

**REGULAR**

**NUMBER:** 309

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING VARIOUS SECTIONS OF TITLES I, IV, V, VIII, X, AND XI OF THE MILPITAS MUNICIPAL CODE TO MAKE CORRECTIONS, CLARIFICATIONS, UPDATES AND MODIFICATIONS

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of January 2, 2021, upon motion by Vice Mayor Montano, and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

\_\_\_\_\_  
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**, City staff has identified various sections of the Municipal Code requiring corrections, clarifications, updates and modifications and requests that the City 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 TITLE I, CHAPTER 2, SECTION 3  
“Procurement Authority - Methods and Procedures”**

Title I (Administration), Chapter 2 (Purchasing), Section 3 (Procurement Authority - Methods and Procedures), Subsection I-2-3.12 (Contracting for Consultants) of the Milpitas Municipal Code is hereby amended to read as follows:

**I-2-3.13 - Contracting for Consultants**

3.13-1 Consultants are required for professional or technical expertise and for matters requiring specialized abilities or a high degree of skill. Their numbers (in relation to a particular skill or expertise required) are comparatively limited. Where consultants are involved, the bidding process is not likely to result in a lower price to the City or eliminate unnecessary expense or delay. However, the request for proposals (RFP) process established in Section I-2-3.09, the request for qualifications (RFQa) process established in Section I-2-3.10, or a similar process based on evaluating consultant qualifications, is better suited.

3.13-2 The requesting department shall be empowered to engage a consultant (including, but not limited to, material testing services and construction inspection services) without the necessity of competitive procurement or notice thereof:

- a. Without City Council approval if the consultant’s total fee for materials and services under the contract by which the consultant is engaged does not exceed \$100,000.00.
- b. With City Council approval if the consultant’s total fee for materials and services under the contract by which the consultant is engaged exceeds \$100,000.00.

3.13-3 Architects, Engineers and Land Surveyors. In addition to the provisions of paragraph 3.13-1 and 3.13-2 of this section, the following requirements shall be applicable to the selection of architects, engineers and land surveyors.

- (a) The requesting department or division head shall negotiate a contract with the firm that possesses the demonstrated competence and professional qualifications for the required architectural, engineering and land-surveying services.
- (b) Should the requesting department or division head be unable to negotiate a satisfactory contract with the firm considered to be competent and qualified, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The requesting department or division head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the requesting department or division head shall formally terminate negotiations. The requesting department or division head shall then undertake negotiations with the third most qualified firm.

- (c) Should the requesting department or division head be unable to negotiate a satisfactory contract with any of the selected firms, the requesting department or division head shall select additional firms in order of their competence and qualifications and continue negotiation until an agreement is reached.

**SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 4, SECTION 3  
“Contract Amendment Authority”**

Title I (Administration), Chapter 4 (Contract Authority), Section 3 (Contract Amendment Authority), Subsection I-4-3.01 of the Milpitas Municipal Code is hereby amended to read as follows:

**I-4-3.01 -**

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 amendment or change order to a Contract that was executed pursuant to their respective authority under this Chapter within the following guidelines:

- a. To extend the term of the Contract for a period not to exceed twelve (12) consecutive months from the last Council-approved expiration date;
- b. To make minor revisions to the scope of services or schedule; or
- c. To make clerical corrections.

**SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I, CHAPTER 5 “Settlement Authority”**

Title I (Administration), Chapter 5 (Settlement Authority), Section 1 (Settlement Authority of City Attorney) of the Milpitas Municipal Code is hereby amended to read as follows:

**I-5-1.01 -**

The City Attorney is authorized to compromise and settle claims and actions for damages against the City, and/or against its officers and employees for conduct within the course and scope of their employment with the City where:

- a. The amount to be paid by the City does not exceed \$10,000.00.
- b. The amount to be paid by the City does not exceed \$50,000.00 if the City Manager also concurs with the compromise or settlement.
- c. The City Attorney is authorized to enter into agreements on behalf of the City and its officers and employees as necessary to effectuate any authorized compromise and settlement.
- d. The City Attorney shall report annually to the City Council the claims or actions against the City settled for an amount greater than \$10,000.00.

