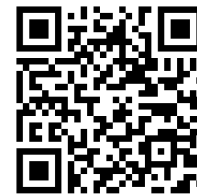




SPECIAL MEETING OF THE MILPITAS CITY COUNCIL



AGENDA

TUESDAY, DECEMBER 10, 2024

CITY COUNCIL CHAMBER, 455 E. CALAVERAS BLVD, MILPITAS, CA
5:30 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

** To access written translation during the meeting, scan the QR Code.*

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 only be provided live during the City Council meeting in person, unless the City Council approves remote public comment. 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. Members of the public may submit written comments by email to CityClerk@milpitas.gov.

The meeting will be streamed via Zoom for viewing purposes only unless the City Council approves remote public comment. To watch via Zoom, please register at:

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_11nHaEqKSzKepSRPKszaqQ

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 (5:30 PM)

PLEDGE OF ALLEGIANCE

INVOCATION (Councilmember Lien)

AGENDA ITEMS

1. **Receive Report of Municipal Election Results of November 5, 2024, and Adopt a Resolution to Certify Final Results of Candidate and Ballot Measure Election (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Recommendation: (1) Receive the report of election results and voter turnout; and (2) Adopt a resolution confirming the official canvass of election returns and declaring the results of the General Municipal Election held on November 5, 2024.

2. **Presentation to Outgoing Councilmember and Remarks**
3. **Ceremonial Swearing-In of Re-Elected and Newly Elected City Officials**
 - Mayor Carmen Montano
 - City Councilmember Evelyn Chua
 - City Councilmember William Lam

<i>**The City Council Will Recess to a Reception and then Reconvene at 7:00 PM **</i>
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4. **Elect New Vice Mayor (Contact: Mayor Carmen Montano, 408-586-3029)**

Recommendation: Receive recommendation from Mayor Montano of one City Councilmember to serve as Milpitas Vice Mayor for one year and move to approve the new Vice Mayor.

PUBLIC FORUM (7:05 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.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

READING OF THE CITY COUNCIL CODE OF CONDUCT

APPROVAL OF AGENDA

CONSENT CALENDAR (7:10 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.

- C5. **Receive City Council Calendar of Meetings for December 2024 and January 2025 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Recommendation: Receive City Council Calendar of Meetings for December 2024 and January 2025.

- C6. Approve City Council Meeting Minutes of December 3, 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**
- Recommendation: Approve City Council Meeting minutes of December 3, 2024.
- C7. 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.
- C8. 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.
- C9. Consider the Recommendation from Mayor Montano for Appointments to City Commissions (Contact: Mayor Montano, 408-586-3024)**
- Recommendation: Receive the recommendation from Mayor Montano and approve appointments to City Commissions.
- C10. Consider Mayor's Appointments of City Councilmembers as Liaisons to City Commissions, City Subcommittees, and Outside Agency Boards and Committees (Contact: Mayor Carmen Montano, 408-586-3024)**
- Recommendation: Consider Mayor's appointments of City Council members to liaisons of City Commissions, City Subcommittees, and outside agencies, boards and committees, and move to confirm those appointments.
- C11. Consider Fee Waiver Requests from Kiwanis Club of Milpitas, Police Activity League Knights, and Milpitas Youth Soccer League (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**
- Recommendation: (1) Approve a fee waiver of \$945 for the Annual Kiwanis Crab Feed Fundraiser on February 7, 2025, at the Milpitas Community Center, (2) Approve a fee waiver of \$436 for the annual Police Activity League (PAL) Knights Football end of season banquet on January 10, 2025, at the Milpitas Community Center; and (3) Approve a fee waiver of \$545 for the annual Milpitas Youth Soccer League (MYSL) volunteer appreciation dinner on December 15, 2024, at the Milpitas Community Center.
- C12. Review and Accept the Development Impact Fee Annual and Five-Year Reports for the Calaveras Boulevard Widening Traffic Impact Fee, Transit Area Specific Plan Impact Fee, and Storm Drainage Improvement Fee (Staff Contact: Luz Cofresí-Howe, Finance Director, 408-586-3111)**
- Recommendation: (1) Review and accept the Development Impact Fee Annual and Five-Year Reports consistent with the Mitigation Fee Act for the Calaveras Boulevard Widening Traffic Impact Fee, Transit Area Specific Plan (TASP) Impact Fee, and Storm Drainage Improvement Fee for the fiscal year ended June 30, 2024; and (2) Adopt a resolution making all findings required by the Mitigation Fee Act (AB1600).

LEADERSHIP AND SUPPORT SERVICES (7:15 PM)

13. Introduce an Ordinance to Make Corrections, Clarifications and Minor Updates and Modifications to the Milpitas Municipal Code (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)

Recommendation: Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 315 amending various sections of the Milpitas Municipal Code to make corrections, clarifications, minor updates and modifications.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (7:30 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 (7:35 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: www.milpitas.gov/government/council/agenda_minutes.asp (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.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Report of Municipal Election Results of November 5, 2024, and Adopt a Resolution to Certify Final Results of Candidate and Ballot Measure Election (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)
Category:	Leadership and Support Services
Meeting Date:	12/10/2024
Recommendation:	(1) Receive the report of election results and voter turnout; and (2) Adopt a resolution confirming the official canvass of election returns and declaring the results of the General Municipal Election held on November 5, 2024.

Background:

The City of Milpitas held a General Municipal Election on Tuesday, November 5, 2024, to fill the offices of Mayor, two City Councilmembers, and to vote on one ballot measure. According to the Santa Clara County Registrar of Voters' Statement of Vote dated December 8, 2024, voter turnout in Milpitas was 67.9 percent, with 26,364 out of 38,836 registered voters participating in the election.

The final certified election results confirm that Carmen Montano was elected as Mayor, and Evelyn Chua and William Lam were elected as City Councilmembers. Carmen Montano was elected to a two-year term as Mayor, receiving 31.8% of the votes cast from a field of four candidates. Evelyn Chua was re-elected to a four-year term as Councilmember with 41.9% of the votes cast, and William Lam was elected for the first time to a four-year term as Councilmember with 27.2% of the votes cast in a field of six candidates.

The election also included Ballot Measure J: City of Milpitas Public Services Reauthorization Measure, an ordinance to extend the expiration date of the City of Milpitas Public Services Measure (Measure F) adopted by the voters in 2020. Measure J was approved by Milpitas voters, with 74.6% (19,582 votes) voting in favor out of the 26,260 total votes cast.

The Santa Clara County Registrar of Voters certified the final election results on Thursday, December 5, 2024, in compliance with California Elections Code, which requires certification within 30 days of the election. These certified results are included in the resolution presented for adoption at this meeting and are attached in the agenda packet.

Staff recommends that the City Council adopt the attached resolution confirming the Official Canvass of Returns for the November 5, 2024, General Municipal Election.

Recommendation:

(1) Receive the report of election results and voter turnout; and
(2) Adopt a resolution confirming the official canvass of election returns and declaring the results of the General Municipal Election held on November 5, 2024.

Attachment:

- (a) Resolution Certifying Election Results
- (b) Exhibit A to the Resolution
- (c) Exhibit B to the Resolution

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS RECITING
THAT A GENERAL MUNICIPAL ELECTION WAS HELD ON NOVEMBER 5, 2024
CONFIRMING THE CANVASS OF RETURNS AND DECLARING THE RESULTS
PURSUANT TO ELECTIONS CODE §§10262-10264**

WHEREAS, a General Municipal Election was held and conducted in the City of Milpitas, California on Tuesday, November 5, 2024, as required by law, for the purpose of filling the Office of Mayor and two seats on the City Council, and for submitting one local ballot measure (Measure J) to Milpitas voters; and

WHEREAS, notice of the election was given in time, form and manner as provided by law, voting precincts were properly established, election officers were appointed and that in all respects the election was held and conducted and the votes were cast, received and canvassed and their return made and declared in time, form and manner as required by the provisions of the Elections Code of the State of California for the holding of elections in general law cities; and

WHEREAS, the Registrar of Voters of Santa Clara County has duly canvassed the votes cast and has certified to the City Council the results, which are attached as Exhibit “A.”

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milpitas as follows:

1. That the whole number of votes/ballots for Mayor and Councilmembers cast in the precincts except votes by mail voter ballots was 3,724 as set forth in the Registrar of Voters’ Certificate of Election attached as Exhibit “A.”

2. That the whole number of votes by mail voter ballots for Mayor and Councilmembers cast in the City was 22,640, making a total of 26,364 votes/ballots cast in the City, as set forth in the Registrar of Voters’ Certificate of Election attached as Exhibit “A.”

3. That the names of the persons voted for at the election for Mayor are as follows:

Hon Lien
Voltaire Soriben Montemayor
Carmen Montano
Anthony Phan

That the names of the persons voted for at the election for Member of the City Council are as follows:

William Lam
Juliette Gomez
Dipak Awasthi
Evelyn Chua
Bill Chuan
Anu Nakka

4. At the municipal election, the total number of votes cast in the City for each of the candidates including vote-by-mail, precinct and write-in votes was as follows:

Mayor

Carmen Montano	8,378
Hon Lien	7,609
Anthony Phan	5,211
Voltaire Soriben Montemayor	2,200

Members of the City Council

Evelyn Chua	11,056
William Lam	7,162
Bill Chuan	6,370
Anu Nakka	6,245
Dipak Awasthi	3,529
Juliette Gomez	2,966

5. Carmen Montano received the highest number of votes cast for the office of Mayor, thereby being elected to that office for a term of two years.

6. Evelyn Chua and William Lam received the highest number of votes cast for the office of Member of City Council and these two persons are thereby elected to that office for a term of four years each.

7. That the whole number of votes/ballots for Measure J cast in the precincts except vote by mail voter ballots was 3,72 as set forth in the Registrar of Voters' Certificate of Election attached as Exhibit "B."

7. That the whole number of vote by mail voter ballots for Measure J cast in the City was 22,539, making a total of 26,260 votes/ballots cast in the City, as set forth in the Registrar of Voters' Certificate of Election attached as Exhibit "B."

8. That the measure voted upon at the election is as follows:

City of Milpitas Public Services Reauthorization Measure. To maintain fiscal stability and essential City services, including 911 emergency response, police and fire protection; repairing streets/fixing potholes; tracking/investigating crime; addressing homeless encampments/affordable housing needs; natural disaster/emergency preparation; maintaining neighborhood parks/public infrastructure, shall the measure continuing the existing voter-approved ¼-cent sales tax be adopted, providing approximately \$7,000,000 annually for eight additional years, requiring independent audits, public disclosure, and all funds controlled locally?	Yes	
	No	

9. Measure J (City of Milpitas Public Services Reauthorization Measure) was voted upon by the registered voters of the City of Milpitas. The total number of votes cast for and against Measure J was:

Yes	19,582
No	4,850

and, therefore, as a result of the election, a majority of the voters voting on Measure J did vote in favor of it, and that the measure was carried, and shall be deemed adopted and ratified.

8. The City Clerk shall enter on the records of the City Council of the City, a statement of the results of the election, showing: (1) The whole number of voters/ballots cast in the City; (2) The names of the persons voted for; (3) The measure voted upon; (4) For what office each person was voted for; (5) The number of votes

given at each precinct to each person, and for and against each measure; and (6) The total number of votes given to each person, and for and against each measure.

9. The City Clerk shall immediately make and deliver to each of the persons so elected a Certificate of Election signed by the City Clerk and authenticated; that the City Clerk shall also administer to each person elected the Oath of Office prescribed in the Constitution of the State of California and shall have them subscribe to it and file it in the office of the City Clerk. Each and all of the persons so elected shall then be inducted into the respective office to which they have been elected.

10. The City Clerk shall certify to the passage and adoption of this resolution.

PASSED AND ADOPTED this 10th day of December 2024 by the following vote:

AYES: ()

NOES: ()

ABSENT: ()

ABSTAIN: ()

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

EXHIBIT A
Certificate of Election and Precinct Canvass
for Mayor and Councilmember

EXHIBIT B
Certificate of Election and Precinct
Canvass for Measure J

CERTIFICATE OF ELECTION RESULTS

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

I, Matt Moreles, Acting Registrar of Voters of the County of Santa Clara, State of California, hereby declare:

1. A General Election was held in the County of Santa Clara, for the **Mayor**, on November 5, 2024 for the purpose of electing **one (1) full-term Member, City of Milpitas** to the Governing Board.
2. The official canvass of the returns of this election was conducted by the Office of the Registrar of Voters in accordance with the appropriate provisions of the Elections Code of the State of California.
3. The Statement of Votes Cast, now on file in my office and attached hereto, shows the number of votes for each candidate for the Mayor of the **City of Milpitas** and in each of the precincts and that the total shown for each candidate are true and correct.

WITNESS my hand and Official Seal this 5th day of December 2024.




Matt Moreles, Acting Registrar of Voters

CERTIFICATE OF ELECTION

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

This certifies that, at the General Election held in and for the County of Santa Clara on November 5, 2024

Carmen Montano

was elected for the office of

Mayor, City of Milpitas

as appears by the official returns of the election and the Statement of Votes Cast now on file in my office.

IN WITNESS WHEREOF, I, Matt Moreles, Acting Registrar of Voters of the County of Santa Clara, hereby issue this official Certificate of Election this 5th day of December 2024.




Matt Moreles, Acting Registrar of Voters

1 City of Milpitas Mayor								
		Registered Voters	Voters Cast	Turnout (%)	Hon Lien Montemayor	Voltaire Sorben Montano	Carmen Montano	Anthony Phan
0004401	In-Person	2758	273	9.90 %	67	49	83	49
0004401	Mail Voting	2758	1600	58.01 %	361	284	532	282
0004401	Total	2758	1873	67.91 %	428	333	615	331
0004402	In-Person	2479	234	9.44 %	44	17	82	59
0004402	Mail Voting	2479	1435	57.89 %	381	131	520	256
0004402	Total	2479	1669	67.33 %	425	148	602	315
0004403	In-Person	606	92	15.18 %	23	3	25	17
0004403	Mail Voting	606	306	50.50 %	73	20	93	75
0004403	Total	606	398	65.68 %	96	23	118	92
0004405	In-Person	2650	248	9.36 %	66	21	70	66
0004405	Mail Voting	2650	1605	60.57 %	484	119	539	293
0004405	Total	2650	1853	69.92 %	550	140	609	359
0004406	In-Person	2770	284	10.25 %	61	17	95	77
0004406	Mail Voting	2770	1500	54.15 %	358	153	540	293
0004406	Total	2770	1784	64.40 %	419	170	635	370
0004407	In-Person	2600	288	11.08 %	87	43	75	51
0004407	Mail Voting	2600	1448	55.69 %	431	133	382	318
0004407	Total	2600	1736	66.77 %	518	176	457	369
0004409	In-Person	3075	260	8.46 %	58	22	80	67
0004409	Mail Voting	3075	1757	57.14 %	508	111	589	380
0004409	Total	3075	2017	65.59 %	566	133	669	447
0004411	In-Person	2091	150	7.17 %	52	12	41	29
0004411	Mail Voting	2091	1343	64.23 %	523	63	422	204
0004411	Total	2091	1493	71.40 %	575	75	463	233
0004413	In-Person	2356	207	8.79 %	61	26	56	43
0004413	Mail Voting	2356	1446	61.38 %	378	142	501	278
0004413	Total	2356	1653	70.16 %	439	168	557	321
0004414	In-Person	3117	254	8.15 %	57	21	80	61
0004414	Mail Voting	3117	1953	62.66 %	592	148	671	355
0004414	Total	3117	2207	70.81 %	649	169	751	416
0004417	In-Person	2330	196	8.41 %	55	24	51	44
0004417	Mail Voting	2330	1329	57.04 %	416	92	434	240
0004417	Total	2330	1525	65.45 %	471	116	485	284
0004419	In-Person	1310	112	8.55 %	33	18	25	25
0004419	Mail Voting	1310	855	65.27 %	294	65	260	143
0004419	Total	1310	967	73.82 %	327	83	285	168
0004420	In-Person	2845	259	9.10 %	71	28	70	57
0004420	Mail Voting	2845	1789	62.88 %	598	94	539	374
0004420	Total	2845	2048	71.99 %	669	122	609	431
0004426	In-Person	2530	257	10.16 %	59	28	71	59
0004426	Mail Voting	2530	1364	53.91 %	421	92	429	293
0004426	Total	2530	1621	64.07 %	480	120	500	352
0004430	In-Person	520	56	10.77 %	8	9	19	10
0004430	Mail Voting	520	259	49.81 %	76	9	71	54
0004430	Total	520	315	60.58 %	84	18	90	64
0004440	In-Person	2657	331	12.46 %	87	26	114	63
0004440	Mail Voting	2657	1427	53.71 %	419	87	378	301
0004440	Total	2657	1758	66.16 %	506	113	492	364
0004447	In-Person	2142	223	10.41 %	46	15	79	45
0004447	Mail Voting	2142	1224	57.14 %	361	78	362	250

1 City of Milpitas Mayor								
		Registered Voters	Voters Cast	Turnout (%)	Hon Lien	Voltaire Soriben Montemayor	Carmen Montano	Anthony Phan
0004447	Total	2142	1447	67.55 %	407	93	441	295
Total - In-Person		38836	3724	9.59 %	935	379	1116	822
Total - Mail Voting		38836	22640	58.30 %	6674	1821	7262	4389
Contest Total		38836	26364	67.89 %	7609	2200	8378	5211

CERTIFICATE OF ELECTION RESULTS

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

I, Matt Moreles, Acting Registrar of Voters of the County of Santa Clara, State of California, hereby declare:

1. A General Election was held in the County of Santa Clara, for the **Councilmember**, on November 5, 2024 for the purpose of electing **one (1) full-term Member, City of Milpitas** to the Governing Board.
2. The official canvass of the returns of this election was conducted by the Office of the Registrar of Voters in accordance with the appropriate provisions of the Elections Code of the State of California.
3. The Statement of Votes Cast, now on file in my office and attached hereto, shows the number of votes for each candidate for the Councilmember of the **City of Milpitas** and in each of the precincts and that the total shown for each candidate are true and correct.

WITNESS my hand and Official Seal this 5th day of December 2024.




Matt Moreles, Acting Registrar of Voters

CERTIFICATE OF ELECTION

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

This certifies that, at the General Election held in and for the County of Santa Clara on November 5, 2024

Evelyn Chua

was elected for the office of

Councilmember, City of Milpitas

as appears by the official returns of the election and the Statement of Votes Cast now on file in my office.

IN WITNESS WHEREOF, I, Matt Moreles, Acting Registrar of Voters of the County of Santa Clara, hereby issue this official Certificate of Election this 5th day of December 2024.




Matt Moreles, Acting Registrar of Voters

CERTIFICATE OF ELECTION RESULTS

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

I, Matt Moreles, Acting Registrar of Voters of the County of Santa Clara, State of California, hereby declare:

1. A General Election was held in the County of Santa Clara, for the **Councilmember**, on November 5, 2024 for the purpose of electing **one (1) full-term Member, City of Milpitas** to the Governing Board.
2. The official canvass of the returns of this election was conducted by the Office of the Registrar of Voters in accordance with the appropriate provisions of the Elections Code of the State of California.
3. The Statement of Votes Cast, now on file in my office and attached hereto, shows the number of votes for each candidate for the Councilmember of the **City of Milpitas** and in each of the precincts and that the total shown for each candidate are true and correct.

WITNESS my hand and Official Seal this 5th day of December 2024.




Matt Moreles, Acting Registrar of Voters

CERTIFICATE OF ELECTION

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

This certifies that, at the General Election held in and for the County of Santa Clara on November 5, 2024

William Lam

was elected for the office of

Councilmember, City of Milpitas

as appears by the official returns of the election and the Statement of Votes Cast now on file in my office.

IN WITNESS WHEREOF, I, Matt Moreles, Acting Registrar of Voters of the County of Santa Clara, hereby issue this official Certificate of Election this 5th day of December 2024.




Matt Moreles, Acting Registrar of Voters

1 City of Milpitas Council Member										
		Registered Voters	Voters Cast	Turnout (%)	William Lam	Juliette Gomez	Dipak Awasthi	Evelyn Chua	Bill Chuan	Anu Nakka
0004401	In-Person	2758	273	9.90 %	69	36	36	106	62	59
0004401	Mail Voting	2758	1600	58.01 %	384	264	140	718	309	393
0004401	Total	2758	1873	67.91 %	453	300	176	824	371	452
0004402	In-Person	2479	234	9.44 %	72	36	47	94	45	47
0004402	Mail Voting	2479	1435	57.89 %	373	154	292	637	294	279
0004402	Total	2479	1669	67.33 %	445	190	339	731	339	326
0004403	In-Person	606	92	15.18 %	24	12	15	30	9	16
0004403	Mail Voting	606	306	50.50 %	85	27	53	112	55	62
0004403	Total	606	398	65.68 %	109	39	68	142	64	78
0004405	In-Person	2650	248	9.36 %	68	34	51	89	56	74
0004405	Mail Voting	2650	1605	60.57 %	432	139	229	693	409	440
0004405	Total	2650	1853	69.92 %	500	173	280	782	465	514
0004406	In-Person	2770	284	10.25 %	80	49	35	96	69	46
0004406	Mail Voting	2770	1500	54.15 %	386	205	168	689	324	314
0004406	Total	2770	1784	64.40 %	466	254	203	785	393	360
0004407	In-Person	2600	288	11.08 %	79	38	55	112	46	65
0004407	Mail Voting	2600	1448	55.69 %	397	165	212	602	302	293
0004407	Total	2600	1736	66.77 %	476	203	267	714	348	358
0004409	In-Person	3075	260	8.46 %	74	58	39	90	61	44
0004409	Mail Voting	3075	1757	57.14 %	421	261	181	729	473	457
0004409	Total	3075	2017	65.59 %	495	319	220	819	534	501
0004411	In-Person	2091	150	7.17 %	51	20	24	44	48	36
0004411	Mail Voting	2091	1343	64.23 %	403	108	157	493	493	353
0004411	Total	2091	1493	71.40 %	454	128	181	537	541	389
0004413	In-Person	2356	207	8.79 %	61	27	46	83	33	56
0004413	Mail Voting	2356	1446	61.38 %	415	108	181	657	360	335
0004413	Total	2356	1653	70.16 %	476	135	227	740	393	391
0004414	In-Person	3117	254	8.15 %	93	19	51	79	55	66
0004414	Mail Voting	3117	1953	62.66 %	658	136	254	936	429	496
0004414	Total	3117	2207	70.81 %	751	155	305	1015	484	562
0004417	In-Person	2330	196	8.41 %	55	23	34	63	36	56
0004417	Mail Voting	2330	1329	57.04 %	307	134	184	561	370	337
0004417	Total	2330	1525	65.45 %	362	157	218	624	406	393
0004419	In-Person	1310	112	8.55 %	38	12	29	39	29	31
0004419	Mail Voting	1310	855	65.27 %	267	59	144	335	234	214
0004419	Total	1310	967	73.82 %	305	71	173	374	263	245
0004420	In-Person	2845	259	9.10 %	75	25	41	98	61	74
0004420	Mail Voting	2845	1789	62.88 %	480	187	210	783	539	437
0004420	Total	2845	2048	71.99 %	555	212	251	881	600	511
0004426	In-Person	2530	257	10.16 %	64	53	29	89	51	51
0004426	Mail Voting	2530	1364	53.91 %	351	163	139	578	385	316
0004426	Total	2530	1621	64.07 %	415	216	168	667	436	367
0004430	In-Person	520	56	10.77 %	13	13	12	15	15	10
0004430	Mail Voting	520	259	49.81 %	50	32	37	88	54	65
0004430	Total	520	315	60.58 %	63	45	49	103	69	75
0004440	In-Person	2657	331	12.46 %	86	60	64	111	72	79
0004440	Mail Voting	2657	1427	53.71 %	347	164	147	589	290	321
0004440	Total	2657	1758	66.16 %	433	224	211	700	362	400
0004447	In-Person	2142	223	10.41 %	74	30	31	76	39	46
0004447	Mail Voting	2142	1224	57.14 %	330	115	162	542	263	277

1 City of Milpitas Council Member										
		Registered Voters	Voters Cast	Turnout (%)	William Lam	Juliette Gomez	Dipak Awasthi	Evelyn Chua	Bill Chuan	Anu Nakka
0004447	Total	2142	1447	67.55 %	404	145	193	618	302	323
Total - In-Person		38836	3724	9.59 %	1076	545	639	1314	787	856
Total - Mail Voting		38836	22640	58.30 %	6086	2421	2890	9742	5583	5389
Contest Total		38836	26364	67.89 %	7162	2966	3529	11056	6370	6245

CERTIFICATE OF ELECTION RESULTS

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

I, Matt Moreles, Acting Registrar of Voters of the County of Santa Clara in the State of California, do hereby declare as follows:

A General Election was held in the County of Santa Clara, in the **City of Milpitas**, on November 5, 2024 for the purpose of submitting the following measure to the voters:

J City of Milpitas Public Services Reauthorization Measure. To maintain fiscal stability and essential City services, including 911 emergency response, police and fire protection; repairing streets/fixing potholes; tracking/investigating crime; addressing homeless encampments/affordable housing needs; natural disaster/emergency preparation; maintaining neighborhood parks/public infrastructure, shall the measure continuing the existing voter-approved ¼-cent sales tax be adopted, providing approximately \$7,000,000 annually for eight additional years, requiring independent audits, public disclosure, and all funds controlled locally?

The results of the election were canvassed by the County of Santa, Office of the Registrar of Voters in accordance with applicable provisions of the California Elections Code; and,

The Statement of Votes Cast, now on file at my office, shows the whole number of votes cast for **Measure J** in each of the precincts and the total shown is true and correct.

WITNESS my hand and Official Seal this 5th day of December 2024.




Matt Moreles, Acting Registrar of Voters

1 Measure J - City of Milpitas, Public Services Reauthorization Measure						
		Registered Voters	Voters Cast	Turnout (%)	Yes	No
0004401	In-Person	2758	273	9.90 %	177	63
0004401	Mail Voting	2758	1592	57.72 %	1207	294
0004401	Total	2758	1865	67.62 %	1384	357
0004402	In-Person	2479	235	9.48 %	152	56
0004402	Mail Voting	2479	1432	57.77 %	1060	285
0004402	Total	2479	1667	67.24 %	1212	341
0004403	In-Person	606	92	15.18 %	67	12
0004403	Mail Voting	606	307	50.66 %	245	41
0004403	Total	606	399	65.84 %	312	53
0004405	In-Person	2650	247	9.32 %	177	52
0004405	Mail Voting	2650	1595	60.19 %	1166	326
0004405	Total	2650	1842	69.51 %	1343	378
0004406	In-Person	2770	284	10.25 %	197	53
0004406	Mail Voting	2770	1492	53.86 %	1110	282
0004406	Total	2770	1776	64.12 %	1307	335
0004407	In-Person	2600	288	11.08 %	197	51
0004407	Mail Voting	2600	1444	55.54 %	1086	237
0004407	Total	2600	1732	66.62 %	1283	288
0004409	In-Person	3075	260	8.46 %	182	54
0004409	Mail Voting	3075	1746	56.78 %	1373	263
0004409	Total	3075	2006	65.24 %	1555	317
0004411	In-Person	2091	150	7.17 %	97	43
0004411	Mail Voting	2091	1339	64.04 %	971	282
0004411	Total	2091	1489	71.21 %	1068	325
0004413	In-Person	2356	207	8.79 %	149	40
0004413	Mail Voting	2356	1443	61.25 %	1089	266
0004413	Total	2356	1650	70.03 %	1238	306
0004414	In-Person	3117	254	8.15 %	170	61
0004414	Mail Voting	3117	1934	62.05 %	1472	368
0004414	Total	3117	2188	70.20 %	1642	429
0004417	In-Person	2330	193	8.28 %	137	42
0004417	Mail Voting	2330	1323	56.78 %	996	236
0004417	Total	2330	1516	65.06 %	1133	278
0004419	In-Person	1310	112	8.55 %	76	25
0004419	Mail Voting	1310	854	65.19 %	633	181
0004419	Total	1310	966	73.74 %	709	206
0004420	In-Person	2845	259	9.10 %	177	59
0004420	Mail Voting	2845	1783	62.67 %	1336	341
0004420	Total	2845	2042	71.78 %	1513	400
0004426	In-Person	2530	257	10.16 %	177	51
0004426	Mail Voting	2530	1362	53.83 %	1050	231
0004426	Total	2530	1619	63.99 %	1227	282
0004430	In-Person	520	56	10.77 %	41	10
0004430	Mail Voting	520	257	49.42 %	198	38
0004430	Total	520	313	60.19 %	239	48
0004440	In-Person	2657	331	12.46 %	243	54
0004440	Mail Voting	2657	1420	53.44 %	1109	194
0004440	Total	2657	1751	65.90 %	1352	248
0004447	In-Person	2142	223	10.41 %	149	49
0004447	Mail Voting	2142	1216	56.77 %	916	210

1 Measure J - City of Milpitas, Public Services Reauthorization Measure						
		Registered Voters	Voters Cast	Turnout (%)	Yes	No
0004447	Total	2142	1439	67.18 %	1065	259
Total - In-Person		38836	3721	9.58 %	2565	775
Total - Mail Voting		38836	22539	58.04 %	17017	4075
Contest Total		38836	26260	67.62 %	19582	4850



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Appoint the Vice Mayor (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)
Category:	Leadership and Support Services
Meeting Date:	12/10/2024
Recommendation:	Receive recommendation from Mayor Carmen Montano of one City Councilmember to serve as Milpitas Vice Mayor for one year and move to appoint the Vice Mayor.

BACKGROUND

Per the City of Milpitas City Council Handbook, the duties of the Vice Mayor are as follows:

“The Vice Mayor is selected from those on the Council during the first meeting at which the Mayor and returning or incoming Councilmembers commence their terms. Nomination is done through a motion and appointment is based on a majority vote.

In the event that the Mayor cannot attend a ceremonial function, the Vice Mayor shall serve as the official head of the City in his or her stead. In the event that neither the Mayor nor the Vice Mayor can preside at a ceremonial function, one of the remaining members of the City Council shall serve as the official head of the City on a rotating basis to be administered by City Staff.”

ANALYSIS

The purpose of this agenda report is to serve as a placeholder for Mayor Carmen Montano to provide her nomination for the Vice Mayor position for City Council consideration at the December 10, 2024 City Council meeting.

POLICY ALTERNATIVE(S):

Not applicable

FISCAL IMPACT:

There is no fiscal impact to the City operating budget.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

This item is not a project under the California Environmental Quality Act (CEQA) Guideline 15378(b).

RECOMMENDATION:

Move to nominate and appoint by majority vote the Vice Mayor for the City of Milpitas to serve a one-year term.

ATTACHMENT(S):

n/a

November 2024						
S	M	T	W	T	F	S
					1	2
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

December 2024

January 2025						
S	M	T	W	T	F	S
			1	2	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	31	

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3 6:00 PM -Closed Session 7:00 PM -City Council	4 1:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (CM) 7:00 PM -Community Housing Commission (EC)	5 5:30 PM -Santa Clara VTA Board of Directors (CM) 7:00 PM -City of Milpitas Annual Tree Lighting Event, Civic Plaza	6	7
8	9 6:00 PM - Housing Opportunity District Community Meeting	10 5:30 PM - Special Council Meeting	11 5:30 PM -Silicon Valley Clean Energy Board of Directors (Cupertino)	12 4:00 PM -Treatment Plant Advisory Committee (San Jose) 5:30 PM -CASCC Legislative Action Committee 6:00 PM -Youth Advisory Commission 7:00 PM -Cities Assoc of SCC	13	14
15	16	17	18 6:00 PM -Energy and Environmental Sustainability Commission	19 10:00 AM -VTA CMPP Meeting	20	21
22	23	24	25	26	27	28
		 City Hall and City Facilities Closed (Fire and Police are not affected)				
29	30	31				
	 City Hall and City Facilities Closed (Fire and Police are not affected)					

December 2024						
S	M	T	W	T	F	S
1	2	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	31				

Milpitas City Council Calendar

January 2025

February 2025						
S	M	T	W	T	F	S
						1
2	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	

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1  CITY OBSERVED HOLIDAY CITY OFFICES CLOSED	2	3	4
5	6 7:00 PM -Parks, Recreation & Cultural Resources Commission	7 6:00 PM -Closed Session 7:00 PM -City Council	8 1:00 PM -VTA Northeast Group Agenda Briefing (Virtual) 7:00 PM -Planning Commission 7:00 PM -Silicon Valley Clean Energy Board of Directors (Cupertino)	9 4:00 PM -Santa Clara VTA Policy Advisory Committee 4:00 PM -Treatment Plant Advisory Committee (San Jose) 5:30 PM -CASCC Legislative Action Committee (Los Altos) 5:30 PM -VTA Board of Directors 6:00 PM -Youth Advisory Commission 7:00 PM -Cities Assoc of SCC (Los Altos)	10	11
12	13 4:30 PM -Economic Development and Trade Commission 7:00 PM -Library & Education Advisory Commission	14 4:00 PM - HOPE Task Force	15 6:00 PM -Energy and Environmental Sustainability Commission	16 6:00 PM -Zoning Advisory Committee 6:30 PM -Bay Area Water Supply Conserv Agency (Sequoia Room – Burlingame Community Center) 7:00 PM -Public Safety and Emergency Preparedness Commission	17	18
19	20  MARTIN LUTHER KING JR. BIRTHDAY CITY OFFICES CLOSED	21 6:00 PM -Closed Session 7:00 PM -City Council	22 12:00 PM -Santa Clara Valley Water Commission 7:00 PM -Planning Commission	23 12:00 PM -Santa Clara County Library JPA Board of Directors Meeting (Campbell) 4:00 PM -Silicon Valley Regional Interoperability Authority (SVRIA)	24 9:00 AM -VTA Board of Directors Orientation/Workshop	25
26	27 7:00 PM -Arts Commission 7:00 PM - Science, Technology & Innovation Commission	28 5:30 PM -Special City Council Meeting – Preliminary Fy2025-26 Budget Study Session	29	30	31	



JOINT MEETING OF THE MILPITAS CITY COUNCIL AND HOUSING AUTHORITY

MINUTES

TUESDAY, DECEMBER 3, 2024

The City Council of the City of Milpitas convened on the regular City Council meeting day in a Joint Meeting of the Milpitas City Council and Housing Authority on December 3, 2024, in the City Council Chamber, 455 E. Calaveras Blvd, Milpitas, CA, and via teleconference/Zoom webinar.

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

Mayor Montano called the Joint Meeting of the City Council and the Housing Authority to order at 6:01 PM. Roll Call was taken by City Clerk Guzzetta.

PRESENT: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien, Councilmember Phan

ABSENT: None.

City Attorney Mutalipassi briefed the City Council on the Closed Session.

The City Council adjourned to Closed Session at 6:02 PM.

ADJOURN TO CLOSED SESSION

(a) CONFERENCE WITH LEGAL COUNSEL

Existing Litigation Pursuant to Government Code § 54956.9(d)(2):
Brian Bruce v. City of Milpitas, WCAB case number ADJ 13140823.

CLOSED SESSION ANNOUNCEMENT:

The City Council reconvened at 7:00 PM

City Attorney Mutalipassi had nothing to report out.

PLEDGE OF ALLEGIANCE

Councilmember Lien led the pledge of allegiance.

