# Chapter 10.05

# ZONING

Sections:

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Prior legislation: 1966 Code §§ 7805, 7904, 7910 – 7913, 8100, 8300 – 8302, 8304, 8310 – 8313, 8325, 8330, 8335 and 8350 – 8352, 1976 Code §§ 10-1.303, 10-1.307, 10-1.404, 10-1.410 – 10-1.413, 10-1.416, 10-1.801 – 10-1.808, 10-1.810 – 10-1.812 and 10-1.814 – 10-1.816 and Ords. 231, 245, 270, 301, 353, 377, 505, 522, 540, 561, 603, 632, 643, 650 and 713.

## Article I. Adoption of Zoning Plan

**10.05.0100 Adoption.**
There is adopted a systematic zoning plan for the city. This plan is adopted to promote and protect the public health, safety, peace, morals, comfort and general welfare. (Ord. 231, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.101; 1966 Code § 7501. Formerly 10.05.0010).

**10.05.0110 Purpose.**
The general purpose of this chapter is to provide regulations needed to implement the Millbrae General Plan for the physical development of the city.

Accordingly, this zoning plan is adopted to:

A. Protect the established character, social and economic values of residential, commercial, industrial, recreational and other areas within the city which have developed in a healthy and orderly manner;

B. Encourage beneficial development of those areas which have grown with conflicting or inefficient patterns of use; and

C. Assist in providing a definite and publicly approved plan of development to guide, control and stimulate the future growth of the city in accordance with the needs of the community and in proper relation to other land use in the city and the region. (Ord. 231, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.102; 1966 Code § 7502. Formerly 10.05.0020).

**10.05.0120 Short title.**
This chapter shall be known by the following short title: "The Millbrae Zoning Ordinance." (Ord. 231, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.103; 1966 Code § 7503. Formerly 10.05.0030).

## Article II. Definitions

**10.05.0200 Definitions.**
Definitions of key terms are set forth in this section in alphabetical order and are applicable throughout this title. A word that is underlined indicates that the word is defined elsewhere in this section.

"Accessory dwelling unit" or "ADU" means an attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary dwelling. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel that the single-family or multifamily dwelling is or will be situated. "Accessory dwelling unit" includes an efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code, or a manufactured home, as defined in Section 18007 of the California Health and Safety Code. An accessory dwelling unit is not an accessory structure, as defined in this section, nor is it subject to the requirements of Article XX of this chapter. Notwithstanding the forgoing sentence, an accessory structure, as defined in this section, may be converted into an accessory dwelling unit or a portion of an accessory dwelling unit in compliance with the requirements of this article.

"Accessory structure" means any structure located on the same lot with the main building, detached or attached, and which is occupied by an accessory use. Examples include detached garages, freestanding carports, sheds, detached decks, gazebos, arbors, trellises, and above-ground swimming pools and spas.

"Accessory use" means a use customarily incidental to the principal use of the land and/or structure located on the same lot with the main building or use.

"Alley" means a public or private right-of-way which affords secondary means of access to abutting properties.

"Animal hospital" means a facility maintained by, or for the use of, a licensed veterinarian in the diagnosis, treatment, or prevention of animal diseases where the animals are limited to dogs, cats, or other comparable household pets and where the overnight care of said animals is prohibited except when necessary in the medical treatment of the animal.

"Attic" means the space in a building between the ceiling joists of the top story and the roof rafters.

"Automobile sales and service" means the premises where motor vehicles are stored and displayed for sale, and where repair or body work is incidental to the operation of the new or used vehicle sales. Motor vehicle sales include retail, consignment or wholesale sales.

"Automotive repair and painting" means an establishment engaged in the repair, maintenance and/or painting of automobiles, motorcycles, trucks, or similar vehicles including major and minor work.

"Balcony" means a platform with a guard rail or wall that either projects from an exterior wall of a building or is recessed within the building wall, and is open on one or more sides to the outside, with access only from the building interior.

"Bar" means a commercial establishment whose primary activity is the selling and serving of alcoholic beverages to be consumed on the premises and in which the service of food is only incidental to the consumption of such beverages; including taverns, lounges, pubs, wine bars, and beer gardens.

"Basement" means any interior portion of a building which is partly or completely below grade, and which is not crawlspace.

"Beauty shop/barber shop" means any personal service business where cosmetology services are provided for compensation by barbers, cosmetologists, electrologists, estheticians, or manicurists licensed by the state, including hair care, nail care, and skin care.

"Bed and breakfast" means a private single-family residence occupied by an owner-operator providing overnight or otherwise temporary accommodations to guests for compensation with only breakfast served.

"Block" means all property fronting upon one side of a street, between intersecting streets, or between a street and a railroad right-of-way, waterway, dead-end street or unsubdivided land.

"Boardinghouse/roominghouse" means a building, or a portion thereof, designed or used exclusively for residential occupancy, including fraternity and sorority houses, but other than a bed and breakfast or commercial lodging, which contains one main kitchen and no individual kitchen facilities, and wherein three or more rooms are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agency, or rental manager is in residence. Boardinghouses provide meal service for residents, while roominghouses do not.

"Building" means any structure completely enclosed by walls and a roof.

"Building footprint" means the perimeter walls of a building in plan view, excluding any exterior spaces such as patios and uncovered decks and any open projections, such as balconies and eaves, but including carports.

"Building site" means a piece of land occupied or to be occupied by one or more structures.

"Bulk materials and heavy equipment sales and service" means a business that displays, warehouses, sells and/or services oversized durable goods, such as construction and other industrial types of equipment, and/or materials, such as rock, stone, sand, and landscaping materials.

"Care facility" means any facility operated under license from the California State Department of Social Services (SDSS) for the purpose of providing residential, social and/or personal care for children, adolescents, adults, seniors, or special categories of people with limits on their ability for self-care, where medical care may or may not be a major element, and for which the city has jurisdiction to limit and/or regulate such uses.

"Carport" means a permanently roofed structure that is open on two or more sides, is used primarily for the shelter of one or more vehicles, and may or may not be attached to a building.

