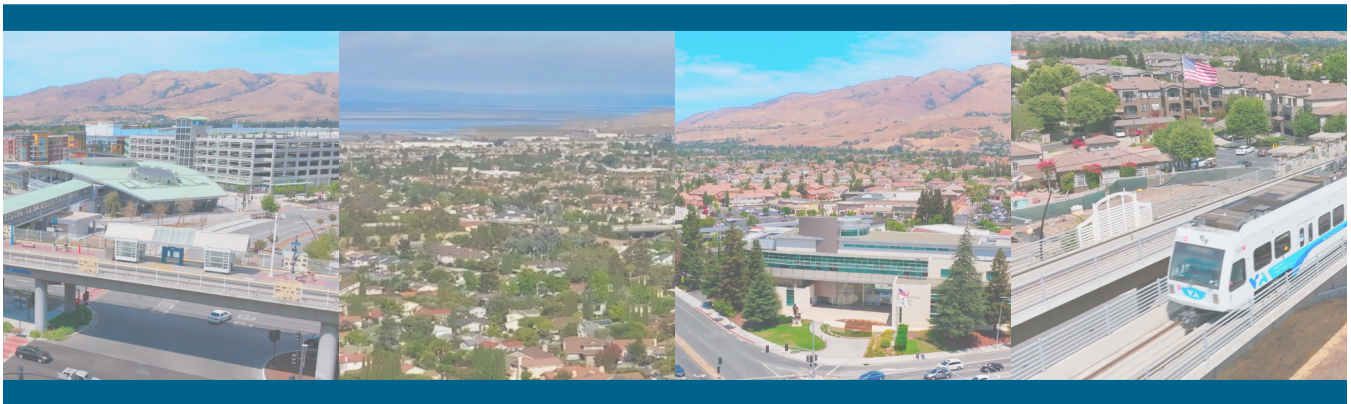




# City of Milpitas Zoning Ordinance Update



## Background Review and Recommendations Report

July 2023

*Prepared for:*

City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

*Prepared by:*

Lisa Wise Consulting, Inc.  
870 Market Street, Suite 977  
San Francisco, CA 94102

LWC

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# Introduction

## Project Overview

In 2021, the City of Milpitas (City) adopted its General Plan 2040, creating an opportunity and an obligation to update the City's Zoning Ordinance to support the type of development that will implement the General Plan's vision. The Comprehensive Zoning Ordinance (CZO) update will replace the City's current Zoning Ordinance (Chapter 10 of Title XI of the Municipal Code). The objectives of this update are to:

- Modernize the Zoning Ordinance to better apply to current and evolving development and design standards, uses, and trends;
- Make the Zoning Ordinance more user-friendly;
- Ensure consistency across all applicable City documents (e.g., General Plan, specific plans, etc.); and
- Promote more compact, mixed-use, and pedestrian and transit-oriented development types where appropriate.

The update will also ensure Zoning Ordinance compliance with applicable federal and state law.

## Purpose of the Report

This report evaluates the effectiveness of the existing Zoning Ordinance and identifies recommendations to be considered for the Zoning Ordinance update. Several public events, including Zoning Advisory Group (ZAG) meetings, workshops, and study sessions with the Planning Commission and City Council will occur to review this document and discuss refining its recommendations to move forward. Thereafter an improved structure and organization of the Zoning Ordinance (i.e., annotated table of contents) will be developed. A preliminary Style Guide will also be prepared to describe the Zoning Ordinance layout, approach to incorporating cross references, terminology, and other stylistic elements based on issues identified in this report. Then, from information collected from public input and this report, components of the updated Zoning Ordinance will be prepared for public review.

# Chapter 1 Background Review Findings

## Section 1.1 Policy Review

The background review began with a technical assessment of the City’s existing plans, regulations, and documents. This process involved reviewing the existing Zoning Ordinance (Title XI, Chapter 10); 2040 General Plan; 2023-2031 Housing Element; Milpitas Metro Specific Plan; Milpitas Residential and Mixed-Use Objective Standards; Draft Housing Opportunity Zones; Trails, Pedestrian, and Bicycle Master Plan; Parks and Recreation Master Plan; Climate Action Plan; and other relevant documents. The following will analyze the effectiveness of the existing regulations and regulatory structure to meet City goals; identify items or topics to be addressed through the Zoning Ordinance update; summarize key inconsistencies between the Zoning Ordinance and the General Plan, other City regulations, State law, and federal law; and provide recommendations for addressing issues in the Zoning Ordinance.

### General Plan

General Plan 2040 is a comprehensive planning document that guides future development and the Citywide vision for Milpitas. Adopted in March 2021, the Plan includes a Land Use Element; Circulation Element; Community Design Element; Economic Development Element; Conservation and Sustainability Element; Utilities and Community Services Element; Safety Element; Noise Element; Parks, Recreation, and Open Space Element; Community Health and Wellness Element; and an Implementation Element.



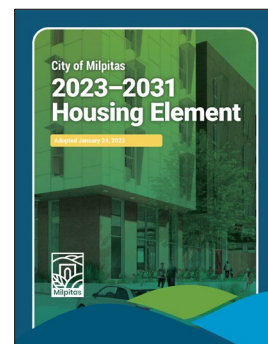
The following table includes preliminary recommendations for how the Zoning Ordinance may implement key General Plan policies and action items.

<b>Preliminary Recommendations for Zoning Ordinance Update</b>	<b>Policies/Actions</b>
Expand and revise the zoning districts and associated standards to implement General Plan Land Use Designations (General Plan Table 1). Update the zoning map to implement the General Plan Land Use Map (Figure LU-1). See Section 2.2, Zoning Districts, for specific zoning district recommendations.	Policy LU 1-2, Action LU-1a, LU 1b, LU-1f, LU 2-5
Add building placement standards (e.g., build-to lines) to locate building close to the street and/or parking placement standards, considering Objective Design Standards.	LU 4-4, LU 6-3
Include building step-backs to transition from high density development to low density neighborhoods, considering Objective Design Standards.	LU 5-2
Reduce the allowance for exceptions to established height limits. <sup>1</sup>	LU 5-3

Table 1.A: General Plan - Key Zoning Recommendations	
Preliminary Recommendations for Zoning Ordinance Update	Policies/Actions
Add requirements for buffers and other standards (e.g., performance standards, non-residential building design, landscaping) to ensure compatibility between residential areas and non-residential development.	LU-5b, CD 2-4, CD 5-4, CD 5-6, CD 5-7, CD 5-8, CD-1c, CD-5b
Ensure creek setbacks and/or buffers are appropriately established. Also note Metro Specific Plan CB 5.3	CD 1-5
Add design standards for non-residential projects (i.e., not addressed by Objective Design Standards). Include standards for building façade and articulation, rooflines, landscaping, screening, lighting, and signage.	CD-2b, CD-2e, CD-5a, CD-6e
Add pedestrian connectivity standards to provide convenient and safe access to sidewalks, transit, and open space.	LU 4-4, LU 5-1, CIR-1f, CD 2-7, CD-10a
Include maximum block length standards.	CD 10-3, CD-10a
Expand bicycle parking ratios to apply to all appropriate uses. Add long-term (i.e., weather protected) and short-term bicycle parking standards. Also note Metro Specific Plan M.8.4.1.	CIR-4j, CIR-4k, LU 4-4, LU 7-5
Reduce current parking ratios and expand alternative parking strategies. Encourage unbundled parking.	CIR-5a, CIR-5c, CD 2-5
Allow parks, plazas, outdoor seating, fitness facilities, daycare centers in Business Park/Research & Development zones. Also note Economic Development Strategy Action 11.1.	LU 7-5
Allow schools in compatible residential, commercial, and mixed-use zones.	LU 1-6
Allow community gardens in zones near and zones allowing high-density housing. Also note Metro Specific Plan PPS 6.6.	CHW-2f
Maintain flexible zoning allowing both horizontal and vertical mixed uses.	ED-1j
Update use definitions to provide greater flexibility for emerging retail businesses and models.	ED-2e
Only allow non-industrial uses in industrially zoned areas when uses will be compatible with industrial uses. Enhance standards for non-industrial uses in industrial areas as appropriate.	ED-1h, ED-1k
Expand development standards for hillside development. <sup>2</sup>	CD-7a
Add landscaping standards reflecting drought-tolerant landscaping.	CON 2-2, SA 1-9
<p>1. In 2022, the Zoning Ordinance was amended to include specific requirements related to additional building height requests in commercial zones and prohibit additional building height requests in commercial zones when within 500 feet of a R1 or R2 zone (Ordinance 38-846). These amendments are recommended to be retained in the Zoning Ordinance.</p> <p>2. Voter approval required for amendments to Section 45 – “H” Hillside Combining District.</p>	

## Housing Element

The City of Milpitas 2023-2031 Housing Element was adopted by the City Council on January 24, 2023, and certified by the California Department of Housing and Community Development (HCD) on May 17, 2023 as a part of the 6<sup>th</sup> Cycle of Housing Element updates. The Housing Element is a plan to accommodate 6,700 units of new housing for Milpitas to meet future housing needs and address existing unmet needs, especially related to the lack of housing stock and current housing cost burdens present in the San Francisco Bay Area. To best plan for the existing and future population of Milpitas, the Housing Element sets forth programs and actions to promote and preserve housing while also furthering other goals in the General Plan, including building vibrant and walkable neighborhoods and maintaining an equitable balance of land uses.