INVOCATION

Councilmember Lien provided the invocation

PRESENTATIONS

1. Receive Report on Manufacturing Day 2024 and Issue Commendation Certificates (Staff Contact: Alex Andrade, Economic Development and Strategic Initiatives Director, 408-586-3046)

Mayor Montano, joined by the Milpitas City Council, presented commendations to Manufacturing Day participants: BD Bioscience, Corsair Gaming, Simon Property Group, MUSD, and City of Milpitas Office of Economic Development.

Economic Development Coordinator Michael Thomas presented the report and video.

PUBLIC FORUM

The following people spoke under Public Forum:

1. Rob Means

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

Vice Mayor Chua read aloud the City Council Code of Conduct.

APPROVAL OF AGENDA

After discussion, motion: to approve the agenda.

Motion/Second: Vice Mayor Chua / Councilmember Barbadillo

Motion carried by the following:

AYES: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien,
Councilmember Phan

NOES: None

CONSENT CALENDAR

Councilmember Phan asked to pull Item C6.

After discussion, motion: to approve the Consent Calendar, pulling Item C6.

Motion/Second: Councilmember Lien / Vice Mayor Chua

Motion carried by the following:

AYES: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien,
Councilmember Phan

NOES: None

2. **Receive City Council Calendar of Meetings for December 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Received City Council Calendar of Meetings for December 2024.

3. **Approve City Council Special and Regular Meeting Minutes of November 19, 2024 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Approved City Council Special and Regular Meeting minutes of November 19, 2024.

4. **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.

5. 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.

7. Adopt a Resolution Updating the Conflict of Interest Code and Amending the List of Designated Positions Requiring Disclosure (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001; and Michael Mutalipassi, City Attorney, 408-586-3041)

Adopted **Resolution No. 9369** updating the City of Milpitas Conflict of Interest Code, including the list of designated positions required to annually file the FPPC Form 700 Statement of Economic Interests.

8. Approve and Authorize the City Manager to Execute Amendment No. 3 to the Professional Services Agreement with Liebert Cassidy Whitmore to Provide Essential Labor Relations and Other Services (Staff Contact: Kelli Parmley, Human Resources Director, 408-586-3086)

Approved and authorized the City Manager to execute Amendment No.3 to the Professional Services Agreement with Liebert Cassidy Whitmore (LCW) for an additional agreement amount of \$200,000, subject to the annual appropriation of funds.

9. Adopt a Resolution to Approve a Cost-of-Living Salary Adjustment for the City Manager as Directed by the City Council (Staff Contact: Kelli Parmley, Human Resources Director, 408-586-3086)

Adopted **Resolution No. 9370** to approve a 3% Cost-of-Living (COLA) salary adjustment for the City Manager as directed by the City Council.

10. Consider Personnel Realignment to Support Department Operations (Staff Contact: Jay Lee, Planning Director, 408-586-3077)

Adopted **Resolution No. 9371** to approve the deletion of a vacant Associate Planner position and the addition of a Junior/Assistant Planner position in the Planning Department.

11. Adopt a Resolution to Accept the Grant Award from and Approve an Agreement with the County of Santa Clara Public Health Department to Implement an Ordinance to Prevent Youth Access to Tobacco Products (Staff Contact: Jay Lee, Planning Director, 408-586-3077)

Adopted **Resolution No. 9372** to accept a grant award of \$22,997 from the County of Santa Clara Public Health Department and authorize the City Manager to execute an Agreement with the Santa Clara County Public Health Department for the Healthy Cities Program in the amount of \$22,997.

12. Adopt a Resolution Granting Acceptance of the Street Resurfacing Project 2024 and Project Nos. 4283, 4304, and 4305, Authorizing the City Engineer to File a Notice of Completion and Issue a Notice of Final Acceptance After the One-Year Warranty (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602; and Michael Silveira, City Engineer, 408-586-3303)

(1) Adopted **Resolution No. 9373** granting acceptance of the Street Resurfacing Project 2024 and Project Nos. 4283, 4304, and 4305; and (2) Authorized the City Engineer to file a Notice of Completion and issue a Notice of Final Acceptance after the one-year warranty.

13. Receive an Update on the Security Improvements at the McCarthy Ranch Sewer Lift Station (Main Lift) and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)

- (1) Received an update on the security improvements at the McCarthy Ranch Sewer Lift Station; and
- (2) Determined by a four-fifths vote that the condition continues to constitute an emergency.

ITEMS PULLED FROM CONSENT CALENDAR

6. Adopt a Resolution Delegating Authority to the City Manager or Designee to Approve and Execute Project-Related Documents and Urgent Administrative Items During the City Council Winter Recess (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)

Councilmember Phan sought clarification asking about the definition of urgent items and the scope of project related documents. City Manager Thomas explained that this was a precautionary measure for extreme emergencies like natural disasters, emphasizing that it would not be used for routine administrative functions and that any actions taken would be fully reported back to the council in January 2025.

After discussion, motion: to adopt **Resolution No. 9368** delegating authority to the City Manager, or their designee, to approve and execute project-related documents, including contract documents and urgent administrative items during the City Council and City of Milpitas Housing Authority winter recess from the last City Council meeting held on December 10, 2024, through January 7, 2025.

Motion/Second: Councilmember Phan / Councilmember Barbadillo

Motion carried by the following:

AYES: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien,
Councilmember Phan

NOES: None

LEADERSHIP AND SUPPORT SERVICES

14. Accept the City of Milpitas Annual Comprehensive Financial Report and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2024 (Staff Contact: Luz Cofresí-Howe, Finance Director, 408-586-3111)

City Manager Thomas introduced the item and Finance Director Cofresí-Howe presented the report.

There were no public speakers.

The City Council engaged in discussions about the financial report, asking questions about audit procedures, internal policies, and future financial trends. Finance Director Cofresí-Howe responded to their questions. Councilmember Phan raised concerns about the Finance Subcommittee meetings not being held regularly and contract disclosures not being up-to-date on the website. Finance Director Cofresí-Howe committed to ensuring the prompt posting of contract disclosures and providing those to the City Council. Vice Mayor Chua asked for details on vacancy trends and expenditures from July to November.

After discussion, motion: to accept the City of Milpitas Annual Comprehensive Financial Report and other related annual audited reports for the fiscal year ended June 30, 2024..

Motion/Second: Mayor Montano / Vice Mayor Chua

Motion carried by the following:

AYES: Mayor Montano, Vice Mayor Chua, Councilmember Barbadillo, Councilmember Lien,
Councilmember Phan

NOES: None

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

City Manager Thomas announced the Annual Tree Lighting on December 5th.

Councilmember Lien extended congratulations to the newly elected and reelected Councilmembers and Mayor. Vice Mayor Chua expressed similar sentiments and recognized Councilmember Phan for his eight years of dedicated service.

ADJOURNMENT

Mayor Montano adjourned the meeting at 8:24 PM.

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

as of 12/5/2024

January 7, 2025 – Regular Meeting

CLOSED SESSION

INVOCATION (Councilmember Barbadillo)

PRESENTATION

CONSENT CALENDAR

1. Receive City Council calendar for January 2025 (City Clerk)
2. Approve City Council meeting minutes of December 10, 2024 (City Clerk)
3. Preview list of items for January 21, 2025 (City Clerk)
4. Councilmember Request List (City Clerk)
5. 2nd Reading - Municipal Code Changes for the FY 24-25 Department Realignments (City Manager)
6. City Council Travel to the New Mayor and Councilmember Academy on January 22 – 24, 2025, and USCM Winter Meeting on January 16-19, 2025 (City Manager)
7. Emergency Declaration Update - Main Sewer Lift Station Security Measures (Public Works)
8. Design Services Award for FM-A (Public Works / Engineering)

PUBLIC HEARINGS

9. CFD 2005-1 Annexation No. 25: 612 S. Main Street (Public Works / Engineering)

COMMUNITY DEVELOPMENT

10. City of Milpitas and Rivian Tax Sharing Agreement (Economic Development)
11. Gateway-Main Street Specific Plan Status Update (Planning)

LEADERSHIP AND SUPPORT SERVICES

12. Measure J Ordinance (City Manager)

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

OPEN ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
1	Look into potential impact fees for heavy vehicle transportation using city roads	Montano	11/19/2024	An update on this item will be included in the next quarterly prioritization update.
2	Staff organize a job fair for City job openings	Chua	11/19/2024	An update on this item will be included in the next quarterly prioritization update.
3	Bring back a study or analysis of the permit process	Chua	11/19/2024	An update on this item will be included in the next quarterly prioritization update.
4	Feasibility study for a potential pickleball field at Dixon Landing Park	Montano	10/15/2024	An update on this item will be included in the next quarterly prioritization update.
5	Review the area near Rose Elementary School at the intersection of Edsel and Roswell for unsafe traffic conditions and possible traffic control measures.	Montano	10/1/2024	An update on this item will be included in the next quarterly prioritization update.
6	Bring forward the costs regarding the library renaming project to clarify costs and design by December of this year	Phan	10/1/2024	An update on this item will be included in the next quarterly prioritization update.
7	Invite the HR Director to a future meeting to present on hiring processes and vacancies	Lien	10/1/2024	City staff is working on an update to this item to be provided to the City Council in the next few months.
8	Explore updating the city's business tax rate schedule	Chua	10/1/2024	An update on this item will be included in the next quarterly prioritization update.
9	Explore funding options for new signage following the decision to rename the Milpitas Library to the Milpitas Jose Esteves Library	Barbadillo	9/3/2024	An update on this item will be included in the next quarterly prioritization update.
10	Send a letter to Supervisory Otto Lee regarding the weeds on Montague Expressway	Montano	8/13/2024	An update on this item will be included in the next quarterly prioritization update.

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
11	Update the animal control ordinance to include other animals such as horses and cats	Chua	9/3/2024	This item was approved to move forward at the 9/17/2024 City Council prioritization.
12	Look into a property for sale on Main Street to investigate the cost and feasibility of creating a museum for downtown or Old Town Main Street as part of the revitalization efforts.	Montano	8/13/2024	This item was approved to move forward at the 9/17/2024 City Council prioritization.
13	Look into adopting an ordinance similar to San Jose allowing ADUs (Accessory Dwelling Units) to have a separate title and be sold separately.	Chua	8/13/2024	This item was approved to move forward at the 9/17/2024 City Council prioritization.
14	Conduct a traffic study on Escuela Parkway to address circulation concerns	Montano	5/7/2024	An update on this item will be included in the next quarterly prioritization update.
15	Explore the possibility of augmenting the Planning Commission stipend	Barbadillo	4/16/2024	An update on this item will be included in the next quarterly prioritization update.
16	Consideration of the 20% Low Income Below Market Rate Housing	Montano	12/5/2023	An update on this item will be included in the next quarterly prioritization update.
17	Bring back Bingo and the Tour at the Senior Center	Chua	11/7/2023	An update on this item will be included in the next quarterly prioritization update.
18	Referral for utility infrastructure cost on Main Street from Carlo to Corning Streets	Montano	10/17/2023	An update on this item will be included in the next quarterly prioritization update.
19	Main Street International Festival	Lien	10/3/2023	An update on this item will be included in the next quarterly prioritization update.
20	Explore taking steps towards becoming a Charter City	Phan	9/5/2023	An update on this item will be included in the next quarterly prioritization update.
21	Pickleball Pilot Project	Chua	2/28/2023	An update on this item will be included in the next quarterly prioritization update.
22	Main Street Infrastructure Projects	Montano	2/28/2023	An update on this item will be included in the next quarterly prioritization update.

NOTE: Deferred and Completed Items are not listed

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
23	Main Street Flooding at Library	Chua	2/28/2023	An update on this item will be included in the next quarterly prioritization update.
24	Have the City look into the possibility of a Citywide Senior Discount	Barbadillo	2/7/2023	An update on this item will be included in the next quarterly prioritization update.
25	City Manager to look into defining either a standalone teen center or updating information to	Chua	9/20/2022	An update on this item will be included in the next quarterly prioritization update.
26	City Manager look into implementing a workshop for small businesses on the bidding process for projects in the city	Chua	8/9/2022	An update on this item will be included in the next quarterly prioritization update.
27	Quarterly or Monthly crime statistics on Homekey Project	Chua	6/7/2022	An update on this item will be included in the next quarterly prioritization update.
28	Memorial Plaque in honor of youth skateboarder that passed away	Montano	6/7/2022	An update on this item will be included in the next quarterly prioritization update.
29	Evaluate reopening the childcare center with a non-profit organization running the center	Montano	2/1/2022	An update on this item will be included in the next quarterly prioritization update.
30	Staff to look into mural Art on Great Mall Parkway on the VTA owned Light rail pillars	Montano	11/16/2021	An update on this item will be included in the next quarterly prioritization update.
31	Have a picture of Albert Vogel Sr. put up in the Senior Center	Montano	10/19/2021	An update on this item will be included in the next quarterly prioritization update.
32	Include a bust of Maria Lemire on the Mural in front of the Senior Center	Montano	8/17/2021	An update on this item will be included in the next quarterly prioritization update.
33	Consider Community Museum and Park on Main St.	Phan	8/20/2019	Discussions with the property owner of this site are ongoing.

NOTE: Deferred and Completed Items are not listed



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider the Recommendation from Mayor Montano for Appointments to City Commissions (Contact: Mayor Montano, 408-586-3024)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/10/2024
Recommendation:	Receive the recommendation from Mayor Montano and approve appointments to City Commissions

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 her 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 Commissioners may seek to be reappointed upon the expiration of their current term, but reappointment to a new term is not automatic. Those Commissioners seeking reappointment must contact the City Clerk and the Mayor to convey their request. Re-appointment must be recommended by the Mayor and confirmed by the City Council.

Analysis:

Mayor Montano is making the following recommendations for appointment:

Planning Commission:

1. Reappoint Parveen Gupta to a full term ending December 2027.
2. Reappoint Dipak Awasthi to a full term ending December 2027.
3. Reappoint Alexander Galang to a full term ending December 2027.

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

Fiscal Impact:

There is no fiscal impact associated with this item.

CEQA:

The action is continuing administrative or maintenance activity and is not a project pursuant to Cal. Code Regs., tit. 14, § 15378.

Recommendation:

Receive the recommendation from Mayor Montano and approve appointments to City Commissions.

Attachments:

n/a



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider Mayor's Appointments of City Councilmembers as Liaisons to City Commissions, City Subcommittees, and Outside Agency Boards and Committees (Contact: Mayor Carmen Montano, 408-586-3024)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/10/2024
Recommendation:	Consider Mayor's appointments of City Council members to liaisons of City Commissions, City Subcommittees, and outside agencies, boards and committees, and move to confirm those appointments.

Background:

Milpitas City Councilmembers serve as liaisons to City Commissions and outside agency boards and committees. Councilmembers also serve on Council Subcommittees. Traditionally, after a local election, the Mayor will recommend reassignments of City Councilmembers to both the City and outside agency bodies, with input on the Councilmembers' interests and availability. These recommendations are placed on a City Council agenda and approved at a City Council meeting.

Analysis:

Mayor Montano has provided the attached recommendations for Councilmember appointments to City subcommittees and commissions, outside agencies, boards, and committees.

Fiscal Impact:

There is no fiscal impact associated with this item.

CEQA:

The action is continuing administrative or maintenance activity and is not a project pursuant to Cal. Code Regs., tit. 14, § 15378.

Recommendation(s):

Consider Mayor's appointments of City Council members to liaisons of City Commissions and outside agencies and committees, and boards, and move to confirm those appointments.

Attachment(s):

List of recommendations – *to be distributed separately*



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider Fee Waiver Requests from Kiwanis Club of Milpitas, Police Activity League Knights, and Milpitas Youth Soccer League (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	12/10/2024
<u>Recommendation:</u>	(1) Approve a fee waiver of \$945 for the Annual Kiwanis Crab Feed Fundraiser on February 7, 2025, at the Milpitas Community Center, (2) Approve a fee waiver of \$436 for the annual Police Activity League (PAL) Knights Football end of season banquet on January 10, 2025, at the Milpitas Community Center; and (3) Approve a fee waiver of \$545 for the annual Milpitas Youth Soccer League (MYSL) volunteer appreciation dinner on December 15, 2024, at the Milpitas Community Center.

BACKGROUND:

On November 21, 2024, staff received a Donation and Fee Waiver/Reduction Policy request from the Kiwanis Club of Milpitas for their 21st Annual MUSD Crab Feed and Auction event scheduled for February 7, 2025, at the Milpitas Community Center. The request is for a \$945 fee waiver for the event space rental costs.

On December 3, 2024, staff received a Donation and Fee Waiver/Reduction Policy request from the Milpitas Youth Soccer League for their annual Volunteers Appreciation Dinner on Sunday, December 15, 2024, at the Milpitas Community Center Auditorium. The request is for a \$545 fee waiver for the hourly rental fees.

On December 4, 2024, staff received a Donation and Fee Waiver/Reduction Policy request from the PAL Knights Football for their annual end of season Banquet on Friday, January 10, 2025, at the Milpitas Community Center. The request is for a \$436 fee waiver for the hourly rental fees.

ANALYSIS:

Three (3) Fee Waiver/Reduction Policy request applications were received by the Recreation and Community Services Department.

The Kiwanis Club of Milpitas submitted the required applications and documentation for their 21st Annual Crab Feed:

- Indoor Space Rental Application for Milpitas Community Center Auditorium
- City Council Donation and Fee Waiver/Reduction Policy request
- Non-profit status letter

Kiwanis is requesting that City Council waive eligible fees for the community room hourly rental fees in the amount of \$945. 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.

The Milpitas Youth Soccer League (MYSL) submitted the required applications and documentation for their Annual Volunteer Appreciation Dinner:

- Indoor Space Rental Application for Milpitas Community Center Auditorium
- City Council Donation and Fee Waiver/Reduction Policy request
- Non-profit status letter

MYSL is requesting that City Council waive eligible fees for the community room hourly rental fees in the amount of \$545. 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.

PAL Knights Football submitted the required applications and documentation for their Annual end of season banquet:

- Indoor Space Rental Application for Milpitas Community Center Auditorium
- City Council Donation and Fee Waiver/Reduction Policy request
- Non-profit status letter

PAL Knights Football is requesting that City Council waive eligible fees for the community room hourly rental fees in the amount of \$436. 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.

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 applicants have provided a copy of their determination letter from the Internal Revenue Service stating they are tax-exempt organizations. The applicants meet the requirements as outlined in the Council adopted Donation and Fee Waiver/Reduction Policy.

POLICY ALTERNATIVE(S):

Alternative: Do not approve the received fee waiver and donation applications as requested.

Pros: The City General Fund will not incur the costs of the fees waived.

Con: Denial of the request may not allow the non-profit organization to hold their events.

Reason not recommended: Received requests are consistent with the Council approved Policy.

FISCAL IMPACT:

\$25,000 was approved and included in the FY 2022-23 City budget for City Council's Unallocated Community Promotions with a current balance of \$21,504.73. If these requests are approved by the City Council, then \$19,578.73 would remain in that line item of the current year's budget.

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:

- 1) Approve a fee waiver of \$945 for the Annual Kiwanis Crab Feed Fundraiser on February 7, 2025, at the Milpitas Community Center.
- 2) Approve a fee waiver of \$436 for the annual PAL Knights Football end of season banquet on January 10, 2025, at the Milpitas Community Center.
- 3) Approve a fee waiver of \$545 for the annual Milpitas Youth Soccer League volunteer appreciation dinner on December 15, 2024, at the Milpitas Community Center.

ATTACHMENT(S):

- (a) Kiwanis Club of Milpitas Fee Waiver Application
- (b) Kiwanis Club of Milpitas IRS Nonprofit Letter
- (c) MYSL Fee Waiver Application
- (d) MYSL IRS Nonprofit Letter
- (e) PAL Knights Football Fee Waiver Application
- (f) PAL Knights Football IRS Nonprofit letter

City of Milpitas City Council Non-Profit Donation/Fee Waiver Requ... #36

Name of Organization	Kiwanis Club of Milpitas Foundation
Is there a Milpitas Branch or Affiliation?	☒ Yes
Organization Address (as listed on your 501 (c) 3)	PO Box 360730 Milpitas, Calif 95036 United States
Organization Web Site	https://www.facebook.com/KiwanisClubofMilpitas
Organization Contact Name	Dennis Grilli
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)	\$1500.00
Description of Use of Funds/Fees to be Waived	Reduce cost of event and help with profit for community projects
Event Name	Milpitas Kiwanis presents the 21st Annual MUSD Crab Feed
Event Date(s)	Feb 07, 2025
Event Location (Facility Name and Address)	Milpitas Community Center 457 E. Calaveras Blvd., Milpitas
Is your Event Open to the Public	No
What is you anticipated Event attendance?	275
What is the purpose of the Event?	The Kiwanis Club of Milpitas focuses on financially disadvantaged students' needs with Annual programs that have served our community for 25 years. Our goal is to enhance the lives of our youth in Milpitas .The Annual CrabFeed provides us with the funds we need to support our community youth.
Is your event a Fundraiser	Yes
What percentage of your event fundraising proceeds will benefit the Milpitas Community?	60% or more

How will the Milpitas Community Benefit from this Event?

Each year we host a Kohls for Kids shopping event for 150 low income elementary students providing them with new school clothing and shoes , accessories and school supplies. Our Turnaround Scholarships identifies 6 graduating high school seniors each year providing them with \$6000 scholarships to assist with college or grade school expenses. Other programs are our Milpitas Reads event for all 2nd graders a annual book focused on our children.

How will the City's contribution (if approved) be recognized in event media and publicity?

We acknowledge your support and waivers on our Facebook page and list The City of Milpitas as a Sponsor of the Annual Crabfeed . At the event we post signs and add to our program .

**Upload your Entity
Status Letter (Entity
Name listed on this
application must match
the Entity Status Letter
Name)**

Pdf.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. 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.

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Entry Info

Date Created 21 Nov 2024 - 01:53:40 PM

Date Updated

IP Address 4.79.52.48

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: 05/01/12

KIWANIS CLUB OF MILPITAS FOUNDATION
C/O MICHAEL MENDIZABAL
PO BOX 360730
MILPITAS, CA 95036

Employer Identification Number:

DLN:

17053074349003

Contact Person:

JOHN M WHITE

ID# 52118

Contact Telephone Number:

(877) 829-5500

Accounting Period Ending:

December 31

Public Charity Status:

509(a)(2)

Form 990 Required:

Yes

Effective Date of Exemption:

September 6, 2012

Contribution Deductibility:

Yes

Addendum Applies:

No

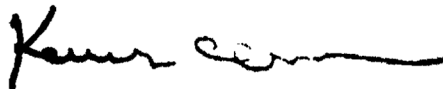
Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

Sincerely,



Director, Exempt Organizations

Enclosure: Publication 4221-PC

Letter 947 (DO/CG)

City of Milpitas City Council Non-Profit Donation/Fee Waiver Requ... #37

Name of Organization	Milpitas Youth Soccer League
Is there a Milpitas Branch or Affiliation?	☒ No
Organization Address (as listed on your 501 (c) 3)	Milpitas Youth Soccer League PO BOX 360577 Milpitas, ca 95035 United States
Organization Web Site	https://mysleague.com/
Organization Contact Name	amin fazal
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)	1500
Description of Use of Funds/Fees to be Waived	Rental of Auditorium for Appreciation event
Event Name	MYSL Volunteers Appreciation Dinner
Event Date(s)	Dec 15, 2024
Event Location (Facility Name and Address)	457 E Calaveras Ave
Is your Event Open to the Public	No
What is you anticipated Event attendance?	200
What is the purpose of the Event?	We are hosting a dinner and awards ceremony for our coaches and league volunteers, some of which have been present since day 1 25 yrs ago. This includes the founders, the board members , coaches, team assistants and team managers. We also promote future employment opportunities for our youth as referees and provide instruction and training for this specific skill set in the part time work force while they remain student athletes.
Is your event a Fundraiser	No
What percentage of your event fundraising proceeds will benefit the Milpitas Community?	None, this is not a fundraiser

How will the Milpitas Community Benefit from this Event?

This is a thank you and awards dinner for our volunteers that keep our league going. If not for our volunteers we would not have coaches, organizers or referees.

How will the City's contribution (if approved) be recognized in event media and publicity?

We will have a photographer present for the media portals and have an article written on the event.

MYSL 501c3.pdf

Upload your Entity Status Letter (Entity Name listed on this application must match the Entity Status Letter Name)



MYSL APPRECIATION DINNER 2024.jpg

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. 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.

Entry Info

Date Created	3 Dec 2024 - 02:12:51 PM
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Date Updated	
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IP Address	50.247.113.118
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INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date **SEP 30 2004**

MILPITAS YOUTH SOCCER CLUB
C/O MICHAEL BAKER
88 S PARK VICTORIA STE 135
MILPITAS, CA 95035

Employer Identification Number:

[REDACTED]

DLN:

17053219008044

Contact Person:

JOAN C KISER

ID# 31217

Contact Telephone Number:

(877) 829-5500

Accounting Period Ending:

DECEMBER 31

Public Charity Status:

170(b)(1)(A)(vi)

Form 990 Required:

YES

Effective Date of Exemption:

APRIL 10, 2003

Contribution Deductibility:

YES

Advance Ruling Ending Date:

DECEMBER 31, 2007

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. During your advance ruling period, you will be treated as a public charity. Your advance ruling period begins with the effective date of your exemption and ends with advance ruling ending date shown in the heading of the letter.

Shortly before the end of your advance ruling period, we will send you Form 8734, Support Schedule for Advance Ruling Period. You will have 90 days after the end of your advance ruling period to return the completed form. We will then notify you, in writing, about your public charity status.

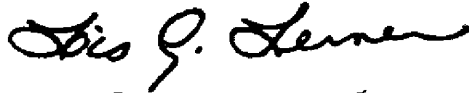
Please see enclosed Information for Exempt Organizations Under Section 501(c)(3) for some helpful information about your responsibilities as an exempt organization.

Letter 1045 (DO/CG)

-2-

MILPITAS YOUTH SOCCER CLUB

Sincerely,

A handwritten signature in cursive script, reading "Lois G. Lerner".

Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

Enclosures: Information for Organizations Exempt Under Section 501(c)(3)
Form 872-C

Letter 1045 (DO/CG)

City of Milpitas City Council Non-Profit Donation/Fee Waiver Requ... #38

Name of Organization	Milpitas PAL Football & Cheer
Is there a Milpitas Branch or Affiliation?	☒ Yes
Organization Address (as listed on your 501 (c) 3)	1275 N Milpitas Blvd Milpitas, Ca 95035 United States
Organization Web Site	https://www.milpitasknights.com
Organization Contact Name	Donna Lacanlale
Organization Contact Phone	[REDACTED]
Organization Contact Email	donna@milpitasknights.com
Request Type	☒ Fee Waiver (up to \$1,500)
Requested Amount (request types cannot be combined or exceed maximum listed amounts)	\$600.00
Description of Use of Funds/Fees to be Waived	Hall rental
Event Name	Milpitas Knights Banquet
Event Date(s)	Jan 10, 2025
Event Location (Facility Name and Address)	Milpitas Community Center 457 Calaveras Blvd Milpitas Ca 95035
Is your Event Open to the Public	Yes
What is you anticipated Event attendance?	250-300 people
What is the purpose of the Event?	To have a banquet to hand out trophies and awards to the football and cheerleaders
Is your event a Fundraiser	No
What percentage of your event fundraising proceeds will benefit the Milpitas Community?	None, this is not a fundraiser
How will the Milpitas Community Benefit from this Event?	It will benefit the families that participate in our program from our community
How will the City's contribution (if approved) be recognized in event media and publicity?	We will thank the city for their sponsorship. Signage at tables to thank the city. And anounced in our presidents speach
Upload your Entity Status Letter (Entity Name listed on this application must match the Entity Status Letter Name)	PAL Knights Entity Status Letter.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

Donna Lacanlale

an accounting of how the proceeds of the event will be dispersed. 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.

Entry Info

Date Created	4 Dec 2024 - 03:14:38 PM
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Date Updated	
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IP Address	99.67.21.47
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Entity Status Letter

Date: 12/4/2024

ESL ID: 6263662937

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: 1970068

Entity Name: THE MILPITAS POLICE ACTIVITIES LEAGUE, INC.

- ☒ 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 AGENDA REPORT (AR)

Item Title:	Review and Accept the Development Impact Fee Annual and Five-Year Reports for the Calaveras Boulevard Widening Traffic Impact Fee, Transit Area Specific Plan Impact Fee, and Storm Drainage Improvement Fee (Staff Contact: Luz Cofresi-Howe, Finance Director, 408-586-3111)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/10/2024
Recommendation:	(1) Review and accept the Development Impact Fee Annual and Five-Year Reports consistent with the Mitigation Fee Act for the Calaveras Boulevard Widening Traffic Impact Fee, Transit Area Specific Plan (TASP) Impact Fee, and Storm Drainage Improvement Fee for the fiscal year ended June 30, 2024; (2) Adopt a Resolution making all findings required by the Mitigation Fee Act.

BACKGROUND:

California Government Code Section 66000 et seq. (Mitigation Fee Act) requires local agencies to provide an accounting of fees charged for development projects. The City has two basic accounting and reporting responsibilities under the Government Code. Section 66001(d) requires that, Five-Years after collecting a development fee subject to this Code section and every Five Years thereafter, the local agency shall make findings with respect to any portion of the fee remaining unexpended, whether committed or uncommitted. If the required findings are not made, the unexpended funds shall be refunded to the current property owners.

The Five-Year Report must:

1. Identify the purpose of the fee;
2. Demonstrate a reasonable relationship between the fee and the purpose for which it was charged;
3. Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements; and
4. Designate the approximate dates on which these funding sources can be expected to be deposited into the appropriate account or fund.

When sufficient funds have been collected to complete financing on incomplete public improvements, the local agency has 180 days to identify an approximate date by which the construction of the public improvement will begin or else is required to refund the unexpended fees, including accrued interest, to the current owner of lots or units of the development project.

For Fiscal Year ending on June 30, 2024, the City is reporting on its last Five-Year findings for the remaining unexpended fee proceeds for the Calaveras Blvd Widening Traffic Impact Fee, the Transit Area Specific Plan Impact Fee and the Storm Drainage Improvement Fee.

The second requirement set forth under Government Code Section 66006(b)(1)* provides that each local agency is required on an annual basis, within 180 days after fiscal year end, for each separate account, to make available to the public the following information:

1. Brief description of the type of fee in the account;
2. The amount of the fee;
3. The account's beginning and ending balance;
4. The amount of fees collected, and the interest earned;
5. A description of the improvements on which the funds were expended and the amount expended on each improvement including the percentage of the improvement funded with development fees;

6. An approximate date by which the construction of a public improvement will begin if the local agency determines that sufficient funds have been collected to complete financing on the incomplete improvement;
7. A description of each inter-fund transfer or loan made from the account; and
8. The amount of any refunds or allocations made pursuant to Code Section 66001.

The City deposits impact fees subject to the above disclosure in the Calaveras Boulevard Widening Traffic Impact Fee Fund, Transit Area Specific Plan (TASP) Impact Fee Fund, and Storm Drain Development Fund to track these development related fees. Interest income is allocated to these funds based on their respective monthly cash balances. Expenditures from these funds were in the form of capital improvement projects to either renovate existing facilities or maintain the existing level of service, consistent with the General Plan and approved Capital Improvement Plan, due to increased demand related to the development projects.

ANALYSIS:

Annual reports (included in the agenda packet) summarize the Fiscal Year 2023-2024 fund activity for Calaveras Boulevard Widening Traffic Impact Fee (Exhibit 1); Transit Area Specific Plan (TASP) Impact Fee (Exhibit 2); and Storm Drainage Improvement Fee (Exhibit 3). The reports show the amount of fees collected in fiscal year 2023-2024, interest income, a brief description of the projects funded, the percentage of the projects funded by the development fees, and the beginning and ending balance of the funds. The table below shows the beginning fund balance, revenues received, expenditures and ending fund balance for each impact fee for Fiscal Year 2023-2024. The plan to expend the funds available in ending fund balances for the various fees is outlined in the attached reports. For the TASP Impact Fee, for example, the unexpended fee proceeds will be used to fund necessary infrastructure (e.g.: a community center/recreation facility, a park, Montague Expressway widening) as identified in the Transit Area Development Impact Fee Report and the City Capital Improvement Program 2025-2029.

FY 2023-24	Calaveras Blvd Widening Traffic Impact Fee	TASP Impact Fee	Storm Drainage Improvement Fee¹
Beginning Fund Balance	\$ 85,007	\$ 43,568,089	\$ 1,686,233
Revenues	1,646	6,010,545	1,513,610
Expenditures	0	(442,355)	(1,400,000)
Ending Fund Balance	\$ 86,653	\$49,576,379	\$ 1,799,843

¹Annual reporting for the Storm Drainage Improvement Fee is subject to Government Code Section 66013; however, those reporting requirements are substantially similar to the annual reporting requirements under Government Code Section 66006 and are referred to collectively here for convenience.

Additionally, the City also provides Five-Year Reports for the Calaveras Boulevard Widening Traffic Impact Fee in Exhibit 4, the Transit Area Specific Plan Fee in Exhibit 5 and the Storm Drainage Improvement Fee in Exhibit 6. These reports identify the purpose of each fee, demonstrate the reasonable relationship between the fee and the purposes for which the fee was charged, identify the sources and amounts of funding anticipated to complete financing of improvements and designate approximate dates on which these funding sources can be expected.

POLICY ALTERNATIVE(S):

Alternative 1: Do not adopt the resolution and accept the annual development impact fee disclosure information and Five-Year reports.

Pros: None.

Cons: Not adopting the resolution and accepting the annual development impact fee disclosure information and/or the Five-Year Reports will place the City in violation of the Mitigation Fee Act, which will require that those fees are refunded to the property owners.

Reason not recommended: None

FISCAL IMPACT:

Not applicable.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) Guidelines Section 15061 (b)(3).

RECOMMENDATION:

Review and accept the Development Impact Fee Five-Year Reports consistent with the Mitigation Fee Act for the Calaveras Boulevard Widening Traffic Impact Fee, Transit Area Specific Plan (TASP) Impact Fee, and Storm Drainage Improvement Fee for the Fiscal Year Ended June 30, 2024.

ATTACHMENT(S):

- (a) Annual and Five-Year Reports (Exhibits 1-6)
- (b) Resolution

CITY OF MILPITAS
ANNUAL REPORT OF DEVELOPMENT FEES AND EXPENDITURES FOR THE
FISCAL YEAR ENDED JUNE 30, 2024

EXHIBIT 1
CALAVERAS BOULEVARD WIDENING TRAFFIC IMPACT FEE

Description:

To implement the goals and objectives of the City of Milpitas General Plan and to mitigate the traffic impacts caused by new development in the City of Milpitas, certain roadways such as Calaveras Boulevard must be widened.

