the vision and goals for growth and preservation of the city by setting forth rules and standards for what may be built, and what types of uses or businesses may be located where. The City's Zoning Ordinance addresses topics such as land uses, administration and procedures for new development as well as alterations to existing buildings and lots, development standards such as building height and lot coverage, and other important topics such as parking and landscaping.

This Agenda Report focuses on the first phase of the comprehensive zoning update project. This phase includes work on new zoning districts: the Business Park Research and Development (BPRD) Zone and the Metro Area Zones. The BPRD Zone is being created to implement the new General Plan land use designation by the same name, while the Metro Area Zones are being developed to implement the land use policies and standards in the Milpitas Metro Specific Plan (Metro Plan), which was adopted in February 2023. Work completed as part of Phase 1 also includes updates to the City's zoning map to bring the zoning of all properties in the city into consistency with the land use designations in the Metro Plan and the recently updated General Plan. The Background Review and Recommendations Report, which outlines the policy framework and content for the full, comprehensive Zoning Ordinance update (Phases 1 and 2), is also discussed.

ANALYSIS:

An overview of the Comprehensive Zoning Update Project, project objectives, draft deliverables, and community feedback received to date is provided below.

Overview of Comprehensive Zoning Update Project

The City's Zoning Ordinance was originally written and adopted in 1955, with the most recent significant update having taken place in 2008. Although there have been multiple ad hoc amendments in recent years in response to changes in state law, zoning practice, and technology, overall the Zoning Ordinance has not kept pace with changing trends in land use and economics and does not reflect current best practices in planning and development regulations. In addition, it contains many outdated terms and needs to be reorganized to improve clarity and ease of use.

In 2021 the City completed a comprehensive update to its general plan, titled the Milpitas 2040 General Plan.

The adoption of the new General Plan created an opportunity as well as a legal mandate to update the Ordinance (also referred to as the Zoning Code) to ensure that the code achieves the type of development that will carry out the vision set forth in the General Plan. The zoning update will ensure that the code implements the zoning-related policies and actions in the General Plan for community design, economic development, conservation and sustainability, and community health and wellness.

The City of Milpitas and its consultant for the zoning update, Lisa Wise Consulting (LWC), commenced work on the project in February 2023. The full zoning update will take approximately two and a half years to complete, with the goal of having the updated Zoning Ordinance adopted by the City Council by the summer of 2025.

Project Objectives

Milpitas' current Zoning Ordinance has only been modified over the years through minor amendments in order to keep up with new state requirements and address targeted policy issues on an ad hoc basis. A comprehensive update will add clarity to the overall organization and usability of the code, reflect current land uses and development practices and trends, and ensure transparency in the administrative processes and permitting procedures. Ultimately, the effort will lead to a user-friendly, illustrated, legally compliant, and effective set of regulations that implements the General Plan.

The zoning update project is designed to achieve the following objectives:

- Modernize the Zoning Ordinance. Modernization involves updating definitions, uses, development standards, and design standards to more accurately reflect current development practices and trends. It also means ensuring the ordinance is compliant with state and federal law.
- Make the Zoning Ordinance more user friendly. The updated ordinance will be organized in a logical and intuitive manner and include clear and graphically consistent diagrams to illustrate standards as needed.
- Ensure consistency across all applicable City documents. The updated ordinance will be consistent with and implement existing City documents, including the General Plan, updated Housing Element, Metro Specific Plan, Economic Development Strategy, Climate Action Plan, and other applicable planning and policy documents.
- Promote more compact, mixed-use and transit-oriented development types, where appropriate. In the more urban areas of the city, the zoning update will seek to establish appropriate standards for design, parking, sustainability, and other topics.

Phase 1 of the project focuses on the essential updates to the Zoning Ordinance and map that are needed to implement the land use policies in the recently updated General Plan and adopted Metro Specific Plan. These tasks include (1) creating the new Business Park Research and Development (BPRD) and Metro Area zones, and (2) making the citywide zoning map consistent with the General Plan and Metro Specific Plan. Phase 2 will address updates to the full Zoning Ordinance in keeping with the project objectives.

Draft Deliverables from Phase 1 of Comprehensive Zoning Update

Three major deliverables for the zoning update project have been prepared to date. The Background Review and Recommendations Report summarizes the policy review and analysis conducted for the project and outlines the recommended content for the full zoning update (Phases 1 and 2). The draft work products for Phase 1 include proposed amendments to the Zoning Ordinance (regulations for the BPRD and Metro Area zones, plus related amendments to other sections of the code) and updated citywide zoning map.

Background Review and Recommendations Report

This report informs the content of and approach to the comprehensive zoning update. The purpose of the Recommendations Report is to:

- Evaluate the effectiveness of the existing Zoning Ordinance
- Review inconsistencies between the existing Zoning Ordinance and various City planning, regulatory, and policy documents

- Identify key issues to be addressed and recommendations to be considered for the zoning update

LWC has conducted a review of the City's existing Zoning Ordinance as well as several other City policy documents, including the Milpitas 2040 General Plan, the recently adopted 2023-2031 Housing Element, Economic Development Strategy, and Climate Action Plan, among others. LWC has also analyzed the compliance of the City's existing zoning regulations with current state and federal laws and court rulings that relate to local land use regulation.

The results of this analysis are summarized in the Background Review and Recommendations Report (Attachment A), along with an identification of items and topics to be addressed through the full zoning update over the next two years.

New Zones: Amendments to the Zoning Ordinance

Overview

The Land Use Element of the Milpitas 2040 General Plan includes two new land use designations that did not exist under the City's previous general plan: Business Park Research and Development (BPRD) and Neighborhood Commercial Mixed Use (NCMU). BPRD is an industrial land use designation that is "intended to accommodate business parks, high-intensity office buildings, light manufacturing parks, and light industrial areas that provide for a variety of businesses that support employment opportunities and services for Milpitas and the region" (Milpitas 2040 General Plan, page LU-7). NCMU is a lower-intensity mixed use designation that was created "to accommodate a mix of commercial and residential uses with an emphasis on commercial activity as the primary use, and residential uses, hotel, and office development allowed on a limited basis" (Milpitas 2040 General Plan, page LU-6).

The Metro Specific Plan focuses on an area of approximately 510 gross acres in the southern end of Milpitas and includes the Milpitas BART station and Transit Center, the Great Mall, and surrounding areas. Table 2-1 in Chapter 2—*Land Use and Public Space* of the Metro Plan outlines eight land use classifications within the plan area and their corresponding zoning districts. The implementing zoning districts listed in the Metro Plan are similar to other zoning districts that currently exist in the City's Zoning Ordinance: High Density Mixed Use (MXD2) and Very High Density Mixed Use (MXD3); Multi-Family High Density Residential (R3), Multi-Family Very High Density Residential (R4), and Urban Residential (R5). In addition, the Metro Plan includes two variations of the new BPRD land use classification and corresponding BPRD zones (BPRD and BPRD-R)¹, with the distinguishing factor being that the latter allows residential uses on a limited basis.

Because the NCMU Zone, which will implement the NCMU General Plan land use designation, is closely related to the proposed new Housing Opportunity Districts (HODs) (formerly called Housing Opportunity Zones, or HOZs), work to develop draft zoning regulations for NCMU is being carried out under a separate effort. The Planning Department has been working with consultant Raimi + Associates since early 2022 on the HODs and new NCMU Zone.

Accordingly, the proposed new zones drafted for Phase 1 of the comprehensive zoning update are:

- Business Park Research and Development (BPRD)
- Metro Multi-Family High Density Residential (R3-Metro)
- Metro Multi-Family Very High Density Residential (R4-Metro)

¹ Note that although Table 2-1 in the Metro Specific Plan includes a lower intensity and a higher intensity version of the BPRD land use classification (BPRD-L and BPRD-H), through the process of drafting the new zones, Planning staff and LWC determined that two separate implementing zones are not needed. Instead, the variations in allowed development intensity in the BPRD can be achieved through development standards that allow increased intensity within closer proximity to the Milpitas Transit Center. See discussion on page 5.

- Metro Urban Residential (R5-Metro)
- Metro High Density Mixed Use (MXD2-Metro)
- Metro Very High Density Mixed Use (MXD3-Metro)
- Metro Business Park Research and Development, Limited Residential; (BPRD-R-Metro)
- Metro Business Park Research and Development (BPRD-Metro)

In addition to these base zone regulations, the draft amendments to the Zoning Ordinance include related changes to Section 2–Definitions and Section 53–Off-Street Parking Regulations. Other Phase 1 draft amendments to the Zoning Ordinance include new regulations for mobile fueling uses. Lastly, a new subsection 54.18–Housing Element Sites has been added to codify new requirements included in the recently updated 2023-2031 Housing Element; and a new subsection 56.06–Nonconforming Parcels has been added to establish new provisions related to parcels that do not comply with the required minimum lot area. The full text of the draft Zoning Ordinance amendments is included as Attachment B.

Definitions (Section 2)

Draft new or revised definitions are included for land uses that are encouraged in the BPRD Zone, including Research and Development (R&D), Advanced Manufacturing, and Retail, Limited. In addition, other needed changes to definitions (both new and updated definitions) were identified through the process of drafting the use regulations for the BPRD and Metro Area zones (e.g., Active Use; College and University, Public or Private; Community Garden; Contractor’s Shop; Convenience Store; Custom and Artisan Manufacturing; Parcel Hub; Service Station; and Self-Storage/Mini Storage). A new draft definition for Mobile Fueling has also been added (see section below on Mobile Fueling Regulations, page 5).

BPRD Zone (Section 7)

The proposed new zoning regulations for the Business Park Research and Development Zone have been incorporated into the existing Industrial Zones code section (Section 7). Draft use regulations and development and design standards for the BPRD zone have been prepared in accordance with the intent and description of the BPRD land use designation in the General Plan. In order to prioritize and incentivize target industries such as research and development, advanced manufacturing, and other high-tech sectors, Planning staff worked closely with Economic Development staff in drafting the use regulations for the BPRD zone ((Table XI-10-7.02-1: Industrial Zone Uses, with footnotes) and ensure an appropriate level of review and permit type for various types of uses in BPRD.

Permitted uses would include research and development (R&D), offices, advanced manufacturing, laboratories, warehousing, and other similar light industrial uses. Other uses that support a primary employment generating use would be allowed with a minor conditional use permit (staff level review) or conditional use permit (Planning Commission level review). Most other commercial uses, all vehicle-related uses, and all residential uses would be prohibited.

The draft development standards for BPRD (Table XI-10-7.03-1) as well as new proposed special design standards for BPRD (Subsection XI-10-7.05) have been designed to facilitate development in a “campus-like setting” as called for in the General Plan. These standards aim to create attractive and high-quality development with a higher level of amenity (landscaping, public open spaces, pedestrian and bicycle facilities, landscaping and screening of parking areas, etc.) than is required for a typical or traditional industrial zone.

Metro Area Zones (Section 9)

A new draft code section has been added for the Metro Area Zones (Section 9). As mentioned previously in the overview of new zoning districts, there are eight proposed zones in the Metro Specific Plan area that are essentially variations of existing mixed-use and residential zones. The distinction between the “regular” versions of these zones (R3, R4, R5, MXD2, MXD3, BPRD) and the Metro versions is that the Metro zones generally allow a higher density and/or intensity of development, with a more urban character and greater emphasis on a transit-oriented, pedestrian-oriented built environment, than the existing zones on which they are based. As

noted above, there are two variations of the BPRD-Metro zone, one which allows limited residential use (R Metro) and one which prohibits residential.

Proposed use regulations and requirements for review/permitting, as set forth in Table XI-10-9.02-1: Metro Area Zone Uses and related footnotes, are focused on allowing vibrant, walkable, high-intensity mixed-use areas around the BART station and Milpitas Transit Center. Special use regulations for the Metro Zones (Subsection XI-10-9.03) have largely been carried over from the regulations for the corresponding “regular” mixed-use and residential zones.

Draft development standards for the Metro Area zones (Table XI-10-9.04-1) have been carried over directly from the standards in the Metro Specific Plan. For the BPRD Metro zone, a provision has been included that would allow increased floor area ratio (FAR) on a sliding scale, based on proximity to the Milpitas Transit Center (see footnote 2 to the development standards table). This provision implements the intended distinction between the higher- and lower-intensity iterations of the BPRD-Metro Zones that is described in Table 2.1 of the Metro Specific Plan.

Special development standards for the Metro Zones (Subsection XI-10-9.05) have been carried over from corresponding standards in existing “regular” mixed-use and residential zones. A section on special design standards (Subsection XI-10-9.06) has also been included to ensure a high-quality and visually appealing built environment and to achieve the goal of development that is dense and transit-oriented, yet pedestrian-friendly and human scale.

Mobile Fueling Regulations (Sections 7 and 9)

The City’s Zoning Ordinance does not currently have regulations specific to mobile fueling. Planning staff recognizes that given the recent increase in mobile fueling operations in Milpitas and other cities, it would be prudent to include specific regulations for mobile fueling in the Zoning Ordinance. Accordingly, mobile fueling has been defined in Section 2 and added to the draft use tables in the BPRD (Section 7) and Metro Area zones (Section 9). Mobile fueling for individual vehicles/customers would be permitted in all zones and locations, since it is an accessory “delivery service” to a property (similar to delivery of prepared food or other retail goods) rather than a primary use of a property. Large-scale mobile fueling for fleet vehicles at a fixed location, which is similar to a “Commercial Fueling Facility,” would be conditionally permitted (i.e., would require a CUP, with Planning Commission review) in the BPRD and all other industrial zones, and would be prohibited in all Metro zones (note: these draft zoning regulations are supplemental to the existing mobile fueling regulations in the Milpitas Fire Code).

Off-Street Parking Requirements (Section 53)

Draft vehicle parking requirements (minimum and maximum) and bicycle parking requirements (short-term and long-term) for the Metro zones have been added to Section 53–Off-Street Parking Regulations. These requirements directly reflect the vehicle and bike parking standards in the Metro Specific Plan, Chapter 4: Mobility and Circulation (see page 148 of the Metro Specific Plan).

Parking requirements for newly added use classifications have also been added to the table of required parking spaces based on land use category in Section 53 (re-numbered in the draft as Table 53.09-3).

Housing Element Sites (Subsection 54.18)

The City’s newly updated 2023-2031 Housing Element includes new actions to encourage housing production on priority sites identified in the Housing Element that require new implementing provisions in the Zoning Ordinance. Program 1 (see pages 66-68 of the 2023-2031 Housing Element) includes actions related to providing by-right approval for certain housing projects.

These provisions have been added to the Zoning Ordinance in a new subsection 54.18–2023-2021 Element Sites. These proposed zoning amendments fulfill the implementation of the above actions outlined as part of Program 1, as required by the adopted Housing Element.

Nonconforming Parcels (Subsection 56.05)

As a result of proposed changes to the zoning of certain residential parcels in the city to align the zoning with the General Plan land use designations and corresponding allowable densities (discussed below in the section “Updated Citywide Zoning Map – Other residentially zoned parcels” on pages 6-7), 65 single-family residential properties in Milpitas would have an existing lot area that does not comply with the minimum lot area required per the updated zoning district. In order to address this issue, a new draft subsection 56.05–Nonconforming Parcels has been added to the code. This subsection clarifies that legal lots with nonconforming minimum lot areas are considered buildable parcels and may be developed and improved according to applicable zoning standards.

Updated Citywide Zoning Map

State law requires that a local jurisdiction’s zoning ordinance and map be consistent with its general plan. LWC performed a detailed analysis of the City’s existing zoning map and its compliance with the Land Use Map (Figure LU-1) in the updated Milpitas 2040 General Plan. The analysis identified approximately 490 parcels across the city that require rezoning for consistency with their land use designations under the updated General Plan. These include parcels in the following categories:

- *Parcels with General Plan land use designation of NCMU*
These properties are proposed to be rezoned to one of the corresponding zoning districts identified in *Table 1: General Plan Designations and Implementing Zoning Districts* on pages LU-14 and LU-15 of the Land Use Element (NCMU–Neighborhood Commercial Mixed Use Zone, C1–Neighborhood Commercial Zone, C2–General Commercial Zone, MXD–Mixed Use Zone, and CO–Administrative and Professional Office Zone). Properties in the vicinity of California Circle with the NCMU General Plan designation are proposed to be rezoned as C2 or MXD, based on existing conditions/uses and future development potential. Properties in other areas of the city with the NCMU General Plan designation are proposed to be rezoned as the new NCMU zoning district, which will be completed concurrently with the adoption of the HODs and NCMU zoning regulations (under a separate effort).
- *Parcels with General Plan land use designation of BPRD*
The large Southwest Employment Area in the southwestern portion of Milpitas, centered around McCarthy Boulevard is proposed to be rezoned as BPRD. A smaller area around the southern end of Cadillac Court with the BPRD General Plan designation is proposed to remain zoned as MP–Industrial Park, which is also consistent with the BPRD General Plan designation.
- *Parcels in the Metro Specific Plan Area*
All properties within the Metro Specific Plan area are proposed to be rezoned to one of the eight new Metro zones described above in the “New Zones” section on page 6. The proposed rezonings in the Metro area are consistent with the Land Use Diagram in Figure 2-1 of the Metro Specific Plan (page 42).
- *Other residentially zoned parcels*
There are three residential areas in the city for which zoning must be updated for consistency with General Plan land use designations. A total of 287 residential properties that have General Plan designations of Medium Density Residential are proposed for rezoning from R3 (Multi-Family High Density Residential Zone) to R2 (One and Two-Family Residential Zone), since R2 is an implementing zone for the MDR designation per Table 1 of the General Plan Land Use Element. Similarly, 92 parcels that have General Plan designations of High Density Residential are proposed for rezoning from R1-2.5 (Single Family Residential Zone, minimum lot area 2,500 square feet) to R3 (Multi-Family High Density Residential Zone), since R3 is the implementing zone for the HDR designation under the General Plan.

During the process of analyzing the consistency of the General Plan land use map with the current map, Planning staff and LWC noted a discrepancy between the residential density that is allowed per the Low Density Residential (LDR) designation in the General Plan (3-5 dwelling units per acre) and some of the variations of the existing R1 Single Family Residential Zone. As illustrated in the existing Table XI-10-4.04-1: Residential Zone Development Standards, the R1 zone has several variations with different minimum lot area standards (e.g., R1-2.5 with minimum lot area 2,500 square feet; R1-5 with minimum lot area 5,000 square feet, etc.).

Most areas of the city with General Plan designation LDR are currently zoned R1-6. Based on the minimum lot area of 6,000 sf, this equates to an allowable density of 7.26 du/a – a higher density than what is allowed per the General Plan land use of LDR. There are also smaller areas (65 parcels in total) that are LDR under the General Plan and are currently zoned R1-5 (min. lot area 5,000 sf and effective max. density 8.71 du/a) or R1-3 (min. lot area 3,000 sf and effective max. density 14.52 du/a).

To correct this discrepancy, prior to adoption of the updated zoning map, Planning staff proposes to make the following amendments to the General Plan Land Use Element:

- Low Density Residential (LDR) Designation: Amend the General Plan to change the density range from 3-5 du/acre to 3-7 du/acre.
- Medium Density Residential (MDR) Designation: Amend the General Plan to change the density range from 6-15 du/acre to 7-15 du/acre.

In addition, in order to align the allowed residential density ranges under the General Plan and zoning, 38 parcels with General Plan land use LDR and current zoning R1-3 must be rezoned to R1-6; and 27 parcels with General Plan land use LDR and current zoning R1-5 must be rezoned to R1-6.

- *Other miscellaneous zoning cleanups*

A small number of other proposed zoning map changes reflect miscellaneous updates or ‘cleanups.’ These mainly involve parcels with General Plan designations of GNC (General Commercial) and Permanent Open Space (POS). Draft zoning changes are proposed to reflect on-the-ground conditions as well as to make the zoning of these parcels consistent with the General Plan Land Use Map.

- *Other City-identified cleanup edits*

Planning staff identified three additional parcels to be rezoned. These zoning changes are needed to better reflect existing conditions on, and ownership of, the properties. Two City-owned open space parcels near the intersection of Dixon Landing Road and California Circle are proposed to be rezoned as POS (Park and Public Open Space District). In addition, 1780 S. Main Street (APN: 083-42-006), a Shell gas station, should have been included in the recently approved South Main General Plan and Zoning Map Amendments (related to changes to the boundaries of the Gateway and Metro Specific Plans, approved by City Council on June 6, 2023), but this parcel was inadvertently left out. The 1780 S. Main Street property will require a General Plan map amendment to GNC (General Commercial) and is proposed to be rezoned as C2–General Commercial.

The draft updated citywide zoning map, including the proposed changes outlined above as well as existing zoning for all other parcels in the city, is presented as Attachment C. A map showing only those parcels with proposed zoning changes, as discussed above, is included Attachment D.

The draft zoning map changes are proposed for the purpose of making the zoning of all properties consistent with the land use designations in the General Plan and Metro Specific Plan and thereby simply implement previously approved land use policies. These proposed zoning map changes do not represent new land use policies for the affected parcels.

Public Outreach and Comments Received

The Planning Department and LWC are conducting a variety of outreach efforts to engage the Milpitas community in the zoning update and request input on the three draft deliverables that are currently out for public review. LWC created a project-specific website (www.milpitaszoningupdate.org) with information about the zoning update project and the Planning Department sends regular updates through the project email list and the City's social media channels.

Additionally, from mid-August through mid-October, Planning staff is offering virtual "office hours" specifically for the zoning update project. Residents, property owners, business owners, and other stakeholders may schedule 30-minute, one-on-one appointments with a member of the Planning staff to ask questions and provide input on the project.

The project team hosted a virtual community workshop via Zoom on Tuesday, August 22nd. This workshop was open to the public and the presentation and discussion focused mainly on the Background and Recommendations Report. The City's Zoning Advisory Group (ZAG), an ad hoc committee formed specifically to provide focused community input on the zoning update project, held its second meeting on August 24th. The ZAG is comprised of nine members of existing City commission (Arts; Economic Development and Trade; Energy and Environmental Sustainability; Parks, Recreation and Cultural Resources; and Planning). The August 24th ZAG meeting, which was also open to the general public, was dedicated to discussion about the recommendations presented in the Background Review and Recommendations Report. It also included an overview of and brief discussion about the draft new zones and updated zoning map.

Comments from Planning Commission and Economic Development and Trade Commission

A study session with the Planning Commission was held on August 30th. Staff and the consultant team (LWC) gave a presentation focused on the draft new zoning districts and draft updated zoning map. No comment was given by members of the Planning Commission. Members of the public provided comment (summarized below under subheading "Comments from Interested Parties").

Planning staff gave a presentation about the proposed new regulations for the BPRD, BPRD Metro, and BPRD-R Metro zones at the September 11th meeting of the Economic Development and Trade Commission (EDTC). Commissioners asked clarifying questions and engaged in discussion. Members of the public also provided comment (summarized below under subheading "Comments from Interested Parties").

Comments from Interested Parties

Planning and Economic Development staff have received detailed input and comments about the draft new zones and updated zoning map from interested parties (property owners and developers, real estate brokers, etc.) during the public workshop and study sessions as well as via phone, email, and videoconference. These comments have mainly focused on the proposed use regulations and development standards for the BPRD zone. Many commenters stated that the proposed limitation on warehousing that restricts warehouse uses to 20 percent of the floor area of the primary use on the property is not workable in terms of the operational needs of businesses in the advanced manufacturing and research and development industries. Other comments have addressed the draft development and design standards. Based on this stakeholder input, revisions will be made to the draft BPRD regulations prior to the public hearings for adoption of the new zones.

Changes that have been identified to date based on staff review and public comment are summarized in the Errata Sheet, included as Attachment E. Additional changes may be incorporated based on City Council direction.

Next Steps

Following the Council direction on Phase 1 of the Comprehensive Zoning Update Project, the project team will continue to engage the public, refine the Phase 1 draft deliverables, and return to the Planning Commission and Council for adoption of the Phase 1 proposed amendments to the Zoning Ordinance) regulations for the BPRD

and Metro Area zones, plus related amendments to other sections of the code) and updated citywide map. Following completion of Phase 1, City staff will initiate Phase 2 to comprehensively update the Zoning Ordinance.

POLICY ALTERNATIVES:

This is an informational item for Council feedback and direction and is one of several sessions for providing Council with the progress of the Comprehensive Zoning Update Project.

FISCAL IMPACT:

This is an informational item. As such, there is no fiscal impact.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

This report represents ongoing work on the Comprehensive Zoning Update. An Addendum to the Environmental Impact Report (EIR) for the Milpitas 2040 General Plan will be prepared for consideration prior to adoption of the updated zoning ordinance and map.

RECOMMENDATION:

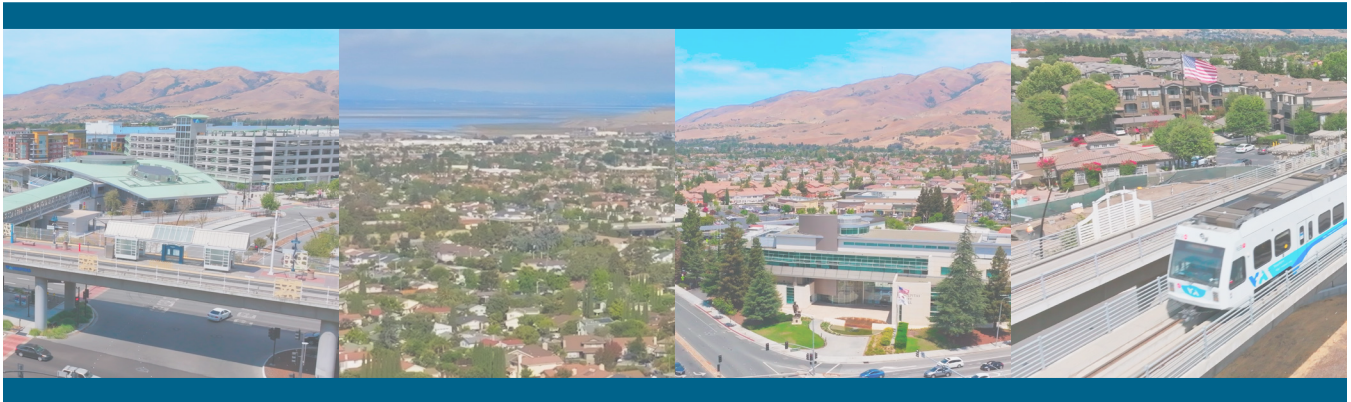
Receive a progress report and provide direction to staff on the work completed to date on Phase 1 of the Comprehensive Zoning Update, including the Background and Recommendations Report, draft new zones (Business Park Research and Development and Metro Area Zones), and draft updated Citywide Zoning Map.

ATTACHMENTS:

1. Background and Recommendations Report
2. Draft Zoning Ordinance Amendments for New Zones (BPRD and Metro Area)
3. Draft Updated Citywide Zoning Map
4. Draft Proposed Zoning Map Changes
5. Errata Sheet



City of Milpitas Zoning Ordinance Update



Background Review and Recommendations Report July 2023

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Introduction

Project Overview

In 2021, the City of Milpitas (City) adopted its General Plan 2040, creating an opportunity and an obligation to update the City's Zoning Ordinance to support the type of development that will implement the General Plan's vision. The Comprehensive Zoning Ordinance (CZO) update will replace the City's current Zoning Ordinance (Chapter 10 of Title XI of the Municipal Code). The objectives of this update are to:

- Modernize the Zoning Ordinance to better apply to current and evolving development and design standards, uses, and trends;
- Make the Zoning Ordinance more user-friendly;
- Ensure consistency across all applicable City documents (e.g., General Plan, specific plans, etc.); and
- Promote more compact, mixed-use, and pedestrian and transit-oriented development types where appropriate.

The update will also ensure Zoning Ordinance compliance with applicable federal and state law.

Purpose of the Report

This report evaluates the effectiveness of the existing Zoning Ordinance and identifies recommendations to be considered for the Zoning Ordinance update. Several public events, including Zoning Advisory Group (ZAG) meetings, workshops, and study sessions with the Planning Commission and City Council will occur to review this document and discuss refining its recommendations to move forward. Thereafter an improved structure and organization of the Zoning Ordinance (i.e., annotated table of contents) will be developed. A preliminary Style Guide will also be prepared to describe the Zoning Ordinance layout, approach to incorporating cross references, terminology, and other stylistic elements based on issues identified in this report. Then, from information collected from public input and this report, components of the updated Zoning Ordinance will be prepared for public review.

Chapter 1 Background Review Findings

Section 1.1 Policy Review

The background review began with a technical assessment of the City's existing plans, regulations, and documents. This process involved reviewing the existing Zoning Ordinance (Title XI, Chapter 10); 2040 General Plan; 2023-2031 Housing Element; Milpitas Metro Specific Plan; Milpitas Residential and Mixed-Use Objective Standards; Draft Housing Opportunity Zones; Trails, Pedestrian, and Bicycle Master Plan; Parks and Recreation Master Plan; Climate Action Plan; and other relevant documents. The following will analyze the effectiveness of the existing regulations and regulatory structure to meet City goals; identify items or topics to be addressed through the Zoning Ordinance update; summarize key inconsistencies between the Zoning Ordinance and the General Plan, other City regulations, State law, and federal law; and provide recommendations for addressing issues in the Zoning Ordinance.

General Plan

General Plan 2040 is a comprehensive planning document that guides future development and the Citywide vision for Milpitas. Adopted in March 2021, the Plan includes a Land Use Element; Circulation



MILPITAS
General Plan Update

Element; Community Design Element; Economic Development Element; Conservation and Sustainability Element; Utilities and Community Services Element; Safety Element; Noise Element; Parks, Recreation, and Open Space Element; Community Health and Wellness Element; and an Implementation Element.

The following table includes preliminary recommendations for how the Zoning Ordinance may implement key General Plan policies and action items.

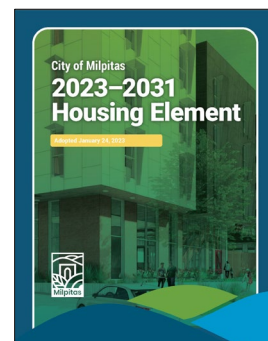
Table 1.A: General Plan - Key Zoning Recommendations	
Preliminary Recommendations for Zoning Ordinance Update	Policies/Actions
Expand and revise the zoning districts and associated standards to implement General Plan Land Use Designations (General Plan Table 1). Update the zoning map to implement the General Plan Land Use Map (Figure LU-1). See Section 2.2, Zoning Districts, for specific zoning district recommendations.	Policy LU 1-2, Action LU-1a, LU 1b, LU-1f, LU 2-5
Add building placement standards (e.g., build-to lines) to locate building close to the street and/or parking placement standards, considering Objective Design Standards.	LU 4-4, LU 6-3
Include building step-backs to transition from high density development to low density neighborhoods, considering Objective Design Standards.	LU 5-2
Reduce the allowance for exceptions to established height limits. ¹	LU 5-3

Table 1.A: General Plan - Key Zoning Recommendations

Preliminary Recommendations for Zoning Ordinance Update	Policies/Actions
Add requirements for buffers and other standards (e.g., performance standards, non-residential building design, landscaping) to ensure compatibility between residential areas and non-residential development.	LU-5b, CD 2-4, CD 5-4, CD 5-6, CD 5-7, CD 5-8, CD-1c, CD-5b
Ensure creek setbacks and/or buffers are appropriately established. Also note Metro Specific Plan CB 5.3	CD 1-5
Add design standards for non-residential projects (i.e., not addressed by Objective Design Standards). Include standards for building façade and articulation, rooflines, landscaping, screening, lighting, and signage.	CD-2b, CD-2e, CD-5a, CD-6e
Add pedestrian connectivity standards to provide convenient and safe access to sidewalks, transit, and open space.	LU 4-4, LU 5-1, CIR-1f, CD 2-7, CD-10a
Include maximum block length standards.	CD 10-3, CD-10a
Expand bicycle parking ratios to apply to all appropriate uses. Add long-term (i.e., weather protected) and short-term bicycle parking standards. Also note Metro Specific Plan M.8.4.1.	CIR-4j, CIR-4k, LU 4-4, LU 7-5
Reduce current parking ratios and expand alternative parking strategies. Encourage unbundled parking.	CIR-5a, CIR-5c, CD 2-5
Allow parks, plazas, outdoor seating, fitness facilities, daycare centers in Business Park/Research & Development zones. Also note Economic Development Strategy Action 11.1.	LU 7-5
Allow schools in compatible residential, commercial, and mixed-use zones.	LU 1-6
Allow community gardens in zones near and zones allowing high-density housing. Also note Metro Specific Plan PPS 6.6.	CHW-2f
Maintain flexible zoning allowing both horizontal and vertical mixed uses.	ED-1j
Update use definitions to provide greater flexibility for emerging retail businesses and models.	ED-2e
Only allow non-industrial uses in industrially zoned areas when uses will be compatible with industrial uses. Enhance standards for non-industrial uses in industrial areas as appropriate.	ED-1h, ED-1k
Expand development standards for hillside development. ²	CD-7a
Add landscaping standards reflecting drought-tolerant landscaping.	CON 2-2, SA 1-9
1. In 2022, the Zoning Ordinance was amended to include specific requirements related to additional building height requests in commercial zones and prohibit additional building height requests in commercial zones when within 500 feet of a R1 or R2 zone (Ordinance 38-846). These amendments are recommended to be retained in the Zoning Ordinance. 2. Voter approval required for amendments to Section 45 – “H” Hillside Combining District.	

Housing Element

The City of Milpitas 2023-2031 Housing Element was adopted by the City Council on January 24, 2023, and certified by the California Department of Housing and Community Development (HCD) on May 17, 2023 as a part of the 6th Cycle of Housing Element updates. The Housing Element is a plan to accommodate 6,700 units of new housing for Milpitas to meet future housing needs and address existing unmet needs, especially related to the lack of housing stock and current housing cost burdens present in the San Francisco Bay Area. To best plan for the existing and future population of Milpitas, the Housing Element sets forth programs and actions to promote and preserve housing while also furthering other goals in the General Plan, including building vibrant and walkable neighborhoods and maintaining an equitable balance of land uses.



Various Housing Element programs and actions prescribe revisions to the Zoning Ordinance. The following preliminary Zoning Ordinance Update recommendations are directed by key Housing Element programs.

Table 1.B: Housing Element – Key Zoning Recommendations	
Preliminary Recommendations for Zoning Ordinance Update	Programs
Provide by-right approval of housing proposed on sites previously identified in the 5 th Cycle Housing Element to accommodate lower income RHNA units and are being reused for this 6 th Cycle update, if the project includes 20 percent of the units as lower income in the 6 th Cycle.	1 [Program deadline: end 2023]
Rezone properties as outlined in Appendix E to provide adequate sites to accommodate the RHNA shortfall including appropriate development standards that facilitate achieving maximum densities. Rezoned properties that accommodate lower-income RHNA capacity must have a minimum density of 20 units per acre and zoned to allow ownership and rental housing by right in which at least 20 percent of the units are affordable to lower income households. Also, these rezoned properties must allow 100% residential projects and mixed-use projects must have at least 50% of the floor area dedicated to residential use consistent with Government Code §65583.2.	1 [Program deadline: end 2024]
Incentivize lot consolidation possibly through additional density bonus and/or flexible development standards (e.g., setbacks, parking).	3 [Program deadline: end 2024]
Implement a Housing Opportunity Zones (HOZ) program to utilize incentive-based zoning in multi-family and mixed-use zoning districts (i.e., the two Specific Plan areas, four Neighborhood Commercial Mixed Use (NCMU) areas, and the Town Center Zoning District). The program, which is currently under development, will provide incentives (e.g., density bonus above State law, relaxed development standards (e.g., maximum height, minimum parking ratio, minimum open space requirement, etc.), additional by-right approval. After the HOZ are complete, they will be integrated into the Zoning Ordinance as appropriate.	15 [Program deadline: end 2023]
Develop incentives to facilitate the development of large rental units (with three or more bedrooms) and rental units for extremely low-income households and persons with disabilities. Also see HOZ discussion, above. Update density bonus provisions to comply with State law. See more in Section 1.3 of this report (Legal Consistency Review).	16, 22, and 23 [Program deadlines: end 2024]

Table 1.B: Housing Element – Key Zoning Recommendations

Preliminary Recommendations for Zoning Ordinance Update	Programs
Ensure the Zoning Ordinance accommodates Tiny Homes, prefabricated, or modular housing units, and rapid rehousing projects based on feasibility study to be completed by end of 2023.	21 [Program deadline: end 2024]
Reduce parking ratios for multi-family, including studios and 1-bedroom units. Revise parking standards to comply with AB 2097	21 [Program deadline: end 2024]
Reduce setback standards to address constraints to multi-family housing, including missing middle housing types.	21 and 24 [Program deadlines: end 2024]
Reduce open space requirements to address constraints to multi-family housing, including missing middle housing types.	21 and 24 [Program deadlines: end 2024]
Update emergency shelter standards to limit required parking to staff parking and require a maximum separation of no more than 300 ft. Designate additional residential and/or mixed-use districts where emergency shelters will be permitted by right. Add objective standards for emergency shelters consistent with AB 2339.	21 [Program deadline: end 2024]
Clarify process requirements for streamlined approval of supportive housing consistent with AB 2162.	21 [Program deadline: end 2024]
Revise single room occupancy (SRO) standards, including unit sizes, parking, and spacing, and provide at least one zone where a Conditional Use Permit is not required for SRO development.	21 [Program deadline: end 2024]
Add low barrier navigation center (LBNC) as an allowed use by right in zones that allow mixed-use development and nonresidential zones that permit multifamily uses, provided the facility meets certain standards per AB 101.	21 [Program deadline: end 2024]
Allow employee housing consistent with State law (employee housing providing accommodations for six or fewer employees treated as a single-family structure).	21 [Program deadline: end 2024]
Allow farmworker housing consistent with State law (farmworker housing up to 36 beds or 12 units is considered an agricultural use to be similarly permitted as other agricultural uses in the same zones).	21 [Program deadline: end 2024]
Allow residential care facilities for six or fewer persons as a single-family dwelling (permitted use). Allow residential care facilities for seven or more persons as similar uses are allowed in the same zones. Establish clear and objective findings and conditions for approval.	21 [Program deadline: end 2024]
Establish a clear procedure for reasonable accommodation approval.	21 [Program deadline: end 2024]
Revise Site Development Permit findings to reflect Objective Design Standards.	21 [Program deadline: end 2024]

Specific Plans

Specific plans are planning documents that establish a vision and goals for a geographic area within a city. The City has two specific plans: the Metro Specific Plan and the Midtown Specific Plan. The Zoning Ordinance should implement the key policies and standards of these two specific plans.

Metro Specific Plan

The Milpitas Metro Specific Plan establishes a vision for a key transit- and opportunity-rich area within



MILPITAS METRO SPECIFIC PLAN

Milpitas. Served by multiple transit lines and Highway 680, the area is envisioned to be an urban, future-forward center that supports a balanced mix of housing, retail, and employment uses; provides safe multimodal connections and public spaces; and is distinguished by urban design standards that create a visually memorable environment. The 2023 Metro Specific Plan updated the 2008 Milpitas Transit Area Specific Plan (TASP) and increased the Plan Area from 437 acres to approximately 510 gross acres. The following preliminary recommendations list key policies and measures to incorporate into the Zoning Ordinance.