"Club/lodge" means an association or organization of people who regularly assemble at a dedicated, designated facility for social or recreational purposes, to which membership is required for participation, and may be subject to other regulations controlling such use. A club/lodge may have dining facilities, may serve alcohol, or engage in professional entertainment for the enjoyment of dues-paying members and their guests. It is not primarily operated for profit nor to render a service that is customarily carried on as a business. Fraternities and sororities are excluded.

"College/university" means a post-secondary institution for higher learning that grants bachelor's degrees and may also have research facilities and/or professional schools that grant master's and doctoral degrees. This may also include community colleges that grant associate degrees or certificates of completion in business or technical fields.

"Commercial lodging" means any building, or group of attached or detached buildings, or portion thereof, containing guestrooms or units, with or without kitchen facilities, in which lodging is offered for compensation, such as hotels, motels and extended stay hotels which are predominantly used for stays of less than thirty days.

"Commercial recreation, indoor" means a recreation facility operated as a business and open to the public for a fee, entirely within a building, including, but not limited to: arcades, art galleries, bowling alleys, athletic or health clubs, gymnasiums, museums, performance theaters, swimming pools, ice skating rinks, billiard halls, motorized cart tracks, comedy clubs and nightclubs.

"Commercial recreation, outdoor" means a recreation facility operated as a business and open to the public for a fee, conducted at least partially outside of a building, including but not limited to: golf driving ranges, miniature golf, water parks, amphitheaters, amusement parks, swimming pools, shooting ranges, batting cages, and motorized cart or motorcycle racing.

"Community center" means a building, or portion thereof, used as a place of meeting, recreation or social activity and not operated for profit.

"Contractor's yard" means an area used for the parking and storage of equipment and materials used for construction and which may or may not include an affiliated construction office.

"Convenience store" means a retail establishment with a floor area of less than five thousand square feet that sells goods such as prepackaged food items, self-serve food items, beverages, tobacco, beer and wine, periodicals, and other household supplies, and is characterized by extended hours of operation and large volumes of in-and-out customer traffic.

"Country club" means a chartered membership club catering primarily to its membership, providing one or more of the following recreational and social activities: golf, swimming, tennis, horseback riding, dances, special events dinners, and may include accessory uses such as a clubhouse, locker room, bar, or pro shop.

"Crawlspace" means the unimproved, enclosed area that is not utilized as living space and is located beneath the first usable floor of a building and which may contain plumbing, ductwork and other utilities as well as structural support.

"Deck" means an exterior floor system supported by an adjoining structure and/or posts, piers, or other independent supports, and which may be covered or uncovered.

"Dense planting" means any grouping of plant material(s) which as a result of plant selection, location and maintenance gives the appearance of a fence or wall in creating a physical barrier.

"District" means a portion of the city within which certain uses of land and buildings are permitted or prohibited and within which certain development standards are established for building sites, all as set forth and specified in this chapter.

"Drive-in restaurant" means a business establishment where prepared food and/or beverages are served to patrons within parked automobiles and which may have an eat-in dining area for on-premises consumption.

"Drive-through facility" means a business establishment that either wholly or partially provides service(s) and/or product(s) through a window directly to patrons who remain in their vehicles. Examples include prepared food, photo finishing services, pharmacies, computer repair, coffee kiosks, and banks.

"Dry cleaners" means a retail establishment where clothing or other fabrics are dropped off for dry cleaning and/or laundering and where the operation and maintenance of the laundry and dry cleaning equipment may or may not be located on the premises.

"Duplex" means a building consisting solely of two dwelling units.

"Dwelling" or "dwelling unit" means a building or portion thereof designed and used exclusively for residential occupancy, and which at a minimum contains one kitchen, bathroom facilities, and sleeping quarters.

"Easement" means a legal or equitable right to use real property owned by another party for a stated purpose or need.

"Emergency shelter" means housing with minimal support services for homeless persons that is limited to occupancy of six months or less by a homeless person.

"Exterior lighting" means any form of outdoor illumination, including interior light sources, but excluding both internally and externally illuminated signs.

"Family" means any individual or group of two or more individuals occupying a dwelling unit where all residents share living expenses, chores, and other household responsibilities, and/or form social, economic, and psychological commitments to each other. A family includes the residents of residential care facilities and group homes for people with disabilities. A family does not include institutional group living situations such as dormitories, fraternities, sororities, monasteries, convents, military barracks, or commercial care facilities such as retirement centers, nursing homes, and the like, or commercial group living arrangements such as boardinghouses, roominghouses, and the like.

"Fence" means any manmade barrier forming a physical boundary constructed of wood, concrete, stone, brick, lattice, metal, chain, cable, plastic, or dense planting materials.

"Flat" means a portion of a building designed and used exclusively for residential occupancy, with independent access to one or more individual units, and where each unit contains a kitchen and a bathroom in a building devoted primarily to a nonresidential use. Characteristics include a building with ground floor commercial uses, with one or more residences, not affiliated with the ground floor uses, located above.

"Fleet vehicle-related uses" means one of the following:

1. A business that offers transportation to passengers, and which is characterized by fleets of vehicles such as taxis, limousines, and shuttle buses; or

2. A service-related business that stores its company-owned vehicles at the business location and uses them in the provision of services to its customers off site during business hours. Examples include contractors, plumbers, electricians, cable companies, and similar service technicians; or

3. Rental car businesses that store their vehicles on site.

"Floor area ratio (FAR)" means the gross floor area divided by the net site area.

"Fuel and service station" means a retail business where flammable or combustible liquids or gases to be used as fuel are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles. Service stations may also supply goods and services essential to the normal operation of automobiles including the sale and service of tires, batteries, and automotive accessories and replacement items, and lubrication service, but not including body or fender work, automobile painting, major motor or running gear repairs, or storage of damaged or wrecked vehicles.

"Gambling establishment" means any establishment which operates for the primary purpose of facilitating wagering as permitted under state law.

"Garage" means a building, or portion thereof, used primarily for the shelter of one or more vehicles.