Various Housing Element programs and actions prescribe revisions to the Zoning Ordinance. The following preliminary Zoning Ordinance Update recommendations are directed by key Housing Element programs.

Table 1.B: Housing Element – Key Zoning Recommendations	
Preliminary Recommendations for Zoning Ordinance Update	Programs
Provide by-right approval of housing proposed on sites previously identified in the 5 <sup>th</sup> Cycle Housing Element to accommodate lower income RHNA units and are being reused for this 6 <sup>th</sup> Cycle update, if the project includes 20 percent of the units as lower income in the 6 <sup>th</sup> Cycle.	1 [Program deadline: end 2023]
Rezone properties as outlined in Appendix E to provide adequate sites to accommodate the RHNA shortfall including appropriate development standards that facilitate achieving maximum densities. Rezoned properties that accommodate lower-income RHNA capacity must have a minimum density of 20 units per acre and zoned to allow ownership and rental housing by right in which at least 20 percent of the units are affordable to lower income households. Also, these rezoned properties must allow 100% residential projects and mixed-use projects must have at least 50% of the floor area dedicated to residential use consistent with Government Code §65583.2.	1 [Program deadline: end 2024]
Incentivize lot consolidation possibly through additional density bonus and/or flexible development standards (e.g., setbacks, parking).	3 [Program deadline: end 2024]
Implement a Housing Opportunity Zones (HOZ) program to utilize incentive-based zoning in multi-family and mixed-use zoning districts (i.e., the two Specific Plan areas, four Neighborhood Commercial Mixed Use (NCMU) areas, and the Town Center Zoning District). The program, which is currently under development, will provide incentives (e.g., density bonus above State law, relaxed development standards (e.g., maximum height, minimum parking ratio, minimum open space requirement, etc.), additional by-right approval. After the HOZ are complete, they will be integrated into the Zoning Ordinance as appropriate.	15 [Program deadline: end 2023]
Develop incentives to facilitate the development of large rental units (with three or more bedrooms) and rental units for extremely low-income households and persons with disabilities. Also see HOZ discussion, above. Update density bonus provisions to comply with State law. See more in Section 1.3 of this report (Legal Consistency Review).	16, 22, and 23 [Program deadlines: end 2024]



<b>Table 1.B: Housing Element – Key Zoning Recommendations</b>	
<b>Preliminary Recommendations for Zoning Ordinance Update</b>	<b>Programs</b>
Ensure the Zoning Ordinance accommodates Tiny Homes, prefabricated, or modular housing units, and rapid rehousing projects based on feasibility study to be completed by end of 2023.	21 [Program deadline: end 2024]
Reduce parking ratios for multi-family, including studios and 1-bedroom units. Revise parking standards to comply with AB 2097	21 [Program deadline: end 2024]
Reduce setback standards to address constraints to multi-family housing, including missing middle housing types.	21 and 24 [Program deadlines: end 2024]
Reduce open space requirements to address constraints to multi-family housing, including missing middle housing types.	21 and 24 [Program deadlines: end 2024]
Update emergency shelter standards to limit required parking to staff parking and require a maximum separation of no more than 300 ft. Designate additional residential and/or mixed-use districts where emergency shelters will be permitted by right. Add objective standards for emergency shelters consistent with AB 2339.	21 [Program deadline: end 2024]
Clarify process requirements for streamlined approval of supportive housing consistent with AB 2162.	21 [Program deadline: end 2024]
Revise single room occupancy (SRO) standards, including unit sizes, parking, and spacing, and provide at least one zone where a Conditional Use Permit is not required for SRO development.	21 [Program deadline: end 2024]
Add low barrier navigation center (LBNC) as an allowed use by right in zones that allow mixed-use development and nonresidential zones that permit multifamily uses, provided the facility meets certain standards per AB 101.	21 [Program deadline: end 2024]
Allow employee housing consistent with State law (employee housing providing accommodations for six or fewer employees treated as a single-family structure).	21 [Program deadline: end 2024]
Allow farmworker housing consistent with State law (farmworker housing up to 36 beds or 12 units is considered an agricultural use to be similarly permitted as other agricultural uses in the same zones).	21 [Program deadline: end 2024]
Allow residential care facilities for six or fewer persons as a single-family dwelling (permitted use). Allow residential care facilities for seven or more persons as similar uses are allowed in the same zones. Establish clear and objective findings and conditions for approval.	21 [Program deadline: end 2024]
Establish a clear procedure for reasonable accommodation approval.	21 [Program deadline: end 2024]
Revise Site Development Permit findings to reflect Objective Design Standards.	21 [Program deadline: end 2024]

## Specific Plans

Specific plans are planning documents that establish a vision and goals for a geographic area within a city. The City has two specific plans: the Metro Specific Plan and the Midtown Specific Plan. The Zoning Ordinance should implement the key policies and standards of these two specific plans.

### **Metro Specific Plan**

The Milpitas Metro Specific Plan establishes a vision for a key transit- and opportunity-rich area within



## **MILPITAS METRO SPECIFIC PLAN**

Milpitas. Served by multiple transit lines and Highway 680, the area is envisioned to be an urban, future-forward center that supports a balanced mix of housing, retail, and employment uses; provides safe multimodal connections and public spaces; and is distinguished by urban design standards that create a visually memorable environment. The 2023 Metro Specific Plan updated the 2008 Milpitas Transit Area Specific Plan (TASP) and increased the Plan Area from 437 acres to approximately 510 gross acres. The following preliminary recommendations list key policies and measures to incorporate into the Zoning Ordinance.

<b>Preliminary Recommendations for Zoning Ordinance Update</b>	<b>Policies/Measures</b>
Establish new Metro zones. Add development intensities (density and floor-area-ratio (FAR), minimums and maximums) and maximum height from Tables 2-4 and 2-5 into new Metro zones.	LU 3.3, Implementation Measure 2
Include standard of 80% of ground floor façade along Activity Streets where retail or active uses is required per Metro Specific Plan Table 2-4 and LU-6.2. Define active uses.	LU 2.4, CB 4.1
Revise use definitions to ensure a range of housing types are allowed. Also see Housing Element program recommendations.	LU 3.2
Prohibit drive-throughs and gas stations throughout the Metro zones.	LU 6.4
Allow uses such as retail and restaurants in the BPRD-Metro zones.	LU 5.4
Allow hotels by-right in appropriate new zones (i.e., MDX-2-Metro, MDX-3-Metro, BPRD-Metro zones).	LU 2.2
Add community gardens as an allowed use in the Metro zones and define.	PPS 6.6
Include building step-backs in the Metro zones while considering the Objective Design Standards.	CB 3.3
Include a minimum 25-ft setback from top of creek/drainage channel bank or maintenance road in Metro zones.	CB 5.3
Require no parking and include maximum parking ratios for Metro zones per Table 4-3. <sup>1</sup>	M.8.4.2

Table 1.C: Milpitas Metro Specific Plan – Key Zoning Recommendations	
Preliminary Recommendations for Zoning Ordinance Update	Policies/Measures
Include long-term (i.e., weather protected) and short-term bicycle parking standards citywide. Add required bicycle parking ratio from Table 4-2. Also note General Plan Policies LU 4-4, LU 7-5, CIR-4j, CIR 4k.	M.8.4.1
Include open space requirements (25 s.f. per 10,000 s.f. of floor area) for commercial projects in BPRD-Metro zones.	PPS 4.3
Require 100 s.f. of on-site private or common open space per unit in Metro zones, with at least 30% of total on-site open space being common shared spaces. Require at least 5% of total open space to be publicly accessible.	Private and Common Open Spaces, CSS-10, CSS-11
Require shade trees at a rate of one tree per 5,000 s.f. of residential building footprint and one tree for every 10,000 s.f. of developed lot area for non-residential or mixed-use development.	PPS 8.2
<p><i>1. Removal of parking minimums for Innovation District developments is Action #5 of the Innovation District Action Plan (June 30, 2022). The Innovation District encompasses BPRD and BPRD-R properties within the Metro Specific Plan.</i></p>	

**Midtown Specific Plan**

Last updated in 2010, the Milpitas Midtown Specific Plan regulates an approximately 589-acre area west of the heavy rail line that bisects the City. In 2021, the City initiated the Gateway-Main Street Specific Plan, which will replace the Midtown Specific Plan. The Gateway-Main Street Specific Plan is being based around the guiding principles of vision and placemaking, land use and development, transportation and access, and open space and community amenities. When the Gateway-Main Street Specific Plan is completed and adopted (anticipated in early 2024), the Zoning Ordinance will be amended to implement the Plan’s direction in quantifiable standards and regulations, as well as establish new zoning districts as necessary.