Table 1.C: Milpitas Metro Specific Plan – Key Zoning Recommendations	
Preliminary Recommendations for Zoning Ordinance Update	Policies/Measures
Establish new Metro zones. Add development intensities (density and floor-area-ratio (FAR), minimums and maximums) and maximum height from Tables 2-4 and 2-5 into new Metro zones.	LU 3.3, Implementation Measure 2
Include standard of 80% of ground floor façade along Activity Streets where retail or active uses is required per Metro Specific Plan Table 2-4 and LU-6.2. Define active uses.	LU 2.4, CB 4.1
Revise use definitions to ensure a range of housing types are allowed. Also see Housing Element program recommendations.	LU 3.2
Prohibit drive-throughs and gas stations throughout the Metro zones.	LU 6.4
Allow uses such as retail and restaurants in the BPRD-Metro zones.	LU 5.4
Allow hotels by-right in appropriate new zones (i.e., MDX-2-Metro, MDX-3-Metro, BPRD-Metro zones).	LU 2.2
Add community gardens as an allowed use in the Metro zones and define.	PPS 6.6
Include building step-backs in the Metro zones while considering the Objective Design Standards.	CB 3.3
Include a minimum 25-ft setback from top of creek/drainage channel bank or maintenance road in Metro zones.	CB 5.3
Require no parking and include maximum parking ratios for Metro zones per Table 4-3. ¹	M.8.4.2

Table 1.C: Milpitas Metro Specific Plan – Key Zoning Recommendations

Preliminary Recommendations for Zoning Ordinance Update	Policies/Measures
Include long-term (i.e., weather protected) and short-term bicycle parking standards citywide. Add required bicycle parking ratio from Table 4-2. Also note General Plan Policies LU 4-4, LU 7-5, CIR-4j, CIR 4k.	M.8.4.1
Include open space requirements (25 s.f. per 10,000 s.f. of floor area) for commercial projects in BPRD-Metro zones.	PPS 4.3
Require 100 s.f. of on-site private or common open space per unit in Metro zones, with at least 30% of total on-site open space being common shared spaces. Require at least 5% of total open space to be publicly accessible.	Private and Common Open Spaces, CSS-10, CSS-11
Require shade trees at a rate of one tree per 5,000 s.f. of residential building footprint and one tree for every 10,000 s.f. of developed lot area for non-residential or mixed-use development.	PPS 8.2
<i>1. Removal of parking minimums for Innovation District developments is Action #5 of the Innovation District Action Plan (June 30, 2022). The Innovation District encompasses BPRD and BPRD-R properties within the Metro Specific Plan.</i>	

Midtown Specific Plan

Last updated in 2010, the Milpitas Midtown Specific Plan regulates an approximately 589-acre area west of the heavy rail line that bisects the City. In 2021, the City initiated the Gateway-Main Street Specific Plan, which will replace the Midtown Specific Plan. The Gateway-Main Street Specific Plan is being based around the guiding principles of vision and placemaking, land use and development, transportation and access, and open space and community amenities. When the Gateway-Main Street Specific Plan is completed and adopted (anticipated in early 2024), the Zoning Ordinance will be amended to implement the Plan's direction in quantifiable standards and regulations, as well as establish new zoning districts as necessary.

Climate Action Plan

The Milpitas Climate Action Plan Update (CAP), adopted in August 2022, is a comprehensive framework to locally address the challenges of climate change to achieve the City's climate change goals. The CAP establishes strategies and actions to reach these goals, which include achieving carbon neutrality by 2045, reducing greenhouse gas emissions, and promoting climate resiliency and community sustainability. The Zoning Ordinance should implement the zoning-related climate action goals as defined by the CAP. The following preliminary Zoning Ordinance Update recommendations are based on the CAP.



Table 1.D: Climate Action Plan - Key Zoning Recommendations	
Preliminary Recommendations for Zoning Ordinance Update	Actions
Ensure renewable energy systems, including battery electric storage, are allowed with limited to no Planning approval required.	Action BE-1.1.2
Provide zoning incentives (e.g., related to development regulations like density or FAR) for projects that exceed mandated sustainability requirements.	Action BE-2.3.1
Require non-residential projects to provide “end-of-trip” facilities for cyclists (e.g., showers, secure bicycle lockers, and changing spaces) and adequate e-bike and e-scooter infrastructure.	Action TR-1.1.2
Ensure electric vehicle (EV) charging stations are allowed.	Action TR-2.1.1
Ensure “resilience hubs” equipped with backup power and disaster assistance and supplies are not precluded through zoning.	Action 4.1.3
Add tree planting standards for front, side, and/or rear yards in single-family development and along commercial development street frontage. Add parking lot shade tree planting standards. Also see Milpitas Metro Specific Plan recommendations (PPS 8.2).	Actions 5.1.1, 5.1.2, 5.1.5
Add tree removal standards and enhance native tree and plant requirements. Reference tree protection and heritage tree program (Municipal Code Title X, Chapter 2, Section 7).	Action 6.3.4

Economic Development Strategy and Implementation Actions

The City of Milpitas Economic Development Strategy and Implementation Actions Final Report (EDS) was adopted in May 2020 to guide the City's economic development activities from 2020-2025. The main goals of the EDS are to grow and diversify the City's economy, support businesses and workers, and improve quality of life in the community. The Zoning Ordinance should implement applicable strategies and implementation actions of the EDS.

The following preliminary Zoning Ordinance Update recommendations are based on the EDS.

Table 1.E: Economic Development Strategy - Key Zoning Recommendations	
Preliminary Recommendations for Zoning Ordinance Update	Actions
Allow uses like childcare centers, gyms, and other services in office and R&D districts (e.g., BPRD zones, Administrative and Professional Office (CO) Zone, etc.).	Action 11.1
Focus on allowing advanced manufacturing and R&D uses in new BPRD zones rather than warehouse and distribution (e.g., limit size of warehouses in BPRD zones).	Actions 19.3, 23.2
Update wireless telecommunications standards and procedures to streamline approval. Also, see Section 1.3, Legal Consistency Review.	Action 29.1
Ensure temporary dining, arts, and entertainment uses are allowed in public spaces and vacant retail spaces, particularly in appropriate new Metro zones.	Action 30.1
Update zoning to reflect the Metro Specific Plan, including the Metro BPRD and BPRD-R zoning districts and reduced parking requirements. Facilitate restaurant and retail uses in the Metro Specific Plan area.	Actions 24.1, 26.3, 27.2
Update zoning for the Midtown area to reflect the Gateway-Main Specific Plan, including reduced parking and facilitating restaurant and retail uses (see Midtown Specific Plan (above) for timing of the Gateway-Main Specific Plan and subsequent Zoning Ordinance updates).	Action 31.5

Trail, Pedestrian, and Bicycle Master Plan

The City of Milpitas Trail, Pedestrian, and Bicycle Master Plan was adopted in June 2021 to increase walking and biking by making improvements to the safety and convenience of active modes of transportation. While the policies identified in the Plan are relevant to community development in Milpitas, there are no direct items to be implemented in the updated Zoning Ordinance.



Parks & Recreation Master Plan

The City of Milpitas Parks & Recreation Master Plan Update was adopted in December 2021 with the purpose of studying the City's existing parks and recreation facilities and programming; preserving and improving facilities and programming; and planning for anticipated population growth over the next 20 years. While the policies identified in the Plan support quality community development, there are no direct items to be implemented in the updated Zoning Ordinance.



Section 1.2 Objective Design Standards

The final Milpitas Residential and Mixed-Use Objective Design Standards (ODS) were adopted in November 2022 to provide clear and quantifiable regulations for residential and mixed-use development and design, as defined by California Senate Bill 330 (SB 330).

Applicability

The ODS apply to all new multi-family projects (two or more dwelling units) and to mixed-use projects that feature a combination of residential and other uses (where at least two-thirds of the square footage of the development is designated for residential use). These standards do not apply to other project types such as single-family homes; commercial-only projects; interior renovations on less than 30 percent of gross floor area; or to mixed-use developments with less than two-thirds of the floor area designated for residential use. Standards in the ODS are separated by building size and height, with different standards for small, medium, large, or extra-large building types.

Design Elements Addressed

The ODS address multiple design elements for applicable residential and mixed-use projects. Examples of these design elements include:

- Block structure in developments
- Block connectivity
- Public open space
- Sidewalk design
- Building orientation
- Building setback character
- Ground floor uses for active frontages
- Access and parking
- Landscaping
- Site lighting
- Standards for special conditions and adjacencies
- Building massing

- Façade design and composition
- Building and residential unit entries
- Fenestration design
- Green/productive roofscapes
- Building materials
- Private open space

Each design element is addressed with clear and quantifiable standards.

Implementation in the Zoning Ordinance

The ODS will be incorporated by reference into the Zoning Ordinance. The new and revised standards in the updated Zoning Ordinance will augment and not conflict with the ODS; however, the Zoning Ordinance will clearly state precedent in case of a conflict (e.g., in case of a conflict, the Zoning Ordinance standards supersede the ODS)¹.

Section 1.3 Legal Consistency Review

California law grants cities and counties relatively broad discretion in the regulation of land uses and development, and the Federal courts and United States Congress have, for the most part, left land use and environmental regulation up to state and local government. There are, however, some important exceptions to this approach. If local regulations conflict with federal law, pursuant to the supremacy clause of the United States Constitution, then local laws are preempted. In some cases, both the United States Congress and the State have identified matters of critical concern that limit the authority of California cities.

This section discusses some examples of State and Federal laws that will be addressed as part of the Zoning Ordinance Update.

Housing Element Program Legal Compliance

The City's 2023-2031 Housing Element includes programs requiring updates to the Zoning Ordinance to reflect State law, specifically Housing Element Program 21. Implementation of this Program, as noted in Table 1.B, will address State law compliance related to the following topics:

- Emergency shelters
- Low barrier navigation centers (LBNC)
- Supportive housing
- Employee and farmworker housing
- Residential care facilities
- Density bonus

¹ The updated Zoning Ordinance will address what standard takes precedent in the case of conflicting requirements between the Zoning Ordinance and other City requirements (e.g., specific plans, development agreements, etc.).

Manufactured Housing

California Government Code §65852.3-.5 requires local agencies to allow the installation of manufactured homes certified under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§5401 et seq.) on a foundation system, pursuant to California Health & Safety Code §1855, on lots zoned for single-family dwellings. Manufactured homes must be subject to the same development standards and permit requirements as a single-family home and subject to the same permit requirements as a conventional single-family dwelling.

It is recommended that the Zoning Ordinance be revised to allow manufactured homes on lots zoned for single-family dwellings without any subjective requirements regarding “compatibility” not required for single-family homes, and to remove permitting requirements (e.g., Site Development Permit) when they are not required for single-family dwellings (i.e., Section 10-13.07.B.1).

Nonconforming Multi-family Dwellings

Local agencies may not prohibit the reconstruction, restoration, or rebuilding of a multi-family dwelling that is involuntarily damaged or destroyed by fire or other catastrophic event, unless certain findings are made that the reconstruction, restoration or rebuilding would be detrimental to public health or safety, and the existing nonconforming use would be more appropriately moved to a district that allows the use (California Government Code §65852.25). It is recommended that the Zoning Ordinance be revised to include provisions to allow for the rebuilding of a nonconforming multi-family dwelling unless the above findings are adopted.

Cottage Food Operations

California Government Code §51035 states that cities and counties must allow cottage food operations (i.e., homemade and packaged food defined in California Health and Safety Code §113758) in residential dwellings, and either:

1. Classify cottage food operations as a permitted use of residential property.
2. Grant a nondiscretionary permit to use a residence as any cottage food operation that complies with local ordinances concerning concentration, traffic control, parking, and noise control. The permit issued shall be granted by the zoning administrator or person designated by the planning agency to grant the permit, without a hearing.
3. Require a use permit for cottage food operations, reviewed and acted upon by the zoning administrator or person designated by the planning agency to grant the permit, pursuant to local ordinances concerning concentration, traffic control, parking, and noise control.

Cottage food operations must be considered residences for the purposes of the State Uniform Building Standards Code and local building and fire codes, and do not constitute a change of occupancy from residential use.

While it is the City’s practice to approve cottage food operation under a home occupation permit, the Zoning Ordinance does not explicitly address cottage food operations. As outlined above, it is recommended that the Zoning Ordinance either 1) permit cottage food operations in any residential zone, 2) require a nondiscretionary permit for cottage food operations, or 3) require a Use Permit for cottage food operations. Also, include specific use standards if/as appropriate related to concentration, traffic control, parking, and

noise control, or reference relevant standards (e.g., Title V, Chapter 213 – Noise Abatement). The level of permit and supplemental standards will be further discussed with City staff prior to drafting these provisions for the updated Zoning Ordinance.

Family Day Care Homes

Pursuant to California Health & Safety Code §1597.30 et seq., small family day care homes in a residential unit are a residential use and are not subject to a fee or business license. Health and Safety Code §1597.45, effective January 1, 2020, further states that large family day care homes (caring for up to 14 children) shall be treated the same as small family day care homes (caring for up to 8 children) under all local laws. Cities and counties must consider the operation of a large family day care home as a residential use of property as they have done with small family day care homes.

It is recommended that the Zoning Ordinance be amended to allow large family day care homes by right at minimum on the upper floors of buildings in the MXD2 Zoning District² and to subject large family day care homes to the same development standards (e.g., parking, density) as other residential uses.

Religious Uses

The Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) requires public agencies to demonstrate a compelling government interest and to use the least restrictive means when making a land use decision that imposes a substantial burden on religious exercise. Religious uses must be treated the same as similar non-religious uses. Additionally, regulations cannot impose a substantial burden to religious uses.

The Zoning Ordinance allows "places of assembly" including religious uses (e.g., churches, mosques, synagogues, temples, etc.) and other types of assembly (e.g., private and nonprofit clubs and social or fraternal organizations), by Conditional Use Permit (CUP) in residential, commercial, mixed-use zones and several industrial zones, and these religious uses are not treated any differently than other "places of assembly." However, the City may consider revising the Zoning Ordinance to allow places of assembly by right up to a certain seating capacity in certain zoning districts, and beyond that allow places of assembly by CUP to address any impacts from traffic, noise, lighting, etc.³ This would remove any "substantial burden" to religious use and "use the least restrictive means."

Parking

Assembly Bill (AB) 2097, codified in California Government Code §65585 and 65863.2, prohibits minimum parking requirements for projects within a half-mile of a major transit stop unless findings are made that not requiring minimum parking would have a "substantially negative impact" on:

- The jurisdiction's ability to meet its Residential Housing Needs Assessment (RHNA) for lower income households;

² See Section 2.2 for recommendations regarding Zoning Districts.

³ Note that Ordinance 38.837 (2019) restricted non-industrial uses (including assembly) in the M2 Heavy Industrial District to protect the integrity of the City's industrial lands.

- The jurisdiction's ability to meet any special housing needs of the elderly or persons with disabilities; or
- Existing residential or commercial parking within half-mile.

Even if the findings are made, no minimum parking requirements apply to housing development projects with a minimum of 20 percent affordable units or fewer than 20 units, or to developments subject to parking reductions based on other applicable laws. It is recommended that the Zoning Ordinance be revised to reflect these parking reductions. This recommendation is also consistent with implementation of Housing Element Program 21.

Signs

In June 2015, the U.S. Supreme Court decision in *Reed v. Town of Gilbert* (No. 135 S.Ct. 2218, 2015) affirmed that sign regulations must be “content-neutral” to survive a legal challenge. To be content-neutral and satisfy First Amendment limitations, sign regulations must be based on “time, place, and manner” restrictions, rather than on content- or message-based restrictions. Content-based regulations are subject to what is called a “strict scrutiny” standard – that is, a compelling governmental interest must be demonstrated, and regulations must be narrowly tailored to serve that interest. It is recommended that sign regulations be updated to be content-neutral. See Section 2.5 for more detail.

Telecommunications

The Federal Telecommunications Act of 1996, California Government Code §65850.6 and 65964.1, and several FCC rulings limits state or local governments' authority to regulate placement, construction, and modification of personal wireless service facilities. It is recommended that the Wireless Telecommunications provisions (§XI-10-13.09) be rewritten comprehensively to ensure consistency with Federal and State law. This would include provisions for eligible facilities requests and collocations, as well as pertinent processing timelines and how minor modifications (e.g., no change to size or height) to existing facilities are processed.

Variances

California Government Code §65906 sets forth findings and requirements for variances. It is recommended that the sign variance provisions in the City's Zoning Ordinance (Milpitas Municipal Code Section XI-10-57.06) be removed, as signs would be subject to updated sign regulations and still be allowed to deviate from standards if the general Variance findings are made.

Development Agreements

California Government Code §65864 et seq. sets forth provisions for development agreements. While development agreements are listed as an application type in the Zoning Ordinance (Table XI-10-64.02-1), they do not have any related procedures in the Zoning Ordinance. Further, Action #6 of the Innovation District Action Plan encourages the City to collaborate with developers through development agreements. It is recommended that the Zoning Ordinance be amended to include development agreement procedures that are consistent with State law or a reference to State law.

Permit Streamlining Act

The Permit Streamlining Act, codified in California Government Code §65920 et seq., specifies permit review requirements and timelines, in part enumerating 30 days to determine whether an application can be accepted as complete (California Government Code §65943). It is recommended that the Zoning Ordinance include the 30-day completeness review in its application processing procedures.

Commercial Density Bonus

Assembly Bill (AB) 1551, codified in California Government Code §65915.7, requires local jurisdictions to grant a commercial developer a density bonus when an applicant requesting approval of a commercial development has entered into an agreement for partnered housing with an affordable housing developer to contribute affordable housing through a joint project or two separate projects encompassing affordable housing. The density bonus incentives may include:

1. Up to a 20 percent increase in maximum allowable intensity in the General Plan.
2. Up to a 20 percent increase in maximum allowable floor area ratio.
3. Up to a 20 percent increase in maximum height requirements.
4. Up to a 20 percent reduction in minimum parking requirements.
5. Use of a limited-use/limited application elevator for upper floor accessibility.
6. An exception to a zoning ordinance or other land use regulation.

It is recommended that the Zoning Ordinance incorporate by reference State law for commercial density bonus.

Residential Development in Commercial Zones

Senate Bill (SB) 6 and Assembly Bill (AB) 2011 allow residential development on sites currently zoned and designated for commercial or retail uses (e.g., commercial zones). These bills will go into effect on July 1, 2023.

AB 2011 creates a CEQA-exempt, ministerial approval process for multifamily housing developments on sites within a zone where office, retail or parking are the principally permitted use. The law provides for slightly different qualifying criteria (1) for 100-percent affordable projects and (2) for mixed-income projects located in “commercial corridors.” AB 2011 projects must pay prevailing wages to construction workers, among other labor standards.

Unlike AB 2011, SB 6 does not create any new approval process. SB 6 instead provides that projects meeting certain criteria may invoke SB 35 and the Housing Accountability Act. A project proposed under SB 6 may be either a 100-percent residential project or a mixed-use project where at least 50 percent of the square footage is dedicated to residential uses. SB 6 projects are not required to be affordable and CEQA applies. SB 6 projects are required to pay prevailing wages and utilize a “skilled and trained workforce.”

Since these bills sunset in 2033, it is recommended that they not be adopted into the Zoning Ordinance; they will remain in force and effect through State law.

Chapter 2 Recommendations

Section 2.1 Code Organization

Logical Sequence and Grouping

The Milpitas Zoning Ordinance, Chapter 10 of Title XI (Zoning, Planning and Annexation), includes the following sections:

- Section 1 The Zoning Plan
- Section 2 Definitions
- Section 3 Zoning Districts
- Section 4 Residential Zones and Standards
- Section 5 Commercial Zones and Standards
- Section 6 Mixed Use Zones and Standards
- Section 7 Industrial Zones and Standards
- Section 8 Planned Development Zones and Standards
- Section 10 Institutional Zone and Standards
- Section 11 Specific Plan Areas
- Section 12 Overlay Districts and Standards
- Section 13 Special Uses
- Section 14 Public Art Requirements for Private Development
- Section 15 Special Events and Activities
- Section 24 Signs
- Section 39 POS Park and Public Open Space District
- Section 40 Agricultural Zones and Standards
- Section 45 “H” Hillside Combining District
- Section 53 Off-Street Parking Regulations
- Section 54 General Provisions
- Section 55 Exceptions
- Section 56 Nonconforming Buildings and Uses

Section 57 Applications

Section 59 Certificate of Occupancy

Section 60 Boundaries of Districts

Section 61 Interpretation

Section 62 Reasonable Accommodation

Section 63 Enforcement and Penalty

Section 64 Development Review Process

Section 65 Procedural Rules for the Conduct of Hearings

As listed above, the existing Zoning Ordinance includes 30 sections, numbered nonconsecutively between one and 65. Consistent and sequential numbering is recommended. Zoning ordinances are complex, with elements building upon, refining, supplementing, and providing exceptions to each other. They are also living documents that change over time. Due to this level of intricacy, it is important that the structure of the Zoning Ordinance reflects the logical relationships between individual elements. Without a logically consistent organization, the intent of regulations is obscured, and users will struggle to understand what is required of them.

For example, the provisions for all base zone standards should be grouped together in consecutive sections. Sections 4 through 10 of the Zoning Ordinance includes standards for many of the City's zoning districts (i.e., residential, commercial, mixed-use, industrial, planned development, and institutional zoning districts). While Sections 4 through 10 are a good example of consecutively ordering similar standards, the remaining base zoning district standards and the overlay and combining district standards are separated from these sections. The Zoning Ordinance sections should be reordered to keep the general zoning district standards and the overlay and combining district standards in sequential order.

While Sections 4 through 10 are grouped logically, the subsequent sections lack clear and effective organization, making for an overly complex Zoning Ordinance. For example, Section 54 (General Provisions) is a collection of various Citywide provisions, but it is neither all-encompassing nor presented in an intuitive order. Commonly used parts of zoning ordinances like sign and parking provisions are included elsewhere in the Ordinance (Sections 24 and 53 respectively), and not in consecutive sequence with Section 54. Similarly, special uses and development standards are addressed separately in each zoning type group section (e.g., residential, commercial, etc.) while special uses standards are also addressed in a separate section (Section 13). Standards specific to particular uses should be consolidated in one place.

Hierarchy of Importance in Organization

Where appropriate, the sections, section groups, and subsections of the Zoning Ordinance should be organized to place the content of highest importance at the beginning. The measure of importance might be defined as the frequency with which Zoning Ordinance users need to reference each section, or the value that a particular standard has to the character of Milpitas. This enhances usability, as users searching the Zoning Ordinance are more likely to find the information they need quickly and efficiently. This also

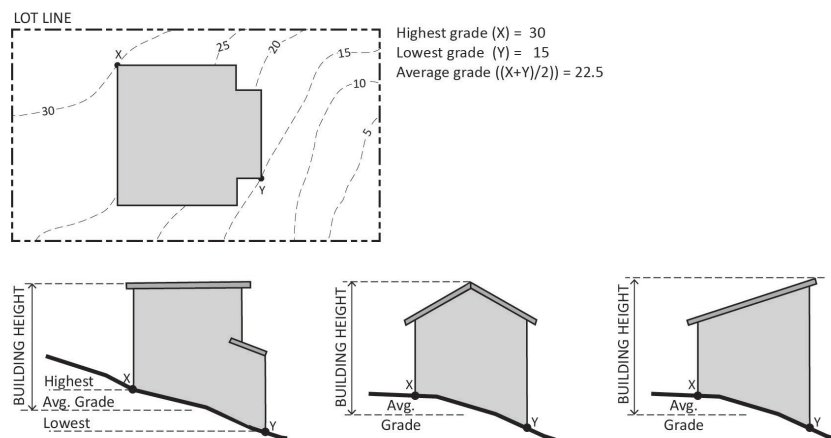
communicates to users the regulations for specific to development that the City has determined to be most important to its vision and policies.

Where no other organizational scheme seems applicable, alphabetization should be used to give some degree of structure to a section and to help with navigation in the Zoning Ordinance. This approach is appropriate for sections with many unrelated elements, such as performance standards for specific uses, where each subsection has equal importance and does not modify or affect any of the other subsections.

Definitions and Clear Rules of Measurement

Organizational improvements to other elements of the Zoning Ordinance are recommended for clarity. For example, it is recommended that use definitions be separated from the definitions of terms, rather than combined, as in the existing Zoning Ordinance. In the Definitions of Uses section, *only* the uses that appear in the use tables – and *all* the uses that appear in the use tables – will be defined. Definitions will remain consolidated, currently located in Section 2 (Definitions) of the Ordinance⁴. All appropriate terms and acronyms will be defined and reflect current definitions. See Section 2.3 of this report for recommendations regarding modernizing uses.

The Zoning Ordinance also lacks a comprehensive section defining rules of measurement, including standards for measuring height (for both principal and accessory structures), measuring setbacks, determining lot area, calculating FAR, and other relevant measurements. Clear rules of measurement are helpful to ensure that development standards are interpreted uniformly among Zoning Ordinance users. For example, clear rules of measurement help to determine applicability of standards in cases of irregularly shaped lots. Placing a complete set of rules of measurement in one location typically at the end of the Zoning Ordinance, provides an easy-to-locate reference tool to ensure consistent interpretation and application of standards.



Remove, Consolidate, or Reorganize Sections as Needed

Sections and subsections that are unnecessary, obsolete, or hard to find are recommended to be deleted or moved to ensure ease of use and clarity in the Zoning Ordinance. For example, overlay zones that are no longer relevant will be deleted (as identified in Section 2.2 of this report). Also, all existing content will be revised for clarity and brevity (e.g., Section XI-10-13.08, Accessory Dwelling Units).

⁴ Some definitions are not included in Section 2 (e.g., special event and activities definitions are in Section XI-10-15.04).

Utilize Tables and Cross-References

The existing Zoning Ordinance's use of tables and notes is largely effective, with minimal edits needed. The use tables are recommended to be improved with appropriate cross-reference to supplemental standards within the Zoning Ordinance as well as to the other Titles and Chapters of the Milpitas Municipal Code. All tables are recommended to be updated to correct typographical errors and errors in table note numbering (likely a result of piecemeal Zoning Ordinance amendments) and to improve clarity.

Incorporate Graphic Illustrations

In many instances, graphics can communicate development regulations more clearly and in less space than written standards. For example, new and updated diagrams can clearly depict standards for measuring sign height, while verbal equivalents are prone to misinterpretation and uncertainty. With visual clarification, fewer sections of the Zoning Ordinance will be subject to competing or incorrect interpretations, and regulations can be cleared of much of the jargon that can obscure the Ordinance's intent. In addition, graphics in the existing Zoning Ordinance need be updated to improve legibility and quality. For example, the graphics found in Section 45 ("H" Hillside Combining District) require improvement⁵.

Section 2.2 Zoning Districts

While a General Plan establishes land use designations and the overall policy basis for land use and development, zoning creates the framework for implementation of the General Plan policies and land use designations. It also establishes districts which are intended to define distinct locations for different uses, consistent with the General Plan. The Milpitas General Plan 2040, however, takes the step of identifying specific zoning districts to implement its land use designations (General Plan Action LU-1f, Table 1). The Zoning Ordinance will carry forward those recommendations and discussed in this Section.

Generally, development codes include two types of districts, base and overlay. "Base districts" set the basic regulations that apply within the geographic area that defines the district. A community may want to vary some of the regulations within the base district to respond to particular conditions within defined areas. "Overlay districts" are often used for this purpose.

Overlay districts are "laid over" or applied to base districts in situations in which modification of permitted uses or required standards is appropriate due to specific conditions, circumstances, or goals. Overlay districts can be geographically defined and mapped or can apply wherever specific conditions exist.

Preliminary recommendations for amendments to base zoning districts and overlay/combining districts are described in the tables below. These recommendations include related amendments to the General Plan to ensure alignment of allowable densities and intensities (i.e., floor area ratio (FAR)) between the General Plan land use designations and corresponding zoning districts⁶.

⁵ As previously noted, voter approval is required for amendments to Section 45 – "H" Hillside Combining District.

⁶ The City will propose any other General Plan amendment as necessary to ensure appropriate alignment of General Plan land use designations and zoning districts with the final proposed modifications of the existing zoning districts.

Base Zoning Districts

Table 2.A: Base Zoning Districts - Preliminary Recommendations		
Existing Zoning District	General Plan Land Use Designation	Preliminary Recommendation for the Zoning Ordinance Update
None	Neighborhood Commercial Mixed Use (NCMU)	Create a new NCMU zoning district.
None	Business Park/Research and Development (BPRD)	Create a new BPRD zoning district.
Agricultural Residence (AR)	None	Delete this zoning district as it is not an implementing zone for the General Plan and no property is zoned AR.
One and Two-Family District (R2)	Medium Density Residential (MDR)	Increase maximum density from 11 units per gross acre to 15 units per gross acre. Decrease minimum lot area from 8,000 s.f. to 5,800 s.f. to reflect this density increase.
Multiple-Family District (R3)	High Density Residential (HDR)	Increase maximum density from 20 units per gross acre to 30 units per gross acre (1,452 s.f. per unit).
Urban Residential (R5)	Very High Density Mixed Use (VHDMU)	Increase maximum density from 60 units per gross acre to 75 units per gross acre.
Mixed Use District (MXD)	Neighborhood Commercial Mixed Use (NCMU)	Allow multifamily dwelling units in mixed-use projects at a rate of 1 unit per 1,500 s.f. of neighborhood-serving commercial. ¹ Allow residential-only projects if 100% affordable to lower income households.
High Density Mixed Use District (MXD2)	None	Delete this zoning district as it is not an implementing zone for the General Plan and no property will be zoned MXD2 with adoption of Metro zoning districts (they will be MXD2-Metro).
Very High Density Mixed Use District (MXD3)	Very High Density Mixed Use (VHDMU)	Increase maximum density from 60 units per gross acre to 75 units per gross acre. Reduce maximum non-residential and mixed-use FAR from 2.0 to 1.5 (retain the existing standard allowing up to 2.5 FAR with a Conditional Use Permit).
Town Center (TC)	Town Center (TWC)	Allow mixed-use projects with a density of up to 40 units per acre provided a minimum 0.35 non-residential FAR is included.
Neighborhood Commercial District (C1)	Neighborhood Commercial Mixed Use (NCMU), General Commercial (GNC), General Commercial (NC)	Increase FAR from 0.35 to 0.75 consistent with NC land use designation. Amend General Plan Table 1 to remove C1 as an implementing zone for the GNC land use designation, which has a maximum FAR of 0.5.
Light Industrial District (M1)	Manufacturing (MFG)	Increase FAR from 0.4 to 1.0.
Heavy Industrial District (M2)	Manufacturing (MFG)	Increase FAR from 0.4 to 1.0.

Table 2.A: Base Zoning Districts - Preliminary Recommendations

Existing Zoning District	General Plan Land Use Designation	Preliminary Recommendation for the Zoning Ordinance Update
Industrial Park District (MP)	Industrial Park (INP)	Increase FAR from 0.5 to 1.0.
1. Anticipate that this ratio may change with the preparation of the new NCMU Zoning District and associated standards. The Zoning Ordinance will ensure consistency with the General Plan ratio, as amended.		

Overlay Districts

Table 2.B: Overlay Districts - Preliminary Recommendations

Overlay/Combining District	Preliminary Recommendation for the Zoning Ordinance Update
High Rise Overlay District (-HR)	Remove this Overlay as it is outdated and applies to only one property as the result of a project-specific entitlement that was never constructed.
Hillside Combining District (-H)	Implements Hillside Low Density and Hillside Medium Density land use designations (maximum density of 1 to 3 units/gross acre with density decreasing with increase in slope until 10 acres required per unit (average slope of 27% or greater). Amend -H Combining District to reflect this increase from currently allowed density. ¹ Additionally, integrate voter-approved ballot measures that affect hillside development but are not codified into the Zoning Ordinance.
Mobile Home Park Combining District (-MHP)	Currently mobile home parks are zoned Highway Services with the MHP Overlay. Create a MHP base zoning district to remove the need for the overlay and create a single density standard for mobile home parks consistent with the General Plan (7 units per gross acre). Note that General Plan Table 1 will need to be amended to show MHP as a base zone rather than R1-MHP.
Recreation & Entertainment Overlay District (-RE)	The -RE Overlay is intended to allow a broader range of uses where it applies over the C2, HS, MP, and M1 zoning districts. Remove this Overlay as it will be largely superseded with the new BPRD zoning district and comprehensively updated use tables.
Site and Architectural Overlay District (-S)	Remove this Overlay and replace with citywide design review requirements.
1. As previously noted, voter approval is required for amendments to Section 45 – “H” Hillside Combining District.	

Note: General Plan Policy LU 2-5 specifically lists all existing overlay/combining districts; therefore, any removal or addition of overlays/combining districts will require a General Plan amendment for consistency.

Section 2.3 Use Regulations

Use regulations, typically presented in a tabular format, detail the type of uses that are allowed, any required planning approval, and specific limitations applicable to the activity or use. Land use categories are building blocks that establish the basis for regulation, while use regulations identify the specific use categories that are allowed, allowed with a permit, or prohibited in each zoning district. Use regulations may also include special requirements applicable to specific uses.

General Plan land use designations outline what is allowed in terms of uses and intensity of development, with each designation mapped on a land use diagram (see General Plan Figure LU-1). In addition, Citywide policies, particularly those related to economic development, call attention to particular uses that should be promoted. It is important to ensure that the use regulations in the Zoning Ordinance carry out these City policies.

An Updated Approach to Uses

The changing nature of land use demands flexibility in regulation. Specialized operations and segregated uses are becoming less prevalent as operations and uses adapt to rapidly changing technology and market preferences. Traditionally, a company may have manufacturing in one place, an office somewhere else, and a shop in still another location. Increasingly, and particularly for smaller operations, functions are blending. For example, a craft brew establishment may brew and distribute beer, sell beer and brewery related merchandise, serve beer and food, and feature live entertainment. This type of operation combines five traditionally separate uses: manufacturing, distribution, retail sales, eating and drinking, and entertainment. While Ordinance 38.848 (adopted in 2022) included updates to various uses, its focus was on industrial areas and related uses. The current Zoning Ordinance is recommended to be revised to make it easier to determine how operations that combine uses fit into the City's use regulation scheme.

The Zoning Ordinance update provides the opportunity to modernize the City's approach to use regulation to reflect contemporary uses, current development practices, and State and federal law. The updated regulations can address specific considerations for certain uses such as urban agriculture, artisan workspace, entertainment, and others. They can provide flexibility to adapt to changing preferences, technology, and other circumstances. The updated use lists can also support community objectives such as providing a diversity of housing types and flexible commercial and employment centers.

To help modernize the Zoning Ordinance, obsolete uses (i.e., those no longer allowed, or those containing outdated terms) are recommended to be eliminated and contemporary uses such as industrial flex space, shared office spaces, and urban agriculture uses (e.g., community gardens, produce stands, etc.) added. The Zoning Ordinance update will also incorporate mechanisms to allow for flexibility in the change in uses or combination of uses. In addition to identifying and providing for accessory uses that are typically associated with certain principal uses, the Zoning Ordinance may incorporate provisions to allow other accessory uses (e.g., outdoor dining, coffee bar, rooftop gardens and/or dining), up to a certain threshold, that are subordinate and incidental to a principal use. Special attention can also be given to having uniform requirements or standards for uses, where appropriate. Reducing nuances between requirements for varying uses will ease administration and provide flexibility with regard to evolving operations and the re-use of property.

The allowable uses within each zoning district will be updated for compatibility with the purpose of the district, compatibility with adjacent districts and uses, consistency with the General Plan land use designation, consistency with other City policies (see Section 1.1 of this report), and adaptability to contemporary trends.

Lastly, these revisions, together with appropriate standards for specific uses, will facilitate a reduction in the application of Conditional Use Permits (CUPs). Reducing the use of CUPs encompasses allowing uses by right or lowering the level of CUP required (i.e., City staff-level approval instead of Planning Commission)⁷. Lowering approval requirements for desired uses provides efficiencies that can advance the City's goals for supporting new businesses and employment generation.

Clarity and Organizational Improvement of Uses

The Zoning Ordinance's use definitions lack congruency and consistency. Some uses are not defined, and others are redundant across the various sections of the Zoning Ordinance. For example, the Ordinance lists hospitals under three different uses: "Hospital," "Hospitals," and "Hospitals or Sanitariums" in commercial districts, industrial districts, and mixed-use districts respectively. It is recommended that redundant uses are consolidated under a uniform term that falls into one use category (e.g., commercial uses, industrial uses, etc.). Additionally, very specific uses are listed (e.g., "Furniture Sales," "Household Appliance Store," and "Paint and Wallpaper Stores"). As previously discussed, this approach limits flexibility and unnecessarily expand the use tables. These types of uses are recommended to be grouped under a broader use (e.g., General Retail) with appropriate supplemental regulation⁸.

Section 2.4 Development and Design Standards

The current Zoning Ordinance has a variety of standards that address design and quality of development. Some of the standards were established more than 20 years ago and reflect the common practice and development style popular at the time. Though additional development and design standards and requirements have been added over the years, the standards lack thorough integration within the Zoning Ordinance, resulting in a code that does not adequately support the development and built form that the Milpitas community envisions. The following subsections address issues across various sections and topics in the existing Zoning Ordinance and provide recommendations for improvement, in addition to those identified in Section 1.1.

Objective Design Standards for Non-Residential Uses

While the City adopted Residential and Mixed-Use Objective Design Standards (ODS) applicable to qualifying multi-family and residential mixed-use projects in November 2022 and consistent with SB 330, the current Zoning Ordinance lacks references to the ODS in the appropriate sections. Further, the

⁷ Removing the CUP requirement for tandem parking, particularly tandem parking for single-family homes, is also recommended; however, standards related to tandem parking may be appropriate to facilitate the staff-level review.

⁸ Home occupations, for example, have standards specific to that use (Section XI-10-13.05); however, it is recommended that these be expanded.

development of objective design standards for non-residential uses (i.e., commercial and industrial) is recommended. The Zoning Ordinance is recommended to include non-residential design standards for elements such as building entrances, façade design and articulation, upper story step-backs, pedestrian and bicycle circulation, landscaping, parking design, and lighting (see Section 1.1 of this report).

Parking

Parking standards for vehicles and bicycles are an important part of any Zoning Ordinance. Parking ratios in the existing Zoning Ordinance need to be updated and reduced to better accommodate the City's vision and needs and ensure consistency with State law (also see Sections 1.1 and 1.3 of this report). It is, therefore, recommended that the parking provisions be comprehensively updated to reduce minimum parking ratios and establish maximum parking ratios where appropriate; expand on allowed shared and alternative parking strategies; update design standards for parking areas such as the inclusion of drive aisles; incorporate standards for both short- and long-term bicycle parking and storage; and incorporate appropriate standards for electric vehicle (EV) charging stations while encouraging these uses (see Table 1.D) and complying with legal requirements. Bicycle parking standards will include requirements for placement (e.g., on-site and near main entrances) and to ensure bicycle parking is easily accessible and secure. Additionally, parking standards will include requirements for on-site delivery, loading, and move-in/move-out activities, as appropriate.

Landscaping and Tree Standards

The current Zoning Ordinance lacks comprehensive standards for landscaping, tree planting, and tree shade. The City's goals and vision, as well as best zoning practice, warrant the inclusion of comprehensive landscaping and tree standards in the Zoning Ordinance, especially the inclusion of updated drought-tolerant requirements for landscaping. Currently, the only landscaping requirements are for development within the Hillside Combining District (H), adopted in City Council Resolution No. 6066, and those requirements are not yet incorporated into the Zoning Ordinance⁹. Further, it is recommended that comprehensive landscape design standards (e.g., parking lot and perimeter landscaping standards and tree planting standards on-site and in adjacent public right-of-way), drought-tolerant planting standards, and water preservation standards be included and/or referenced from other chapters in the Municipal Code, as well as review procedures for landscape plans, if different from other site or design review processes.

The City has standards applicable to tree removal in the City's right-of-way (Tree Protection and Heritage Tree Program (Municipal Code Title X, Chapter 2, Section 7), the Zoning Ordinance is recommended to address tree protection on private property (also see Table 1.D). Some of the standards in the existing Tree Protection and Heritage Tree Program may be appropriate to also apply to private property; however, this will be further reviewed during preparation of the draft updated Zoning Ordinance.