Title I (Administration), Chapter 5 (Settlement Authority), Section 2 (Settlement Authority of the Risk Manager) of the Milpitas Municipal Code is hereby amended to read as follows:

**I-5-2.01 -**

- a. The Risk Manager is authorized to compromise and settle any claims against the City for damages or claims for other money owed to the City where the amount to be paid does not exceed \$20,000.00, provided the Risk Manager deems the compromise and settlement to be in the City’s best interest. For purposes of any compromise and settlement pursuant to this provision, the Risk Manager is authorized to enter into any agreement for or on behalf of the City necessary to effectuate the compromise and settlement. To the extent the full amount owing to the City on any claim is not collected due to a compromise and settlement pursuant to this provision, the uncollected amount shall be deemed written off as uncollectible.

- b. The Risk Manager shall report annually to the City Council the claims or actions against the City settled pursuant to this Section I-5-2.01.

**SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE IV, CHAPTER 1, SECTION 2 “Care of Funds”**

Title IV (Financial), Chapter 1 (General Provisions), Section 2 (Care of Funds), Subsection IV-1-2.02 (Demands or Claims Against the City) of the Milpitas Municipal Code is hereby amended to read as follows:

**IV-1-2.02 - Demands or Claims Against the City**

A. All demands or claims against the City for money, damages or refunds which are excepted by Section 905 of the Government Code and which are not governed by other statutes or ordinances expressly relating thereto shall:

- (a) Be in writing;
- (b) Contain the name and post office address of the claimant;
- (c) Be verified by the person who claims to be entitled to be paid the money or damages or who has paid the money sought to be refunded or by his or her guardian, conservator, or the executor or administrator of his or her will or estate;
- (d) Contain the date, description and amount of each item, or if the demand or claim is other than contractual, state the date, place and circumstance of the occurrence or transaction giving rise to the demand or claim and a general description of the indebtedness, obligation or injury so far as it may be known;
- (e) State the total amount of the demand or claim, together with the basis for computation of the amount claimed;
- (f) Be presented to the City not later than one year after the accrual of the cause of action

B. Pursuant to Government Code Section 935.4, the City Council delegates authority to the City’s Risk Manager or his or her designee to perform all the functions of the City Council in the receipt, review, allowance, compromise or settlement of all claims against the City that fall under Division 3.6 of Title 1 of the Government Code or this Subsection IV-1-2.02, provided that no allowance, compromise or settlement shall exceed the Risk Manager’s settlement authority as pursuant to Milpitas Municipal Code Section I-5-2.01.

Title IV (Financial), Chapter 1 (General Provisions), Section 2 (Care of Funds), Subsection IV-1-2.03 (Action by City Council) of the Milpitas Municipal Code is hereby amended to read as follows:

**IV-1-2.03 - Time for Action by City**

Pursuant to Government Code Section 912.4, the City Council or Risk Manager or his or her designee shall act on a claim within 45 days after the claim has been presented. By mutual agreement of the claimant and the City Council, or Risk Manager or his or her designee, such 45-day period may be extended by written agreement. If the claim is not acted on within 45 days, it shall be deemed to have been rejected on the forty-fifth day unless such time period has been extended, in which case it shall be denied on the last day of the period specified in the extension agreement.

Title IV (Financial), Chapter 1 (General Provisions), Section 2 (Care of Funds), Subsection IV-1-2.04 (Prerequisite to Suit) of the Milpitas Municipal Code is hereby amended to read as follows:

**IV-1-2.04 - Prerequisite to Suit**

No suit may be brought against the City on any cause of action for which a demand or claim must be filed until said written demand or claim has been presented as required by this Chapter to the City and has been acted upon by the City or has been deemed to have been rejected. Any action brought against the City on said demand or claim shall be subject

to the provisions of Sections 945.6 and 946 of the Government Code. Only the person who filed the claim may bring such a suit and if another person should do so, judgment shall not be rendered for the plaintiff.

**SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE V, CHAPTER 100, SECTION 10  
“Stopping, Standing and Parking”**

Title V (Public Health, Safety and Welfare), Chapter 100 (Traffic), Section 10 (Stopping, Standing and Parking), Subsection 10.15-2 of the Milpitas Municipal Code, is hereby amended to read as follows:

**10.15-2** When signs authorized by the provisions of this Subsection are in place, giving notice thereof, no person shall park or stand any vehicle contrary to the directions or provisions of such signs, and any vehicle parked in violation of such signs may be towed to a public storage garage at the expense of the owner of such vehicle; or the Police Department may, and it is granted authority to, issue a citation in the usual form and manner for any violation of the prohibition, limitation or restriction indicated by such signs or for any violation of the provisions of this Subsection.

Title V (Public Health, Safety and Welfare), Chapter 100 (Traffic), Section 10 (Stopping, Standing and Parking), Subsection 10.15-4 of the Milpitas Municipal Code, is hereby amended to read as follows:

**10.15-4** The City Council finds and declares that the orderly, efficient conduct of the City’s business requires that parking of vehicles on City property be prohibited, limited or restricted as hereafter provided:

(a) When signs are in place giving notice thereof, and except as authorized by permit as hereafter provided, it shall be unlawful to park a vehicle between the hours of 7:00 a.m. and 6:00 p.m. on any day (except Saturdays, Sundays and official City holidays) at the following locations and in excess of the following periods:

(1) Within the east wing of the City Hall parking lot (including the area in front of and east of the Community Center) in excess of four (4) hours in any one day (except as authorized by permit);

(2) Within the parking areas in front of the main entrance to City Hall in excess of three (3) hours in any one day (except as authorized by permit);

(3) In the parking stalls in front of the Finance Department and the Credit Union on the southerly side of City Hall in excess of thirty (30) minutes in any one day.

(b) Permits shall be issued by the City Manager or the Chief of Police. They may be limited as to date and permitted hours. They shall be prominently displayed on the dashboard of the vehicle or, if a sticker, affixed to the rear bumper. They will be issued to all City Councilpersons, to all City vehicles and to all City employees for use on the employee’s private vehicle. They may be issued by the City Manager or Chief of Police on a sign-out basis for all persons having business to conduct at City Hall or the Community Center in excess of the allowable parking time.

(c) When signs are in place giving notice thereof, it shall be unlawful to park a vehicle between the hours of 10:00 p.m. and 7:00 a.m. on any day in the Milpitas Library Parking Garage.

**SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE V, CHAPTER 100, SECTION 12  
“Stopping Standing, Parking, are Restricted or Prohibited on Certain Streets”**

Title V (Public Health, Safety and Welfare), Chapter 100 (Traffic), Section 12 (Stopping Standing, Parking, are Restricted or Prohibited on Certain Streets) of the Milpitas Municipal Code, is hereby amended to read as follows:

**Title V, Chapter 100, Section 12 - Stopping, Standing, Parking, are Restricted or Prohibited on Certain Streets and City Facilities**

Title V (Public Health, Safety and Welfare), Chapter 100 (Traffic), Section 12 (Stopping Standing, Parking, are Restricted or Prohibited on Certain Streets), Subsection V-100-12.09-1 of the Milpitas Municipal Code is hereby amended to read as follows:

**12.09-1** Pursuant to the authority contained in the California Vehicle Code, any vehicle parked or left standing in violation of the provisions of this Chapter upon any street, portion thereof, in any parking lots or designated areas adjacent to or at a City Park, may be removed therefrom and stored by order of any police officer, provided signs are in place giving notice of said removal. (See Section 22651 CVC)

Title V (Public Health, Safety and Welfare), Chapter 100 (Traffic), Section 12 (Stopping Standing, Parking, are Restricted or Prohibited on Certain Streets), Subsection V-100-12.13 (Parking Time Limited Adjacent to City Parks) of the Milpitas Municipal Code is hereby amended to read as follows:

**V-100-12.13 - Parking Time Limited Adjacent to City Parks**

When authorized signs are in place giving notice thereof, no person shall stop, stand or park any vehicle on any of the streets or portions thereof facing onto a City Park for a period of time in excess of three (3) hours between the hours of 6:00 a.m. and 10:00 p.m. of any day.