## Climate Action Plan

The Milpitas Climate Action Plan Update (CAP), adopted in August 2022, is a comprehensive framework to locally address the challenges of climate change to achieve the City’s climate change goals. The CAP establishes strategies and actions to reach these goals, which include achieving carbon neutrality by 2045, reducing greenhouse gas emissions, and promoting climate resiliency and community sustainability. The Zoning Ordinance should implement the zoning-related climate action goals as defined by the CAP. The following preliminary Zoning Ordinance Update recommendations are based on the CAP.



Table 1.D: Climate Action Plan - Key Zoning Recommendations	
Preliminary Recommendations for Zoning Ordinance Update	Actions
Ensure renewable energy systems, including battery electric storage, are allowed with limited to no Planning approval required.	Action BE-1.1.2
Provide zoning incentives (e.g., related to development regulations like density or FAR) for projects that exceed mandated sustainability requirements.	Action BE-2.3.1
Require non-residential projects to provide “end-of-trip” facilities for cyclists (e.g., showers, secure bicycle lockers, and changing spaces) and adequate e-bike and e-scooter infrastructure.	Action TR-1.1.2
Ensure electric vehicle (EV) charging stations are allowed.	Action TR-2.1.1
Ensure “resilience hubs” equipped with backup power and disaster assistance and supplies are not precluded through zoning.	Action 4.1.3
Add tree planting standards for front, side, and/or rear yards in single-family development and along commercial development street frontage. Add parking lot shade tree planting standards. Also see Milpitas Metro Specific Plan recommendations (PPS 8.2).	Actions 5.1.1, 5.1.2, 5.1.5
Add tree removal standards and enhance native tree and plant requirements. Reference tree protection and heritage tree program (Municipal Code Title X, Chapter 2, Section 7).	Action 6.3.4

## Economic Development Strategy and Implementation Actions

The City of Milpitas Economic Development Strategy and Implementation Actions Final Report (EDS) was adopted in May 2020 to guide the City’s economic development activities from 2020-2025. The main goals of the EDS are to grow and diversify the City’s economy, support businesses and workers, and improve quality of life in the community. The Zoning Ordinance should implement applicable strategies and implementation actions of the EDS.

The following preliminary Zoning Ordinance Update recommendations are based on the EDS.

Table 1.E: Economic Development Strategy - Key Zoning Recommendations	
Preliminary Recommendations for Zoning Ordinance Update	Actions
Allow uses like childcare centers, gyms, and other services in office and R&D districts (e.g., BPRD zones, Administrative and Professional Office (CO) Zone, etc.).	Action 11.1
Focus on allowing advanced manufacturing and R&D uses in new BPRD zones rather than warehouse and distribution (e.g., limit size of warehouses in BPRD zones).	Actions 19.3, 23.2
Update wireless telecommunications standards and procedures to streamline approval. Also, see Section 1.3, Legal Consistency Review.	Action 29.1
Ensure temporary dining, arts, and entertainment uses are allowed in public spaces and vacant retail spaces, particularly in appropriate new Metro zones.	Action 30.1
Update zoning to reflect the Metro Specific Plan, including the Metro BPRD and BPRD-R zoning districts and reduced parking requirements. Facilitate restaurant and retail uses in the Metro Specific Plan area.	Actions 24.1, 26.3, 27.2
Update zoning for the Midtown area to reflect the Gateway-Main Specific Plan, including reduced parking and facilitating restaurant and retail uses (see Midtown Specific Plan (above) for timing of the Gateway-Main Specific Plan and subsequent Zoning Ordinance updates).	Action 31.5

## Trail, Pedestrian, and Bicycle Master Plan

The City of Milpitas Trail, Pedestrian, and Bicycle Master Plan was adopted in June 2021 to increase walking and biking by making improvements to the safety and convenience of active modes of transportation. While the policies identified in the Plan are relevant to community development in Milpitas, there are no direct items to be implemented in the updated Zoning Ordinance.



## Parks & Recreation Master Plan

The City of Milpitas Parks & Recreation Master Plan Update was adopted in December 2021 with the purpose of studying the City's existing parks and recreation facilities and programming; preserving and improving facilities and programming; and planning for anticipated population growth over the next 20 years. While the policies identified in the Plan support quality community development, there are no direct items to be implemented in the updated Zoning Ordinance.



## Section 1.2 Objective Design Standards

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The final Milpitas Residential and Mixed-Use Objective Design Standards (ODS) were adopted in November 2022 to provide clear and quantifiable regulations for residential and mixed-use development and design, as defined by California Senate Bill 330 (SB 330).

### Applicability

The ODS apply to all new multi-family projects (two or more dwelling units) and to mixed-use projects that feature a combination of residential and other uses (where at least two-thirds of the square footage of the development is designated for residential use). These standards do not apply to other project types such as single-family homes; commercial-only projects; interior renovations on less than 30 percent of gross floor area; or to mixed-use developments with less than two-thirds of the floor area designated for residential use. Standards in the ODS are separated by building size and height, with different standards for small, medium, large, or extra-large building types.

### Design Elements Addressed

The ODS address multiple design elements for applicable residential and mixed-use projects. Examples of these design elements include:

- Block structure in developments
- Block connectivity
- Public open space
- Sidewalk design
- Building orientation
- Building setback character
- Ground floor uses for active frontages
- Access and parking
- Landscaping
- Site lighting
- Standards for special conditions and adjacencies
- Building massing

- Façade design and composition
- Building and residential unit entries
- Fenestration design
- Green/productive roofscapes
- Building materials
- Private open space

Each design element is addressed with clear and quantifiable standards.

### **Implementation in the Zoning Ordinance**

The ODS will be incorporated by reference into the Zoning Ordinance. The new and revised standards in the updated Zoning Ordinance will augment and not conflict with the ODS; however, the Zoning Ordinance will clearly state precedent in case of a conflict (e.g., in case of a conflict, the Zoning Ordinance standards supersede the ODS)<sup>1</sup>.

## **Section 1.3 Legal Consistency Review**

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California law grants cities and counties relatively broad discretion in the regulation of land uses and development, and the Federal courts and United States Congress have, for the most part, left land use and environmental regulation up to state and local government. There are, however, some important exceptions to this approach. If local regulations conflict with federal law, pursuant to the supremacy clause of the United State Constitution, then local laws are preempted. In some cases, both the United States Congress and the State have identified matters of critical concern that limit the authority of California cities.

This section discusses some examples of State and Federal laws that will be addressed as part of the Zoning Ordinance Update.

### **Housing Element Program Legal Compliance**

The City's 2023-2031 Housing Element includes programs requiring updates to the Zoning Ordinance to reflect State law, specifically Housing Element Program 21. Implementation of this Program, as noted in Table 1.B, will address State law compliance related to the following topics:

- Emergency shelters
- Low barrier navigation centers (LBNC)
- Supportive housing
- Employee and farmworker housing
- Residential care facilities
- Density bonus

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<sup>1</sup> The updated Zoning Ordinance will address what standard takes precedent in the case of conflicting requirements between the Zoning Ordinance and other City requirements (e.g., specific plans, development agreements, etc.).