"General office" means an office used to provide direct services to consumers, characterized by moderate levels of vehicular and pedestrian traffic and which may have walk-in customers. Examples include travel agencies, advertising agencies, real estate offices, mortgage brokers, insurance agents, title companies, contractor's offices, and janitorial services.

"Golf course" means land laid out with at least nine golf holes including tees, greens, fairways, and hazards for playing a game of golf, and which may contain accessory uses such as a pro shop and a restaurant.

"Gross floor area" means the total horizontal area of all floors of all buildings on a site, as measured to the outside surface of all exterior walls.

"Gross lot area" means the total land area within the boundaries of a lot.

"Guesthouse" means detached living quarters of a permanent type of construction and without kitchens or cooking facilities, and where no compensation in any form for occupancy is received or paid.

"Gun shop" means an establishment that engages in advertising, selling, transferring, or exposing for sale any weapons such as pistols, revolvers, rifles, or other firearms and is licensed in accordance with Chapter 5.55 MMC and state law as a firearms dealer.

"Heavy equipment sales and service" means an establishment that engages in the sale, rental, and/or service of vehicles and other apparatus commonly used in commercial, industrial or construction operations. It also includes the sale and service of large-sized household appliances and furniture, incidental outdoor storage areas or yards, and services related to the above-mentioned which may include the use of solvents and chemicals.

"Height" means the measurement of the greatest vertical distance above the exterior finished grade to the highest point of the building immediately above, exclusive of antennas, chimneys and roof equipment. The height of a stepped or terraced building is the height of the tallest segment of the building.

"Home occupation" means any home-based business activity carried on within a dwelling, which is incidental to the residential use of the dwelling, and which meets the requirements set forth in this chapter.

"Hospital" means an institution possessing the professional staff, specialized equipment, and other resources necessary for the medical and/or surgical care of people on an outpatient basis and/or for extended overnight stay.

"Instructional classes, retail" means classes associated with a retail or service use where classes are incidental to the principal use on site. Such classes would generally be offered during evenings or weekends and examples include craft-making classes where items such as yarn, beads, or fabric are sold, flower arranging at floral shops, and cooking classes at grocery stores.

"Junior accessory dwelling unit" or "JADU" means a unit that is no more than five hundred square feet in size and contained entirely within a single-family dwelling or attached garage. A junior accessory dwelling unit shall contain at least an efficiency kitchen that includes a cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the junior accessory dwelling unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure. A junior accessory dwelling unit is not an accessory structure, as defined in this section, nor is it subject to the requirements of Article XX of this chapter.

"Kennel" means any establishment in which dogs, cats, and/or other household domestic animals are boarded, bred, or cared for in return for compensation or are kept for sale, but excluding animal hospitals.

"Landscaped area" means any portion of a building site that is devoted to and maintained for the growing of live vegetative materials such as trees, shrubs, grass (including synthetic grass), and ground cover, for primarily decorative purposes. Such area may contain xeriscaping (landscaping with slow-growing, drought-tolerant plants and little or no irrigation), natural or manmade water features (such as ponds, streams, waterfalls, and fountains), and other amenities (such as walkways, retaining walls, patios, decks, arbors, trellises, raised planter beds, decorative stone/brick work, benches, lighting). Landscaped areas shall not be surfaced with concrete, asphalt, or other impervious materials, but shall be natural earth and may contain organic mulch (such as wood shavings and bark) or inorganic fillers (such as sand and gravel), and decorative rocks/boulders.

"Laundromat" means a commercial establishment that provides coin-operated washing machines and dryers to be used by customers on site.

"Liquor store" means a business where the principal use is the sale of alcoholic beverages for off-premises consumption.

"Live/work unit" means a space within a building permitted for joint use for both nonresidential and residential purposes where the residential use of the space is clearly secondary or accessory to the principal use as a place of business, the residential space is directly accessible from the nonresidential space, and the residential space is occupied by a person(s) working within the nonresidential space. The covenants, conditions and restrictions (CC&Rs) for specific projects will define the parameters under which live/work units will operate.

"Lodge" – See definition of "club/lodge."

"Lot" means a parcel of land with established and legally recorded ownership boundary lines.

1. "Corner lot" means a lot located at the intersection of two or more streets. The shortest street frontage of a corner lot is the front, and the longest street frontage is the side, irrespective of the direction in which any building on the lot may face or to which street it may be addressed.

2. "Flag lot" means a lot where the main building site area is connected by a narrow access strip to a public right-of-way.

3. "Interior lot" means a lot other than a corner lot.

4. "Side fronting lot" means a corner lot where its side street lot line is a continuation of the front lot line of the first lot to its rear.

5. "Through lot" means an interior lot having frontage on two parallel or approximately parallel streets.

"Lot coverage" means the percentage of the gross lot area covered by all building footprints. Lot coverage does not include any open projections such as decks, balconies and eaves; however, carports are included.

"Lot depth" means the horizontal distance from the midpoint of the front lot line to the midpoint of the rear lot line, or to the rear-most point of the lot where there is no rear lot line.

"Lot line" means an established and legally recorded ownership boundary.

1. "Exterior lot line" means a lot line with street frontage.

2. "Front lot line" means the shortest exterior lot line except for through lots which are determined on a case-by-case basis.

3. "Interior lot line" means a lot line without street frontage.

4. "Rear lot line" means the lot line opposite or approximately opposite the front lot line.

5. "Side lot line" means any lot line that is neither a front nor a rear lot line.

"Lot width" means the horizontal distance between the midpoints of the side lot lines.

"Manufacturing, heavy" means a facility that engages in the manufacturing of products from processed or unprocessed raw materials, where the finished product is noncombustible and nonexplosive; such a facility may have the potential to produce odor, noise, vibrations, illumination or particulates. Warehousing, wholesaling and distribution of the finished products produced at the site may be associated with this use.