Single-Family Residential Development Standards

Some of the existing Zoning Ordinance's single-family residential development standards are recommended to be clarified and expanded. For example, exceptions to the Zoning Ordinance's setback

⁹ Water Efficient Landscapes are regulated in Title VIII, Chapter 5.

standards, found in Section XI-10-55.03 (Setbacks), are recommended to be updated and revised to reflect the development types the community envisions, to be cognizant of sensitive adjacencies, and support engaging frontages. Additional objective design standards, for elements such as window recess, variation of roof form, blank walls, and colors and materials, are also recommended. Standards for site design should ensure that single-family home remodels or additions are supported and encouraged¹⁰.

Other Recommendations

Other recommendations for development and design standards of the Zoning Ordinance are listed below:

- Clarify building height in the industrial zoning districts rather than leaving ambiguity regarding allowed maximum height.
- Simplify height regulations for accessory structures, which are in multiple places in the Zoning Ordinance (Table XI-10-4.04, XI-10-54.08 (B), etc.).
- Clarify setback standards for accessory structures in coordination with Fire and Building Department requirements. Also, acknowledge potential easement conflicts.
- Revise and clarify fence and wall standards to accommodate taller entry features, allow appropriate flexibility, and address recurring issues (e.g., easements, utility areas, City right-of-way/street trees, corner lots and irregularly-shaped lots, applicability (e.g., retaining walls, bushes, etc.), gates/locks, etc.).
- Better define distinctions between special events to facilitate review and approval (Section 15).
- Include and/or reference access management best practices as outlined in the Transportation Research Board's Access Management Manual and Access Management Application Guidelines as appropriate.

Section 2.5 Sign Standards

Legal Issues

For many years, and especially since the landmark U.S. Supreme Court decision in *Reed v. Town of Gilbert* (No. 135 S.Ct.2218, 2015), decided in June 2015, U.S. Courts have affirmed that sign regulations must be “content-neutral” to survive a legal challenge. To be content-neutral, sign regulations must be based on “time, place, and manner” restrictions, rather than by making distinctions based on the message the sign conveys.

“Time, place, and manner” restrictions, as the name suggests, limit the length of time, the manner, and place or location of a sign. As an example, well-written sign regulations may include a limitation on the length of time portable or temporary signs may be displayed, such as A-frame signs or banner signs;

¹⁰ This also relates to nonconforming structure thresholds.

restrictions on the total area, maximum height, or illumination of a sign; and where the sign may be placed (i.e., so as not to encroach within public right-of-way).

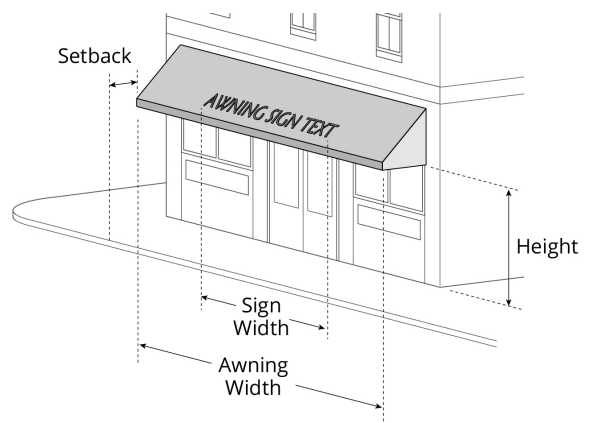
A content-based sign regulation, on the other hand, includes standards specific to the message that is conveyed on the sign (i.e., the sign needs to be read to understand what standards will apply to it). These include, for example, “political signs” which may be regulated differently to “temporary construction signs,” “garage sale signs,” or “real estate signs.”

As a general recommendation, it is important that all content-based sign standards be removed from Section 24 (Signs). This includes, for example, references to garage sale signs, political signs, open house direction signs, temporary tract advertising signs, etc.

Organization and Clarity Issues

In addition to the content-based issues described above, the sign regulations can be improved by applying the following recommendations:

- Revise the organization of the sign standards based on best practices, especially following the *Reed* case. This includes for example a new general development standards section for standards related to measuring sign area and height, illumination standards, sign placement and display standards, maintenance standards, etc. and separate sections for permanent and temporary/portable signs.
- Include a comprehensively updated Purpose and Intent section, provisions to allow the substitution of a sign message, provisions for the right to picket, a content-neutral statement, and a separate severability clause.
- Revise and reduce the number of exceptions to the sign standards consistent with best practices.
- Include simple and clearly illustrated graphics to illustrate each sign type (see awning sign graphic).
- Format the standards for sign types (i.e., sign area, height, placement, illumination, etc.) in a simple table format for ease of use.
- Update and modernize the sign definitions. Group sign definitions in a subsection of the definitions section, similar to separate definition subsections for uses and general terms.
- Include the sign regulations in the Metro Specific Plan in the updated Zoning Ordinance sign standards.
- Consider modifying standards (e.g., height, length of display, etc.) and review authority for various signs as appropriate.
- Ensure consistency throughout the Zoning Ordinance pertaining to sign regulations (e.g., Applications Section 57).



- Conform to and/or reference California Department of Transportation's Outdoor Advertising Regulations where appropriate.

Section 2.6 Administration and Procedures

Organization Issues

The City's Zoning Ordinance does not include one logically organized and consolidated Administration and Procedures Chapter or Section. Instead, administrative processes are randomly included in a variety of Sections within Chapter 10, Zoning, including for example:

- Section 57 (Applications) that provides the procedures for General Plan, Specific Plan, and Zoning Amendments; Site Development Permits and Minor Site Development Permits; Conditional Use Permits and Minor Conditional Use Permits; Density Bonus Permits; and Variances;
- Section 59 (Certificates of Occupancy);
- Section 61 (Interpretation);
- Section 63 (Enforcement and Penalty); and
- Section 64 (Development Review Process).

It is recommended that all of the above-listed administration and procedures sections be reorganized and consolidated. The consolidated section will then include all of the procedures for various planning permits and approvals, amendments to the General Plan, amendments to the zoning map and text, specific plans, appeals, enforcement, etc.

Design Review and Clear Purpose of Permits

It is recommended that procedures for design review, clearly stating that design review is applicable citywide, be included. Site Development Permits and Use Permits currently serve in some capacity as design-related review. It is recommended that the purpose, review procedures, and findings for each of these permit types be clarified. For example, permit purpose statement may focus on the following:

- **Design Review Permit** – Permit for reviewing consistency with applicable design standards and guidelines.
- **Site Development Permit** – Permit for reviewing compliance with applicable Zoning Ordinance standards.
- **Conditional Use Permit** – Permit for reviewing uses and activities for compatibility with the site and surrounding uses.

It is recommended that a minor design review process (i.e., review and approval by City staff for alterations, additions, certain levels of new construction, etc.) and major design review for larger and potentially more controversial projects, by for example, the Zoning Administrator or Planning Commission, be included.

Site Development Permits

Table XI-10-57.03-1 (Additions or Alterations Requiring Minor Site Development Permits), while very comprehensive, is unwieldy and challenging to use and apply. It is recommended that this table be streamlined and reorganized, with consideration of the proposed citywide design review (see above), and with actual development standards included in the appropriate places within the updated Zoning Ordinance. This will result in the table including only clear applicability provisions for certain uses and/or development features. This table or accompanying text should also include, for example, a description of those applications for which planning review and permits are not required (e.g., for window or roof replacement).

Exceptions

The Zoning Ordinance provides extensive flexibility to various standards and provisions (e.g., building height, nonconforming, parking, temporary uses and structures, etc.) through a Conditional Use Permit (see Table XI-10-57.04-1). While flexibility in a Zoning Ordinance provides an opportunity to address unique conditions, it erodes predictability which can result in neighborhood opposition. An alternative approach would be to codify clear standards (e.g., when projections into setback areas or exceedances of the height limit are appropriate) (see Section 55), and if additional flexibility is needed, establish a new minor modification process (effectively a staff level process for adjusting a standard up to predetermined limits). Section 55 (Exceptions) describes various circumstances where minor exceptions from certain standards are allowed including encroachments and projections into setbacks and various determinations for setbacks, height, and lot area. Regardless of whether a minor modification process is added, the variance process will remain in the Zoning Ordinance and be used when hardship conditions are present and the findings consistent with State law for granting a variance are met (also see Section 1.3 regarding variances). This recommendation is also consistent with implementation of General Plan Policy LU 5-3 (see Table 1.A).

Other Recommendations

Other recommendations for administrative and procedure sections of the Zoning Ordinance are listed below:

- Modify findings for approval as necessary so they are clear to facilitate the review and approval of all projects, especially housing developments. This recommendation is also consistent with implementation of Housing Element Program 21. Potential modifications will be further discussed with City staff prior to drafting these provisions for the updated Zoning Ordinance.
- Create a new “common procedures” section in which all processes and procedures that are common to the preparation, filing, and processing of development applications will be placed, including for example, application process, review of planning applications, noticing requirements, extensions and modifications, etc.
- Revise the noticing requirements to be more effective, such as using additional noticing methods. The Zoning Ordinance revisions may be supplemented with additional City guidance that is not codified.
- Add flexibility to time limits/extensions of permit approvals.
- Add a clear statement clarifying when any type of review authority (e.g., City staff, the Zoning Administrator, etc.) may refer or elevate a decision to a higher review authority.

- Clearly describe the requirements and procedure for amendments or modifications to existing entitlements.

Chapter 3 Next Steps

This report will be used as the foundation to prepare the comprehensively updated Zoning Ordinance. These preliminary findings and recommendations will be discussed, refined, and expanded through continued community engagement including public workshops, Zoning Advisory Group (ZAG) meetings, and Planning Commission and City Council study sessions.

The next milestones for the Zoning Ordinance Update are summarized as follows:

- **Draft New Zoning Districts and Zoning Map.** The new Business Park/Research & Development zoning district, Neighborhood Commercial Mixed Use zoning district, and Metro Specific Plan zoning districts will be drafted for public review. A draft updated Zoning Map will also be prepared and released for public review.
- **Public Review and Comment.** Public review and opportunities for discussion and feedback on this Report and the draft new zoning districts and zoning map.
- **Annotated Table of Contents.** An annotated Zoning Ordinance table of contents will be prepared that proposes an improved structure and organization of the Zoning Ordinance based on identified issues and findings of this report.
- **Preliminary Style Guide.** A preliminary Zoning Ordinance style guide will be prepared that identifies guidance for the updated Ordinance layout, cross references, terminology, fonts, graphics, and other items.

This report and public engagement efforts will continue to inform the update of the Zoning Ordinance.

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City of Milpitas

New Zoning Districts (Zoning Ordinance Update Phase I)

Public Draft | August 2023

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Section 2 Definitions*

* Prior ordinance history: Ords. 38, 38.19, 38.22, 38.39, 38.227, 38.339, 38.342, 38.355, 38.395, 38.485, 38.541, 38.551, 38.591, 38.603, 38.629, 38.646, 38.654, 38.667, 38.688, 38.694, 38.697, 38.702, 38.708, 38.710, 38.713, 38.754, 38.759, 38.760, 38.761, 38.763, 38.767, 38.770, 38.776 and 124.27.

XI-10-2.01 Purpose and Intent

The purpose of this chapter is to ensure precision in interpretation of this title. This section provides definitions of terms and phrases used in this Zoning Code that are technical or specialized, or that may not reflect common usage. If any of the definitions in this chapter conflict with definitions in other provisions of the Municipal Code, these definitions shall control for the purposes of this Zoning Code. If a word is not defined in this chapter, or other provisions of the Municipal Code, the most common dictionary definition is presumed to be correct.

(Ord. 38.780 (2) (part), 8/19/08)

XI-10-2.02 General Definitions

- A. The word "shall" is mandatory and not discretionary. The word "may" is permissive and discretionary.
- B. The word "should" indicates a guideline that must be followed in the absence of compelling considerations to the contrary.
- C. In the case of any difference of meaning or implication between the text of any provision and any caption or illustration, the text shall control.
- D. Unless the context clearly indicates to the contrary, words in the present and the future tense are interchangeable, and words in the singular and plural are interchangeable.
- E. Unless the context clearly indicates to the contrary, the following conjunctions shall be interpreted as follows:
 - 1. "And" indicates that all connected items or provisions shall apply;
 - 2. "Or" indicates the connected items or provisions apply singly; and
 - 3. "And/or" indicates the connected items or provisions may apply singly or in any combination; and
 - 4. "Either...or" indicates that the connected items or provisions shall apply singly but not in combination.
- F. The word "used" shall include arranged, designed, constructed, altered, converted, rented, leased, occupied, or intended to be utilized.
- G. The words "Planning Director" shall mean the Planning Director of the City or designee.
- H. The words "Planning Division" shall mean staff representing the City in implementing this chapter, the General Plan, and other regulations affecting land use.
- I. The words "City Engineer" shall mean the City Engineer of the City or designee.
- J. The words "Building Official" shall mean the Building Official of the City or designee charged with the administration and enforcement of the Building Code of the City of Milpitas.
- K. The words "City Manager" shall mean the City Manager of the City or designee.
- L. The words "Planning Commission" or "Commission" shall mean the City Planning Commission.

- M. The word "Council" shall mean the City Council, the governing body of the City.
 - N. The word "City" shall mean the City of Milpitas.
 - O. The word "County" shall mean the County of Santa Clara.
 - P. The word "State" shall mean the State of California.
 - Q. The words "Zoning Ordinance" or "this Chapter" or "Zoning Code" shall mean Title XI, Chapter 10 of the Municipal Code of the City.
 - R. The words "General Plan" shall mean the General Plan of the City.
 - S. The word "code" shall mean the municipal code of the City.
 - T. Unless otherwise indicated, reference in this Chapter to whole numbers of sections includes all of the decimal-numbered paragraphs listed under such whole number section; i.e., a reference to Section 1.00 includes Subsections 1.01, 1.01-1 where the same are applicable.
 - U. The word "lot" includes "plot".
 - V. The word "building" includes "structure" except as specified.
 - W. The words "Enforcement Officer" mean that person or persons specifically designated by the City Manager to enforce the provisions of this Chapter.
 - X. The words "Zoning Administrator" shall mean the City Zoning Administrator.
- (Ord. No. 38.834 , § 4, 8/20/19; Ord. 38.780 (2) (part), 8/19/08)

XI-10-2.03 Definitions

A

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

"Accessory Building or Use" means a subordinate building or use, whose purpose is clearly incidental to that of the main building or the use of the land, and which shall not contain living or sleeping quarters or storage for commercial vehicles in excess of three-quarter ($\frac{3}{4}$) ton size. Accessory dwelling units, as defined in subsection XI-10-13.08 "Accessory Dwelling Units," are exempted from the prohibition against living and sleeping quarters. An accessory building shall be considered attached to the main building if:

1. It shares a common wall with the main building; or
2. It shares an integral roof structure having the same framing system and roof covering as the main building and is separated from the main structure by no more than ten (10) feet at any given point.

"Accessory Structure" means a structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. An accessory structure is that which an accessory building is not, by definition. Examples include, but are not limited to fences, trellises, covered patios, and porte cocheres.

"Active Use" means a use that attracts walk-in visitors and has a high degree of transparency from the street. Active uses include but are not limited to retail, restaurants, bars, markets, theaters, salons, yoga studios, art studios/galleries, banks, offices, and clinics. Active uses also include ground floor residential shared amenities, such as a lobby, gym, or conference room.

"Adjacent" means having a common border with, or being separated from such a common border by a right-of-way, alley or easement. Properties separated by a street, alley, intersection, or other public right-of-way (other

than an elevated interstate freeway), shall be considered abutting when their property lines would touch in any way if drawn to the center line of such street, alleyway, intersection, or other public right-of-way.

"Advanced Manufacturing" means the use of innovative technologies to create existing and new products or to improve products and processes. Advanced manufacturing focuses on the rapid transfer of science and technology into production activities and may incorporate high technology elements such as information, automation, computation, software, sensing, and networking.

"Airport" means any area of land or water designed, used, or intended to be used or set aside for the landing and taking off of aircraft. The term "Airport" includes all necessary taxi-ways, aircraft storage and tie-down area, hangars and other necessary buildings and open spaces.

"Alley" means any public thoroughfare which affords only a secondary means of access to abutting property.

"Alteration, Structural" means any change which would tend to prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams or girders.

"Amateur Radio Facility" means a wireless communication facility operated by an FCC licensed amateur radio operator within the Amateur Radio Service (USC Title 47, Part 97).

"Amateur Radio Operator" means a person holding written authorization to be the control operator of an Amateur Radio facility. This authorization may be in the form of a license or permit issued by the Federal Communications Commission or a foreign national or multi-national license or permit recognized by treaty as valid in the United States.

"Antenna" means any system of towers, poles, panels, rods, wires, drums, reflecting discs or similar devices used for the transmission or reception of electromagnetic waves. See also "Satellite dish or satellite antenna."

Apartment House. See "Dwelling, Multiple-Family."

Apartment, Efficiency. Efficiency apartment means a dwelling unit in a multi-family building consisting of not more than one (1) habitable room, together with kitchen or kitchenette and sanitary facilities.

"Assembly" means the provision of activities for assembled groups of participants at institutions or facilities including but not limited to private and nonprofit clubs; social or fraternal organizations; and churches, temples, synagogues and other places of worship. Assembly uses in the context of groups of people is distinct from and unrelated to the definition of the industrial use "Assembly from pre-processed materials."

"Assembly from pre-processed materials" means assembling, packaging, or distributing from previously prepared materials, such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, electric or electronic instruments and devices such as television, radios, and pharmaceutical products. Assembly in the context of industrial manufacturing is distinct from and unrelated to the definition of "Assembly" involving groups of people.

"Auto" means any motor vehicle requiring a license pursuant to the California Vehicle Code.

~~**"Automobile Service Station"** means any premises used for supplying gasoline and oil at retail, direct to the customer, including minor accessories and services for automobiles, but not including automobile repairs.~~

"Auto Repair shop" means any shop, building, room, place or space wherein, for compensation, any automobile, other motor vehicle, or any parts thereof, are repaired, remodeled, overhauled, reconditioned, or painted.

"Automobile and Trailer Sales Area" means 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.

"Automobile Wrecking" means 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.

B

"Bar or nightclub" means a commercial establishment serving alcoholic beverages for consumption on the premises where the service of food is only incidental to the consumption of such beverages. Dancing and live entertainment may also be conducted within the establishment.

"Basement" means a story, partly or wholly, underground. For purposes of height measurements, a basement shall be counted as a story where more than one-half (½) of its height is above the average level of the adjoining ground.

"Bay Window" means 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.

"Bedroom" means any room which meets the minimum requirements of both the Zoning Ordinance and the Building Code for a Habitable Room, which is constructed in such a manner that less than fifty (50) percent of one (1) wall is open to an adjacent room or hallway and which can be readily used for private sleeping purposes, shall be counted as a bedroom in order to determine parking or other requirements. For the purpose of calculating parking requirements, the following rooms which regularly make up a standard dwelling unit shall not be considered a "bedroom": one (1) kitchen, one (1) living room; one (1) family or recreation room; one (1) dining room; and the customary sanitary facilities. Planning staff shall determine whether or not a room qualifies as one of the above exceptions.

"Billiard Center" means 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.

"Billiards" means a "Recreation and Entertainment facility" for the public to view and participate in cue sports, such as but not limited to billiards, pocket billiards (e.g., pool), snooker, and the various forms of carom billiards.

"Block" means 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.

"Boarding House" means an establishment where lodging is provided for compensation, generally for stays of more than 30 days, for up to 8 persons. Boarding houses typically have individual rooms for guests, shared bathroom facilities and a single common kitchen. Meals may be served for guests and included as part of the cost of lodging.

"Breezeway" means a covered passageway between buildings which does not exceed ten (10) feet in width and which has at least one side open, except for necessary supporting columns.

"Building" means 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.

Building, Height of. "Height of building" means the vertical distance measured from the adjoining curb grade to the highest point of the roof surface, if a flat roof; and to the mean height level between eaves and ridge for a gable, hip or gambrel roof; provided, however, that where buildings are set back from the street line, then the height may be measured from the average elevation of the finished grade along the front of the building.

Building, Main. "Main building" means a building in which is conducted the principal use of the lot on which it is situated. The main building shall contain all area within the interior faces of the building, including enclosed areas that are attached. In any "M" district any dwelling shall be deemed to be the main building on the lot on which the same is situated.

Building, Unit Group. "Unit group building" means two (2) or more buildings (other than dwellings) grouped upon a lot and held under single ownership such as universities, hospitals, institutions and industrial plants.

Business, Retail. "Retail business" means retail sale of any article, substance, or commodity for profit or livelihood conducted within a building, but not including the sale of lumber or other building materials or the sale of used or second-hand goods or materials of any kind.

"Business Support Services" means establishments primarily within structures that provide other businesses with ancillary services that further or facilitate the other businesses' primary activity. This term does not include activities or uses that are specifically listed as a conditionally permitted or prohibited use in the applicable zone. Examples of business support services include but are not limited to:

1. Business equipment repair services (except vehicle repair);
2. Commercial art and design (production);
3. Computer-related services (rental, repair);
4. Copying and quick-printing services;
5. Equipment rental businesses within structures;
6. Heavy equipment repair services where repair occurs ~~on the client site~~;
7. Janitorial services;
8. Mailbox rentals;
9. Mail advertising services (reproduction and shipping);
10. Other "heavy service" business services;
11. Outdoor advertising services;
12. Protective services (other than office related);
13. Rental, repairs and distribution of office or business equipment;
- ~~14. Window cleaning.~~
14. ~~**Business, Wholesale.** "Wholesale business" means the wholesale handling of any article, substance or commodity for profit or livelihood, but not including the handling of lumber or other building material or the open storage or sale of material or commodity, and not including the processing or manufacture of any product or substance.~~

C

Camp, Trailer. "Trailer camp" means an area or tract of land used or designed to accommodate two (2) or more automobile or house trailers.

"Catering establishment" means an establishment in which the principal use is the preparation of food and meals on the premises, and where such food and meals are delivered to another location for serving and consumption.

"Candidate" means any person, party, referendum, initiative or other ballot measure.

"Cemetery" means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundary of such cemetery.

"Child Care Center" means any child care facility other than a family child care home, in which less than twenty-four (24) hour per day non-medical care and supervision are provided to children in a group setting. It includes infant centers, preschools, and extended child day care facilities, but does not include after school programs.

"Class A Office Space" means a high quality, modern building with large floor plates and amenities that typically attracts rents in the top twenty-five percent (25%) bracket.

"College and University, Public or Private" means a college, community college, or university giving general academic instruction equivalent to the standards prescribed by the State Board of Education.

"Commercial Athletic Facility" means a building or site equipped for physical training or athletic type games and sports, such as but not limited to, health spas, tennis, gymnasiums, handball courts, racquetball courts; also including ancillary uses when incidental to the primary use, such as but not limited to, steam baths, weight training, aerobic classes, massage, saunas, and the retailing of athletic supplies to be used in the facility.

"Commercial Fueling Facility" means a fueling facility designed for commercial customers which dispenses gasoline, diesel, or similar vehicle fuels, and which is not open to the general public, has no cash sales and provides no personal services on-site, provided that said facility is located not closer than five hundred (500) feet from any residentially zoned district or any area designated on the General Plan as being "residential" or any mobile home park.

"Commercial Laboratory" means a facility for scientific research in technology-intensive fields. Examples include biotechnology, pharmaceuticals, genetics, plastics, polymers, films and fibers.

"Commissary" means a fixed-location kitchen where food is stored and prepared for off-site vending from mobile food vehicles. Commissaries serving mobile food vendors may include shared-use commercial kitchens, private commercial kitchens, restaurant kitchens, and kitchens associated with civic and community organizations such as churches or social clubs; but do not include catering service establishments.

"Community Garden" means an area where neighbors and residents have the opportunity to contribute to and manage the cultivation of plants, herbs, vegetables, and fruits, generally on property under public or non-profit ownership. May consist of individually tended plots on a shared parcel or many be communal on a single plot.

"Condominium" means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building on such real property, such as an apartment, office, or store. A condominium may include in addition a separate interest in other portions of such real property. Such estate may, with respect to the duration of its enjoyment, be either of the following:

1. An estate of inheritance or perpetual estate.
2. An estate of life.
3. An estate for years, such as leasehold or sub-leasehold.

"Condominium Conversion" means a change in the type of ownership of a parcel or parcels of land, together with the existing attached structures, to that defined for a condominium project or a community apartment project regardless of the present or prior use of such land and structures and whether substantial improvements have been made or are to be made to such structures.

"Conference Center" means a facility used for holding conventions, seminars, workshops or similar activities, including dining facilities and lounges for use by participants, as well as compatible accessory facilities such as offices and business centers.

"Continuing Violation" means a violation, infringement or breach of a provision of this chapter that is uninterrupted and lasts for a continuous period in excess of 24 hours.

"Contractor's Shop" means an establishment for specialized business activities related to building construction. This classification includes establishments for trades such as painting, carpentry, plumbing, glassworking, heating, air-conditioning, roofing, landscaping, cabinetmaking, and sign-making.

"Convenience Store" means a retail establishment selling food, beverages, and small convenience items such as personal hygiene products, cigarettes, magazines, etc. Food and beverage products sold primarily consist of packaged and canned goods, prepared foods and hot drinks for immediate consumption, fountain sodas, etc., with less than 10 percent of net retail floor area allocated for the sale of fresh fruits, fresh vegetables, fresh meat and dairy products, and other similar perishable items. Convenience stores are smaller in floor area than supermarkets/grocery stores (typically 4,000 square feet or less) and have long or late hours of operation (open before 7:00 am or after 10:00 pm).

"Court Dwellings" means a residential development in which there are several freestanding single-family or two-family dwellings with separate walls clustered on a single lot. Units are typically arranged to face around a common open space or drive aisle. If subdivided, a maintenance agreement or homeowners association may govern common areas like driveways or open space.

"Court" means an open unoccupied space, other than a yard, on the same lot with a building or buildings, and bounded on two (2) or more sides by a building, or buildings, including the open space in a dwelling group providing access to the units thereof.

"Court Apartment" means one (1), two (2) or three (3) multiple dwellings arranged around two (2) or three (3) sides of a court which opens onto a street, or a place approved by the Commission.

"Curb Grade" means the elevation of the established curb in front of the building measured at the center of such front. Where no curb grade has been established, the City Engineer shall establish such curb grade or its equivalent for the purpose of this Chapter.

"Custom and Artisan Manufacturing" means an establishment primarily engaged in on-site production of goods by hand manufacturing or artistic endeavor, which involves only the use of hand tools or small mechanical equipment and the incidental direct sale to consumers of only those goods produced on site. Typical uses include metalworking, pottery and ceramic studios, film processing, photo finishing, printmaking, lithography, glass furnace, or woodworking.

D

"District" means 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.

"Drive Through Uses" means any component or part of a building or structure which attracts or invites persons in motor vehicles to drive their vehicles upon the premises, and which is used to conduct business or used for the purpose of selling merchandise from the inside of said building to the occupants of motor vehicles.

"Dry-Cleaning Plant" means an establishment providing onsite, high-volume laundry and garment cleaning services, typically with the use of volatile solvents, including dry cleaning and garment pressing, diaper services, commercial laundries, and linen supply services. These facilities may include incidental onsite customer pick-up services.

"Dwelling" means a building or portion thereof designed exclusively for residential occupancy, including single-family, two-family and multiple-family dwellings, but not including hotels.

Dwelling, Group. "Group dwelling" means 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.

Dwelling, Multiple-Family. "Multiple-family dwelling" means a building or portion thereof, designed for occupancy by three (3) or more families living independently of each other.

Dwelling, Single-Family. "Single-family dwelling" means a detached building designed exclusively for occupancy by one (1) family for living purposes and having only one (1) kitchen.

Dwelling, Two-Family. "Two-family dwelling" means a building designed exclusively for occupancy by two (2) families living independently of each other.

"Dwelling Unit" means a habitable room or group of habitable rooms (e.g., living room, bedroom, den, library, recreation, studio, etc.) designed for occupancy by one (1) or more persons living as a family or single household unit with common interior access to all living, kitchen and bathroom areas. No dwelling unit may have more than one (1) kitchen.

E

"EcoPass" means 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. ~~"Educational Institution" means a college or university giving general academic instruction equivalent to the standards prescribed by the State Board of Education.~~

"Electronic Smoking Device" means an electronic and/or battery-operated device, the use of which may resemble smoking that can be used to deliver an inhaled dose of nicotine or other substances. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vaporizer or any other product name or descriptor.

"Elevation" means:

1. A scale drawing of the front, rear or side of a building or structure; or
2. A vertical distance above or below a fixed reference level.

Emergency Cache, Community. "Community emergency cache" means a collection of disaster response supplies approved by the City's Office of Emergency Services that would benefit the surrounding community.

"Emergency Shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay as set forth in the California Health and Safety Code Section 50801(e), as may be amended.

"Erosion" means the wear and removal of the material in the earth's crust from one site and the deposition at another.

"Extended Stay Hotel" means a commercial establishment providing lodging for a fee for guests, generally marketed to long-term visitors on a temporary basis, which contain furnishings and facilities for sleeping, bathing, food preparation and cooking, Kitchen facilities within individual units may include, but are not limited to, counters, refrigerators, stoves, and ovens.

F

"Family" means an individual, or two (2) or more persons related by blood or marriage or legal adoption or joined through a judicial or administrative order of placement or guardianship, or unrelated persons who function together as a single household unit.

"Family Child Care Homes" means a home in which care, protection, and supervision of fourteen (14) or fewer children is regularly provided, in the caregiver'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:

1. **"Large family child care home"** 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.
2. **"Small family child care home"** 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.

"Farmers' Market" means an event offering for sale produce, food items, and related goods and merchandise by certified growers authorized to sell, directly to consumers, products that are produced on land the producer controls or taken in consignment from other producers. Excludes flea markets.

"Floor Area Ratio (FAR)" is defined for nonresidential Zoning Districts as the maximum permitted ratio of gross floor area to site area and is calculated as follows:

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

"Frontage" means 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.

G

Garage, Private. "Private garage" means a detached accessory building or portion of a main building for the parking or temporary storage of automobiles of the occupants of the premises.

Garage, Public. "Public garage" means a building, other than a private garage, used for the care, repair, or equipment of automobiles, or where such vehicles are parked or stored for remuneration, hire or sale.

Game Machine, Mechanical or Electronic. "Mechanical or electronic game machine" means any machine, apparatus, contrivance, appliance, or device which may be operated or played upon the placing or depositing therein of any coin, check, slug, ball, token, or any other article or device, or by paying therefore either in advance or after use, involving in its use either skill or chance, including, but not limited to tape machine, card machine, pinball machine, bowling game machine, shuffleboard machine, marble game machine, horse racing machine, basketball game machine, baseball game machine, football game machine, electronic video game or any other similar machine or device, exclusive of food, beverage and tobacco vending machine.

Grade, Finished. "Finished grade" means the final elevation of the ground surface after development, as shown on a precise Grading Plan.

"Grocery Store" means any premises wherein any of the following are exposed, offered for sale, or sold by retail: fresh fruits; fresh vegetables; bakery; meat; poultry, or fish products; frozen foods; and processed and pre-packaged food.

"Grocery Store, Small" means any premises less than 15,000 gross square feet in area wherein any of the following are exposed, offered for sale, or sold by retail: fresh fruits; fresh vegetables; bakery; meat; poultry, or fish products; frozen foods; and processed and pre-packaged food.

"Gross Acreage" means the total area within the boundaries of a legal lot or parcel, including any area proposed to be dedicated or reserved for public right-of-way. Adjacent lands already dedicated for public right-of-way, including public roadways, easements or other areas, shall not be included as part of the gross acreage.

"Gross Floor Area" means the total of all floors measured from the interior faces of the building, but not including areas for parking, basements, shaft enclosures, or unroofed inner courts unless any outdoor areas are used for retail purposes.

"Group Living Accommodations" means a building or portion of a building designed for or accommodating a residential use by persons not living together as a household. This use includes dormitories, convents and monasteries, and other types of organizational housing. This use does not include residential care facilities, nursing homes, hotels, single room occupancy residences, or boarding houses. Group living accommodations typically provide shared living quarters without separate kitchen or bathroom facilities for each room or unit.

"Guest House Accessory Building" means a one accessory structure, used for the accommodation of guests. Said guest house shall not contain any kitchen or cooking facilities but may contain one (1) bedroom, one (1) living area and one (1) bathroom, and shall be limited in floor area to a maximum of twenty (20%) percent of the total floor area of the main residence.

H

"Habitable Space" means a room designed for living, sleeping, eating or food preparation, including but not limited to a den, study, library, home office, sewing room or recreational room and excluding such areas as garages.

"Hazardous Material" means a material identified as hazardous by California Health and Safety Code Section 25502(n).

"Head/Smoke/Tobacco Shop" means a retail establishment primarily engaged in the selling of smoking and tobacco products and accessories, and other products, devices and components reasonably assumed to be used for smoking and/or the inhalation or ingestion of any substances. Tobacco products may include but are not limited to cigarettes, cigars, loose leaf tobacco, tobacco pipes, Electronic Smoking Devices and accessories, vaporizers and accessories and any other product, device or component used in the inhalation of tobacco, nicotine or other substance. For the purposes of this definition only, "primarily engaged" means when thirty percent (30%) or more of products sold at the retail establishment are smoking and tobacco products and accessories, and other products, devices and components reasonably assumed to be used for smoking and/or the inhalation or ingestion of any substance.

"Home Occupation" means a business enterprise conducted within a dwelling by the residents of the dwelling and which is incidental and secondary to the use the dwelling for residential purposes.

"Hospital" means an institution that maintains and operates facilities for primarily inpatient medical care, including x-ray, laboratory and surgical, for the diagnosis, care and treatment of human illness, injury and disease (physical or mental).

"Hotel" means a commercial establishment providing lodging accommodations for a fee for transient guests, generally for stays of 30 days or less, with access to rooms or units primarily from interior lobbies, courts or halls. A hotel may include limited facilities for storage and preparation of food and beverages within individual rooms, such as coffee makers, mini refrigerators and microwave ovens.

I

"Individual Violation" means a noncontinuous condition or occurrence in violation, infringement or breach of a provision of this chapter that does not exceed twenty-four (24) hours in duration. An Individual Violation may be recurrent. Examples of "Individual Violations" for the purposes of this Chapter include, but are not limited to, the illegal outdoor storage of materials, entertainment events, or outdoor seating in violation of a use permit.

"Instruction, group and private" means the provision of instructional services, including but not limited to photography, fine arts, crafts, dance or music studios, driving schools, diet centers, yoga, martial arts studios, after school programs or similar uses. This definition does not include instruction received through trade or vocational schools nor a post-secondary school or child care centers. Private instruction includes fewer than six (6) students or clients at any one time and group instruction includes six (6) or more students or clients at any one time.

"Intensity" means the degree to which land is used, measured by a combination of the type of land used and the amount of land or floor area devoted to that use.

"Intensification of Use" means to alter the character of a use to the extent that the use generates new or different impacts on the health, safety, or welfare of the surrounding neighborhood, including but not limited to the level or amount of traffic, noise, light, smoke, odor, vibration, outdoor storage, or other similar conditions associated with the use.

J

"Junk Yard" means 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.

K

"Kennel" means any lot or premises on which four (4) or more dogs, more than four (4) months of age, are kept.

"Kitchen (for residential uses)" means 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:

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

L

"Laundromat" means a primarily self-service facility where customers wash and dry clothing and other textiles in on-site machines, and where ancillary full-service laundry services may also be offered.

"Live-Work Unit" means 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. Live-work uses allow one non-residential employee, more customers, and a broader range of uses than permitted in Home Occupations. See XI-10-13.12 within Special Uses for Live-Work Unit purpose, intent, and regulations.

Uses permitted or conditionally permitted within the underlining zoning district apply unless otherwise prohibited in Section 10-13.12(E). Additional uses covered by this designation include, but are not limited to:

Art and craft work;
Offices, Business and Professional;
Artists and artisans;
Fashion.

"Loading Area" means an open area, other than a street or alley, used for the loading or unloading of vehicles.

"Loading Space" means 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.

"Lot" means land occupied or to be occupied by a building, or unit group of buildings, and accessory buildings, together with such yards and lot area as are required by this Chapter and having its principal frontage upon a street or a place approved by the Commission.

1. **"Corner lot"** means a lot, or portion thereof, not greater than seventy-five (75) feet in width and situated at the intersection of two (2) or more streets.
2. **"Flag lot"** means a lot having access or an easement to a public or private street by a narrow, private right-of-way.
3. **"Interior lot"** means a lot other than a corner lot.
4. **"Key lot"** means a lot with a side line that abuts the rear line of any one (1) or more adjoining lots.

5. **"Reversed corner lot"** means a corner lot the street line of which is substantially a continuation of the front line of the lot to its rear.
6. **"Through lot"** means a lot having frontage on two (2) paralleled or approximately paralleled streets.

"Lot Dimensions."

1. **"Lot Area"** means the total horizontal area within the lot lines of a lot.
2. **"Lot Depth"** means the horizontal distance between the front and rear lot lines, measured along the median between the two (2) side lot lines.
3. **"Lot Lines"** means the lines bounding a lot as defined herein.
 - a. In the case of an irregular shaped lot or a lot with more than four (4) sides where there is question as to which are the front, side, and rear property lines in order to determine setbacks and required yards, there shall be at a minimum of one (1) front property line and one (1) rear property line. The rear property line shall be the lot line directly parallel to the front property line and of a width of at least thirty (30) feet in length. If no such lot line exists, the Director of Planning shall make the final determination as to the rear property line of such lot.
4. **"Lot Width"** means the horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines.

M

"Manufacture/Manufacturing" means the preparation, making, treatment, or processing of articles as merchandise.

"Massage Establishment" means any establishment having a fixed place of business where any person, firm, association, partnership, corporation or other entity engages in, conducts, or carries on, or permits to be engaged in, conducted or carried on, any massage for compensation. For the purpose of this Chapter, the term "massage establishment" shall also include, but not be limited to, any business providing off-premises massage services.

"Massage Establishment, Accessory" means an establishment that provides massage which is incidental to the primary business, where the owner of the primary business is responsible for the massage services and conduct of the massage technician(s) employed at the location.

"Medical and Dental Offices" means a building or place where (a) member(s) of the medical profession, dentists, chiropractors, osteopaths, acupuncturists, and physicians or occupational therapists provide diagnosis and treatment to the general public without overnight accommodation and shall include such uses as reception areas, offices, consultation rooms, pharmacy and x-ray providing that all such uses have access only from the interior of the building or structure.

"Medical and Dental Clinics" means the same as Medical and Dental Offices, except they also include minor operating rooms and out-patient surgery with no overnight stay.

"Medical Support Laboratory" means a facility for scientific laboratory analysis of medical resources. The analysis is generally performed for an outside customer, to support the work of that customer.

"Micromobility Device" means a small, lightweight vehicle operating at a speed typically below 15 miles per hour and driven by the individual user, such as bicycles, e-bikes, and electric scooters.

"Mixed Use Development" means a development that consists of vertical or horizontal combination of residential and commercial uses within a single building or site.

"Mobile Fueling" means a commercial service that offers on-demand fueling of motor vehicles at a specified location instead of at a service station. Mobile fueling may be provided to individual customers via the use of a mobile app, with fuel delivered to a home, office, or other location requested by the customer. Mobile fueling may also be provided for operators of fleet vehicles at a fixed, semi-permanent or permanent location.

"Mobile Home" means a transportable structure designed to be used as a dwelling unit when connected to required utilities.

"Mobile Home Accessory Building or Structure" means any awning, portable, demountable or permanent cabana, ramada, storage cabinet, carport, fence, windbreak or porch established for the use of the occupant of the mobile home.

"Mobile Home Lot" means a portion of mobile home park designated or used for the occupancy of one mobile home.

"Mobile Home Park" means any areas or tract of land where mobile home lots are rented or leased or held out for rent or lease to accommodate mobile homes used for human habitation.

"Mobile Home Stand" means the area on which the mobile home is placed when it is stationed on the lot, including the land lying under the mobile home.