## Manufactured Housing

California Government Code §65852.3-.5 requires local agencies to allow the installation of manufactured homes certified under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§5401 et seq.) on a foundation system, pursuant to California Health & Safety Code §1855, on lots zoned for single-family dwellings. Manufactured homes must be subject to the same development standards and permit requirements as a single-family home and subject to the same permit requirements as a conventional single-family dwelling.

It is recommended that the Zoning Ordinance be revised to allow manufactured homes on lots zoned for single-family dwellings without any subjective requirements regarding “compatibility” not required for single-family homes, and to remove permitting requirements (e.g., Site Development Permit) when they are not required for single-family dwellings (i.e., Section 10-13.07.B.1).

## Nonconforming Multi-family Dwellings

Local agencies may not prohibit the reconstruction, restoration, or rebuilding of a multi-family dwelling that is involuntarily damaged or destroyed by fire or other catastrophic event, unless certain findings are made that the reconstruction, restoration or rebuilding would be detrimental to public health or safety, and the existing nonconforming use would be more appropriately moved to a district that allows the use (California Government Code §65852.25). It is recommended that the Zoning Ordinance be revised to include provisions to allow for the rebuilding of a nonconforming multi-family dwelling unless the above findings are adopted.

## Cottage Food Operations

California Government Code §51035 states that cities and counties must allow cottage food operations (i.e., homemade and packaged food defined in California Health and Safety Code §113758) in residential dwellings, and either:

1. Classify cottage food operations as a permitted use of residential property.
2. Grant a nondiscretionary permit to use a residence as any cottage food operation that complies with local ordinances concerning concentration, traffic control, parking, and noise control. The permit issued shall be granted by the zoning administrator or person designated by the planning agency to grant the permit, without a hearing.
3. Require a use permit for cottage food operations, reviewed and acted upon by the zoning administrator or person designated by the planning agency to grant the permit, pursuant to local ordinances concerning concentration, traffic control, parking, and noise control.

Cottage food operations must be considered residences for the purposes of the State Uniform Building Standards Code and local building and fire codes, and do not constitute a change of occupancy from residential use.

While it is the City’s practice to approve cottage food operation under a home occupation permit, the Zoning Ordinance does not explicitly address cottage food operations. As outlined above, it is recommended that the Zoning Ordinance either 1) permit cottage food operations in any residential zone, 2) require a nondiscretionary permit for cottage food operations, or 3) require a Use Permit for cottage food operations. Also, include specific use standards if/as appropriate related to concentration, traffic control, parking, and



noise control, or reference relevant standards (e.g., Title V, Chapter 213 – Noise Abatement). The level of permit and supplemental standards will be further discussed with City staff prior to drafting these provisions for the updated Zoning Ordinance.

## Family Day Care Homes

Pursuant to California Health & Safety Code §1597.30 et seq., small family day care homes in a residential unit are a residential use and are not subject to a fee or business license. Health and Safety Code §1597.45, effective January 1, 2020, further states that large family day care homes (caring for up to 14 children) shall be treated the same as small family day care homes (caring for up to 8 children) under all local laws. Cities and counties must consider the operation of a large family day care home as a residential use of property as they have done with small family day care homes.

It is recommended that the Zoning Ordinance be amended to allow large family day care homes by right at minimum on the upper floors of buildings in the MXD2 Zoning District<sup>2</sup> and to subject large family day care homes to the same development standards (e.g., parking, density) as other residential uses.

## Religious Uses

The Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) requires public agencies to demonstrate a compelling government interest and to use the least restrictive means when making a land use decision that imposes a substantial burden on religious exercise. Religious uses must be treated the same as similar non-religious uses. Additionally, regulations cannot impose a substantial burden to religious uses.

The Zoning Ordinance allows "places of assembly" including religious uses (e.g., churches, mosques, synagogues, temples, etc.) and other types of assembly (e.g., private and nonprofit clubs and social or fraternal organizations), by Conditional Use Permit (CUP) in residential, commercial, mixed-use zones and several industrial zones, and these religious uses are not treated any differently than other "places of assembly." However, the City may consider revising the Zoning Ordinance to allow places of assembly by right up to a certain seating capacity in certain zoning districts, and beyond that allow places of assembly by CUP to address any impacts from traffic, noise, lighting, etc.<sup>3</sup> This would remove any "substantial burden" to religious use and "use the least restrictive means."

## Parking

Assembly Bill (AB) 2097, codified in California Government Code §65585 and 65863.2, prohibits minimum parking requirements for projects within a half-mile of a major transit stop unless findings are made that not requiring minimum parking would have a "substantially negative impact" on:

- The jurisdiction's ability to meet its Residential Housing Needs Assessment (RHNA) for lower income households;

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<sup>2</sup> See Section 2.2 for recommendations regarding Zoning Districts.

<sup>3</sup> Note that Ordinance 38.837 (2019) restricted non-industrial uses (including assembly) in the M2 Heavy Industrial District to protect the integrity of the City's industrial lands.

- The jurisdiction’s ability to meet any special housing needs of the elderly or persons with disabilities; or
- Existing residential or commercial parking within half-mile.

Even if the findings are made, no minimum parking requirements apply to housing development projects with a minimum of 20 percent affordable units or fewer than 20 units, or to developments subject to parking reductions based on other applicable laws. It is recommended that the Zoning Ordinance be revised to reflect these parking reductions. This recommendation is also consistent with implementation of Housing Element Program 21.

## Signs

In June 2015, the U.S. Supreme Court decision in *Reed v. Town of Gilbert* (No. 135 S.Ct. 2218, 2015) affirmed that sign regulations must be “content-neutral” to survive a legal challenge. To be content-neutral and satisfy First Amendment limitations, sign regulations must be based on “time, place, and manner” restrictions, rather than on content- or message-based restrictions. Content-based regulations are subject to what is called a “strict scrutiny” standard – that is, a compelling governmental interest must be demonstrated, and regulations must be narrowly tailored to serve that interest. It is recommended that sign regulations be updated to be content-neutral. See Section 2.5 for more detail.

## Telecommunications

The Federal Telecommunications Act of 1996, California Government Code §65850.6 and 65964.1, and several FCC rulings limits state or local governments' authority to regulate placement, construction, and modification of personal wireless service facilities. It is recommended that the Wireless Telecommunications provisions (§XI-10-13.09) be rewritten comprehensively to ensure consistency with Federal and State law. This would include provisions for eligible facilities requests and collocations, as well as pertinent processing timelines and how minor modifications (e.g., no change to size or height) to existing facilities are processed.

## Variances

California Government Code §65906 sets forth findings and requirements for variances. It is recommended that the sign variance provisions in the City's Zoning Ordinance (Milpitas Municipal Code Section XI-10-57.06) be removed, as signs would be subject to updated sign regulations and still be allowed to deviate from standards if the general Variance findings are made.

## Development Agreements

California Government Code §65864 et seq. sets forth provisions for development agreements. While development agreements are listed as an application type in the Zoning Ordinance (Table XI-10-64.02-1), they do not have any related procedures in the Zoning Ordinance. Further, Action #6 of the Innovation District Action Plan encourages the City to collaborate with developers through development agreements. It is recommended that the Zoning Ordinance be amended to include development agreement procedures that are consistent with State law or a reference to State law.

## Permit Streamlining Act

The Permit Streamlining Act, codified in California Government Code §65920 et seq., specifies permit review requirements and timelines, in part enumerating 30 days to determine whether an application can be accepted as complete (California Government Code §65943). It is recommended that the Zoning Ordinance include the 30-day completeness review in its application processing procedures.

## Commercial Density Bonus

Assembly Bill (AB) 1551, codified in California Government Code §65915.7, requires local jurisdictions to grant a commercial developer a density bonus when an applicant requesting approval of a commercial development has entered into an agreement for partnered housing with an affordable housing developer to contribute affordable housing through a joint project or two separate projects encompassing affordable housing. The density bonus incentives may include:

1. Up to a 20 percent increase in maximum allowable intensity in the General Plan.
2. Up to a 20 percent increase in maximum allowable floor area ratio.
3. Up to a 20 percent increase in maximum height requirements.
4. Up to a 20 percent reduction in minimum parking requirements.
5. Use of a limited-use/limited application elevator for upper floor accessibility.
6. An exception to a zoning ordinance or other land use regulation.

It is recommended that the Zoning Ordinance incorporate by reference State law for commercial density bonus.

## Residential Development in Commercial Zones

Senate Bill (SB) 6 and Assembly Bill (AB) 2011 allow residential development on sites currently zoned and designated for commercial or retail uses (e.g., commercial zones). These bills will go into effect on July 1, 2023.

