

PLEASE NOTE:

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REGULAR

NUMBER: 301

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING VARIOUS SECTIONS OF TITLES I, II, IV, V, VI, XI AND XII OF THE MILPITAS MUNICIPAL CODE TO MAKE CORRECTIONS, CLARIFICATIONS, MINOR UPDATES AND MODIFICATIONS

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:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas has a Municipal Code that details the laws and regulations of the City; and

WHEREAS, as part of maintaining the Municipal Code, City staff routinely review the Municipal Code for any errors, incorrect job titles, and other minor clean-up items; and

WHEREAS, City staff has identified various minor clean-up items and requests that the Council take action to correct these issues through the adoption of this ordinance.

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. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION I-2-1.03 “Definitions”

Title I, Chapter 2, Section I-2-1.03 “Definitions” at definition number 5, “CONTRACT,” of the Milpitas Municipal Code is hereby amended to read as follows:

5. CONTRACT. All types of City contracts or agreements, with the exception of public works contracts which shall be governed by I-2-3.20, for the procurement of supplies and services or the disposal of surplus supplies.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION I-2-3.02 “Purchases Over Five Thousand Dollars (\$5,000) and Less Than Twenty Thousand Dollars (\$20,000)” AT SUBSECTION (d)

Title I, Chapter 2, Subsection I-2-3.02(d), of the Milpitas Municipal Code is hereby amended to read as follows:

(d) The Purchasing Agent is authorized to award a contract for less than Twenty Thousand Dollars (\$20,000) ~~or less~~ to the lowest responsive and responsible bidder.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION I-2-3.20-6 “Award of Contracts”

Title I, Chapter 2, Section I-2-3.20-6 of the Milpitas Municipal Code is hereby amended to read as follows:

3.20-6 Award of Contracts. The City Manager is authorized to award contracts for public projects ~~of forty five thousand dollars or less~~ consistent with the contract authority under I-4-2.00.

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION I-4-2 “Contract Authority of City Manager” AT SUBSECTION I-4-2.01

Title I, Chapter 4, Subsection I-4-2.01, of the Milpitas Municipal Code is hereby amended to read as follows:

I-4-2.01 -

The City Manager is authorized to enter into and execute for and on behalf of the City of Milpitas, without the prior approval of the City Council, any Contract, for which:

- a. Funds have been appropriated, if funding is needed; and
- b. There is an unexpended and unencumbered balance of such appropriation sufficient to pay the contract expense, if there is an expense associated with the contract; ~~and~~

- c. The total cumulative monetary value of the contract, including amendments, does not exceed \$100,000.00, or is a zero dollar contract; and
- d. The City Attorney and Risk Manager/Finance Director have signed off and approved.

The contract authority of the City Manager in this Section does not include the authority to execute any contracts within the authority of the City Attorney.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION II-1-9 “Establishment of the Department” AT SUBSECTION II-1-9.01

Title II, Chapter 1, Subsection II-1-9.01 of the Milpitas Municipal Code is hereby amended to read as follows:

II-1-9.01

There is hereby established in the City of Milpitas the "Building and ~~Housing~~Safety Department" which shall be under the jurisdiction of the City Manager.

SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION II-1-12.03 “Posting Notice of Hazardous Building”

Title II, Chapter 1, Section II-1-12.03 of the Milpitas Municipal Code is hereby amended to read as follows:

II-1-12.03 - Posting Notice of Hazardous Building

Every building which the Chief 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: Building and ~~Housing~~Safety 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 Chief 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.

SECTION 8. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION II-2-11.01 “Permit Required” AT SUBSECTION II-2-11.01-2

Title II, Chapter 2, Subsection II-2-11.01-2 of the Milpitas Municipal Code is hereby amended to read as follows:

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 Building and ~~Housing~~Safety 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.

SECTION 9. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION II-13-4 “Permits Required” AT SUBSECTION II-13-4.01, AND SECTION II-13-7 “Grading Permit Requirements” AT SUBSECTION II-13-7.01 “Permits Required”

Title II, Chapter 13, Subsections II-13-4.01 and II-13-7.01 of the Milpitas Municipal Code are hereby amended to read as follows:

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 Building and Housing Safety 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.

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 Building and Housing Safety Department. A separate permit shall be required for each site, and may cover both excavations and fills.