"Mobile Recycling Unit" means an automobile, truck, trailer or van, licensed by the Department of Motor Vehicles or bins, boxes or containers transported by a truck, van or trailer, and used for the collection of recyclable materials.

"Motel" means a building or group of attached or detached buildings providing lodging accommodations for a fee for transient guests, generally for stays of 30 days or less, with access to each room or unit through an exterior door. Motels are distinguished from hotels primarily in that the former provide direct independent access to, and adjoining parking for, guest rooms and do not provide 24-hour guest services.

N

"Natural Land Slope" means the average slope of the lot in percent, determined by observation on simple slopes, or more precisely by the formula:

$$S = 100 \text{ I } / \text{ L } \text{ A}$$

Where:

I is the contour interval in feet;

L is the combined length of the contour lines in scale feet; and

A is the net area of the lot in square feet.

"Nonconforming Building" means a building or structure or portion thereof lawfully existing at the time this Chapter became effective, which was designed, erected or structurally altered, for a use that does not conform to the use regulations of the district in which it is located. A nonconforming building shall also mean any building or structure built in compliance with all city land use and zoning laws in existence at the time and which does not comply with current development standards, including but not limited to height, setbacks, floor area ratio, maximum lot coverage, maximum size of residence, front yard paving and impervious surface coverage.

"Nonconforming Use" means a use which lawfully occupied a building or land at the time this Chapter became effective and which does not conform to the use regulations of the district in which it is located.

O

"Occupation" means a principal business, profession or vocation in which one is regularly and habitually engaged for the purpose of compensation for a livelihood.

"Offices, Business and Professional" means offices of firms or organizations providing professional, management, or administrative services, including but not limited to:

Accounting;

Architectural;

~~Business~~ accounting, architectural, business and management consulting;

~~Computer~~, computer and technology;

~~Engineering~~; ~~Insurance~~;

~~Insurance~~;

~~Interior~~, engineering, insurance, interior design;

~~Graphic~~, graphic design;

~~Real~~, real estate;

~~Title~~, title companies;

~~Legal~~, and legal services

. This classification ~~does~~ includes co-working spaces designed to accommodate different organizations that provide such services. Does not include medical and dental offices, ~~which have a separate definition.~~ or financial institutions such as retail and commercial banks.

"Open-Air Business" means drive-in business where persons are served in automobiles.

"Outdoor Music" means live music, both acoustic and amplified, including live individual musicians, bands, and disc jockeys (DJs), but not including karaoke, that takes place on a patio or other outdoor space. Outdoor music as defined and regulated in this Chapter shall also include recorded background music played outdoors at a public establishment such as a restaurant, bar, retail store, or other business.

"Owner/Occupant" means any person owning property, as shown on the last equalized assessment roll for City taxes, or the lessee tenant, or other person having control or possession of the property.

P

"Parcel" shall mean a legal lot of record.

"Parcel Hub" means a "last mile" facility or similar establishment for the processing and/or redistribution of parcels or products to end-user customers. A Parcel hub's primary function is moving a shipment from one mode of transport to vehicles with rated capacities less than 10,000 pounds, for delivery directly to consumers or end-users primarily within a ten-mile radius.

Parking Area, Private. "Private parking area" means an open area, other than a street or alley, used for the parking of the automobiles of occupants of a building.

Parking Area, Public. "Public parking area" means an open area, other than a private parking area, street or alley, used for the parking of automobiles and available for public or quasi-public use.

Parking Space, Automobile. "Automobile parking space" means a space within a building or a private or public parking area for the parking of one (1) automobile.

"Parking Structure" means a structure or portion thereof composed of one or more levels or floors used exclusively for the parking or storage of motor vehicles. A parking structure may be totally below grade (as in an underground parking garage) or either partially or totally above grade with those levels being either open or enclosed.

"Patio Cover" means a one-story structure, not exceeding twelve (12) feet in height and open on one (1) or more sides (provided, however, that the open sides may be closed with insect or plastic screening that is permeable material and not in any manner that would obstruct the free passage of light or air) used for recreational, outdoor living purposes only and not as carports, storage rooms or habitable rooms.

"Person" means a natural person, his heirs, executors, administrators, or assigns, and also includes a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid.

"Personal Services" means a commercial establishment which provides services of a personal or aesthetic nature directly to consumers, including but not limited to:

1. Beauty salons and barber shops;
2. Nail salons;
3. Tanning salons;
4. Hair removal salons;
5. Tattoo studios;
6. Body piercing studios.

"Place" means an open, unoccupied space, other than a street or alley, permanently reserved as the principal means of access to abutting property.

"Places of Assembly." See "Assembly"

"Private Recreational Areas" means any usable open space or recreational facility available for use by all of the site's residents.

"Property" means all real property and fixtures, including, but not limited to, parking lots, sidewalks, gutters, driveways, walkways and any building and structure located on such property.

"Public Right-of-Way" as defined in Section V-500-1.13 of the Milpitas Municipal Code, shall mean the full width of the right-of-way of any street or bicycle pathway, as defined in the California Vehicle Code used by the general public, whether or not such street or path has been accepted as and declared to be part of the City system of streets and paths, including streets forming a part of the State Highway System. "Public right-of-way" also includes easements where the City is the grantee of the easement and property owned by the City of Milpitas or the Milpitas Redevelopment Agency and any public park, trail, or right-of-way within the City of Milpitas.

"Public Safety Use" means facilities for public safety or emergency services, including police and fire protection.

"Public Service Use" means facilities owned and operated by governmental agencies that provide services to the general public, including but not limited to federal, state and municipal administration buildings, courthouses, and post offices.

"Public Use" means a use intended to serve the whole city and/or region and operated by a public institution or entity. Such uses have the purpose primarily of serving the general public and include public schools, recreational facilities, government housing, government clinics, and the like.

"Public Utilities" means facilities for the production, storage, treatment, transmission and/or distribution of electricity, natural gas, water, wastewater, and telecommunications and other similar essential services. Also includes service facilities, electric transmission and distribution substations and public utility service centers.

Q

"Quasi-Public Use" means a use intended to serve the whole city and/or region and are operated by a private, nonprofit, educational, religious, recreational, or charitable, and having the purpose primarily of serving the general public. Such uses include religious facilities, private schools, community theaters, community and club organizations, private hospitals, places of assembly and the like.

F

R

"Recreation or Entertainment Facility" means a commercial establishment (indoors or outdoors) where patrons can actively participate in entertainment or recreation activities either independently or in conjunction with other uses.

"Recyclable Material" means reusable material including but not limited to metals, glass, plastic and paper, which are intended for reuse, remanufacture, or reconstitution for the purpose of using the altered form. Recyclable material does not include refuse or hazardous materials. Recyclable material may include used motor oil collected and transported in accordance with the California Health and Safety Code.

"Recyclable Processing Facility" means a building or space used for the collection and processing of recyclable materials. Processing means the preparation of material for shipment by such means as baling, briquetting, compacting, flattening, grinding, crushing, sorting, shredding, cleaning and remanufacturing.

"Repair and Cleaning, Small Items" means a commercial establishment that performs cleaning, repair, and alteration of small consumer and household items, such as laundromats (self-service laundries), dry cleaning pick-up stores (where cleaning is done off-site), tailors, shoe repair shops, jewelry and watch repair shops, and locksmiths. Excludes dry-cleaning plants, business equipment and computer repair, heavy equipment and machinery repair, repair and servicing of large and bulky household items such as appliances and furniture, or vehicle repair.

"Research and Development (R and D) Uses" means ~~one industrial or more buildings which feature a combination of offices, manufacturing, assembly, warehousing, distribution, laboratories~~ scientific research for the design, development, engineering and testing of high technology, clean rooms, technology, industrial, or scientific products. Research and ancillary development uses such may include limited manufacturing as cafeterias and employee fitness necessary for the production of prototypes, but exclude the full-scale manufacturing of final products.

"Residential Care Facility" means a facility licensed by the State of California to provide living accommodations, 24-hour care for persons requiring personal services, supervision, protection, or assistance for sustaining the activities of daily living for more than six individuals. Living accommodations are group homes or shared living quarters with or without separate kitchen or bathroom facilities- for each room or unit. This classification includes facilities that are operated for profit as well as those operated by public or not-for-profit institutions.

"Restaurant" means an establishment in which the principal use is the preparation and sale of food and non-alcoholic beverages. If approved, the service of alcoholic beverages is incidental to the principal use.

1. **"Drive-in"** means a restaurant that delivers prepared food and/or beverages to customers in motor vehicles, regardless of whether or not it also serves prepared food and/or beverages to customers who are not in motor vehicles, for consumption either on or off the premises.
2. **"Drive-thru"** means a restaurant which includes one (1) or more drive-through lanes for the ordering and receipt of foods and/or beverages by patrons remaining in their vehicles.
3. **"Fast-food"** means a restaurant that offers quick food service, which is accomplished through a limited menu of items already prepared and held for service, or prepared. Orders are generally not taken at the customer's table, and food is generally served for consumption either on or off the premises. For the purposes of parking requirements, the ordering or take-out area is defined as the counter and the area between the counter and the main entry to the establishment.
4. **"Take-out"** means a restaurant where foods and/or beverages are sold directly to the customer in a ready-to-consume state for consumption off site with no seats onsite. For the purposes of parking requirements, the ordering or take-out area is defined as the counter and the area between the counter and the main entry to the establishment.

"Retail, Limited" means an establishment which offers the sale of a limited line of merchandise that is generally necessary or desirable for everyday living or everyday business activities. Examples include small grocery stores offering primarily prepared or pre-packaged food and beverage items, small drugstores and variety stores,

small stationery, office supply stores, shops selling other small household goods, and walk-out retail stores. This classification excludes convenience stores.

"Retail Stores, General Merchandise" means retail trade establishments selling lines of merchandise. This classification excludes convenience stores. Examples of general retail stores and lines of merchandise include but are not limited to:

1. Art supply;
2. Antiques;
3. Bakeries (retail only);
4. Bicycles;
5. Books;
6. Candy stores;
7. Clothing and accessories;
8. Collectables;
9. Fabrics and sewing supplies;
10. Floral;
- ~~11. Gifts (novelties and souvenirs);~~
- ~~12. Hobby materials;~~
- ~~13. Jewelry;~~
- ~~14. Luggage and leather goods;~~
- ~~15. Music stores;~~
- ~~16. Office supplies and stationery;~~
- ~~17. Sporting goods and equipment;~~
- ~~18. Toys and games;~~
- ~~19. Tuxedo and formalwear rental;~~
- ~~20. Variety stores;~~
- ~~21. Video rentals and sales.~~

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- ~~8. Collectables;~~

~~9. Fabrics and sewing supplies;~~

~~10. Floral;~~

11. Gifts (novelties and souvenirs);

12. Hobby materials;

13. Jewelry;

14. Luggage and leather goods;

15. Music stores;

16. Office supplies and stationery;

17. Sporting goods and equipment;

18. Toys and games;

~~17. Sporting goods and equipment;~~

~~18. Toys and games;~~

19. Tuxedo and formalwear rental;

20. Variety stores;

21. Video rentals and sales.

"Reverse Vending Machine" means an automated mechanical device which accepts at least one or more types of empty beverage containers including, but not limited to aluminum cans, glass and plastic containers, and issues a cash refund or a redeemable credit slip. A reverse vending machine sorts, and processes containers mechanically provided that the entire process is enclosed within the machine. In order to accept and temporarily store all three container types in a proportion commensurate with their relative redemption rates, and to meet the requirements of certification as a recycling facility, multiple grouping of reverse vending machines may be necessary.

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.

S

"Satellite Dish Antenna or Satellite Antenna" means 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."

"School: Elementary, Middle, or High" means 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.

"School, trade and vocational" means an establishment where training is received to learn a particular trade or craft that involves skilled labor. Trades and crafts include but are not limited to the various construction trades, auto mechanics, machining, HVAC installation/repair/maintenance and similar trades and crafts.

"Service Station" means any premises used for supplying gasoline and oil at retail, direct to the customer, including minor accessories and services for automobiles, but not including automobile repairs.

Setback. See "Yard."

"Self-Storage or Mini-Storage" means the storage, generally of furniture and/or other household items, in small individual units (typically 400 square feet or less) that are available for rental by the general public.

"Short-Term Rental Unit" or "Short-Term Rental" or "STR" means the use of a dwelling unit, including, without limitation, a single-family, two-family, or multiple-family dwelling unit, mobile home, or any portion of such dwellings, rented for occupancy for dwelling, lodging, or sleeping purposes for a period of 30 or fewer calendar days, counting portions of days as full calendar days.

Signs. For purposes of Section XI-10-24, Sign Regulations, of this Chapter, the following definitions shall apply:

1. **"Abandoned Signs"** means any sign used for advertising or other purposes where the business it advertised or the use or event it supported has ceased operation for or occurred more than ninety (90) days prior to the sign's posting.
2. **"Abate"** means to repair, replace, remove, destroy, or otherwise remedy the condition in violation of this Chapter.
3. **"A-Frame Sign"** means and includes a sign that is portable, is capable of standing without support or attachment, and folds open in the form of an "A" or "sandwich-board".
4. **"Ancillary services sign"** means a sign displaying ancillary services such as smog services, lotto, or that represent trade affiliations, such as credit card services, or other similar services and not for the purpose of displaying products being sold.
5. **"Approved Plastics"** means those materials specified in the U.B.C. Standard No. 52-1 which have a flame spread rating of 225 or less and a smoke density not greater than that obtained from the burning of untreated wood under similar conditions when tested in accordance with U.B.C. Standard No. 42-1 in the way intended for use. The products of combustion shall be no more toxic than the burning of untreated wood under similar conditions.
6. **"Architectural Sign"** means and includes a sign used for advertising purposes which constitutes an integral part of a roof or marquee and is designed with an intent and purpose to relate to the architectural style of the main building.
7. **"Area Identification Sign"** means and includes a permanent sign which serves to identify an area.
8. **"Awning sign"** means any sign or graphic attached to, painted on or applied to an awning or canopy.
9. **"Balloon Sign"** means and includes any large [over three (3) cubic feet in size] inflatable hot/cold air or helium balloon that is used as an advertising device for any business or promotional event.
10. **"Banner Sign"** means and includes a temporary sign composed of lightweight, flexible, non-rigid material either enclosed or not enclosed in a rigid frame.
11. **"Blade Sign"** means a pedestrian oriented sign, adjacent to a pedestrian walkway or sidewalk, attached to a building wall, marquee, awning, or arcade with the exposed face of the sign in a plane that is perpendicular to the plane of the building wall.
12. **"Building Perimeter"** means the total exterior wall length for any and all buildings intended for human occupancy, as measured at the ground elevation. No second story or subsequent upper story areas shall be considered as a part of this calculation.
13. **Canopy Sign.** See awning sign.
14. **"City Identification Sign"** means and includes a sign placed at the point of entry to the City of Milpitas for the purpose of informing a person that they are entering the City of Milpitas.
15. **"Construction Sign"** means and includes a sign placed on the property where site work, building construction and/or a tenant improvement within an existing building is in progress. The sign may denote that a business will be opening soon, the opening date, names of the architect, engineer, contractor, future business and lending agency.

16. **"Directional Sign"** means a sign which guides and directs motorists to a specified destination in the most direct manner possible.
17. **"Display Surface"** means the area made available by the sign structure of building surface for the purpose of displaying the advertising message.
18. **"Electric Sign"** means any sign containing electrical wiring, but not including signs illuminated by an exterior light source.
19. **"Erect"** means to build, construct, attach, hang, place, suspend or affix.
20. **"Exposed raceway"** means an enclosure or conduit that is used to conceal wiring for a lighted sign and is visible from any elevation, typically located between the sign and the building to which the sign is attached.
21. **"Flag"** means a visual device with no commercial copy, usually rectangular in shape and made of a cloth material suspended by, or attached to, a pole or post and may be raised or lowered.
22. **"Flag sign"** means a visual display device with commercial copy, usually rectangular in shape and made of a cloth material suspended by, or attached to, a post, or pole and may be raised and lowered.
23. **"Freestanding Sign"** means a sign which is supported by one or more uprights, poles, or braces in or upon the ground, or partially supported and attached to any building, other structure, or foundation on the ground.
24. **"Garage Sale Sign"** means a sign used primarily for the purpose of advertising a "garage sale" and/or "yard sale" at a residence.
25. **"Grand Opening Sign"** means and includes banners, pennants, flags, balloons, and similar advertising devices when used only for bona fide grand-opening functions, new ownership, name change, or the reopening of a business that has completely closed for remodeling for at least two weeks.
26. **Graphic Panel, Freestanding.** Freestanding graphic panel means a freestanding sign located within five feet of the main building wall, which relates to the architecture of the building and depends primarily on a graphic image for delivering its advertising message. Graphic panels do not count as freestanding signs. The display area on graphic panels counts towards overall sign area.
27. **"Impact Resistive Plastic"** means any plastic material capable of resisting fifty (50) foot pounds of force as tested in accordance with ANSI/UL 972 Multiple Impact Test or any similar test procedure.
28. **"Information Sign"** means and includes signs providing courtesy information, or direction to the public without advertising the business products, or services such as hours, entrance, exit, self-serve, credit cards, restrooms, telephone drive-up, or which serves to direct motorist and pedestrians on private property.
29. **"Joint Use Sign"** means and includes a freestanding sign for a commercial district under multiple ownerships where freestanding signs for each parcel for which signage is desired is infeasible. The commercial district shall be characterized by close proximity of the businesses and small parcel size. A common parking field and common vehicular circulation are encouraged.
30. **"Logo"** means a trademark, or symbol of an organization which is registered with the federal or State government and consistently used in conducting the business activities of said organization.
31. **"Marquee"** means a permanent roofed structure, attached to, and support by the building and projecting beyond the main building.
32. **"Multi-use Structures"** means any commercial, industrial, quasi-public, or agricultural farm products sales use, containing five or more stores, or businesses on a single parcel of land.

33. **"Mural"** means a display, or illustration painted on a building, or wall within a public view not intended to advertise a product, service, or business, and therefore is not considered a sign.
34. **"Mural sign"** means a display, or illustration painted on a building, or wall intended to advertise a product, service, or business.
35. **"Noncombustible Material"** means any material which will not ignite at, or below a temperature of one thousand two hundred (1,200) degrees during an exposure of five (5) minutes, and which will not continue to burn or glow at that temperature. Tests shall be made as specified in U.B.C. Standard No. 4-1.
36. **"Nonstructural Trim"** means the molding, battens, capping, nailing strips, latticing, cutout, or letters and walkways which are attached to the sign structure.
37. **"Off-site Advertising Display"** means any sign that advertises, or informs about a business organization, event, goods, products, services, or uses not available on the property upon which the sign is located.

The term "Off-site Advertising Sign" does not include Joint Use Sign, Temporary Tract Advertising Signs for subdivisions under construction in the City, Open House Directional Signs, Garage Sale Signs, Off-site Public Information Signs, off-site directional signs for purposes of identifying regional shopping centers, and Temporary Tract Advertising Signs.

38. **"Off-site Directional Sign"** means any sign that provides direction to retail, community, and cultural events not available on the property upon which the sign is located.

The term "Off-site Directional Sign" does not include Garage Sale Signs, Joint Use Signs, Official City or City-sponsored signs, Off-site Directional Signs identifying regional shopping centers, Off-site Public Information Signs, Open House Directional Signs, and Temporary Tract Advertising Signs.

39. **"Off-site Public Information Sign"** means a sign that is placed proximate to a major city entry on privately owned property that is used to provide non-advertising information and/or identification symbols or plaques to the public for civic organizations, service clubs or other quasi-public uses and is erected within the public right-of-way.
40. **"Open House Directional Sign"** means a sign, no larger than six (6) square feet in sign area per side, used primarily for the purpose of directing traffic to a house being offered for sale or lease.
41. **"Other Advertising Structure"** means any device erected or used for the same purpose as a sign, whether erected, or used:
 - a. Exclusively for advertising purposes, upon which any poster bill, printing, painting device, or other advertisement or identification of any kind whatsoever may be placed, posted, painted, fastened, or affixed.
 - b. Exclusively for advertising purposes and including any spectacle, display or advertising statuary.
42. **"Permanent Sign"** means every sign except temporary sign as defined herein.
43. **"Political Sign"** means a sign which is designated to influence the action of the voters, and election, or defeat of a candidate for the nomination, or election to any public office, or a measure appearing on the ballot at any national, state, district, or local election.
44. **"Portable"** means an object that is capable of being borne or carried, easily transported, or conveyed without difficulty.
45. **"Portable Sign"** means and includes a sign that is portable and capable of being borne, or carried, easily transported, or conveyed without difficulty, is capable of standing without support or attachment, is unattached to any structure, and is used for advertising purposes.

46. **"Projection"** means the distance by which a sign extends over public property or beyond the building line.
47. **"Projecting Sign"** means a sign other than a wall sign which projects from, and is supported by a wall of a building or structure.
48. **"Public Information Sign"** means a sign erected for the sole purpose of displaying advertising for community activities and/or identification symbols or plaques for civic organizations or service clubs.
49. **"Public Street Frontage"** means a publicly owned street immediately adjacent to the parcel, for purposes of sign area and height calculations. Public streets for which the parcel does not have access rights are not included for purposes of any sign calculations.
50. **Raceway.** See "exposed raceway."
51. **"Regional Shopping Center"** means any commercial development on one (1) or more parcels of land which are contiguous, or across from a right-of-way which contains a gross land area of at least thirty (30) acres or a gross building area of at least 200,000 square feet. Current regional shopping centers are McCarthy Ranch Marketplace, the Town Center shopping center, and the Great Mall and its out-parcels zoned General Commercial.
52. **"Roof Sign"** means a sign erected upon or above a roof or a part of a parapet of a building or structure.
53. **"Scoreboard Sign"** means a sign located on scoreboard structures located in an adult or youth outdoor playing field on public property and shall be for products or businesses available to persons of all ages.
54. **"Shopping Center"** means any commercial development containing five (5) or more stores or businesses on one (1) or more parcels of land operating as an integrated use and having a gross parcel area of five (5) or more acres.
55. **"Shopping Center Identification Sign"** means a sign located on the site of a shopping center or regional shopping center that states the name of the shopping center or regional shopping center.
56. **"Sign"** means every announcement, declaration, demonstration, display, illustration insignia, surface, or space when erected or maintained out of doors in view of the general public for identification, advertisement or promotion of the interests of any person.
57. **"Sign Area"** means the area of a sign to be calculated that includes all lettering, wording, and accompanying designs or symbols, together with any background of a different material or color than the remainder of the wall of the building to which is affixed or upon which it is painted. In the case of a freestanding sign, the supports or uprights on which any sign is supported should not be included in determining the sign area unless such supports or uprights are designed in a manner as to form an integral background of the sign.

Where the sign consists of individual letters or symbols, the area shall be considered to be that of the smallest rectangle, circle, square, or triangle which can be drawn to encompass all of the letters. Provided however, that where such individual type letters or symbols are separated more than thirty-six (36) inches from each other, those letters or symbols shall be calculated separately.

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

58. **"Sign Program"** means a specific set of design standards established for the purpose of unifying a variety of signs associated with a multitenant or multiuse project, building or complex of buildings.

59. **"Sign Surface"** means the surface of the sign upon, against or through which the message is displayed or illustrated.
60. **"Snipe sign"** means temporary or portable signs advertising events that are fastened to fences, trees, utility poles, or other structures or fixtures and also including signs on sticks stuck in the ground and usually found off-site. These do not include real estate, political or open house signs.
61. **"Statuary Sign"** means statuary used for advertising purposes or representing the logo of a business.
62. **"Temporary Sign"** means any sign, banner, flag, valance, pennant, streamer, whirligig or advertising display, constructed of cloth, canvas, fabric, cardboard, plywood or other light material with or without a frame, whether attached or portable, and designed or intended to be displayed for a short period of time.
63. **"Temporary Promotional Sign"** means any temporary Balloon Signs, banners, and similar advertising devices when used only for special promotional events.
64. **"Temporary Tract Advertising Sign"** means a uniformly designed sign which advertises a residential development.
65. **"Vehicle-Mounted Sign"** means a sign, used for the purpose of advertising, larger than three (3) feet by three (3) feet mounted on, attached to or capable of being borne or carried, easily transported or conveyed without difficulty by a vehicle, where that vehicle is parked on public or private property. This definition does not include signs on delivery vehicles in the act of making a delivery or signs on vehicles parked on residential driveways or public streets.
66. **"Wall Sign"** means any sign painted on, attached to or erected against the wall of a building or structure.
67. **"Window Sign"** means any sign painted, attached, glued or otherwise affixed to the interior or exterior surfaces of a window or suspended or located within three (3) feet of the window for the primary purpose of being visible from the exterior of the building.

"Single Household Unit" means 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 locked cabinets or doors. 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 Accessory Dwelling Units.

"Single Room Occupancy (SRO) Residence" means a multi-tenant building consisting of single room dwelling units that are the primary residence of its occupants, containing either individual or shared kitchen and bathroom facilities. These units are small (generally less than 350 square feet), and provide a valuable source of affordable housing for individuals and can serve as an entry point into the housing market for formerly homeless people.

Slope. Same as "Natural Land Slope."

"Specific plan" means a detailed plan for the development of a specific area. Specific plans are a significant tool to implement the General Plan. A specific plan documents the proposed distribution, location, extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, parks and other essential facilities proposed to be located within or needed to support the land uses described in the plan, as well as implementation and financing methods and added benefits to the City as a whole.

Stable, Private. "Private stable" means a detached accessory building for the keeping of horses owned by the occupants of the premises and not kept for remuneration, hire or sale.

Stable, Public. "Public stable" means a stable other than a private stable.

"Story" means that portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between such floor and ceiling next above it.

Story, Half. "Half story" means a story under a gable, hip or gambrel roof, the wall plates on which on at least two (2) opposite exterior walls are not more than four (4) feet above the floor of such story.

"Street" means a permanently reserved thoroughfare which affords principal means of access to abutting property.

"Structure" means anything constructed or erected, which requires location on the ground or is attached to something having a location on the ground.

"Supportive Housing" means housing with no limit on length of stay, that is occupied by the target population as defined in Section 11302 of Title 42 of the United States Code, as may be amended, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community as defined in the California Health and Safety Code Section 50801(e), as may be amended.

T

"Thrift Store" means any profit or nonprofit business, organization, group or otherwise that engages in or specializes in the sale or resale of previously owned or used goods and merchandise from an area greater than 25 percent of the total floor area devoted to retail sales and whose goods and merchandise are donated or primarily donated. A specialty retail store that sells used goods or merchandise not donated for sale, including but not limited to used record stores, used book stores, used furniture stores, and sports trading card stores, shall not be considered a thrift store for the purpose of this Chapter.

"Townhouses" means dwelling units that are attached at their sides in groups of three or more and are sited on individual lots with vehicular access from driveways. Private rear yards or patios and common open space may be part of a townhouse development.

Trailer, Automobile. "Automobile trailer" means a vehicle without motive power designed to be drawn by a motor vehicle and to be used for human habitation or for carrying persons and property, including a trailer coach or house trailer.

"Transitional Housing" means buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months as defined in the California Health and Safety Code Section 50801(e), as may be amended.

"Tri-laminate Asphalt Composition" means an asphalt composition roof material that is comprised of three layers of tile adhered together to create one shingle and when installed overlap with another row of three-layered tile for a total minimum thickness of $\frac{7}{8}$ inches.

"Tutoring Centers" means facilities offering academic instruction to individuals or groups in a classroom setting.

"Two-unit Project" means the development of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit on a legally subdivided lot.

U

"Unreasonable Period of Time" means not less than thirty (30) calendar days following notification by the City to the owner/occupant pursuant to this Chapter that the property is in violation of this Chapter. The City Manager, upon a finding that the violation in question constitutes a threat to the health and safety of any person may designate a time period of thirty (30) calendar days or less upon notice to the owner/occupant to abate the nuisance. Prior notice shall not be required for summary abatement pursuant to this Chapter.

"Urban Lot Split" means the subdivision of an existing, legally subdivided lot into two lots.

"Usable Open Space" means any open space, the smallest dimension of which is at least six (6) feet and which is not used as storage or for movement of motor vehicles. Yards abutting a public street, which are not adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space.

"Use" means the purpose for which land or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained.

V

"Video Sales and Rental Store" means any place of business which includes the sale or rental of prerecorded video tapes, laser discs, compact discs, or any other medium which projects pictures on a screen.

W

"Warehousing, General" means the commercial receipt, storage, and distribution of goods generally handled in containers, such as boxes, barrels, and/or drums, with the use of equipment such as forklifts, pallets, and racks. General warehouse facilities typically have 80 percent or more of the gross floor area dedicated to storage activities, with the remaining floor area dedicated to office and other auxiliary uses.

Wireless Communications Facilities Definitions. For the purposes of wireless communications facilities, the following definitions shall apply:

1. **"Commercial Wireless Communication Facility"** means a wireless communication facility operated by a for-profit business or for-profit purposes. See by contrast, "Noncommercial wireless communication facility."
2. **"Noncommercial Wireless Communication Facility"** means a wireless communication facility operated by a government agency, a nonprofit organization, a for-profit business for nonprofit purposes or a private citizen for personal use. It includes all amateur radio facilities. See by contrast, "Commercial wireless communication facility."
3. **"Stealth Wireless Communications Facility"** means any antenna designed to be architecturally integrated into a building that is architecturally consistent with the building design. Examples include a steeple, cupola or tower element on a building and do not include flag poles, monopoles or other structures designed to house antenna and resemble natural features.
4. **"Wireless Communication Facility"** means the equipment and associated structures needed to transmit and/or receive electromagnetic signals. A wireless communication facility typically includes antennas, supporting structures (including, but not limited to, monopoles, utility structures, buildings and accessory structures), enclosures and/or cabinets housing associated equipment, cable, access roads and other accessory development.

"Wholesale Sales" means the selling and/or distributing of merchandise to retailers; industrial, commercial, or institutional buyers; or other wholesalers; or acting as agents or brokers in the buying and selling of merchandise to or for such entities.

Y

"Yard" means an open space, other than a court, on a lot, unoccupied and unobstructed, except by eaves, from the ground upward, except as otherwise provided in this Chapter. Where applicable, yards shall be measured perpendicularly from the property line to the face of the nearest exterior wall of any main building, except as otherwise provided in this Chapter (See Subsection XI-10-55.04-11). Setback shall be synonymous with yard.

Yard, Front. "Front yard" means a yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto on the lot.

Yard, Rear. "Rear yard" means a yard extending across the full width of the lot between the most rear main building and the rear lot line; the depth of the required rear yard shall be measured horizontally from the nearest point of the rear lot line toward the nearest exterior wall of the main building.

Yard, Side. "Side yard" means a yard between the main building and the side lot line extending from the front yard, or front lot line where no front yard is required, to the rear yard; the width of the required side yard shall be measured horizontally from the nearest point of the side lot line toward the nearest exterior wall of the main building.

Z

Zone. See "district."

Title XI - ZONING, PLANNING AND ANNEXATION
Chapter 10 - ZONING
Section 7 Industrial Zones and Standards

Section 7 Industrial Zones and Standards

XI-10-7.01 Purpose and Intent

- A. Light Industrial (M1) Zone. The M1 Light Industrial District is reserved for the construction, use and occupancy of buildings and facilities for office, research, limited and light manufacturing, and other uses compatible with the district.
- B. Heavy Industrial (M2) Zone. The M2 Heavy Industrial District is reserved for the construction, use, and occupancy of buildings and facilities for office, research, general manufacturing, warehousing and distribution and other uses compatible with the district.
- C. Industrial Park (MP) Zone. The MP District is intended to accommodate, in a park-like setting, a limited group of research, professional, packaging and distribution facilities and uses which may have unusual requirements for space, light, and air, and the operation of which are clean and quiet and which meet the standards set herein.

D. Business Park Research and Development (BPRD) Zone. The purpose of the BPRD District is to designate specific areas of the city as important employment centers, especially for jobs in the hightech industry. The BPRD zone is intended to accommodate business parks, high-intensity office buildings, advanced manufacturing, and other light industrial uses, and to enable the integration and growth of research and development, office, small warehouse, and light manufacturing uses on consolidated sites with supportive ancillary uses such as restaurants, health/fitness centers, limited retail, and child care facilities.

(Ord. No. 38.803, § 8, 4/17/12; Ord. No. 38.789, § 9, 4-21-09)

XI-10-7.02 Industrial Use Regulations

A. Permitted and Conditionally Permitted Uses.

1. Primary uses. The uses identified in Table XI-10-7.02-1, Industrial Zone Uses, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted within enclosed structures. The primary uses identified in Table XI-10-7.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol "P" appears, the use shall be permitted.
MCS	Where the symbol "MCS" appears the use shall be permitted subject to the issuance of a Minor Conditional Use Permit <u>by staff</u> , in accordance with Subsection XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.
C	Where the symbol "C" appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Subsection XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.
MC	Where the symbol "MC" appears, the use shall be permitted subject to the issuance of a Minor Conditional Use Permit <u>by the Zoning Administrator</u> , in accordance with Section <u>Subsection XI-10-57.04</u> , Conditional Use Permits and Minor Conditional Use Permits, of this Chapter .
O	Where the symbol "O" appears, the use is subject to an alternative review process described in a subsequent footnote.

2. In the BPRD zone, all uses and activities must take place within an enclosed building.

3. Accessory Uses. The following accessory uses are allowed when incidental to the primary use:

- In M1 and MP zones, incidental services, such as restaurants and recreation facilities for employee use only and when conducted in and entered from within the building or campus.
- Cafeterias may be permitted when ancillary to a primary use and associated with business or industrial uses.
- Banquet halls may be permitted with a Conditional Use Permit, in accordance with Section XI-10-57.04, when ancillary to convention centers, hotels or motels.
- In the BPRD, business support services, convenience retail, commercial athletic facilities, child care centers, and restaurants with or without on-site service of alcohol.

B. Prohibited Uses. The following uses are prohibited:

- Uses where the symbol "NP" appears within Table XI-10-7.02-1.
- Uses that have been excluded from Table XI-10-7.02-1, unless they are found by the City to be similar to permitted or conditionally permitted uses in accordance with C below.

C. Other Uses. Any other uses may be considered by the Planning Commission that are similar in accordance with the procedure prescribed in Subsection 10-54.02, Other Uses Permitted by Commission, of this Chapter.

**Table XI-10-7.02-1
Industrial Zone Uses**

Use	M1	M2	MP	BPRD
1. Commercial Uses				
<u>Alcoholic beverage sales</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>C¹</u>
Adult B usinesses ^{4,2}	P	NP	NP	<u>NP</u>
Business support services	P	NP	P	<u>MCS¹</u>
<u>Convenience store</u>	<u>C</u>	<u>NP</u>	<u>C</u>	<u>NP</u>
Furniture repair and reupholstery	P	NP	NP	<u>NP</u>
<u>Grocery store</u>	<u>C</u>	<u>NP</u>	<u>C</u>	<u>NP</u>
Personal services	C	NP	C	<u>C</u>
Printing (newspaper, blueprint, publishing)	P	NP	C	<u>MC</u>
Repair and cleaning, small items	P	NP	NP	<u>NP</u>
<u>Retail, limited</u>	<u>C</u>	<u>NP</u>	<u>C</u>	<u>MCS¹</u>
Retail stores, general merchandise ³	C	NP	C	<u>NP</u>
2. Entertainment and Recreation Uses				
Billiards	C	NP	C	<u>NP</u>
Commercial athletic facilities	C	NP	C	<u>MCS^{1,3}</u>
3. Health and Veterinarian Uses				
Hospitals	NP	NP	C	<u>NP</u>
Kennel	P	NP	NP	<u>NP</u>
Medical support laboratories	P	NP	P	<u>MC</u>
Medical and dental offices and clinics ²	P	NP	P	<u>MC</u>
Veterinarian hospital	P	NP	P	<u>NP</u>
4. Industrial Uses				

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Assembly from pre-processed materials ³⁴	P	P	P	<u>P</u>
Auto assembly facility	NP	P	NP	<u>NP</u>
Bottling facility	P	P	NP	<u>NP</u>
Building material sales (equipment rental) ⁴⁵	NP	C	NP	<u>NP</u>
Commercial fueling facility	C	C	NP	<u>NP</u>
Commercial laboratory	P	P	P	<u>P</u>
Contractor's yard and offices ⁴ shop ⁵	NP	C	NP	<u>C</u>
<u>Custom and artisan manufacturing</u>	<u>P</u>	<u>MCS</u>	<u>P</u>	<u>MUP</u>
Distribution facility	P	P	P	<u>P</u>
Dry-cleaning plant	P	P	NP	<u>NP</u>
Film processing, photo finishing and printing, etching, lithography, printmaking, and other similar creative industries	P	MCS	P	<u>MCS</u>
Freight and trucking yard ⁴⁵	NP	P	NP	<u>NP</u>
Mini-storage complex or self storage	C	C	NP	<u>NP</u>
<u>Parcel hub</u>	<u>P</u>	<u>NP</u>	<u>P</u>	<u>P</u>
Plumbing, metalworking, glassworking or woodworking	P	P	NP	<u>C</u>
Plant or facility (research & development , assembly, manufacturing, packaging, processing, repairing, etc. or materials, merchandise or products)	P	P	P	<u>MC</u>
Pottery or tile manufacturing	P	P	NP	<u>C</u>
Recycling processing facility	C	C	NP	<u>NP</u>
<u>Research and development</u>	<u>P</u>	<u>MCS</u>	<u>P</u>	<u>P</u>
Soils and materials testing laboratories	P	P	P	<u>P</u>
Warehousing and wholesale , general	P	P	P	<u>P⁶</u>
<u>Wholesale sales</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
5. Lodging Uses				
Hotels/motels	C	NP	C	<u>NP</u>
6. Professional Office Uses				
Offices, business and professional	P	NP	P	<u>P</u>
Financial institutions (banks, savings and loans, etc.)	C	NP	P	<u>NP</u>
7. Public, Quasi-Public and Assembly Uses				
Auditorium ⁵²	NP	NP	C	<u>NP</u>
<u>Child care center</u>	<u>NP</u>	<u>NP</u>	<u>C</u>	<u>MCS¹</u>
Conference center ⁵²	NP	NP	C	<u>MCS</u>
<u>College and university, public or private⁸</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>C</u>
Vocational school	C	NP	C	<u>C</u>
Farmer's market (not including flea market) ⁶⁹	NP	NP	C	<u>MC</u>
Public utilities ⁷¹⁰	P	P	P	<u>NP</u>
Transportation facility (taxi, parcel service, armored car, etc.) ⁴⁵	NP	P	NP	<u>NP</u>

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Temporary Public Safety Uses ^{8,11}	C	C	C	<u>NP</u>
Places of assembly ^{9,12}	C	NP	C	<u>NP</u>
8. Residential Uses				
Caretaker's residence	C	C	NP	<u>NP</u>
9. Restaurants or Food Service Uses				
Catering establishment	P	NP	P	<u>MC</u>
Restaurants				
With on-site service of alcohol	C	NP	C	<u>C¹</u>
Without on-site service of alcohol	C	NP	C	<u>MCS¹</u>
With live entertainment/dancing	NP	NP	NP	<u>NP</u>
Drive-in or drive-thru	C	NP	C	<u>NP</u>
Mobile Food Vending (individual vehicle) ^{10,13}	P	P	P	<u>P</u>
Mobile Food Park	NP	NP	NP	<u>NP</u>
Commissary	P	NP	P	<u>MC</u>
10. Vehicle Related Uses				
Auto junk yard ^{4,5}	NP	C	NP	<u>NP</u>
Auto repair (tire, oil change, smog check, etc.) ^{11,14}	C	P	<u>C^{1,5,2}</u>	<u>NP</u>
Mobile Fueling ¹⁶	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>
Service stations (with or without repair or retail) ^{11,14}	C	C	C	<u>NP</u>
With car wash	NP	C	C	<u>NP</u>
Vehicle sales and rental (auto, RV and truck-new and used in operable condition) ^{11,17}	C	C	<u>C^{1,5,2}</u>	<u>NP</u>
Auto broker (wholesale, no vehicles on site) ^{9,12}	MCS	MCS	MCS	<u>NP</u>

***--Notes:**

¹ Limited to accessory uses that support primary employment-generating uses on the same site. Accessory commercial uses such as restaurants and convenience retail shall be located on the ground floor and in an area of the development where they can be directly accessed by the public.