Fee:

The amount of the fee as of June 30, 2024 was as follows:

Activity Description		FY 23/24 Fee	Unit
1 Residential 5 or More Units		\$ 278.00	per unit
2 Retail Development of 1,000 or more Square Feet		\$ 1,184.00	per square foot
3 Office Development of 1,000 or more Square Feet		\$ 588.00	per square foot
4 Other Uses		To Be Determined	

CITY OF MILPITAS
ANNUAL REPORT OF DEVELOPMENT FEES AND EXPENDITURES FOR THE
FISCAL YEAR ENDED JUNE 30, 2024

EXHIBIT 1
CALAVERAS BOULEVARD WIDENING TRAFFIC IMPACT FEE

STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES

Fees Collected And Interest Earned:

Revenues	
Interest	\$ 1,646
Total Revenues	<u>\$ 1,646</u>
 Excess/(Deficiency) Of Revenues Over/(Under) Expenditures	 \$ 1,646
 Beginning and Ending Balance:	
Fund Balance, Beginning Of Year	<u>\$ 85,007</u>
Fund Balance, End Of Year	<u><u>\$ 86,653</u></u>
 Inter-Fund Transfer Or Loan Made Description	 None
Refunds Made From Surplus Fees And Amount Of Any Allocations Made	None

CITY OF MILPITAS
ANNUAL REPORT OF DEVELOPMENT FEES AND EXPENDITURES FOR THE
FISCAL YEAR ENDED JUNE 30, 2024
EXHIBIT 2
TRANSIT AREA SPECIFIC PLAN (TASP) IMPACT FEE

Description:

Based on Resolution No. 8344, Transit Area Development Impact Fee Update Report Exhibit A prepared by Economic & Planning Systems, Inc., dated February 2014, the purpose of the Transit Area Specific Plan (TASP) Impact fee is to fund the planning and development (as described in the Report) of an approximately 437-acre area in the southern portion of the City near the Great Mall shopping center to support more residents and workers with appropriately scaled utilities, parks, community facilities, and roadways.

Fee:

The amount of the fee as of June 30, 2024 was as follows:

Activity Description			FY 23/24 Fee	Unit
1	Residential		\$ 50,056.00	per unit
2	Commercial		\$ 32.75	per square foot
3	Office		\$ 56.28	per square foot
4	Hotel		\$ -	per room
5	Other Uses		To Be Determined	

^a Fee applies Citywide except TASP Fees for Calaveras Boulevard Widening

CITY OF MILPITAS
ANNUAL REPORT OF DEVELOPMENT FEES AND EXPENDITURES FOR THE
FISCAL YEAR ENDED JUNE 30, 2024

EXHIBIT 2
TRANSIT AREA SPECIFIC PLAN (TASP) IMPACT FEE

STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES

Fees Collected And Interest Earned:

Revenues	
TASP Impact Fees	\$ 2,093,717
Funding returned from closed project CP 2013– (Rmb ¹) Trade Zone/Montague Park – North	1,977,503
Funding returned from closed project CP 2021 – Costa Street Plan Line Study	125,000
Funding returned from closed project CP 4179 – Montague Expwy Widening	578,227
Interest	1,236,098
Total Revenues	<u>\$ 6,010,545</u>

Fees expended on public improvement (See table for % of cost funded with fees)

CP 2010 – Land/Right-of-Way Value Determination	\$ 8,000
CP 2019 – (Rmb ¹) TASP Recycled Water Distribution	104,609
CP 3469 – Metro Impact Fee Study	180,000
CP 3490 – Capital Improvement Program Administration	144,000
TASP Plan Administration Expenses	5,746
Total Expenditures	<u>\$ 442,355</u>

Excess/(Deficiency) Of Revenues Over/(Under) Expenditures \$ 5,568,190

Payment received for Loan to Piper Montague Infrastructure Plan (PMIP) Plan \$ 440,100

Beginning and Ending Balance:

Fund Balance, Beginning Of Year	\$ 43,568,089
Fund Balance, End Of Year	<u><u>\$ 49,576,379</u></u>

Inter-Fund Transfer Or Loan Made Description None

Refunds Made From Surplus Fees And Amount Of Any Allocations Made None

¹ Rmb = Reimbursement

CITY OF MILPITAS
ANNUAL REPORT OF DEVELOPMENT FEES AND EXPENDITURES FOR THE
FISCAL YEAR ENDED JUNE 30, 2024

EXHIBIT 2
TRANSIT AREA SPECIFIC PLAN (TASP) IMPACT FEE

CIP Item Number and Title	Project Description	% Funded with Development Fees	Construction Commencement Date	Project Status
CP 2010 - Land/Right-of-Way Value Determination	This project provides for the annual evaluation and determination of land and right-of-way fair market values within the City for the purpose of updating development fee calculations such as the park-in-lieu fee.	100%	2019	In Process
CP 2012 – (Rmb) ¹ Trade Zone/Montague Park - North	This project provides for reimbursement to developers to construct a new linear park north of Penitencia Creek from new South Milpitas Blvd Extension to the city limits of San José in the Trade Zone/Montague Park subdistrict as specified in the Transit Area Specific Plan.	100%	2017	Closed
CP 2019 - (Rmb) ¹ Metro Recycled Water Distribution	The project provides reimbursement to developers for the construction of recycled water system extension in the Metro Specific Plan area. This project is the City's effort to diversify the water supply system and offset the use of potable water with recycled water mainly for irrigation purposes. New mains will be installed along Great Mall Parkway, East Capitol Avenue, Montague Expressway, South Milpitas Boulevard, McCandless Drive, Sango Court, Tarob Court, and the Piper/Montague subdistrict.	100%	2019	In Process
CP 2021 - Costa Street Plan Line Study	This project provides for the preparation of a Plan Line Study to evaluate the extension of Costa Street to connect to S. Abel St. and S. Main St. in the Metro Specific Plan area. The study will evaluate right-of way, adjacent property access, emergency vehicle access, pedestrian circulation, and streetscape opportunities.	100%	N/A	Closed

¹ Rmb = Reimbursed

CITY OF MILPITAS
ANNUAL REPORT OF DEVELOPMENT FEES AND EXPENDITURES FOR THE
FISCAL YEAR ENDED JUNE 30, 2024

EXHIBIT 2
TRANSIT AREA SPECIFIC PLAN (TASP) IMPACT FEE

CIP Item Number and Title	Project Description	% Funded with Development Fees	Construction Commencement Date	Project Status
CP 3469 - Metro Impact Fee Study	This project provides for the preparation of an impact fee nexus study for infrastructure needs in the Milpitas Metro Specific Plan (update of the 2008 TASP) planning area.	100%	N/A	Closed
CP 3490 - Capital Improvement Program Administration	This project provides for the annual preparation of the Capital Improvement Program. Work includes program administration, printing, and software programming assistance.	20%	N/A	In Process
CP 4179 - Montague Expwy Widening at Great Mall Pkwy	This project provides a fourth through lane in each direction on Montague Expressway at Great Mall Parkway, one westbound lane on Montague Expressway from Pecton Court to UPRR rails, and a new bridge over Berryessa Creek. Construction is to be completed by VTA's contractor.	11%	2019	In Process
	TASP Plan Administration Expense	100%	N/A	In Process

CITY OF MILPITAS
ANNUAL REPORT OF DEVELOPMENT FEES AND EXPENDITURES FOR THE
FISCAL YEAR ENDED JUNE 30, 2024
EXHIBIT 3
STORM DRAINAGE IMPROVEMENT IMPACT FEE

Description:

Each Developer shall install all storm drains necessary to serve his development, sized in accordance with the City's current Storm Master Plan. In addition, the Developer is required to pay all storm-related fees including connection fees as set forth in ordinance 239.8.

Fee:

Effective April 20, 2024, the amount of the fee was as follows:

Activity Description		FY 23/24 Fee	Unit
1	Milpitas Metro Specific Plan Area	\$ -	per runoff acre
	Milpitas Metro Specific Plan Area	\$ -	per 100 sf of runoff surface
2	Gateway-Main Street Specific Plan Area	\$ 48,768.00	per runoff acre
	Gateway-Main Street Specific Plan Area	\$ 112.00	per 100 sf of runoff surface
3	Remaining Urban Service Area	\$ 240,000.00	per runoff acre
	Remaining Urban Service Area	\$ 551.00	per 100 sf of runoff surface

CITY OF MILPITAS
ANNUAL REPORT OF DEVELOPMENT FEES AND EXPENDITURES FOR THE
FISCAL YEAR ENDED JUNE 30, 2024

EXHIBIT 3
STORM DRAINAGE IMPROVEMENT IMPACT FEE

STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES

Fees Collected And Interest Earned:

Revenues	
Connection Fees	\$ 32,703
Funding returned from closed project CP 3709	1,401,460
Interest	79,447
Total Revenues	<u>\$ 1,513,610</u>

Fees expended on public improvement (See table for % of cost funded with fees)

CP 3714 – Flap Gate Replacement	\$ 400,000
CP 3715 – Storm Drain System Rehabilitation	1,000,000
Total Expenditures	<u>\$ 1,400,000</u>

Excess/(Deficiency) Of Revenues Over/(Under) Expenditures	\$ 113,610
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Beginning and Ending Balance:

Fund Balance, Beginning Of Year	<u>\$ 1,686,233</u>
Fund Balance, End Of Year	<u><u>\$ 1,799,843</u></u>

Inter-Fund Transfer Or Loan Made Description	None
Refunds Made From Surplus Fees And Amount Of Any Allocations Made	None

CITY OF MILPITAS
ANNUAL REPORT OF DEVELOPMENT FEES AND EXPENDITURES FOR THE
FISCAL YEAR ENDED JUNE 30, 2024

EXHIBIT 3
STORM DRAINAGE IMPROVEMENT IMPACT FEE

CIP Item Number and Title	Project Description	% Funded with Development Fees	Construction Commencement Date	Project Status
CP 3709-Dempsey Road Storm Drain Replacement	The project provides for the design and construction to increase the capacity of the existing storm drain system in Dempsey Road and Edsel Dr. as recommended in the Storm Drain Master Plan, dated October 21, 2021.	100%	N/A	Closed
CP 3714 - Flap Gate Replacement	This project provides for the assessment, design, and installation of City flap gates, check valves, and outfalls located in all creeks within the City.	100%	2017	In Process
CP 3715 - Storm Drain System Rehabilitation	This project provides for the design and improvements of the City's storm drain systems due to insufficient capacity and aging infrastructure. Work will include maintenance to pumps, electrical and mechanical systems at pump stations, and improvements of City-owned creeks and drainage ditches. Work will be programmed based on the new Storm Drain Master Plan and Urban Runoff Program requirements.	100%	2018	In Process

CITY OF MILPITAS
FIVE-YEAR REPORT OF DEVELOPMENT FEES AND EXPENDITURES FOR THE
FISCAL YEAR ENDED JUNE 30, 2024

EXHIBIT 4
CALAVERAS BOULEVARD WIDENING TRAFFIC IMPACT FEE

Summary:

This Five Year Report provides information and findings on unexpended funds in the Calaveras Boulevard Widening Traffic Impact Fee account as of June 30, 2024 pursuant to Government Code section 66001(d).

Fund Information:

The Calaveras Boulevard Widening Traffic Impact Fund currently contains Eighty-Six Thousand Six Hundred Fifty-Three Dollars (\$ 86,653) in unexpended Traffic Impact Fees for the Calaveras Widening Project (Unexpended Fee).

Pursuant to Government Code section 66001(d)(1):

- A) **Purpose.** The Unexpended Traffic Impact Fee will be used to fund facilities necessary to provide for the Calaveras Boulevard Widening Project as identified in the Transportation Impact Fee Study Report dated February 2009, and the City Capital Improvement Program 2018-2023 Final Report. The Project will widen Calaveras Boulevard from four lanes to six lanes between Town Center Drive and Abel Street within the City limits, with pedestrian and bicycle access in each direction, as well as reconstruction of certain bridge structures.
- B) **Relationship between the fee and the purpose for which it is charged.** There exists a reasonable relationship between the Unexpended Fee described above and the purpose for which it was charged, as the improvements will mitigate increased traffic caused by development and ensure adverse traffic impacts be minimized by implementing needed roadway improvements as set forth in the Transportation Impact Fee Study Report Dated February 2009. The Fee is a means of ensuring new development located outside of the Transit Area Specific Plan (TASP) pay its proportionate share of the costs of the Calaveras Boulevard Widening Project. Specifically, the Fee is assessed based on vehicle trips generated by future (non-TASP) growth in Milpitas during PM peak hours which justify the need for additional street capacity.
- C) **Sources of funding anticipated to complete financing of incomplete improvements.** Based on the Transportation Impact Fee Study Report dated February 2009, the current estimated total cost of the Calaveras Boulevard Widening Project is approximately Eighty Million Dollars (\$80,000,000), of which the City minimum local match share (11.47%) is Nine Million One Hundred Seventy Six Thousand Dollars (\$9,176,000). The difference between the Project cost and the City local match share is anticipated to come from California State Transportation Improvement Funds. The City funding source for the local match share will include the Unexpended Fee of Eighty-Six Thousand Six Hundred Fifty-Three Dollars (\$ 86,653), TASP funds of \$6.8M, and future traffic impact fees to be collected for this Project from developments outside the TASP area.
- D) **Approximate dates on which the funding will be deposited.** The funding will be transferred to the City Capital Improvement Program 2025-2029.

**CITY OF MILPITAS
FIVE-YEAR REPORT OF DEVELOPMENT FEES AND EXPENDITURES FOR THE
FISCAL YEAR ENDED JUNE 30, 2024**

**EXHIBIT 5
TRANSIT AREA SPECIFIC PLAN (TASP) IMPACT FEE**

Summary:

This Five Year Report provides information and findings on unexpended funds in the Transit Area Specific Plan (TASP) Fee account as of June 30, 2024 pursuant to Government Code section 66001(d).

Fund Information:

The TASP Fee Fund currently contains Forty-Nine Million Five Hundred Seventy-Six Thousand Three Hundred Seventy-Nine Dollars (\$ 49,576,379) in unexpended TASP Fees (Unexpended Fee).

Pursuant to Government Code section 66001(d)(1):

- A) **Purpose.** The Unexpended Fee will be used to fund facilities necessary to provide infrastructure, as identified in the Transit Area Development Impact Fee Report, dated February 2014, prepared by Economic and Planning Systems, Inc. and the City Capital Improvement Program 2018-2023 Final Report. The Fee funds basic public infrastructure needed to serve the new development in the Transit Area Specific Plan area and to maintain or improve levels of service for public facilities.
- B) **Relationship between the fee and the purpose for which it is charged.** There exists a reasonable relationship between the Unexpended Fee described above and the purpose for which it was charged as the improvements will mitigate the infrastructure needs and use caused by both the residential and commercial development and ensure increased TASP area impacts be minimized by implementing needed TASP infrastructure improvements as set forth in the Transit Area Development Impact Fee Report dated February 2014.
- C) **Sources of funding anticipated to complete financing of incomplete improvements.** Based on the Transit Area Development Impact Fee Update dated February 2014, the current estimated total cost of infrastructure is approximately \$249,611,290. Anticipated funding will come from developers who have been entitled and will pay at the building permit issuance milestone.
- D) **Approximate dates on which the funding will be deposited.** The date on which future TASP fees will be collected from developers is unknown.

CITY OF MILPITAS
FIVE-YEAR REPORT OF DEVELOPMENT FEES AND EXPENDITURES FOR THE
FISCAL YEAR ENDED JUNE 30, 2024

EXHIBIT 6
FIVE YEAR REPORT OF STORM DRAINAGE IMPROVEMENT IMPACT FEE

Summary:

This Five Year Report provides information and findings on unexpended funds in the Storm Drain Fee account as of June 30, 2024 pursuant to Government Code section 66001(d).

Fund Information:

The Storm Drain Fee Fund currently contains One Million Seven Hundred Ninety-Nine Thousand Eight Hundred Forty-Three Dollars (\$ 1,799,843) in unexpended Storm Drain Fees (Unexpended Fee).

Pursuant to Government Code section 66001(d)(1):

- (A) **Purpose.** The Unexpended Fee will be used to fund facilities necessary to fund storm drainage infrastructure, as identified in the Storm Drainage Improvement Impact Fee Report, dated June 2023, and the City Capital Improvement Program 2025-2029 Final Report. The Fee funds basic public infrastructure needed to serve new development in the Gateway – Main Street Specific Plan (GSP) area, which includes extending the storm drain system to underserved areas of proposed development, and capital improvement projects downstream of proposed development, which are identified in the 2021 Storm Drain Master Plan (SDMP).
- (B) **Relationship between the fee and the purpose for which it is charged.** There exists a reasonable relationship between the Unexpended Fee described above and the purpose for which it was charged as new development will increase the impervious percentage of a project site and generate additional runoff, and development in the GSP area will require the addition of storm drain infrastructure set forth in Storm Drainage Improvement Impact Fee Report dated June 2023.
- (C) **Sources of funding anticipated to complete financing of incomplete improvements.** Based on the Storm Drainage Improvement Impact Fee Report dated June 2023, the current estimated total cost of infrastructure is approximately \$116,070,871. Anticipated funding will come from developers who have been entitled and will pay at the building permit issuance milestone.
- (D) **Approximate dates on which the funding will be deposited.** The City will perform an assessment on Main Street Flood Study Project to identify any new storm drain improvements needed in this area. The City plans to appropriate the Unexpended Fee to this Project in the upcoming fiscal year 2026-2027 based on the result of the assessment.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
APPROVING THE ANNUAL AND FIVE-YEAR DEVELOPMENT IMPACT FEE
REPORTS FOR FISCAL YEAR ENDING JUNE 30, 2024, AND MAKING ALL
FINDINGS REQUIRED BY THE MITIGATION FEE ACT**

WHEREAS, the Mitigation Fee Act, Government Code Section 66000 *et seq.* (“Mitigation Fee Act”), authorizes the City of Milpitas (“City”) to impose, collect, and expend mitigation fees to offset the impacts of development within the City (“development impact fees”); and

WHEREAS, pursuant to its authority, including under the Mitigation Fee Act (Government Code §§ 66000 *et seq.*), the City Council established, adopted, and imposed the Calaveras Boulevard Widening Traffic Impact Fee, a Transit Area Specific Plan (“TASP”) Impact Fee, and a Storm Drainage Improvement Impact Fee (collectively, the “Fees”); and

WHEREAS, the City has deposited all Fees in separate non-commingled funds (“Funds”) established for such a purpose; and

WHEREAS, the Mitigation Fee Act directs public entities that collect development impact fees to make an annual accounting of the fees it has collected and make additional findings every five years if there are any funds remaining in those accounts at the end of the prior fiscal year; and

WHEREAS, the City has made available to the public within one hundred eighty (180) days following the last day of the fiscal year the annual accounting information (“Annual Report”) required by the Mitigation Fee Act related to each of the Fees and Five-Year Reports with respect to each of the Fees; and

WHEREAS, the City has mailed notice at least fifteen (15) days prior to this meeting to all interested parties who have requested notice of any meeting relative to the City’s imposition of the Fees and has held a duly noticed, regularly scheduled public meeting at which oral and written testimony was received regarding the Annual Reports and the Five Year Reports at least fifteen (15) days after the City made this information publicly available; and

WHEREAS, all prerequisites for the City’s approval of the Annual Reports and the Five Year Reports have been met and the City can make all required findings by the Mitigation Fee Act; and

WHEREAS, the City Council desires to make the findings required by law with respect to the continued maintenance of the Fees and finds sufficient information to do so.

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

1. 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. The City Council further takes notice of the prior studies and reports supporting the Fees and the continued validity of any necessary information therefrom to support its findings here. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. In accordance with Government Code Section 66006(b), the City Council has reviewed and approves the Annual Reports for each of the Fees, which are attached to Agenda Report that accompanied this Resolution as **Exhibits 1-3** and are also placed on file with the City Clerk. The Council, based upon the information contained in the Annual Reports and the remaining need for the unexpended funds makes all annual findings required by the Mitigation Fee Act, including specifically as follows:
 - a. That each of the Annual Reports describe the types of Fees contained in each Funds, including the amount of the fees, the beginning and ending balance of the Funds, as well as the amount of fees collected, and the interest earned thereon.
 - b. That each of the Annual Reports identifies each public improvement on which the Fees were expended, the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with the Fees.
 - c. That there were interfund transfers or loans made from the Funds, as noted.
 - d. That sufficient funds have not been collected to complete the financing of any incomplete public improvement, and that there were no refunds or allocations made of the Fees.
3. In accordance with Government Code Section 66001(d), the City Council has reviewed the Five-Year Reports for each of the Fees, which are attached to Agenda Report that accompanied this Resolution as **Exhibits 4-6** and are also on file with the City Clerk. The City Council, based upon the information contained in the Five-Year Reports and the remaining need for the unexpended funds makes all five-year findings required by the Mitigation Fee Act, including specifically as follows:
 - a. Pursuant to Government Code Subsection 66001(d)(1)(A), the Five-Year Reports identify, including by reference to the underlying and supporting studies and capital improvement program reports, the purpose of the development impact fees, including the purpose to which all unexpended fees, whether committed or uncommitted, contained in the Fees and Funds will be put; and
 - b. Pursuant to Government Code Subsection 66001(d)(1)(B), the Five-Year Reports demonstrate, including by reference to the underlying and supporting studies and capital improvement program reports, a reasonable relationship between the unexpended fees contained in the Funds, the continued need for the relevant infrastructure, improvements, and fees, and the purposes to which such Funds and future collected Fees will be put; and
 - c. Pursuant to Government Code Subsection 66001(d)(1)(C), the Five-Year Reports identify all sources and amounts of funding anticipated to complete financing of incomplete improvements or projects; and
 - d. Pursuant to Government Code Subsection 66001(d)(1)(D), the Five-Year Reports identify that the approximate dates upon which the funding for such incomplete improvements or projects will be deposited in the Fund accounts, including to the extent such information is known, estimated, or unknown; and

- e. There remain unexpended funds from the Fees which are still necessary to complete the purposes for which they were collected.
- 4. Pursuant to these findings, and at this time, the continued maintenance of these Fees and Funds are reasonable, just, and appropriate, comply with all applicable laws, and there shall not be a refund of any unexpended Fees.

PASSED AND ADOPTED this _____ day of _____ 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Introduce an Ordinance to Make Corrections, Clarifications and Minor Updates and Modifications to the Milpitas Municipal Code (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/10/2024
Recommendation:	Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 315 amending various sections of the Milpitas Municipal Code to make corrections, clarifications, minor updates and modifications.

BACKGROUND:

The Milpitas Municipal Code (Muni Code) codifies the ordinances of the City of Milpitas. The Muni Code is organized by Titles, Chapters and Sections.

Title: A title is a broad category under which ordinances on a related subject are compiled. This code contains a total of 12 titles. For example, the first title is Title I, Administration, which contains ordinances about the code adoption process, definitions, general penalties, etc

Chapter: Chapters deal with more specific subjects, and are often derived from one ordinance. All of the chapters on a related subject are grouped in one title. The chapters are numbered so that new chapters which should logically be placed near certain existing chapters can be added at a later time without renumbering existing material.

Section: Each section of the code contains substantive ordinance material

The Muni Code was originally published in 1987 and in order to stay current, needs to be updated on a periodic basis. Staff is proposing several updates to the Muni Code that provide corrections and clarifications and make minor updates and modifications for purposes of general code clean-up

On December 12, 2023 the Mayor and City Council approved the combining of the Engineering and Public Works Departments. On June 4, 2024, as part of the approval of the Fiscal Year 2024-2025 Budget, the Mayor and City Council approved additional departmental structure changes such as: Elimination of the Building Safety & Housing Department, shifting the Housing and Building Safety teams into the City Manager's Office and shifting Code Enforcement to the Planning Department. As a result of these changes, certain sections of the City of Milpitas Municipal Code must be updated.

ANALYSIS:

The following changes have been made to the City of Milpitas Municipal Code as a result of organizational changes approved by the City Council during Fiscal Year 2023-2024:

- Change the name "Building Safety and Housing Department" to "Office of Building Safety"
- Replaced references to the department overseeing code enforcement to "Planning Department"
- Replaced references to the "Director of Building Safety and Housing" to "City Manager"
- Replaced "Engineering Department" with "Public Works Department"
- Replaced "Director of Engineering and Public Works" with "Director of Public Works"
- Included language clarifying that the Offices of the City Clerk, Communications, Building Safety, Housing and Economic Development are part of the City Manager's Office.

Additionally, the following items are being changed as they were not cleaned up from prior year organizational changes:

- Changed references to “Director of Planning and Engineering” to either “Director of Planning” or “Director of Public Works” depending on which of these two departments carries the responsibility as the “Department of Planning and Engineering” no longer exists.
- Changing references to “Community Development Department”, “Planning and Neighborhood Services Department” and “Planning and Engineering Department” as they no longer exist.
- Changed all references to “Chief Building Official” to “Building Official” as the Chief Building Official classification no longer exists.
- Added language to clarify that if a developer pays fees in-lieu of installing public improvements that the amount of payment required will be equivalent to the City’s estimated costs to construct the improvements.

A summary list of the changes being made as a result of the above actions is included as Attachment (a).

FISCAL IMPACT:

None

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

This item is not a Project under CEQA exempt under CEQA Guideline 15378(b)(4) as it is a government fiscal activity that does not involve a commitment to any specific project which may result in a potentially significant physical impact on the environment.

RECOMMENDATION:

Following the City Attorney’s reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 315 amending various sections of the Milpitas Municipal Code to make corrections, clarifications, minor updates and modifications.

ATTACHMENT(S):

- (a) Summary spreadsheet of changes
- (b) Draft Ordinance No. 315

Attachment 1
Summary of Changes to Municipal Code

Section	Existing Language	Revised Language
I-2-3.20-3	Directors of Engineering and Public Works	Director of Public Works
I-13-2.04	Director of Central Services	Director of Public Works
II-1-3.03	Building Safety and Housing Department	Office of Building Safety
II-2-11.01	Building Safety and Housing Department	Office of Building Safety
II-12-1.01	Chief Building Official	Building Official
II-12-2.04	Chief Building Official	Building Official
II-13-4	Building Safety and Housing Department	Office of Building Safety
II-13-5	Chief Building Official	Building Official
II-13-7	Building Safety and Housing Department	Office of Building Safety
II-13-7	Chief Building Official	Building Official
II-13-9	Chief Building Official	Building Official
II-13-10	Chief Building Official	Building Official
II-13-11	Chief Building Official	Building Official
II-13-14	Chief Building Official	Building Official
II-13-15	Chief Building Official	Building Official
II-13-16	Chief Building Official	Building Official
II-13-17	Building Safety and Housing Department	Office of Building Safety
II-13-18	Chief Building Official	Building Official
II-13-18	Building Safety and Housing Department	Office of Building Safety
II-13-32	Chief Building Official	Building Official
II-13-33	Chief Building Official	Building Official
II-13-35	Chief Building Official	Building Official
II-13-36	Chief Building Official	Building Official
II-13-37	Chief Building Official	Building Official
II-13-38	Chief Building Official	Building Official
II-13-39	Chief Building Official	Building Official
II-13-39	Chief Building Official	Building Official
II-13-40	Chief Building Official	Building Official
II-13-42	Chief Building Official	Building Official
II-13-45	Chief Building Official	Building Official
II-15-4.01	Building Safety and Housing Department	Office of Building Safety
II-20-2.02	Chief Building Official	Building Official
II-160-2.20	Building Safety and Housing Department	Office of Building Safety
II-160-3.00	Building Safety and Housing Department	Office of Building Safety
II-160-4.40	Building Safety and Housing Department	*DELETED*
II-160-4.40	Housing Officers	staff
II-170-3.00	Building Safety and Housing Department	Office of Building Safety
II-170-3.01	Building Safety and Housing Department	Office of Building Safety
II-170-4.00	Building Safety and Housing	Office of Building Safety
III-4-5.010	Chief Building Official	Building Official
III-7-20.00	Chief Building Official	Building Official
III-8-4.00	Engineering Department	Public Works Department
VI-3-1.00	Engineering	*DELETED*
VI-3-1.00	Building Safety and Housing; and	*DELETED*
VI-3-2.00	-	In addition to the general functions of the City Manager's Office, the Offices of Clerk, Communications, Building Safety, Housing and Economic Development are included as part of the City Manager's Office.

Attachment 1
Summary of Changes to Municipal Code

Section	Existing Language	Revised Language
VI-3-4.00	Chief Building Official	Building Official
VIII-2-1.02.1	Director of Engineering	part of the Public Works Department
VIII-2-5.10	Chief Building Official	Building Official
VIII-6-3.00	Chief Building Official	Building Official
X-3-10.03	Planning and Engineering	Edited to clarify that the City Engineer establishes the costs.
X-3-13.04	Planning and Engineering	Public Works
X-3-13.05	Planning and Engineering	Public Works
X-3-13.06	Planning and Engineering	Public Works
X-3-14.01-5	Planning and Engineering	Planning
XI-1-16.01	Community Development	Planning
XI-1-19.05	Planning and Engineering	Planning
X-10-4.08	Building Safety and Housing Department	Office of Building Safety
XI-10-11.07	Chief Building Official	Building Official
XI-10-11.07	Building Safety and Housing Department	Office of Building Safety
XI-10-11.07	Engineering Department	Public Works Department
XI-10-13.07	Chief Building Official	Building Official
XI-10-13.14	Planning and Neighborhood Services	Planning
XI-10-63.03	Division	Department
XI-500-6.00	Community Development	Planning
XI-500-7.00	Community Development	Planning
XI-500-11.00	Community Development	Planning
XI-500-13.00	Community Development	Planning
XI-500-14.00	Community Development	Planning
XI-500-17.00	Community Development	Planning
XII-1-3.04	Director of Building Safety and Housing	City Manager
XII-1-4.00	Director of Building Safety and Housing	City Manager
XII-1-5.01	Director of Building Safety and Housing	City Manager
XII-2-2.04	City's director of Building and Housing	deleted
XII-2-4.01	City's Director of Building Safety and Housing	deleted
XII-2-4.01	Director of Building Safety and Housing	City Manager
XII-2-4.01	Department of Building Safety and Housing	City Manager

REGULAR

NUMBER: 302

TITLE: AN ORDINANCE TO MAKE CORRECTIONS, CLARIFICATIONS AND MINOR UPDATES AND MODIFICATIONS TO THE MILPITAS MUNICIPAL CODE

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Carmen Montano, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

RECITALS AND FINDINGS:

WHEREAS, in December 2023, the City Council approved realigning the Engineering and Public Works Departments into one department;

WHEREAS, in the 2024-2025 Adopted Budget & Financial Plan the City Council approved organizational realignments in the City Manager's Office and development services departments.; and

WHEREAS, the departmental realignments included the addition of positions, the deletion of positions, and the realignment of certain departments and offices; and

WHEREAS, the codified municipal code referred to some of the deleted positions and the realigned departments and divisions; and

WHEREAS, the codified municipal code referred to some departments and positions that have been changed due to prior realignments over the past decades prior to December 2023;

WHEREAS, the City Council wishes to amend the codified municipal code so that it is consistent with the realignment adopted in December 2023 and in the 2024-2025 Adopted Budget & Financial Plan and with past realignments prior to December 2023; and

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

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 the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CORRECTIONS, CLARIFICATIONS, AND MINOR UPDATES TO THE MUNICIPAL CODE

Chapters 2 and 13 of Title I of the Milpitas Municipal Code are hereby amended to read as follows:

I-2-3.20-3: Contractors List. The Directors ~~of Engineering and of~~ Public Works, in coordination with the City's Purchasing Agent, shall compile and maintain a list of qualified contractors identified according to categories of work. This list shall comply with the requirements of Section 22034 of the Act and the criteria promulgated, from time to time, by the Commission.

I-13-2.04 Property Not Sold at Auction

Any property not purchased at said auction may be disposed of or destroyed by the Director of ~~Central Services~~ Public Works as he shall determine to be in the best interests of the City.

Chapters 1, 2, 12 13, 15, 20, 160, and 170 of Title II of the Milpitas Municipal Code are hereby amended to read as follows:

II-1-3.03 Posting Notice of Hazardous Building

Every building which the Building Official causes to be vacated because of an immediate danger or hazard may be posted at each entrance with a notice which states: "Do Not Enter: Unsafe to Occupy: It is a misdemeanor to occupy the building or remove or deface the notice. [Office of Building Safety](#)~~Building Safety and Housing Department~~, City of Milpitas." Such notice may remain posted until the required repairs, improvements, demolition or removal are completed. Such notice shall not be removed without written permission of the Building Official, and all persons shall forthwith vacate said building and no person shall enter the building except for the purpose of making the required repairs, improvements, demolition or removal of the building.

II-2-11.01 Permit Required

11.01-1 No building shall be demolished without first obtaining a permit to do the same.

11.01-2 If the permit is for a building listed on the 1990 Historic Sites Inventory, which is identified in Section 11.01-3 below, the permit shall be issued by the City Council upon application filed with the [Office of Building Safety](#)~~Building Safety and Housing Department of City~~. The Building Official shall promptly transmit the permit application to the City Clerk, together with his or her comments and recommendations. The Council may consider the matter on the first available agenda but shall not be required to take action for 30 days following the filing of the application. In granting any permit hereunder, the City Council shall be empowered to:

- (a) Impose reasonable conditions to protect the public peace, health, safety and general welfare and to defer issuance of the permit until those conditions are met or secured.
- (b) Impose a reasonable delay (not to exceed 180 days) on the issuance of a permit if it finds a building a potential cultural resource within the meaning of Chapter 4, Title XI of the Milpitas Municipal Code.

II-12-1.01

The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, published by the International Conference of Building Officials, is hereby adopted by reference as the Abatement of Dangerous Buildings Code for the City of Milpitas with amendments as identified herein. There is one copy of said Code on file in the office of the [Chief Building Official](#)~~Building Official~~ for use and examination by the public.

II-12-2.04

Section 403 (3) of the Uniform Code for Abatement of Dangerous Buildings, 1997 Edition, is added in its entirety to read as follows:

Structural Analysis and Repair of Potentially Hazardous Buildings and Structures. If the [Chief Building Official](#)~~Building Official~~ has determined that a building or structure is potentially hazardous, as defined in Government Code Sec. 8875, the order shall require that structural analysis be submitted within 270 days of the order and that repair or rehabilitation shall be commenced within 60 days thereafter and that the work be completed within such time as the [Chief Building Official](#)~~Building Official~~ shall determine is reasonable. Where applicable, structural analysis, design, and plans shall be in accordance with the current edition of California Existing Building Code and International Building Code Appendix Chapters A2, A3, A4 and A5.

II-13-4 Permits Required

- .01 No person shall do any grading, filling, excavation, or clearing of natural vegetation without first having obtained a grading permit from the [Office of Building Safety](#) ~~Building Safety and Housing Department~~ except for the following:
1. An excavation below finished grade for swimming pools, basements and footings of a building, retaining wall pier holes or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation nor exempt any excavation having an unsupported height greater than 5 feet after the completion of such structure.
 2. Cemetery graves.
 3. Refuse disposal sites controlled by other regulations.
 4. Excavations for wells or tunnels or utilities.
 5. Mining, quarrying, excavating, processing, stockpiling of rock, sand, gravel, aggregate or clay where established and provided for by law, provided such operations do not affect the lateral support or increase the stresses in, or pressure upon any adjacent or contiguous property.
 6. Exploratory excavations under the direction of soil engineers or engineering geologists.
 7. An excavation which (a) is less than two feet in depth, and (b) which does not create a cut slope greater than five feet in height and steeper than two horizontal to one vertical, (c) and does not result in the movement of more than 50 cubic yards of material.
 8. A fill less than one foot in depth and placed on natural terrain with a slope flatter than five horizontal to one vertical, and less than two feet in depth, not intended to support structures, and which does not exceed 50 cubic yards on any one lot and does not obstruct a drainage course.
- .02 Fees shall be as set by Resolution of the City Council of Milpitas.