SECTION 10. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION II-13-14 “Fills” AT SUBSECTION II-13-14.05 “Compaction”

Title II, Chapter 13, Subsection II-13-14.05 of the Milpitas Municipal Code is hereby amended to read as follows:

.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 Safety Housing Department.

SECTION 11. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION II-13-17 “Lot Improvement, Paving of Driveways, Parking Lots” AT SUBSECTION II-13-17.03

Title II, Chapter 13, Subsection II-13-17.03 of the Milpitas Municipal Code is hereby amended to read as follows:

.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 Building and Housing Safety 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.

SECTION 12. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION II-13-18 “Paving Standards” AT SUBSECTION II-13-18.05(h)

Title II, Chapter 13, Subsection II-13-18.05(h) of the Milpitas Municipal Code is hereby amended to read as follows:

h. Approval. Approval of the mix shall be by the Building and Safety who may determine accuracy by making tests, to be paid for by the contractor. Batch tickets to be provided the Building and Housing Safety Department upon request with each load.

SECTION 13. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION II-13-28 “Slope Surface Stabilization” AT SUBSECTION II-13-28.03

Title II, Chapter 13, Subsection II-13-28.03 of the Milpitas Municipal Code is hereby amended to read as follows:

.03 Clearing shall be kept to the minimum needed, as determined by the Building and Safety Housing Department.

SECTION 14. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION II-15.4.01 “Enforcement”

Title II, Chapter 15, Section II-15.4.01 of the Milpitas Municipal Code is hereby amended to read as follows:

II-15.4.01 – Enforcement

Any person who plans to install a wood burning device must submit documentation to the Building and ~~Housing~~Safety 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.

SECTION 15. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTIONS II-160-2.20 “Delegation of Authority,” II-160-3.00 “Statement of Qualifications,” AND II-160-4.40 “Inspection Capability”

Title II, Chapter 160, Sections II-160-2.20, II-160-3.00 and II-160-4.40 of the Milpitas Municipal Code are hereby amended to read as follows:

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's Building and ~~Housing~~Safety Department.

II-160-3.00 - Statement of Qualifications

In discharging its delegated responsibilities, the City's Building and ~~Housing~~Safety 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 and ~~Housing~~Safety 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 have years of Code Enforcement experience.

SECTION 16. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTIONS II-170-3.00 “Automatic Gas Shut-off Devices,” II-170-3.01 “List of Approved Devices,” AND II-170-4.00 “Enforcement”

Title II, Chapter 170, Sections II-170-3.00, II-170-3.01 and II-170-4.00, of the Milpitas Municipal Code are hereby amended to read as follows:

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 Building and ~~Housing~~Safety Division 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 Building and ~~Housing~~Safety 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 and ~~Housing~~Safety Department shall administer and enforce the provisions of this ordinance.

SECTION 17. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION IV-3-4.00 “Schedule of Fees and Service Charges”

Title IV, Chapter 3, Section IV-3-4.00, of the Milpitas Municipal Code is hereby amended to remove the table in its entirety and to read as follows:

IV-3-4.00 - Schedule of Fees and Service Charges

The City Manager and department heads will ~~from time to time~~ review the fees and service charges listed in the ~~Council Resolution No. 5762, Master Fee Schedule~~ and calculate and propose adjustments to said fees and charges necessary to assure recovery of the specified percentages of "costs reasonably borne" on an annual basis, as part of the budget process provided in the schedule hereto, taking into full consideration the in-kind services and improvements made by each recipient program. The City Council will determine, at a public hearing, whether such proposed adjustment should be implemented. The cost recovery percentages are included in the Master Fee Schedule, which will be updated annually.

Service-Center	Description-Service Center	Percentage of "Costs Reasonably Borne" to be Recovered
S-001	Planning inquiry/research fee	100
S-002	Floodplain letter	100

S-003	Zoning letter	100
S-004	Zoning code interpretation	50
S-005	Appeal of staff interpretation	0
S-005A	Appeal of planning commission decision	100
S-006	Zoning code text amendment	100
S-006A	Zone change	100
S-007	Preliminary plan review	100
S-008	Development agreement	100
S-009	Development agreement amendment	100
S-010	Basic development services	100
S-010A	General plan amendment	100
S-010B	Planned unit development	100
S-010C	S-Zone applications	100
S-010D	Planned signage program	100
S-010E	Amendments/modifications to previous approvals	100
S-010F	Tentative map	100
S-010G	Parcel map	100
S-010H	Newspaper advertisement	100
S-011	Planning time extension	100
S-012	General plan maintenance	100
S-013	Building plan check	100
S-013A	After hours plan check	100
S-013B	Plan check revisions	100
S-014	After hours plan check and inspection	100