² In accordance with the Title III, Chapter 4, Adult Business Ordinance and Subsection XI-10-13.04, Adult Businesses, of this Chapter.

² ~~When found necessary to serve and appropriate to the industrial area.~~

³ Maximum 8,000 gross square feet in size.

⁴ Assembling, packaging, or distribution from previously prepared materials, such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, electric or electronic instruments and devices such as television, radios, and pharmaceutical products.

⁴⁻⁵ When conducted wholly within a completely enclosed building or within an area enclosed on all sides with a solid wall or fence (e.g., chain link with slats) not less than eight feet in height.

⁵⁻⁶ Warehousing is permitted if integrated with and accessory to a primary use such as Office or Research and Development. Warehouse facilities may not exceed 20 percent of the floor area of the primary use on the property.

⁷ Shall be ancillary to the primary use or associated with business or industrial uses.

⁶⁻⁸ State has authority over permitting process regarding public facilities.

⁹ Refer to Subsection XI-10-13.10, Farmers Markets, of this Chapter.

⁷⁻¹⁰ Includes service facilities, electric transmission and distribution substations and public utility service centers.

⁸⁻¹¹ See Subsection XI-10-13.11(I), Temporary Public Safety Uses.

⁹⁻¹² See Subsection XI-10-7.04(A)(1), Industrial Zone Special Development and Performance Standards.

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¹³ Refer to Subsection XI-10-13.18, Mobile Food Vending, of this Chapter.

¹⁴ Entrances to the services bays shall not be open to the street, but shall be so designed to face the rear or interior side property line.

¹⁵ Within MP zones, rental and repair may be considered only when ancillary to new auto dealerships.

¹⁶ Mobile fueling is permitted when fueling service is ordered by an individual vehicle owner and the amount of fuel dispensed as part of any individual order does not exceed 50 gallons. Mobile fueling for fleet vehicles may be permitted subject to approval of a Conditional Use Permit. Refer also to the California Fire Code as amended by the City of Milpitas Municipal Code, Title V, Chapter 300.

¹⁷ Within MP zones, boat and camper sales are prohibited. Dealerships shall be on property at least three acres or greater in area.

(Ord. No. 38.837 , §§ 7, 8, 11/5/19; Ord. No. 38.836 , § 5, 9/3/19; Ord. No. 38.827, § 2, 2/21/17; Ord. No. 38.803, § 8, 4/17/12; Ord. No. 38.795, §§ 24, 25, 4/6/10; Ord. No. 38.789, § 9, 4/21/09)

XI-10.7.03 Industrial Zone General Development Standards

A. The following minimum or maximum requirements shall be observed.

Table XI-10-7.03-1
Industrial Zone Development Standards

Standard	M1	M2	MP	BPRD
Lot Area, minimum	None	None	Individual sites shall be of such size to that all space requirements in this table are satisfied.	<u>25,000 sq. ft.</u>
Lot Width, minimum	None	None	100 ft.	<u>100 ft.</u>
Front Yard Setback, minimum	Along major street: 35 ft. from face of curb. Along non-major street: 25 ft. from face of curb.	Along major street: 35 ft. from face of curb. Along non-major street: 25 ft. from face of curb.	35 ft.	<u>10 ft.</u>
Side Yard Setback (interior), minimum	None	None	10 ft.	<u>None; 20 ft where abutting an R zone</u>
Street Side Yard Setback, minimum	Same as front yard setback	Same as front yard setback	Same as front yard setback	<u>Same as front yard setback</u>
Rear Yard Setback, minimum	None	None	20 ft.	<u>None; 20 ft where abutting an R zone</u>
Building Height, maximum	None. However, prior to construction of any structure that exceeds three (3) stories or thirty-five (35) feet in height, the Planning Commission must make the following finding: That any such excess height will not be detrimental to the light, air or privacy of any other structure or use currently existing or anticipated.			<u>60 ft/5 stories</u>

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<u>Parking Setback from street-facing property line, minimum</u>				<u>Surface parking: 25 ft</u> <u>Truck or bus parking: 40 ft</u>
Parking	Refer to Section 53, Off Street Parking, of this Chapter.			
Floor Area Ratio	0.40 <u>Maximum</u>	0.40 <u>Maximum</u>	0.50 <u>Maximum</u>	<u>Minimum 0.5</u> <u>Maximum 2.5</u>
Landscaping	Refer to Subsection 7.03(B)			

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- B. Areas of Lot Required to be Landscaped. Landscaped areas shall mean any area planted with plant material (trees, shrubs, ground cover, etc.). Landscape areas shall be exclusive of parking and vehicular traffic area (direct driveways excepted) and this shall be shown on the site plan in detail for Planning Commission approval.

The following areas shall be landscaped:

1. Required front yard area.
2. Required street side yard area.

This may be adjusted, by the Planning Commission, if it is found that adequate landscaping adjacent to the building(s) is provided to compensate for a reduction.

- C. Fences, Hedges and Walls. All planting, fencing and walls for new development, including but not restricted to fences and walls along rear and interior side property lines shall be approved by the Planning Commission. Modifications regarding landscaping, fencing and walls at existing developed sites shall be subject to the provisions of Subsection 54.10, Fences and Walls, of this Chapter.
- D. Utilities. All wires, pipes, cables and utility connections shall be placed in underground or subsurface conduits. All above ground transformers and vaults for new development shall be adequately screened to the approval of the Planning Commission. Modifications regarding subsurface conduits or above ground transformers and vaults at existing developed sites shall be subject to the provisions of Subsection 54.16, Trash Enclosures, Equipment and their Screening, of this Chapter.
- E. 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 54.12, Areas for collecting and loading recyclable materials, of this Chapter.
- F. Legal Nonconforming projects. Existing developments lawful at the time of installation or improvements which have been approved and a building permit issued prior to June 17, 1982, and installed in conformance with said approval and permit are considered legal nonconforming projects.

(Ord. No. 38.803, § 8, 4/17/12; Ord. No. 38.789, § 9, 4-21-09)

XI-10-7.04 Industrial Zone Special Development and Performance Standards

- A. Performance Standards. For uses requiring approval of a Minor Conditional Use Permit by staff, in accordance with Section XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter, the following performance standards shall be met.
1. Auto Brokers. Auto Brokers may be permitted by right if the following standards are met:
 - a. Local Sales and Use Tax. In order to assist the City of Milpitas in its efforts to receive direct distribution of the local tax on materials associated with the project, the California Sales and Use Tax (the "Local Tax") shall be allocated to the project site, to the extent reasonably possible.

Evidence of tax allocation or cause as to why such allocation cannot be made shall be submitted at the time of business license submittal.

B. Special Development Standards in All Industrial Zones.

1. Abutting any R District. Where any ~~M4~~Industrial District abuts any R District, there shall be provided 100 feet between any ~~M4~~building on an industrially zoned parcel and the nearest property line of any R District. Applicants are advised that mitigating improvements may be needed to eliminate any adverse impacts from the residences and that additional requirements may be imposed on the developer to remedy the situation.
2. Outdoor Storage. Outdoor storage for such things as trash and materials shall be permitted only when said storage areas are suitably screened with a solid wall or tight board fence and are located at least 100 feet from any R District and not within any required front or street side yard. Said location and screening of outdoor storage areas shall be to the approval of the Planning Commission. Modifications regarding outdoor storage at existing developed sites shall be subject to the provisions of Subsection 54.16, Trash Enclosures, Equipment and their Screening, of this Chapter.
3. Places of Assembly. Places of Assembly are prohibited in the ~~M42~~Heavy Industrial (M2) Zone and Business Park Research and Development (BPRD) Zone. When any place of assembly use is established in an M1 or MP zone after the effective date of this Ordinance, such use shall be subject to the following requirements:
 - a. Applicant shall submit a review of potential hazardous site conditions and potential exposure of site users to these conditions. At a minimum, a Phase I Environmental Site Assessment (ESA) shall be performed for each proposed assembly use within the City's Light Industrial (M1), and Industrial Park (MP) zoning districts. Each individual project shall comply with the recommendations of the Phase I Environmental Site Assessment (which may include conducting Phase II sampling and implementing the recommendations of the Phase II ESA that may include cleanup of hazardous materials) and demonstrate that exposure of site users to hazardous materials conditions would be below established thresholds prior to approval of the Conditional Use Permit. In addition, an Accidental Release Assessment (ARA) shall be performed for each proposed assembly use within the City's Light Industrial (M1) and Industrial Park (MP) zoning districts to determine if unacceptable safety risks may result from the proposed change in use. The ARA shall review and evaluate any and all Risk Management Plans prepared for facilities in the vicinity under the California Accidental Release Prevention (CalARP) program. The environmental professional preparing the ARA shall determine, based on Alternative Release Scenarios, whether the proposed new assembly use would result in unacceptable safety risks due to proximity of uses handling or emitting acutely hazardous materials. If unacceptable risks are identified, the proposed use shall not be allowed.
 - b. Applicant shall submit a further noise study. The noise study shall demonstrate that ambient noise conditions within the vicinity of the proposed assembly use do not exceed the City's "normally acceptable" Noise Compatibility Standard of 70 dBA Ldn. In the event that existing conditions exceed the "normally acceptable" standard the proposed assembly use may be required to install noise insulating materials to achieve the interior noise standard. Also as a condition of approval, proposed assembly uses shall be required to sign a disclosure of acknowledgment that they agree to operate within an existing industrial area and may be subject to noise levels that exceed the City of Milpitas's Noise Compatibility Standards for noise-sensitive uses.
 - c. No assembly use shall install or otherwise use exterior public address systems or other noise generating equipment that exceeds the 70 dBA noise standard.

- d. No new structure shall be construed within the M1 or MP zoning district for use as a place of assembly and no more than 50% of the square footage of any existing structure within the M1 or MP zoning district shall be converted to use as a place of assembly.
- e. No exterior modifications to any existing structure within the M1 or MP zoning district shall be permitted if such modifications would materially alter the structure's appearance or future use as an industrial building.

C. Special Development Standards in the MP Zones and BPRD zones.

- 1. Uses in the MP ~~District~~ and BPRD zones shall ~~be such that they:~~
 - a. Emit no obnoxious, toxic or corrosive fumes or gases.
 - b. Emit no odors perceptible at the property line.
 - c. Emit no smoke.
 - d. Discharge into the air no dust or other particular matter created by any industrial operations or emanating from any products stored prior or subsequent to processing.
 - e. Produce no heat or glare perceptible beyond the lot boundaries.
 - f. Utilize all lighting in a manner which produces no glare on public streets or on any other parcel.
 - g. Produce no physical vibrations perceptible at or beyond the lot boundaries.
 - h. Produce no electromagnetic radiation or radioactive emission injurious to human beings, animals or vegetation, except under controlled operations being conducted observing standards or methods or operation established by the Nuclear Regulatory Commission. Electromagnetic radiation or radioactive emissions shall not be of an intensity that interferes with the use of any other property.
 - i. Do not engage in the production or storage of any material designed for use as an explosive, or in the use of such material in production.
 - j. Indicate that all industrial uses shall use only gas, electricity, or preheated oil as a fuel; provided, however, that oil-burning equipment may be installed for stand-by emergency use only.

XI-10-7.05 Special Design Standards for the BPRD Zone

A. Building Entrances.

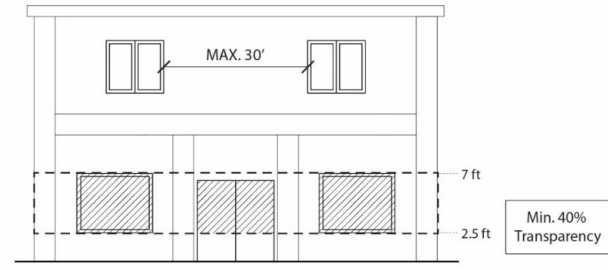
- 1. The primary building entrance must be oriented toward the primary street frontage.
- 2. The primary building entrance must incorporate a projection, recess, or combination of projection and recess at least 40 square feet in area and with a minimum depth of five feet.

B. Façade Design and Articulation.

- 1. Facades within 20 feet of a front or street side property line shall include windows, doors, or other openings for at least 40 percent of the building wall area located between 2.5 and seven feet above the level of the sidewalk.
- 2. A minimum of 50 percent of the building frontage must be located at or within 10 feet of the front setback.
- 3. No façade may run in a continuous plane for more than 30 feet without an opening. Openings fulfilling this requirement must:
 - a. Have transparent glazing and provide views into work areas, sales areas, lobbies, or similar active spaces, or into window displays that are at least three feet deep.

- b. Not provide views into parking or vehicle circulation areas.

Figure 7.05-1: Façade Design and Transparency

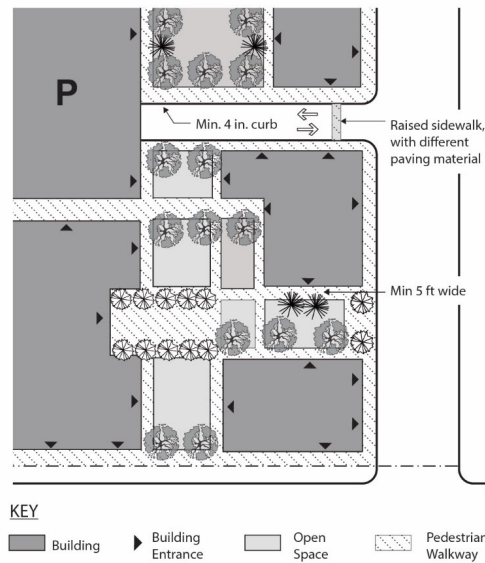


4. All building facades must incorporate window trim, window recesses, cornices, changes in material, or similar design elements that add visual interest to the facade. This includes a varied palette of materials, textures, and colors that emphasize details and changes in plane.

C. Pedestrian and Bicycle Circulation.

1. A system of pedestrian walkways shall connect all primary building entrances on a site to each other, to on-site vehicle and bicycle parking areas, and to any on-site open space areas, pedestrian amenities, and transit stops.
2. Walkways shall be the shortest practical distance between the primary building entrance and sidewalk, generally no more than 125 percent of the straight-line distance.
3. Walkways shall be a minimum of five feet wide, hard-surfaced, and paved with permeable materials.
4. Where a required walkway crosses a driveway, parking area, or loading area, it must be clearly identifiable through a raised crosswalk, a different paving material, or similar method.
5. Where a required walkway is parallel and adjacent to a vehicle travel area, it must be raised or separated from the vehicle travel lane by a raised curb at least four inches high, bollards, or other physical barrier.

Figure 7.05-2: On-Site Circulation



D. Site Design for Large Projects. Projects over 80,000 gross square feet must provide the following:

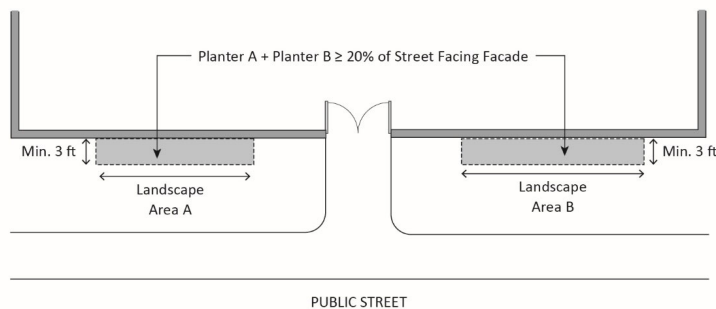
1. Usable common open space equal to 10 percent of the site area and with a minimum dimension of 12 feet that:
 - a. Provides gathering space or opportunities for active or passive recreation and benches or other seating.
 - b. Provides amenities must be provided to enhance the comfort, aesthetics, or usability of the space, including but not limited to trees and other landscaping, shade structures, drinking fountains, water features, or public art.
 - c. Is separated from on-site parking areas by a minimum of 12 feet.
2. A minimum of 400 square feet of outdoor eating facilities for the use of employees. Outdoor eating areas shall include tables, seating and covering to provide protection from sun and weather conditions. Employee eating areas must be contiguous with required on-site public open space or provided in a separate area.
3. Stormwater detention facilities incorporated into the site landscaping. Refer also to Subsection VIII-5-3, Provisions for New and Rehabilitated Landscapes.
4. A lighting, landscaping, and signage design concept for common areas. Refer also to Subsection XI-10-54.17 for general lighting standards and to Subsection XI-10-24 for general signs standards.

E. Landscaping.

1. The following areas shall be landscaped and may count toward the total area of site landscaping required by the zoning district standards.

- a. Street-Facing Setbacks, as required in Section 10-7.03.B of this Chapter.
- b. Interior Property Lines Abutting Residential Districts. A six-foot-wide landscape buffer yard planted with a mix of trees and shrubs shall be provided along interior property lines. At least one tree of at least 15-gallon size shall be planted per 20 linear feet or as appropriate to create a tree canopy over the buffer yard. In addition, at least three shrubs shall be planted per 20 linear feet. At least 10 percent of the required trees shall be 24-inch box size.
- c. Building Perimeters. The portions of a building that front a public street shall have one or more landscape planters, each a minimum of three feet in depth, installed along a minimum 20 percent of street-facing facades.

Figure 7.05-3: On-Site Circulation



- d. Parking Areas. A minimum of 10 percent of any parking lot area shall be landscaped. For the purpose of calculating required parking lot landscaping, parking lot areas are deemed to include parking and loading spaces as well as aisles, vehicle entry and exit areas, and any adjacent paved areas. Parking lot area does not include enclosed vehicle storage areas.
 - e. Unused Areas. All areas of a project site not intended for a specific use, including areas planned for future phases of a phased development, shall be landscaped or left in a natural state.
2. Landscaping Materials. In addition to the standards of Section VIII-5-3, Provisions for New and Rehabilitated Landscapes, the following landscape standards apply.
- a. General. Landscaping must consist of a combination of groundcovers, shrubs, vines, and trees. Landscaping may also include incidental features including stepping stones, benches, fountains, sculptures, decorative stones, or other ornamental features, placed within a landscaped setting. Landscaped areas may include paved or graveled surfaces, provided they do not cover more than 10 percent of the area required to be landscaped.
 - b. Plant selection. Plants must be selected to control erosion and provide protection from wind and summer sun.
 - c. Ground Cover Materials. Ground cover shall be of live plant material. Groundcover may include grasses. Non-plant materials including gravel, colored rock, cinder, bark, and similar materials shall not be used to meet the minimum planting area requirements required by this section, except with approval by the Zoning Administrator. Mulch must be confined to areas underneath shrubs and trees and is not a substitute for ground cover plants.

- d. Turf Allowance. The maximum amount of lawn in required landscape areas shall be 20 percent except for turf areas that comprise an essential component of a project (e.g., golf courses or playing fields), which are exempt from this limit. The installation of turf on slopes greater than 25 percent is prohibited.
- e. Size and Spacing. Plant materials shall be grouped in hydrozones in accordance with their respective water, cultural (soil, climate, sun and light) and maintenance needs. Plants shall be of adequate size and spacing at the time of installation to provide ample vegetation coverage. Minimum requirements include:
 - i. Ground Covers. Ground cover plants other than grasses must be at least the four-inch pot size. Areas planted in ground cover plants other than grass seed or sod must be planted at a rate of one per 12 inches on center or less.
 - ii. Shrubs. Shrubs shall be a minimum size of one gallon. When planted to serve as a hedge or screen, shrubs shall be planted with two to four feet of spacing, depending on the plant species.
 - iii. Trees. Tree canopies shall cover a minimum of 30 percent of the total required landscape area. Of the total number of trees provided on site, at least 20 percent shall be of the same species.
 - (a) A minimum of 15 percent of the trees planted shall be 24 inch-box or greater in size. All other trees shall be a minimum of 15 gallons in size with a one-inch diameter at breast height (dbh).
 - (b) Newly planted trees shall be supported with double stakes or guy wires and tree guards per International Society for Arboriculture and American National Standards Institute standards.
 - (c) Any trees planted along a sidewalk shall be 15 gallon trees no more than 30 feet apart on center.
 - (d) Any tree to be planted along a lot line or adjacent to a structure shall be no closer to said lot line or structure than one-half the diameter of the particular species' drip line at maturity, measured from the center of the tree. Any tree that cannot be planted in the ground shall be planted in a planter box at least twice the width and depth of the root ball plus one additional foot in container diameter for every four feet of mature tree height.

F. Parking and Loading.

1. Parking Location.

- a. Required parking spaces shall be located on the same lot as the use they serve.
- b. Parking areas shall be set back from adjacent buildings and streets as follows:
 - i. From Streets. Where parking is located between a building and street, a landscaped setback at least 10 feet wide must be provided between the parking area and adjacent right-of-way.
 - ii. From On-Site Buildings. Parking areas must be separated from the front and side exterior walls of on-site buildings by walkways at least five feet in width.
- b. On-site parking shall not be located within a required setback.
- c. No parking is allowed on frontages facing Milpitas Boulevard, McCarthy Boulevard, or Montague Expressway.

2. Parking Design.

- a. Access. Driveways shall not exceed 35 feet in width and must be located a minimum of 50 feet from the boundary of an abutting residential or open space zone.
- b. Screening. Parking and loading areas shall be screened from view from public streets and properties in abutting residential, mixed-use, or commercial zones, according to the following standards.
 - i. Height. Screening of parking lots from adjacent public streets shall be a minimum of three feet in height. Screening of parking lots along interior lot lines that abut residential or open space districts shall be a minimum of six feet in height.
 - ii. Materials. Screening must consist of one or any combination of the methods listed below:
 - (a) Walls. Low-profile walls consisting of brick, stone, stucco, or other quality durable material and including a decorative cap or top finish as well as edge detail at wall ends.
 - (b) Fences. An open fence of wood, wrought iron or similar high-quality, durable material combined with plant materials to form an opaque screen. This option does not include the use of chain-link or vinyl fencing.
 - (c) Planting. Plant materials consisting of compact evergreen plants that form an opaque screen. Such plant materials must achieve a minimum height of two feet within 18 months after initial installation.
 - (d) Berms. Berms planted with grass, ground cover, or other low-growing plant materials.
3. Loading Areas. Truck docks, loading areas, and service areas must be located at the rear or interior side of buildings and be screened so as not to be visible from public streets. The outermost point of the truck docks, loading, and service areas are not permitted within 50 feet of the boundary of a residential district.

G. Lighting.

1. Fixtures. All exterior lighting fixtures shall be oriented downward, fully shielded, and certified by the International Dark Sky Association to prevent light intrusion into adjacent building buildings and sensitive habitat such as riparian habitat, streams, and wetlands.
2. Controls. All exterior lighting must be capable of accepting controls that enable dimmers, timers motion sensors, or networking to avoid unnecessary lighting and energy use, especially in areas adjacent to sensitive habitat, such as riparian habitat, streams, and wetlands.
3. Exterior Building Lighting.
 - a. Ground-floor building façades and an adjacent four-foot-wide zone shall be illuminated with lighting fixtures that are placed:
 - i. Every 40 feet or less for all building façades to illuminate the sidewalk along all street-facing building frontages.
 - ii. Every 30 feet or less for all building façades facing public open spaces and pedestrian pathways.
 - iii. Every 20 feet or less for all ground floor blank walls.
 - b. Electrical elements such as wires, conduits, and panel boxes shall be concealed from public view or painted to match the background surface color.
4. Other On-Site Lighting.

a. On-site lighting shall be provided in parking lots, driveways, circulation areas, and recesses. The following minimum levels of illumination shall be achieved:

- i. Open parking lots: One to two foot-candles at ground level.
- ii. Pedestrian path/bike path: One-half to one foot-candle at ground level.
- iii. Covered parking: Five foot-candles at ground level.

b. Parking lot lighting shall be designed and installed so that light and glare is not directed onto residential use areas, adjacent public rights-of-way, or sensitive habitat, such as riparian habitat, streams, and wetlands.

5. Prohibited Lighting. The following types of exterior lighting are prohibited:

- a. Mercury vapor luminaires;
- b. Searchlights;
- c. Sky beams;
- d. Upward-directed fixtures; and
- e. Aerial lasers.

XI-10-7.06 Conformance with Specific Plans

Properties located within Specific Plans shall conform to the underlying Specific Plan in accordance with Section XI-10-11.06, Conformance with Specific Plans, of this Chapter.

(Ord. No. 38.803, § 8, 4/17/12; Ord. No. 38.795, § 26, 4/6/10; Ord. No. 38.789, § 9, 4/21/09)

Section 9 Metro Area Zones and Standards (New Section)

XI-10-9.01 Purpose and Intent

- A. Metro Multi-Family High Density Residential ("R3-Metro") Zoning District. The purpose of the R3-Metro zoning district is to create and enhance high-density residential areas (densities in the range of 30 to 40 dwelling units per acre) characterized by a mix of multi-family unit types and small-scale neighborhood businesses where appropriate. The R3-Metro zone implements the Multi-Family High Density Residential (MFH) land use designation as described in the Metro Specific Plan.
- B. Metro Multi-Family Very High Density Residential ("R4-Metro") Zoning District. The purpose of the R4-Metro zoning district is to create and enhance very high-density residential areas (densities in the range of 40 to 85 dwelling units per acre) characterized by low- and mid-rise multi-family residential buildings and compatible commercial uses where appropriate. . The "R4" District is intended to provide for higher-density residential "villages" structured around transit stations, streets, creek side open spaces, trails and parks. The R4-Metro zone implements the Multi-Family Very High Density Residential (VHD) land use designation as described in the Metro Specific Plan.
- C. Metro Urban Residential ("R5-Metro") Zoning District. The purpose of the R5-Metro zoning district is to create and enhance very high-density residential areas (densities in the range of 70-120 dwelling units per acre) characterized by high-rise residential buildings and compatible commercial uses structured around transit stations. The R5-Metro zone implements the Urban Residential (URR) land use designation as described in the Metro Specific Plan.
- D. Metro High Density Mixed Use ("MXD2-Metro") Zoning District. The purpose of the MXD2-Metro zoning district is to create and enhance areas with a mix of retail, restaurant, entertainment, and commercial service uses on the ground floor and residential or office uses on upper stories, while maintaining a pedestrian-oriented streetscape (mixed-use FARs in the range of 1.0 to 2.5 and residential densities in the range of 40 to 85 dwelling units per acre). It is intended that the required active ground floor uses will ensure neighborhood-oriented retail and services are provided within walking distance of high-density residential development. The MXD2-Metro zone implements the Residential Retail Mixed Use (RRMU) land use designation as described in the Metro Specific Plan.
- E. Metro Very High Density Mixed Use ("MXD3-Metro") Zoning District. The purpose of the MXD3-Metro zoning district is to create and enhance urban areas characterized by a mix of very-high density housing, retail and employment uses (mixed-use FARs in the range of 2.5 to 5.0 and residential densities in the range of 85 to 250 dwelling units per acre). The MXD3-Metro zone implements the Boulevard Very High Density Mixed Use (BVMU) land use designation as described in the Metro Specific Plan.
- F. Metro Business Park Research and Development, Limited Residential; (BPRD-R-Metro) Zone. The purpose of the BPRD-R-Metro zoning district is to designate specific areas of the city as important employment centers, especially for jobs in the high-tech industry, with limited, integrated residential development (mixed-use FARs in the range of 1.0 to 5.0). The BPRD-R-Metro zone is intended to accommodate business parks, high-intensity office buildings, advanced manufacturing, other light industrial uses, and limited residential uses. It also enables the integration and growth of research and development, office, and light manufacturing uses on consolidated sites with supportive ancillary uses, typically on the ground floor, such as restaurants, health/fitness centers, limited retail, and child care facilities. The BPRD-R-Metro zone implements the Business Park Research and Development, Limited Residential (BPRD-H) land use designations as described in the Metro Specific Plan.

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- G. Metro Business Park Research and Development (BPRD-Metro) Zone. The purpose of the BPRD-Metro zoning district is to designate specific areas of the city as important employment centers, especially for jobs in the high-tech industry (FARs in the range of 1.0 to 2.5, with additional FAR up to 4.0 for properties within 1,000 feet of the Milpitas Transit Center). The BPRD zone is intended to accommodate business parks, high-intensity office buildings, advanced manufacturing, and other light industrial uses, and to enable the integration and growth of research and development, office, and light manufacturing uses on consolidated sites with supportive ancillary uses, typically on the ground floor, such as restaurants, health/fitness centers, limited retail, and child care facilities. The BPRD-Metro zone implements the Business Park Research and Development (BPRD) land use designation as described in the Metro Specific Plan.

XI-10-9.02 Metro Area General Use Regulations

A. Permitted and Conditionally Permitted Uses.

1. Primary uses. The uses identified in Table XI-10-9.02-1, Metro Area Zone Uses, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted within enclosed structures. The primary uses identified in Table XI-10-9.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol "P" appears, the use shall be permitted.
MCS	Where the symbol "MCS" appears, the use shall be permitted subject to the issuance of a Minor Conditional Use Permit by staff, in accordance with Subsection XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.
C	Where the symbol "C" appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Subsection XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
MC	Where the symbol "MC" appears, the use shall be permitted subject to the issuance of a Minor Conditional Use Permit by the Zoning Administrator, in accordance with Subsection XI-10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.
O	Where the symbol "O" appears, the use is subject to an alternative review process described in a subsequent footnote.

B. Prohibited Uses. The following uses are prohibited:

1. Uses where the symbol "NP" appears within Table XI-10-9.02-1.
2. The following uses are not permitted in any Metro zone:
 - a. Adult Businesses as defined in Subsection 13.04, Adult Businesses, of this Chapter.
 - b. Disinfecting and extermination business.
 - c. Outdoor storage of vehicles.
 - d. Private self-storage facilities.
 - g. Drive through uses (restaurants, pharmacies, etc.).
- C. Mixed Use Development. Where a single parcel is proposed for development with two or more of the land uses listed in Table 9.02-1, Metro Area Zone Uses at the same time, the overall project will be subject to the permit with the highest level of review required by the Table for any individual use.
- D. Residential uses on Activity Streets and Neighborhood Streets. Residential units are not allowed on the ground floor facing any right-of-way designated as an Activity Street or Neighborhood Street by the Metro Specific Plan Figure 4-6, unless allowed by Subsection 9-05.B. Other residential spaces such as lobbies and

common areas are permitted on the ground floor facing an Activity Street in accordance with Table XI-10-9.02-1.

- E. Other Uses. Any other uses may be considered by the Planning Commission that are similar in accordance with the procedure, prescribed in Subsection 10-54.02, Other Uses Permitted by Commission, of this Chapter.

**Table XI-10-9.02-1
Metro Area Zone Uses**

Uses	R3 Metro	R4 Metro	R5 Metro	MXD2 Metro	MXD3 Metro	BPRD-R Metro	BPRD- Metro	Additional Regulations
Commercial								
Alcoholic Beverage Sales	C ¹	C ¹	C ¹	C	C	C	C ¹	
Business Support Services	NP	NP	NP	MCS	MCS	MCS ¹	MCS ¹	
Convenience store	MC	MC	MC	MCS	MCS	NP	NP	Refer to Subsection XI-10-9.03(A), Special Uses
Grocery Store	NP	NP	NP	C	C	NP	NP	
Grocery Store, Small	P	P	P	P	P	NP	NP	Refer to Subsection XI-10-9.03(A), Special Uses
Pawnshop	NP	NP	NP	C	C	NP	NP	Refer to Subsection XI-10-9.03(C), Special Uses
Personal Services	MCS ²	MCS ²	MCS ²	P ²	P ²	NP	NP	Refer to Subsection XI-10-9.03(A), Special Uses
Pet Shops	NP	NP	NP	MC	MC	NP	NP	
Repair and Cleaning, Small Items	NP	NP	MCS	P	P	NP	NP	Refer to Subsection XI-10-9.03(A), Special Uses
Retail, Limited	C ³	P	P	P	P	P ¹	P ¹	Refer to Subsection XI-10-9.03(A), Special Uses
Retail Stores, General Merchandise	C ³	P	P	P	P	NP	NP	Refer to Subsection XI-10-9.03(A), Special Uses
Thrift Shop								
<i>Retail only</i>	NP	NP	NP	P	P	NP	NP	Refer to Subsection XI-10-9.03(A), Special Uses
<i>With collections</i>	NP	NP	NP	C	C	NP	NP	
Entertainment and Recreation								
Commercial Athletic Facilities	NP	NP	NP	P	P	MCS ¹	MCS ¹	
Golf Course	NP	NP	NP	NP	NP	NP	NP	
Recreation or Entertainment Facility	NP	NP	NP	C	C	NP	NP	
Health and Veterinarian Uses								
Animal Grooming (no boarding)	NP	NP	NP	MC	MC	NP	NP	
Hospitals or Sanitariums	NP	NP	NP	C	C	NP	NP	Refer to Subsection XI-10-9.03(B), Quasi-Public Uses
Massage Establishment	NP	NP	NP	MC/MC S ⁴	MC/MC S ⁴	C ¹	C ¹	Refer to Title III, Chapter 6 of the Milpitas Municipal Code and to Subsection XI-10-13.16
Medical and Dental Offices and Clinics	NP	NP	NP	P	P	MC	MC	
Medical Support Laboratories	NP	NP	NP	P	P	MC	MC	
Optician and Optometrist Shop	NP	NP	NP	P	P	MC	MC	

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Uses	R3 Metro	R4 Metro	R5 Metro	MXD2 Metro	MXD3 Metro	BPRD-R Metro	BPRD-Metro	Additional Regulations
Pharmacy or Drug Store	NP	MCS	MCS	P	P	MC	MC	
Veterinary Clinic	NP	NP	NP	P	P	NP	NP	
Industrial Uses								
Agriculture	p ⁵	NP	NP	NP	NP	NP	NP	
Art and Artisan Studio	NP	NP	NP	P	P	MCS	P	
Commercial Laboratory	NP	NP	NP	NP	NP	P	P	
Custom and Artisan Manufacturing	NP	NP	NP	MCS	MCS	MCS	MCS	
Manufacturing, Assembling, Packaging, and Processing Facility	NP	NP	NP	NP	NP	MCS	MCS	
Parcel hub	NP	NP	NP	NP	NP	NP	MC	
Printing (Newspaper, Blueprint, Publishing)	NP	NP	NP	NP	NP	NP	MC	
Research and Development	NP	NP	NP	NP	NP	P	P	
Soils and materials testing laboratories	NP	NP	NP	NP	NP	P	P	
Warehousing, General	NP	NP	NP	NP	NP	p ⁶	p ⁶	
Wholesale Sales	NP	NP	NP	NP	NP	MC	MC	
Lodging Uses								
Bed and Breakfast	P	P	P	P	P	NP	NP	
Boarding Houses	C	C	C	C	C	NP	NP	
Hotels	NP	NP	NP	P	P	P	P	
Motels	NP	NP	NP	NP	NP	NP	NP	
Short-Term Rentals	P	P	P	P	P	NP	NP	Refer to Subsection XI-10-13.17, Short-Term Rentals
Professional Offices Uses								
Offices, Business and Professional	C	C	C	P	P	P	P	
Financial institutions (banks, savings and loans, etc.)	NP	MCS	MCS	P	P	MCS ¹	MCS ¹	
Public, Quasi-Public and Institutional/Assembly Uses								
College and university, public or private ⁷	NP	NP	NP	C	C	C	C	
Community Garden	P	P	P	P	P	P	P	
Day Care Center	MC	MC	P	P	P	p ¹	p ¹	Refer to Subsection XI-10-13.06, Large Family Child Care and Child Care Centers
Farmer's Market	MC	MC	MC	MCS	MCS	MCS	MCS	Refer to Subsection XI-10-13.10, Farmers Markets
Instruction, Group	MC	MC	MC	MCS	MCS	NP	NP	
Instruction, Private	MCS	MCS	MCS	P	P	NP	NP	
Park, Playground or Community Center	O ⁸	O ⁸	O ⁸	O ⁸	O ⁸	O ⁸	O ⁸	
Places of Assembly	MC	MC	MC	MCS	MCS	NP	NP	
Public Utilities	NP	NP	NP	NP	NP	NP	NP	
School (not trade or vocational)	C	C	C	C	C	NP	NP	

Uses	R3 Metro	R4 Metro	R5 Metro	MXD2 Metro	MXD3 Metro	BPRD-R Metro	BPRD-Metro	Additional Regulations
Schools, private (elementary, middle, high)	C	C	C	C	C	NP	NP	
Theater (indoor)	NP	NP	NP	C	C	NP	NP	
Trade and Vocational School	NP	NP	NP	C	C	NP	NP	
Transportation Facilities	C	C	C	C	C	NP	NP	
Residential Uses								
Court Dwellings	P	P	P	P	P	NP	NP	
Duplex (two dwellings)	NP	NP	NP	NP	NP	NP	NP	
Group Living Accommodations	C	C	C	C	C	C	NP	
Live/Work	C ⁹	C ⁹	C ⁹	MCS	MCS	MCS	NP	
Multi-Family Dwellings	P	P	P	P	P	P	NP	
Residential Care Facility	P	P	P	P	P	P	NP	
Single-Room Occupancy Residences	MC	MC	MC	MC	MC	NP	NP	Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences
Transitional and Supportive Housing	P	P	P	P	P	P	NP	Refer to CA Government Code Sec. 65582
Restaurants or Food Service								
Bar or Nightclub	NP	NP	NP	C ¹⁰	C ¹⁰	NP	NP	
Brewery/ Eateries	NP	NP	NP	MCS ¹⁰	MCS ¹⁰	NP	NP	
Catering Establishment	NP	NP	NP	C	C	NP	NP	
Commissary	NP	NP	NP	NP	MC	NP	NP	
Mobile Food Park	NP	NP	NP	MC	MC	NP	NP	Refer to Subsection XI-10-13.18, Mobile Food Vending
Mobile Food Vending (individual vehicle)	P	P	P	P	P	P	P	Refer to Subsection XI-10-13.18, Mobile Food Vending
Restaurants								
<i>With on-site service of alcohol</i>	C ³	C	C	P/C ¹¹	P/C ¹¹	C ¹	C ¹	Refer to Subsection (XI-10-9.03(C)(5))
<i>Without on-site service of alcohol</i>	MCS ³	P	P	P/C ¹¹	P/C ¹¹	P ¹	P ¹	Refer to Subsection (XI-10-9.03(C)(5))
<i>With music (indoor/outdoor)</i>	NP	NP	NP	P ¹⁰	P ¹⁰	NP	NP	Refer to Subsection (XI-10-9.03(C)(5))
<i>With other live entertainment</i>	NP	NP	NP	C ¹²	C ¹²	NP	NP	Refer to Subsection (XI-10-9.03(C)(5))
Vehicle Related Uses								
Auto Broker (wholesale, no vehicles on site)	NP	NP	NP	MCS	MCS	NP	NP	
Auto Rental	NP	NP	NP	MC ¹³	MC ¹³	NP	NP	
Auto Sales	NP	NP	NP	NP	NP	NP	NP	
Mobile Fueling ¹⁴	P/NP	P/NP	P/NP	P/NP	P/NP	P/NP	P/NP	Refer to the California Fire Code as amended by the City of Milpitas Municipal Code, Title V, Chapter 300.
Service Stations	NP	NP	NP	NP	NP	NP	NP	
Auto Repair Shop	NP	NP	NP	NP	NP	NP	NP	
Accessory and Temporary Uses								

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Uses	R3 Metro	R4 Metro	R5 Metro	MXD2 Metro	MXD3 Metro	BPRD-R Metro	BPRD-Metro	Additional Regulations
Accessory Dwelling Unit	P	P	P	P	P	P	NP	Refer to Subsection XI-10-13.08, Accessory Dwelling Units
Model home complex	P	P	P	P	P	NP	NP	Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices
Large family child care home	P	P	P	P	P	P	NP	Refer to Subsection XI-10-13.06, Large Family Child Care and Child Care Centers
Small family child care home	P	P	P	P	P	P	P	
Temporary seasonal sales	NP	NP	NP	P	P	NP	NP	Refer to Section 13.11, Temporary Uses and Structures

1. Limited to accessory use that supports primary employment-generating uses on the same site. Accessory commercial uses such as restaurants and limited retail shall be located on the ground floor and in an area of the development where they can be directly accessed by the public.
2. When located on the ground floor, retail sales of products related to the Personal Services provided shall be offered at the front of the premises near the pedestrian entrance and shall comprise at least 10 percent of the floor area of the business establishment.
3. No exterior display or advertising and such activities are conducted in spaces which are integral parts of a main building.
4. Allowed with an MCS when an accessory use to any permitted or conditionally permitted medical office, medical clinic, chiropractor practice, acupuncture practice, physical therapist, fitness and athletic facility, health care facility (such as hospitals, nursing homes and sanitariums), and accredited school, college, and university. Massage services, limited to massage of the head, neck, shoulders, hands and feet may be allowed with an MCS when an accessory use to any permitted or conditionally permitted beauty salon, barbershop, and healing art practices. This section shall not exempt any person or business from complying with all the provisions of Title III, Chapter 6.
5. The raising of animals or fowl for commercial purposes and the sale of any products at retail on the premises is not allowed.
6. Warehouses may not exceed 25,000 gross square feet in size.
7. State has authority over permitting process regarding public facilities.
8. For uses owned and operated by a government agency. The approval process will require that the site be rezoned to POS.
9. Allowed non-residential uses to be specified through the Conditional Use Permit process.
10. Indoor or outdoor music is permitted as an accessory use on the same parcel in conjunction with a restaurant or bar that is a principal permitted use or approved conditional use. See also Subsection XI-10-9.03(E)(6) for additional regulations.
11. Permitted when located on the ground floor facing a public street designated as an Activity Street. Requires a Conditional Use Permit when located elsewhere.
12. "Other live entertainment" Includes but is not limited to dancing, stand-up comedy, theatrical shows, magic shows, and karaoke.
13. Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals, must be fully enclosed within a building.