II-13-5 Hazards

Whenever the ~~Chief Building Official~~ [Building Official](#) determines that any existing excavating or embankment or fill on private property has become a hazard to life and limb, or endangers property, or adversely affects the safety, use or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, the Lessee thereof or other person or agent in control of said property, upon receipt of notice in writing from the ~~Chief Building Official~~ [Building Official](#), shall within the period specified therein, repair or eliminate such excavation or embankment so as to eliminate the hazard and be in conformance with the requirements of this Chapter.

II-13-7 Grading Permit Requirements

- .01 **Permits Required.** Except as exempted in Section II-13-4 of this Chapter, no person shall do any grading without first obtaining a grading permit from the [Office of Building Safety](#) ~~Building Safety and Housing Department~~. A separate permit shall be required for each site, and may cover both excavations and fills.
- .02 **Issuance.** The provisions of Section II-13-7 are applicable to grading permits. The ~~Chief Building Official~~ [Building Official](#) may require that grading operations and project designs be modified if delays occur which incur weather-generated problems not considered at the time permit was issued.
- .03 **Application.** The application for a grading plan shall include:

1. A Site Map.
 2. A Grading Plan.
 3. An Erosion Control Plan.
 4. Any supplementary material as required by the Building and Safety Department.
 5. Work schedule.
 6. Application fees.
 7. Estimated quantities of material involved.
- .04 **Plans and Specifications.** Each application for a grading permit shall be accompanied by five sets of plans and two sets of specifications, they shall specify the amount of cut, fill export, and import, and supporting data consisting of a soil engineering report and engineering geology report. The plans and specifications shall be prepared and signed by a Civil Engineer when required by the ~~Chief Building Official~~[Building Official](#).
- .05 **Information on Plans and in Specifications.** Plans shall be drawn to scale upon suitable material, minimum dimension 24" × 36" sheet size, and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that they will conform to the provisions of this Code and all relevant laws, ordinances, rules and regulations. The first sheet of each set of plans shall give the location of the work and the name and address of the owner and the person by whom they were prepared.

II-13-9 Specifications Covering Construction and Material Requirements

- .01 **Soil Engineering Report.** The soil engineering report required by Section II-13-7.04 shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures when necessary, and opinions and recommendations covering adequacy of sites to be developed by the proposed grading.
- .02 Recommendations included in the report and approved by the ~~Chief Building Official~~[Building Official](#) shall be incorporated in the grading plans or specifications.
- .03 In-depth soils investigations shall be performed by the Soils Engineer if any of the following circumstances occur on the site:
1. More than 1,000 cubic yards of cut and fill material is moved.
 2. Cuts and/or fills are more than ten feet deep.
 3. Grading or clearing will be done on slopes greater than ten percent.
 4. Other conditions as determined by the ~~Chief Building Official~~[Building Official](#).
- .04 **Engineering Geology Report.** The engineering geology report required by Section II-13-7.04 shall include an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinions and recommendations covering the adequacy of sites to be developed by the proposed grading.
- Recommendations included in the report and approved by the ~~Chief Building Official~~[Building Official](#) shall be incorporated in the grading plans or specifications.
- .05 In-depth geologic investigations shall be performed by a Geological Engineer, if required by the ~~Chief Building Official~~[Building Official](#).

II-13-10 Erosion Control

All aspects of Stormwater Quality protection shall be adhered to, and erosion control plans shall be prepared to be consistent with Section XIII, Stormwater of the Engineering Design Guidelines per Ordinance 66.3 and this section. In case of conflict between this section and Engineering Design Guidelines, the stricter requirement shall be followed.

- .01 **Erosion Control Plan.** The plan shall be signed by a registered Civil Engineer. When site stabilization measures are included these shall be prepared by a registered Civil Engineer, Landscape Architect, or Architect.
- .02 The erosion control plan will fully indicate necessary land treatment, structural measures and timing requirements which will effectively minimize soil erosion and sedimentation. The erosion and sediment control plan shall contain appropriate information according to this Section and as deemed necessary by the ~~Chief Building Official~~[Building Official](#). Following submittal of the application, the ~~Chief Building Official~~[Building Official](#) shall determine the adequacy of the plan and may require the submission of further qualification or information when necessary to judge the adequacy of the planned erosion and sediment control measures.
- .03 The erosion control plan shall contain a detailed description of the following:
 1. Vegetative measures to stabilize the site, including steps to promote and protect native vegetation.
 - a) a description and delineation of the vegetative measures to stabilize the site, including, but not limited to, seed bed preparation, seeding methods, seeding time for new erosion control planting, the type, location and extent of pre-existing and undisturbed vegetation, and the steps for the promotion and protection of the native vegetation.
 2. Drainage protection and control measures.
 3. A description and delineation of non-vegetative surface runoff, erosion and sediment control measures, including, but not limited to, types of and methods of applying mulches, design and specification of berms sediment basins, retention basins, diverters and dikes.
 4. Cut and fill construction.
 5. Disposal of excess materials.
 6. Stockpiling of materials.
 7. Dust control measures.
 8. A clear and definite delineation of the limits of work showing areas to remain undisturbed and showing areas to be disturbed.
 9. Any additional information required by the ~~Chief Building Official~~[Building Official](#) when necessary to judge the adequacy of the plan (i.e., mandatory soils and geologic investigations).
 10. The site assessment which shall identify the character of the site as it pertains to:
 - a) erosion and loss of sediments.
 - b) slope stability.
- .04 **Slopes.** The faces of cut and fill slopes shall be prepared and maintained to control against erosion. This control may consist of effective planting. The protection for the slopes shall be installed as soon as practicable and prior to calling for final approval. Where cut slopes are not subject to erosion due to the erosion-resistant character of the materials, such protection may be omitted.
- .05 **Other Devices.** Where necessary, check dams, cribbing, riprap and other devices or methods that shall be employed to control erosion and provide safety.

II-13-11 Work Schedule

- .01 The applicant must submit a master work schedule showing the following information:
1. The proposed grading schedule.
 2. The proposed schedule for installation of all interim erosion and sediment control measures including, but not limited to, the stage of completion of erosion and sediment control devices and vegetative measures.
 3. The schedule for construction, if any.
 4. The schedule for installation of permanent erosion and sediment control devices where required.
 5. For Hillside residences a detailed schedule of maintenance and upkeep for both erosion and sediment control facilities and plantings through the first rainy season, as identified by Engineering Design Guidelines.
 6. For Hillside residences approval on a week to week basis during the period of rainy season may be granted by the ~~Chief Building Official~~[Building Official](#). This approval will require long range weather projection as a primary basis.

II-13-14 Fills

- .01 **General.** Unless otherwise recommended in the approved soil engineering report, fills shall conform to the provisions of this section.

Exception: In the absence of an approved soil engineering report these provisions may be waived for minor fills not intended to support structures.

- .02 **Fill Location.** Fill slopes shall not be constructed on natural slopes steeper than two to one.
- .03 **Preparation of Ground.** The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, top-soil and other unsuitable materials scarifying to provide a bond with the new fill, and, where slopes are steeper than five to one, and the height is greater than five feet, by benching into sound bedrock or other competent material as determined by the soils engineer. The bench under the toe of a fill on a slope steeper than five to one shall be at least ten feet wide and two feet deep in accordance with Fig. No. 1. The area beyond the toe of fill shall be sloped for sheet overflow or a paved drain shall be provided. Where fill is to be placed over a cut, the bench under the toe of fill shall be at least ten feet wide but the cut must be made before placing fill and approved by the Soils Engineer and Engineering Geologist as a suitable foundation for fill. Unsuitable soil is soil which, in the opinion of the ~~Chief Building Official~~[Building Official](#) or the Civil Engineer or the Soils Engineer or the Geologist, is not competent to support other soil or fill, to support structures or to satisfactorily perform the other functions for which the soil is intended.

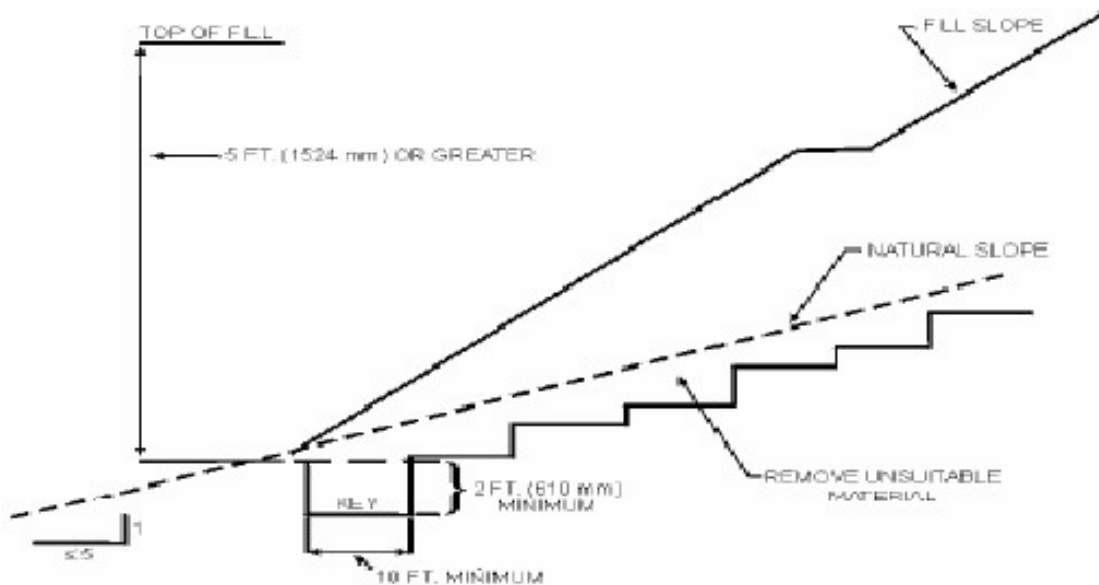


Figure No. 1

- .04 **Fill Material.** Detrimental amounts of organic material shall not be permitted in fills. Except as permitted by the Chief Building Official no rock or similar irreducible material with a maximum dimension greater than 12 inches shall be buried or placed in fills.

Exceptions: The [Chief Building Official](#) may permit placement of larger rock when the soils engineer properly devises a method of placement, continuously inspects its placement and approves the fill stability. The following conditions shall also apply:

- A. Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan.
 - B. Rock sizes greater than 12 inches in maximum dimension shall be ten feet or more below the grade, measured vertically.
 - C. Rocks shall be placed so as to assure filling of all voids with fines.
- .05 **Compaction.** All fill material shall be compacted to 90 percent of maximum density as determined by ASTM D 1557, Modified Proctor, in lifts not exceeding 12 inches (305 mm) in depth or equivalent as approved by the Building and Housing Department.
- .06 **Slope.** The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than two horizontal to one vertical.
- .07 **Drainage and Terracing.** Drainage and terracing shall be provided, and the area above fill slopes and the surfaces of terraces shall be graded and paved as required by Section II-13.

II-13-15 Setbacks

- .01 **General.** The setbacks and other restrictions specified by this section are minimum and may be increased by the [Chief Building Official](#) or by the recommendation of a Civil Engineer, Soils Engineer or Engineering Geologist, if necessary for safety and stability or to prevent damage of adjacent properties from deposition or erosion or to provide access for slope maintenance and drainage. Retaining walls may be used to reduce the required setbacks when approved by the [Chief Building Official](#).

- .02 **Setbacks from Property Lines.** The tops of cuts and toes of fill slopes shall be set back from the outer boundaries of the permit area, including slope-right areas and easements, in accordance with Figure No. 2.
- .03 **Design Standards for Setbacks.** Setback between graded slopes (cut or fill) and structures shall be provided in accordance with the California Building Code, 2016 Edition Figure No. 1808.7.1.

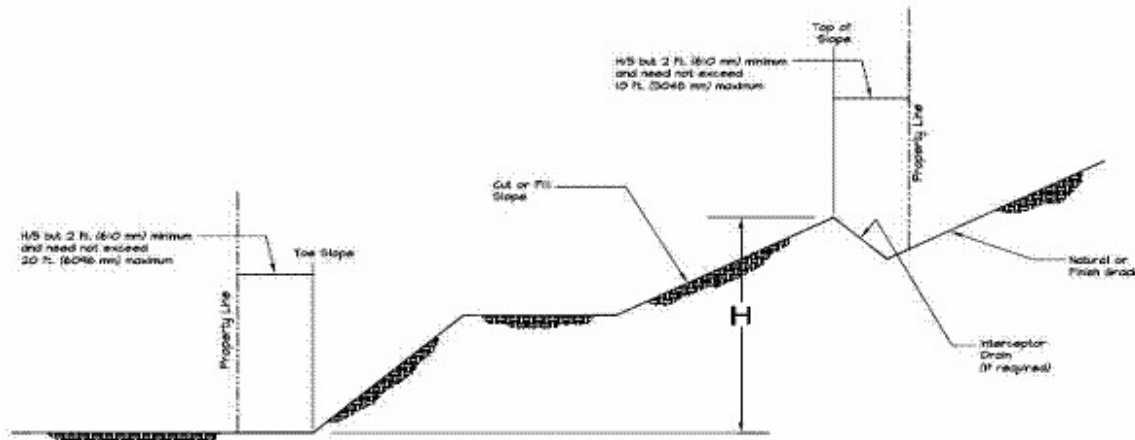


Figure No. 2

II-13-16 Drainage and Terracing

- .01 **General.** Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provision of this section and Section XIII Stormwater of the Engineering Design Guidelines per Ordinance 66.3. In case of conflict between this section and Engineering Design Guidelines, the stricter requirement shall be followed.
- .02 **Terrace.** Terraces at least six feet in width shall be established at not more than 30-foot vertical intervals on all cut or fill slopes to control surface drainage and debris except that where only one terrace is required, it shall be at mid-height. For cut or fill slopes greater than 60 feet and up to 120 feet in vertical height, one terrace at approximately mid-height shall be 12 feet in width. Terrace widths and spacing for cut and fill slopes greater than 120 feet in height shall be designed by the Civil Engineer and approved by the [Chief Building Official](#). Suitable access shall be provided to permit proper cleaning and maintenance.
- .03 **Swales or Ditches.** Swales and ditches on terraces shall have a minimum gradient of five percent and must be paved with reinforced concrete not less than three inches in thickness or an approved equal paving. They shall have a minimum depth at the deepest point of one foot and a minimum paved width of five feet. A single run of swale or ditch shall not collect runoff from a tributary area exceeding one surface acre (projected) without discharging into a down drain, and subject to approval of the [Chief Building Official](#).
- .04 **Subsurface Drainage.** Cut and fill slopes shall be provided with sub-surface drainage as necessary for stability.
- .05 **Disposal.** All drainage facilities shall be designed to carry waters to the nearest practicable drainage way approved by the [Chief Building Official](#) and/or other appropriate jurisdiction as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of nonerosive downdrains or other devices.

- .06 Building sites shall have a drainage gradient of two percent from the building pad toward approved drainage facilities, unless waived by the ~~Chief Building Official~~[Building Official](#).

Exception: The gradient from the building pad may be one percent if all of the following conditions exist throughout the permit area:

- A. No proposed fills are greater than ten feet in maximum depth.
 - B. No proposed finish cut or fill slope faces have a vertical height in excess of ten feet.
 - C. No existing slope faces, which have a slope face steeper than ten horizontally to one vertically, shall have a vertical height in excess of ten feet.
- .07 **Interceptor Drains.** Paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes towards the cut and has a drainage path greater than 40 feet measured horizontally. Interceptor drains shall be paved with a minimum of three inches of concrete, or gunite and reinforced. They shall have a minimum depth of 12 inches and a minimum paved width of 36 inches measured horizontally across the drain. The slope of drain shall be approved by the ~~Chief Building Official~~[Building Official](#).

II-13-17 Lot Improvement, Paving of Driveways, Parking Lots

- .01 **Drainage Swales.** Each lot shall be graded to provide protective slopes away from all sides of all buildings on the lot. Where such a swale meets a slope which drains toward a building, a drainage swale of adequate width, depth and longitudinal gradient will be required to carry away the surface water without flooding against the buildings or without ponding lot areas. The location of the swales is to be directly related to the block grading type.
- .02 **Elevation of Pads.** The elevation of the pads shall be higher than the elevation of the drainage swale or ground slope measured at least five feet from the outer walks of the buildings.
- .03 Drainage Method used shall be shown on all plans. When building plans indicate that the construction will comply with the provisions of this Chapter, but inspection shows that the building as constructed cannot drain by gravity, the ~~Office of Building Safety Building Safety and Housing Department~~[Building Safety and Housing Department](#) may require that the condition be remedied by installing a pump or by other approved means. No Final Inspection or Certificate of Occupancy may be issued until this requirement is met.
- .04 Not used.
- .05 Flat Cement Work for garage, or carport floors, and patio slabs shall have minimum thickness of 3½ inches and shall be installed over four inches of an approved aggregate base (6 × 6 × 10 × 10) woven wire mesh laid within the slab may be used in place of the approved aggregate base. Other flat cement work, except walkways, having any minimum dimension of six feet and a minimum area of 64 square feet shall be installed in a like manner.

II-13-18 Paving Standards

Private streets shall be designed consistent with Section VII "Street Design" of the Engineering Design Guidelines per Ordinance 66.3 and this section. In case of conflict between this section and Engineering Design Guidelines, the stricter requirement shall be followed.

- .01 The areas designed for use as driveways, parking lots and loading areas and their approaches shall be paved with asphalt concrete, Portland cement concrete on prepared bases or any other approved material meeting traffic index as noted in Section II-13-18.02 and shall be maintained in good condition to the satisfaction of the ~~Chief Building Official~~[Building Official](#).

- .02 Paving sections shall be designed by a Civil Engineer or a Soils Engineer based on a "R" value test of the native soil and a traffic index as noted below and approved by the ~~Chief Building Official~~[Building Official](#).

1. One family residential	T.I. 3.5
2. Multi-family	T.I. 5
3. Commercial	T.I. 5
4. Industrial auto parking lots	T.I. 5
5. Industrial driveways	T.I. 5.5
6. Industrial & commercial loading zones	T.I. 6

- .03 On approval of the ~~Chief Building Official~~[Building Official](#), the following minimum standards may be used without a soils report:

- a. Residential—Single Family and Duplex.
 - (1) Portland Cement concrete: Four inches of concrete on four inches of approved granular aggregate base on compacted subgrade.
 - (2) Asphaltic concrete surfacing: Two inches of asphaltic concrete with fog seal on six inches of aggregate base on compacted subgrade.

.04 Residential Multiple, Commercial and Institutional.

- (1) Portland Cement concrete: Five inches of concrete on four inches of aggregate base.
- (2) Asphaltic concrete surfacing: Two and one-half inches of asphaltic concrete with fog seal on ten inches of aggregate base material on compacted subgrade.

An alternate, with approval of the ~~Chief Building Official~~[Building Official](#), a $6 \times 6 \times 10 \times 10$ mesh in the concrete may be substituted for the aggregate base under the Portland Cement.

.05 Materials.

- a. "Aggregate Base" material shall be Class 2 and shall conform to Caltrans Standard Specifications, Section 26 for $\frac{3}{4}$ ", $1\frac{1}{2}$ inches maximum combined grading, except as herein specified.
- b. Spreading equipment used in lieu of Caltrans Standard Specifications, Section 26-1.04 for spreading of aggregate subbases shall be approved by the ~~Chief Building Official~~[Building Official](#) prior to construction.
- c. "Asphalt Concrete Surfacing" shall conform to Caltrans Standard Specifications, Section 39 for Type B Asphalt Concrete. Aggregate grading shall conform to $\frac{3}{4}$ " maximum, medium.
- d. Asphalt of grade AR 4000 shall be used and a certificate guaranteeing compliance of asphalt with specification is to be furnished.
- e. Placing of tack coat, prime coat, spreading and compaction methods and miscellaneous details of asphaltic construction shall be in accordance with applicable portions of Caltrans Standard Specifications.
- f. Concrete. Portland Cement Concrete shall be designed to develop a strength of a minimum of 2,000 pounds per square inch at 28 days and shall be poured with a maximum of four inches of slump.

- g. Mix Design. Mix design shall be designed by an approved laboratory and paid for by the contractor. The basic proportions of the mix shall be determined by weight of loose dry material, and all proportioning of the ingredients for each batch shall be done by weighing the fine and coarse aggregates separately. Water and cement shall be separately measured and introduced to the mix by such methods that the proportions thereof can be accurately controlled and easily checked at any time.
- h. Approval. Approval of the mix shall be by the [Office of Building Safety Building and Safety](#) who may determine accuracy by making tests, to be paid for by the contractor. Batch tickets to be provided the [Office of Building Safety Building Safety and Housing Department](#) upon request with each load.

II-13-32 Grading Inspection

- .01 **General.** All grading operations for which a permit is required shall be subject to inspection by the [Chief Building Official Building Official](#). When required by the [Chief Building Official Building Official](#), special inspection of grading operations and special testing shall be performed in accordance with the provisions of Section II-I-22.01 of the City of Milpitas Municipal Code.
- .02 **Grading Designation.** All grading in excess of 5000 cubic yards shall be performed in accordance with the approved grading plan prepared by a Civil Engineer, and shall be designated as "engineered grading." Grading involving less than 5000 cubic yards shall be designated "regular grading," unless the permittee, with the approval of the [Chief Building Official Building Official](#), chooses to have the grading performed as "engineered grading."
- .03 **Engineered Grading Requirements.** For engineered grading, it shall be the responsibility of the Civil Engineer who prepares the approved grading plan to incorporate all recommendations from the soil engineering and engineering geology reports into the grading plan. He also shall be responsible for the professional inspection and approval of the grading within his area of technical specialty. This responsibility shall include, but need not be limited to, inspection and approval as to the establishment of line, grade and drainage of the development area. The Civil Engineer shall act as the coordinating agent in the event the need arises for liaison between the other professionals, the contractor and the [Chief Building Official Building Official](#). The Civil Engineer also shall be responsible for the preparation of revised plans and the submission of as-graded grading plans upon completion of the work. The grading contractor shall submit in a form prescribed by the [Chief Building Official Building Official](#) a statement of compliance to said as-built plan.
- .04 Soil Engineering and Engineering Geology reports shall be required as specified in Section II-13-7. During grading all necessary reports, compaction data and soil engineering and engineering geology recommendations shall be submitted to the civil engineer and the [Chief Building Official Building Official](#) by the Soils Engineer and the Engineering Geologist.
- .05 The Soils Engineer's area of responsibility shall include, but need not be limited to, the professional inspection and approval concerning the preparation of ground to receive fills, testing for required compaction, stability of all finish slopes and the design of buttress fills, where required, incorporating data supplied by the Engineering Geologist.
- .06 The Engineering Geologist's area of responsibility shall include, but need not be limited to, professional inspection and approval of the adequacy of natural ground for receiving fills and the stability of cut slopes with respect to geological matters and the need for subdrains or other ground water drainage devices. He shall report his findings to the Soils Engineer and the Civil Engineer for engineering analysis.

.07 The ~~Chief Building Official~~Building Official shall inspect the project at the various stages of the work requiring approval and at more frequent intervals as necessary, to determine that adequate control is being exercised by the professional consultants.

.08 **Regular Grading Requirements.** The ~~Chief Building Official~~Building Official may require inspection and testing by an approved testing agency, paid for by the Contractor.

The testing agency's responsibility shall include, but need not be limited to, approval concerning the inspection of cleared areas and benches to receive fill, and the compaction of fills.

When the ~~Chief Building Official~~Building Official has cause to believe that geologic factors may be involved the grading operation will be required to conform to "engineered grading" requirements.

.09 **Notification of Noncompliance.** If, in the course of fulfilling their responsibility under this Chapter, the Civil Engineer, the Soils Engineer, the Engineering Geologist or the testing agency finds that the work is not being done in conformance with this Chapter or the approved grading plans, the discrepancies shall be reported immediately in writing to the person in charge of the grading work and to the ~~Chief Building Official~~Building Official. Recommendations for corrective measures, if necessary, shall be submitted.

.10 **Transfer of Responsibility for Approval.** If the Civil engineer, the Soils Engineer, the Engineering Geologist or the testing agency of record is changed during the course of the work, the work shall be stopped until the replacement has agreed to accept the responsibility within the area of their technical competence for approval upon completion of the work.

II-13-33 Completion of Work

.01 **Final Reports.** Upon completion of the rough grading work and at the final completion of the work the ~~Chief Building Official~~Building Official may require the following reports and drawings and supplements thereto:

1. An as-graded grading plan prepared by the Civil Engineer including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations and elevations of all surface and sub-surface drainage facilities. Civil Engineer shall provide approval that the work was done in accordance with the final approved grading plan.
2. A soil grading report prepared by the Soil Engineer including locations and elevations of field density tests, summaries of field and laboratory tests and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soil engineering investigation report. Soil Engineer shall provide approval as to the adequacy of the site for the intended use.
3. A geologic grading report prepared by the Engineering Geologist including a final description of the geology of the site including any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. Engineering Geologist shall provide approval as to the adequacy of the site for the intended use as affected by geologic factors.

.02 **Notification of Completion.** The permittee or his/her agent shall notify the ~~Chief Building Official~~Building Official when the grading operation is ready for final inspection. Final approval shall not be given until all work including installation of all drainage facilities and their protective devices and all erosion control measures have been completed in accordance with the final approved grading plan and the required report have been submitted.

II-13-35 Review and Approval

- .01 Grading permit applications and accompanying maps and plans shall be reviewed by the ~~Chief Building Official~~Building Official and approved when found to be in compliance with the provisions of this Chapter, and conforms to acceptable grading and erosion control techniques.

II-13-36 Enforcement and Inspection

- .01 The provisions of this ordinance shall be enforced by the City of Milpitas and by the ~~Chief Building Official~~Building Official who shall inspect all grading and erosion control work and require compliance with all the provisions of the Chapter.

II-13-37 Grading and Erosion Control Inspection

- .01 The ~~Chief Building Official~~Building Official shall inspect the work site for compliance with conditions of the approved permit, for verification of reports submitted by the permittee, and for the quality of the work being performed as approved by the permit.
- .02 Approved plans and permits for grading and erosion control work shall be maintained at the site during the grading activity and until the work has been approved.
- .03 A minimum of at least five inspections shall be made as listed.
 - 1. **Initial Inspection.** When permittee or his agent is ready to begin work on excavation or fill and construction stakes have been set, but no grading begun;
 - 2. **Rough Grading.** Including stripping, keying, compaction and subsurface drains;
 - 3. **Erosion Control Compliance Inspection.** For hillside residences, an inspection of erosion control facilities and revegetation measures shall be made between September 15 and October 1, if work completion is scheduled after October 1.
 - 4. **Final Construction Inspection.** When all work, including installation of all drainage, and other erosion control facilities and all planting has been completed.
 - 5. **Final Stabilization Inspection.** For Hillside residences during the first rainy season an inspection of the site will be made to determine if any remedial work is necessary to abate erosion and sedimentation problems prior to issuing the Notice of Compliance for the permit.

II-13-38 Notification of Completion

- .01 The permittee or his agent shall notify the ~~Chief Building Official~~Building Official when the grading/erosion operation is ready for final inspection. Final approval shall not be given until all work including installation of all drainage facilities and their protective devices and all erosion control measures have been completed and maintained following completion of grading or clearing, in accordance with the final approved grading and erosion control plans and the required reports have been submitted.

II-13-39 Applicant's Responsibilities

- .01 The applicant shall install all soil erosion and sediment control measures in strict compliance with this Chapter and in accordance with the approved erosion control plan. All soil erosion and sediment control measures shall be adequately maintained by the applicant for three years or until such measures are stabilized as determined by the ~~Chief Building Official~~Building Official. The ~~Chief Building Official~~Building Official shall issue a notice of compliance when the approved grading and erosion control plan measures are fully applied and completed indicating the date of compliance.

- .02 The design guidelines for construction Best Management Practices and permanent stormwater quality protection shall conform to the City's Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) permit, issued by the State of California Regional Water Quality Control Board by Order R2-2015-0049 for Municipal Regional Permit Number (MRP) CAS612008. Developers are responsible for reviewing and complying with the MRP conditions.
- .03 The applicant shall comply with the City's Flood Plain Ordinance (Ord. 209.1, Chapter 15, Title XI).
- .04 A new or modified erosion and sediment control technique may be allowed to be used provided there is mutual agreement between the ~~Chief Building Official~~Building Official and the applicant that the technique meets the intent of the erosion control plan.
- .05 The City of Milpitas may cause remedial work to be done, at the applicant's expense, if it is determined that it is necessary to protect completed work or to prevent damage.

II-13-40 Permit Suspension

- .01 In the event that work performed does not conform to the provisions of the permit, or to the approved plans and specifications, or to any written instructions of the ~~Chief Building Official~~Building Official, a written notice to comply shall be given to the permittee. Such notice shall set forth the nature of the corrections required and the time within which corrections shall be made. Failure to comply with such written notice shall be deemed justification for suspension of the permit, which will require that all work stop except that necessary for correction of the violation. Upon correction of the violation the permittee may apply for removal of suspension.

II-13-42 Performance Bond

- .01 The ~~Chief Building Official~~Building Official shall, before issuing a permit in hillside areas, require a cash or corporate surety bond, instrument of credit or other security acceptable to the City be posted by the applicant, conditioned upon the faithful performance of the conditions in the permit, and erosion control measures specified in the permit within the time specified by the ~~Chief Building Official~~Building Official.
- .02 The amount of the bond or security shall be the full cost of the installed erosion and sediment control measures and facility maintenance.
- .03 The ~~Chief Building Official~~Building Official may grant a partial or complete waiver of such bond where he finds minimal impairment of existing surface drainage, minimal erosion hazard and minimal sedimentation hazard upon any adjacent land or watercourse and no hazard to human life or property.
- .04 The bond or security shall remain in effect and held until the erosion and sediment control measures have stabilized the site and all plan and permit conditions have been met, at which time a "notice of compliance" certificate will be issued following the final construction inspection.

II-13-45 Fees

- .01 **Plan Checking Fee.** For excavation and fill on the same site, the fee shall be based on the volume of the excavation or fill, whichever is greater. Before accepting a set of plans and specifications for checking, the ~~Chief Building Official~~Building Official shall collect a plan checking fee. Separate permits and fees shall apply to retaining walls or major drainage structures as indicated elsewhere in this Chapter. There shall be no separate charge for standard terrace drains and similar facilities. The amount of the plan checking fee for grading plans shall be as set forth by Resolutions of the City Council.

- .02 The plan checking fee for a grading permit authorizing additional work to that under a valid permit shall be the difference between such fee paid for the original permit and the fee shown for the entire project.

II-15-4.01 Enforcement

Any person who plans to install a wood burning device must submit documentation to the [Office of Building Safety](#) ~~Building Safety and Housing Department~~ of the City of Milpitas demonstrating that the device is compliant with this Chapter. Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be punishable as provided by law.

II-20-2.02 Definitions

The following terms shall have the ascribed definition for the purposes of applying the criteria of this Chapter.

A

"Addition" means new construction square footage added to an existing structure.

"Applicant" means any entity that applies to the City for the applicable permits to undertake any covered project within the City, or any subsequent owner of the site.

C

"Compliance Official" means the ~~Chief Building Official~~ [Building Official](#) or designee.

"Compliance Threshold" means the minimum number of points or rating level of a green building rating system that must be attained for a particular Covered Project.

"Covered Project" means any planning entitlement application(s) or building permit application(s) for commercial (non-residential) new construction or renovations, for any single-family, two-family or multi-family new construction or renovation, or for city-sponsored construction projects subject to the Standards for Compliance Section of this Ordinance.

G

"Good Faith Effort" means a project that has not met the required compliance threshold, but for extenuating reasons or reasons beyond the control of the applicant, the Compliance Official has found the project meets the good faith effort provisions.

"Green Building" means a whole systems approach to the design, construction and operation of buildings that substantially mitigates the environmental, economic, and social impacts of buildings. Green building practices recognize the relationship between the natural and built environments and seek to minimize the use of energy, water and other natural resources and provide a healthy, productive indoor environment.

"Green Building Project Checklist" means a checklist or scorecard developed for the purpose of calculating a green building rating.

"Green Building Rating System" means the rating system associated with specific green building criteria and used to determine compliance thresholds. Examples of rating systems include, but are not limited to, the LEED and GreenPoint Rated systems.

"GreenPoint Rated" means a residential green building rating system developed by the Build It Green organization.

"GreenPoint Rated Verification" means verification of compliance by a certified GreenPoint Rater, resulting in green building certification by Build It Green including green points allocation across all of the resource categories.

L

"LEED®" means the "Leadership in Energy and Environmental Design" green building rating system developed by the U.S. Green Building Council.

M

"Mixed Use" means the construction of a building or buildings that include both commercial and residential uses.

"Multi-Family Residential" means a building containing three or more attached dwelling units.

N

New Construction, Commercial (Nonresidential). "Commercial (Nonresidential) New Construction" means the construction of a new retail, office, industrial, warehouse, service, hotel, motel, or similar building(s), or additions to such building(s).

New Construction, Residential. "Residential New Construction" means the construction of a new single-family or two-family dwelling unit or of new or replacement multi-family residential building(s), or additions to such building(s).

P

"Priority Plan Review" means a covered project meeting the Incentives for Compliance will receive building permit plan review comments from all City Departments on the first plan review within 50 percent less time than what would normally be scheduled for the scale and size of the project. The plan review would be performed during regular working hours and would be scheduled ahead of other plan reviews for which off-hour fees were not already paid.

Q

"Qualified Green Building Professional" means a person including but not limited to an employee of the City, trained through the USGBC as a LEED accredited professional or through Build It Green as a certified green building professional or similar qualifications if acceptable to the Compliance Official.

R

"Renovation" means any rehabilitation, repair, remodeling, change, or modification to an existing building, where changes to floor area and the footprint of the building are negligible.

S

"Single-Family or Two-Family Residential" means a single detached dwelling unit or two units in a single building.

"Square Footage," for the purposes of calculating commercial, multi-family residential, and single-family and two-family new construction square footage, means all new and replacement square footage, including basement areas [seven feet or greater in height] and garages, except that unconditioned garage space shall only count as 50 percent of that square footage. Areas demolished shall not be deducted from the total new construction square footage.

II-160-2.20 Delegation of Authority

Responsibility for enforcing the Mobilehome Parks Act, upon its assumption from HCD, is hereby delegated to the City [Office of Building Safety's Building Safety and Housing Department](#).

II-160-3.00 Statement of Qualifications

In discharging its delegated responsibilities, the City's ~~Office of Building Safety~~ ~~Building Safety and Housing Department~~ shall provide qualified personnel in the enforcement of the Mobilehome Parks Act. In this regard, the Building Inspectors are hereby designated as the Department's authorized representatives for the purpose of enforcing said Act.

II-160-4.40 Inspection Capability

The City's capability to undertake mobile home installation inspections to the satisfaction of HCD is demonstrated as follows:

- (a) The City's ~~Building Safety and Housing Department~~ has established and operated concerted code enforcement programs since 1959 encompassing systematic enforcement of State Building Regulations and the Municipal Code.
- (b) The City's Building Inspectors have years of construction inspection experience.
- (c) The City's ~~Housing Officers~~ ~~staff~~ have years of Code Enforcement experience.