AB 2011 creates a CEQA-exempt, ministerial approval process for multifamily housing developments on sites within a zone where office, retail or parking are the principally permitted use. The law provides for slightly different qualifying criteria (1) for 100-percent affordable projects and (2) for mixed-income projects located in “commercial corridors.” AB 2011 projects must pay prevailing wages to construction workers, among other labor standards.

Unlike AB 2011, SB 6 does not create any new approval process. SB 6 instead provides that projects meeting certain criteria may invoke SB 35 and the Housing Accountability Act. A project proposed under SB 6 may be either a 100-percent residential project or a mixed-use project where at least 50 percent of the square footage is dedicated to residential uses. SB 6 projects are not required to be affordable and CEQA applies. SB 6 projects are required to pay prevailing wages and utilize a “skilled and trained workforce.”

Since these bills sunset in 2033, it is recommended that they not be adopted into the Zoning Ordinance; they will remain in force and effect through State law.

# Chapter 2 Recommendations

## Section 2.1 Code Organization

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### Logical Sequence and Grouping

The Milpitas Zoning Ordinance, Chapter 10 of Title XI (Zoning, Planning and Annexation), includes the following sections:

- Section 1 The Zoning Plan
- Section 2 Definitions
- Section 3 Zoning Districts
- Section 4 Residential Zones and Standards
- Section 5 Commercial Zones and Standards
- Section 6 Mixed Use Zones and Standards
- Section 7 Industrial Zones and Standards
- Section 8 Planned Development Zones and Standards
- Section 10 Institutional Zone and Standards
- Section 11 Specific Plan Areas
- Section 12 Overlay Districts and Standards
- Section 13 Special Uses
- Section 14 Public Art Requirements for Private Development
- Section 15 Special Events and Activities
- Section 24 Signs
- Section 39 POS Park and Public Open Space District
- Section 40 Agricultural Zones and Standards
- Section 45 "H" Hillside Combining District
- Section 53 Off-Street Parking Regulations
- Section 54 General Provisions
- Section 55 Exceptions
- Section 56 Nonconforming Buildings and Uses

- Section 57 Applications
- Section 59 Certificate of Occupancy
- Section 60 Boundaries of Districts
- Section 61 Interpretation
- Section 62 Reasonable Accommodation
- Section 63 Enforcement and Penalty
- Section 64 Development Review Process
- Section 65 Procedural Rules for the Conduct of Hearings

As listed above, the existing Zoning Ordinance includes 30 sections, numbered nonconsecutively between one and 65. Consistent and sequential numbering is recommended. Zoning ordinances are complex, with elements building upon, refining, supplementing, and providing exceptions to each other. They are also living documents that change over time. Due to this level of intricacy, it is important that the structure of the Zoning Ordinance reflects the logical relationships between individual elements. Without a logically consistent organization, the intent of regulations is obscured, and users will struggle to understand what is required of them.

For example, the provisions for all base zone standards should be grouped together in consecutive sections. Sections 4 through 10 of the Zoning Ordinance includes standards for many of the City's zoning districts (i.e., residential, commercial, mixed-use, industrial, planned development, and institutional zoning districts). While Sections 4 through 10 are a good example of consecutively ordering similar standards, the remaining base zoning district standards and the overlay and combining district standards are separated from these sections. The Zoning Ordinance sections should be reordered to keep the general zoning district standards and the overlay and combining district standards in sequential order.

While Sections 4 through 10 are grouped logically, the subsequent sections lack clear and effective organization, making for an overly complex Zoning Ordinance. For example, Section 54 (General Provisions) is a collection of various Citywide provisions, but it is neither all-encompassing nor presented in an intuitive order. Commonly used parts of zoning ordinances like sign and parking provisions are included elsewhere in the Ordinance (Sections 24 and 53 respectively), and not in consecutive sequence with Section 54. Similarly, special uses and development standards are addressed separately in each zoning type group section (e.g., residential, commercial, etc.) while special uses standards are also addressed in a separate section (Section 13). Standards specific to particular uses should be consolidated in one place.

### **Hierarchy of Importance in Organization**

Where appropriate, the sections, section groups, and subsections of the Zoning Ordinance should be organized to place the content of highest importance at the beginning. The measure of importance might be defined as the frequency with which Zoning Ordinance users need to reference each section, or the value that a particular standard has to the character of Milpitas. This enhances usability, as users searching the Zoning Ordinance are more likely to find the information they need quickly and efficiently. This also

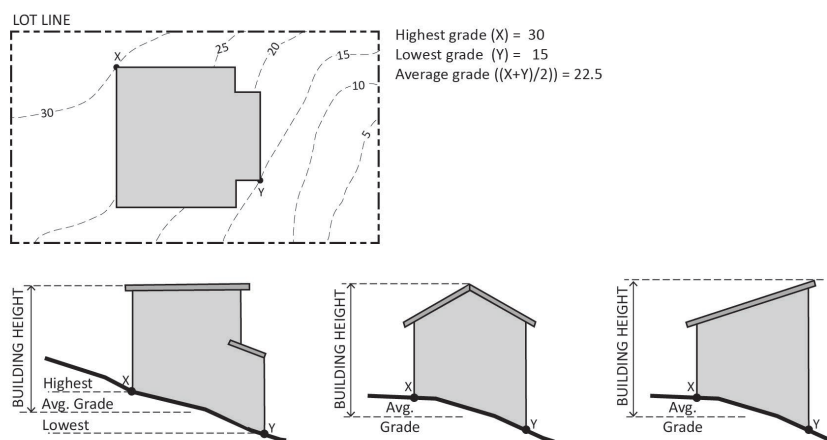
communicates to users the regulations for specific to development that the City has determined to be most important to its vision and policies.

Where no other organizational scheme seems applicable, alphabetization should be used to give some degree of structure to a section and to help with navigation in the Zoning Ordinance. This approach is appropriate for sections with many unrelated elements, such as performance standards for specific uses, where each subsection has equal importance and does not modify or affect any of the other subsections.

## Definitions and Clear Rules of Measurement

Organizational improvements to other elements of the Zoning Ordinance are recommended for clarity. For example, it is recommended that use definitions be separated from the definitions of terms, rather than combined, as in the existing Zoning Ordinance. In the Definitions of Uses section, *only* the uses that appear in the use tables – and *all* the uses that appear in the use tables – will be defined. Definitions will remain consolidated, currently located in Section 2 (Definitions) of the Ordinance<sup>4</sup>. All appropriate terms and acronyms will be defined and reflect current definitions. See Section 2.3 of this report for recommendations regarding modernizing uses.

The Zoning Ordinance also lacks a comprehensive section defining rules of measurement, including standards for measuring height (for both principal and accessory structures), measuring setbacks, determining lot area, calculating FAR, and other relevant measurements. Clear rules of measurement are helpful to ensure that development standards are interpreted uniformly among Zoning Ordinance users. For example, clear rules of measurement help to determine applicability of standards in cases of irregularly shaped lots. Placing a complete set of rules of measurement in one location typically at the end of the Zoning Ordinance, provides an easy-to-locate reference tool to ensure consistent interpretation and application of standards.



## Remove, Consolidate, or Reorganize Sections as Needed

Sections and subsections that are unnecessary, obsolete, or hard to find are recommended to be deleted or moved to ensure ease of use and clarity in the Zoning Ordinance. For example, overlay zones that are no longer relevant will be deleted (as identified in Section 2.2 of this report). Also, all existing content will be revised for clarity and brevity (e.g., Section XI-10-13.08, Accessory Dwelling Units).

<sup>4</sup> Some definitions are not included in Section 2 (e.g., special event and activities definitions are in Section XI-10-15.04).

## Utilize Tables and Cross-References

The existing Zoning Ordinance's use of tables and notes is largely effective, with minimal edits needed. The use tables are recommended to be improved with appropriate cross-reference to supplemental standards within the Zoning Ordinance as well as to the other Titles and Chapters of the Milpitas Municipal Code. All tables are recommended to be updated to correct typographical errors and errors in table note numbering (likely a result of piecemeal Zoning Ordinance amendments) and to improve clarity.