S-015	Temporary building permit	100
S-015A	Temporary building permit inspection (courtesy)	100
S-016	Building inspection	100
S-016A	Building inspection—miscellaneous services	100
S-016B	State strong motion fees	100
S-016C	Mobile home unit inspection	80
S-016D	Mobile home park common area inspection	0
S-017	Grading inspection	100
S-018	Fire construction inspection	100
S-019	Building time extension	100
S-020	Building reinspection	100
S-021	Certificate of occupancy	100
S-022	Mechanical inspection	100
S-023	Plumbing inspection	100
S-024	Electrical inspection	100
S-025	Reroofing plan check and inspection	Single Family—100
		Multi-Family—100
		Commercial Industrial—100
S-026	Pool and spa plan check and inspections	100
S-027	Demolition plan check and inspection	100
S-028	Building resale inspection	100
S-029	Christmas tree lot permit	100
S-030	Environment categorical exemption	0

S-031	Environmental initial study and negative declaration	100
S-031A	Environmental impact report	100
S-031B	California fish and game fee	100
S-032	Variance	50—100
S-032A	Use permits	100
S-032B	Use permits	50—100
S-033	City council appeal	0—100
S-034	Lot line/merger adjustment	100
S-035	Encroachment permit processing	100
S-036	Street/alley easement/vacation	100
S-037	Street name change	100
S-038	Street address change	100
S-039	Municipal code enforcement	0
S-039A	Message technician ordinance enforcement	100
S-040	Special use permit	0—100
S-041	Overwide/overweight load review	0
S-042	Concealed weapon permit review	0
S-043	Parking enforcement	100
S-044	Second response call back	100
S-045	Police false alarm response	75
S-046	Crossing guard services	0
S-047	Private security—school district	100
S-048	Parking permit (high school)	0
S-049	Private property abandoned vehicle	100

	abatement	
S-050	Public property abandoned vehicle abatement	100
S-051	Impound release	100
S-052	DUI arrest/report	100
S-053	DUI accident investigation	100
S-054	Booking fees	100
S-055	Fingerprinting service	100
S-056	Police photograph reproduction	100
S-057	Vehicle cite correction sign-off	0
S-058	V.I.N. verification	0
S-059	Bicycle licensing	0
S-060	Fire false alarm response	75
S-061	Hazardous spill response	100
S-062	Non-Milpitas fire response	100
S-063	Annual engine co. inspection	0
S-064	Fire second reinspection	100
S-065	Annual fire code inspection	100
S-065A	Non-point source discharge inspection	100
S-066	Annual building and life safety inspection	100
S-067	Animal control	25
S-068	Fitness passes	75% of actual cost balanced by market factors
S-069	Adult sports program	75% of actual cost balanced by market factors
S-070	Youth sports program	50% of actual cost balanced by market factors
S-071	Private group ball field usage	50% of actual cost balanced by market factors

S-072	Adult recreation classes	75% of actual cost balanced by market factors
S-073	Youth recreation classes	50% of actual cost balanced by market factors
S-074	City-wide events	0%
S-075	Preschool program	50% of actual cost balanced by market factors
S-076	After school/latchkey program	50% of actual cost balanced by market factors
S-077	Summer day camp	50% of actual cost balanced by market factors
S-078	Winter/Spring vacation day camp	50% of actual cost balanced by market factors
S-079	Teen programs	50% of actual cost balanced by market factors
S-080	Recreational swimming	50% of actual cost balanced by market factors
S-081	Swimming lessons	50% of actual cost balanced by market factors
S-082	Swim team support	50% of actual cost balanced by market factors
S-083	Theatre program	50% of actual cost balanced by market factors
S-083A	Theatre tickets	50% of actual cost balanced by market factors
S-084	Senior citizen programs	25% of actual cost balanced by market factors
S-085	Library services	No modifications to agreements recommended
S-086	Water service	100
S-087	Water delinquent turn-off/on	100
S-088	After hours turn-on	100
S-089	Water meter testing	100
S-090	Water meter installation	100
S-090A	Meter acquisition fee	100
S-091	Water line repair	100
S-092	Private backflow device monitoring	100
S-093	Sewer service	100
S-094	Underground utilities locator service	100