II-170-3.00 Automatic Gas Shut-off Devices

Gas Shut-off Devices-either installed in compliance with this ordinance or voluntarily, with a permit issued on or after the effective date of this ordinance, shall comply with the following requirements:

- (a) Automatic Gas Shut-off Devices shall be installed by a contractor licensed in the appropriate classification by the State of California and in accordance with the manufacturer's instructions.
- (b) Seismic Gas Shut-off Devices (motion sensitive) must be mounted rigidly to the exterior of the building or structure containing the fuel gas piping. This requirement need not apply if the ~~Office of Building Safety~~ ~~Building Safety and Housing Department~~ determines that the Seismic Gas Shut-off Device (motion sensitive) has been tested and listed for an alternate method of installation.
- (c) Seismic Gas Shut-off Devices (motion sensitive) must be certified by the Office of State Architect and be listed by an approved listing and testing agency such as IAS, IAMPO, UL or the Office of State Architect. In the case of Excess Flow Gas Shut-off Devices only, be certified by the Office of State Architect or be listed by an approved listing and testing agency such as IAS, IAMPO, UL or the Office of the State Architect.
- (d) Both Excess Flow Gas Shut-off Devices and Seismic Gas Shut-off Devices must have a 30-year warranty which warrants that the valve or device is free from defects and will continue to operate properly for 30 years from the date of installation.
- (e) Where Automatic Gas Shut-off Devices are installed voluntarily or as required by this section, they shall be maintained for the life of the building or structure or be replaced with a valve or device complying with the requirements of this section.

II-170-3.01 List of Approved Valves and Devices

The ~~Office of Building Safety~~ ~~Building Safety and Housing Department~~ shall maintain a list of all Seismic Gas Shut-off Devices (motion sensitive) and Excess Flow Gas Shut-off Devices (non-motion sensitive) which meet or exceed the requirements of devices certified by the Office of the State Architect for installation in the State of California and which comply with the standards and criteria set forth in Health and Safety Code Section 19180 et seq., including quality and design regulation for earthquake actuated automatic gas Shut-off systems (see 24 Cal. Code Regs. Ch. 12-16-1).

II-170-4.00 Enforcement

The City of Milpitas ~~Building Safety and Housing~~Office of Building Safety-Department shall administer and enforce the provisions of this ordinance.

Chapters 4, 7, and 8 of Title III of the Milpitas Municipal Code are hereby amended to read as follows:

III-4.5.010 Facilities and Employees

- (a) No adult business shall be operated in any manner that permits the observation of any material or activities depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any location outside the building of the establishment. This provision shall apply to any display, decoration, sign, show window or other opening.
- (b) The building entrance to an adult business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) years are precluded from entering the premises. This notice shall be constructed and posted to the satisfaction of the ~~Chief Building Official~~Building Official or designee. No person under the age of eighteen (18) years shall be permitted within the premises at any time.
- (c) All indoor areas of the adult business within which patrons are permitted, except restrooms, shall be open to view by the management at all times.
- (d) All off-street parking area and premises entries of the sexually oriented entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) footcandle of light on the parking surface and/or walkways. The required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence or vandalism and criminal conduct.
- (e) The premises within which the adult business is located shall provide sufficient sound-absorbing insulation so that noise generated inside said premises shall not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building.
- (f) Except for those businesses also regulated by the California Department of Alcoholic Beverage Control, an adult business shall be open for business only between the hours of 8:00 a.m. and midnight on any particular day.
- (g) All areas of the adult-oriented business shall be illuminated at a minimum of the following footcandles, minimally maintained and evenly distributed at ground level:

Area	Footcandles
Bookstores and other retail establishments	20
Theatres and cabarets	5 (except during performances, at which times lighting shall be at least 1.25 footcandles)
Arcades	10
Motels/Hotels	20 (in public areas)
Modeling studios	20

- (h) Any adult business which is also an "adult arcade" or an "adult bookstore" shall comply with the following provisions:
- (1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the managers' stations. The view required in this subsection must be direct line of sight from the manager's station.
 - (2) The view area specified in subsection (1) of this section shall remain unobstructed by any doors, walls, merchandise, display racks, or other materials at all times. No patron is permitted access to any area of the premises which has designated as an area in which patrons will not be permitted.
 - (3) No viewing room may be occupied by more than one person at any one time.
 - (4) The walls or partitions between viewing rooms or booths shall be maintained in good repair at all times, with no holes between any two such rooms such as would allow viewing from one booth into another or such as to allow physical contact of any kind between the occupants or any two such booths or rooms.
 - (5) Customers, patrons or visitors shall not be allowed to stand idly in the vicinity of any such viewing booths, or from remaining in the common area of such business, other than the restrooms, who are not actively engaged in shopping for or reviewing the products available on display for purchaser viewing. Signs prohibiting loitering shall be posted in prominent places in and near the viewing booths.
 - (6) The floors, seats, walls and other interior portions of all viewing booths shall be maintained clean and free from waste and bodily secretions. Presence of human excrement, urine, semen or saliva in any such booths shall be evidence of improper maintenance and inadequate sanitary controls; repeated instances of such conditions may justify suspension or revocation of the owner and operator's license to conduct the adult-oriented establishment.
- (i) The following additional requirements shall pertain to adult businesses providing live entertainment depicting specified anatomical areas or involving specified sexual activities, except for businesses regulated by the Alcoholic Beverage Control Commission:
- (1) No person shall perform live entertainment for patrons of an adult business except upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least ten (10) feet from the nearest area occupied by patrons, and no patron shall be permitted within ten (10) feet of the stage while the stage is occupied by an entertainer. "Entertainer" shall mean any person who is an employee or independent contractor of the adult business, or any person who, with or without any compensation or other form of consideration, performs live entertainment for patrons of an adult business.
 - (2) The adult business shall provide separate dressing room facilities for entertainers which are exclusively dedicated to the entertainers' use.
 - (3) The adult business shall provide an entrance/exit for entertainers which is separate from the entrance/exit by patrons.
 - (4) The adult business shall provide access for entertainers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically

feasible, the adult business shall provide a minimum three (3) foot wide walk aisle for entertainers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the entertainers capable of (and which actually results in) preventing any physical contact between patrons and entertainers.

- (5) No entertainer, either before, during or after performances, shall have physical contact with any patron and no patron shall have physical contact with any entertainer either before, during or after performances by such entertainer. This subsection shall only apply to physical contact on the premises of the adult business.
- (6) Fixed rail(s) at least thirty (30) inches in height shall be maintained establishing the separations between entertainers and patrons required by this subsection.
- (7) No patron shall directly pay or give any gratuity to any entertainer and no entertainer shall solicit any pay or gratuity from any patron.
- (8) No owner or other person with managerial control over an adult business (as that term is defined herein) shall permit any person on the premises of the adult business to engage in a live showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage over any part of the nipple or areola and/or covered male genitals in a discernibly turgid state. This provision may not be complied with by applying an opaque covering simulating the appearance of the specified anatomical part required to be covered.
- (j) Every permittee of an adult business which provides live entertainment depicting specified anatomical areas or involving specified sexual activities must maintain a current register of all persons so performing on the premises. A copy of the register must be provided to the Chief of Police. The registry must contain the following information:
 - (1) The legal name of each entertainer and any other names (including stage names) used by the entertainer;
 - (2) A copy of each entertainer's California Driver's License or comparable identification;
 - (3) Age and date of birth of each entertainer; and
 - (4) A photograph of each entertainer.
- (k) It is unlawful for any permittee, operator, or other person in charge of any adult business to employ any person who is not at least eighteen (18) years of age.

III-7-20.00

The application shall be submitted to the following City departments, at a minimum, for investigation and recommendation, with other City departments reviewing if needed as solely determined by the City:

20.01 Fire Marshal as to any fire hazard on the premises in question and compliance to current laws and regulations.

20.02 The ~~Chief Building Official~~[Building Official](#) as to compliance with City building regulations.

20.03 Planning Director as to compliance with zoning requirements and the zoning ordinance.

III-8-4.00

- A. A food vendor may seek a grace period from the prohibition under Section III-8-3.00 due to a "unique packaging hardship" under Subsection B of this Section, or the grace period for "unused inventory" under Subsection C of this Section.

- B. The food vendor must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a "unique packaging hardship" exemption.
- C. The food vendor must demonstrate that before December 31, 2017, it purchased the polystyrene foam food service ware, which cannot be returned to the distributor, and, despite the food vendor's best efforts, will remain in inventory on July 1, 2018, to qualify for an "unused inventory" grace period.
- D. Food vendors may submit a written application for grace period on a form provided by the ~~Engineering Department~~[Public Works Department](#). The City Engineer or his or her designee may require the applicant to submit additional information or documentation to make a determination regarding the grace period request. A request for grace period under Subsection B shall be reviewed upon a case-by-case basis, and may be granted in whole or in part, with or without conditions, for a period of up to 12 months. A food vendor must apply for a new grace period under Subsection B no later than 60 days prior to the expiration of the then-current grace period to preserve a continuous exemption status. A request for grace period under Subsection C shall be reviewed upon a case-by-case basis, and may be granted in whole or in part, with or without conditions, for a period of up to three months or to October 1, 2018, whichever comes first. The determination of the City Engineer or designee shall be final and is not subject to appeal.

Sections 1.00, 2.00, and 4.00 of Chapter 3, Title VI of the Milpitas Municipal Code are hereby amended to read as follows:

VI-3-1.00 Establishment of Departments of City

Pursuant to the provision of Section VI-1-2.08 of the Milpitas Municipal Code, the work of the City government shall be distributed among the following departments of the City:

- A. City Manager;
- B. City Attorney;
- C. Finance;
- D. Human Resources;
- E. Information Technology;
- F. Planning;
- G. Public Works;
- H. ~~Engineering;~~
- I. Police;
- J. Fire; [and](#)
- K. ~~Building Safety and Housing; and~~
- L. Recreation and Community Services.

VI-3-2.00 Divisions and Distribution of Work

Subject to other provisions of law, the work of the City government shall be assigned to such departments and such divisions within such departments as the City Manager shall establish and determine. [In addition to the general functions of the City Manager's Office, the Offices of the City](#)

Clerk, Communications, Building Safety, Housing and Economic Development are included as part of the City Manager's Office.

VI-3-4.00 Severance Payments for Specified "At-Will" Positions

1. Application. The ordinance codified in this Section shall permit the payment of severance to City employees serving in any of the following positions on an "at-will" (i.e., exempt) basis: Department Heads; ~~Chief Building Official~~Building Official; and City Engineer (hereafter "qualifying positions").

2. Severance Schedule. In exchange for a general release in a form subject to approval by the City Attorney, the City Manager may grant severance pay pursuant to this Section on the following schedule. Severance pay shall be based on an employee's base salary at the time of separation and is subject to all applicable withholding as determined by the City or appropriate taxing authorities:

For employees with up to one year of City service in a qualifying position: Four weeks' salary.

For employees with greater than one year, but no more than five years, of City service in a qualifying position: Four weeks' salary, plus two weeks' salary for each additional year of City service in a qualifying position (maximum twelve weeks' salary).

For employees with greater than five years of City service in a qualifying position: Twelve weeks' salary, plus one week's salary for each additional year of City service in a qualifying position not to exceed a total of four additional weeks' salary.

3. Criteria and Administration.

- (a) The maximum amount of severance payable under this Section sixteen weeks' salary. The minimum City service required in a qualifying position in order to receive this amount is nine years.
- (b) A year of City service means at least 2080 hours during a twelve-month period in a paid status.
- (c) Severance payments under this Section shall not be paid until after the City Attorney approves the release and after any statutory waiting periods have expired (e.g., the seven-day waiting period under the ADEA).
- (d) Severance payments may be made under this Section only after an employee is dismissed without cause or is laid off. Employees who voluntarily resign, retire, or who are dismissed "for cause" are ineligible for severance payments made under this section. Dismissal "for cause" includes any dismissal made for reasons of fraud, dishonesty, insubordination, theft, misappropriation or misuse of City property, excessive absenteeism, actions prohibited by the City's anti-discrimination policies, or conduct that would constitute a crime. The City Manager shall have the discretion to determine whether dismissals are "for cause" under this section.

Chapters 2 and 6 of Title VIII of the Milpitas Municipal Code are hereby amended to read as follows:

VIII-2-1.02.1

CITY ENGINEER is ~~the Director of Engineering~~part of the Public Works Department of the City of Milpitas.

VIII-2-5.10 Pretreatment by Owner or Operator

Each owner or operator shall, at the owner's or operator's own expense, provide such treatment or take such other measures as the ~~Chief Building Official~~Building Official may require to prevent accidental discharge; and to reduce objectionable characteristics, contents, or rates of discharge into the sanitary sewer system to prevent damage to or interference with the sanitary sewer system.

VIII-6-3.00 Permanent Water Use Restrictions

3.06 Use in new, added, or altered cooling system equipment unless at least fifty percent (50%) of the water is recirculated. A waiver to allow less than fifty percent (50%) recirculating may be granted by the ~~Chief Building Official~~Building Official due to water quality concerns only. Cost is not an acceptable reason to request or receive a waiver.

Sections 10.03, 13.04A, 13.04B, 13.05, 13.06, and 14.01-5 of Chapter 3, Title X of the Milpitas Municipal Code are hereby amended to read as follows:

X-3-10.03 Amount of Payment in Lieu of Improvement

The amount of payment required in lieu of improvement shall be equivalent to the cost of said improvements in ~~accordance with a resolution of Costs of Improvements adopted by the City Council as determined by the City Engineer. It shall be the duty of the Director of Planning and Engineering to present to the City Council at least once each six months its calculation of the reasonable cost of improvements at that time in Santa Clara County as the basis for the review of said costs and the adoption and revision of any resolution relating to said costs. Nothing herein contained, however, shall invalidate any action of the City Council or invalidate the imposition of any charge upon a Permittee under the provisions of this Chapter for payment in lieu of improvements as a result of any failure on the part of the Director of Planning Engineering to present said costs to the City Council or any failure on the part of the City Council to revise any resolution of costs once adopted.~~

X-3-13.04 Agreements

If permittee does not install improvements prior to the issuance of a development permit or second reading of a zoning ordinance, permittee shall execute an agreement with the City (prior to the issuance of a development permit or second reading of a zoning ordinance) to install the improvements required by City pursuant to this Chapter at permittee's sole cost within such time as said agreement shall require. Said agreement shall contain such covenants and conditions as are required by City including but not limited to the following:

- A. No work shall be undertaken by the permittee until all plans and specifications have been submitted to the ~~Director of Planning and Engineering~~Director of Public Works and approved in writing.
- B. All improvements shall be constructed under and subject to inspection by the Director of ~~Planning and Engineering~~Public Works.
- C. Permittee shall pay City's costs and expenses in connection therewith.
- D. Completion of improvements shall be prior to the issuance of a certificate of occupancy pursuant to Chapter 1, Title II of the Milpitas Municipal Code or prior to the expiration of one year after execution of the agreement, whichever occurs first (unless otherwise required by the City Council).
- E. For progress payments to permittee from any monies which permittee has deposited with the City as security for the performance of said agreement.
- F. Waiver of protest to formation of assessment district and credit in said assessment district proceedings for contributions made by permittee pursuant to this Chapter to the extent applicable.
- G. That said agreement shall bind the successors, assigns and transferees of permittee and shall run with the land.

X-3-13.05 Security for Agreement and Payment of Labor and Materials Bills

Permittee shall file with the aforesaid agreement, to assure his full and faithful performance thereof, security for such sum as is sufficient to cover 100% of the cost of said improvements and other costs and, in addition, such security as is sufficient to cover 100% of all labor and materials costs required to construct improvements. The amount of such security shall be determined by the Director of [Planning and EngineeringPublic Works](#), and such security shall be approved by the Director of [Planning and EngineeringPublic Works](#) as to sufficiency and by the City Attorney as to form. Such security shall be one or more of the following:

- A. A bond issued by a surety company authorized to transact a surety business in the State of California.
- B. A letter of credit issued by a savings and loan institution or by a bank authorized to transact business in the State of California, the form of which shall be satisfactory to and approved by the City Attorney.
- C. The deposit of cash funds in a savings account in any savings and loan or bank maintaining an office in Santa Clara County, California, with an assignment of said account to the City for payment upon said account. Provided, further, that the permittee and the bank or savings and loan shall execute such written documents as shall be required by the City Attorney and as shall be approved by him as to form to insure the availability of said sums upon demand to City and provided, further, that there shall be delivered to City a certificate or passbook representing said account, together with said assignment, in a form satisfactory to the City Attorney.
- D. Cash or cashier's check drawn upon a bank or savings and loan institution maintaining an office in Santa Clara County, California.

X-3-13.06 Release of Security

No release of any security required hereunder shall be made except upon the certification by Director of [Planning and EngineeringPublic Works](#) that work covered thereunder has been satisfactorily completed and upon approval of the City Council provided, however, that progress payments may be made to the permittee upon approval of the City Council in accordance with the provisions of his agreement with the City. Said security or any portion thereof, may be retained by the City until the end of any express warranty, or guarantee period provided for in the agreement secured, or until any claim period established by law or agreement has expired. No interest shall be paid by City upon any security deposited by permittee with the City. Any interest earned by permittee from any bank or savings and loan association upon an account assigned to the City (if not called upon to satisfy permittee's obligations pursuant to his written agreement) shall be released to permittee when the principal sum on deposit is released to said permittee.

X-3-14.01-5 Determination of Value of Building Structure or Improvements

For purposes of this section, the value of a building structure or improvement, shall be deemed to be the current market value thereof as determined by the Director of [Planning and Engineering](#). In determining said market value, the City shall consider the most recent appraised value as shown upon the records of the County Appraiser of Santa Clara County as well as such other appraisal data as the Director of Planning and Engineering shall deem pertinent. In the event that the Director of [Planning and Engineering](#) determines that the value exceeds 50%, the Permittee shall receive written notice by mail, postage prepaid, and dispatched to Permittee at his address as shown upon his permit application, of the determination of the Director of Planning and Engineering as to value and shall be entitled to appeal said determination in accordance with the provisions of this Chapter.

Chapters 1, 10, and 500 of Title XI of the Milpitas Municipal Code are hereby amended to read as follows:

XI-1-16.01 Reversions to Acreage by Final Map

Subdivided property may be reverted to acreage pursuant to provisions of this chapter.

Proceedings to revert subdivided property to acreage may be initiated by petition of all of the owners of record of the property. The petition shall be in a form prescribed by the City. The petition shall contain the information required by XI-1-16.02 and such other information as required by City.

The City Council at the request of any person or on its own motion may by minute order initiate proceedings to revert property to acreage. The Council shall direct the [Community Development Planning](#) Director to obtain the necessary information to initiate and conduct the proceedings.

XI-1-19.05 Land Division Violations To Be Recorded

Pursuant to the authority contained in Government Code Section 66499.36, whenever the Director of Planning ~~and Engineering~~ has knowledge that real property has been divided in violation of the provisions of the Subdivision Map Act or of this Chapter, he shall cause to be filed for record with the Recorder of Santa Clara County a Notice of Intention To Record A Notice Of Violation, describing the real property in detail, naming the owner thereof, and describing the violation, and stating that an opportunity will be given to the owner to represent evidence. The Director of Planning and Engineering shall mail a copy of such notice to the owner of said real property as his address appears on the last equalized assessment roll of the County of Santa Clara. The notice shall specify a time, date and place at which the owner may present evidence to Planning Commission why such notice should not be recorded. If, after the owner has presented evidence, it is determined that there has been no violation, the Director of Planning and Engineering shall record a release of the Notice of Intention To Record A Notice Of Violation. If however, it is determined that there has been a violation (or if within sixty (60) days of receipt of the copy of the Notice Of Intention To Record A Violation the real property owner fails to inform the Director of Planning and Engineering of his objection to recording the Notice of Violation), the Director of Planning and Engineering shall record the Notice of Violation. For all purposes, the Director of Planning and Engineering is designated as the person authorized to perform any duty to be performed pursuant to the provisions of Government Code Section 66499.36 by the City of Milpitas, the City Council of Milpitas, or the Planning Commission of the City of Milpitas.

XI-10-4.08 Two-unit Projects

- A. Purpose. The purpose of this section is to allow and appropriately regulate two-unit projects in accordance with Government Code section 65852.21.
- B. Definition. A "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 in accordance with the requirements of this section.
- C. Application.
 1. Only individual property owners may apply for a two-unit project. "Individual property owner" means a natural person holding fee title individually or jointly in the person's own name or a beneficiary of a trust that holds fee title. "Individual property owner" does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corp., S corp., etc.) except for a community land trust (as defined by Rev. & Tax Code § 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by § 214.15).
 2. An application for a two-unit project must be submitted on the city's approved form.

3. The applicant must obtain a certificate of compliance with the Subdivision Map Act for the lot and provide the certificate with the application.
 4. Only a complete application will be considered. The city will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.
 5. The city may establish a fee to recover its costs for adopting, implementing, and enforcing this section of the Code, in accordance with applicable law. The city council may establish and change the fee by resolution. The fee must be paid with the application.
- D. Approval.
1. An application for a two-unit project is approved or denied ministerially, by the Planning Director, without discretionary review.
 2. The ministerial approval of a two-unit project does not take effect until the city has confirmed that the required documents, such as the deed restriction and easements, have been recorded with the Santa Clara County Clerk.
 3. The approval must require the owner and applicant to hold the city harmless from all claims and damages related to the approval and its subject matter.
 4. The approval must require the owner and applicant to reimburse the city for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this Code.
- E. Location requirements. A two-unit project must satisfy each of the following requirements:
1. Map act compliance. The lot must have been legally subdivided.
 2. Single-family residential zone. The two-unit project shall be located in a single-family residential zone. For the purposes of this section, the R1 zone is the only single-family residential zoning district where a two-unit project may be located.
 3. Lot location. The two-unit project shall be located on a lot that conforms with the applicable requirements of Sections XI-1-31.04-4 through XI-1-31.04-8 of this Title.
 4. Not historic. The two-unit project shall be located on a lot that conforms with the applicable requirements of Section XI-1-31.05 of this Title.
 5. No impact on protected housing. The two-unit project shall be located on a lot that conforms with the applicable requirements of Section XI-1-31.06 of this Title.
- F. Residential unit standards.
1. *Quantity.*
 - a. No more than two dwelling units of any kind may be built on a lot that results from an urban lot split. For purposes of this paragraph, "unit" means a dwelling unit, including, but not limited to, a primary dwelling unit, a unit created under Section XI-10-04.08 of this Chapter, an ADU, or a JADU.
 - b. A lot that is not created by an urban lot split may have a two-unit project under this section, plus any ADU or JADU that must be allowed under State law and the City's ADU Ordinance.
 2. *Unit size.*
 - a. The total floor area of each primary dwelling that is developed on a resulting lot must be:
 - i. Less than or equal to 800 square feet; and
 - ii. More than or equal to 500 square feet.

- b. A primary dwelling that was legally established prior to the urban lot split and that is larger than 800 square feet is limited to the lawful floor area at the time of the urban lot split. It may not be expanded.
 - c. A primary dwelling that was legally established prior to the urban lot split and that is smaller than 800 square feet may be expanded to 800 square feet after the urban lot split.
3. Demo cap. The two-unit project may not involve the demolition of more than 25 percent of the existing exterior walls of an existing dwelling unless the site has not been occupied by a tenant in the last three years.

G. Maximum height.

- 1. On a resulting lot that is larger than 2,000 square feet, no new primary dwelling unit may exceed a single story or 16 feet in height, measured from grade to peak of the structure.
- 2. On a resulting lot that is smaller than 2,000 square feet, no new primary dwelling unit may exceed two stories or 22 feet in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story must be stepped back by an additional five feet from the ground floor; no balcony deck or other portion of the second story may project into the step-back area.
- 3. No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot resulting from an urban lot split.

H. Setbacks.

- 1. General setbacks. All setbacks must conform to those objective setbacks that are imposed through the underlying R1 zone.
- 2. Exceptions. Notwithstanding Subsection XI-10-4.08.H.1 above:
 - a. Existing structures. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.
 - b. Minimum unit size. The setbacks imposed by the underlying zone must yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 square feet in floor area; but in no event may any structure be less than four feet from a side or rear property line.
- 3. Front setback area. Notwithstanding any other part of this code, dwellings that are constructed under this section must be a minimum of 15 feet from the front property lines. The front setback area must:
 - a. Be kept free from all structures greater than three feet high;
 - b. Be at least 50 percent landscaped with drought-tolerant plants, with vegetation and irrigation plans approved by a licensed landscape architect;
 - c. Allow vehicular and fire-safety access to the front structure in accordance with the City's adopted Building and Fire Safety Codes.

I. Parking.

- 1. Off-street parking requirement. Each new primary dwelling unit that is built on an existing lot or a lot created through an urban lot split must have at least one off-street parking space per unit.
- 2. Exceptions. Notwithstanding Subsection XI-10-4.08.I.1 above:
 - a. Proximity to transit. No additional parking is required for any new primary dwelling unit located within one-half mile walking distance of:

- i. A corridor with fixed-route bus service or the intersection of two or more major bus routes with frequency of service intervals of 15 minutes or less during the morning and afternoon peak commute hours; or
 - ii. A site that contains an existing rail or bus rapid transit station; or
- b. Proximity to car-share service. No additional parking is required for a new primary dwelling unit located within one block of a car-share vehicle location.

J. Architecture.

- 1. If there is a legal primary dwelling on the lot that was established before the urban lot split, any new primary dwelling unit must match the existing primary dwelling unit in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
- 2. If there is no legal primary dwelling on the lot before the urban lot split, and if two primary dwellings are developed on the lot, the dwellings must match each other in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
- 3. Reserved.
- 4. All exterior lighting must be limited to down-lights.
- 5. No window or door of a dwelling that is constructed on the lot after the urban lot split may have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.
- 6. If a dwelling is constructed on a lot after an urban lot split and any portion of the dwelling is less than 30 feet from a property line that is not a public right-of-way line, then all windows and doors in that portion must either be (for windows) clerestory with the bottom of the glass at least six feet above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

K. Landscaping.

- 1. Evergreen landscape screening must be planted and maintained between each dwelling and adjacent lots (but not rights-of-way) as follows:
 - a. At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24-inch box size plant shall be provided for every ten linear feet of exterior wall.
 - b. Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least six feet in height may be installed.
 - c. All landscaping must be drought-tolerant to conserve water used for irrigation.

L. Non-conforming conditions. A two-unit project may only be approved if all nonconforming zoning conditions are corrected.

M. Utilities.

- 1. Each primary dwelling unit on an existing lot or the lots resulting from an urban lot split must have a separate direct water connection to the water service provider.
- 2. Each primary dwelling unit on the resulting lots that is or that is proposed to be connected to an onsite wastewater treatment system must first have a percolation test completed within the last five years or, if the percolation test has been recertified, within the last ten years.

- N. Building and Safety. All structures built on the lot must comply with all current local building standards. A project under this section is a change of use and subjects the whole of the lot and all structures to the City's current code.
- O. Separate conveyance.
1. Within a resulting lot.
 - a. Primary dwelling units on a lot that is created by an urban lot split may not be owned or conveyed separately from each other.
 - b. Condominium airspace divisions and common interest developments are not permitted on a lot that is created by an urban lot split.
 - c. All fee interest in a lot and all dwellings on the lot must be held equally and undivided by all individual property owners.
- P. Regulation of uses.
1. Residential-only. Non-residential uses, except for legal home-based businesses, are not permitted on any single-family residential lot.
 2. No STRs. No dwelling unit located on a lot created by an urban lot split may be rented for a period of less than 30 days.
 3. Owner Occupancy. Unless the lot was created by an urban lot split, the individual property owners of a lot with a two-unit project must occupy one of the dwellings on the lot as the owners' principal residence and legal domicile.
- Q. Notice of construction.
1. At least 30 business days prior to starting any construction activities related to a structure on a lot created by an urban lot split, the property owner must provide written notice to all the owners of record of each of the adjacent residential parcels, which notice must include the following information:
 - a. Notice that construction has been authorized;
 - b. The estimated start and end dates for construction;
 - c. The hours of construction;
 - d. Contact information for the project manager (for construction-related issues); and
 - e. Contact information for the City [Office of Building Safety](#)~~Building Safety & Housing Department~~.
 2. This notice requirement does not confer a right on the noticed persons or any others to comment on the project before permits are issued. Approval is ministerial. Under state law, the City has no discretion in approving or denying a project under this Chapter. This notice requirement is intended to foster neighborhood awareness and expectations.
- R. Deed restriction. The owner must record a deed restriction, acceptable to the City of Milpitas, that does each of the following:
- a. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.
 - b. Expressly prohibits any non-residential use of the lots created by the urban lot split.
 - c. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.
 - d. States that the property is formed by an urban lot split and is therefore subject to the city's urban lot split regulations, including all applicable limits on dwelling size and development.
- S. Specific adverse impacts.

1. Notwithstanding any other provisions in this section, the City may deny an application for a two-unit project if the Building Official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
 2. "Specific adverse impact" has the same meaning as in Gov. Code § 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code section 214(g).
 3. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.
- T. Remedies. If a two-unit project violates any part of this code or any other legal requirement:
1. The buyer, grantee, or lessee of any part of the property has an action for damages or to void the deed, sale, or contract.
 2. The city may:
 - a. Bring an action to enjoin any attempt to sell, lease, or finance the property.
 - b. Bring an action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.
 - c. Pursue criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to \$10,000.00, or both; or a misdemeanor.
 - d. Record a notice of violation.
 - e. Withhold any or all future permits and approvals.
 - f. Pursue all other administrative, legal, or equitable remedies that are allowed by law or the Milpitas Municipal Code.

XI-10-11.07 Milpitas Commercial Specific Plan Area

A. Introduction.

1. **Specific Plan Area.** The Milpitas Commercial Specific Plan area is an approximately 14.56 acre-site located in the City of Milpitas, in Santa Clara County, California on the northernmost southeast corner of North McCarthy Boulevard and Ranch Drive (Figures 1 and 2). Regional access to the Specific Plan area is provided from Interstate 880 (I-880) and State Route 237 (SR-237). The Specific Plan area is bounded by Ranch Drive and the McCarthy Center office complex to the north; stores and parking areas in the McCarthy Ranch Marketplace to the south; Ranch Drive and I-880 to the east; and North McCarthy Boulevard and undeveloped land to the west. The undeveloped land to the west of the Specific Plan area is designated for Industrial Park uses by the City of Milpitas General Plan and is entitled for an office park campus (The Campus at McCarthy Ranch). Coyote Creek is located west of the undeveloped land with Coyote Creek Trail, a Class I bicycle/pedestrian trail, paralleling the east side of the creek. Single-family residences are located east of I-880 and are protected by a sound wall along the I-880 frontage.

2. **Purpose of the Specific Plan.** A specific plan is a combination policy statement and implementation tool that can be used to address the unique needs of a particular area of a city or county. As a result, emphasis is on concrete standards and development criteria for use in the submission and review of subsequent development plans and permits. The California Government Code permits the use of specific plans to regulate site development, including permitted uses such as density, building size, and placement. Specific plans also govern the landscaping and roadways, as well as the provision of infrastructure and utilities. Since the development guidelines established in a specific plan focus on the

unique needs of a specific area, specific plans allow for greater flexibility than is possible with conventional zoning.

The purpose of the Milpitas Commercial Specific Plan is to assist in the development of the site in a manner that will benefit local shoppers, the general public, and the City of Milpitas. The Specific Plan accomplishes these purposes by providing for the efficient use of land, ensuring compatibility between existing and proposed land uses, and establishing environmental and development standards and procedures to be met in development of the Specific Plan area. The customized development regulations contained in the Specific Plan address the unique characteristics of the site and surrounding properties, as well as the needs of the commercial land uses proposed for the site. These efforts are intended to foster greater economic development and design opportunities than could be achieved through the use of conventional zoning and development standards.

As used herein, the term "developer" shall mean the fee title holder of the Milpitas Commercial Specific Plan area.

3. Project Objectives. The objectives of the Milpitas Commercial Specific Plan are as follows:
 - a. Promote economic growth and development that is consistent with the policies of the City of Milpitas General Plan.
 - b. Provide development that maximizes the Specific Plan area's use potential in a manner consistent with the City of Milpitas General Plan.
 - c. Ensure development within the Specific Plan area complies with appropriate conditions and environmental mitigations for the benefit of the City, its residents and taxpayers.
 - d. Generate sales tax and property tax revenues to accrue to the various agencies within the Specific Plan area.
 - e. Enhance the commercial retail opportunities in the City of Milpitas and surrounding communities.
 - f. Create additional employment opportunities for local area residents.
 - g. Expand and upgrade an existing retail facility to provide the City of Milpitas and surrounding communities with a modern and energy efficient facility that provides daytime and nighttime shopping opportunities in a safe and secure environment.
 - h. Minimize travel lengths and utilize existing infrastructure to the maximum extent possible by expanding and revitalizing an existing retail store.
4. Authority. The Milpitas Commercial Specific Plan has been prepared in accordance with Government Code Sections 65450 et seq. and 66450 et seq. and will constitute the zoning for the Specific Plan area. Land use standards and regulations contained within this document shall govern future development within the boundaries of this Specific Plan.

The Milpitas Commercial Specific Plan provides a framework for development of the Specific Plan area. The Specific Plan provides guidance for the review of specific development proposals and is the City's reference document for determining permitted uses, intensity of use, and development standards and requirements. The Specific Plan defines objectives, as well as regulations and requirements for development of the Milpitas Commercial Specific Plan area.

5. General Requirements.
 - a. General Plan Consistency. Implementation of the Milpitas Commercial Specific Plan is intended to carry out the goals and policies contained in the City of Milpitas General Plan, as amended, in an orderly and attractive fashion. Development within the Milpitas Commercial Specific Plan area shall, therefore, be consistent with the provisions of the City of Milpitas General Plan.

The Milpitas Commercial Specific Plan implements the General Plan by:

- i. Encouraging development within the incorporated limits to fill in the urban fabric rather than providing costly expansion of urban services into outlying areas.
 - ii. Encouraging economic pursuits to strengthen and promote development; provide economic opportunities for all Milpitas residents within existing environmental, social, fiscal, and land use constraints; and maintain a balanced economic base that can resist downturns in any one economic sector.
 - iii. Providing opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.
 - iv. Fostering community pride and growth through beautification of existing and future development.
 - v. Utilizing the City's adopted Level of Service standards in evaluating development proposals and capital improvements.
 - vi. Paying its share of street and other traffic improvements based on its impacts.
 - vii. Promoting measures that increase transit use, walking, and bicycling and that lead to improved utilization of the existing transportation system.
 - viii. Providing adequate circulation and off-street parking and loading facilities for trucks and restricting trucks to designated truck routes.
 - ix. Protecting and enhancing the quality of water resources and promoting conservation and efficiency in the use of water.
 - x. Implementing the National Pollutant Discharge Elimination System (NPDES) requirements of the Regional Water Quality Control Board.
 - xi. Enhancing the visual impact of the gateways to Milpitas.
 - xii. Undertaking efforts to reduce the generation of waste, increase recycling and slow the filling of local and regional landfills.
 - xiii. Minimizing threats to life and property from seismic hazards, geologic hazards, flooding, and dam inundation.
 - xiv. Minimizing unnecessary, annoying, or injurious noise.
 - xv. Furthering the Land Use Guiding Principles by promoting a compact urban form and encouraging focused growth through infill opportunities in the incorporated City limits rather than in outlying areas.
 - xvi. Improving the viability of transit, pedestrian and bicycle systems by promoting measures that increases use of those systems.
 - xvii. Maintaining the architectural and landscape elements that contribute to the identity and history of the City by requiring new developments to be harmonious with older structures.
 - xviii. Ensuring the conservation, development and use of natural resources by providing "smart growth" through infill development and promoting conservation and efficiency in energy and water use and reducing waste generation through increased recycling and less waste production.
- b. Relationship Between Specific Plan Development Standards/Criteria and the City of Milpitas Municipal Code. The provisions of the Milpitas Commercial Specific Plan shall govern all development on the lands within the Specific Plan area. Any regulations or requirements not specifically covered herein shall be subject to the regulations and requirements of the City of Milpitas Municipal Code, design guidelines and engineering standards and other applicable regulations, in addition to all applicable local, state and federal ordinances, laws or regulations. Any operations on the Specific Plan area shall also be required to operate in accordance with all local, state and federal regulations. If any provision of this

document conflicts with the regulations or requirements of the City of Milpitas Municipal Code, the provisions of this document shall govern.