"Manufacturing, light" means a facility that engages in the manufacturing, processing, assembly, packaging, treatment, or fabricating of finished or semi-finished products from previously prepared materials, where activities are conducted wholly within an enclosed building, and the facility is operated in such a manner as to control external effects of the operation such as smoke, noise, soot, dirt, vibration, and odor. Warehousing, wholesaling and distribution of the finished products produced at the site may be associated with this use.

"Massage establishment" – See definition in MMC 5.60.030(C).

"Medical clinic" means a facility providing medical, psychiatric, or surgical service for sick or injured persons exclusively on an out-patient basis, including emergency treatment.

"Medical office" means an office dedicated for use exclusively by a physician, dentist, orthodontist, ophthalmologist, chiropractor, physical therapist, acupuncturist, psychiatrist, psychologist or similar medical practitioner, on an appointment-only basis with no overnight care.

"Mortuary" means an establishment where the deceased are prepared for burial or cremation and may include display and sale of funeral products and a chapel for the conduct of funeral services and informal gatherings. Cemeteries, crematoriums, and columbariums are excluded.

"Multifamily dwelling" means a building or portion thereof, designed and constructed as four or more individual dwelling units.

"Net site area" means the total horizontal area of a legal lot which:

1. Includes the cumulative area of all easements up to a maximum of ten percent of gross lot area;

2. Excludes all other easement area; and

3. Excludes all portions of the site not included above, with slopes greater than thirty percent.

"Nonconformity" means a lot, structure, or use that lawfully existed prior to the enactment of the current regulations of the district in which the lot, structure, or use is located, but which does not comply with those regulations.

"Open space" means publicly accessible lands which are vacant of any structures and are primarily maintained in their natural condition, but may also include pathways, landscaping, benches, and other recreational improvements.

"Outdoor dining" means any outdoor arrangement of tables, chairs, benches, stools, or other furnishings primarily intended for use while eating and drinking by the customers of the restaurant with which the furnishings are associated. Furnishings shall also include patio umbrellas, portable heaters, table lighting, potted plants, portable signs, etc. Furnishings located upon private property or within a public right-of-way and furnishings temporarily placed or permanently affixed are included.

"Outdoor display of merchandise" means an outdoor arrangement of objects, items, or products for sale which are typically located inside of a building but are placed outdoors for either a limited period of time, such as for a sidewalk sale or seasonal event, or for an extended period of time, but excludes permanent outdoor storage. Also excluded are new and used vehicles displayed at dealerships.

"Outdoor storage" means products, materials, or other equipment having a large size, mass, or volume, are not easily moved or carried, and that are not enclosed within a building for the purpose of being displayed for sale. Such areas may also provide adequate space to allow customers to examine the merchandise. Such storage is typically accessory to a permitted or conditional use and may include the outdoor storage of items such as sheds, sculptures, hot tubs or outdoor patio furniture, but does not include automobile display.

"Park" means an improved but primarily unobstructed area containing landscaping, including walkways and benches, recreational facilities such as open fields, hiking trails, basketball courts, baseball fields, soccer fields, and playgrounds, and may also include recreational buildings or structures.

"Parking lot/structure" means any facility designed and constructed for the primary purpose of parking automobiles not intended for sale or long-term storage, and that serves adjacent uses.

"Parking space" means any accessible, usable, permanently surfaced area for vehicle parking that is not located on a public street, alley, or other public right-of-way.

1. "Covered parking space" means a parking space in a garage, carport, or parking structure.

2. "Uncovered parking space" means any parking space that is not a covered parking space.

"Pawn shop" means an establishment that loans money upon deposit of personal property or deals in the purchase or possession of personal property on condition of selling the same back again to the pledger and may also include retail sales of previously used general merchandise.

"Personal care establishment" means a business that provides nonmedical services of a personal nature that include, but are not limited to, barber shops, beauty shops, nail salons, skincare salons, spas, massage businesses, acupressure, reflexology, and tanning salons.

"Pet daycare" means a facility providing pet care for all or part of a day, and including services such as obedience classes, training and grooming; provided, that overnight boarding is not offered.

"Pet grooming" means an establishment where pets are bathed, clipped, or combed for the purpose of maintaining their aesthetic appearance or health.

"Place of worship" means any building where persons regularly assemble for religious purposes.

"Principal use" means the primary activity, function, or operation conducted on the premises.

"Professional office" means an office used by a person or persons generally classified as professionals, such as architects, engineers, attorneys, accountants, consulting services, and financial advisors, and which is characterized by low traffic and pedestrian volumes, lack of distracting, irritating or sustained noise, and that typically functions by appointment only.

"Rear yard open space" means that area located within the rear one-third of a lot which is to remain unbuilt, unoccupied, and unobstructed from the ground to the sky.

"Reflexology" means the physical act of applying pressure, massaging, squeezing, or pushing on parts of the feet, or sometimes the hands and ears, with the goal of encouraging a beneficial effect on other parts of the body, or to improve general health. Reflexology is considered a type of massage as defined in MMC 5.60.020.

"Repair shops and services" means any establishment that specializes in the repair, service and/or maintenance of items such as household appliances, furniture, computers, shoes, watches, electronics, jewelry, and musical instruments, and also includes alterations, tailoring, and dressmaking. These services are generally provided to individuals and households rather than businesses and may include the limited use of chemicals and solvents. Automotive repair is excluded.

"Restaurant" means an establishment where food, beverages and/or desserts are prepared on site and are served to patrons for consumption on or off the premises and which may or may not provide seating and shall include, but are not limited to, coffee shops, bakeries, cafeterias, sandwich shops, and diners, excluding take-out only restaurants.

"Retail sales" means a commercial establishment engaged in selling goods within a building directly to customers.

"Right-of-way" means land dedicated to public use for pedestrian and vehicular travel and which may also or exclusively accommodate public and/or private utilities.

"Roominghouse" – See definition of "boardinghouse/roominghouse."

"School (pre-K and K through twelve)" means a public or private educational institution for pre-kindergarten and kindergarten through twelfth grade, but not including trade schools.

"Second story" means any floor surface which has a vertical height of at least seven feet above the exterior grade.