S-095	Storm drainage	0
S-096	Street sweeping	100
S-097	Residential refuse service	100
S-098	Commercial refuse street usage	100
S-099	General utility street usage	100
S-100	Median maintenance	0
S-101	Park maintenance	0
S-102	Street tree maintenance	0
S-103	Street lighting	0
S-104	Tree removal review	0
S-105	Facility rental	0—100
S-106	Picnic rental	100
S-107	Fire training facility rental	100
S-108	Mobile home rent control	0
S-110	New/Moved business processing	100
S-111	New home occupation review	50
S-112	Business tax renewal processing	100
S-113	Returned check processing	100
S-114	Property damage invoice processing	100
S-115	Bond payoff calculation	100
S-116	Records subpoena	Per Evidence Code
S-117	Records research	100
S-118	Sales of printed/copied materials	0—100

SECTION 18. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION V-210-13.01 “Remedies Not Exclusive”

Title V, Chapter 210, Section V-210-13.01, of the Milpitas Municipal Code is hereby amended to read as follows:

V-210-13.01 - Remedies Not Exclusive

This Section provides for issuance of a notice of violation and/or an administrative hearing process which is in addition to any and all legal remedies, administrative, criminal or civil, which may be pursued by the City to address any violation of this Chapter, which may include use of the Administrative Citation provisions in Title I.

SECTION 19. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION VI-3-1.00 “Establishment of Departments of City”

Title VI, Chapter 3, Section VI-3-1.00 of the Milpitas Municipal Code is 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 ~~Services~~ Technology;
- F. Planning ~~and Neighborhood Services~~;
- G. Public Works;
- H. Engineering;
- I. Police;
- J. Fire;
- K. Building and ~~Safety~~ Housing; and
- L. Recreation and Community Services.

SECTION 20. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION VI-3-4.00 “Severance Payments for Specified ‘At-Will’ Positions” AT SUBSECTION (1) “Application”

Title VI, Chapter 3, Subsection VI-3-4.00(1), of the Milpitas Municipal Code is hereby amended to read as follows:

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; and~~ City Engineer; Deputy City Manager; and Assistant City Manager (hereafter "qualifying positions").

SECTION 21. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTIONS VI-101-3.00 “Competitive Service” AND VI-101-3.01 “Positions Exempt from Competitive Service”

Title VI, Chapter 101, Sections VI-101-3.00 and VI-101-3.01, of the Milpitas Municipal Code are hereby amended to read as follows:

VI-101-3.00 - Competitive Service

The provisions of this Chapter shall apply to all offices, positions, and employments in the service of the City, except the following "exempt" and/or “at-will” positions.

VI-101-3.01 - Positions Exempt from Competitive Service

- 3.01-1 All elected officials.
- 3.01-2 Members of appointive boards, commissions and committees.

- 3.01-3 Persons engaged under contract to supply expert, professional or technical services for a definite period of time.
- 3.01-4 Volunteer personnel, such as volunteer firemen, who receive no regular compensation from the City.
- 3.01-5 The City Attorney, the City Clerk, and City Treasurer.
- 3.01-6 The City Manager, ~~and Assistant City Manager~~, Deputy City Manager and Public Information Officer.
- 3.01-7 Department Heads, Directors, Division Heads and other employees with significant responsibility for formulating and administering City policies and programs.

SECTION 22. AMENDMENT OF MILPITAS MUNICIPAL CODE TABLE XI-10-11.07-6 “Milpitas Commercial Specific Plan Environmental Performance Standards”

Title XI, Chapter 10, Table XI-10-11.07-6 of the Milpitas Municipal Code is hereby amended to read as follows:

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 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.	Approval of plans	Prior to issuance of building permits	City of Milpitas Planning and Neighborhood Services Department		
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 and Neighborhood Services Department and Public Works Department		
AES-1c: Prior to issuance of the final certificate of occupancy, the developer	Site inspection	Prior to issuance of the	City of Milpitas		

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 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.		final certificate of occupancy	Planning and Neighborhood Services Department		
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 and Neighborhood Services Department		
2. Air Quality					
AIR-3: The following measures shall be implemented during all construction activities:	Site inspection	During construction activities	City of Milpitas Building and Safety Housing Department		
<ul style="list-style-type: none"> 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. 					
<ul style="list-style-type: none"> Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard. 					
<ul style="list-style-type: none"> 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. 					
<ul style="list-style-type: none"> Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites. 					
<ul style="list-style-type: none"> Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets. 					