14. Mobile fueling is permitted when fueling service is ordered by an individual vehicle owner and the amount of fuel dispensed as part of any individual order does not exceed 50 gallons. Mobile fueling for fleet vehicles is not permitted.

XI-10-9.03 Metro Area Special Use Regulations

- A. Personal services, convenience stores, grocery stores, retail, repair and cleaning services, private and group instruction, and financial institutions within R3-Metro, R4-Metro and R5-Metro zones may be permitted provided they are:

1. Less than or equal to 10,000 square feet in gross floor area;
2. Not open past 10:00 p.m.;
3. Conducted wholly within a building, except for approved outdoor seating areas;
4. Not specifically noted in Table XI-10-9.02-1, Metro Zone Uses, of this Chapter, requiring Conditional Use Permit approval; and
5. Not listed as a prohibited use in Section XI-10-9.02(B), Prohibited Uses, of this Chapter.

If items (1) through (3), above, are not met, then approval of a Conditional Use Permit is required in accordance with Section 10-57.04 of this Chapter.

- B. Quasi-Public Uses. The following uses may be permitted within the MXD2-Metro and MXD3-Metro zones provided their location is first approved by the Planning staff, the Zoning Administrator, or the Planning Commission (as applicable), in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter, and they are not located within 1,000 feet of the parcel boundary of another quasi-public use listed below. This distance shall be measured from the property line of the parcel where such use is located.

1. Places of meeting or assembly, such as auditoriums, banquet halls, and fraternal or union halls. Churches and religious institutions are exempt from this spatial requirement.
2. Private elementary, middle or high schools.
3. Vocational schools, if not found objectionable due to noise, odor, vibration or other similar health, safety and welfare basis.

- C. Performance Standards for Certain Uses. For uses requiring approval of a Minor Conditional Use Permit by staff, in accordance with Section 10-57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter, the following performance standards below shall be met.

1. The following uses may not be located within 1,000 feet of another same use listed below. This distance shall be measured from the property line of the parcel where such use is located.
 - a. Vehicle Related Uses.
 - b. Transportation facilities without outdoor storage of vehicles.
 - c. Pawnshops.
2. Auto Brokers. Auto Brokers are subject to the following standards:
 - a. Local Sales and Use Tax. In order to assist the City of Milpitas in its efforts to receive direct distribution of the local tax on materials associated with the project, the California Sales and Use Tax (the "Local Tax") shall be allocated to the project site, to the extent reasonably possible. Evidence of tax allocation or cause as to why such allocation cannot be made shall be submitted at the time of business license submittal.
 3. Art and Artisans Studios shall comply with the following standards:
 - a. All operations shall be conducted completely within an enclosed building.

- b. There shall be no dust, fume, or odor either emitted from the premise.
 - c. The operations shall not create excessive vibrations.
 - d. The operations shall be consistent with the City's noise standards.
4. Outdoor Music in the MXD2-Metro and MXD3-Metro zones:
- 1. Outdoor music as an accessory use in conjunction with a restaurant or bar shall be permitted for the entertainment and enjoyment of customers at the restaurant or bar during regular operating hours. Outdoor music as an accessory use shall be limited to the hours of 9:00 a.m. to 11:00 p.m.
 - 2. Recorded background music may be permitted outdoors on public sidewalks and other public areas subject to the standards of this Chapter and Title V - Public Health, Safety and Welfare, Chapter 213 - Noise Abatement.
 - 3. Noise levels for outdoor music, when permitted as an accessory use to a restaurant or bar, shall not exceed a maximum range of 70 to 90 decibels (dB). See also Title V - Public Health, Safety and Welfare, Subsections V-213-2 and V-213-3, for additional regulations.
 - 4. Larger outdoor music events, both live and recorded music, which are intended for the entertainment and enjoyment of the general public shall not be considered accessory uses and shall require a Special Event Permit pursuant to Section 15, Special Events and Activities, of this Chapter.
 - 5. Minor outdoor music events, both live and recorded music, which are hosted onsite by a business with nine or fewer employees shall be exempt from applicable permit and fee requirements.
5. Restaurant Performance Standards. Restaurants shall comply with the following performance standards:
- a. Outdoor seating is allowed if it has been approved as part of the facility's Minor Site Development Permit or Site Development Permit and is operated in conformance with any conditions of that approval.
 - b. Outdoor dining shall comply with the standards of Section 10-13.19 – Outdoor Dining.
 - c. The restaurant shall comply with the City Council's Guidelines for Recycling Enclosures (Resolution No. 6296).
 - d. The restaurant shall incorporate measures to reduce odors to acceptable levels, including, but not limited to, installation of a scrubber, carbon filter or similar equipment, on the roof vent to control odors.
 - e. All the facility's floor drains, trash compactors and indoor mat and equipment washing areas shall be drained to the sanitary sewer.
 - f. Where applicable, the restaurant shall maintain an active account with a tallow hauling company.
 - g. The restaurant shall prepare and implement a program assigning restaurant staff responsibility for complying with the following guidelines which shall be adhered to while the restaurant is in operation:
 - i. Wash all containers and equipment in the kitchen areas so that wash water may drain into the sanitary sewer.
 - ii. Keep garbage dumpsters clean inside and out; replace very dirty dumpsters with new, clean ones.
 - iii. Double bag waste to prevent leaking.

- iv. Place, do not drop or throw, waste-filled bags, to prevent leaking.
- v. Keep the ground under and around the garbage dumpsters swept.
- vi. Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.
- vii. Hold training sessions to instruct 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. A record of such training must be kept to prove compliance with this requirement.
- viii. Post signs (in English and multi-lingual) inside the premises for all employees identifying procedures for food delivery and garbage disposal.
- ix. All garbage bins shall be stored in the garbage enclosure except for the 12 hours immediately before and after garbage collection.

XI-10-9.04 Metro Area General Development Standards

- A. Standards within the Metro Specific Plan area. For all Metro Area properties, refer to the Metro Specific Plan for development standards. When a standard is not listed within the Metro Specific Plan, the standards listed within the zoning ordinance shall govern.
- B. General Standards. The following requirements shall be observed.

Table XI-10-9.04-1
Metro Zones Development Standards

Standard	R3 Metro	R4 Metro	R5 Metro	MXD2 Metro	MXD3 Metro	BPRD-R Metro	BPRD- Metro
<i>Min. Lot Area</i>	8,000 sq ft	none	none	none	none	none	none
<i>Residential Density¹</i>	30-40 units/ac	40-85 units/ac	70-120 du/ac	40-85 units/ac	85-250 units/ac	No min. or max.	N/A
<i>FAR</i>	n/a	n/a	n/a	Mixed Use: 1.0-2.5 FAR	Mixed Use: 2.5-5.0 FAR	Mixed-use: 1.0-5.0 FAR; min. 1.0 FAR non-residential uses	Min. 1.0; Max. 2.5-4.0 ²
<i>Active Use</i>	none	none	none	Ground floor retail and active uses required on 80% of frontages on any one blockface along any Activity Street as identified on the Metro Specific Plan Figure 4-6: Circulation Network.			none
<i>Front Setback</i>	20 ft min.	8 ft min., 20 ft max. from back of sidewalk	12 ft min., 20 ft max. from back of sidewalk	Min. 0 ft, Max. 20 ft	Min. 12 ft, Max. 20 ft	Min. 10 ft, Max. -20 ft	Min. 0 ft.
<i>Interior Side Setback</i>	1 story: Each side 5 ft min, total of 12 ft both sides 2-2.5 story: Each side 10 ft min, total 25 ft both sides 3-3.5 story:	10 ft min.	15 ft; 20 feet for buildings over 3 stories abutting residential uses	0 ft; 10 ft when abutting residential use and for portions of buildings over 60 ft or 4 stories tall	10 ft; 15 ft when abutting residential; 20 ft for portions of buildings over 60 ft or 4 stories tall	10 ft min.	10 ft min.

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Standard	R3 Metro	R4 Metro	R5 Metro	MXD2 Metro	MXD3 Metro	BPRD-R Metro	BPRD- Metro
	Each side 12 ft min, total 30 ft both sides						
<i>Street Side Setback</i>	10 ft	8 ft min., 15 ft max. from back of sidewalk	12 ft min., 20 ft max. from back of sidewalk	0 ft	12-20 ft	10-15 ft	0 ft min.
<i>Rear Setback</i>	1 story: 30 ft 2-2.5 story: 35 ft 3-3.5 story: 40 ft	10 ft min.	15 ft; 20 feet for buildings over 3 stories abutting residential uses	10 ft; 15 ft when abutting an R Zone; 20 ft for portions of building over 60 ft or 4 stories tall	15 ft; 20 ft when abutting an R zone; 30 ft for portions of building over 60 ft or 4 stories tall	10 ft min.	10 ft min.
<i>Creek/Drainage Channel Setback</i>	25 ft from top of bank or from any maintenance road or required setback, whichever is greater.						
<i>Max. Primary Building Height</i>	75 ft	35 ft min., 75 ft max.	75 ft and 6 stories	85 ft ³	275 ft ⁴	275 ft or 18 stories	8 stories
<i>Accessory Building Height</i>	Max. 25 ft or 2.5 stories						
<i>On-Site Open Space</i>	Residential and mixed-use projects: Min. 100 sq ft per residential unit, may be private or common Non-residential projects: Min. 10% of site area						Min. 15% of site area
<i>Private Open Space Dimensions</i>	Min. 4 ft x 6 ft						n/a
<i>Common Open Space</i>	Residential and mixed-use projects: Min. 30% of the total open space provided on-site; Min. dimension 10 ft						Min. dimension 10 ft
<i>Publicly Accessible Open Space</i>	Mixed-use projects: Min. 5% of the total open space provided on-site ⁵ Non-residential projects: Min. 25 contiguous sq ft per 10,000 sq ft non-residential floor area.						Min. 25 contiguous sq ft per 10,000 sq ft non-residential floor area excluding retail, restaurant, or service areas

- When determining the density of non-traditional housing configurations such as group living accommodations and single-room occupancy residences, three bedrooms may be counted as the equivalent of one unit.
- Maximum allowed FAR is based on the following sliding scale:
 - 2.5 for properties farther than 3,000 ft from the Milpitas Transit Center;
 - 3.0 for properties within 3,000 ft from the Milpitas Transit Center;
 - 3.5 for properties within 2,000 ft from the Milpitas Transit Center;
 - 4.0 for properties within 1,000 ft from the Milpitas Transit Center.

3. Within 60 feet of adjacent existing residentially zoned parcels, building height shall be stepped down to a maximum of 10 feet higher than the maximum allowed height of the adjacent parcel.
4. A maximum 50% of base footprint may reach 85 feet in height and a maximum 25% of base footprint may reach 275 feet in height.
5. Required publicly accessible open space may include one or more of the following types of public open spaces: park, plaza, garden, public sitting area.

XI-10-9.05 Metro Area Special Development Standards

A. R3-Metro Zone.

1. On-Site Utilities Requirements.
 - a. Where the allowable dwelling units exceed six for a single parcel or the total area to be subdivided exceeds three acres, all on-site utilities are to be placed underground.
 - b. Television antennas are to be centralized for structures of four or more units.
2. Trash and Storage Areas and Areas for Collecting and Loading Recyclable Materials.
 - a. There shall be provided areas for collecting and loading recyclable materials in accordance with the requirements of Section 10-54.12 of this Chapter.
 - b. All outdoor storage and trash areas shall be within a completely enclosed building or behind a solid wall or tight board fence a minimum of six feet in height.

B. 2023-2031 Housing Element Rezone Sites. Rezone sites are listed in the City of Milpitas 2023-2031 Housing Element, Appendix E, Table E-14. Rezone sites within the Metro Specific Plan are sites R-11 to R-29, which all provide lower-income housing capacity (see City of Milpitas 2023-2031 Housing Element Table E-14 and Figures E-4 and E-5). On these rezone sites (sites R-11 to R-29), the following shall apply:

1. Owner-occupied and rental multi-family housing uses shall be allowed by right (i.e., without any discretionary review) when at least 20 percent of the units will be affordable to lower income households.
2. 100 percent residential use is allowed.
3. A minimum of 50 percent of the floor area in mixed-use projects must be occupied by residential use(s).

C. BPRD-Metro and BPRD-R-Metro zones.

1. Fences, Hedges and Walls.
 - a. All planting, fencing and walls for new development, including but not restricted to fences and walls along rear and interior side property lines shall be approved by the review authority. Modifications regarding landscaping, fencing and walls at existing developed sites shall be subject to the provisions of Subsection 54.10, Fences and Walls, of this Chapter.
 - b. Temporary buffers must be installed when residential uses are developed adjacent to existing industrial uses. The buffers, which may be fences, walls, or vegetation, are subject to the provisions of Subsection 54.10, Fences and Walls, of this Chapter and must be reviewed and approved by the City Planning Department. The temporary buffers may be removed if and when an adjacent site is redeveloped as a non-industrial use.
2. Utilities. All wires, pipes, cables and utility connections shall be placed in underground or subsurface conduits. All above ground transformers and vaults for new development shall be adequately screened

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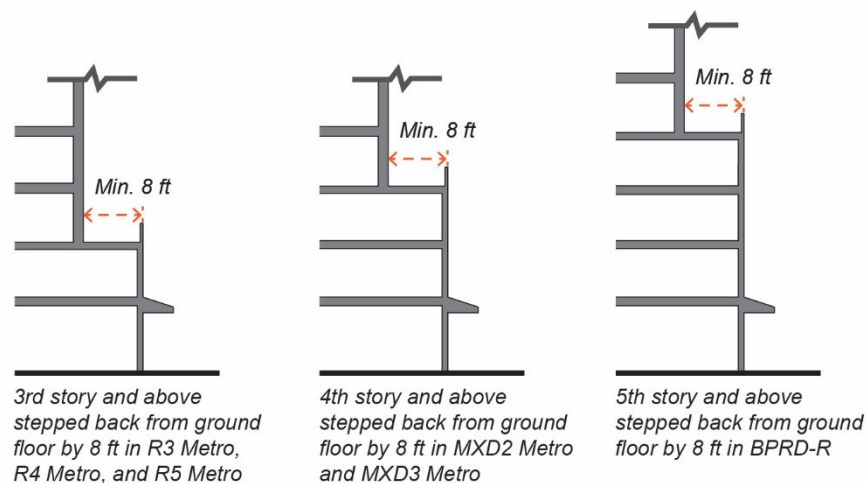
- to the approval of the review authority. Modifications regarding subsurface conduits or above ground transformers and vaults at existing developed sites shall be subject to the provisions of Subsection 54.16, Trash Enclosures, Equipment and their Screening, of this Chapter.
3. Loading dock/doors. A maximum of two loading docks are allowed for any single project and must be located out of view from the primary abutting right-of-way.
 4. 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 54.12, Areas for collecting and loading recyclable materials, of this Chapter.
 4. Legal Nonconforming projects. Existing developments lawful at the time of installation or improvements which have been approved and a building permit issued prior to June 17, 1982, and installed in conformance with said approval and permit are considered legal nonconforming projects.
 5. Uses in the BPRD-Metro and BPRD-R-Metro zones shall:
 - a. Emit no obnoxious, toxic or corrosive fumes or gases.
 - b. Emit no odors perceptible at the property line.
 - c. Emit no smoke.
 - d. Discharge into the air no dust or other particulate matter created by any industrial operations or emanating from any products stored prior or subsequent to processing.
 - e. Produce no heat or glare perceptible beyond the lot boundaries.
 - f. Utilize all lighting in a manner which produces no glare on public streets or on any other parcel.
 - g. Produce no physical vibrations perceptible at or beyond the lot boundaries.
 - h. Produce no electromagnetic radiation or radioactive emission injurious to human beings, animals or vegetation, except under controlled operations being conducted observing standards or methods or operation established by the Nuclear Regulatory Commission. Electromagnetic radiation or radioactive emissions shall not be of an intensity that interferes with the use of any other property.
 - i. Do not engage in the production or storage of any material designed for use as an explosive, or in the use of such material in production.
 - j. Indicate that all industrial uses shall use only gas, electricity, or preheated oil as a fuel; provided, however, that oil-burning equipment may be installed for stand-by emergency use only.
 - D. Equipment and Screening in all Metro Zones.
 1. Trash enclosures and utility equipment (mechanical, electrical, and plumbing) may not be located within the front setback. Public utilities are excluded from this requirement.
 2. All exterior equipment and enclosures shall be screened or incorporated into the design of buildings so as not to be visible from public rights of way or public spaces.
 3. See also Subsection 54.16 – Trash Enclosures, Equipment and their Screening for standards related to equipment and screening.

XI-10-9.06 Metro Area Special Design Standards

- A. All residential and residential mixed-use development must comply with the Milpitas Residential and Mixed-Use Objective Design Standards in addition to the standards of this subsection 10-9-.06. Where standards of this subsection conflict with those of the Objective Design Standards, this section supersedes.

- B. All non-residential development in the BPRD-R-Metro, BPRD- Metro zones must comply with the standards of Section 10-7.05, Special Design Standards for the BPRD Zone in addition to the standards of this Subsection 10-9-.06. Where standards of this subsection conflict with those of Section 10-7.05, the more restrictive standard applies.
- C. Block Length.
1. Blocks may not exceed 700 feet in length.
 2. Blocks more than 500 feet in length must incorporate a mid-block pedestrian and bicycle through connection.
- D. Building Articulation.
1. In the R3-Metro, R4-Metro and R5-Metro zones, the third floor and above must be stepped-back from the ground-floor street-facing building façade by a minimum of 8 feet.
 2. In the MXD2-Metro and MXD3-Metro zones, the fourth floor and above must be stepped-back from the ground-floor street-facing building façade by a minimum of 8 feet.
 3. In the BPRD-R zone, the fifth floor and above must be stepped-back from the ground-floor street-facing building façade by a minimum of 8 feet.

Figure 9.06-1: Building Step-Back



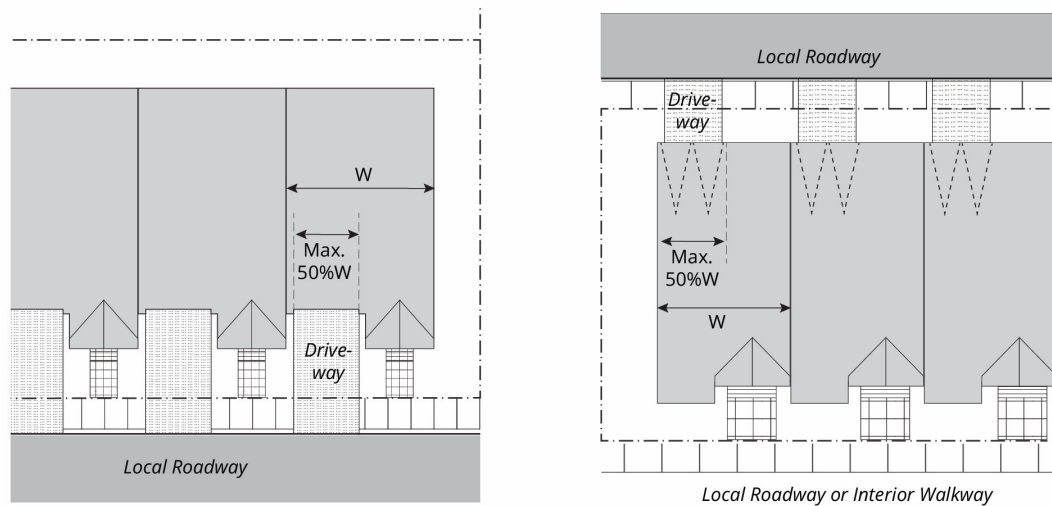
4. Non-residential building façades over 80 feet in length shall break up long street walls through at least two of the following features: recesses a minimum six feet in depth; awnings; colonnades; projections a minimum four feet in depth; step-backs a minimum six feet in depth; window reveals; cornice treatment; and changes in color and material.
 5. Non-residential building height must vary such that the building has at least one change in height of at least one story. This may be achieved through changes in pitch, plane, orientation, a change in the number of stories, differentiated forms, projections and recesses and/or special architectural features such as towers.
- E. Ground Floor Commercial Design Standards. On retail mixed use streets, and in any other areas with ground floor retail, restaurant, and commercial service uses, the following standards apply:

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1. Ground floor spaces shall be a minimum of 60 feet in depth for a minimum of 50 percent of the space, and a minimum of 40 feet in depth for any remaining space.
 2. Floor to Ceiling Height.
 - a. Retail: Minimum 18 feet floor-to-floor and a minimum 14 feet clear.
 - b. Office: Minimum 14 feet.
 3. Building Entrances. There shall be at least one entrance per 100 feet of building frontage and the main entrance may not face a parking lot.
 4. Wall Plane Articulation. Windows, doors, columns, and other features shall be recessed or project forward, such that there is a six-inch difference between wall and window surfaces and a total of at least eighteen inches from the window to the outermost plane of a wall or column.
 5. Floor Elevation. Ground floor elevation shall be no more than two feet above or below the sidewalk level.
- F. Building Materials.
1. Ground Floor Materials. All ground floor exterior materials shall be durable, quality materials, such as glass, concrete, precast concrete, aluminum and high quality metal panels, composite panels, stone, and stucco.
 2. Non-residential Building Materials. Primary building materials in all non-residential construction shall store carbon (e.g., wood, calcium carbonate-based cementitious substances, synthetic limestone).
 3. Glass Materials. Glass types shall be clear glass, frit glass, sandblasted glass, spandrel glass, or channel glass. Glazing should provide a high degree of light transmittance and be non-reflective.
 4. Roofing Materials. Roof design and materials shall include vegetated roofs, high-albedo built-up roofs, high albedo single-ply roofing, metal, terracotta tile, concrete tile, composite concrete tile, skylights, solar collectors, and photovoltaics.
 4. Window Materials. Vinyl-frame windows and doors are prohibited. Wood-framed windows must have metal or fiberglass cladding on the exterior. Metal-frame windows must be thermally broken.
- G. Unit Design.
1. A minimum of 10 percent of units in any single residential project shall be designed to be accessible to all users using the principles of Universal Design.
 2. Public plazas shall be constructed with ADA-compliant ramps and tactile warning strips at the crosswalks. Equipment and facilities such as tables, trash cans, restrooms, and drinking fountains should allow for universal access, including people of all ages and ability levels.
- H. Landscaping and Site Design.
1. All development projects shall include on-site vegetated stormwater treatment and landscaping and shade trees at a rate of one tree per 5,000 square feet of the residential building footprint and one tree for every 10,000 square feet of developed lot area for non-residential or mixed-use development.
 2. Where a creek runs under a site, the applicant must coordinate with the City Planning Department to daylight the waterway as part of the site design.
 3. All applicants shall also reference the Santa Clara Valley Urban Runoff Pollution Prevention Program C.3 Stormwater Handbook.
- I. Parks and Publicly Accessible Open Spaces.

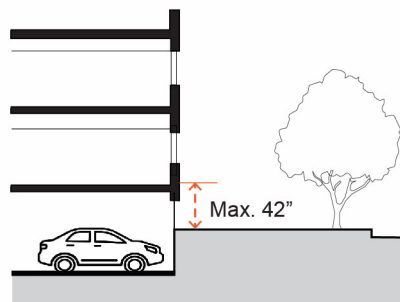
1. All development projects shall dedicate land for parks if a park is shown on the subject property on Figure 2-16: Existing and Proposed Parks, of the Metro Specific Plan.
 2. Privately-owned public open space must remain accessible and open to the public during business hours. Private single-access gates are prohibited.
 2. The Recreational Value System as described in the Metro Specific Plan Section 2.8, Parks and Public Spaces Framework, shall be used to ensure park improvements provide a diversity of active, contemplative, and social gathering experiences.
 3. Parks must be bordered by a public right-of-way such as a street, trail or railroad, on at least three sides, and must be clearly visible and accessible from all abutting rights-of-way.
 4. Small neighborhood-serving parks less than one-quarter acre must be located a minimum 500 feet from Montague Expressway, the Great Mall Parkway, or any rail line.
 5. Seating shall be provided in all publicly-accessible open spaces. Seating may include both moveable and fixed seating as well as seat walls, steps, boulders, and other multi-use objects and must be placed along pathways and within or near gathering spaces.
- J. Common and Private Open Spaces.
1. Private open spaces may take the form of balconies, patios, gardens, porches, decks, or roof decks.
 2. Usable open space surfaces may be any combination of lawn, garden, flagstone, wood planking, concrete, or other dust-free surfacing, and may not exceed 10 percent slope.
 2. Universal access shall be provided to all rooftop amenities. An accessible path to a publicly accessible restroom on an adjacent floor or at the rooftop level shall be provided for any common outdoor open space on the rooftop.
 3. A minimum of 10 percent of common rooftop open spaces shall be landscaped using green roofs or planters.
- K. Parking Design. Where parking is required or proposed, it must comply with the following:
1. Parking location. Off-street parking must be located in:
 - a. Ground-floor “tuck-under” individually secured garages;
 - b. Shared garages (podium or underground); or
 - c. Above-ground structures “wrapped” with habitable uses.
 2. Tandem Parking. Tandem parking may be provided in accordance with the following:
 - a. No more than two vehicles may be placed one behind the other.
 - b. Both spaces shall be assigned to a single dwelling unit or to employees of the same non-residential establishment.
 - c. Each tandem parking bay must be a minimum 40 feet in length by 10 feet in width.
 3. Ground-level visibility.
 - a. Individually secured garages. Individually secured garages shall be accessed from a shared rear or side drive aisle where such abuts the property. Where individual garages are accessed from the right-of-way, garages shall occupy no more than 50 percent of the frontage of each unit.

Figure 9.06-2: Individual Garages



- b. Structured parking. Structured parking may not be located along the ground-level building frontage unless the parking is:
 - i. Recessed a minimum of four feet from the rest of the building façade and screened with a living wall or textured or decorative screening; or
 - ii. Designed such that the parking area is located in a basement, where the vertical distance from grade to the finished floor directly above the parking area is a maximum of 42 inches.

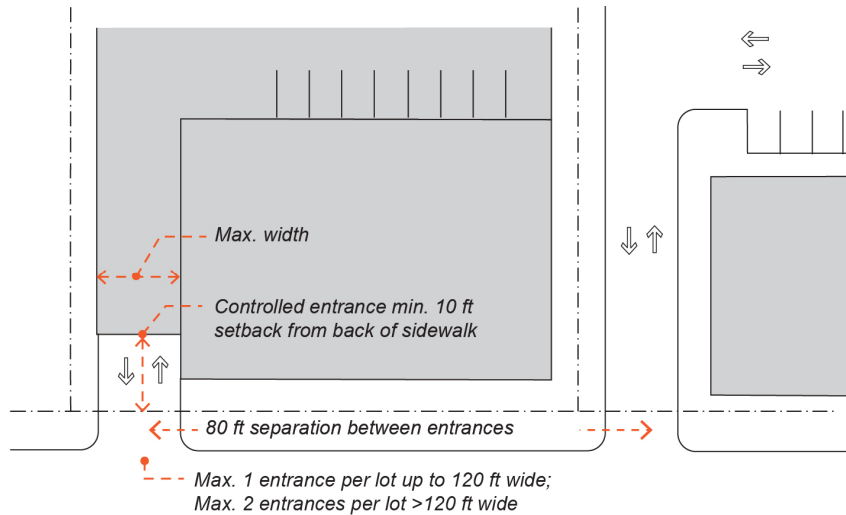
Figure 9.06-3: Structured Parking Ground Level



4. Upper-level visibility. All upper-level street-facing structured parking must be screened from view from the right-of-way by at least one of the following features:
 - a. Regular openings designed to resemble windows of habitable spaces that do not reflect the sloping floor lines of interior parking ramps on the facade;
 - b. A trellis or living wall; or
 - c. Textured or decorative screening.
5. Vehicle access. Parking must comply with the following standards:
 - a. A maximum of one driveway to shared parking is permitted on street frontages up to 120 feet in length; a maximum of two shared driveways are permitted on street frontages exceeding 120 feet in length.

- b. Controlled entrances to shared parking facilities (i.e., gates, doors, etc.) shall be located a minimum of 10 feet from the back of sidewalk.
- c. Vehicular entrances to parking areas shall be a minimum of 80 horizontal feet from vehicular entrances to parking areas on adjacent properties.
- d. Mechanical parking lifts are allowed in all structured parking configurations.

Figure 9.06-4: Parking Access



- 6. **Parking separation.** Parking for residential units shall be physically separated from parking for non-residential uses through a controlled fence, gate, or other barrier.
- L. Pedestrian and Bicycle Circulation.**
- 1. A system of pedestrian walkways shall connect all primary buildings entrances on a site to each other, to on-site automobile and bicycle parking areas, and to any on-site open space areas, pedestrian amenities, and transit stops.
 - 2. Walkways shall be the shortest practical distance between the primary building entrance and sidewalk, generally no more than 125 percent of the straight-line distance.
 - 3. Walkways must link the entrances with on-site open spaces, on-site services, and other internal facilities.
 - 4. Walkways shall be a minimum of five feet wide, hard-surfaced, and paved with permeable materials.
 - 5. Where a required walkway crosses a driveway, parking area, or loading area, it must be clearly identifiable through a raised crosswalk, a different paving material, or similar method.
 - 6. Where a required walkway is parallel and adjacent to a vehicle travel area, it must be raised or separated from the vehicle travel lane by a raised curb at least four inches high, bollards, or other physical barrier.
- M. Utilities.**
- 1. Utilities shall be placed in underground or subsurface conduits.
 - 2. All mechanical equipment, ground transformers and meters shall be located and screened to minimize visual impacts.

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3. Rooftop mechanical equipment shall be concealed from street level views through roof designs that area architecturally integrated with the building, such as equipment wells and parapets.
4. Public utility distribution meters, vaults and similar installations shall be consolidated in a single area whenever possible and located away from highly visible areas such as street corners and public open spaces.
5. Backflow preventors shall be located within landscaped setback areas and painted black or dark green to minimize visual impact. Where no landscaped setback areas exist the backflow preventors shall be incorporated into the front of the building to minimize visual obtrusiveness.
6. Refuse and recycling containers shall not be visible from a public or private street. Such containers shall be stored either within the parking facility of the building or within a vehicular accessway with screening designed to meet the requirements of this section.
7. Trash enclosure walls shall incorporate building materials and colors that match the architecture of the building and be well landscaped.
8. All telecommunications antennas shall be building facade or roof mounted and screened appropriately.
9. On Main Street only telecommunication facilities that are disguised to appear as a part of the building architecture (i.e., "stealth" antennas) may be used.

XI-10-9.07 Affordable Housing

Affordable housing units should be provided in all new housing projects consistent with Title XII, Chapter 1 (Affordable Housing Ordinance).

XI-10-9.08 Exceptions to Standards

1. Exceptions to all but the use, floor area ratio, density, and park land requirement regulations of this Section may be approved by the Planning Commission through approval of a Conditional Use Permit in accordance with the requirements of Section 57, Conditional Uses Permitted by Commission, of this Chapter.
2. In addition to the required findings under Chapter 57, the Planning Commission must be able to make the following two additional findings for such exceptions:
 - a. The exceptions meet the design intent identified within the Zoning District and/or Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development.
 - b. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.
 - c. The project design in its totality does not adversely impact adjoining properties to a greater degree than a project that complies with all development standards. Impacts to be considered include: access to sunlight, views, shadows on parks and open space, privacy, and noise.

Section 53 Off-Street Parking Regulations¹

XI-10-53.01 Purpose and Intent

The following off-street parking requirements are regulations which are established in order to achieve, among others, the following purposes:

1. To establish minimum requirements for the off-street parking of motor vehicles in accordance with the use established on the property;
2. To relieve congestion on streets, and to provide more fully for movement of traffic, maneuvering of emergency vehicles or street maintenance equipment;
3. To protect neighborhoods from vehicular traffic congestion generated by the adjacent nonresidential uses of land; and
4. To promote the general welfare and convenience and prosperity of residential, commercial and manufacturing developments which depend upon the availability of off-street parking facilities.

(Ord. No. 38.785, § 7, 4-7-09)

XI-10-53.03 Applicability

Off-street parking spaces shall be provided in accordance with the schedule in Table 53.09-~~31~~, Number of Parking Spaces Required, of this Section and improved as per Section 54.03 as a condition precedent to the occupancy of an institutional, commercial or manufacturing use and in conformance with other provisions of this Chapter:

1. Whenever a building is constructed; or
2. Whenever an existing building or use is altered, resulting in an increase in floor area, seating capacity or other units of measurement specified herein for required parking or loading facilities; or
3. Whenever the use of an existing building is changed to a use requiring fifty percent (50%) or more off-street parking spaces, as determined by the provisions of Table 53.09-~~31~~, Number of Parking Spaces Required, of this Section.

(Ord. No. 38.785, § 7, 4-7-09)

¹Editor's note(s)—Ord. No. 38.785, § 7, adopted April 7, 2009, amended the Code by repealing former Section 53, §§ XI-10-53.01—XI-10-53.23, and adding a new Section 53. Former Section 53 pertained to similar subject matter, and derived from Ord. 38, adopted March 15, 1955; Ord. 38.384, adopted October 26, 1976; Ord. 38.530, adopted July 21, 1981; Ord. 38.546, adopted May, 1982; Ord. 38.665, adopted October 29, 1991; Ord. 38.675, October 20, 1992; Ord. 38.702, adopted August 15, 1995; Ord. 38.708, adopted August 6, 1996; Ord. 38.716, adopted September 15, 1998; Ord. 38.759, adopted April 2, 2002; Ord. 38.760, adopted September 17, 2002; Ord. 38.761, adopted May 20, 2003; Ord. 38.763, adopted April 20, 2004; and Ord. 38.776, adopted March 18, 2008.

XI-10-53.05 Maintenance of Off-Street Parking

- A. Continuation of Off-Street Parking. All off-street parking spaces shall continue unobstructed in operation, shall not be used for vehicle repair work of any kind unless within a building, and shall not be reduced below the required size as long as the primary use remains, unless an equivalent number of spaces is provided for said use in another approved location. This does not apply to those parking spaces which are established on a voluntary basis which are in excess of the requirements of this Chapter.
- B. Temporary Sales, Storage and Advertising. The sale or storage of merchandise in permissive parking areas may be allowed by the Zoning Administrator through the approval of a Minor Site Development Permit and subject to such reasonable conditions as may be deemed necessary by the Planning Commission to ensure adequate parking, access and circulation.

In no event shall any off-street parking space (permissive or otherwise) or lot be used for the stopping, standing or parking of any vehicle(s) for either the purpose of selling such vehicle (excluding an approved car sales lot), or advertising any other property, services or products on said vehicle.
- C. Maintenance. All parking areas shall be kept clean and free of dirt, oil, mud or trash; pavement and striping shall be maintained in a continuous state of good repair.
- D. Acknowledgment of Parking Spaces in Residential Projects. For new residential tract, multi-family or condominium projects, the amount and type of parking available to each dwelling unit shall be clearly stated within the CC&Rs in large font and bold lettering to the approval of the City Attorney or designee.

(Ord. No. 38.834 , § 8, 8/20/19; Ord. No. 38.785, § 7, 4-7-09)

XI-10-53.07 Types of Parking Allowed

- A. Standard Parking Spaces. The number of parking spaces required for various land uses shall be as required in Table 53.09-34, Number of Parking Spaces Required. Parking spaces shall be designed as required in Subsection 53.13, Design Standards for Off-Street Parking Facilities, of this Chapter.
- B. Compact Parking Spaces. For parking areas and garages containing ten (10) or more stalls serving the following uses in Subsection 53.07(B)(1), up to forty percent (40%) of the required and non-required stalls may be designed as compact stalls to accommodate compact cars.
 - 1. Applicable uses.
 - a. Commercial uses (CO, C1, C2, HS, TC zones).
 - i. Standards. Compact stalls shall be dispersed throughout the parking lot.
 - b. Industrial uses.
 - i. Research and Development (R and D) facilities.
 - ii. Manufacturing facilities.
 - iii. Warehouse/distribution facilities.
 - iv. Other industrial uses deemed appropriate by the Planning Commission.
 - c. Multi-Family Residential uses.
 - i. Projects within R3, R4, and R5 zones.
 - 2. Design Standards. See Subsection 53.13, Design Standards for Off-Street Parking Facilities, of this Section.

- C. Disabled Accessible Parking Spaces. Parking spaces for the disabled shall comply in all respects with the requirements of the California Code of Regulations (State Building Code) or Federal law, where such prevails over State law.
- D. Tandem Parking Spaces.
 - 1. Applicability. Tandem parking may be allowed with the approval of a Conditional Use Permit, in accordance with Section 57.04, Conditional Use Permits, of this Chapter.
 - 2. Standards.
 - a. Maximum allowed.
 - i. A maximum of seventy-five percent (75%) of parking required for residential uses may be tandem parking in projects with open structured parking facilities (e.g. single level or multi-level parking structures).
 - ii. A maximum of fifty percent (50%) of parking required for residential uses may be tandem parking in projects with private individual garages.
 - b. Tandem parking spaces shall be a maximum of two (2) parking spaces deep.
 - c. When tandem parking spaces are used in private garages or other parking facilities with more than two (2) parking spaces, they shall be assigned and marked for resident use.
- E. Bicycle or Motorcycle Parking Spaces. The number of parking spaces required for various land uses shall be as required in Table 53.09-34, Number of Parking Spaces Required. Parking spaces shall be designed as required in Subsection 53.13, Design Standards for Off-Street Parking Facilities, of this Chapter.