Title V (Public Health, Safety and Welfare), Chapter 100 (Traffic), Section 12 (Stopping Standing, Parking, are Restricted or Prohibited on Certain Streets) of the Milpitas Municipal Code is hereby amended to add a new Subsection V-100-12.16 to read as follows:

**V-100-12.16 Parking Time Limited in City Parks**

When authorized signs are in place giving notice thereof, no person shall stop, stand, or park any vehicle on any City Park or portions thereof for a period of time in excess of three (3) hours between the hours of 6:00 a.m. and 10:00 p.m. of any day.

**SECTION 8. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE VIII, CHAPTER 2, ARTICLE XIII, SECTION 13.02 “Maintenance by User”**

Title VIII (Public Works), Chapter 2 (Milpitas Sanitary Code), Article XIII (Responsibility for Maintenance), Section 13.02 (Maintenance by User) of the Milpitas Municipal Code is hereby amended to read as follows:

**Section 13.02 - Maintenance by User**

The User owns the entire house sewer and shall be responsible for maintaining, repairing, replacing, and clearing all stoppages and maintaining flow in the house sewer, in accordance with the following provisions:

A. Stoppages or other maintenance and repairs required in the house sewer shall be the responsibility of the User. B. The User shall be responsible for clearing stoppages in the entire length of the house sewer.

The User shall keep the house sewer free from roots, grease deposits, and other solids which may impede the flow or obstruct the transmission of waste.

The User shall have a street cleanout located at the property line, between the house sewer and the house lateral. All cleanouts shall be securely capped with a proper cap at all times.

All joints of the side sewer shall be watertight and all side sewer pipe shall be sound to prevent exfiltration by waste or infiltration by ground water or storm water.

**SECTION 9. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE X, CHAPTER 2, SECTION 2  
“Definitions”**

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 2 (Definitions), Subsection X-2-2.12 of the Milpitas Municipal Code is hereby amended to read as follows:

**X-2-2.12**

“Parkway” shall mean that portion of a street other than a roadway or a sidewalk.

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 2 (Definitions), Subsection X-2-2.13 of the Milpitas Municipal Code is hereby amended to read as follows:

**X-2-2.13**

“Tree Pruning” shall refer to the removal of diseased, dead, dying, decayed, interfering or obstructing branches, or the training of young trees to control growth and enhance performance or function in the landscape, and by developing and preserving tree structure, health and stability. No more than 25% of the tree canopy should be removed within a growing season.

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 2 (Definitions), Subsection X-2-2.14 of the Milpitas Municipal Code is hereby amended to read as follows:

**X-2-2.14**

“Street Tree Planting” shall mean the planting of City street trees within the public right-of-way, in parks and in easements dedicated to tree planting. Street trees shall be planted in residential neighborhoods within tree planting easements in suitable vacant planting sites, which avoid conflicts with underground utilities and hardscapes.

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 2 (Definitions), Subsection X-2-2.15 of the Milpitas Municipal Code is hereby amended to read as follows:

**X-2-2.15**

“Tree Removal” means either 1) complete removal, such as cutting a tree to the ground; or 2) taking any action that would lead to the death of a tree or cause permanent damage that may compromise tree health and stability. Tree removal may include, but shall not be limited to, severe pruning or topping, girdling, poisoning, over watering, under watering, trenching, excavating, or altering the soil grade around the tree trunk.

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 2 (Definitions), Subsection X-2-2.16 of the Milpitas Municipal Code is hereby amended to read as follows:

**X-2-2.16**

“Tree Topping” is the removal of large branches to a stub, or smaller lateral not large enough to assume a terminal role. Tree topping is not an approved tree pruning practice for City street trees or protected trees, and is considered tree removal under this Chapter.

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 2 (Definitions) of the Milpitas Municipal Code is hereby amended to add a new Subsection X-2-2.17 to read as follows:

**X-2-2.17**

“Unapproved Street Tree” shall mean any tree planted within street right-of-way or easements or in proximity thereto, or on adjoining property, which does not qualify as an Approved Street Tree.