## Incorporate Graphic Illustrations

In many instances, graphics can communicate development regulations more clearly and in less space than written standards. For example, new and updated diagrams can clearly depict standards for measuring sign height, while verbal equivalents are prone to misinterpretation and uncertainty. With visual clarification, fewer sections of the Zoning Ordinance will be subject to competing or incorrect interpretations, and regulations can be cleared of much of the jargon that can obscure the Ordinance's intent. In addition, graphics in the existing Zoning Ordinance need be updated to improve legibility and quality. For example, the graphics found in Section 45 ("H" Hillside Combining District) require improvement<sup>5</sup>.

## Section 2.2 Zoning Districts

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While a General Plan establishes land use designations and the overall policy basis for land use and development, zoning creates the framework for implementation of the General Plan policies and land use designations. It also establishes districts which are intended to define distinct locations for different uses, consistent with the General Plan. The Milpitas General Plan 2040, however, takes the step of identifying specific zoning districts to implement its land use designations (General Plan Action LU-1f, Table 1). The Zoning Ordinance will carry forward those recommendations and discussed in this Section.

Generally, development codes include two types of districts, base and overlay. "Base districts" set the basic regulations that apply within the geographic area that defines the district. A community may want to vary some of the regulations within the base district to respond to particular conditions within defined areas. "Overlay districts" are often used for this purpose.

Overlay districts are "laid over" or applied to base districts in situations in which modification of permitted uses or required standards is appropriate due to specific conditions, circumstances, or goals. Overlay districts can be geographically defined and mapped or can apply wherever specific conditions exist.

Preliminary recommendations for amendments to base zoning districts and overlay/combining districts are described in the tables below. These recommendations include related amendments to the General Plan to ensure alignment of allowable densities and intensities (i.e., floor area ratio (FAR)) between the General Plan land use designations and corresponding zoning districts<sup>6</sup>.

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<sup>5</sup> As previously noted, voter approval is required for amendments to Section 45 – "H" Hillside Combining District.

<sup>6</sup> The City will propose any other General Plan amendment as necessary to ensure appropriate alignment of General Plan land use designations and zoning districts with the final proposed modifications of the existing zoning districts.

## Base Zoning Districts

Table 2.A: Base Zoning Districts - Preliminary Recommendations		
Existing Zoning District	General Plan Land Use Designation	Preliminary Recommendation for the Zoning Ordinance Update
None	Neighborhood Commercial Mixed Use (NCMU)	Create a new NCMU zoning district.
None	Business Park/Research and Development (BPRD)	Create a new BPRD zoning district.
Agricultural Residence (AR)	None	Delete this zoning district as it is not an implementing zone for the General Plan and no property is zoned AR.
One and Two-Family District (R2)	Medium Density Residential (MDR)	Increase maximum density from 11 units per gross acre to 15 units per gross acre. Decrease minimum lot area from 8,000 s.f. to 5,800 s.f. to reflect this density increase.
Multiple-Family District (R3)	High Density Residential (HDR)	Increase maximum density from 20 units per gross acre to 30 units per gross acre (1,452 s.f. per unit).
Urban Residential (R5)	Very High Density Mixed Use (VHDMU)	Increase maximum density from 60 units per gross acre to 75 units per gross acre.
Mixed Use District (MXD)	Neighborhood Commercial Mixed Use (NCMU)	Allow multifamily dwelling units in mixed-use projects at a rate of 1 unit per 1,500 s.f. of neighborhood-serving commercial. <sup>1</sup> Allow residential-only projects if 100% affordable to lower income households.
High Density Mixed Use District (MXD2)	None	Delete this zoning district as it is not an implementing zone for the General Plan and no property will be zoned MXD2 with adoption of Metro zoning districts (they will be MXD2-Metro).
Very High Density Mixed Use District (MXD3)	Very High Density Mixed Use (VHDMU)	Increase maximum density from 60 units per gross acre to 75 units per gross acre. Reduce maximum non-residential and mixed-use FAR from 2.0 to 1.5 (retain the existing standard allowing up to 2.5 FAR with a Conditional Use Permit).
Town Center (TC)	Town Center (TWC)	Allow mixed-use projects with a density of up to 40 units per acre provided a minimum 0.35 non-residential FAR is included.
Neighborhood Commercial District (C1)	Neighborhood Commercial Mixed Use (NCMU), General Commercial (GNC), General Commercial (NC)	Increase FAR from 0.35 to 0.75 consistent with NC land use designation. Amend General Plan Table 1 to remove C1 as an implementing zone for the GNC land use designation, which has a maximum FAR of 0.5.
Light Industrial District (M1)	Manufacturing (MFG)	Increase FAR from 0.4 to 1.0.
Heavy Industrial District (M2)	Manufacturing (MFG)	Increase FAR from 0.4 to 1.0.



Table 2.A: Base Zoning Districts - Preliminary Recommendations		
Existing Zoning District	General Plan Land Use Designation	Preliminary Recommendation for the Zoning Ordinance Update
Industrial Park District (MP)	Industrial Park (INP)	Increase FAR from 0.5 to 1.0.
<p><i>1. Anticipate that this ratio may change with the preparation of the new NCMU Zoning District and associated standards. The Zoning Ordinance will ensure consistency with the General Plan ratio, as amended.</i></p>		

**Overlay Districts**

Table 2.B: Overlay Districts - Preliminary Recommendations	
Overlay/Combining District	Preliminary Recommendation for the Zoning Ordinance Update
High Rise Overlay District (-HR)	Remove this Overlay as it is outdated and applies to only one property as the result of a project-specific entitlement that was never constructed.
Hillside Combining District (-H)	Implements Hillside Low Density and Hillside Medium Density land use designations (maximum density of 1 to 3 units/gross acre with density decreasing with increase in slope until 10 acres required per unit (average slope of 27% or greater). Amend -H Combining District to reflect this increase from currently allowed density. <sup>1</sup> Additionally, integrate voter-approved ballot measures that affect hillside development but are not codified into the Zoning Ordinance.
Mobile Home Park Combining District (-MHP)	Currently mobile home parks are zoned Highway Services with the MHP Overlay. Create a MHP base zoning district to remove the need for the overlay and create a single density standard for mobile home parks consistent with the General Plan (7 units per gross acre). Note that General Plan Table 1 will need to be amended to show MHP as a base zone rather than R1-MHP.
Recreation & Entertainment Overlay District (-RE)	The -RE Overlay is intended to allow a broader range of uses where it applies over the C2, HS, MP, and M1 zoning districts. Remove this Overlay as it will be largely superseded with the new BPRD zoning district and comprehensively updated use tables.
Site and Architectural Overlay District (-S)	Remove this Overlay and replace with citywide design review requirements.
<p><i>1. As previously noted, voter approval is required for amendments to Section 45 – “H” Hillside Combining District.</i></p>	

Note: General Plan Policy LU 2-5 specifically lists all existing overlay/combining districts; therefore, any removal or addition of overlays/combining districts will require a General Plan amendment for consistency.

## Section 2.3 Use Regulations

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Use regulations, typically presented in a tabular format, detail the type of uses that are allowed, any required planning approval, and specific limitations applicable to the activity or use. Land use categories are building blocks that establish the basis for regulation, while use regulations identify the specific use categories that are allowed, allowed with a permit, or prohibited in each zoning district. Use regulations may also include special requirements applicable to specific uses.

General Plan land use designations outline what is allowed in terms of uses and intensity of development, with each designation mapped on a land use diagram (see General Plan Figure LU-1). In addition, Citywide policies, particularly those related to economic development, call attention to particular uses that should be promoted. It is important to ensure that the use regulations in the Zoning Ordinance carry out these City policies.

### An Updated Approach to Uses

The changing nature of land use demands flexibility in regulation. Specialized operations and segregated uses are becoming less prevalent as operations and uses adapt to rapidly changing technology and market preferences. Traditionally, a company may have manufacturing in one place, an office somewhere else, and a shop in still another location. Increasingly, and particularly for smaller operations, functions are blending. For example, a craft brew establishment may brew and distribute beer, sell beer and brewery related merchandise, serve beer and food, and feature live entertainment. This type of operation combines five traditionally separate uses: manufacturing, distribution, retail sales, eating and drinking, and entertainment. While Ordinance 38.848 (adopted in 2022) included updates to various uses, its focus was on industrial areas and related uses. The current Zoning Ordinance is recommended to be revised to make it easier to determine how operations that combine uses fit into the City's use regulation scheme.