"Self-service storage facility" means a building or group of buildings with controlled access, that are divided into individual, self-contained units leased to individuals, organizations or businesses for storage of private property.

"Setback" means the distance by which any structure is horizontally separated from a lot line of the lot upon which it is located.

"Sexually oriented businesses" – See definition in MMC 5.115.020(A).

"Short-term residential rental" means all or part of a single-family dwelling, a unit in a multifamily dwelling, or accessory dwelling unit offered for compensation for the purpose of sleeping, residing, lodging or other similar activities for fewer than thirty consecutive calendar days, counting portions of days as full calendar days. A short-term residential rental is distinguished from a commercial lodging and a boardinghouse/roominghouse in that the units used as short-term residential rentals are of the type typically occupied by permanent residents as a house or an apartment. A short-term residential rental is distinguished from a bed and breakfast in that short-term residential rentals may, but need not be, single-family residences, and need not serve breakfast.

"Sign" means any advertising, informational, or directional display or structure.

"Single-family dwelling" means a building designed and used exclusively for residential occupancy by one family.

"Smoke shop" means a retail establishment whose primary products for sale are tobacco products and paraphernalia, including any tobacco cigarettes, cigarette papers, cigars, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or by any other means of ingestion. Such establishments must first obtain a tobacco retailer permit as required in Chapter 5.110 MMC.

"State-regulated residential care facility" means any facility operated under license from the California State Department of Social Services (SDSS) for the purpose of providing residential, social and/or personal care for children, adolescents, adults, seniors, and special categories of people with limits on their ability for self-care, but where medical care is not a major element, and for which the city has limited authority to regulate such uses under state law.

"Story" means that portion of a building included between the surface of a floor and the surface of the floor or roof immediately above, including any attic having an interior height of seven feet and six inches over at least fifty percent of its floor area.

"Street" means a public or private right-of-way which affords primary means of access to abutting properties.

"Structural alterations" means any change in the supporting members of a structure, such as foundations, bearing walls, columns, beams, trusses, joists, or girders.

"Structure" means anything constructed or erected, the use of which requires location on or in the ground, or attachment to something having location on or in the ground. Examples include buildings, swimming pools, and carports.

"Supermarket" means a retail establishment offering a wide variety of departmentalized food and household merchandise and may contain a deli, bakery, florist, bank, pharmacy, photo processing, or other ancillary uses within the store, and which occupies more than twenty-five thousand square feet of gross floor area.

"Supportive housing" means housing occupied by the target population, as defined in subdivision (d) of Section 53260 of the California Government Code, and that is linked to on- or off-site services that assist the supportive housing residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community.

"Take-out only restaurant" means an establishment where food, beverages or desserts are typically ordered by phone, prepared on site and served in disposable containers or wrappers for consumption exclusively off of the premises, with no on-site seating other than a limited number of seats for patrons waiting for take-out orders. Such an establishment may also deliver food to customers off site.

"Tattoo parlor" means a retail establishment that offers tattooing (meaning the placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or puncture the skin) and/or body piercing (meaning the creation of an opening in the skin of a person for the purpose of attaching jewelry or other decoration).

"Trade school" means a private educational facility devoted to instruction in particular crafts, trades or skills such as business, cosmetology and barbering, computer or automotive repair, culinary arts, and construction trades.

"Transitional housing" means one or more buildings physically configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recycling of the assisted units to other eligible program recipients at some predetermined future point in time.

"Triplex" means a building consisting solely of three dwelling units.

"Tutoring and instruction" means an establishment where people pay a fee to assemble for learning or training in exercise, dance, self-defense and martial arts, aerobics, voice or musical instruments, academic subjects, or similar pursuits.

"University" – See definition for "college/university."

"Use" means the conduct of an activity or the performance of a function or operation on the premises.

"Utility services" means all infrastructure related to the supply and maintenance of power, water, and communications including, but not limited to, electric distribution substations and transmission lines, service yards

and field operating centers, communications equipment cabinets and buildings, and public utility pumps, wells, and valve stations.

"Wall" means any upright structure with a height and length greater than its thickness that divides or encloses an area or supports another structure.

1. "Building wall" means a wall forming an inner partition or exterior facade of a building.

2. For other than a building wall, see definition of fence.

"Warehouse" means a building used for storage, wholesaling, and/or distribution of manufactured products, supplies, and equipment. The storage of live animals is excluded.

"Yard" means all land on a lot not occupied by a building.

1. "Front yard" means a yard extending across the full width of the front of the lot between its front lot line and any portion of the front facade of the main building.

2. "Rear yard" means a yard extending across the full width of the back of the lot between its rear lot line and any portion of the rear facade of the main building.

3. "Side yard" means a yard between the side lot line of the lot and any portion of the side facade of the main building and extending from the front yard of the lot to the rear yard of the lot. (Ord. 231, Amended by Ord. 382, § 1; Ord. 409, § 1; Ord. 436, §§ 1, 2; Ord. 510, §§ 2, 3, 4; Ord. 516, § 1; Ord. 526, § 1; Ord. 561, § 3.1; Ord. 578, § 2; Ord. 603, § 1; Ord. 612, § 1; Ord. 632, § 1; Ord. 650, § 1; Ord. 670, § 1; Ord. 691, § 1; Ord. 726, § 2 (Att. A); Ord. 748, § 2; Ord. 756, § 5; Ord. 771, § 4(A); Ord. 782, § 2; 1976 Code § 10-1.201; 1966 Code §§ 7600 – 7673, inclusive. Formerly 10.05.0040).

## Article III. Zoning Districts and Map

**10.05.0300 Establishment and designation of districts.**
The city is divided into zoning districts which are designated as follows:

A. Single-family large lot or "R-1LL" district;

B. Single-family residential or "R-1" district;

C. Duplex/triplex residential or "R-2" district;

D. Multifamily residential or "R-3" district;

E. Commercial or "C" district;

F. Downtown ~~improvement area~~and El Camino Real Specific Plan or "DTECRSP~~DIA~~" district;

G. Industrial or "I" district;

H. Open space or "OS" district;

I. Public facilities or "PF" district;

J. Planned development or "PD" district;

K. Millbrae Station Area Planned Development or "MSAPD" district;

L. Grand Boulevard Planned Development or "GBPD" district. (Ord. 231, Amended by Ord. 337, § 1; Ord. 445, § 1; Ord. 643, § 1; Ord. 726, § 2 (Att. A); 1976 Code § 10-1.301; 1966 Code § 7800. Formerly 10.05.0050).