(Ord. No. 38.785, § 7, 4-7-09)

XI-10-53.09 Off-Street Parking Required by Land Use

- A. Enforcement and Interpretation of Parking Requirements.
 - 1. Number of Off-Street Parking Spaces Required. The number of off-street parking spaces required for the land uses identified in the Permitted and Conditional Use Tables of this Chapter are listed in Table 53.09-34, Number of Parking Spaces Required, except where parking requirements are established in Section 13, Special Uses, of this Chapter, or exceptions to these requirements are granted in accordance with this Section.
 - 2. Uses not specified. In the case of a use not specifically mentioned in Table 53.09-34, Number of Parking Spaces Required, or elsewhere in this Chapter, the requirements for off-street parking facilities shall be determined by the Planning Commission through the Interpretation process, in accordance with Section 61, Interpretation, of this Chapter, based on uses which create similar demands for off-street parking spaces. The Planning Commission may draw upon the experience of other local cities to make their decision.
 - 3. New Buildings Without Tenants. If the type of tenants that will occupy a nonresidential building, or the nonresidential portion of a mixed-use building, is not known at the time the new building is being proposed, the number of parking spaces required for the nonresidential uses will be determined through the discretionary review process.
 - 4. Mixed occupancies and uses. When two or more uses are located in the same lot or parcel of land or within the same building, the number of off-street parking spaces required shall be the sum total of the requirements of the various individual uses computed separately in accordance with the provisions of this Section and Section 13, Special Uses, when applicable.

Exception: For alternative parking computation in accordance with Subsection 53.11, Shared Parking, of this Chapter.

5. Measurement Standards and Definitions. For the purpose of determining off-street parking requirements, the following definitions and standards shall apply:
 - a. Gross Floor Area: The total of all the floors measured from the interior faces of the building, and outdoor areas used for retail purposes.
 - b. Net Floor Area (NFA): Net Floor Area shall mean the Gross Floor Areas less twenty percent (20%).
 - c. Seat: The number of seating units installed or indicated, or each twenty-four (24) lineal inches of benches, pews, or space for loose chairs. For places of meeting or assembly that do not include fixed seating, seven (7) square feet shall equal one (1) seat.
 - d. Employees/students: The maximum number of employees/students on the principal shift or period.
 - e. Fractional Measurements: When units or measurements determining the number of required off-street parking spaces result in a requirement of fractional space, any fraction up to and including (.49) shall be rounded down to the nearest whole number and fractions including and over (.50) shall be rounded up to the nearest whole number. For example, 7.41 would be rounded to 7 and 7.61 would be rounded to 8.
 6. More than One Parking Ratio. Where more than one (1) parking ratio is shown for a particular use, the required number of spaces shall be the total of all ratios shown. For example, the parking requirement for hotel is "1 per unit, 2 for the manager's unit." The total parking requirement for a hotel is the sum of the required parking for the units and two (2) spaces for the manager's unit.
 - B. Permissive Parking Facilities. Nothing in this Section shall prevent the voluntary establishment of off-street parking facilities in excess of the requirements of this Section to serve any existing use of land or buildings, provided that all regulations herein governing the location, size and access design, improvement and operation of such facilities are adhered to.
- ~~Exception: The Transit Area Specific Plan has a standard for the maximum number of parking allowed.~~
- C. Number of Parking Spaces Required. The number of off-street parking spaces required for various land uses shall be as listed in Table 53.09-~~31~~, Number of Parking Spaces Required, except for those listed specifically elsewhere in this Chapter. Unless otherwise indicated, the parking requirements are for square feet of gross floor area occupied by the use and, in the case of nonresidential uses, include the parking required for customers and employees.

Exceptions:

1. ~~Exception:~~ Where a portion of a structure is used for automobile parking, that portion shall not be counted in calculating the required parking for the structure. If parking is eliminated and the space is occupied by another use, parking shall be required for the use as indicated for the use in this Chapter.
2. Metro Specific Plan Area. Off-street parking requirements and bicycle parking requirements for all uses in the Metro Specific Plan area are as follows:

Table 53.09-1
Vehicle Parking Requirements in the Metro Zones

<u>Use</u>	<u>Minimum</u>	<u>Maximum¹</u>
<u>Residential and lodging uses</u>	<u>None</u>	<u>1.5 spaces per unit</u>
<u>Industrial uses</u>	<u>None</u>	<u>2 spaces per 1,000 square feet</u>
<u>All other non-residential uses</u>	<u>None</u>	<u>1 space per 1,000 square feet</u>

¹ Valet, tandem spaces, and mechanical lift stalls are counted as individual spaces.

Table 53.09-2
Bicycle Parking Requirements in the Metro Zones

Use	Minimum, Long-Term Spaces	Minimum, Short-Term Spaces
Multi-family residential uses	0.5 spaces per bedroom	0.1 spaces per bedroom
Retail uses	1 space per 10,000 square feet	1 space per 5,000 square feet
Offices, Business and Professional	1.5 spaces per 10,000 square feet	1 space per 20,000 square feet
All other uses	None	None

Table 53.09-3
Number of Parking Spaces Required

Use	Minimum Parking Spaces Required
A. Commercial Uses	
Business Support Services	1 per 350 sq. ft.
Furniture and appliance stores and other bulky item retail; Furniture Repair and Reupholstery	1 per 350 sq. ft.
General Retail, <u>Grocery</u> and Convenience uses <u>Stores</u> ; Check Cashing	1 per 200 sq. ft.
Mortuary, funeral parlor	1 per 4 seats and 1 per employee
Personal Services	1 per 200 sq. ft.
Plant nursery	1 per 200 sq. ft.
Repair and Cleaning, Small Items	1 per 200 sq. ft.
B. Entertainment and Recreation	
Arcade and amusement	1 per 200 sq. ft.
Billiards	1 per 200 sq. ft.
Bowling Alleys including incidental accessory uses (eating and drinking, billiards, etc.)	6 per alley or lane
Clubs and Lodges	1 per 200 sq. ft.
Commercial Athletic Facility (indoor)	1 per 150 sq. ft.
With outdoor or indoor sports courts	
Small courts (tennis, badminton)	2 per court plus required parking for other uses on site.
Large courts (basketball, volleyball)	5 per court plus required parking for other uses on site.
Golf Course	6 per hole plus parking for ancillary uses
Miniature Golf	1.25 per tee, plus 1 per employee
Motion Picture Theater (indoor)	1 per 3.5 seats
Nightclub	1 per 30 sq. ft.
C. Health and Veterinarian Uses	
Convalescent Homes	1 per 2 beds or 1 per 1,000 sq. ft, whichever is greater
Hospital	1 per bed or 1 per 220 sq. ft., whichever is greater
Kennel, indoor	1 per 1,000
Massage Establishments	Two per treatment room or if no treatment room, one per 2 chairs or 2 tables
Medical and dental Clinic and Office	1 per 225 sq. ft.
Veterinary Clinic and Animal Grooming	1 per 250 sq. ft.

D. Industrial Uses	
<u>Custom and artisan manufacturing, Contractor's shop</u>	<u>1 per 500 sq. ft</u>
Distribution Manufacturing Processing/Plant (Dry-cleaning plant, photo finishing/printing, etc.) Warehousing, <u>General</u>	1 per 1,500 sq. ft.
Mini Storage	1 per 5,000 sq. ft., plus 1 per resident manager
<u>Parcel hub</u>	<u>1 per 2,000 sq ft plus 1 truck parking space for each delivery vehicle on-site during the peak time</u>
Wholesale <u>Sales</u>	1 per 500 sq. ft.
Research and Development Medical Laboratories Soils and Materials Testing Laboratories High employee demand uses	1 per 300 sq. ft.
Office space within an industrial building (to be combined with categories above)	1 per 350 sq. ft.
E. Lodging	
Extended Stay Hotels	0.7 per guest room or unit ⁵
Hotels	0.7 per guest room ⁵
Motels	0.7 per guest room ⁵
F. Professional Offices, Financial Institutions and Related Uses	
Automated Teller Machine (free standing)	2 per machine
Financial institutions (banks, savings and loans, etc.)	1 per 180 sq. ft.
Offices, business and professional	1 per 240 sq. ft.
G. Public, Quasi-Public and Assembly Uses	
Adult Day Care	1 per 500 sq. ft.
Auditoriums and theaters and places of meeting and assembly	1 per 4 seats
<i>Child Care Uses^{2, 3}:</i>	
Day Care School	1 per classroom or 1 per 500 sq. ft., whichever is greater.
Small family child care home	Same as required for underlying residential use
Large Family Child Care Home and Child Care Centers	1 per 1.5 employees
Community Center	1 per 4 fixed seats, or 1 per 6 linear feet of seating, plus 1 per 200 square feet of area without seating but designed for meeting or assembly by guests, plus 1 per 500 sq. ft. of outdoor area developed for recreational purposes
<u>Community Garden</u>	<u>Determined by Planning Director</u>
Museums	1 per 400 sq. ft.
Public Utilities	1 per 400 sq. ft.
Religious Institutions	1 per 5 seats in the main area of assembly plus parking for classrooms and offices in this table. Where there are no seats, then 1 seat equals 7 sq. ft.
<i>Educational Institutions:</i>	
School-elementary (K-8 Private)	1 per classroom, plus 1 per 240 sq. ft. of office
School-secondary (9-12 Private)	1 per classroom, plus 1 per 240 sq. ft. of office, plus 1 per 5 students

Vocational School, including business, professional, technical and trade	1 per 200 sq. ft.
Instructional Studios (Dance, Yoga)	1 per 150 sq. ft.
Private instruction, personal enrichment (tutoring)	1 per instructional area or classroom, whichever is greater. No fewer than 3 spaces.
Stadiums and arenas	1 per 4 seats
H. Restaurants or Food Service	
Banquet facilities	See restaurants below
Bars, Drinking Establishments	1 per 30 sq. ft.
Catering and Commissary	1 per 300 sq. ft. floor area
Drive thru	See "Vehicle Related Uses" section.
<i>Restaurants:</i>	
Sit down:	
Indoor and outdoor:	1 per 39 square feet of dining area.
Take out:	1 per 2.5 seats (indoor/outdoor) plus 1 per 60 sq. ft. GFA for the ordering or take out area.
Mobile food parks	1 per 2.5 seats provide for on-site dining, plus 1 per 60 sq. ft. of lot area dedicated to mobile food vending.
I. Residential Uses	
Single Family and Duplexes:	
3 bedrooms or fewer	2 per unit ⁴
4 or more bedrooms	3 per unit, plus 1 per each additional bedroom ⁴
Multi-Family (R3—R5 zones):	
Studio	1 covered per unit
1 bedroom	1.5 covered per unit
2—3 bedrooms	2 covered per unit
4 or more bedrooms	3 per unit, plus 1 additional space for each additional bedroom (at least two covered). ⁴
Guest parking	
Projects with Parking structures	15% of the total required, may be uncovered
Projects with Private garages	20% of the total required, may be uncovered
Bicycle parking	5% of the total required
Boarding houses, dormitories, sororities and fraternities, <u>group living accommodations</u>	1 per each room rented
Live-Work Units	Single family and duplexes parking requirements shall apply, plus 1.5 for the commercial component
<i>Mixed Use buildings or sites</i>	
Residential use	
Studio	1 covered per unit
1 bedroom	1.5 covered per unit
2—3 bedrooms	2 covered per unit
4 or more bedrooms	3 per unit, plus 1 additional space for each additional bedroom (at least two covered). ⁴
Guest parking	
Projects with Parking structures	15% of the total required, may be uncovered
Projects with Private garages	20% of the total required, may be uncovered
Bicycle parking	5% of total required

Commercial use	
Ground Floor Retail	1 per 250 sq. ft.
Office	If building is 1,000 sq. ft. or smaller: 1 per 250 sq. ft. If building is larger than 1,000 sq. ft.: 3.3 per 1,000 sq. ft.
Short-Term Rentals	1 per unit
Other uses	Refer to specific uses within this table
Bicycle parking	5% of total required
Mobile Homes	Refer to Section 13.07, Mobile Homes
Residential Care Facility	<u>1 for every three beds</u>
Senior Housing	1 per unit plus 2 per manager's unit
Single Room Occupancy (SRO)	1 per unit
J. Vehicle Related Uses	
Auto rental agency	1 per 400 sq. ft. plus 1 per rental vehicle
Auto repair (tire, oil change, smog check, etc.)	3 per service bay
Car Wash	1 per 200 sq. ft. of building area and reservoir space outside of building equal to two (2) times the maximum capacity of facility
<i>Gas & Service Stations:</i>	
With Retail	1 per 200 sq. ft.
With Auto Repair	3 per service bay
<i>Auto dealerships:</i>	
Sale or lease of vehicle	1 per 200 sq. ft. of showroom
Office	1 per 200 sq. ft.
With Service Bays	3 per service bay
Window service or drive-thru in conjunction with any other use	The required parking for primary use (restaurant, or other use providing window service) plus queuing of 5 vehicles which do not interfere with any on-site parking spaces

¹ Refer to Subsection 2.03, Definitions, of this Chapter for a full description of "Commercial Services."

² For loading and unloading: One (1) parking space per six (6) children up to five (5) spaces and thereafter one (1) space per ten (10) children. Driveways, garage aprons and street frontage may be counted if appropriate permits are first received when calculating spaces for child care homes. Tandem spaces are prohibited.

³ Exceptions for Child Care Requirements: The parking and loading/unloading requirements for child care facilities may in the Planning Commission's discretion be reduced, based on an empirical study (provided by the applicant) which establishes no adverse effects will occur as a result. The required number of loading/unloading spaces may be reduced without a study by one (1) space for each employee permanently assigned to load and unload children from vehicles.

⁴ Applicable to new and existing projects being remodeled resulting in additional bedrooms submitted for approval after April 7, 2009. Existing projects or projects either entitled or submitted active planning applications prior to April 7, 2009 shall use the parking regulations in effect at the time of entitlement or application submittal. For R4, R5, MXD/MXD2/MXD3 zones, 15% guest parking is legal and conforming for projects entitled or active planning applications submitted prior to April 7, 2009.

⁵ Refer to Subsection XI-10-53.15, Parking Standards for Hotels and Motels, of this Chapter for allowed reductions to minimum parking requirements.

(Ord. No. 38.848 , § 9, 11/15/22; Ord. No. 38.845 , § 13, 6/21/22; Ord. No. 38.841 , § 5, 5/4/21; Ord. No. 38.835 , § 8, 3/3/20; Ord. No. 38.839 , § 14, 12/3/19; Ord. No. 38.808, § 5, 5/21/13; Ord. No. 38.785, § 7, 4/7/09)

XI-10-53.11 Shared Parking

- A. Purpose and Intent. Dedicated parking areas for individual uses, especially when provided in new developments, can result in less efficient land usage, lower floor area ratios, and more environmental/water quality impacts.

Shared parking is typically applied when land uses have different parking demand patterns and are able to use the same parking spaces/areas throughout the day. Shared parking is most effective when these land uses have significantly different peak parking characteristics that vary by time of day, day of week, and/or season of the year. In these situations, shared parking strategies will result in fewer total parking spaces needed when compared to the total number of spaces needed for each land use or business separately.

- B. Applicability. Shared parking may be applied in the following situations:
1. In mixed-use developments, which include one or more businesses that are complementary, ancillary, or support other activities. A typical mix of uses includes, but is not limited to: residential, office, restaurants, retail, colleges, churches, cinemas, and special event situations if they can demonstrate that demand patterns vary among uses.
 2. In shopping centers, when more than twenty percent (20%) of gross leasable area is occupied by dining and entertainment uses, (not including pad restaurants, unless they are located within 300 feet of the main shopping center building) shared parking may be applied.
- C. Required Review. Shared parking proposals may be allowed with the approval of a Conditional Use Permit, in accordance with Subsection 57.04, Conditional Use Permits, of this Chapter.
- D. Calculation of Parking Spaces Required with Shared Parking. The minimum number of parking spaces for a mixed use development or where shared parking strategies are proposed shall be determined by a study prepared following the procedures of the Urban Land Institute Shared Parking Report, ITE Shared Parking Guidelines, or other approved procedures. A formal study may be waived for small developments where there is established experience with the land use mix and its impact is expected to be minimal. The actual number of parking spaces required shall be based on well-recognized sources of parking data such as the ULI or ITE reports. If standard rates are not available or limited, the applicant may collect data at similar sites to establish local parking demand rates. If the shared parking plan assumes use of an existing parking facility, then field surveys may be conducted to determine actual parking accumulation. If possible, these surveys should consider the seasonal peak period for the combination of land uses involved.
- E. Location of Shared Parking Spaces. Shared spaces shall be located within three hundred (300) feet of the use entrances they serve. Up to fifty percent (50%) of nonresidential spaces may be provided at greater distances if dedicated shuttle bus or van service is provided. Clear, safe pedestrian connections must be provided.
- F. Captive Market Parking Requirements. For uses that are considered ancillary to a larger business, no additional parking may be required. Examples of this case include a coffee or snack shop within an office or hotel development, a copy/package store within a business park or redevelopment of small retail uses in a large business district. Parking requirements for similar ancillary uses may be reduced to account for the likely cross patronage among the adjacent uses located within a maximum walking distance of three hundred (300) feet. Parking requirements may be reduced up to ninety percent (90%) as appropriate.
- G. Agreement Between Sharing Property Owners. If a parking facility is to serve two (2) or more separate properties, a legal agreement between property owners guaranteeing access to, use of, and management of designated spaces shall be executed to the satisfaction of the City.
- H. Shared Parking Plan. A shared parking plan shall be submitted to the Planning Division with the following information:

1. Site plan and required parking calculations of parking spaces intended for shared parking and their proximity to land uses that they will serve.
2. A signage plan that directs drivers to the most convenient parking areas for each particular use or group of uses (if such distinctions can be made).
3. A pedestrian circulation plan that shows connections and walkways between parking areas and land uses. These paths should be as direct and short as possible.

(Ord. No. 38.785, § 7, 4-7-09)

XI-10-53.13 Design Standards

A. Location of Parking.

1. Location of Parking in Relationship to a Use.
 - a. Residential Uses: Parking required for all residential uses shall conform with all of the following: (i) be located within the same project site as the use; (ii) be less than 300 feet away from the residential unit it serves; and (iii) shall not be located on any public street, public right-of-way or in any other public area.
 - b. Commercial Services and Retail Stores in the Transit or Midtown Specific Plan Areas: Commercial service and retail uses may meet its parking requirements with on-street parking if the project satisfies all of the following conditions: (i) the project site is located within the Transit or Midtown Specific Plan Areas; (ii) the on-street parking space is located along the project site frontage directly serving and adjacent to the use; (iii) no more than 50 percent of the required parking spaces shall be allocated on-street unless the commercial or retail use requires ten or less parking spaces; (iv) the on-street parking space is located less than 300 feet away from the use it serves; and (v) the on-street parking space shall be designated as limited time parking in accordance with the California Vehicle Code.
 - c. Other Uses: Required parking for all other uses shall conform with all of the following: (i) be located within the same project site as the use; (ii) be less than 300 feet away from the use for which the parking is required, as provided for in Table 53.09-34 Number of Parking Spaces Required or Section 13, Special Uses, of this Chapter; and, (iii) shall not be located on any public street, public right-of-way or in any other public area.
2. Location of Residential Parking, Permitted. Vehicles on private property used for residential purposes shall be parked only in paved parking spaces or in driveways which comply with the following standards:
 - a. The driveway provides access to required parking spaces; and
 - b. The vehicle is not blocking access to parking for other residential units.
3. Each automobile parking stall shall be so located that no automobile is required to back onto any public street or sidewalk to leave the parking stall, parking bay or driveway except from a lot in an "R2" or more restrictive zone containing not more than two (2) dwelling units.
4. Parking Location for R5, MXD2 and MXD3 projects.
 - a. No parking spaces area allowed within the front or street side setback areas.
 - b. Parking must be located behind buildings to minimize visibility from public streets.
 - c. At least seventy percent (70%) of the street facing perimeter of above-ground parking shall be wrapped with habitable space.

Exception: Exceptions may be allowed through the approval of a Conditional Use Permit, if the design quality of the structure is equivalent to habitable space.

- d. Parking may be partially above grade along the street, provided that no more than four (4) feet of the structure is above grade. The above-grade area must be wrapped with continuous landscaping that screens parking garage openings.
- 5. Parking Structure access for R5, MXD2 and MXD3 projects.
 - a. No more than one curb cut per street frontage is allowed.
 - b. Parking structure entrances shall be no greater than twenty-two (22) feet wide.
 - c. Parking structure access points shall be set back from the curb so that a car can pull up to the entry gate or ticket machine without blocking the sidewalk.
- B. Parking Space Size.
 - 1. Individual garage.
 - a. Each parking space with a minimum width of ten (10) feet and a minimum length of twenty (20) feet shall be required in residential garages meeting both of the following criteria:
 - i. The individual garage contains four (4) or fewer parking spaces;
 - ii. The individual garage does not include circulation elements such as driveway aisles, but consists primarily of parking spaces.
 - 2. Compact Spaces
 - a. Each stall shall be legibly marked "compact stall" or "small car" on the stall surface. Compact stalls may be used only for the above-listed buildings and uses and only within the Industrial zoning district.
 - b. Parking stalls shall be dispersed throughout the parking lot and not concentrated to discourage oversized vehicles from using the stalls.
 - 3. Tandem Spaces
 - a. Each residential garage tandem (two parking spaces) shall have a minimum width of ten (10) feet and a minimum length of thirty-eight (38) feet.
 - 4. Bicycle or Motorcycle Spaces. Any existing or proposed parking facility may utilize, on a substitution basis, on-site parking spaces for bicycle or motorcycle spaces.
 - a. Said bicycle spaces shall be raised a minimum of six (6) inches from grade of the adjacent parking facility.
 - b. One parking space may be omitted for each eight (8) bicycle spaces provided.
 - c. One parking space may be omitted for each two (2) motorcycle spaces provided.
 - d. Bicycle spaces shall measure at least two (2) feet by seven (7) feet and shall be located in groups of four (4) and shall be of the following three types:
 - i. A rack which secures the frame, or
 - ii. An enclosed bike locker, or
 - iii. A fenced, covered, locked or guarded bike storage area.
 - e. Motorcycle spaces shall measure four (4) feet by eight (8) feet and shall be provided with adequate unobstructed maneuvering areas to permit easy access to the space.

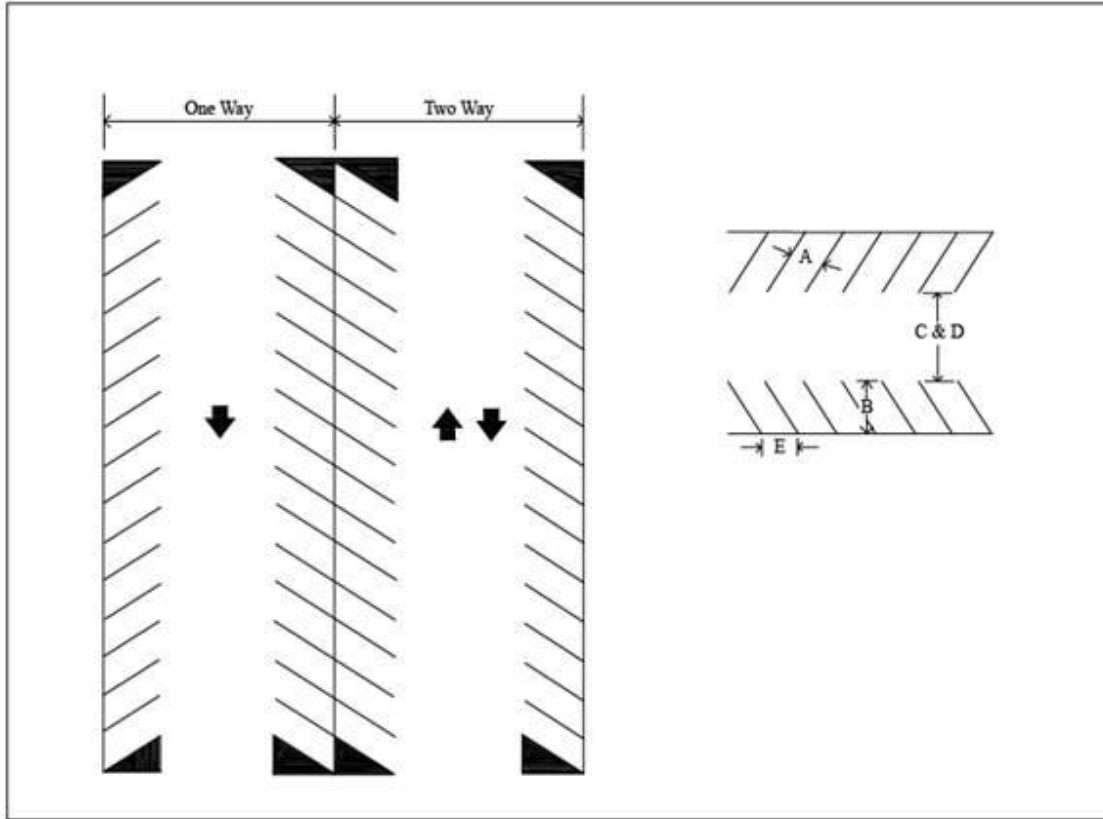
- f. In no instance shall credit for motorcycle or bicycle parking or combination thereof exceed five percent (5%) of the total required parking spaces.
- C. Required Improvements. All parking areas and access driveways shall have a smoothly graded, stabilized and dustless surface with adequate drainage so that injury will not be caused to adjacent properties. Bumper guards or curbs shall be provided in order to define parking spaces or limits of paved areas.
- Also refer to Section 54.03 of this Chapter for Improvement of Parking Areas.
- D. Screening and Landscaping. All open automobile parking areas which abut upon a public street right-of-way shall provide landscaping to a depth of at least ten (10) feet of said street right-of-way and of any adopted plan line, with openings for walkway or drive purposes. Each landscaped planter in said parking facility shall be contained with a six (6) inch raised concrete curb (extruded curbing not permitted). Installation of an irrigation system shall be provided for in each planter area.
- E. Lighting. All lights used to illuminate a parking area shall be designed, located and arranged so as to reflect the light away from any street and any adjacent premises.
- F. Signs. Directional signs are permitted in parking areas in accordance with the adopted Sign Ordinance.
- G. Fencing. A solid masonry wall a minimum height of six (6) feet shall be required on all common property lines when any parking area is established abutting residentially zoned property or property shown on the adopted General Plan as being Residential. The architectural design of said wall shall be to the approval of the Planning Commission through the Site Development Permit process in accordance with Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.
- H. Angles and Dimensions
- Vehicle Overhang. Vehicles may overhang two (2) feet into any landscape area or private walkway if the walkway is a minimum six (6) feet in width, but in no event shall the overhang be permitted within any public right-of-way.
 - Stall and drive aisle dimensions. The stall and drive aisle dimensions shall be as follows:

Table 53.13-1
Parking Stall and Drive Aisle Dimensions

Angle	A ¹ Stall Width	B ¹ Stall Depth	C ¹ Aisle Width 1 Way	D ¹ Aisle Width 2 Way	E ¹ Curb Length per Car
Standard size:					
0°	9'	9'	12'	16'	22'
45°	9'	19.5'	12'	22'	12'
60°	9'	21'	18'	22'	10.5'
90°	9'	18'	24'	24'	9'
Compact size: [See Subsection 53.07(B)]					
0°	7.5'	7.5'	12'	15'	17'
45°	7.5'	16'	13'	20'	8.5'
60°	7.5'	17'	15'	20'	8.5'
90°	7.5'	15'	20'	20'	7.5'

¹ Reference to Figure 53.13-1, Parking Stall and Drive Aisle Dimensions

Figure 53.13-1
Parking Stall and Drive Aisle Dimensions



3. Backing Space in Residential Projects. A minimum unobstructed vehicular maneuvering distance of 25 feet measured from the opening of the garage or carport shall be provided, except as otherwise permitted in this section.
4. Parking Structures. The parking stall and drive aisle dimensions for Parking Structures, as defined in this Chapter, may be modified with the approval of a Conditional Use Permit in accordance with Section 57 of this Chapter.

(Ord. No. 38.815, § 2, 9-2-14; Ord. No. 38.785, § 7, 4-7-09)

XI-10-53.15 Allowed Reductions to Required Parking for Lodging Uses

- A. Allowed Reductions to Minimum Required Parking. The required parking for lodging uses, including hotels, motels, and extended stay hotels, may be reduced by up to 30 percent at the discretion of the decision-making authority based on a demonstrated program to reduce demand for on-site parking and maximize the efficient use of parking areas. A reduction in required parking shall be granted based on a point system as described in Subsection XI-10-53.15.C.
- B. An applicant requesting a reduction to the minimum required parking for a lodging use shall submit a written description of all proposed parking demand reduction and site design measures and a written justification of the anticipated reduction in parking demand that would result from implementation of such measures.
- C. Point System for Calculation of Parking Reduction. The decision-making authority may grant a reduction in the required number of parking spaces for lodging uses, as outlined in Table 53.15-1, according to the total number of points scored for implementation of parking demand reduction and site design measures.

Table 53.15-1
Point System for Parking Reduction for Lodging Uses

Total Points	Allowed Parking Reduction
60 points or more	30 percent
40 points or more	20 percent
20 points or more	10 percent

1. Parking Reduction for Lodging Near Fixed Guideway Transit. A parking reduction may be granted for a lodging establishment within one-half (0.5) mile of a fixed guideway transit station. Fixed guideway transit means a public transit facility that uses and occupies a separate right-of-way or rail line for the exclusive use of public transit vehicles (15 points).
2. On-Site Parking Demand Reduction and Site Design Measures for Lodging Uses. Any combination of the following measures may be incorporated into the site plan and operational plan for a hotel, motel, or extended stay hotel to support a reduction in the minimum required on-site parking:
 - a. Shared parking agreement with owners of other property or properties in the vicinity of the lodging establishment pursuant to Subsection XI-10-53.11, Shared Parking, of this Chapter. The shared parking spaces must be located within 0.25 mile of the lodging use (10 points for a number of shared parking spaces totaling between 10 and 20 percent of the base parking space requirement for the lodging use; 15 points for a number of shared parking spaces totaling more than 20 percent of the base parking space requirement for the lodging use).
 - b. Providing free monthly transit passes for employees. To qualify for this measure a lodging use must be located within 0.5 mile of a transit route (bus or rail) with service frequency of every 15 minutes or less between the hours of 7:00 a.m. and 7:00 p.m. (10 points).
 - c. Providing free 24-hour airport guest shuttle service (10 points).
 - d. Providing free guest shuttle service to other key destinations (including but not limited to BART and VTA light rail stations, San Jose Diridon Caltrain Station, Levi's Stadium, and major commercial centers) (5 points for shuttle service serving one or two destinations, 10 points for shuttle service serving three or more destinations).
 - e. Providing free shared cars for guest use with dedicated, permanent on-site parking spaces for the shared cars. To qualify for this measure the lodging use must provide at least one shared car for every 50 guest rooms (when applying this calculation, any fractional number of required shared cars shall be rounded up to the nearest whole number) (10 points).
 - f. Providing on-site, free micromobility devices for guest use. To qualify for this measure the lodging use must provide at least one shared micromobility device for every 50 guest rooms (when applying this calculation, any fractional number of required shared micromobility devices shall be rounded up to the nearest whole number). The operator of the lodging establishment shall obtain approval from the Planning Director or designee for the proposed placement and use of micromobility devices prior to commencing operations. The operator of the lodging establishment shall maintain micromobility devices in good working order at all times (5 points).
 - g. Providing valet parking (on-site or at an off-site shared parking location) (5 points for a number of valet parking spaces totaling between 10 and 20 percent of the base parking space requirement for the lodging use; 10 points for a number of valet parking spaces totaling more than 20 percent of the base parking space requirement for the lodging use).
 - h. Mechanical lifts for vehicles (if provided, lifts must be operated by staff of the lodging establishment) (5 points for a number of mechanical lift spaces totaling between 10 and 20 percent of the base parking space requirement for the lodging use; 10 points for a number of

mechanical lift spaces totaling more than 20 percent of the base parking space requirement for the lodging use).

- i. Charging a daily fee of \$25 or more for on-site parking of guest vehicles (10 points).
- j. Offering prepaid transit cards (Clipper) to guests (5 points).
- k. Featuring public transportation information and links on lodging establishment's website (schedules and route maps for Valley Transportation Authority [VTA] bus and light rail and/or Bay Area Rapid Transit [BART] regional rail) (3 points).
- l. Providing dedicated on-site passenger pickup/dropoff zones (3 points).
- m. Active marketing of guest shuttle services, on-site shared cars, and/or on-site shared micromobility devices, via the lodging establishment's website and other electronic and/or print advertising materials (3 points).
- n. Other measures as preproposed by lodging establishment operator (points to be determined by the decision-making authority based on the potential for parking demand reduction of the proposed measure).

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Section 54 General Provisions

XI-10-54.18 ~~Reserved.~~ 2023-2031 Housing Element Sites

- A. Reused Sites. Reused sites are opportunity and rezone sites listed in the City of Milpitas 2023-2031 Housing Element, Appendix E, Tables E-13 and E-14 that are identified for lower-income housing capacity and as a 5th Cycle Housing Element site. On these reused sites, owner-occupied and rental multi-family housing uses shall be allowed by right (i.e., without any discretionary review) when at least 20 percent of the units will be affordable to lower income households.
- B. Rezone Sites. Rezone sites are listed in the City of Milpitas 2023-2031 Housing Element, Appendix E, Table E-14 that are identified for lower-income housing capacity. On these rezone sites, the following shall apply:
1. Owner-occupied and rental multi-family housing uses shall be allowed by right (i.e., without any discretionary review) when at least 20 percent of the units will be affordable to lower income households.
 2. 100 percent residential use is allowed.
 3. A minimum of 50 percent of the floor area in mixed-use projects must be occupied by residential use.

Editor's note(s)—Ord. No. 38.795, § 35, adopted April 6, 2010, amended the Code by repealing former § XI-10-54.18 in its entirety. Former § XI-10-54.18 pertained to temporary contractor's offices, and derived from Ord. 38.780 (25) (part), adopted August 19, 2008.

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Section 56 Nonconforming Buildings and Uses

XI-10-56.05 Nonconforming Parcels (New Subsection)

- A. Legal Building Site. A nonconforming parcel that does not comply with the applicable lot requirements for the zone (e.g., lot area, lot width, etc.) in which it is located shall be considered a legal building site if it meets at least one of the following:
 - 1. The parcel was created by a recorded subdivision;
 - 2. The parcel is under one ownership and of record, and was legally created by a recorded deed prior to the effective date of the zoning amendment that made the parcel nonconforming; or
 - 3. The parcel was approved through a variance procedure or resulted from a lot line adjustment.
- B. Development of Legal Building Sites. A legal building site may be developed provided that any structure or development complies with the standards for the zone unless standards are specifically waived or altered through a variance or as otherwise allowed by the zoning ordinance.
- C. Subdivision or Adjustment of a Nonconforming Parcel. No subdivision or lot line adjustment shall be approved that would increase the nonconformity of an existing parcel.