The Zoning Ordinance update provides the opportunity to modernize the City's approach to use regulation to reflect contemporary uses, current development practices, and State and federal law. The updated regulations can address specific considerations for certain uses such as urban agriculture, artisan workspace, entertainment, and others. They can provide flexibility to adapt to changing preferences, technology, and other circumstances. The updated use lists can also support community objectives such as providing a diversity of housing types and flexible commercial and employment centers.

To help modernize the Zoning Ordinance, obsolete uses (i.e., those no longer allowed, or those containing outdated terms) are recommended to be eliminated and contemporary uses such as industrial flex space, shared office spaces, and urban agriculture uses (e.g., community gardens, produce stands, etc.) added. The Zoning Ordinance update will also incorporate mechanisms to allow for flexibility in the change in uses or combination of uses. In addition to identifying and providing for accessory uses that are typically associated with certain principal uses, the Zoning Ordinance may incorporate provisions to allow other accessory uses (e.g., outdoor dining, coffee bar, rooftop gardens and/or dining), up to a certain threshold, that are subordinate and incidental to a principal use. Special attention can also be given to having uniform requirements or standards for uses, where appropriate. Reducing nuances between requirements for varying uses will ease administration and provide flexibility with regard to evolving operations and the re-use of property.

The allowable uses within each zoning district will be updated for compatibility with the purpose of the district, compatibility with adjacent districts and uses, consistency with the General Plan land use designation, consistency with other City policies (see Section 1.1 of this report), and adaptability to contemporary trends.

Lastly, these revisions, together with appropriate standards for specific uses, will facilitate a reduction in the application of Conditional Use Permits (CUPs). Reducing the use of CUPs encompasses allowing uses by right or lowering the level of CUP required (i.e., City staff-level approval instead of Planning Commission)<sup>7</sup>. Lowering approval requirements for desired uses provides efficiencies that can advance the City's goals for supporting new businesses and employment generation.

### **Clarity and Organizational Improvement of Uses**

The Zoning Ordinance's use definitions lack congruency and consistency. Some uses are not defined, and others are redundant across the various sections of the Zoning Ordinance. For example, the Ordinance lists hospitals under three different uses: "Hospital," "Hospitals," and "Hospitals or Sanitariums" in commercial districts, industrial districts, and mixed-use districts respectively. It is recommended that redundant uses are consolidated under a uniform term that falls into one use category (e.g., commercial uses, industrial uses, etc.). Additionally, very specific uses are listed (e.g., "Furniture Sales," "Household Appliance Store," and "Paint and Wallpaper Stores"). As previously discussed, this approach limits flexibility and unnecessarily expand the use tables. These types of uses are recommended to be grouped under a broader use (e.g., General Retail) with appropriate supplemental regulation<sup>8</sup>.

## **Section 2.4 Development and Design Standards**

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The current Zoning Ordinance has a variety of standards that address design and quality of development. Some of the standards were established more than 20 years ago and reflect the common practice and development style popular at the time. Though additional development and design standards and requirements have been added over the years, the standards lack thorough integration within the Zoning Ordinance, resulting in a code that does not adequately support the development and built form that the Milpitas community envisions. The following subsections address issues across various sections and topics in the existing Zoning Ordinance and provide recommendations for improvement, in addition to those identified in Section 1.1.

### **Objective Design Standards for Non-Residential Uses**

While the City adopted Residential and Mixed-Use Objective Design Standards (ODS) applicable to qualifying multi-family and residential mixed-use projects in November 2022 and consistent with SB 330, the current Zoning Ordinance lacks references to the ODS in the appropriate sections. Further, the

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<sup>7</sup> Removing the CUP requirement for tandem parking, particularly tandem parking for single-family homes, is also recommended; however, standards related to tandem parking may be appropriate to facilitate the staff-level review.

<sup>8</sup> Home occupations, for example, have standards specific to that use (Section XI-10-13.05); however, it is recommended that these be expanded.

development of objective design standards for non-residential uses (i.e., commercial and industrial) is recommended. The Zoning Ordinance is recommended to include non-residential design standards for elements such as building entrances, façade design and articulation, upper story step-backs, pedestrian and bicycle circulation, landscaping, parking design, and lighting (see Section 1.1 of this report).

## Parking

Parking standards for vehicles and bicycles are an important part of any Zoning Ordinance. Parking ratios in the existing Zoning Ordinance need to be updated and reduced to better accommodate the City's vision and needs and ensure consistency with State law (also see Sections 1.1 and 1.3 of this report). It is, therefore, recommended that the parking provisions be comprehensively updated to reduce minimum parking ratios and establish maximum parking ratios where appropriate; expand on allowed shared and alternative parking strategies; update design standards for parking areas such as the inclusion of drive aisles; incorporate standards for both short- and long-term bicycle parking and storage; and incorporate appropriate standards for electric vehicle (EV) charging stations while encouraging these uses (see Table 1.D) and complying with legal requirements. Bicycle parking standards will include requirements for placement (e.g., on-site and near main entrances) and to ensure bicycle parking is easily accessible and secure. Additionally, parking standards will include requirements for on-site delivery, loading, and move-in/move-out activities, as appropriate.

## Landscaping and Tree Standards

The current Zoning Ordinance lacks comprehensive standards for landscaping, tree planting, and tree shade. The City's goals and vision, as well as best zoning practice, warrant the inclusion of comprehensive landscaping and tree standards in the Zoning Ordinance, especially the inclusion of updated drought-tolerant requirements for landscaping. Currently, the only landscaping requirements are for development within the Hillside Combining District (H), adopted in City Council Resolution No. 6066, and those requirements are not yet incorporated into the Zoning Ordinance<sup>9</sup>. Further, it is recommended that comprehensive landscape design standards (e.g., parking lot and perimeter landscaping standards and tree planting standards on-site and in adjacent public right-of-way), drought-tolerant planting standards, and water preservation standards be included and/or referenced from other chapters in the Municipal Code, as well as review procedures for landscape plans, if different from other site or design review processes.

The City has standards applicable to tree removal in the City's right-of-way (Tree Protection and Heritage Tree Program (Municipal Code Title X, Chapter 2, Section 7), the Zoning Ordinance is recommended to address tree protection on private property (also see Table 1.D). Some of the standards in the existing Tree Protection and Heritage Tree Program may be appropriate to also apply to private property; however, this will be further reviewed during preparation of the draft updated Zoning Ordinance.

## Single-Family Residential Development Standards

Some of the existing Zoning Ordinance's single-family residential development standards are recommended to be clarified and expanded. For example, exceptions to the Zoning Ordinance's setback

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<sup>9</sup> Water Efficient Landscapes are regulated in Title VIII, Chapter 5.

standards, found in Section XI-10-55.03 (Setbacks), are recommended to be updated and revised to reflect the development types the community envisions, to be cognizant of sensitive adjacencies, and support engaging frontages. Additional objective design standards, for elements such as window recess, variation of roof form, blank walls, and colors and materials, are also recommended. Standards for site design should ensure that single-family home remodels or additions are supported and encouraged<sup>10</sup>.

## Other Recommendations

Other recommendations for development and design standards of the Zoning Ordinance are listed below:

- Clarify building height in the industrial zoning districts rather than leaving ambiguity regarding allowed maximum height.
- Simplify height regulations for accessory structures, which are in multiple places in the Zoning Ordinance (Table XI-10-4.04, XI-10-54.08 (B), etc.).
- Clarify setback standards for accessory structures in coordination with Fire and Building Department requirements. Also, acknowledge potential easement conflicts.
- Revise and clarify fence and wall standards to accommodate taller entry features, allow appropriate flexibility, and address recurring issues (e.g., easements, utility areas, City right-of-way/street trees, corner lots and irregularly-shaped lots, applicability (e.g., retaining walls, bushes, etc.), gates/locks, etc.).
- Better define distinctions between special events to facilitate review and approval (Section 15).
- Include and/or reference access management best practices as outlined in the Transportation Research Board's Access Management Manual and Access Management Application Guidelines as appropriate.

## Section 2.5 Sign Standards

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### Legal Issues

For many years, and especially since the landmark U.S. Supreme Court decision in *Reed v. Town of Gilbert* (No. 135 S.Ct.2218, 2015), decided in June 2015, U.S Courts have affirmed that sign regulations must be “content-neutral” to survive a legal challenge. To be content-neutral, sign regulations must be based on “time, place, and manner” restrictions, rather than by making distinctions based on the message the sign conveys.