**10.05.0310 Combining district.**
In addition to the districts established in MMC 10.05.0300, there is established a combining district in which office uses may be combined with any of the districts set forth in MMC 10.05.0300, said district to be designated by the suffix "-O." (Ord. 231, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.302; 1966 Code § 7801. Formerly 10.05.0060).

**10.05.0320 Zoning map.**
A. The boundaries of the districts designated and established by MMC 10.05.0300 and 10.05.0310 are shown on that map entitled, "Zoning Map of the City of Millbrae," which map is incorporated in and made a part of this chapter. An official copy of said map shall be kept by the city clerk of the city for the purpose, among other things, of performing the duties prescribed by MMC 10.05.0340. The districts shown on said map are declared to be subject to the regulations pertaining to such designated districts as said regulations are set forth in this chapter. All notations, references and other information shown on the zoning map are incorporated by reference and shall be deemed as much a part of this title as if the matter and information set forth by the map were fully described in this chapter.

B. No person shall use any land or structure, nor shall any structure be erected, constructed, enlarged, altered, moved or used in any district shown on said zoning map, except in accordance with the regulations established by this chapter for the district in which it is located.

C. The boundaries of any district included in the zoning map incorporated in this chapter shall be determined by reference to that zoning map dated December 6, 1949, adopted by Section 2.2 of Ordinance No. 42 of the city and subsequent amendments to such map. (Ord. 231, Amended by Ord. 643, § 1; Ord. 726, § 2 (Att. A); 1976 Code § 10-1.304; 1966 Code § 7802. Formerly 10.05.0080).

**10.05.0330 Boundary determinations.**
Where the exact boundaries of a district cannot be readily or exactly ascertained by reference to the zoning map of the city, the boundary shall be deemed to be along the nearest legally recorded property line. If a district boundary line divides or splits a lot, the lot shall be deemed to be included within the district which is the more restrictive. (Ord. 231, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.305; 1966 Code § 7803. Formerly 10.05.0090).

**10.05.0340 Changes in districting boundaries.**
Changes in the boundaries of districts shall be made by ordinance in the manner provided in Article XXVI of this chapter, said ordinance describing the area to be changed either by lot and block number, or by metes and bounds. After adoption of any ordinance changing any boundaries of any district, the city clerk shall mark the aforementioned map to show the number and date of the adoption of this chapter, and annually thereafter, the city clerk shall cause a revised zoning map to be published in a newspaper of general circulation in the city, said map to show the changes made in district boundaries effected by amending ordinances as provided in this chapter for the year preceding said publication; provided, however, that no publication shall be required if there have been no such changes during the preceding year. However, district boundary lines shall be deemed to automatically change with changes to lot boundaries as a result of city-approved lot line adjustments. (Ord. 231, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.306; 1966 Code § 7804. Formerly 10.05.0100).

## Article IV. District Regulations

**10.05.0400 Compliance with regulations.**
Except as provided hereinafter, no structure shall be erected, reconstructed, enlarged, altered, or moved; nor shall any structure or land be used except as hereinafter specifically provided for and allowed in the districts in which such structure and land are located. Uses that are not listed as permitted or conditional uses in MMC 10.05.0410 (the "land use table") shall be prohibited unless the community development director or designee determines that they are sufficiently similar in character to listed uses. Appeals of all such staff-level determinations shall be made in the manner provided in Article XXVII of this chapter. In addition, prior to the issuance of any new permit on a property, any existing uses or structures on that property for which a permit is required but was not approved, or for which regulations exist but have not been complied with, shall be removed or made compliant so that a permit, if required, can be approved; with the exception that legal nonconforming uses and structures are exempt from this provision but are subject to the provisions of Article XXIV of this chapter. (Ord. 231, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.401; 1966 Code § 7900. Formerly 10.05.0120).

**10.05.0410 Land use table.**

The following uses listed in the land use table detail the permitted, conditional, or accessory uses allowed within each zoning district in the city.

**Table 1 – Land Uses by Zoning District**

| Land Use Categories | Specific Land Uses | R-1LL – Article V. | R-1 – Article VI. | R-2 – Article VII. | R-3 – Article VIII. | C – Article X. | ~~DIA – Article XI~~. | | I – Article XII. | PF – Article XIII. | OS – Article XIV. | PD – Article XV. | DTECRSP~~G~~ BP~~D~~ – Article X~~V~~I. | MSAP D – Article XVII. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | ~~Primary Frontages~~ | ~~Secondary Frontages~~ | | | | | | |
| Household Living | Single-Family Dwellings | P | P | P | P | | | | | | | * | | |
| | Flats | | | | | C | | ~~C~~ | | | | * | | |
| | Duplexes | | | P | P | | | | | | | * | | |
| | Triplexes | | | P | P | | | ~~C~~ | | | | * | | |
| | Multiple-Family Dwellings | | | | P | C | | ~~C~~ | | | | * | | |
| Group Living | Care Facilities | | | C | P | C | | | | | | * | | |
| | Rooming and Boardinghouses | | | | C | C | | | | | | * | | |
| | State-Regulated Residential Care Facilities | P | P | P | P | | | | | | | * | | |
| | Emergency, Transitional, and Supportive Housing | | | | | P | | | P | | | * | | |
| Accessory Uses (Allowed Only in Conjunction with Principal Uses) | Short-Term Residential Rental | PP | PP | PP | PP | PP | ~~pp~~ | ~~pp~~ | | | | | | |
| | Accessory Dwelling Unit | PP | PP | PP | PP | PP | | ~~pp~~ | | | | | | |
| | Junior Accessory Dwelling Unit | PP | PP | PP | PP | | | | | | | | | |
| Community Services | Clubs and Lodges | | | | C | C | | ~~C~~ | | | | * | | |