<ul style="list-style-type: none"> • All vehicle speeds on unpaved roads shall be limited to 15 miles per hour. 					
<ul style="list-style-type: none"> • 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. 					
<ul style="list-style-type: none"> • 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. 					
<ul style="list-style-type: none"> • 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. 					
<ul style="list-style-type: none"> • 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 and Neighborhood Services 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	Site inspection	Prior to issuance of the final certificate of occupancy	City of Milpitas Planning and Neighborhood Services Department		

more than 5 minutes.					
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 and Neighborhood Services Department and Building and Safety Housing Department		
<ul style="list-style-type: none"> • 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. 					
<ul style="list-style-type: none"> • 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. 					
<ul style="list-style-type: none"> • 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 and Neighborhood Services Department		
<ul style="list-style-type: none"> • 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. 					
<ul style="list-style-type: none"> • 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.					
<ul style="list-style-type: none">• 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 and Neighborhood Services Department		
<ul style="list-style-type: none">• At least 15 percent of the construction vehicles/equipment shall be fueled by an alternative source such as biodiesel and/or electric.					
<ul style="list-style-type: none">• At least 10 percent of all building materials shall be local (within 100 miles); and					
<ul style="list-style-type: none">• 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 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	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 and Neighborhood Services Department		

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 Building and Safety 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 Building and Safety 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 Building and Safety 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 Building and Safety Housing Department		
5. Hydrology and Water Quality					

<p>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 limited to, the following elements:</p>	Approval of plan	Prior to the issuance of grading permits	City of Milpitas Planning and Neighborhood Services Department and Engineering Department		
<ul style="list-style-type: none"> • Temporary erosion control measures shall be employed for disturbed areas. 					
<ul style="list-style-type: none"> • No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months. 					
<ul style="list-style-type: none"> • Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures. 					
<ul style="list-style-type: none"> • 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. 					
<ul style="list-style-type: none"> • 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. 					
<ul style="list-style-type: none"> • 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. 					
<p>HYD-2: Prior to the issuance of building</p>	Approval of	Prior to the	City of		

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:	plan	issuance of building permits	Milpitas Planning and Neighborhood Services Department and Engineering 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					

<p>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:</p>	Approval of plans	Prior to issuance of the final certificate of occupancy	City of Milpitas Planning and Neighborhood Services Department, Building and Safety Housing Department and Engineering Department		
<ul style="list-style-type: none"> • Low-flow or ultra-low-flow toilets and urinals 					
<ul style="list-style-type: none"> • Sensor-activated faucets in restrooms 					
<p>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.</p>	Submittal of documentation	Prior to issuance of building permits	City of Milpitas Planning and Neighborhood Services Department		
<p>PSU-6b: Prior to building permit issuance, the developer shall show onsite 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.</p>	Approval of plans; Site inspection	Prior to issuance of building permits	City of Milpitas Planning and Neighborhood Services Department		
7. Transportation					
<p>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</p>	Receipt of fees	Prior to the issuance of building permits	City of Milpitas Planning and Neighborhood Services Department		

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.					
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 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.	Receipt of fees	Prior to the issuance of final certificate of occupancy	City of Milpitas Planning and Neighborhood Services Department		
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 and Neighborhood Services Department		
<ul style="list-style-type: none"> • McCarthy Boulevard/Technology Drive: The eastbound approach shall be re-stripped to provide two left-turn lanes and one shared through/right lane. 					
<ul style="list-style-type: none"> • 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. 					
<ul style="list-style-type: none"> • 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	Approval of plan	Prior to issuance of	City of Milpitas		

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.	(Note: Project plans submitted comply with the City's off-street parking requirements)	building permits	Planning and Neighborhood Services 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 and Neighborhood Services 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., mornings or evenings) to avoid conflicts with local traffic circulation. The plan shall also identify suitable locations for construction worker parking.	Approval of plan	Prior to commencement of construction activities	City of Milpitas Planning and Neighborhood Services Department		

SECTION 23. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION XI-10-13.14 “Emergency Shelters” AT SUBSECTION D “Additional Standards”

Title XI, Chapter 10, Subsection XI-10-13.14(D) of the Milpitas Municipal Code is hereby amended to read as follows:

D. Additional Standards. The Director of Planning and ~~Neighborhood Services~~ 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.