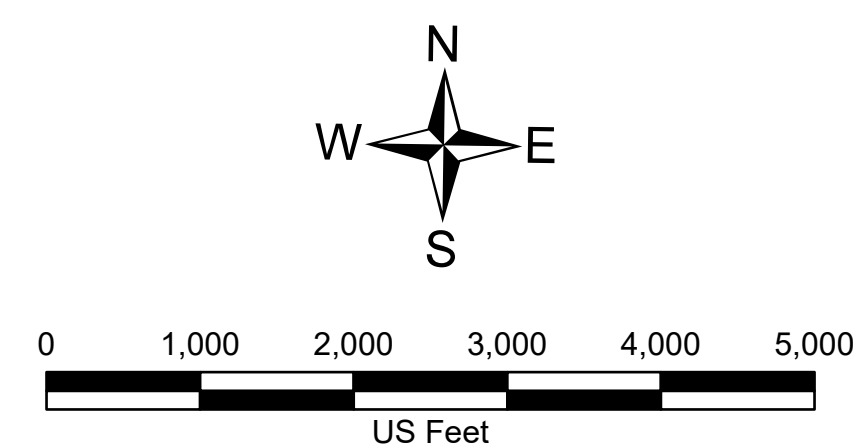
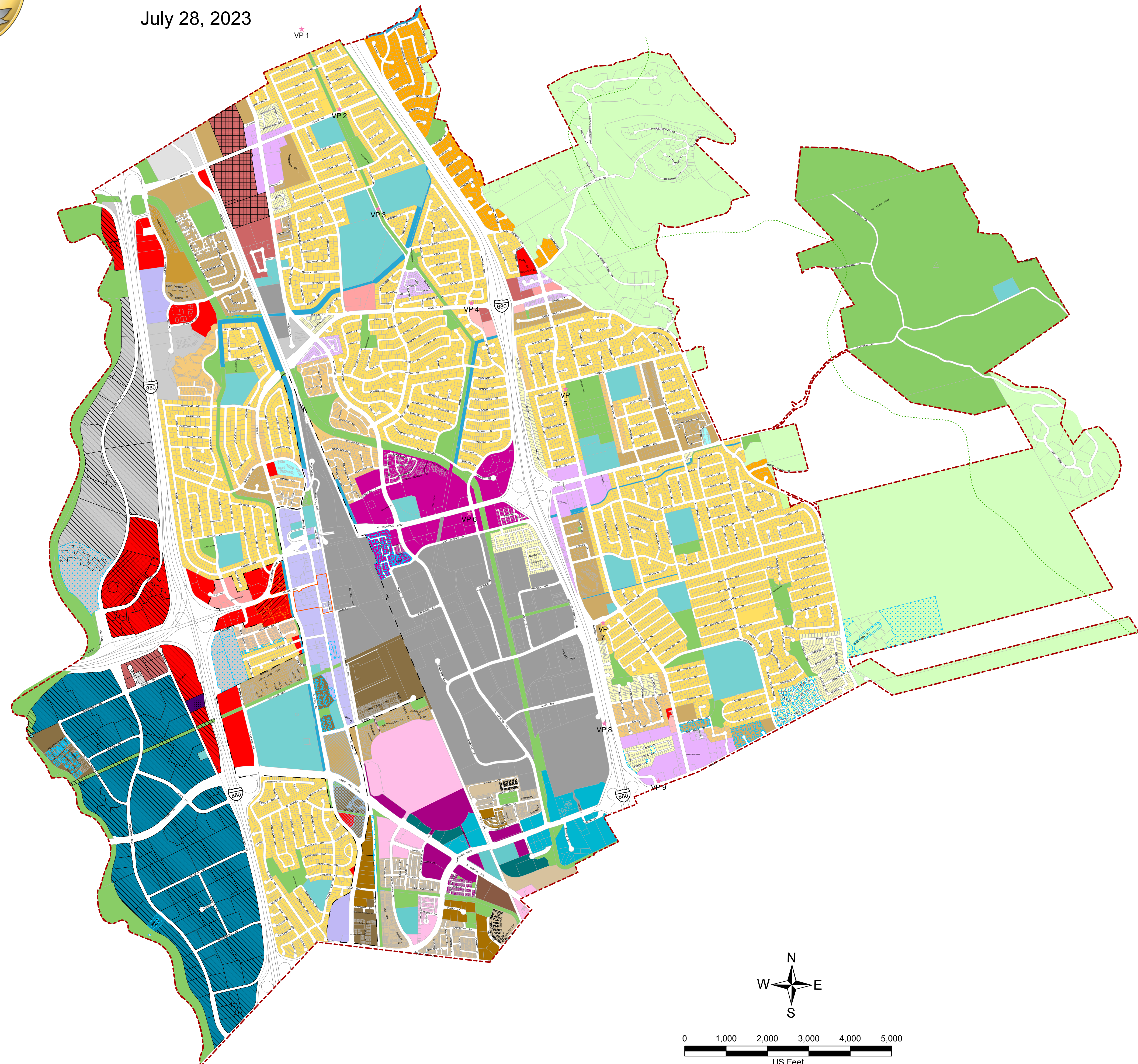


PUBLIC REVIEW DRAFT

CITY OF MILPITAS

ZONING MAP

July 28, 2023



Legend

Zones

- Single Family Residential minimum lot size 2,500 s.f. (R1-2.5)
- Single Family Residential minimum lot size 3,000 s.f. (R1-3)
- Single Family Residential minimum lot size 4,000 s.f. (R1-4)
- Single Family Residential minimum lot size 5,000 s.f. (R1-5)
- Single Family Residential minimum lot size 6,000 s.f. (R1-6)
- Single Family Residential minimum lot size 10,000 s.f. (R1-10)
- Single Family Residential with Hillside Combining District (R1-H)
- One or Two Family (R2)
- Multi-Family Residential, High Density (R3)
- Multi-Family Residential, Very High Density (R4)
- Urban Residential (R5)
- Mixed Use (MXD)
- Mixed Use, High Density (MXD2)
- Mixed Use, Very High Density (MXD3)
- Administrative and Professional Offices (CO)
- Neighborhood Commercial Mixed Use (NCMU)
- Neighborhood Commercial (C1)
- General Commercial (C2)
- Highway Services (HS)
- Town Center (TC)
- Light Industrial (M1)
- Heavy Industrial (M2)
- Industrial Park (MP)
- Business Park Research & Development (BPRD)
- Institutional (I)
- Agricultural (A)
- Parks and Open Space (POS)
- Waterway

Milpitas Metro Specific Plan Zones

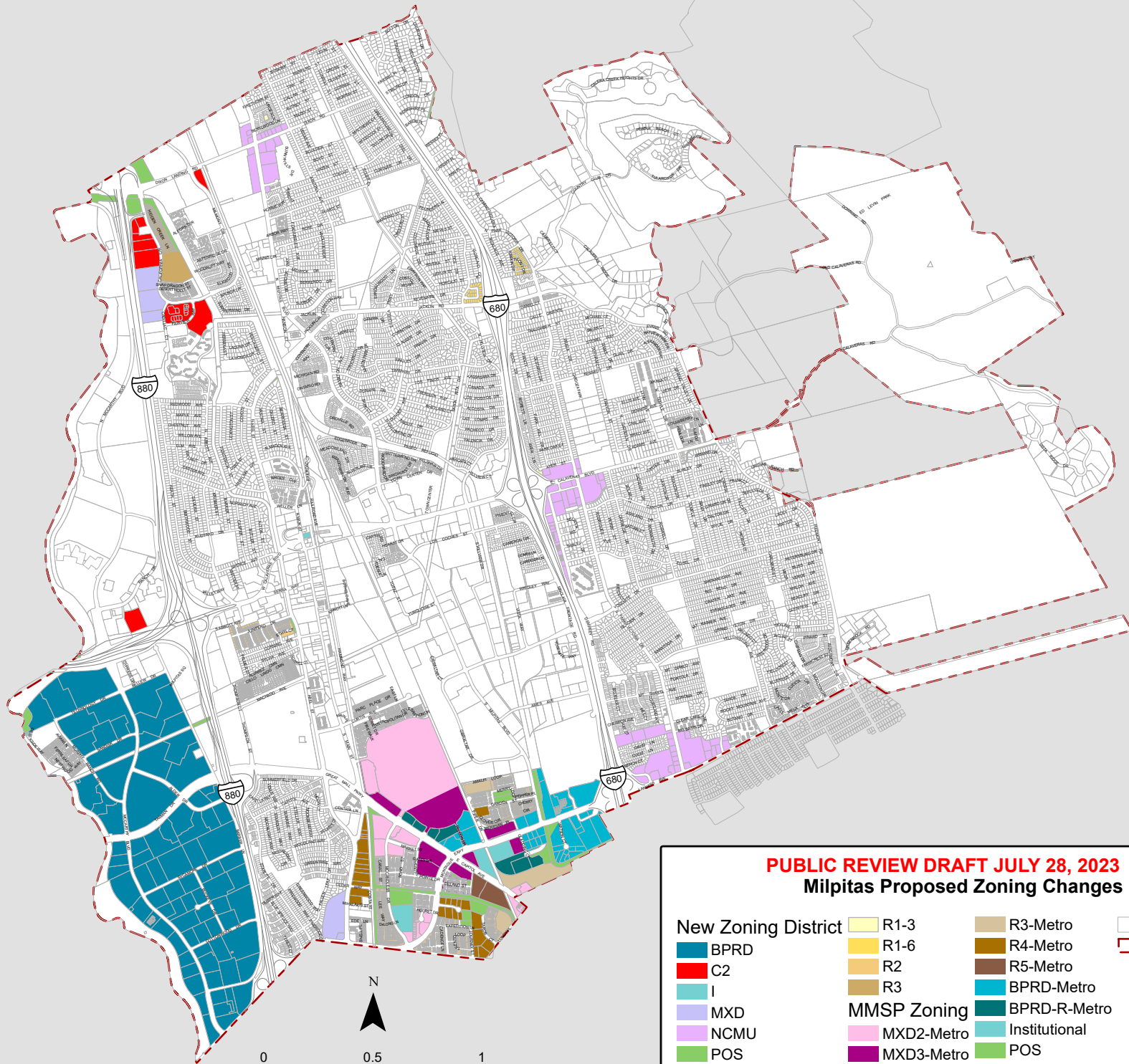
- Metro High Density Mixed Use (MXD2-Metro)
- Metro Very High Density Mixed Use (MXD3-Metro)
- Metro Multi-Family High Density Residential (R3-Metro)
- Metro Multi-Family Very High Density Residential (R4-Metro)
- Metro Urban (R5-Metro)
- Business Park Research & Development (BPRD-Metro)
- Business Park Research & Development, Limited Residential (BPRD-R-Metro)

Overlays

- Freeway Corridor Overlay (FC)
- High Rise Overlay (HR)
- Mobile Home Park Overlay (MHP)
- Office Overlay (OO)
- Recreation and Entertainment Overlay (RE)
- Site and Architectural Overlay (S)
- Transit Oriented Development Overlay (TOD)

Other Features

- Precise Plan Area
- Midtown Specific Plan Area
- City Boundary
- Parcels
- Crestline
- View Points



PUBLIC REVIEW DRAFT JULY 28, 2023
Milpitas Proposed Zoning Changes

New Zoning District		R1-3	R3-Metro	Parcels
BPRD		R1-6	R4-Metro	City Boundary
C2		R2	R5-Metro	
I		R3	BPRD-Metro	
MXD		MMSP Zoning		
NCMU		MXD2-Metro	BPRD-R-Metro	
POS		MXD3-Metro	Institutional	
			POS	

	B	C	D	E	F	G
1	City of Milpitas - Zoning Ordinance Update Public Hearing Draft - August 2023 ERRATA and TYPOGRAPHIC ERRORS					 September 2023
2						
3						
4						
5	Date of Comment	Name of commenter	Section/Subsection Name	Description of Needed Edit	Notes/Proposed Edit to the Code	Date edit made in final document
6	Zoning Map					
7	8.15.23	Staff/LWC		Mapping of new NCMU zone to be removed from updated zoning map.	Mapping of NCMU zone will be completed as part of the separate effort to create NCMU zoning regulations and HODs	
8	9.12.23	Staff/LWC		1780 S. Main Street (APN 8342006) to be rezoned to C2 (General Commercial).	This parcel should have been included in a separate batch of City-initiated rezonings in the South Main area (related to a change in specific plan boundaries), but was inadvertently left out. To be included in this round of zoning map changes.	
9	9.12.23	Staff/LWC		1430 California Circle (APN: 022-37-019) to be rezoned to MXD, not R3 as shown	Rezoning to R3 had been proposed for consistency with the rezoning of adjacent residential areas (north and south), but upon further review and discussion, rezoning to MXD is preferred.	
10	9.22.23	Staff/LWC		Recreation and Entertainment (RE) Overlay zone to be removed from all parcels to be rezoned as BPRD (Business Park Research and Development), POS (Park and Public Open Space), and I (Institutional).	The RE overlay effectively modifies the allowed uses for the underlying base zone, so it must be removed in order for the use regulations for the BPRD, POS, and I zones to be in effect. <i>Note : the RE Overlay also applies to some properties currently zoned C2 and HS. It will remain in effect for those properties until the second phase of the Zoning Ordinance Update, when use regulations will be updated for all zoning districts.</i>	
11						
15	Section 2 - Definitions					
16	8.25.23	Ward Mace/ Goodman	XI-10-2.03 - Definitions	Add definition for "Data Centers"		
17	9.11.23	Matt Taylor/ CBRE	XI-10-2.03 - Definitions	Add definition for "Distribution Facility"		
18						
19	Section 7 - Industrial Zones (BPRD)					
20	Multiple	Multiple	Industrial Zone Uses Table (XI-10-7.02-1), footnote 6	Increase proposed limitation on warehousing to 50 percent (instead of 20 percent) of floor area of primary use	Advanced manufacturing/R&D uses frequently require large areas for storage of materials and/or finished goods prior to distribution	
21	8.25.23	Ward Mace/ Goodman	Industrial Zone Uses Table (XI-10-7.02-1)	Add Data Centers to use table. Allow in BPRD, M1 (Light Industrial), and MP (Industrial Park) zones. Prohibit in M2 (Heavy Industrial) zone.		
22	9.11.23	Matt Taylor/ CBRE	Industrial Zone Development Standards (Table XI-10-7.03-1)	Reduce minimum floor area ratio (FAR) in BPRD to 0.45		
23	Multiple	Multiple	XI-10-7.05 - Special Design Standards for BPRD Zone	Some design standards would be difficult to meet (e.g., open space requirements for large projects, parking setback requirement and prohibition on parking along major street frontages)	Add a provision allowing for discretionary relaxation/ modification of design standards with Zoning Administrator approval	

	B	C	D	E	F	G
5	Date of Comment	Name of commenter	Section/Subsection Name	Description of Needed Edit	Notes/Proposed Edit to the Code	Date edit made in final document
24	9.12.23	Staff	Industrial Zone Uses Table (XI-10-7.02-1)	Add Advanced Manufacturing to use table. Allow by right ("P") in BPRD zone.	Advanced manufacturing was inadvertently left out of the draft use table	
25	9.12.23	Staff	Industrial Zone Uses Table (XI-10-7.02-1)	Custom and Artisan Manufacturing should be MCS (minor conditional use permit, staff level) (not MUP).	MUP doesn't exist in Milpitas' zoning code	
26						
27	Section 9 - Metro Area Zones					
28	9.12.23	Staff	Metro Area Zones Uses Table (XI-10-9.02-1)	Add Advanced Manufacturing to use table. Allow by right ("P") in BPRD Metro and BPRD-R Metro zones.	Advanced manufacturing was inadvertently left out of the draft use table	
29	9.12.23	Staff	Metro Area Zones Uses Table (XI-10-9.02-1)	Small Family Child Care Home should be NP (not permitted) in BPRD Metro (since residential uses are not permitted in this zone)		
30	9.12.23	Staff	Metro Area Zones Uses Table (XI-10-9.02-1)	Add Contractor's Shop to use table and make NP (not permitted) in all Metro Area zones		
31	9.12.23	Staff	Metro Area Zones Uses Table (XI-10-9.02-1)	Trade and Vocational Schools should be C (conditionally permitted) in BPRD Metro and BPRD-R Metro zones (same as colleges and universities)		
32	9.12.23	Staff	Metro Area Zones Uses Table (XI-10-9.02-1)	Add Conference Center to use table, and make C (conditionally permitted) in BPRD Metro and BPRD-R Metro zones		
33	9.12.23	Staff	Metro Area Zones Uses Table (XI-10-9.02-1)	Personal Services should be C (conditionally permitted), instead of NP (not permitted) in BPRD Metro and BPRD-R Metro zones		
34	9.12.23	Staff	Metro Area Zones Uses Table (XI-10-9.02-1), footnote 6	Include same standard for warehousing as in use table for "regular" BPRD zone (max 50 percent of floor area of primary use)	Per public comment, advanced manufacturing/R&D uses frequently require large areas for storage of materials and/or finished goods prior to distribution	
35						
36	Section 53 - Off-Street Parking Requirements					
37						
38						
39	Subsection 54.18 - Housing Element Sites					
40						
41						
42	Subsection 56.05 - Nonconforming Parcels					
43						
44						



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Presentation from Staff on Storm Drain System Revenue Requirements Analysis (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	10/3/2023
Recommendation:	Receive an informational presentation on the stormwater revenue requirements analysis and provide feedback to staff.

BACKGROUND:

The City of Milpitas owns and maintains an extensive storm drain system network (System), consisting over 100 miles of pipeline ranging from 12-inches to 36-inches, approximately 1,400 manholes, 260 trash capture devices and 3,500 storm drain inlets. The City of Milpitas is over 60 years old with some of the infrastructure even older, and some of the older storm drainage infrastructure, particularly pumping equipment, are reaching the end of their useful life. The System collects surface stormwater runoff and conveys the water to 13 pump stations, which then release stormwater into local creeks and flows out to the lower San Francisco Bay. This system of inlets, pipes, and pump stations is critical infrastructure that protects our community during rain events and prevents flooding of our streets and neighborhoods. An essential element of responsibly operating the System is short-term and long-term asset management and planning, which includes on-going maintenance and systematic replacement of infrastructure.

In order to operate and maintain this storm drain system, the City is regulatorily required to comply with the requirements of the California Regional Water Quality Control Board San Francisco Bay Region Municipal Regional Stormwater NPDES Permit (Municipal Regional Permit, MRP). The most recent MRP became effective on July 1, 2022 and almost all cities, counties, and flood control districts in the Bay Area are subject to this permit and its requirements. The goal of the MRP is to protect the water quality and health of local waterways, creeks, and San Francisco Bay by prohibiting the discharge of anything but stormwater from storm drain systems and requiring program implementation and controls for specific pollutants that can be washed through the systems with stormwater such as pesticides, trash, mercury, PCBs, bacteria, and sediment, etc. The City continues to implement best management practices (BMPs) to control and reduce polluted stormwater and non-stormwater discharges to storm drains and watercourses during operation, inspection, and routine repair and maintenance activities of municipal facilities and infrastructure; sidewalk and other hardscape repairs and cleaning; stormwater pump station operation and maintenance; Corporation yard activities; constructions sites; and pesticide toxicity control. The new MRP includes increasingly aggressive requirements to reduce pollutant loads that will require funding such as constructing new Green Stormwater Infrastructure, achieving 100% trash load reduction by 2025, and new requirements to control for PCBs and mercury.

On August 9, 2022, the City Council adopted the Storm Drain Master Plan (Plan). The adopted Plan prioritized rehabilitation and replacement capital improvement projects (CIP) in order to avoid System failures and to increase conveyance capacity. The total CIP costs for the System are approximately \$53 million (2020 dollars). This value represents both high priority CIPs (\$40 million) and scheduled replacements through 2050 (\$13 million). Low priority CIPs and scheduled replacements beyond 2050 are excluded from this revenue requirements analysis. Unlike the water and sewer utilities, the stormwater utility (Utility) does not have a dedicated funding source. The General Fund is currently the primary source of funding for expenditure incurred by the System, including operation and maintenance (O&M) expenses. The General Fund contribution to the Utility is \$500,000 annually, however this is a target and funds may be re-appropriated away from the Utility in any given budget cycle.

Consistent with the direction provided by City Council, on November 12, 2022, the City entered into a

Professional Services Agreement with SCI Consulting Group for Storm Drain Fee Analysis Services. SCI performed a preliminary analysis exploring various revenue stream options to fund the City's System needs. The analysis incorporated the City's high priority CIP projects, as identified in the Plan, preliminary O&M program costs and costs associated with regulatory compliance.

On May 16, 2023, SCI and staff presented to Council the project overview and preliminary findings of the analysis. This presentation was informational only and intended to solicit Council engagement and feedback.

ANALYSIS:

The System requires a reliable and dedicated funding source to provide stormwater conveyance to Milpitas customers in a way which protects public health and safety and meets ever increasing regulatory requirements. As such, annual revenues should be adequate to cover the costs incurred for O&M, MRP regulatory compliance programs, CIP and establishing and maintaining an operational reserve. To determine an Annual Storm Drainage Fee (Fee) amount, the financial needs must be expressed as an annual revenue requirement. O&M and regulatory compliance revenue needs are estimated as an annual formula based on existing costs associated with operations, preventative maintenance, MRP program costs and programmed annual system improvements. The CIP needs in the Plan are expressed as a series of lump sum present values and must be converted into an annual cost to form the basis for the Fee. The Fee will vary depending on the financing approach taken. SCI and staff have worked to fine tune the revenue requirements and develop various preliminary funding scenarios for the System. The scenarios include funding needs analysis ranging from maintaining the status quo to fully funding the O&M and MPR compliance programs and CIP projects. Since the City has not yet determined the precise financing approach to be used, the fees presented are intended to provide an estimate of potential fee impacts corresponding to each scenario.

Scenario 1: Status Quo

The status quo scenario provides funding for basic-bare minimum O&M and MRP compliance of the system (i.e. staff time, electricity and fuel costs, minor repairs and maintenance). While this would ensure that the City is performing proactive preventive maintenance and tracking the requirements for the Water Board and NPDES permits, additional funding would be required over time to ensure that major CIP project needs are met to avoid adverse impacts on the system.

Scenario 2: Status Quo + Proactive O&M + MRP Compliance

Proactive O&M needs include costs for day-to-day maintenance, engineering and rehabilitation/replacement of system components to extend the life of existing infrastructure. The annual revenue needs associated with proactive O&M in FY24/25 is estimated to be approximately \$2.1 million.

Proactive MRP compliance needs include costs for on-going weekly/monthly/annual inspections of the System and its appurtenances to ensure stormwater runoff flowing into creeks and the Bay meets or exceeds NPDES requirements. This program also includes review, inspection and education for private systems to ensure runoff of rainwater and/or any other flows into drains, which end up in the City's System, remain clean. The annual revenue needs associated with proactive MRP compliance in FY24/25 is estimated to be approximately \$865,000.

Scenario 3: Proactive O&M + MRP Compliance + High Priority CIP Only

The City of Milpitas is over 60 years old, and some of its older storm drainage infrastructure, particularly pumping equipment, are reaching the end of its useful life. Over the course of the next several decades, major equipment replacements will be needed, and the City will need to set aside sufficient funds for annual facility maintenance and a systematic long-term replacement program. The Plan identified CIP projects totaling \$53 million (2020 dollars) through 2050. The CIP costs include:

- Complete overhaul of two pump stations
- New pipelines to address flooding
- Rehabilitation/replacement of existing pipelines
- Systematic programmed repair and replacement of pump station components to maintain efficiency and prolong life

Of the \$53 million CIP costs identified in the Plan, \$40 million are high priority projects. These projects will replace or rehabilitate infrastructure fundamental to the System and are recommended to be completed in the next 10 to 15 years. The projects include:

- Complete replacement of Jurgens and Penitencia (built in 1989 and 1960, respectively) pump stations at an estimated cost of \$25 million
- Five miles of new pipes or upsizing of existing pipes to alleviate stresses on the storm drain infrastructure at an estimated cost of \$15 million

This scenario does not include CIP costs associated to systematic programmed repair and replacement of pump stations.

Scenario 4: Proactive O&M + MRP Compliance + All Plan Recommended CIP Scenario 4 is the same as scenario 3 above, however it includes the entire \$53 million in CIP funding needs, inclusive of the systematic programmed repair and replacement of pump stations, which are estimated to cost \$13 million through 2050.

Financial Analysis

A comparative analysis was performed using a 25-year forecast horizon. User rates were calculated to fund the O&M and MRP compliance costs and complete CIP projects recommended by the Plan. Assumptions included the following:

- Only the High Priority projects were included
- O&M costs were assumed to increase 3.1% annually
- Capital costs (for uncompleted projects) were assumed to escalate at 2.9% annually,
- Interest on debt (should it be obtained for capital) is assumed to be 6%, and
- An operating reserve is maintained at 30% of O&M costs.

A standard industry practice for calculating storm fees is to use the typical single-family residential parcel as a benchmark, which is called the single-family equivalent (SFE). The metric for this fee structure is impervious surface area. This becomes the basis for calculating the SFEs for all other types of land uses. In order to accomplish this, a representative sample of each land use category will be studied through aerial photographs to measure the actual impervious surface area in order to calculate the fee commensurate to the SFE.

The table below shows various scenarios SCI and staff evaluated, the corresponding annualized revenue needs and the estimated fee for an SFE, commensurate to the various elements of the System it will fund.

Scenario	Estimated Annual Need FY 2024/2025	Estimated Annual per Parcel Fee FY 2024/2025	Estimated Monthly Per Parcel Fee FY 2024/2025
1. Status Quo	\$1 million	\$27.20	\$2.27
2. Proactive O&M + MRP Compliance	\$3 million	\$75.70	\$6.31
3. Proactive O&M + MRP Compliance + High Priority CIP Only	\$5.1 million	\$127.30	\$10.61
4. Proactive O&M + MRP Compliance + All Plan Recommended CIP	\$5.9 million	\$147.10	\$12.26

Community Opinion Polling

Upon direction of City Council, staff would proceed with a community opinion poll. A community poll and opinion research phase would assist the City in gauging ballot support for the Fee. Additionally, the opinion research will provide insight into the community's priorities, which will enable the City to finalize a set of services and improvements to best meet the community's needs.

Financial Engineering – Fee Report

SCI will prepare a comprehensive Fee Report which will include a detailed description of the services and improvements to be funded by the proposed fee, the rationale used for the fee structure, and calculations of the specific proposed fee amount for each parcel in the City.

Implementation

Once the Fee Report and opinion polling are complete, the traditional path by which the implementation of a storm fee property-related fee includes the following steps:

1. City Council review of the community opinion poll and direction to staff to proceed (or to not proceed) with next steps to implement the funding measure process
2. City Council approval of the Fee Report, establishing a public hearing date and time and authorizing the mailing of notices
3. Conducting a public hearing after mailing of notices
4. City Council authorization for mailing of ballots (if no protest exists)
5. Printing and mailing of ballots
6. Tabulation of ballots after close of ballot period
7. City Council certification of results of the balloting, authorizing the fee structure if support is over 50%

Staff will work with SCI to complete the final Fee Report that would serve as the defensible basis for any recommended fees. This activity is not estimated to alter the draft fees noted above by an appreciable magnitude. The revenue requirement needs to support the System, fund its CIP, and ensure compliance with the MRP, will be discussed and considered further within the broader context of the City's other revenue needs when this topic comes before City Council in late October or November 2023

Next Steps

As described above, the next steps include developing a plan for conducting community opinion polling and completing the Financial Engineering Study (Fee Report). Staff will return to Council at a future date and seek Council's approval to proceed with the community opinion polling phase. If Council votes to proceed, staff and the Consultant will initiate a statistically valid community opinion poll and develop a draft fee report. The results of the opinion poll and draft fee report will be presented to Council prior to seeking direction on further implementation steps.

POLICY ALTERNATIVE(S):

This item is presented for City Council information and discussion only. No policy action is recommended at this time.

FISCAL IMPACT:

There is no fiscal impact at this time.

California Environmental Quality Act (CEQA):

The proposed action, to hold a study session, does not itself constitute a "project" under CEQA because it would not itself affect the environment in any way. Even if the proposed project were a project under CEQA, the proposed action would be statutorily exempt under 14 Cal. Code Regs. § 15262 (exempting feasibility and planning studies).

RECOMMENDATION:

Receive an informational presentation on the stormwater revenue requirements analysis and provide feedback to staff.

Attachment(s):

None



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Approve Employment Agreement for the City Manager (Staff Contact: Nick Raisch, Human Resources Director, 408-687-5086)
Category:	Leadership and Support Services
Meeting Date:	10/3/2023
	<u>Recommendation:</u> Approve Employment Agreement for the City Manager.

Background:

The previous City Manager's agreement ended in June of 2023, and the City Council appointed Ned Thomas as Acting City Manager on June 20, 2023.

The City Council hired an executive recruiting firm and conducted an open and competitive nationwide recruitment process. At the conclusion of this process, the Council selected their top candidate to serve as the next City Manager of the City of Milpitas. The Council through assigned staff have negotiated an employment agreement, and the draft agreement is before the Council tonight for adoption.

Analysis:

The employment agreement provides the following:

- **Term:** The agreement is effective upon adoption by Council through June 30, 2025.
- **Salary:** The City Manager shall have an annual salary of Two Hundred and Seventy-Nine Thousand Dollars (\$279,000).
- **Benefits:** Shall be consistent with those provided for unrepresented executive employees except where specifically included/excluded within this agreement.
- **Professional Development:** The City Manager will be allowed additional reimbursement for the pursuit of higher education in alignment with the City's goals and the continued enhancement of his skills and knowledge within the areas of public administration. (\$10,000 per year/\$10,000 upon completion)
- **Miscellaneous:** This agreement provides for an "At-Will" employment relationship between the City Manager and the City including severance equal to that articulated in the Muni Code (VI-3-4.00).

The full agreement is attached to this agenda report.

Policy Alternatives:

Alternative 1: The City Council could choose not to approve the employment agreement or seek modifications to the agreement.

Pros: None, as City Council has directed the preparation of this agreement and it represents the good faith negotiations between the parties.

Cons: If the City Council does not approve the employment agreement, then the City Council will need to provide additional direction to staff.

Reason not recommended: The City Council should approve the employment agreement as the City Council has directed its preparation and negotiation and it represents the completion of the negotiations.

Fiscal Impact:

The City as a part of the FY23-24 budget process funded the City Manager position. No changes to the FY23-24 budget are required to adopt and implement this appointment.

California Environmental Quality Act:

The action is an organizational or administrative activity of the City government that will not result in direct or indirect physical changes in the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

Recommendation:

Approve Employment Agreement for the City Manager

Attachments:

1) Employment Agreement

EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of Milpitas, a municipal corporation (the “City” or “Employer”) and _____ (“Employee”). It is effective on the latest date next to the signatures on the last page (“the Effective Date”).

This Agreement is entered into on the basis of the following facts, among others:

- A. The City desires to employ the professional services of Employee as City Manager of the City, as provided by the Milpitas Municipal Code.
- B. The City Council and Employee desire to establish a reasonable, professional and trustworthy employment relationship, subject to the terms and conditions set forth in this Agreement pertaining to compensation and benefits, performance evaluations, and any related matters.

BASED UPON THE FOREGOING, THE CITY AND EMPLOYEE AGREE AS FOLLOWS:

1. **Employee Appointed.**

- (a) The City appoints and employs Employee as City Manager, and Employee continues to accept the appointment and employment as of the Effective Date.

2. **Duties of Employee.**

- (a) Employee shall perform the duties established for the City Manager by State law, the Milpitas Municipal Code, the City Manager job description, the directions of the City Council, or as otherwise provided by law, ordinance, or regulation. The provisions of the Municipal Code pertaining to the City Manager and the City Manager job description, as may be amended from time to time, are attached hereto as Exhibit A and are hereby made a part of this Agreement. Such duties shall include, but not be limited to:
 - (i) To see that all laws and ordinances of the City are duly enforced and that all franchises, permits, licenses and privileges granted by the City are faithfully performed and observed;
 - (ii) To control, order and give directions to all directors of departments and to

- subordinate officers and employees of the City under his jurisdiction through their department directors, and to transfer employees from one department to another;
- (iii) To attend all meetings of the City Council unless excused there from by the City Council;
 - (iv) To recommend to the City Council for adoption such measures and ordinances as he deems necessary or expedient;
 - (v) To keep the City Council at all times fully advised as to the financial conditions and needs of the City;
 - (vi) After receiving feedback from the City Council, to prepare and submit to the City Council an annual recommended budget and to administer the adopted budget.
 - (vii) To purchase or cause to be purchased all supplies for all of the departments or divisions of the City. No expenditures, except those for legal services, shall be submitted or recommended to the City Council except on report and approval of the City Manager;
 - (viii) To make investigation into the affairs of the City and any department or division thereof and any Contract or the proper performance of any obligation running to the City;
 - (ix) To oversee and direct the investigation of all complaints in relation to matters concerning the administration of the government of the City and in regard to the services maintained by public utilities in the City and to see that all franchises, permits and privileges granted by the City are faithfully observed;
 - (x) To execute general supervision over all public buildings, public parks, streets and other public property which are under the control and jurisdiction of the City Council;
 - (xi) To devote his/her entire working time, thought and energy to the duties and interests of the City;

- (xii) To make reports and initiate recommendations as may be desirable or as requested by the City Council; and
 - (xiii) To perform such other duties and exercise such other powers as may be delegated to him/her from time to time by ordinance, resolution or other action of the City Council.
 - (xiv) When acting in his/her official capacity as City Manager, respond to all media and community inquiries in alignment with the City Council's approved values, visions, and goals, and exclusively in the best interests of the City.
- (b) Full Energy and Skill. Employee shall faithfully, diligently, and to the best of Employee's abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the City. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention, and best effort exclusively to the City's business and affairs. Prior to undertaking any secondary activities for which Employee receives compensation, Employee shall disclose those activities to the Council.
- (c) No Conflict. Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Employee's duties. Further, Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Milpitas.
- (d) Outside Activities. Consistent with subdivision 2(a) above, the Employee's primary employment is with the City. Any outside activities for which the Employee receives compensation from a third party shall be disclosed, in advance, to the City Council. Employee is expected to take personal leave (i.e., vacation time) for any outside activities of this nature.

3. **Hours of Work.**

The City Manager is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work as the City Manager is expected to be reasonably available to the City Council with support and coverage by the Assistant or Deputy City Manager at all times. It is recognized that the City Manager must devote a great deal of time to the business of the City outside of the city's customary office hours, and to that end, the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed and in accordance with any specific direction provided by the City Council.

4. **Term.**

The term of this Agreement shall be from the Effective Date through June 30, 2025, unless terminated earlier by either party in accordance with the provisions set forth in Section 12, or unless extended as authorized by this Section. The City Council shall meet annually on or around each anniversary of the Effective Date to consider a one-year extension to the Agreement.

5. **Annual Evaluation.**

In the first year of the term of this Agreement, the City Council shall conduct an evaluation of Employee's performance within six months of the Effective Date to establish working relationships, norms, opportunities to be successful, and goals for coming year, then followed on a six-month basis for the term of the agreement. The City Manager shall be responsible for placing on a City Council agenda the bi-annual evaluation every six months. The City Council shall conduct an evaluation of Employee's performance and provide guidance and direction in accordance with the specific criteria developed by the City Council, specific criteria for evaluation can be gained through a closed session with the full City Council or through the City Manager's regular one on one meetings with individual members of the Council. At the performance evaluation on or near Employee's anniversary as City Manager, Employee may be eligible to receive an increase in Base Salary, as determined by the City Council in its sole discretion. Employee may be eligible for the first increase on Employee's initial six-month performance evaluation, and then annually, dependent on a performance evaluation to precede any consideration of a salary adjustment. Employee is

not automatically entitled to any increase, which is subject to the sole discretion of the Council. In addition to an established evaluation, the Council has the discretion to provide Employee with an evaluation of performance at other times chosen by the Council.

At the initial six-month performance evaluation, Employee may be eligible to receive an increase in Base Salary, as determined by the City Council in its sole discretion.

6. Compensation.

- (a) Base Salary. Employee shall receive the annual Base Salary of Two-Hundred Seventy Nine Thousand Dollars (\$279,000.00), (_____) payable on a pro-rata basis in the same manner as all full time City employees, and subject to all applicable payroll taxes and withholdings.
- (b) COLA Adjustments. Whenever a cost of living adjustment or other non-merit based salary increase is provided to other miscellaneous unrepresented executive staff, the City Council shall consider whether it is reasonable and appropriate to grant the highest cost of living increase received by any miscellaneous unrepresented employee groups to the Employee's Base Salary to avoid compaction. No salary adjustment is guaranteed. All adjustments are subject to the sole discretion of the City Council. Employee shall be obligated to inform the City Council of any relevant adjustment provided to other miscellaneous unrepresented executive staff.
- (c) Reduction in Salary or Benefits. If the City reduces the Employee's Base Salary, or any benefit described in Sections 8 to 11 of this Agreement, in a percentage that is greater than the average reduction of all miscellaneous unrepresented executive staff, such action shall constitute a termination of this Agreement without Cause under Section 11 of this Agreement.

7. Regular Benefits and Allowances.

- (a) Employer agrees to provide and pay the City allowance for vision, dental and comprehensive medical health insurance for Employee and his/her dependents, if any,

equal to that which is provided to all other full-time miscellaneous unrepresented executive staff of Employer. The City contribution toward health insurance shall be equal to that which is provided to all other miscellaneous unrepresented executive staff of Employer as specified in the applicable Unrepresented Employee Benefit Handbook ("Benefit Handbook"), dated July 1, 2023, or any amendment thereto or replacement thereof. Similarly, Employee shall receive short term and long-term disability insurance coverage while this Agreement is in force, subject to any contributions required of unrepresented miscellaneous unrepresented executive staff.

8. **Additional Deferred Compensation.**

- (a) As part of Employee's annual base compensation, City agrees to provide a Section 401a deferred compensation program which will be administered by Mission Square Retirement, and to pay into such program for Employee's benefit monthly, an amount equal to that for miscellaneous unrepresented staff commencing with the Effective Date of this Agreement. For the term of this agreement there will be no employee contribution to the 401a plan.

9. **Retirement Benefits.**

Employer agrees to enroll Employee into the California Public Employees Retirement System ("CalPERS") consistent with other City employees.

10. **Additional Benefits and Allowances.**

In addition to the benefits already specified in this Agreement, Employee shall receive the same benefits afforded to miscellaneous unrepresented executive staff, including and not limited to:

- (a) **Vacation; Sick Leave**
 - (i) **Vacation.** Employee shall accrue and be eligible to use vacation days in accordance with the City's established vacation policy.
 - (ii) **Sick Leave.** Employee shall be entitled to use and accrue sick leave in accordance with established City policy.

- (b) Automobile. Employee shall receive a monthly vehicle allowance equal to that which is provided to all other miscellaneous unrepresented executive staff of Employer as specified in the applicable Unrepresented Employee Benefit Handbook (“Benefit Handbook”), dated July 1, 2023, or any amendment thereto or replacement thereof.
- (c) Cellular Phone. Employee shall receive a City cell phone for use City work purposes.
- (d) Professional Development. Employer expects the Employee to continue to develop the professional technical and leadership skills and knowledge necessary to serve as City Manager. To that end, Employee is expected to continue membership with the International City Managers Association. Employee is expected to attend national, state or local regular conferences, trainings and other educational opportunities to continue to hone the skills consistent with the City Manager job description. The City will allow Employee reasonable time away to participate in these professional development opportunities and Employer shall pay for these training opportunities as provided for in this subsection subject to City Council’s budget approval. The City shall provide Employee with ten thousand dollars (\$10,000) per year for qualified professional development reimbursement or tuition reimbursement, so long as the reimbursable class, training, or other activity, in the sole discretion of the City Council, tends to develop the professional technical and leadership skills and knowledge necessary to serve as City Manager. City agrees to a single lump sum payment to employee, not to exceed ten thousand dollars (\$10,000), should employee achieve an advanced degree during the term of this Agreement. For the purposes of this agreement, an advanced degree shall constitute a Masters level or Doctoral level degree from a college or university accredited by the U.S. Department of Education.

11. Termination of Employment.

- (a) No property Interest/Cause Defined. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee’s employment as City Manager. Employee understands and agrees that Employee works at the will and pleasure of the City Council and that Employee may be terminated, or asked to

resign, at any time, with or without Cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing. As used in this Agreement, Cause shall only mean any of the following:

- (i) Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the Employee's reputation;
- (ii) Proven failure of the Employee to observe or perform any of his/her duties and obligations, if that failure continues for a period of fifteen (15) business days from the date of his/her receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;
- (iii) Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4;
- (iv) Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act compliant meeting; and
- (v) Any grossly negligent action or inaction by Employee that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety, or (c) violates the City's properly-established rules or procedures.

- (b) Termination Immediately Before or Following City Council Election. No action by the City Council to terminate Employee, other than for Cause, will be made within ninety (90) days before a regular City Council election or within six (6) months immediately following a regular City Council election. Nothing in this subsection alters the "at will" status of Employee's employment with the City. Any deliberation or decision by the City Council not to extend or renew this Agreement during the above specified period shall not be an action to terminate Employee for the purposes of this section.
- (c) Notice Required of Employee. Employee may voluntarily terminate employment at any time by giving not less than sixty (60) days' notice.
- (d) Severance Pay. If Employee is asked to resign or is terminated without Cause, then Employee shall be eligible to receive severance as outlined in Municode VI-3-4-.00. Any severance and benefits paid shall be subject to state law requirements codified by Government Code Section 53260. This cash payment will be made on a pro-rated, monthly basis over the number of months involved, subject to termination of the severance requirement set forth below. Employee shall also be paid for any accrued, but unused, vacation. In the event of termination or resignation from employment or the non-renewal of this Agreement, sick leave upon termination shall be treated in

accordance with the Benefit Handbook. Eligibility for such severance payment is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against City approved by the City Attorney, (ii) the expiration of any statutory waiting period necessary for such release to become effective, and (iii) a covenant not to sue. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section. Employee expressly agrees to provide notice to the City within two (2) business days of accepting employment elsewhere, and the City's obligation to pay any severance benefit to Employee shall terminate upon Employee's acceptance of such alternative employment.

- (e) Ineligibility for Severance under Certain Conditions. If the termination of Employee is for Cause (as defined above) or if Employee voluntarily resigns, Employee is not eligible for and will not receive any severance. If Employee is terminated without Cause, then Section 7(d) above shall control.
- (f) Communications Upon Termination. In the event that Employer terminates the Employee for any reason or no reason, the Employer and Employee agree to undertake reasonable efforts to issue a joint press release or statement, the content of which is mutually agreeable to the Employer and Employee. The joint press release or statement shall not contain any text or information that is reasonably considered to be disparaging to either party. For purposes of this subdivision only, "party" includes City Council members in the office at the time of termination and miscellaneous unrepresented executive employees. If the parties are able to agree on a joint statement, any party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

12. Statutory Requirements.

- (a) This Agreement shall be deemed to incorporate by reference the provisions of Sections 53243 *et seq.* of the Government Code, as it may be amended or renumbered.
- (b) Compliance with Government Code §§53243, 53243.1, & 53243.2. If Employee is convicted of a crime involving an abuse of the Employee's office or position, all of the following shall apply:
 - (i) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse the City for such amounts paid;

- (ii) if the City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is not generally required to pay for a criminal defense), Employee shall be required to fully reimburse City such amounts paid; and
- (iii) if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City or void if not yet paid to Employee.
- (iv) For this subsection, “abuse of office or position” means either (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority, or (2) a crime against public justice, including but not limited to a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

13. Payment of Expenses of Employment.

The City shall pay the following usual and customary employment expenses.

- (a) The cost of any fidelity or other bonds required by law for the City Manager.
- (b) Subject to budget approval, the cost of attending conferences or other events (i.e. retirement dinners, out-of-town meetings, professional memberships and seminars, etc.) necessary for the proper discharge of Employee’s duties. The City will not reimburse Employee for any expenses related to membership in service clubs and will not encourage or require service club membership.

14. Miscellaneous.

- (a) Notices. Notices given under this Agreement shall be in writing and shall be:
 - (i) served personally; or
 - (ii) sent by electronic mail (provided a hard copy is mailed within one (1) business day); or
 - (iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or
 - (iv) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid.

Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

EMPLOYEE:

City of Milpitas Attn: Mayor

455 E. Calaveras Blvd.

Milpitas, CA 95035

- (b) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.
- (c) Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of that severability would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.
- (d) Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.
- (e) Representation by Counsel. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.
- (f) Governing Law and Venue. This Agreement shall be governed by and construed in accordance

with the laws of the State of California. Employee and City agree that venue for any dispute shall be in Santa Clara County, California.

- (g) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.
- (h) No Assignment. Employee may not assign this Agreement in whole or in part.

Dated: _____

CITY OF MILPITAS

By _____

Carmen Montano, Mayor

Dated: _____

EMPLOYEE

By _____

Approved as to Form:

Michael Mutalipassi, City Attorney