The process for approving development under the Milpitas Commercial Specific Plan shall be set forth in Section XI-10-11.07(E), Administration.

c. Conformance with Uniform Building and Fire Codes. All construction within the Milpitas Commercial Specific Plan shall be in compliance with Title II "Building Regulations" and Title V-300 "Fire Code" of the Milpitas Municipal Code.

d. Provision of Infrastructure. Unless otherwise specifically approved as part of this Specific Plan, all off-site improvements under the control of the City shall be subject to the City of Milpitas regulations and requirements in effect at the time improvement plans are submitted. Other improvements not under the control of the City (e.g., electricity, natural gas, telephone) shall be subject to the regulations and requirements of the responsible agency.

Specific requirements for infrastructure improvements are set forth in Table XI-10-11.07-6, Milpitas Commercial Specific Plan Environmental Performance Standards, of this Specific Plan. To ensure the cost-effective availability of current and adequate infrastructure and services during the development of the Specific Plan area, infrastructure plans may be modified upon approval of the City of Milpitas ~~Chief Building Official~~ Building Official, which pursuant to Section XI-10-11.07(E), Administration, of this Specific Plan, shall be ministerial, final and not subject to appeal and without the need to amend this Specific Plan.

e. Severability. If any term, provision, condition, requirement, or portion thereof of this Specific Plan is for any reason held invalid, unenforceable, or unconstitutional, the remainder of this Specific Plan or the application of such term, provision, condition, requirement, or portion thereof to circumstances other than those in which it is held to be invalid, unenforceable, or unconstitutional, shall not be affected thereby; and each other term, provision, condition, requirement, or portion thereof shall be held valid and enforceable to the fullest extent permitted by law.

f. Costs. The developer shall pay the costs of any code enforcement activities, including attorney's fees, resulting in the violation of any provisions of the Milpitas Municipal Code, including the Milpitas Commercial Specific Plan. The developer shall be responsible for the entire cost to implement the environmental performance standards in accordance with Section XI-10-11.07(F), Environmental Performance Standards, of this Specific Plan.

g. Consent to Hold Harmless. The developer shall as a requirement of any development within the Milpitas Commercial Specific Plan area, agree to indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void or annul, any action by the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body related to, in furtherance of this Specific Plan.

Furthermore, developer shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer is subject to that other governmental entity's approval and a condition of such approval is that city indemnify and defend such governmental entity. City shall promptly notify the developer of any claim, action or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the city, any agency, or instrumentality thereof, or any of its officers, officials, employees, or agents.

B. Existing Setting.

1. Site Conditions And Existing Land Uses.

a. Historical and Existing Land Uses.

i. Existing Land Use. The Specific Plan area is currently developed with a 131,725-square-foot retail store and associated parking.

ii. Existing On-Site General Plan Land Use and Zoning. The Specific Plan area is currently designated General Commercial by the City of Milpitas General Plan. The General Commercial land use designation is intended for a wide range of retail sales and personal and business services accessed primarily by the automobile. It includes commercial uses where shopping is conducted by people walking to several stores and uses of a single-purpose character served from an adjacent parked vehicle.

The Specific Plan area is currently designated General Commercial (C2) by the City of Milpitas Zoning Code. The C2 zoning district is intended to provide for a wide range of retail sales and personal and business services primarily oriented to the automobile customer and is intended to promote stable, attractive commercial development which will afford a pleasant shopping environment. This zone permits retail sales as of right. Grocery stores that are within one thousand (1,000) feet of a residential zone and Liquor Stores (Alcohol Beverage Sales) are conditionally permitted.

The Specific Plan area is also within the Site and Architectural Overlay District (S). The S zone is intended to promote orderly, attractive and harmonious development; recognize environmental limitations on development; stabilize land values and investments; and promote the general welfare by preventing the establishment of uses or erection of structures having qualities that would not meet the intent of the Zoning Code. The General Plan and Zoning designations are illustrated in Figures XI-10-11.07-3 and -4.

b. Surrounding Land Uses. Land uses surrounding the Milpitas Commercial Specific Plan area are characterized by office and Research and Development uses to the north, commercial uses to the south, Interstate 880 and residential uses to the east, and undeveloped but entitled land to the west. North of the Specific Plan area is the McCarthy Center office complex, a 68-acre complex with approximately one million square feet of office and Research and Development uses spread among nineteen (19) two-story buildings in a campus setting. To the south is the remainder of a commercial/retail development, McCarthy Ranch Marketplace, which includes Best Buy, Borders and PetSmart, small shops and restaurants, and small, freestanding restaurants such as Black Angus, Macaroni Grill and Applebees. To the east, east of I-880, are single-family residential uses that are protected by a sound wall located along the I-880 frontage. The undeveloped land to the west is approved for an office park campus (The Campus at McCarthy Ranch) and further west of the undeveloped land is Coyote Creek and Coyote Creek Trail, a Class I bicycle/pedestrian trail, that parallels the east side of the creek. The surrounding land uses are illustrated in Figure 5.

2. Existing Circulation.

a. Regional Circulation. Excellent regional access to the Specific Plan area is provided by I-880 and SR-237.

I-880 is a north-south highway known as the Nimitz Freeway that provides regional access throughout the East Bay. It stretches north to Interstate 980 in Oakland and south to San Jose where it becomes State Route 17. It generally is an eight-lane, divided freeway. In the vicinity of the Specific Plan area, I-880 provides six (6) lanes in each direction, including a High Occupancy Vehicle (HOV) lane in each direction. It accommodates approximately one hundred eighty-one thousand (181,000) vehicles per day. Access to and from the Specific Plan area is provided at the SR-237/North McCarthy Boulevard interchange.

SR-237 is an east-west regional highway located approximately three-tenths (0.3) miles south of the Specific Plan area that provides access throughout northern Santa Clara County. It connects Mountain

View to the west and Milpitas to the east. It is a major arterial providing connectivity to I-880 and Interstate 680. East of I-880, SR-237 is known as Calaveras Boulevard. SR-237 is a six-lane highway with HOV lanes in both directions. In the vicinity of the Specific Plan, SR-237 accommodates approximately one hundred fifty-eight thousand (158,000) vehicles per day. Access to and from the Specific Plan area is provided at the SR-237/North McCarthy Boulevard interchange.

b. Local Circulation. Major roadways in and around the Specific Plan area are Dixon Landing Road, North McCarthy Boulevard, Ranch Drive and Tasman Drive. These roadways are defined as arterials or collectors. Arterials collect and distribute traffic from freeways and expressways to collector streets and vice versa. Collector streets, which constitute most of the roadways in and around the Specific Plan area, serve as connectors between arterial and local streets, providing direct access to the parcel. Major collectors are typically wide streets with four (4) to six (6) lanes of moving traffic. Minor collectors are smaller street with either less than four (4) lanes of moving traffic or less traffic.

Dixon Landing Road is an east-west major collector roadway connecting North McCarthy Boulevard to the west and North Milpitas Boulevard to the east. It is a major collector East of North Milpitas Boulevard where it becomes Dixon Road. It is a four-lane divided roadway, except for between Milmont Drive and Village Parkway, where it is a four-lane undivided roadway with a center two-way left-turn lane. The posted speed limit along Dixon Landing Road is forty (40) miles per hour (mph).

North McCarthy Boulevard is a major north-south collector roadway connecting Dixon Landing Road to the north and Montague Expressway to the south. South of the Montague Expressway it becomes O'Toole Avenue. It is a four-lane divided roadway primarily serving adjacent commercial uses north of SR-237 and office parks south of SR-237. The posted speed limit along North McCarthy Boulevard is thirty-five (35) mph north of Technology Drive and forty (40) mph south of Technology Drive.

Ranch Drive is an east-west minor collector roadway that intersects North McCarthy Boulevard at two (2) locations. Ranch Drive is the main access roadway to retail uses within the McCarthy Ranch Marketplace. It changes from a four-lane divided roadway, a four-lane undivided roadway, and a two-lane road with a center two-way left-turn lane between its southern and northern intersection with North McCarthy Boulevard. The posted speed limit along Ranch Drive is thirty (30) mph.

Tasman Drive is an east-west arterial roadway stretching from Sunnyvale to the west to I-880 to the east. East of I-880 it becomes Great Mall Parkway. It is a six-lane divided roadway near the Specific Plan area. Santa Clara Valley Transportation Authority operates light rail service along Tasman Drive, with tracks located in the center median of the roadway. The posted speed limit along Tasman Drive is forty (40) mph.

c. Public Transit. Santa Clara Valley Transportation Authority (VTA) provides bus and light rail services in Milpitas and throughout Santa Clara County. The Specific Plan area is served by Route 33 and Route 825.

Route 33 passes northbound on North McCarthy Boulevard directly adjacent to the Specific Plan area and loops clockwise around Ranch Drive, where it returns south and provides connections to many locations in Milpitas and San Jose. Route 825 is a shuttle service provided by VTA for connections to the Santa Clara Great America station. The Santa Clara Great America station serves the Altamont Commuter Express (ACE), a weekday commuter rail service between Stockton and San Jose, and the Amtrak Capitol Corridor, a daily intercity rail service between San Jose and the Sacramento Area.

Route 33 operates every thirty (30) minutes and Route 825 operates every seventy-five (75) minutes during the weekday commute peaks. Route 33 provides weekend service from 9 a.m. to 6 p.m. every thirty (30) minutes. Route 825 does not provide weekend service, as it is a limited service commuter route.

The nearest light rail station to the Specific Plan area is the I-880 station, located at the intersection of Tasman Drive and Alder Drive, approximately one and one-half (1.5) miles to the south.

d. **Bicycle Facilities.** The Specific Plan area is serviced by a bicycle lane running along North McCarthy Boulevard. The existing retail building provides bicycle racks and any future development shall upgrade and provide bike storage pursuant to Section 11.07(D)(2), Project Access, of this Specific Plan.

3. Existing Physical Conditions.

a. **Topography.** The Specific Plan area is located in the City of Milpitas, which is within the relatively flat floor of the Santa Clara Valley. The Santa Clara Valley is a broad, northwesterly trending, alluvial-filled basin between the Santa Cruz Mountains to the south and the Diablo Range to the northeast. The Specific Plan area is bounded by bay-lands to the west and foothills to the east, with urban development located in the plain between the two (2) features. The Mission Hills are the primary backdrop to the Milpitas area. Monument Peak at two thousand five hundred ninety-four (2,594) feet is the highest point in the Mission Hills above Milpitas.

b. **Hydrology.** The Specific Plan area is located within Coyote Creek watershed. The Coyote Creek watershed encompasses three hundred fifty (350) square miles and drains the Specific Plan area, City of Milpitas, the eastern portion of San Jose and the Coyote Valley.

Coyote Creek is approximately one-quarter (0.25) miles west of the Specific Plan area and spans the length of the Santa Clara Valley, originating at Anderson Reservoir near Morgan Hill and emptying into San Francisco Bay. Downstream of the Specific Plan area, Coyote Creek splits into "New" and "Old" branches. New Coyote Creek is a man-made channel that skirts the south side of the Newby Island Sanitary Landfill, while Old Coyote Creek meanders around the east and north sides of the landfill.

The Specific Plan area has an existing stormwater collection system. Stormwater is collected via inlets located around the Specific Plan area and is then piped and discharged into the City of Milpitas's municipal storm drain system, which outlets into Coyote Creek. Storm drain lines are located within Ranch Drive and North McCarthy Boulevard.

The Specific Plan area is located within the Santa Clara Valley subbasin, which extends from Coyote Narrows at Metcalf Road in south San Jose to Santa Clara County's northern boundary. The subbasin is approximately twenty-two (22) miles long and fifteen (15) miles wide, with a surface area of two hundred twenty-five (225) square miles.

c. **Soils.** The Specific Plan area is a developed, urban area. The Specific Plan area was graded and engineered in the early 1990s with the development of the existing retail building. The soils were conditioned to support urban development and are considered stable soils and geologic units. The deep-surface soils beneath the Specific Plan area consist of approximately three hundred (300) feet of alluvium, which is regarded as a very stable geologic unit. The Quaternary age old alluvium consists of inter-layered, poorly sorted gravel, sand, silt and clay.

d. **Seismicity.** The Specific Plan area is located in an area with eight (8) active faults including the Hayward, Calaveras, San Andreas, San Gregorio-Seal Cove-Hosgri, Concord, Greenville, Las Positas, and Verona faults. The closest fault to the Specific Plan area is the Hayward fault, which is located approximately two and one-half (2.5) miles northeast. The Specific Plan area is also located in a moderate liquefaction susceptibility zone pursuant to the Liquefaction Susceptibility Map for the San Francisco Bay Area prepared by the United States Geologic Study (USGS) in cooperation with the California Geological Survey and William Lettis & Associates, Inc. The Specific Plan area is not located within an Alquist-Priolo zone and no faults or fault traces are located within the Specific Plan area.

The Specific Plan area may be exposed to moderate to severe ground shaking during an earthquake, particularly one that occurs on either the Hayward or Calaveras fault. To reduce the risk associated with

ground shaking, development within the Specific Plan area will be required to demonstrate that structural design measures identified in a seismic hazards technical study prepared prior to construction and in accordance with the requirements of the Seismic Hazards Mapping Act have been incorporated into any design and/or building plans.

The Specific Plan area is located within a liquefaction hazard zone. To reduce the risk associated with liquefaction, development within the Specific Plan area will be required to demonstrate that abatement measures identified in a design-level geotechnical investigation prepared prior to construction have been incorporated into any design and/or building plans. Development will also be required to comply with all state and local seismic safety requirements including the California Building Standards Code and Milpitas Municipal Code, Title II.

The Specific Plan area is flat and is not located in an area identified as being susceptible to landslides.

e. Hazardous Materials. The Specific Plan area is a developed, active commercial area. It appears on four (4) environmental databases listing parcels with known or potentially hazardous conditions.

The first database is the Hazardous Waste Information System database which lists sites recorded on hazardous wastes manifests. This listing only indicates that hazardous materials were transported to or from the Specific Plan area; it does not indicate that contamination occurred. The second database is the Statewide Environmental Evaluation and Planning System database which lists sites with registered underground storage tanks (USTs). This database is no longer updated. The Specific Plan area did contain a 1,000 gallon waste oil underground storage tank. A Phase I Environmental Site Assessment ("Phase I") prepared by Tait Environmental Services, dated April 25, 2009, concluded that no UST exists in the Specific Plan area today based on the site reconnaissance. The Phase I found no evidence or record of when or how the UST was removed. The third database is the California Hazardous Material Incident Report System which records reported hazardous material incidents or accidental releases or spills. An alleged incident of raw sewage bubbling up on the parking lot in the Specific Plan area was reported in 1997 by a caller to the Santa Clara County Health Department. No confirmation of this release exists. The final database is the Emergency Response Notification System which reports the release of oil and hazardous substances. No details about the listing exist, so it is unclear why the Specific Plan area is listed on this database.

Fluorescent lighting fixtures within the existing building within the Specific Plan area may contain polychlorinated biphenyls and mercury. The existing refrigeration units and rooftop HVAC units may also contain chlorofluorocarbons. The existing automobile service area utilizes several above-ground storage tanks (AST) that store petroleum hydrocarbons and a hazardous waste storage area. The existing building also has a hazardous waste storage area inside for spent absorbent material used to soak up spills of hazardous retail products and store maintenance products.

The Specific Plan area is located one and one-tenth (1.1) miles east of the San Jose/Santa Clara Water Pollution Control Plant which uses nineteen (19) percent aqueous ammonia, a hazardous material. Worst-case offsite release for aqueous ammonia is one-one hundredth (0.01) mile from the release point or only forty-five (45) feet from the plant's fence line. The Calpine Los Esteros Critical Energy Facility, a 180-megawatt natural gas power plant served by two (2) PG&E natural gas pipelines, is located six-tenths (0.6) miles southwest of the Specific Plan area. The plant began operation in 2003. Because of the localized nature of any releases of aqueous ammonia, and the recent age and clean-burning attributes of natural gas, the Specific Plan area is not susceptible to exposure of hazardous materials from surrounding land uses.

f. Biological Resources. Most of the Specific Plan area is covered with impervious surfaces. Mature ornamental trees and landscaping are located throughout the parking lot and along frontages with Ranch Drive and North McCarthy Boulevard. Horticultural low growing shrubs, tree rows and single planter trees are located in the parking areas and along the periphery of the existing building. The ornamental

trees include species up to approximately twenty (20) feet in height and non-native shrubs of five (5) feet or less in height. There are no special-status plants or wildlife species with potential to occur within the Specific Plan area.

Based on the developed and disturbed condition of the Specific Plan area, only commonly observed wildlife species would be expected to occur in the area such as house sparrows, starlings, crows, opossums and small squirrels. Based on the lack of trees, shrubs, and aquatic resources, there is no indication of a wildlife community in the area. The area also does not contain features suitable for use as a wildlife movement corridor (e.g., open drainages). The Specific Plan area does support ornamental trees and shrubs trees that could potentially provide nesting habitat for small migratory songbirds. No open channels, natural drainage features, wetlands or waters of state or the United States exist within the Specific Plan area.

g. Climate. Temperatures in the Specific Plan area range from an average monthly high of 81.9 degrees Fahrenheit (°F) in July to an average monthly low of 40.8°F in January. Average annual rainfall is 14.70 inches.

4. Existing Utilities.

a. Water. The Specific Plan area will receive water service from the City of Milpitas, which provides potable water supply and distribution to an approximately fifteen (15) square mile service area. Milpitas's water distribution systems includes two hundred three (203) miles of water main, one thousand seven hundred fifty-five (1,755) fire hydrants, five (5) water tanks totaling 15.64 million gallons of capacity, five (5) pump stations, sixteen (16) pressure regulator valves, and one (1) well. Milpitas purchases treated water from the San Francisco Public Utilities Commission and the Santa Clara Valley Water District, and receives recycled water from the San Jose/Santa Clara Water Pollution Control Plant. The City also maintains an emergency well system. The City's emergency well meets all drinking water standards and is permitted for unlimited use. A second emergency well is under design.

The San Francisco Public Utilities Commission receives approximately eighty-five percent (85%) of its water from the Hetch Hetchy Reservoir with the remaining fifteen (15%) percent coming from Alameda and Peninsula watershed. The Santa Clara Valley Water District receives its water from local groundwater aquifers, the Sierra Nevada Mountains via pumping stations in the Sacramento-San Joaquin River Delta, and a small amount from local surface water and recycled water. The annual yield from the Santa Clara Valley Water District is four hundred forty thousand eight hundred (440,800) acre-feet during a year during average weather conditions.

In 2010, the estimated water demand for Milpitas based on the City's Urban Water Management Plan was 14.06 million gallons per day. By 2030, the projected demand would be 17.10 million gallons per day with the estimated supply also at 17.10 million gallons per day. Based on these projections, demand would exceed supply under both single dry year and multiple dry year scenarios. The Urban Water Management Plan identifies various water shortage contingency strategies including voluntary and mandatory rationing and supplemental groundwater pumping. Development in the Specific Plan area will be required to install indoor water conservation measures such as low-flow or ultra-low-flow toilets and urinals, and sensor-activated faucets in restrooms prior to final certificate of occupancy issuance.

b. Wastewater. The San Jose/Santa Clara Water Pollution Control Plant provides wastewater treatment and disposal services to a three hundred (300) square-mile service area encompassing the cities of San Jose, Santa Clara, Milpitas, Campbell, Cupertino, Los Gatos, Saratoga, and Monte Sereno. The plant, which is located in San Jose, west of Milpitas, has capacity to treat 167 million gallons of wastewater per day. The plant receives 116.6 million gallons per day, on average.

The City of Milpitas collects wastewater from approximately six thousand (6,000) acres within the City planning area, including the Specific Plan area. Effluent is transmitted though 172.5 miles of sewer main to the San Jose/Santa Clara Water Pollution Control Plant. Wastewater treatment services are governed by

an agreement between the cities of San Jose and Santa Clara (as joint owners of the plant) and the City of Milpitas. The City of Milpitas pays a capital share in proportion to the City's capacity rights and the total plant capacity. In 2009, the City of Milpitas increased its capacity allocation from 13.5 million gallons per day to 14.25 million gallons per day. Any development in the Specific Plan area will be required to pay a Treatment Plant Fee.

Existing development in the Specific Plan area is served by a lateral tie into a wastewater trunk line located in North McCarthy Boulevard from SR-237 to the Milpitas Pump Station located at Dixon Landing Road. The trunk line ranges in diameter from thirty-six (36) to forty-eight (48) inches.

c. Water Quality. The existing drainage within the Specific Plan area is discussed above in Section XI-10-11.07(B)(3)(b), Hydrology.

Coyote Creek and South San Francisco Bay are listed on the United State Environmental Protection Agency (EPA) 303(d) list of impaired water bodies. During construction, all work would be required to meet the National Pollution Discharge Elimination System (NPDES) requirements for stormwater quality. The contractor would also be required to implement Best Management Practices (BMPs) for erosion control. These requirements will be implemented through the preparation and approval of a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP would ensure that construction would not violate any water quality standards.

During operations, all activities must comply with a City-approved stormwater management plan. Compliance with the stormwater management plan would ensure that operational activities within the Specific Plan area would not violate any water quality standards.

d. Stormwater. The City of Milpitas collects and disposes its stormwater via a storm drainage network consisting of catch basins, conveyance piping, pump stations, and outfalls to creeks. Storm drainage infrastructure within the City includes one hundred twenty-three (123) miles of piping, three thousand four hundred ninety (3,490) catch basins, approximately four and one-half (4.5) miles of drainage ditches and creeks, and thirteen (13) stormwater pump stations. The Santa Clara Valley Water District has jurisdiction over creeks, including Coyote Creek.

The Specific Plan area is served by existing storm drainage infrastructure (inlets and piping) that discharges runoff into the City's municipal storm drain system. The City's storm drain system includes lines located within Ranch Drive and North McCarthy Boulevard. The storm drain main within North McCarthy Boulevard ranges from twenty-four (24) to forty-eight (48) inches in diameter and discharges stormwater into Coyote Creek northwest of the Specific Plan area.

e. Solid Waste Disposal. Solid waste collection and recycling services are provided by Republic Services under contract with the City of Milpitas Public Works department. Solid waste from the City of Milpitas is landfilled at the Newby Island Landfill on Dixon Landing Road in San Jose, which has approximately 10.7 million cubic yards of remaining capacity. The Newby Island Landfill operator has applied to the City of San Jose to increase disposal capacity by 15 million cubic yards. Newby Island Landfill is permitted to accept up to four thousand (4,000) tons of Municipal Solid Waste (MSW) per day. The anticipated closure date of the Newby Island Landfill is 2025. The annual waste diversion rate in the City of Milpitas is steadily increasing and was sixty (60) percent in 2006.

Development on site shall be required to retain a qualified contractor to perform construction and demolition debris recycling and developer must document to the satisfaction of the City of Milpitas, that construction and demolition debris was recycled. Development on the Specific Plan area will be required to provide on-site recycling facilities prior to obtaining certificate of occupancy permits.

f. Natural Gas. Natural gas service to the Specific Plan area will provided by Pacific Gas and Electric Company (PG&E).

g. Electricity. Electricity service to the Specific Plan area will be provided by PG&E.

h. Telephone. Telephone service to the Specific Plan area will be provided by American Telephone & Telegraph (AT&T).

C. Land Use Plan. Any and all approvals, decisions, reviews or actions required under this section and required for development within the Milpitas Commercial Specific Plan area shall be ministerial, final, and not subject to appeal, and shall be processed pursuant to Section 11.07(E), Administration, of this Specific Plan, provided the proposed development is consistent with the conceptual site plan, elevations, colors and materials, and landscaping as depicted in Figures XI-10-11.07-6 through -9, of this Specific Plan and the conditions and requirements set forth in Figure XI-10-11.07-10, of this Specific Plan.

Development that is not consistent with the development standards set forth in the Milpitas Commercial Specific Plan and Figures XI-10-11.07-6 through -9, of this Specific Plan, and the conditions and requirements set forth in Figure XI-10-11.07-10, of this Specific Plan shall either require a Substantial Conformance Determination, as discussed below, or shall be processed under the procedures set forth for development in the General Commercial (C2) zone as set forth in the City of Milpitas Zoning Code. Development that has not commenced, which is defined as building permit issuance or completion of a foundation, within eighteen (18) months of approval of the Milpitas Specific Plan, shall be processed under the procedures set forth for development in the C2 zone as set forth in the City of Milpitas Zoning Code. The development standards shall be the same as those specified herein, but the process shall be consistent with the zoning code.

1. Land Use Concept. The overall land use concept for the Milpitas Commercial Specific Plan is to revitalize, update and expand an existing retail facility to take advantage of the site's excellent regional access and visibility. It will improve the aesthetic and commercial landscape and provide for development of a full-service retail use to complement existing uses in the surrounding area. The land use concept will incorporate design elements that complement and are compatible with the architectural theme of the existing commercial landscape by creating an attractive and productive blend of retail uses. Access and parking within the Specific Plan area is intended to be designed with convenient vehicular, non-motorized vehicle and pedestrian access that blends and interconnects with the surrounding commercial area.

Figure XI-10-11.07-6 illustrates the Conceptual Site Plan for the Milpitas Commercial Specific Plan.

a. Uses Allowed By Right. Table XI-10-11.07-1, Permitted Uses, below establishes the permitted uses for the Milpitas Commercial Specific Plan area. Ancillary and accessory uses, if proposed, will be reviewed concurrently with any application for development submitted. Ancillary and accessory uses that are not specifically listed as permitted may be approved subject to determination of substantial conformance as set forth in Section 11.07(E), Administration, of this Specific Plan. All uses shall be fully enclosed unless otherwise indicated.

Table XI-10-11.07-1. Permitted Uses

1. Commercial Uses	
	Alcoholic beverage sales for offsite consumption (type 20 or 21 license)
	Art/photography studio or gallery
	Bookstore
	Commercial services (i.e., establishments which provide non-medical services of a retail character to patrons which may involve the sale of goods associated with the service being provided, including, but not limited to, establishments such as: accountants, architects, dry-cleaners, floral shops, barber and beauty shops, interior decorators; Laundromats (self-service

	laundries), locksmiths, mailbox rentals, photocopy shops, shoe repair shops, tailors, and tuxedo rental shops)
	Furniture sales
	Grocery store (supermarkets) regardless of distance from residential zone(s)
	Home improvement (hardware, blinds, interior decorating, etc.)
	Household appliance store
	Janitorial services
	Newsstand (indoor and outdoor)
	Nursery (flower or plant) provided all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building or garden center.
	Office supply sales (stationary, equipment)
	Paint and wallpaper stores
	Pet stores
	Printing (newspaper, publishing)
	Rentals (medical supplies, costumes, party equipment, office equipment)
	Retail stores, general merchandise (i.e., retail trade establishments selling lines of merchandise, including, but not limited to: art supplies, antiques, bakeries (retail only), bicycles, candy stores, clothing and accessories, collectables, fabrics and sewing supplies, gifts (novelties and souvenirs), hobby materials, jewelry, luggage and leather goods, music stores, sporting goods and equipment, toys and games, variety stores; video rentals and sales)
	Superstore-type uses including general merchandise, grocery, pharmacy and other uses permitted independently in the Specific Plan area1
	Tanning salon
	Thrift store
2. Entertainment and Recreation	
	Bowling alleys
	Commercial athletic facilities - Indoor
3. Health and Veterinarian Uses	
	Animal grooming (no boarding)
	Medical and dental office2
	Medical support laboratories
	Optician and optometrist shop

	Pharmacy or drug store
	Veterinary clinic
4. Professional Offices, Financial Institutions and Related Uses	
	Automatic Teller Machines (freestanding)
	Financial institutions (banks, savings and loans, check cashing, etc.)
	General offices (administrative and business services, real estate, travel agencies, etc.)
5. Public, Quasi-Public and Assembly Uses	
	Trade and vocational school
	Instruction - Private
	Parking Facility - Storage Garage
6. Restaurants or Food Service	
	Catering establishment
	Restaurants ³
7. Vehicle Related Uses	
	Auto repair (tire, oil change, smog check, etc.)
	Temporary Recreational Vehicles (RV) sales
	Vehicle-oriented window service facility
8. Unclassified Uses	
	24-hour operations
	Accessory structures (not including warehouses on the same site as a permitted use)
	Temporary seasonal sales ⁴

1 24-hour operations permitted as-of-right.

2 Medical and dental office is defined as 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.

3 Does not include live entertainment, dancing, drive-thru or drive-in restaurants.

4 Any temporary seasonal sales shall comply with the requirements of Section XI-10-11.07(C)(2)(e).

2. Site Development Standards.

a. Land and Structure Regulations. Table XI-10-11.07-2, Land and Structure Regulations, below establishes the land and structure regulations for the Milpitas Commercial Specific Plan area:

Table XI-10-11.07-2
Land and Structure Regulations

Lot Area, minimum	10,000 square feet
Lot Width, minimum	100 feet
Maximum Floor Area Ratio	0.50
Minimum Yard Setbacks	Front: 0 feet Side Yard (interior): 0 feet; 15 feet when abutting R District Street Side Yard: 0 feet Rear Yard: 0 feet; 15 feet when abutting R District
Maximum Building Height	None
Maximum Building Square Footage	150,725 square feet

b. General Design Concepts. Within the Milpitas Commercial Specific Plan, general design concepts address the nature and function of the use, building, or feature being considered. Architectural design and details are to be integrated throughout the Specific Plan area and oriented to areas within public view. Design within the Milpitas Commercial Specific Plan shall meld function and form, not one to the exclusion of the other, and promote the harmonious appearance of structures in other commercial areas adjacent to the Specific Plan area, including the McCarthy Ranch Marketplace which is a commercial/retail development south of the Specific Plan area.

To facilitate design integrity between the uses within the Milpitas Commercial Specific Plan and other commercial uses surrounding the Specific Plan area, the following standards shall be adhered to:

- i. Design shall reflect the "California ranch" design theme of the McCarthy Ranch Marketplace, including "salt box" style metal roofs and canopies, faux wood siding, corrugated metal cladding, and the use of colors such as Colonnade Gray, Cool Old Zinc Gray and Countryland Red. Figures XI-10-11.07-7 and -8 included in this Specific Plan comply with these requirements.
- ii. The Planning Director shall review and approve all final building plans and elevations to ensure substantial conformance with Figures XI-10-11.07-6, -7 and -8, of this Specific Plan. Substantial conformance shall be determined as set forth in Section XI-10-11.07(E), Administration, of this Specific Plan.
- iii. Development within the Specific Plan area shall comply with the environmental performance standards set forth in Section XI-10-11.07(F), Environmental Performance Standards, of this Specific Plan. Developer shall bear all costs of implementing such environmental performance standards.
- iv. Shipping containers shall be removed from the Specific Plan area or screened in accordance with Municipal Code Title XI, Chapter 10, Section 5.04(A)(2) to be completely enclosed within a building or behind a visually obscure solid wall or tight board fence a minimum six (6) feet in height and not located within any front or street side yard setbacks.
- v. No trees shall be removed until the City has approved a detailed landscape plan as set forth in Section XI-10-11.07(C)(2)(c) below.
- vi. All development within the Specific Plan area shall comply with all applicable building codes and the requirements of the City, County, State and other responsible agencies.

Figures XI-10-11.07-7 and -8 illustrate the conceptual exterior elevations and conceptual colors and materials for the Specific Plan area. Development proposed that is consistent with Figures XI-10-11.07-7 and -8 shall be processed as a ministerial building permit and construction plan review as set forth in Section XI-10-11.07(E), Administration, of this Specific Plan.

c. Site Development Standards. Within the Milpitas Commercial Specific Plan area the following standards shall apply to certain types of development or uses.

i. Alcoholic Beverage Sales. Any business conducting alcohol sales in the Specific Plan area shall comply with all Department of Alcoholic Beverage Control licensing requirements pertaining to the sale of beer, wine and distilled spirits. Business operators shall be responsible for ensuring that all employees receive "Responsible Alcoholic Beverage Service" training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request.

ii. Food Preparation and Sales. The owner of any establishment involved in the preparation or sale of food shall hold training sessions to instruct their employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor; and any other procedures that would assist the business in complying with all state and local health and sanitation standards.

Prior to issuance of a certificate of occupancy, the owner of any establishment involved in the preparation or sale of food shall post signs (in English, Vietnamese, Chinese, Filipino and Spanish) inside the premises for all employees, which identify procedures for the food delivery and disposing of garbage.

The preparation and storage of food is not permitted outside of the establishment.

The owner of any establishment involved in the preparation or sale of food shall comply with best management practices for the handling and disposal of solid and food wastes, as permitted by and in compliance with local and state solid waste disposal regulations.

d. Landscaping. The quality environment envisioned for the Milpitas Commercial Specific Plan site will be established, in large part, by its landscape treatment. Landscaping is to be designed to highlight positive visual features, to screen negative ones, and to provide a cool, pleasant outdoor environment.

Landscaping currently exists along the existing building frontage with North McCarthy Boulevard and Ranch Drive and within the parking area. The existing retail building and Specific Plan area is almost entirely screened from view by this landscaping. New planter areas shall be installed along the south side of the existing retail building, but all other landscaping shall remain unchanged.

Prior to issuance of a building permit, a detailed landscape plan shall be submitted to the Planning Director for review, approval and implementation.

Prior to the issuance of grading or building permits, whichever comes first, the developer shall obtain a tree removal permit from the City of Milpitas for any trees to be removed with a trunk circumference of 37 inches or more measured at 4.5 feet above ground level. As set forth in Section XI-10-11.07(E), Administration, of this Specific Plan, landscape plan review and approval, and tree removal permit issuance, shall be non-discretionary, final actions that cannot be appealed.

The detailed landscape plan shall include and/or provide for the following:

i. The location and screening of all transformers and utility devices including backflow preventers.

ii. The location and type of trees, shrubs and ground cover, including sizes and quantities. The legend shall also show tree canopy diameter at planting, five (5) years and ten (10) years.

iii. Plan details for all fence and wall structures. These shall be compatible in style and material with the proposed buildings.