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| Land Use Categories | Specific Land Uses | R-1LL – Article V. | R-1 – Article VI. | R-2 – Article VII. | R-3 – Article VIII. | C – Article X. | ~~DIA – Article XI.~~ | | I – Article XII. | PF – Article XIII. | OS – Article XIV. | PD – Article XV. | DTECRSP~~G~~ ~~BPD~~ – Article X~~V~~I. | MSAPD – Article XVII. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | ~~Primary Frontages~~ | ~~Secondary Frontages~~ | | | | | | |
| | Community Centers | | | | C | C | | ~~C~~ | | P | | | * | |
| | Places of Worship | C | C | C | C | C | | | | | | | * | |
| Educational | Colleges and Universities | | | | | C | | | C | | | | * | |
| | Classes Incidental to Retail Uses | | | | | | ~~P~~ | ~~P~~ | | | | | * | |
| | Schools (Pre-K and K through 12) | C | C | C | C | C | | | | | | | * | |
| | Trade and Vocational Schools | | | | | C | | ~~C~~ | | | | | * | |
| | Tutoring and Instruction over 2,500 Square Feet | | | | | C | ~~C~~ | ~~C~~ | | | | | * | |
| | Tutoring and Instruction up to 2,500 Square Feet | | | | | P | ~~P~~ | ~~P~~ | | | | | * | |
| Parks, Recreation and Open Space | Country Clubs | C | C | | | | | | | | | | * | |
| | Golf Courses | C | C | | | | | | | | | | * | |
| | Open Space | | | | | | | | | | P | | | |
| | Parks | C | C | C | C | C | | | | | P | | * | |
| Utilities | Utility Services | C | C | C | C | C | ~~C~~ | ~~C~~ | | C | | | * | |
| | Wireless Communication Facilities | C | C | C | C | C | ~~C~~ | ~~C~~ | | C | C | | * | |
| Eating and Drinking | Bars | | | | | C | ~~C~~ | ~~C~~ | | | | | * | |
| | Drive-In Restaurants | | | | | C | | | | | | | * | |
| | General Restaurants | | | | | P | ~~C~~ | ~~C~~ | | | | | * | |
| | Take-Out Only Restaurants | | | | | P | ~~C~~ | | | | | | * | |

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| Land Use Categories | Specific Land Uses | R-1LL – Article V. | R-1 – Article VI. | R-2 – Article VII. | R-3 – Article VIII. | C – Article X. | ~~DIA – Article XI.~~ ~~Primary Frontages~~ | ~~DIA – Article XI.~~ ~~Secondary Frontages~~ | I – Article XII. | PF – Article XIII. | OS – Article XIV. | PD – Article XV. | DTECRSPG~~BPD~~ – Article X~~V~~I. | MSAPD – Article XVII. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Entertainment | Indoor Commercial Recreation | | | | | C | ~~C~~ | ~~C~~ | | | | * | | |
| | Outdoor Commercial Recreation | | | | | C | | | C | | | * | | |
| Offices | General Offices | | | | | P | | ~~C~~ | | P | | * | | |
| | Medical Offices | | | | C | P | | ~~C~~ | | | | * | | |
| | Professional Offices | | | | C | P | | ~~C~~ | | | | * | | |
| Parking | Parking Lots and Structures | | | | | C | ~~C~~ | ~~C~~ | | P | | * | | |
| Personal Services | Banks | | | | | P | | ~~P~~ | | | | * | | |
| | Dry Cleaners | | | | | P | | ~~P~~ | P | | | * | | |
| | Hospitals | | | | | C | | | C | | | * | | |
| | Laundromats | | | | | P | | ~~P~~ | | | | * | | |
| | Medical Clinics | | | | | C | | | C | | | * | | |
| | Mortuaries | | | | | C | | | C | | | * | | |
| | Personal Care-Related Uses | | | | | P | | ~~P~~ | C | | | * | | |
| | Repair Shops – Not Automobile Related | | | | | P | | ~~P~~ | P | | | * | | |
| Pet-Related Services | Animal Hospitals | | | | | C | | | C | | | * | | |
| | Animal Kennels | | | | | | | | C | | | * | | |
| | Pet Daycare | | | | | C | | | C | | | * | | |
| | Pet Grooming | | | | | P | | | C | | | * | | |
| Retail Sales | Convenience Stores | | | | | P | ~~P~~ | ~~P~~ | | | | * | | |
| | Retail Uses 5,000 Square Feet or Less | | | | | P | ~~P~~ | ~~P~~ | | | | * | | |
| | Retail Uses 5,001 – | | | | | P | ~~C~~ | ~~C~~ | | | | * | | |

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| Land Use Categories | Specific Land Uses | R-1LL – Article V. | R-1 – Article VI. | R-2 – Article VII. | R-3 – Article VIII. | C – Article X. | ~~DIA – Article XI.~~ | | I – Article XII. | PF – Article XIII. | OS – Article XIV. | PD – Article XV. | DTECRSPG~~BPD~~ – Article X~~V~~I. | MSAPD – Article XVII. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | ~~Primary Frontages~~ | ~~Secondary Frontages~~ | | | | | | |
| | 10,000 Square Feet | | | | | | | | | | | | | |
| | Retail Uses Greater Than 10,000 Square Feet | | | | | C | | | | | | | * | |
| | Supermarkets | | | | | C | | | | | | | * | |
| Vehicle Related | Automotive Repair and Paint | | | | | C | | | C | | | | * | |
| | Automobile Sales and Service | | | | | C | | | C | | | | * | |
| | Carwash | | | | | C | | | C | | | | * | |
| | Fuel and Service Stations | | | | | C | | | C | | | | * | |
| Visitor Accommodations | Bed and Breakfasts | C | C | C | C | | | | | | | | * | |
| | Commercial Lodging | | | | C | C | | | | | | | * | |
| | | | | | | | | | | | | | | |
| Manufacturing | Heavy Manufacturing | | | | | | | | C | | | | * | |
| | Light Manufacturing | | | | | | | | P | | | | * | |
| Warehouse, Storage and Bulk Materials | Bulk Materials, Heavy Equipment Sales and Service | | | | | | | | C | | | | * | |
| | Fleet Vehicle-Related Uses | | | | | | | | C | | | | * | |
| | General Warehousing | | | | | | | | P | | | | * | |
| | Mini Storage | | | | | | | | P | | | | * | |
| | Outdoor Storage | | | | | | | | C | | | | * | |