SECTION 24. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTIONS XII-1-4.00 “Payment of Fees in Lieu of Creation of Affordable Units,” XII-1-4.03 “Credit Transfers,” XII-1-4.03 “Transfer of Square Foot Equivalent,” XII-1-4.04 Waiver of Requirements AND XII-1-5.01 “Applicability”

Title XII, Chapter 1, Sections 4.00, 4.03, a second Section 4.03, 4.04, and 5.01 of the Milpitas Municipal Code are hereby amended to read as follows:

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

Upon request of the applicant, 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. The City shall adopt, by resolution, current affordable housing impact fee levels as well as administrative guidelines necessary for the implementation of this Chapter. To the extent State law may require, applicants for development of rental units will not require the approval of City Council for the payment of in-lieu fees, but shall otherwise be subject to all requirements herein.

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 New Record McGraw-Hill Construction Weekly Building Cost Index for San Francisco. If this index ceases to exist, the Director of ~~Planning and Neighborhood Services~~Building and Housing shall substitute another construction cost index, which in his/her judgement is as nearly equivalent to the original index as possible.

The applicant shall pay any in-lieu fees authorized pursuant to this Chapter prior to issuance of the building permit. Applicable fees will be determined at time of payment. All payment of in-lieu fees and other penalties and payments made to the City under this Chapter shall be deposited into the Affordable Housing Ordinance Fund.

XII-1-4.03 - Credit transfers

An applicant may fully or partially satisfy the requirements of XII-1-3.00 through the use of transfer credits created pursuant to XII-1-7.00. Credit certificates shall be presented to the Director of ~~Planning and Neighborhood Services~~Building and Housing, who shall note at the time of project approval the credit certificate by number. Credit certificates may only be used to satisfy the requirements for inclusionary units for the income category (i.e., very low, low, or moderate) and number of bedrooms for which they are issued.

XII-1-4.043 - Transfer of square foot equivalent

The applicant may choose to provide more units in an overall development; however the gross square footage of the proposed affordable units cannot be less than the square footage of the required affordable units.

XII-1-4.054 - Waiver of requirements

As part of the development application, the applicant may request and the City Council, at its discretion, may waive, wholly or partially, the requirements of this Chapter and approve alternate methods of compliance with this Chapter if the applicant demonstrates, and the City Council finds, either (1) that such alternate methods meet the purposes of this Chapter; or (2) that there is no reasonable relationship between the impact of the proposed development and the contested requirement or that applying the requirements of this Chapter would take property in violation of the United States Constitution or California Constitution or would result in any other unconstitutional result.

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 New Record McGraw-Hill Construction Weekly Building Cost Index for San Francisco. If this index ceases to exist, the Director of ~~Planning and Neighborhood Services~~Building and Housing shall substitute another construction cost index, which in his/her judgement 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 Ordinance Fund.

SECTION 25. AMENDMENT OF MILPITAS MUNICIPAL CODE SECTION XII-1-8.00 “Incentives to Encourage On-Site Construction of Affordable Units” AT SUBSECTION (A) “Planning Waivers”

Title XII, Chapter 1, Subsection XII-1-8.00(A), of the Milpitas Municipal Code is hereby amended to read as follows:

Section 8 - Incentives to Encourage On-Site Construction of Affordable Units

XII-1-8.00

Applicants shall receive incentives as specified in this Section 8 to encourage the on-site construction of affordable units. If an applicant provides affordable units in excess of 20 percent of the total number of units in the project the City will provide the following incentives to include:

- A. Planning Waivers. In addition to waivers, incentives and/or concessions that may be provided pursuant to density bonus law as outlined in Section XI-10-54.15 in the Milpitas Municipal Code if the applicant provides affordable units in excess of 20 percent of the total number of units in the development, the Director of Planning ~~and Neighborhood Services~~ shall grant up to two of the waivers listed below in this Section that help increase the feasibility of the construction of affordable units. The applicant will receive an additional two waivers from the list below for every additional five percent of affordable units provided above the 20 percent. The applicant may choose from the following waivers:

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

SECTION 26. 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 27. 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.