- iv. All planter areas shall be serviced by a sprinkler head or drip system.
- v. All trees removed with a trunk circumference of more than thirty-seven (37) inches or more measured at four and one-half (4.5) feet above ground level shall be replaced in accordance with the requirements of the City of Milpitas Tree Maintenance Protection Ordinance and as set forth in the required tree removal permit. All trees removed with a trunk circumference of less than thirty-seven (37) inches or more measured at four and one-half (4.5) feet above ground level, shall be replaced on-site with a similar tree species at no less than a 1:1 ratio. All replacement trees shall be planted within thirty (30) days of issuance of the final certificate of occupancy.
- vi. All approved landscaping shall be permanently maintained and replaced in kind as necessary to provide a permanent, attractive and effective appearance.

The approved detailed landscape plan shall be incorporated into the development proposed. All required landscaping shall be planted and in place prior to issuance of a certificate of occupancy.

Figure XI-10-11.07-9 illustrates the preliminary planting plan for the Specific Plan area. Figure XI-10-11.07-11 is a colored conceptual site plan that shows all the existing and preliminary planting pursuant to the preliminary planting plan for the Specific Plan area.

Any detailed land use plan or tree removal permit submitted as part of a development proposed that is consistent with Figure XI-10-11.07-9 shall be processed as a ministerial building permit and/or construction plan review as set forth in Section XI-10-11.07(E), Administration, of this Specific Plan.

e. On-Site Circulation, Parking, and Loading.

- i. On-Site Circulation. The on-site circulation standards within the Milpitas Commercial Specific Plan will ensure the efficient and safe passage of vehicles and pedestrians to and from the various commercial uses within the Specific Plan area.

On-site circulation within the Specific Plan area shall adhere to the following requirements:

- (1) All ingress and egress routes shall be maintained clear of storage, delivery trucks or other obstructions at all times.
- (2) The circulation system shall include adequate directional signs for entrances, exits, parking areas, loading areas, and other uses.
- (3) On-site driveways shall be permitted to provide common access between the Specific Plan area and adjacent properties.
- (4) Site lines required for safe automobile movement shall be kept clear.
- (5) On-site pedestrian walkways should provide direct, safe, and adequate movement paths between parking areas and building entrances.
- (6) Truck deliveries shall enter via the northern driveway along Ranch Drive and immediately turn right and travel westbound towards the loading dock. Trucks exiting the site would retrace their path to the northern Ranch Drive driveway.

- ii. Parking. Prior to issuance of a building permit, the developer shall prepare and submit a site plan to the City of Milpitas that demonstrates that off-street parking provided on-site complies with the parking provisions of the Milpitas Commercial Specific Plan. As set forth in Section XI-10-11.07(E), Administration, of this Specific Plan, review and approval of the site plan shall be a non-discretionary, final action that cannot be appealed. The intent of this action is to ensure compliance with the provision of the Milpitas Commercial Specific Plan.

The number of required parking spaces in the Specific Plan area is set forth in Table XI-10-11.07-3, Number of Parking Spaces Required, below. Gross floor area, as used in this Specific Plan, 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.

Table XI-10-11.07-3

Number of Parking Spaces Required

Use	Minimum Parking Spaces Required
1. Commercial Uses	
Commercial services ¹	1 per 200 square feet
Furniture and appliance stores and other bulky item retail	1 per 350 square feet
General Retail and Convenience Stores, including grocery stores	1 per 200 square feet
Plant nursery	1 per 200 square feet
Superstore-type uses including general merchandise, grocery, pharmacy and other uses permitted independently in the Specific Plan area	1 per 200 square feet
2. Entertainment and Recreation	
Arcade and Amusement	1 per 200 square feet
Bowling Alleys	6 per alley or lane
Indoor Commercial Athletic Facilities	1 per 150 square feet
3. Health and Veterinarian Uses	
Medical and dental office	1 per 225 square feet
Veterinary clinic and Animal Grooming	1 per 250 square feet
4. Professional Offices, Financial Institutions and Related Uses	
Automatic Teller Machines (freestanding)	2 per machine
Financial institutions (banks, savings and loans, check cashing, etc.)	1 per 180 square feet
Offices, administrative and business services	1 per 240 square feet
5. Public, Quasi-Public and Assembly Uses	
Trade and vocational school	1 per 200 square feet
Instruction - Private	1 per instructional area or classroom, whichever is greater. No fewer than 3 spaces
6. Restaurants or Food Service	

Restaurant - Sit Down	1 per 39 square feet of dining area
Restaurant - Take Out	1 per 2.5 seats (indoor/outdoor) plus 1 per 60 square feet GFA for the ordering or take-out area
7. Vehicle Related Uses	
Auto repair (tire, oil change, smog check, etc.)	3 per service bay

1 Commercial services shall have the same definition as that set forth in Table XI-10-11.07-1.

Off-street parking configurations within the Specific Plan area shall adhere to the following requirements:

- (1) Shared Parking within the Specific Plan area shall be as set forth in the City of Milpitas Zoning Code section XI-10-53.11.
- (2) Up to forty (40) percent of the required parking stalls may be designed as compact stalls to accommodate compact cars. Compact parking stalls shall be dispersed throughout the parking lot and not concentrated to discourage oversized vehicles from using the stalls. Each stall shall be legibly marked "compact stall" or "small car" on the stall surface.
- (3) 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.
- (4) Parking spaces shall be 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.
- (5) The sale or storage of merchandise in parking areas may be allowed pursuant to the provisions and requirements set forth in Figure 10 and as set forth in Section XI-10-11.07(C)(2)(e), of this Specific Plan.
- (6) 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.
- (7) 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.
- (8) Parking stalls and drive aisle dimensions shall comply with Table XI-10-53.13-1 of the City of Milpitas Zoning Code.
- (9) 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 (extruding curbing not permitted). Installation of an irrigation system shall be provided for in each planter area.
- (10) Lighting shall be provided in the parking area pursuant to Section 11.07(C)(2)(h), of this Specific Plan and shall be designed, located and arranged so as to reflect the light away from any street and any adjacent premises.
- (11) Directional signs are permitted in parking areas pursuant to Section 11.07(C)(2)(f), of this Specific Plan.

(12) 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.

iii. Loading.

(1) Each loading berth shall have vehicular access to the street, without passing over other parking stalls.

(2) Loading areas shall be designed to provide for backing and maneuvering on site and not from or within a public street. Direct loading from a public street shall not be permitted.

(3) Loading bays shall be sealed with rubber gaskets to reduce noise impacts to adjacent areas.

f. Outdoor Storage/Sales. Outdoor storage and sales shall be permitted in the Milpitas Commercial Specific Plan area, pursuant to the requirements set forth below.

i. Outdoor storage of material shall be completely enclosed within a building or behind a visually obscure solid wall or tight board fence a minimum six (6) feet in height and not located within any front or street side yard setbacks.

ii. Temporary seasonal sales such as Christmas tree or pumpkin sales lots may be permitted provided they do not reduce available parking to below the required parking ratio for the primary use on the site. Temporary seasonal sales shall not engage in the sale of any merchandise not directly associated with the holidays with which the seasonal sales are associated. Each site occupied by a temporary use shall be left free of debris, litter, or any other evidence of the temporary use upon completion or removal of the use. Temporary seasonal sales shall be approved by Planning Department staff pursuant to Section XI-10-11.07(E), Administration, of this Specific Plan, provided the above requirements are met, and shall be limited to forty-five (45) days of operation per calendar year.

iii. Outdoor sales, including temporary tent sales and periodic temporary RV sales, shall be allowed as pursuant to the provisions and requirements set forth in Figure 10 and this Section.

iv. Ingress and egress for emergency vehicles shall be maintained at all times within the sales and storage area.

g. Signage. Signage and graphics will be an important element within the Milpitas Commercial Specific Plan area. The intent of the sign program is to provide for maximum sign exposure for uses within the Specific Plan area in a manner that will complement the overall image of the area while preserving and enhancing the aesthetic, vehicle and pedestrian traffic safety and convenience, and environmental values of the surrounding area.

Developer shall be required to prepare and submit a sign program to the City of Milpitas for review and approval before building permit issuance. Developer shall implement the approved sign program into any proposed development in the Specific Plan area. As set forth in Section XI-10-11.07(E), Administration, of this Specific Plan, any review and approval of a sign program shall be a non-discretionary, final action that cannot be appealed. The intent of the review is to ensure compliance with the signage requirements of the Milpitas Commercial Specific Plan. Changes in existing sign copy and relocation of existing signs that do not change the existing sign area shall be deemed to be consistent with the signage requirements of the Specific Plan and shall not require any additional approvals.

The following sets forth the requirements for signs in the Milpitas Commercial Specific Plan area:

i. Definitions. The definitions stated in Milpitas Municipal Code Title XI, Chapter 10, Section 2.03 are incorporated herein.

ii. Maximum Sign Area. The maximum permissible sign area in the Specific Plan area shall conform to the following area:

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

(a) For buildings or uses containing more than one (1) business, the allowable sign area as defined in Section (1) above shall be distributed to each business proportionately to the floor area of the subject business to the total floor area for all leasable structures on the parcel or site; or, distributed to each business proportionately to the building façade of the subject business by one (1) square feet of sign area per one (1) lineal feet of adjacent building façade oriented towards a property line of a site or common parking area.

(b) Public street frontage with non-access rights or no immediate direct access, such as flood control channels, but excluding landscaped planter areas, shall not be included in computing public street frontage for purposes of sign area calculations.

(c) Any square footage of a sign shall be deducted from the total maximum permissible sign area allowed for the site, unless otherwise specified or exempted in this Specific Plan.

The following signs shall not count towards the maximum sign area allocations: Ancillary Service Signs; Blade Signs; City Identification Signs; Flag Signs; Menu Board Sign for Drive Through; one "open/closed" Window Sign; and Temporary Signs. Based on public street frontage the maximum allowable sign area is 2,806 square feet in the Specific Plan area.

iii. General Sign Requirements.

(1) The sign shall relate to the architectural design of the building. An attractive scale between the sign, the building and the immediate surrounding buildings and signs shall be maintained.

(2) Signs should be an integral part of the design of the storefronts of mixed-use buildings.

(3) To the extent feasible, a sign shall be graphic with design emphasis on simplicity, style, trademark, business identification and symbol. Wording shall be an integral part of the overall design.

(4) Signage shall not obstruct pedestrian circulation.

(5) While bilingual signs are allowed, the size of English lettering should be at least equal to the size of letters of another language.

(6) The business name and address shall be displayed on the tenant space if located in a multi-tenant building or on the building or property for a single occupant building.

(7) All signs shall be erected only upon the site occupied by the persons or business sought to be identified or advertised by such signs.

(8) Lighting - All lighting sources shall be adequately diffused or shielded; bare lighting sources, such as neon, bare fluorescent tubes, incandescent bulbs, light emitting diodes (LED) and similar devices are not permitted.

(9) Construction - The sign's supporting structure shall be as small in density and as simple as is structurally safe; sign letters and materials should be professionally designed and fabricated; multiple signing on a single-faced building shall be reviewed for coordination of all signs architecturally and aesthetically; exposed transformers are prohibited; exposed conduit and tubing must be mitigated so that they are inconspicuous.

(10) Materials - Sign faces should be constructed of non-brittle, non-yellowing Polycarbonate material or superior; signs should be constructed using high-quality materials such as metal, plastic, stone and wood; impact resistive plastic shall be used on all internally illuminated signs utilizing plastic sign faces.

Whenever a plastic internally illuminated sign face, advertising copy or message becomes damaged and is to be replaced, said sign face shall be replaced with a sign face constructed of impact resistive plastic.

iv. Standards for Specific Types of Permanent Signs.

- (1) Ancillary Service Signs must be affixed to building, wall or window, and shall be smaller in scale to the tenant signs.
- (2) Architectural Signs shall constitute an integral part of a roof or marquee and must have a minimum clearance of ten (10) feet from the ground.
- (3) Area Identification Signs shall not require extensive maintenance or upkeep.
- (4) Blade Signs shall provide a minimum of eight (8) feet of clearance above the walkway surface below, be pedestrian oriented only, project a maximum of four (4) feet from the wall of a building, and not be internally illuminated.
- (5) City Identification Signs erected on private property do not count toward the maximum number of freestanding signs allowed on site.
- (6) Freestanding Signs greater than six (6) shall be part of an approved sign program as set forth in Section XI-10-11.07(C)(2)(f), of this Specific Plan. Freestanding signs shall be erected in on-site landscaped planter areas and maintained in a neat and healthy manner in perpetuity with vegetation that is appropriate to the site. The planter area shall extend a minimum of three (3) feet from the base of the sign. The height of free standing signs shall be measured from grade level of the closest public sidewalk, curb or public street. A freestanding sign may consist of more than one (1) sign panel provided that all such sign panels are consolidated into one (1) common integrated sign structure.
- (7) Graphic Panel Signs shall be located within five (5) feet of the main building wall. They do not count as freestanding signs, but the display area on graphic panels counts towards overall sign area.
- (8) Joint Use Signs shall be approved as part of a Sign Program and only 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 strongly encouraged.
- (9) Menu Board Signs for drive-thru and speakers shall be oriented away from the public right-of-way.
- (10) Off-Site Public Information Signs for a quasi-public use may request up to two (2) signs to be located by the City within the public right-of-way. These signs shall only include the name of the use in letters not exceeding four (4) inches in height and an arrow specifying the appropriate direction. Requests for such signs shall be made in writing by an authorized representative of the use and shall include the general location desired for said signs. The City Manager, or his or her designee, shall determine the precise location and sign design based on good traffic engineering practice and shall provide for erection of the signs.
- (11) Projecting Signs shall have a clearance of eight (8) feet above the ground and fourteen (14) feet above a driveway, alley, or other vehicular access way. Unless modified by an approved sign program, projecting signs shall only be located on the middle one-third of the front wall of a building and shall not extend from the front wall to which they are attached more than five (5) feet. Projecting signs shall not project into a public right-of-way.
- (12) Wall Signs shall have a maximum area as set forth in Table XI-10-11.07-4, Matrix of Permanent Sign Types, below. The exposed face of a wall sign shall be installed in a plane parallel to the plane of the wall.

The maximum number, size and height of permanent signs, as defined and discussed above, is set forth in Table XI-10-11.07-4, Matrix of Permanent Sign Types.

Table XI-10-11.07-4

Matrix of Permanent Sign Types

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign
Ancillary Service Signs	n/a	n/a	None
Architectural Sign	n/a	n/a	n/a
Area Identification Sign	n/a	60 square feet	n/a
Blade Sign	One per elevation of each tenant space	n/a	15 feet above walkway surface
City Identification Sign	n/a	n/a	n/a
Flag Signs	1 per site or building	40 square feet per flag sign	n/a
Freestanding Sign	1 per each parcel's public street frontage, 1 additional sign for sites with more than 300 feet of public street frontage	n/a	25 feet max; 1 foot of height for every 8 lineal feet of public street frontage. For any second sign, only the lineal feet in excess of 300 shall be used to determine height.
Graphic Panel Sign	n/a	n/a	n/a
Joint Use Sign	See Freestanding Sign		
Menu Board Sign for Drive Through	2 per site	n/a	6 feet
Off-site Public Information Sign	n/a	n/a	n/a
Projecting Sign	One per business	Sixteen (16) square feet per side unless increased pursuant to approve Sign Program.	n/a
Wall Sign	n/a	n/a	n/a
Window Sign	n/a	Shall not exceed twenty-five (25) percent of the contiguous window area.	n/a

v. Standards for Specific Types of Temporary Signs.

(1) Balloon Signs shall be allowed for grand openings (when first opened or after significant remodeling) for a business, promotional events for individual businesses or group of businesses on a parcel. Only one (1) sign may be attached to the balloon to identify the name of the shopping center, business, activity or event. No other smaller balloons shall be attached to the balloon or its supporting or secure lines. The balloon shall be securely mounted to the ground or a room and shall not move by any other means than normal wind current.

(2) Banner Signs shall be securely attached flush to a building and located on the premise of the business or use it advertises. The banner sign may be wrapped around a permitted permanent freestanding sign or wall sign when used to announce a change of business name. This banner would be allowed in addition to any other banner for the business.

(3) Construction Signs may indicate the opening date, architect, engineer, contractor, future business or lending agency and shall only be placed on the site of work under construction with a valid building permit.

(4) Grand Opening Signs are permitted when used for bona-fide grand opening functions after a business' initial occupancy, new ownership, name change or the reopening of a business that completely closed for remodeling for at least two week and shall only be displayed at the business for which the grand opening will occur.

The maximum number, size and height of temporary signs, as defined and discussed above, is set forth in Table XI-10-11.07-5, Matrix of Temporary Sign Types.

Table XI-10-11.07-5
Matrix of Temporary Sign Types

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Duration
Balloon Sign	1 per event		50 feet above grade	Up to four (4) times per calendar year. Maximum 30 days per event, 15 days for subsequent displays during year. Minimum 30 days between display occurrences
Banner Sign	1 per elevation	60 square feet		Maximum 30 consecutive days for 1st event; maximum 15 consecutive days for subsequent event. Displays shall be

				interrupted by 30 days. Maximum four (4) banner signs permitted per calendar year. If associated with a remodel, the interruption period may be waved.
Construction Sign	2 per street frontage For tenant improvements: 2 maximum	32 square feet	6 feet when freestanding	After issuance of building permit and removed upon approval of final occupancy
Grand Opening Sign	1 per elevation	60 square feet		30 days
Temporary Use Sign	1 per street frontage	32 square feet	8 feet	To be erected only during the temporary use and taken down upon completion of temporary use

vi. Prohibited Signs and Elements of Signs. The following types of signs are prohibited in the Specific Plan Area: Off-Site Advertising Displays; Privately-Owned Signs Resembling Traffic Signs; Reflective Signs; Rotating or Moving Signs; Roof Sign or Signs Extending Above Roof Ridge; Signs That Are A Traffic Hazard; Sound or Odor Emitting Signs; Other Advertising Structure; and Statuary Signs.

The following types of signs are prohibited subject to the exceptions noted below:

- (1) Abandoned Signs shall be removed within ninety (90) days after the business the sign advertised has ceased and shall include elimination of all sign copy and if the sign was mounted on a building, the building façade shall be restored to its original state to the best extent possible.
- (2) A-Frame Signs and Portable Signs with the exception of public services signs and open house directional signs.
- (3) Blinking, Flashing Lights or any sign having fluttering lights or other illuminating device which has changing light intensity, brightness or color unless approved pursuant to an approved sign program.
- (4) Temporary Signs except construction signs, grand-opening signs, and temporary promotional signs.
- (5) Vehicle-Mounted Signs where the vehicle is not legally registered, not operable, not parking within the confines of a striped parking space approved by the City of Milpitas or parked within the confines of a striped parking space approved by the City of Milpitas or a city street for more than seventy-two (72) hours.
- (6) Portable Signs

h. Noise.

i. Construction Noise. Hours of exterior construction shall be limited to between the hours of 7 a.m. and 7 p.m. daily except holidays. All construction equipment shall be acoustically muffled to reduce noise in accordance with Caltrans Standard Specifications.

ii. Operational Noise. Development in the Specific Plan area shall comply with the noise standards contained in the Noise Element of the Milpitas General Plan.

i. Lighting. The following section addresses illumination of on-site areas for purposes of safety, security, and nighttime ambience, including lighting for parking areas, pedestrian walkways, graphics and signage, architectural and landscape features, shipping and loading areas, and any additional exterior areas.

Prior to issuance of building permits, the developer shall ensure that all exterior lighting fixtures (building-mounted and freestanding) are shielded, recessed, or directed downward to prevent unwanted illumination of neighboring properties. Fixtures shall be appropriate in terms of height, style, design, scale and wattage to the use of the property. Fixtures shall be spaced appropriately to maximize pedestrian safety. This may be accomplished by submitting a Lighting Plan for review and approval by the Planning Director as set forth in Section XI-10-11.07(E), Administration, of the Milpitas Commercial Specific Plan. Any review of a Lighting Plan shall be a non-discretionary, final action that cannot be appealed. The intent of the review is to ensure compliance with the provisions of the Milpitas Commercial Specific Plan. The approved Lighting Plan shall be incorporated into the development proposed.

j. Police Protection. Developer shall conduct a crime survey of the area to evaluate the security needs for development in the Specific Plan area and shall implement a security plan based on this analysis. Any security plan shall be submitted to the City of Milpitas Police Department for review and approval. As set forth in Section XI-10-11.07(E), Administration, of this Specific Plan, any review and approval of a security plan shall be a non-discretionary, final action that cannot be appealed. The intent of the review is to ensure compliance with the police protection requirements of the Milpitas Commercial Specific Plan.

The following security measures shall be incorporated into any development in the Specific Plan area and may be part of the developer's security plan:

i. A closed-circuit camera surveillance system for inside and outside of any retail building. These cameras should monitor the store entrance, cash registers and safe;

ii. A parking lot patrol that assists customers, ensures safety, and takes action to identify and prevent any suspicious activity (such as loitering and vandalism) both during the day and nighttime hours, and a plainclothes patrol inside the retail building to ensure safety and security;

iii. Practices and procedures to prohibit consumption of alcohol in the parking lot by having employees regularly patrol the parking lot areas while collecting shopping carts and report any inappropriate activity to the appropriate management staff;

iv. A burglar, robbery and/or panic alarm;

v. Clearly marked and lighted parking areas to allow for safe circulation; and,

vi. On-site security twenty-four (24) hours a day during construction to prevent theft or vandalism of construction materials.

3. Business Licenses. Prior to the issuance of a grading permit, demolition or ground or vegetation disturbance; whichever occurs first, the developer will comply with City of Milpitas provisions for obtaining business licenses for the construction contractor and subcontractors.

Prior to the issuance of a Final Certificate of Occupancy, the developer shall comply with City of Milpitas provisions for obtaining business licenses (including amendments to existing licenses) for the building occupant.

D. Infrastructure, Grading and Construction. Any and all approvals, decisions, reviews or actions required under this section and required for development within the Milpitas Commercial Specific Plan area shall be ministerial, final and not subject to appeal, and shall be processed pursuant to Section XI-10-11.07(E), Administration, of this Specific Plan.

1. Infrastructure.

a. General Provisions. Any development in the Specific Plan area shall comply with the following:

i. All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure shall be permitted within City easements and no trees or deep-rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas.

ii. Submittal of the Sewer Needs Questionnaire and/or Industrial Waste Questionnaire is required with any building permit application. Payment of the storm water connection fee and treatment plant fee shall be paid prior to building permit issuance.

iii. Developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit, and two and one-half percent (2.5%) building permit automation fee. These fees are collected as part of the secured public improvement agreement. The agreement shall be secured for an amount of one hundred percent (100%) of the engineer's estimate of the construction cost for faithful performance and one hundred percent (100%) of the engineer's estimate of the construction cost for labor & materials. All fees shall be paid prior to building permit issuance.

iv. Before building permit issuance, developer shall obtain design approval from the City Engineer pursuant to Section XI-10-11.07(F), Environmental Performance Standards, of this Specific Plan, for all necessary public improvements along Ranch Drive, including, but not limited to, the installation of new pedestrian crosswalk and ped-flashing warning signals, new mid-block ramp, signage and striping, and installation of new median. Developer shall bond for such improvements and execute a secured public improvement agreement. The agreement shall be secured for an amount of one hundred percent (100%) of the engineer's estimate of the construction cost for faithful performance and one hundred percent (100%) of the engineer's estimate of the construction cost for labor and materials. All public improvements shall be constructed to the City Engineer's satisfaction and accepted by the City prior to building occupancy permit issuance.

v. At the time of building permit application, developer shall pay any project job account balance due to the City for recovery of review fees. Review of any permit submittals will not be initiated until balance is paid in full.

b. Water Facilities. The Specific Plan area will receive water service from the City of Milpitas. The City of Milpitas's Urban Water Management Plan indicates that under normal water years, water supplies are sufficient to serve demands within the City through 2030. Under multiple dry year scenarios, demand is expected to surpass supply as soon as 2010. Because the Specific Plan area has an existing building, that building's water demand is accounted for in the City's water demand projections. Development within the allowable Floor Area Ratio for the Specific Plan area would not create increased potable water demand that would adversely impact the water system. Development may be suspended, however, prior to building permit issuance if necessary to stay within available water supplies and will remain suspended until water is available. The City shall provide Developer with written evidence that available water supplies do not exist prior to suspending any development within the Specific Plan area. The Specific

Plan area is estimated to generate ten thousand nine hundred (10,900) gallons per day of water demand. Implementation of the Specific Plan will not require new or expanded water facilities.

Development in the Specific Plan area must install the following indoor water conservation measures prior to issuance of the final certificate of occupancy to reduce overall demand for potable water: low-flow or ultra-low-flow toilets and urinals; and sensor-activated faucets in restrooms.

c. Wastewater Facilities. The Specific Plan area would convey wastewater via municipal sewage infrastructure maintained by the City of Milpitas to the San Jose/Santa Clara Water Pollution Control Plant. A wastewater trunk line is located in North McCarthy Boulevard from SR-237 to the Milpitas Pump Station located at Dixon Landing Road. The trunk line ranges in diameter from thirty-six (36) to forty-eight (48) inches. Development within the allowable Floor Area Ratio for the Specific Plan area would not create increased effluent generation that would adversely impact the sewer system or treatment plan capacity. Development may be suspended, however, prior to building permit issuance if necessary to stay within the safe allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant and will remain suspended until sewage capacity is available. The City shall provide Developer with written evidence that available sewage capacity does not exist prior to suspending any development within the Specific Plan area. The Specific Plan area is estimated to generate six thousand three hundred ninety (6,390) gallons per day of effluent. Implementation of the Specific Plan will not require new or expanded wastewater treatment facilities.

Development in the Specific Plan area will be required to pay a Treatment Plant Fee, a standard requirement for new development projects.

d. Storm Drains. Implementation of the Specific Plan will not require new or expanded offsite storm drainage facilities. However, at the time of building permit plan check, the developer shall submit a grading plan and a Drainage Study prepared by a registered Civil Engineer that recommends adequate drainage facilities to properly accept and convey drainage flows from the Specific Plan area. The study shall be reviewed and approved by the City Engineer, pursuant to Section XI-10-11.07(E), Administration, of this Specific Plan. Developer shall incorporate the conclusions and recommendations of the approved Drainage Study prior to building permit issuance.

e. Solid Waste Disposal. Republic Services provides solid waste and recycling services to the City of Milpitas, including the Specific Plan area. During construction, it is estimated that the Specific Plan area would generate approximately five thousand seven hundred thirty-seven (5,737) tons of solid waste. During operation, it is estimated that the Specific Plan area would generate approximately 361.7 tons of solid waste annually. Before starting construction in the Specific Plan area, developer shall retain a qualified contractor to perform construction and demolition debris recycling. Developer must document, to the satisfaction of the City of Milpitas, that construction and demolition debris was recycled. Before building permit issuance, developer shall show on-site facilities necessary to collect and store recyclable materials. The facilities shall include receptacles in public spaces that are of high-quality design and identify accepted materials. Business owners in the Specific Plan area must comply with best management practices for the handling of solid and food wastes, as permitted by and in compliance with local and state solid waste disposal regulations.

f. Natural Gas. PG&E will provide natural gas service to the Specific Plan area and has available natural gas supplies and appropriate transmission capacity to serve the Specific Plan area. The Specific Plan area's estimated annual natural gas consumption is 8.79 million cubic feet.

g. Police Protection. The Milpitas Police Department will provide police protection to the Specific Plan area. No new or expanded police protection facilities are necessary to serve the Specific Plan area.

h. Fire. The Milpitas Fire Department will provide fire protection and emergency medical services to the Specific Plan area. No new or expanded fire protection facilities are necessary to serve the Specific Plan area.

i. Electricity and Telephone. The Specific Plan area is located within PG&E's service territory. PG&E would provide electrical services to the Specific Plan area. PG&E has available electricity supplies and appropriate transmission capacity to serve the Specific Plan area. The Specific Plan area's estimated annual electricity consumption is 2.37 million kilowatt hours.

Telephone service to the Specific Plan area will be provided by AT&T.

j. Schools. Prior to the issuance of building permits, the developer shall pay school impact fees. Impact fees are currently forty-seven cents (\$0.47) per square foot.

2. Project Access. Access to the Specific Plan area allows for safe and efficient travel to and from the area. Administrative provisions and signage of the Specific Plan will facilitate direction and access throughout the area. Public transportation exists in the Specific Plan area and a direct pedestrian connection links the existing retail building with the Ranch Drive sidewalk, allowing for safe and convenient access between the existing retail building and the bus stop. A designated pedestrian connection between the existing retail building and the balance of the McCarthy Ranch Marketplace to the south and Ranch Drive to the north exists and will be maintained with any development of the Specific Plan area.

Vehicular access to the Specific Plan area will be provided by two (2) driveways onto Ranch Drive and a McCarthy Ranch Marketplace driveway entrance located to the southeast of the existing retail building. The driveways on Ranch Drive are stop-controlled and provide single-lane ingress and egress. Truck deliveries would enter via the northern driveway along Ranch Drive and immediately turn right and travel westbound towards the loading dock. Trucks exiting the site would retrace their path to the northern Ranch Drive driveway.

Prior to the issuance of a Certificate of Occupancy, Developer shall obtain the necessary approvals for the installation of VTA bus stop improvements consisting of retention of the bus stop in its existing location, and installation of a seven-foot by twenty-foot Portland cement concrete shelter pad behind the sidewalk/passenger waiting pad with retaining wall. Bicycle storage facilities shall also be installed prior to the issuance of the final certificate of occupancy. These facilities shall consist of at least one (1) rack located in a visible and convenient location (i.e., near the entrance to the building) and that provides storage equivalent to two (2) percent of the minimum parking requirement in the Specific Plan area.

Developer also shall work with and negotiate in good faith with the adjacent property owner to obtain permission for the design and construction of striped pedestrian crossing and associated median and/or ramp modifications at the shared driveway for McCarthy Ranch Marketplace and Specific Plan area entrances.

3. Grading. Given the relatively level topography within the Specific Plan area, development will result in modest changes to topography and ground surface features. During grading and construction, however, developer shall adhere to all applicable recommendations for abating expansive soil conditions contained in the Geotechnical Engineering Investigation or comparable geotechnical study. Prior to the issuance of grading permits, developer shall prepare and submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Milpitas that identifies specific actions and Best Management Practices (BMPs) to prevent stormwater pollution during construction activities.

4. Construction. During all construction activities within the Milpitas Commercial Specific Plan area, the following measures shall be implemented:

a. Water all active construction areas and exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) at least two (2) times per day;

b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two (2) feet of freeboard;

- c. Pave, apply water three (3) times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
- d. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites;
- e. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;
- f. All vehicle speeds on unpaved roads shall be limited to fifteen (15) miles per hour;
- g. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used;
- h. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five (5) minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Clear signage shall be provided for construction workers at all access points;
- i. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation; and,
- j. A publicly visible sign shall be posted with the telephone number and person to contact at the City of Milpitas regarding dust complaints. This person shall respond and take corrective action within forty-eight (48) hours. The phone number of the Bay Area Air Quality Management District shall also be visible to ensure compliance with applicable regulations.

5. Fiscal Implementation. Implementation of the Specific Plan including, without limitation, construction of all infrastructure and private facilities contemplated in the Specific Plan, will be financed as follows:

- a. All infrastructure necessary to implement the Specific Plan will be privately funded (by way of debt and/or equity financing), except to the extent that the cost of components of the infrastructure is a) funded by development impact fees, fair share contributions and other payments to public agencies and/or b) reimbursed from any public source.
- b. All private improvements necessary to implement the Specific Plan will be privately financed (by way of debt and/or equity financing).

E. Administration.

1. Permit Processing. Development within the Specific Plan area that is consistent with the provisions of the Milpitas Commercial Specific Plan and the conceptual site plan, elevations, colors and materials, and landscaping as depicted in Figures XI-10-11-07-6 through -9, and the conditions and requirements set forth in Figure 10, shall be processed under building permit and/or construction plan review and no additional approvals or permits shall be required. Any review or action by City agencies, entities or individuals (i.e., the Milpitas Police Department; the City Engineer; the City Building Department; Planning Director) on such development submittals shall be considered part of building permit and/or construction plan review. The action shall be limited to a determination of compliance with the provisions of the Milpitas Commercial Specific Plan and all applicable building codes and other requirements of the City, County, State and/or other responsible agencies. Building permit and/or construction plan review shall be non-discretionary, final actions that cannot be appealed.

Development that is not consistent with the development standards set forth in the Milpitas Commercial Specific Plan, shall either require a Substantial Conformance Determination, as discussed below, or require approval under the provisions and requirements of the Milpitas Zoning Code for development in the C2 Zone.

Any building permit issuance in the Specific Plan area will be conditioned on the availability of water and sewage capacity as set forth in Sections XI-10-11.07(D)(1)(b) and XI-10-11.07(D)(1)(c). Conformance with the provisions of this Specific Plan do not provide a vested right to the issuance of a Building Permit as water and sewage capacity availability is a material (demand/supply) condition to development on the Specific Plan area.

2. Existing Uses. Operation and maintenance of existing uses or structures in the Specific Plan area are not subject to the provisions of the Milpitas Commercial Specific Plan provided a building permit has been obtained and is still valid at the time of the effective date of the provisions codified in this title. Any expansion or development of existing uses or structures, however, would require compliance with the provisions of the Milpitas Commercial Specific Plan.

3. Substantial Conformance Determination.

a. Purpose. A Substantial Conformance Determination is a mechanism to allow the approval of minor modifications for development under the Specific Plan. A Substantial Conformance Determination may include, but is not limited to, minor modifications to the conceptual plans (Figures XI-10-11.07-6 through-9); inclusion of land uses not listed in Section XI-10-11.07(C)(1) of the Specific Plan; modifications that might be necessary to comply with applicable infrastructure, public services and facilities requirements, and landscape palette; and other issues. A Substantial Conformance Determination does not apply to significant modifications in the basic design of the Specific Plan area; changes to the height or bulk of the approved uses; or increases in the density or intensity of the approved uses unless specifically permitted by the provisions of this Specific Plan.

The purpose of a Substantial Conformance Determination is to ensure orderly development, quality aesthetic design, and safe and harmonious placement of uses within the Specific Plan area. A Substantial Conformance Determination (unless specifically noted otherwise) shall be made by the Planning Director or designee administratively, without the need for a public hearing. In making a Substantial Conformance Determination, the Planning Director or designee shall first make all of the required findings set forth in this section.

b. Guidelines For A Substantial Conformance Determination. The following guidelines explain the requirements for making a Substantial Conformance Determination, and the limits placed on the degree of variance from the provisions of the Specific Plan that can occur as part of a Substantial Conformance Determination.

i. Permitted Land Uses. Land uses not listed as permitted in Section XI-10-11.07(C)(1) of this Specific Plan may be permitted, with a Substantial Conformance Determination, provided that:

(1) The proposed use is compatible with the uses permitted described in Section XI-10-11.07(C)(1) of this Specific Plan; and

(2) The proposed use is similar to and will not cause environmental impacts substantially greater than the other permitted uses set forth within Section XI-10-11.07(C)(1) of this Specific Plan.

ii. Infrastructure. Any modifications to the alignment of access roads; parking lot configurations, or adjustments to individual infrastructure facilities plans such as drainage, sewer, water, and utilities shall be subject to a Substantial Conformance Determination by the Planning Director or designee. Prior to making a Substantial Conformance Determination, the Planning Director or designee shall make the finding that the proposed modification will not result in any environmental impacts substantially greater than those which would occur without any modification.

iii. Environmental Performance Standards. The Planning Director or designee may approve minor variations from the environmental performance standards set forth in Section XI-10-11.07(F), Environmental Performance Standards, of this Specific Plan, with a Substantial Conformance Determination. In making such a determination, the Planning Director or designee shall first find that the

proposed variation provides substantially equivalent environmental protection as the originally approved standard.

iv. Conceptual Plan and Other Specific Plan Provisions. Provisions of the Specific Plan including, but not limited to, architectural details; landscape palette; building size, height, bulk, and orientation; parking lot layout; and other plan details may be modified with a Substantial Conformance Determination. In making such a determination, the Planning Director or designee shall be required to find that the revisions requested as part of a Substantial Conformance Determination are consistent with the provisions of the Milpitas General Plan, and will not create impacts substantially greater than those that would have resulted from the original approval of the Specific Plan.