“Time, place, and manner” restrictions, as the name suggests, limit the length of time, the manner, and place or location of a sign. As an example, well-written sign regulations may include a limitation on the length of time portable or temporary signs may be displayed, such as A-frame signs or banner signs;

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<sup>10</sup> This also relates to nonconforming structure thresholds.

restrictions on the total area, maximum height, or illumination of a sign; and where the sign may be placed (i.e., so as not to encroach within public right-of-way).

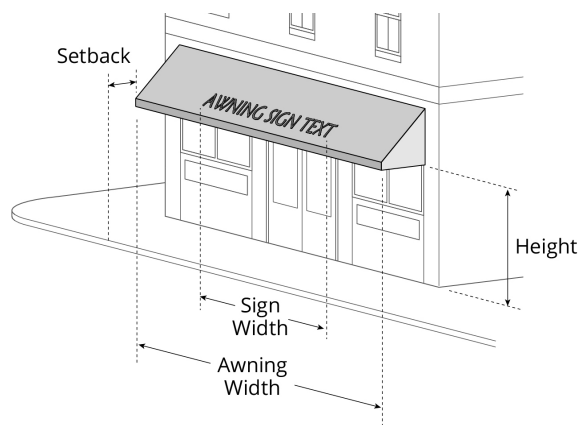
A content-based sign regulation, on the other hand, includes standards specific to the message that is conveyed on the sign (i.e., the sign needs to be read to understand what standards will apply to it). These include, for example, “political signs” which may be regulated differently to “temporary construction signs,” “garage sale signs,” or “real estate signs.”

As a general recommendation, it is important that all content-based sign standards be removed from Section 24 (Signs). This includes, for example, references to garage sale signs, political signs, open house direction signs, temporary tract advertising signs, etc.

## Organization and Clarity Issues

In addition to the content-based issues described above, the sign regulations can be improved by applying the following recommendations:

- Revise the organization of the sign standards based on best practices, especially following the *Reed* case. This includes for example a new general development standards section for standards related to measuring sign area and height, illumination standards, sign placement and display standards, maintenance standards, etc. and separate sections for permanent and temporary/portable signs.
- Include a comprehensively updated Purpose and Intent section, provisions to allow the substitution of a sign message, provisions for the right to picket, a content-neutral statement, and a separate severability clause.
- Revise and reduce the number of exceptions to the sign standards consistent with best practices.
- Include simple and clearly illustrated graphics to illustrate each sign type (see awning sign graphic).
- Format the standards for sign types (i.e., sign area, height, placement, illumination, etc.) in a simple table format for ease of use.
- Update and modernize the sign definitions. Group sign definitions in a subsection of the definitions section, similar to separate definition subsections for uses and general terms.
- Include the sign regulations in the Metro Specific Plan in the updated Zoning Ordinance sign standards.
- Consider modifying standards (e.g., height, length of display, etc.) and review authority for various signs as appropriate.
- Ensure consistency throughout the Zoning Ordinance pertaining to sign regulations (e.g., Applications Section 57).



- Conform to and/or reference California Department of Transportation’s Outdoor Advertising Regulations where appropriate.

## Section 2.6 Administration and Procedures

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### Organization Issues

The City’s Zoning Ordinance does not include one logically organized and consolidated Administration and Procedures Chapter or Section. Instead, administrative processes are randomly included in a variety of Sections within Chapter 10, Zoning, including for example:

- Section 57 (Applications) that provides the procedures for General Plan, Specific Plan, and Zoning Amendments; Site Development Permits and Minor Site Development Permits; Conditional Use Permits and Minor Conditional Use Permits; Density Bonus Permits; and Variances;
- Section 59 (Certificates of Occupancy);
- Section 61 (Interpretation);
- Section 63 (Enforcement and Penalty); and
- Section 64 (Development Review Process).

It is recommended that all of the above-listed administration and procedures sections be reorganized and consolidated. The consolidated section will then include all of the procedures for various planning permits and approvals, amendments to the General Plan, amendments to the zoning map and text, specific plans, appeals, enforcement, etc.

### Design Review and Clear Purpose of Permits

It is recommended that procedures for design review, clearly stating that design review is applicable citywide, be included. Site Development Permits and Use Permits currently serve in some capacity as design-related review. It is recommended that the purpose, review procedures, and findings for each of these permit types be clarified. For example, permit purpose statement may focus on the following:

- **Design Review Permit** – Permit for reviewing consistency with applicable design standards and guidelines.
- **Site Development Permit** – Permit for reviewing compliance with applicable Zoning Ordinance standards.
- **Conditional Use Permit** – Permit for reviewing uses and activities for compatibility with the site and surrounding uses.

It is recommended that a minor design review process (i.e., review and approval by City staff for alterations, additions, certain levels of new construction, etc.) and major design review for larger and potentially more controversial projects, by for example, the Zoning Administrator or Planning Commission, be included.

## Site Development Permits

Table XI-10-57.03-1 (Additions or Alterations Requiring Minor Site Development Permits), while very comprehensive, is unwieldy and challenging to use and apply. It is recommended that this table be streamlined and reorganized, with consideration of the proposed citywide design review (see above), and with actual development standards included in the appropriate places within the updated Zoning Ordinance. This will result in the table including only clear applicability provisions for certain uses and/or development features. This table or accompanying text should also include, for example, a description of those applications for which planning review and permits are not required (e.g., for window or roof replacement).

## Exceptions

The Zoning Ordinance provides extensive flexibility to various standards and provisions (e.g., building height, nonconforming, parking, temporary uses and structures, etc.) through a Conditional Use Permit (see Table XI-10-57.04-1). While flexibility in a Zoning Ordinance provides an opportunity to address unique conditions, it erodes predictability which can result in neighborhood opposition. An alternative approach would be to codify clear standards (e.g., when projections into setback areas or exceedances of the height limit are appropriate) (see Section 55), and if additional flexibility is needed, establish a new minor modification process (effectively a staff level process for adjusting a standard up to predetermined limits). Section 55 (Exceptions) describes various circumstances where minor exceptions from certain standards are allowed including encroachments and projections into setbacks and various determinations for setbacks, height, and lot area. Regardless of whether a minor modification process is added, the variance process will remain in the Zoning Ordinance and be used when hardship conditions are present and the findings consistent with State law for granting a variance are met (also see Section 1.3 regarding variances). This recommendation is also consistent with implementation of General Plan Policy LU 5-3 (see Table 1.A).

## Other Recommendations

Other recommendations for administrative and procedure sections of the Zoning Ordinance are listed below:

- Modify findings for approval as necessary so they are clear to facilitate the review and approval of all projects, especially housing developments. This recommendation is also consistent with implementation of Housing Element Program 21. Potential modifications will be further discussed with City staff prior to drafting these provisions for the updated Zoning Ordinance.
- Create a new “common procedures” section in which all processes and procedures that are common to the preparation, filing, and processing of development applications will be placed, including for example, application process, review of planning applications, noticing requirements, extensions and modifications, etc.
- Revise the noticing requirements to be more effective, such as using additional noticing methods. The Zoning Ordinance revisions may be supplemented with additional City guidance that is not codified.
- Add flexibility to time limits/extensions of permit approvals.
- Add a clear statement clarifying when any type of review authority (e.g., City staff, the Zoning Administrator, etc.) may refer or elevate a decision to a higher review authority.



- Clearly describe the requirements and procedure for amendments or modifications to existing entitlements.

## Chapter 3 Next Steps

This report will be used as the foundation to prepare the comprehensively updated Zoning Ordinance. These preliminary findings and recommendations will be discussed, refined, and expanded through continued community engagement including public workshops, Zoning Advisory Group (ZAG) meetings, and Planning Commission and City Council study sessions.

The next milestones for the Zoning Ordinance Update are summarized as follows:

- **Draft New Zoning Districts and Zoning Map.** The new Business Park/Research & Development zoning district, Neighborhood Commercial Mixed Use zoning district, and Metro Specific Plan zoning districts will be drafted for public review. A draft updated Zoning Map will also be prepared and released for public review.
- **Public Review and Comment.** Public review and opportunities for discussion and feedback on this Report and the draft new zoning districts and zoning map.
- **Annotated Table of Contents.** An annotated Zoning Ordinance table of contents will be prepared that proposes an improved structure and organization of the Zoning Ordinance based on identified issues and findings of this report.
- **Preliminary Style Guide.** A preliminary Zoning Ordinance style guide will be prepared that identifies guidance for the updated Ordinance layout, cross references, terminology, fonts, graphics, and other items.

This report and public engagement efforts will continue to inform the update of the Zoning Ordinance.

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