**SECTION 10. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE X, CHAPTER 2, SECTION 6 “Other Plantings and Improvements”**

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 6 (Other Plantings and Improvements), Subsection X-2-6.01 of the Milpitas Municipal Code is hereby amended to read as follows:

**X-2-6.01 - Responsibility for Parkway Maintenance**

Any person owning or occupying property adjoining the public right-of-way shall be responsible for planting, maintenance and care of any plantings other than Approved Street Trees in those areas between the curb and right-of-way or easement. The planting areas shall be maintained in a healthy condition free of dying, dead, diseased, decayed, discarded and/or overgrown vegetation. Maintenance of such areas shall include, but not limited to, weeding, pruning, spraying and watering.

X-6.01-1 Exception: The City shall maintain those planting areas within the street, which are developed and landscaped as a public improvement.

Title X (Streets and Sidewalks), Chapter 2 (Tree Maintenance and Protection), Section 6 (Other Plantings and Improvements), Subsection X-2-6.01-2 of the Milpitas Municipal Code is hereby amended to read as follows:

**X-2-6.01-2 - Hardscape in Lieu of Other Plantings**

Any person owning or occupying property adjoining the public right-of-way shall be responsible for any hardscape placed between the curb and right-of-way or easement, including, but not limited to, brick, pavers and cement and the maintenance and care of any hardscape including, but not limited to, weeding, grinding and replacement.

**SECTION 11. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 15, SECTION XI-15-5.1 “Standards of Construction”**

Title XI (Zoning, Planning and Annexation), Chapter 15 (Floodplain Management Regulations), Section XI-15-5.1 (Standards of Construction) of the Milpitas Municipal Code is hereby amended to read as follows:

**XI-15-5.1 - Standards of Construction**

In all areas of special flood hazards the following standards are required:

- (a) Anchoring.
  - (1) All new construction and substantial improvements, including manufactured homes, shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
  - (2) All manufactured homes shall meet the anchoring standards of Section XI-15-5.4.
- (b) Construction Materials and Methods. All new construction and substantial improvements, including manufactured homes, shall be constructed:
  - (1) With materials and utility equipment resistant to flood damage;
  - (2) Using methods and practices that minimize flood damage;
  - (3) With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and
  - (4) Within Zone AH or AO, so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.



(c) Elevation and Floodproofing. (See Section XI-15-2, definitions for “basement,” “lowest floor,” “new construction,” “substantial damage” and “substantial improvement.”)

(1) Residential construction, new or substantial improvement, including manufactured homes, shall have the lowest floor, including basement:

- (i) In an AO Zone, elevated above the highest adjacent grade to a height exceeding the depth number specified in feet on the FIRM by at least one (1) foot, or elevated at least three (3) feet above the highest adjacent grade if no depth number is specified.
- (ii) In an A Zone, elevated at least one (1) foot above the base flood elevation, as determined by the developer's engineer, and approved by the City Engineer.
- (iii) In all other zones, be elevated at least one (1) foot above the base flood elevation.

This includes all non-flood resistant building material and all of the structure's support equipment such as, but not limited to, electrical, heating, ventilation ductworks, plumbing, and air conditioning equipment and other service facilities that could be damaged if submerged under water.

Upon the completion of the structure, the elevation of the lowest floor including basement and the structure's support equipment shall be certified by a registered professional engineer or surveyor, to be properly elevated. Such certification or verification shall be provided to the Floodplain Administrator.

(2) Nonresidential construction shall either be elevated to conform with Section XI-15-5.1(c)(1) or together with attendant utility and sanitary facilities:

- (i) Be floodproofed below the elevation recommended under subsection (c)(1) of this Section so that the structure is watertight with walls substantially impermeable to the passage of water;
- (ii) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- (iii) Be certified by a registered professional engineer or architect that the standards of this Section are satisfied. Such certification shall be provided to the Floodplain Administrator.

(3) All new construction and substantial improvement with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must exceed the following minimum criteria:

- (i) Be certified by a registered professional engineer or architect; or
- (ii) Be certified to comply with a local flood-proofing standard approved by the Federal Insurance Administration, Federal Emergency Management Agency; or
- (iii) Have a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

(4) Manufactured homes shall also meet the standards in Section XI-15-5.4.

## **SECTION 12. SEVERABILITY**

The provisions of this Ordinance are severable, and the invalidity of any phrase, clause, provision or part shall not affect the

validity of the remainder.

**SECTION 13. 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 36933 of the Government Code of the State of California.