A maximum ten (10) percent modification to permitted lot coverage, setbacks, floor area (other than the maximum allowable with the Specific Plan area), parking and fence and wall heights may be permitted subject to a Substantial Conformance Determination by the Planning Director or designee. In making such a determination, the Planning Director or designee shall be required to find that the revisions requested as part of a Substantial Conformance Determination are consistent with the provisions of the Milpitas General Plan, and will not create impacts substantially greater than those that would have resulted from the original approval of the Specific Plan.

The required parking spaces may be reduced by the Planning Director or designee subject to a Substantial Conformance Determination after preparation of a parking study demonstrating the proposed reduction in parking spaces is justified based on the mix of uses within the Specific Plan area and the use of shared parking between those uses.

A comprehensive sign program shall be submitted to the Planning Director for finding that it complies with the signage requirements of the Milpitas Commercial Specific Plan. Such finding shall be made as a part of building permit and/or construction plan review. Any subsequent sign permit applications that substantially comply with the comprehensive sign program shall be processed as a ministerial building permit and/or construction plan review. Any comprehensive sign program that does not comply with the signage requirements of the Milpitas Commercial Specific Plan shall require a Substantial Conformance Determination.

4. Substantial Conformance Determination Procedure.

a. Application. Applications for a Substantial Conformance Determination shall be made on forms provided by the Planning Director or designee and shall be accompanied by a filing fee, equivalent to the fee for a Site Development Permit application. Applications shall be made by the owner of the property for which the approval is sought, or an authorized agent.

b. Hearing. No public hearing shall be required for a Substantial Conformance Determination.

c. Action by Reviewing Authority. The reviewing authority for a Substantial Conformance Determination shall be the Planning Director or designee. The reviewing authority shall take action by providing written notice to the applicant or developer approving, conditionally approving, or denying a Substantial Conformance Determination. The action of the Planning Director or designee shall be final with no appeal.

d. Findings. The Planning Director or designee must make a Substantial Conformance Determination if all of the following findings, in addition to those identified above, can be made:

i. The physical characteristics of the site have been adequately assessed, and proposed building sites are of adequate size and shape to accommodate proposed uses and all other features of development.

ii. There is supporting infrastructure, existing or available, consistent with the requirements of the Milpitas Commercial Specific Plan, to accommodate the development without significantly lowering service levels.

iii. The development resulting from the determination of substantial conformance will not have a substantial adverse effect on surrounding property or the permitted use thereof, and will be compatible with the existing and planned land uses, as well as the character of the surrounding area.

iv. The proposed improvements related to the development resulting from a Substantial Conformance Determination adequately address all natural and man-made hazards associated with the proposed development and the project site.

5. Periodic Review. After receiving a certificate of occupancy, development in the Milpitas Commercial Specific Plan Area is subject to a six-, twelve- and eighteen-month review by the Planning Commission. The review shall be a public hearing to review conformance of the development with the requirements of the Milpitas Commercial Specific Plan.

6. Specific Plan Amendments.

a. Purpose. Specific Plan amendments are governed by Government Code Section 65453 and the Milpitas Municipal Code Section XI-10-57.02.

b. Process.

i. The Specific Plan may be amended or repealed only by a majority of the voters voting in an election thereon.

ii. Notwithstanding subsection (a), upon application of the fee title holder of the Milpitas Commercial Specific Plan area, the City Council may amend the Specific Plan to further the purposes of this Specific Plan, but in no case can such amendment reduce or eliminate the parties' obligation to fund, construct, or cause to be funded or constructed, the public benefits or Environmental Performance Standards required.

F. Environmental Performance Standards. The Specific Plan includes environmental performance standards to ensure that development proceeds with appropriate environmental sensitivity. Environmental studies related to aesthetics, light and glare, health risks, air quality, biological resources, geology, soils and seismicity, hazards and hazardous materials, hydrology and water quality, noise, public services and utilities, transportation and urban decay were conducted for an expansion of the existing retail facility in the Specific Plan area. Environmental performance standards were developed from these environmental studies along with information from the City of Milpitas General Plan.

All environmental performance standards shall be implemented in accordance with the Specific Plan's environmental performance standards and implementation process as outlined in Table XI-10-11.07-6, Milpitas Commercial Specific Plan Environmental Performance Standards. The developer of the Specific Plan area shall bear all costs of implementing the environmental performance standards.

Table XI-10-11.07-6 - Milpitas Commercial Specific Plan Environmental Performance Standards

Environmental Performance Standards	Method of Verification	Timing of Verification	Responsible for Verification	Verification of Completion	
				Date	Initial
1. Aesthetics, Light, and Glare					
AES-1a: Prior to issuance of building permits, the developer shall prepare and submit a sign program to the	Approval of plans	Prior to issuance of	City of Milpitas Planning Department		

City of Milpitas for review and approval. The sign program shall demonstrate compliance with the applicable requirements with Milpitas Municipal Code Title XI, Chapter 30. The approved sign program shall be implemented into the proposed project.		building permits			
AES-1b: Prior to issuance of grading or building permits, whichever comes first, the developer shall obtain a tree removal permit from the City of Milpitas for any trees slated for removal with a trunk circumference of 37 inches or more measured at 4.5 feet above ground level. Replacement of such trees shall be performed in accordance with the requirements of the Tree Maintenance and Protection Ordinance. Removed trees that are not covered by the Tree Maintenance and Protection Ordinance (i.e., less than 37 inches in circumference at 4.5 feet above ground level) shall be replaced onsite with a similar tree species at no less than a 1:1 ratio. All replacement trees shall be planted prior to the issuance of the final certificate of occupancy.	Issuance of permit; Site inspection	Prior to issuance of grading or building permits (whichever comes first); Prior to issuance of the final certificate of occupancy	City of Milpitas Planning Department and Public Works Department		
AES-1c: Prior to issuance of the final certificate of occupancy, the developer shall do one of the following: 1) permanently remove all shipping containers from the project site; or 2) obtain a minor Site Development Permit Approval and install screening measures in accordance with Zoning	Site inspection	Prior to issuance of the final certificate of occupancy	City of Milpitas Planning Department		

Ordinance requirements. If the second option is pursued, outdoor storage of containers shall occur in a completely enclosed building or behind a visually obscure solid wall or tight board fence a minimum 6 feet in height and outside any front or street side yard setback area.					
AES-2: Prior issuance building permits, the developer shall ensure that all exterior lighting fixtures associated with the existing retail building (building-mounted and freestanding) are shielded, recessed, or directed downward to prevent unwanted illumination of neighboring properties.	Approval of plans	Prior issuance building permits	City of Milpitas Planning Department		
2. Air Quality					
AIR-3: The following measures shall be implemented during all construction activities:	Site inspection	During construction activities	City of Milpitas Office of Building Safety and Housing Department		
Water all active construction areas and exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) at least two times per day.					
Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.					
Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.					

• Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.					
• Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.					
• All vehicle speeds on unpaved roads shall be limited to 15 miles per hour.					
• All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.					
• Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Clear signage shall be provided for construction workers at all access points.					
• All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.					
• Post a publicly visible sign with the telephone number and person to contact at the City of Milpitas regarding dust complaints. This person shall					

respond and take corrective action within 48 hours. The phone number of the Bay Area Air Quality Management District shall also be visible to ensure compliance with applicable regulations.					
AIR-7a: The developer shall use paving materials with increased solar reflectivity in areas where pavement is replaced. Such materials shall use light-colored aggregate or other appropriate methods to achieve high solar reflectivity. The developer shall provide construction details and specifications that shall be submitted with construction drawings and installed with improvements.	Approval of plans and site inspection	Prior to issuance of Building Permit	City of Milpitas Planning Department		
AIR-7b: Prior to issuance of the final certificate of occupancy, the developer shall post signs in the loading docks advising truck drivers to turn off engines when not in use and advising truck drivers of state law prohibiting diesel idling of more than 5 minutes.	Site inspection	Prior to issuance of the final certificate of occupancy	City of Milpitas Planning Department		
AIR-7c: Prior to issuance of the final certificate of occupancy, the developer shall do the following:	Approval of plans; Site inspection; ongoing	Prior to issuance of the building permit; ongoing.	City of Milpitas Planning Department and Office of Building Safety and Housing Department		
• Prior to building permit issuance, a secondary closed loop system shall be evaluated and implemented, if found to be technically and economically feasible. Details and specifications shall be					

included with the construction drawings.					
The developer shall maintain the refrigeration system at least once per year to ensure that refrigerant leaks remain minimal. The maintenance records shall be kept onsite for review by the City of Milpitas.					
During installation of the new refrigerators and freezers, effort shall be made to reuse the existing refrigerants in the new system, unless the old refrigerant is not the same type as is proposed in the new system or more leakage would occur if the refrigerants are reused.					
AIR-7d: Prior to issuance of the final certificate of occupancy, the developer shall provide the following Transportation Demand Management measures:	Site inspection	Prior to issuance of the final certificate of occupancy	City of Milpitas Planning Department		
Public transit information in the employee breakroom. Store management shall post information such as Santa Clara Valley Transportation Authority bus and light rail schedules, maps, and fares.					
Ride sharing information in the employee breakroom. Store management shall facilitate ride sharing by providing sign-up sheets or other measures to allow interested employees to identify carpooling opportunities.					
Bicycling information. Store management shall post information such as bicycle route maps and information					

about taking bikes on public transportation.					
AIR-7e: To reduce construction related greenhouse gas impacts, the following measures are required:	Submittal of documentation	During construction activities	City of Milpitas Planning Department		
At least 15 percent of the construction vehicles/equipment shall be fueled by an alternative source such as biodiesel and/or electric.					
At least 10 percent of all building materials shall be local (within 100 miles); and					
At least 50 percent of construction and demolition materials shall be recycled. This latter provision shall be coordinated with Mitigation Measure PSU-6a.					
3. Biological Resources					
BIO-1: If vegetation removal associated with development of the property is to occur during the nesting bird season (February 15 through August 31), a qualified biologist shall conduct a pre-construction survey for nesting birds to identify any potential nesting activity. The pre-construction surveys for nesting birds shall be conducted within 14 days prior to any construction-related activities (grading, ground clearing, etc.). If nesting birds are identified on the site, a 100-foot buffer shall be maintained around the nests; no construction-related activities shall be permitted within the 100-foot buffer. A qualified biologist shall monitor the nests, and	Submittal of documentation; Site inspection	Within 14 days prior to any construction-related activities during the nesting bird season (February 15 through August 31)	City of Milpitas Planning Department		

construction activities may commence within the buffer area at the discretion and presence of the biological monitor. The pre-construction survey for nesting birds shall not be required if construction activities occur outside of the nesting bird season (September 1 through February 14).					
4. Geology, Soils, and Seismicity					
GEO-1a: Prior to issuance of building permits, the developer shall submit a seismic hazards technical study prepared by a qualified geotechnical engineer to the City of Milpitas for review and approval. The report shall be prepared in accordance with the requirements of the Seismic Hazards Mapping Act and shall identify necessary design measures to reduce potential seismic ground shaking impacts to acceptable levels. The developer shall incorporate the approved design measures into the project plans.	Approval of plans	Prior to issuance of building permits	City of Milpitas Office of Building Safety and Housing Department		
GEO-1b: Prior to issuance of building permits, the developer shall submit a design-level geotechnical investigation to the City of Milpitas for review and approval. The design-level investigation shall address the potential for ground failure to occur onsite and identify abatement measures to reduce the potential for such an event to acceptable levels. The abatement measures shall be incorporated into the project design.	Approval of plans	Prior to issuance of building permits	City of Milpitas Office of Building Safety and Housing Department		

GEO-1c: Prior to issuance of building permits, the developer shall submit plans to the City of Milpitas for review and approval that demonstrate that the proposed project is designed in accordance with all state and local seismic safety requirements. Such requirements shall include the California Building Standards Code and Milpitas Municipal Code, Title II. The approved plans shall be incorporated into the project design.	Approval of plans	Prior to issuance of building permits	City of Milpitas Office of Building Safety Building Safety and Housing Department		
GEO-4: During grading and construction, the developer shall adhere to all applicable recommendations for abating expansive soil conditions contained in the Geotechnical Engineering Investigation or comparable geotechnical study. This includes the excavation of expansive soils and the subsequent replacement of such soils with non-expansive engineered fill.	Site inspection	During grading and construction	City of Milpitas Office of Building Safety Building Safety and Housing Department		
5. Hydrology and Water Quality					
HYD-1: Prior to the issuance of grading permits for the proposed project, the developer shall prepare and submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Milpitas that identifies specific actions and Best Management Practices (BMPs) to prevent stormwater pollution during construction activities. The SWPPP shall identify a practical sequence for BMP implementation and maintenance, site restoration, contingency measures, responsible parties, and agency contacts. The SWPPP shall include, but not be	Approval of plan	Prior to the issuance of grading permits	City of Milpitas Planning Department and Engineering Department Public Works Department		

limited to, the following elements:					
• Temporary erosion control measures shall be employed for disturbed areas.					
• No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months.					
• Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.					
• The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate or reduce discharge of materials to storm drains.					
• BMP performance and effectiveness shall be determined either by visual means where applicable (e.g., observation of above-normal sediment release), or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required by the RWQCB to determine adequacy of the measure.					
• In the event of significant construction delays or delays in final landscape installation, native grasses or other appropriate vegetative cover shall be established on the construction site as soon as possible after disturbance, as an interim erosion control measure throughout the wet season.					

HYD-2: Prior to the issuance of building permits for the proposed project, the developer shall submit a stormwater management plan to the City of Milpitas for review and approval. The stormwater management plan shall comply with the requirements of Milpitas Municipal Code Title XI, Chapter 16 and identify pollution prevention measures and practices to prevent polluted runoff from leaving the project site. Examples of stormwater pollution prevention measures and practices to be contained in the plan include, but are not limited to:	Approval of plan	Prior to the issuance of building permits	City of Milpitas Planning Department and Engineering Department Public Works Department		
• Strategically placed bioswales and landscaped areas that promote percolation of runoff					
• Pervious pavement					
• Roof drains that discharge to landscaped areas					
• Trash enclosures with screen walls					
• Stenciling on storm drains					
• Curb cuts in parking areas to allow runoff to enter landscaped areas					
• Rock-lined areas along landscaped areas in parking lots					
• Catch basins					
• Oil/water separators					
• Regular sweeping of parking areas and cleaning of storm drainage facilities					

• Employee training to inform store personnel of stormwater pollution prevention measures					
The developer shall also prepare and submit an Operations and Maintenance Agreement to the City identifying procedures to ensure that stormwater quality control measures work properly during operations.					
6. Public Services and Utilities					
PSU-3: Prior to building permit issuance, the developer shall include details and specification in the construction drawings and install the following indoor water conservation measures:	Approval of plans	Prior to issuance of the final certificate of occupancy	City of Milpitas Planning Department, Office of Building Safety Building Safety and Housing Department and Engineering Department Public Works Department		
• Low-flow or ultra-low-flow toilets and urinals					
• Sensor-activated faucets in restrooms					
PSU-6a: Prior to the commencement of construction activities, the developer shall retain a qualified contractor to perform construction and demolition debris recycling. The developer shall provide documentation to the satisfaction of the City of Milpitas demonstrating that construction and demolition debris was recycled.	Submittal of documentation	Prior to issuance of building permits	City of Milpitas Planning Department		
PSU-6b: Prior to building permit issuance, the developer shall show onsite facilities	Approval of plans; Site inspection	Prior to issuance of	City of Milpitas Planning Department		

necessary to collect and store recyclable materials. The facilities shall include receptacles in public spaces that are of high-quality design and identify accepted materials.		building permits			
7. Transportation					
TRANS-1a: Prior to the issuance of building permits, the developer shall provide fair-share fees to the City of Milpitas for improvements to the Dixon Landing Road/N. Milpitas Boulevard intersection and the widening of Dixon Landing Road in the amount of \$31,960 (\$3,000 for the intersection improvement and \$28,960 for the roadway widening). The fees will go towards the following intersection improvements: 1) modifying the signal operation to include a southbound right-turn overlap and subsequent signal timing optimization or 2) adding a northbound left turn lane, a southbound right-turn lane, and eastbound left-turn and right-turn lanes. The widening shall consist of adding an additional lane in each direction between I-880 and N. Milpitas Boulevard. Both improvements are identified in the Valley Transportation Plan 2035.	Receipt of fees	Prior to the issuance of building permits	City of Milpitas Planning Department		
TRANS-1b: Prior to the issuance of final certificate of occupancy, the developer shall provide the City of Milpitas the full cost of signal timing modifications at the N. McCarthy Boulevard/Ranch Drive (south) intersection in the estimated amount of \$2,500 dollars. The	Receipt of fees	Prior to the issuance of final certificate of occupancy	City of Milpitas Planning Department		

modifications shall consist of re-timing the signal to increase the current cycle length. This mitigation measure shall not apply if the signal timing is modified prior to the developer seeking the final certificate of occupancy.					
TRANS-3: Prior to issuance of building permits, the developer shall provide a traffic management fee in the amount of \$180,000 to the City of Milpitas. The fees shall be used for circulation and traffic operation improvements within the City of Milpitas, including signal coordination and intersection improvements. Specific improvements that shall be fully funded by funds collected shall include:	Receipt of fees	Prior to issuance of building permits	City of Milpitas Planning Department		
• McCarthy Boulevard/Technology Drive: The eastbound approach shall be re-striped to provide two left-turn lanes and one shared through/right lane.					
• McCarthy Boulevard/SR-237 Westbound Ramps: An additional westbound right-turn lane shall be constructed to provide two left-turn lanes, two through lanes, and two right-turn lanes for the westbound approach.					
• Ranch Drive: The roadway shall be restriped to extend the existing two-way left-turn lane from the northern driveway of the existing retail building to the end of the existing westbound left-turn lane at the McCarthy Boulevard/Ranch Drive (North) intersection.					

TRANS-5: Prior to issuance of building permits, the developer shall prepare and submit a site plan to the City of Milpitas that demonstrates that off-street parking is provided onsite complies with the Milpitas Municipal Code Parking Regulations and Development Standards. The approved site plan shall be incorporated into the proposed project.	Approval of plan (Note: Project plans submitted comply with the City's off-street parking requirements)	Prior to issuance of building permits	City of Milpitas Planning Department		
TRANS-8: Prior to building permit issuance, the developer shall provide details and specifications for bicycle storage facilities on the construction drawings and install prior to occupancy. Bicycle storage facilities shall consist of at least one rack located in a visible and convenient location (e.g., near the store entrance) and that provides storage equivalent to 2 percent of the proposed project's minimum parking requirement.	Approval of plans; Site inspection	Prior to issuance of the final certificate of occupancy	City of Milpitas Planning Department		
TRANS-9: Prior to commencement of construction activities, the developer shall submit a Construction Traffic Control Plan to the City of Milpitas for review and approval. The plan shall identify the timing and routing of all major construction equipment and materials deliveries to avoid potential traffic congestion and delays on the local street network and the McCarthy Ranch Marketplace, and to encourage the use of I-880 and SR-237. If necessary, construction equipment and materials deliveries shall be limited to off-peak hours (e.g.,	Approval of plan	Prior to commencement of construction activities	City of Milpitas Planning Department		

mornings or evenings) to avoid conflicts with local traffic circulation. The plan shall also identify suitable locations for construction worker parking.					
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XI-10-13.07 Manufactured Homes

- A. Purpose and Intent. This Section provides standards and procedures for individual manufactured homes on individual lots in residential zones. These standards are provided to ensure the compatibility of manufactured homes with other surrounding permitted uses, create a safe and desirable living environment for manufactured home residences, and address land use compatibility.
- B. Applicability and Review Requirements. A single manufactured home may be permitted on lots zoned for single-family dwellings where it has been determined the lot and structure are compatible:
 1. In districts where site plan and architectural review is not generally required for single-family dwellings, the site plan and architectural review process shall be utilized to initially determine if a lot and structure is compatible for a manufactured home. Compatibility of a lot and structure shall be determined by such factors as height, bulk and character of other structures in the neighborhood. If a lot and structure is determined to be compatible, site plan and architectural review is limited only to specifying roof overhang, roofing material and siding material based on the following standards.
- C. Development Standards. The following development standards shall be applicable to the establishment of manufactured homes as single-family dwellings in the R1 District:
 1. Manufactured homes and any garages, carports, and other structures attached thereto, must conform to all regulations for single-family dwellings applicable to the zone.
 2. Manufactured homes must be certified under the National Manufactured Housing Construction and Safety Standards Act of 1974.
 3. Manufactured homes must be attached to a permanent engineered perimeter foundation system approved by the ~~Chief Building Official~~[Building Official](#) and pursuant to Section 18551 of the State Health and Safety Code.
 4. Manufactured homes must be covered with stucco and/or wood siding or an exterior material commonly found on new conventionally erected single-family dwellings in the surrounding area.
 5. The roofing material must be wood or composition shingles or other materials commonly found on conventionally erected single-family dwellings in the surrounding area. The roof must have a minimum pitch with respect to roofing material in accordance with the City of Milpitas Building Code.
 6. The roof must have eave and gable overhangs of not less than eighteen (18) inches measured horizontally from the vertical side of the mobile home. The overhang must be constructed with materials commonly found on conventionally erected single-family dwellings in the surrounding area and must be at the same slope and be covered with the same roofing material as the roof itself.
 7. The exterior covering and roofing materials of the garage, carport, or any other structure attached to the manufactured home must be the same as for the manufactured home.

8. As used in this Section, "commonly found" means an architectural feature or construction material that occurs or appears frequently on conventionally erected single-family dwellings within five hundred (500) feet of the boundaries of the lot or parcel on which a manufactured home is proposed.

XI-10-13.14 Emergency Shelters.

- A. Purpose and Intent. The purpose of this Section is to comply with California Government Code Section 65583(a)(4), as may be amended, which requires that emergency shelters be permitted by-right in at least one zone with sufficient capacity to accommodate the local need for emergency shelter.
- B. Applicability. Standards for Emergency Shelters contained in this Section shall apply to all Emergency Shelters where permitted by this Chapter.
- C. Minimum Standards.
 1. A management plan shall be submitted to the City Planning Division for review and approval prior to issuance of an occupancy permit. Management plans shall be resubmitted to City Planning Division on an annual basis for review and approval.
 2. The number of beds for each Emergency Shelter shall be limited to thirty (30).
 3. Parking requirements shall be either one space per three hundred (300) square feet of habitable floor area, or sufficient to serve the parking demand determined in a study prepared by the applicant and approved by the Planning Division.
 4. The size of outdoor waiting areas on private property shall be sufficient to accommodate the expected number of clients without infringing upon the public right-of-way.
 5. Onsite management shall be provided during the hours that the emergency shelter is in operation.
 6. An emergency shelter shall not be located within 300 feet of other emergency shelters.
 7. The length of stay for each individual at any emergency shelter shall not exceed 90 days, unless the management plan approved by City provides for longer residency by those enrolled and regularly participating in a training or rehabilitation program.
 8. Exterior lighting of the property shall be designed to provide a minimum maintained horizontal illumination of at least one foot candle of light on parking surfaces and walkways that serve the facility. Illumination shall not extend across property lines to an adjacent property.
 9. Security shall be provided during the hours that the emergency shelter is in operation. Security plans shall be submitted to City staff for review and approval prior to issuance of an occupancy permit. Security plans shall be resubmitted to City staff on an annual basis for review and approval.
- D. Additional Standards. The Director of Planning may adopt additional written objective minimum standards consistent with California Government Code Section 65583(a)(4)(A), as may be amended. Any such administrative standards adopted by the Director of Planning [and Neighborhood Services](#) shall be published on the Planning Division's website.

XI-10-63.03 Declaration of Public Nuisance

1. General. The use of any land, building or other structure hereafter established or conducted or the present use of any land, building or other structure hereafter extended or enlarged or the erection, construction, moving, conversion, remodeling or alteration of any building or other structure

contrary to the provisions of this Chapter shall be and the same is hereby declared to be a public nuisance, and the Attorney for the City of Milpitas shall, upon order of the City Council, immediately commence action or proceedings for the abatement or removal or enjoinder thereof in the manner provided by law.

2. Signs. Any sign or structure erected, constructed, maintained, marked, posted, pasted, painted, printed, altered or repaired in violation of the provisions of the Chapter or after a permit or variance therefore has been revoked or expired is hereby found and declared to be a public nuisance subject to abatement and lien for recovery of abatement costs.
 - a. Without limitation to the generality of the foregoing, any sign or structure erected, constructed, maintained, marked, posted, pasted, painted, altered or repaired:
 - i. So as to be unsafe and so as to constitute an immediate peril to persons or property; or
 - ii. Upon public property without written permission of the Planning ~~Division~~ Department or City Manager of the City of Milpitas.

XI-500-6.00 Acceptance by Director

The ~~Community Development~~ Planning Director may accept an easement as described in this part on behalf of the City when such an easement is required as a condition of a land use approval, permit or designation pursuant to this Title.

XI-500-7.00 Recordation

The covenant of easement shall be recorded in the county recorder's office. A copy of the recorded document shall be provided to the ~~Community Development~~ Planning Director.

XI-500-11.00 Petition for Release

A petition for release of a covenant of easement may be made by any person whether or not that person has title to the real property, and shall be filed in writing with the ~~Community Development~~ Planning Director on a form furnished by the Director. The form of the petition and the information required to be set forth in them shall be prescribed by the Director. The Director shall not accept any such petition for filing unless:

- A. All information and data is set forth and shown as required by the form;
- B. The petition is verified by the party making the petition; and
- C. The filing fee required by Section XI-500-12.00 has been paid.

XI-500-13.00 Hearing by Planning Commission

- A. Upon filing of such petition, payment of filing fees, and acceptance of such petition as complete by the ~~Planning Community Development~~ Director, said director shall, subject to the rules of the Planning Commission as to the hour and place of public hearings which shall be conducted by it, set a date for the public hearing which shall be held thereon by the Planning Commission. Said date of hearing shall be not less than twenty nor more than sixty days after the date such application was accepted as complete by the Director.
- B. The Director shall provide a report and recommendation to the commission. In addition thereto, the director shall file with the commission at its hearing all papers, documents, and exhibits which are part of the file. Within a reasonable time after the commission has concluded its hearing, it shall, by resolution, set forth its findings and decision on the matter. The Commission may decide to grant the petition, conditionally grant the petition or deny the petition.

XI-500-14.00 Appeal to City Council

Any action taken by the Planning Commission under this part may be appealed to the City Council by filing with the City Clerk a written notice of appeal within twelve (12) calendar days after a copy of the decision of the Planning Commission. The applicant, or any person, may file such a notice of appeal. The notice of appeal shall be filed on a form furnished by the [Community Development Planning](#) Director, and the information and data required to be set forth in such notice shall be as prescribed by the Director.

- A. The Council shall hold at least one public hearing on the matter. The hearing of the council shall be de novo. The City Clerk shall set the date of the first public hearing by the Council, which date shall not be less than ten nor more than sixty days after the date on which the day of the application and the notice of appeal were filed with the City Clerk. Within a reasonable time after the Council has concluded its hearing, it shall, by resolution, set forth its findings and decision on the matter.
- B. The decision of the Council shall be final.

XI-500-17.00 Release to be Recorded

Within fifteen days after the action of the Planning Commission or the City Council in granting a petition for release has become final, the [Community Development Planning](#) Director shall cause the release to be recorded in the office of the recorder for the County of Santa Clara.

Chapters 1 and 2 of Title XII of the Milpitas Municipal Code are hereby amended as follows:

XII-1-3.04 Design and distribution of affordable units

Affordable units shall meet the following requirements:

1. The bedroom mix of the affordable units should be proportionate to the bedroom mix of market rate units, provided that the City may allow a different unit mix to meet other City goals as determined by the City Council.
2. The square footage of the affordable housing units must be reasonably consistent with the market rate units in the development although smaller unit sizes may be allowed by the [Director or Building Safety and Housing City Manager](#) if the developer provides adequate justification and reasons why the provision of small unit sizes would further the City's housing goals and this Chapter.
3. All affordable units shall be reasonably comparable in terms of floor plan and base finish amenities to market rate units in the proposed development.
4. The quality of the exterior design, landscaping, and construction of the affordable units shall be consistent with the other units in the proposed development. When affordable units are built off-site they shall be of equivalent or of higher quality compared with the market rate units.
5. Affordable units shall have the same access to common entrances from the exterior as market rate units.
6. Affordable units shall have the same access to all project amenities and recreational facilities available to market rate units. Off-site projects shall have convenient access to equivalent project amenities and recreational facilities compared to the market rate units.
7. All affordable units shall be reasonably dispersed throughout the project and for residential structures higher than eight stories, the affordable units shall be evenly distributed throughout the bottom 60% of the floors or higher.

XII-1-4.00 Payment of fees in lieu of creation of affordable units

Upon request of the applicant and subject to the requirements of this Section 4 as set forth above, the City Council may permit the applicant to pay a fee in lieu of constructing the affordable units that the applicant would otherwise be required to construct pursuant to this Chapter. In-lieu fees shall also be paid for requirements to construct fractional units of less than 0.5 units as set forth in Section XII-1-3.00. The City shall adopt, by resolution, current affordable housing in-lieu fee levels as well as administrative guidelines necessary for the implementation of this Chapter.

Fees paid in-lieu of constructing affordable units must be paid prior to the issuance of the building permit for the project, and fees shall be deposited into the City's Affordable Housing Fund. The in-lieu fee shall be calculated based on the gross square footage constructed for each new residential use, taking into account any fee credits that would be applicable based on existing building area. While accessory dwelling units are not counted towards either calculating or meeting the 15% on-site affordable housing requirement pursuant to Section XII-1-3.00, any payment of in-lieu fees must be based on the total gross square footage of all dwelling units developed as part of the project, including any accessory dwelling units.

Unless otherwise specified by resolution of the City Council or amendment to this Chapter, every July 1, or the following business day, if applicable, the City will adjust the affordable housing fees for inflation using the Engineering News Record Building Cost Index for San Francisco. If this index ceases to exist, the [Director of Building Safety and Housing City Manager](#) shall substitute another construction cost index, which in his/her judgment is as nearly equivalent to the original index as possible.

XII-1-5.01 Applicability

Any non-residential development, applicable under the definition set forth in Section XII-1-2.05, is subject to payment of a non-residential affordable housing impact fee. The City shall adopt, by resolution, current non-residential affordable housing impact fee levels. Every July 1, or the following business day, if applicable, the City will adjust affordable housing fees for inflation annually using the Engineering News Record Building Cost Index for San Francisco. If this index ceases to exist, the [Director of Building Safety and Housing City Manager](#) shall substitute another construction cost index, which in his/her judgment is as nearly equivalent to the original index as possible.

The applicant shall pay the non-residential impact fees prior to issuance of the building permit. Applicable fees will be determined at time of payment. All payment of fees made to the City under this Chapter shall be deposited into the City Affordable Housing Fund.

XII-2-2.04

"Director" means the [City's Director of Building and Housing, who is the](#) person designated by the City Manager to direct and manage the rent review program. Any duty required of the director may be delegated to a third party by the director and any service required to be performed by the director may be provided by a designated service provider as authorized by the director.

XII-2-4.01

The notice of availability of rent review shall be provided in English and the most commonly used languages within the City as determined by the director based upon the American Community Survey, the most recent census or other reputable source data and shall read as follows:

NOTICE:

Under California Civil Code Section 827(b), a Landlord must provide a Tenant with 30 days' notice prior to a rent increase of 10 percent (10%) or less and 60 days' notice of a rent increase greater than 10 percent (10%). In addition, Chapter 2 of Title XII of the Milpitas Municipal Code requires that a

Landlord must at the same time provide and serve this written notice of the City's Rent Review Program. This program provides a procedure for Landlords and Tenants to meet to discuss issues related to rent increases. Information about this program and a copy of Chapter 2 of Title XII are available on the City's website at www.ci.milpitas.ca.gov, at City Hall located at 455 E, Calaveras Blvd. in Milpitas, California, the Milpitas Public Library located at 160 N, Main St. in Milpitas, California, and other locations designated by the [City's Director of Building Safety](#) [City Manager and Housing](#). Copies are also available in English and the most commonly used languages within the City as determined by the [Director of Building Safety and Housing](#) [City Manager](#).

You are encouraged to contact the owner or manager of your rental unit whose name is _____ (landlord to insert the name of the Responsible Party) at _____ (landlord to insert email address and telephone number) to discuss this rent increase for your rental unit.

In addition if you have received notice of a rent increase of more than five percent (5%) in the last 12 months, you are also entitled to review by the City's Rent Review Board. To initiate the rent review process, you must request rent review by contacting the [Department of Building Safety and Housing](#) [City Manager](#) (landlords will be advised of the name and contact information for the service provider designated by the director that is to be inserted in this notice) within 15 days of the date of the notice of rent increase. Your Landlord will be notified of your request and you will be contacted by a housing professional to discuss the rent increase. Please note that petitioning for rent review does not guarantee a reduction in the rent increase.

At the hearing, the Rent Review Board will make a decision concerning the rent increase. You and your Landlord may agree to accept the Board's decision, The Rent Review Board's decision as to the rent increase is non-binding on you and your Landlord.

Under California Civil Code Section 1942.5 and Chapter 2 of Title XII of the City's Municipal Code, it is illegal for a Landlord to retaliate against a Tenant for lawfully exercising his or her legal rights.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City Council finds and determines that the adoption of this ordinance is not a project and is not subject to CEQA review because it does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change, particularly in that it does not alter the use of land or does a most does not do so inconsistently with uses already authorized, prohibited, or regulated by law. (Cal. Code Regs., tit. 14, § 15378.) This ordinance also is not a project because it amounts to general policy and procedure making that does not relate to the enactment or amendment of zoning ordinances or the other activities identified as potential “projects.” (Cal. Code Regs., tit. 14, § 15378(b)(2).) Furthermore, even if considered a project, this amending ordinance is categorically exempt from CEQA review in that it comprises of non-land use regulations or at most minor alterations in land use limitations that do not result in any changes in land use or density (Cal. Code Regs., tit. 14, § 15305, 15378(a)(1)) and by common sense can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment particularly in consideration of the activities already permitted, prohibited, or regulated by law (Cal. Code Regs., tit. 14, § 15061(b)(3)). This amending ordinance is also exempt because it does not affect development density established by existing zoning and the City’s General Plan, for which an Environmental Impact Report was already certified, and does not have any project-specific significant environmental effects peculiar to the project or any site. (Cal. Code Regs., tit. 14, § 15183.)

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.