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| Land Use Categories | Specific Land Uses | R-1LL – Article V. | R-1 – Article VI. | R-2 – Article VII. | R-3 – Article VIII. | C – Article X. | ~~DIA – Article XI.~~ | | I – Article XII. | PF – Article XIII. | OS – Article XIV. | PD – Article XV. | DTECRSP~~C~~ BP~~D~~ – Article X~~V~~I. | MSAPD – Article XVII. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | ~~Primary Frontages~~ | ~~Secondary Frontages~~ | | | | | | |
| Adult-Oriented | Sexually Oriented Businesses | | | | | | | | C | | | * | | |
| | Gun Shops | | | | | C | | | | | | * | | |
| | Liquor Stores | | | | | C | ~~C~~ | | | | | * | | |
| | Pawn Shops | | | | | C | | | | | | * | | |
| | Smoke Shops | | | | | C | ~~C~~ | | | | | * | | |
| Accessory Uses (allowed only in conjunction with principal uses) | Drive-Through Facilities | | | | | C | | | C | | | * | | |
| | Home Occupations | PP | PP | PP | PP | PP | | ~~PP~~ | | | | * | | |
| | Outdoor Dining | | | | | PP | ~~C, PP~~ | | | | | * | | |
| | Outdoor Display of Merchandise | | | | | C | ~~C~~ | ~~C~~ | C | | | * | | |
| Other | Any change in use where available on-site parking would be at least 50 percent of required parking. (See Articles X, XI, and XII for additional requirements.) | | | | | P | ~~P~~ | ~~P~~ | P | | | * | | |
| | Any change in use where available on-site parking would be less than 50 percent of required parking. (See Articles X, XI, and XII for additional requirements.) | | | | | C | P | ~~P~~ | C | | | * | | |

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(Ord. 726, § 2 (Att. A), Amended by Ord. 748, § 4; Ord. 750, § 2; Ord. 771, § 4(B) (Exh. A); Ord. 782, § 3).

**10.05.0420 Reasonable accommodation.**

A. Purpose. To allow the city manager (or designee) to grant limited exceptions to development standards for minor improvements to existing residences to accommodate access needs for disabled persons.

B. Procedure. Exceptions to existing development standards may be granted by the city manager (or designee), upon making all of the findings outlined below:

1. The applicant shall submit an application, together with a site plan, elevations and additional supporting information as required by the city manager to provide sufficient understanding of the request and compliance with development standards.

2. No public notice or hearing is required.

3. Exceptions shall be granted subject to the following restrictions:

a. The improvements may be made to any existing main residence or accessory living quarters.

b. Exceptions are not permitted for a proposed new residence.

c. Improvements shall be restricted to those necessary for enhanced access for disabled persons, including but not limited to interior access ramps, widening of hallways, or expansion of bathrooms or closets.

d. Exceptions to development regulations shall be limited by all of the following, over the life of each structure:

i. Paved area coverage not greater than two hundred fifty square feet in excess of allowable limits for the site;

ii. Accessory structures are exempt from the development standards specified in MMC 10.05.2000;

iii. Encroachment into setbacks not greater than forty percent of the minimum required ground floor side setbacks and not greater than eighty percent of the minimum required upper floor side setbacks;

iv. Increase in house size for a main residence not greater than ten percent in excess of the maximum FAR for the site.

C. Findings. The city manager (or designee) shall make all of the following findings in order to grant an exception for minor improvements for disabled access:

1. The proposed improvements are necessary to provide for housing access for disabled persons.

2. The proposed exception(s) will cause no significant negative environmental impacts to the applicant's property, adjacent properties, or to the surrounding neighborhood and community.

3. The proposed exception(s) will cause no significant negative impacts on the privacy of the applicant or adjacent neighbors. (Ord. 748, § 3).

**10.05.0430 State density bonus law.**

A. Purpose. The purpose of this chapter is to specify how compliance with Government Code Section 65915 ("state density bonus law") will be implemented in an effort to encourage the production of low income housing units in developments proposed within the city.

B. Applicability.

1. This chapter shall apply to all zoning districts, including mixed use zoning districts, where residential developments of five or more dwelling units are proposed and where the applicant seeks and agrees to provide low, very low, senior or moderate income housing units in the threshold amounts specified in state density bonus law such that the resulting density is beyond that which is permitted by the applicable zoning. This chapter and state density bonus law shall apply only to the residential component of a mixed-use project and shall not operate to increase the allowable density of the nonresidential component of any proposed project.

2. Nothing in this chapter requires the provision of direct financial incentives for the residential development, including but not limited to the provision of financial subsidies, publicly owned land, fee waivers, or waiver of dedication requirements. The city at its sole discretion may choose to provide such direct financial incentives.

3. Financial and certain other incentives may require payment of prevailing wages by the residential development if required by state law.

4. Unless otherwise specified in this chapter, the definitions found in state density bonus law shall apply to the terms contained herein.

C. Procedure.

1. Application Requirements.

a. Any applicant requesting a density bonus, incentive(s) and/or waiver(s) pursuant to state density bonus law shall provide the city with a written proposal. The proposal shall be submitted prior to or concurrently with filing the planning application for the housing development and shall be processed in conjunction with the underlying application.

b. The proposal for a density bonus, incentive(s) and/or waiver(s) pursuant to state density bonus law shall include the following information:

i. The specific requested density bonus proposal shall demonstrate that the project meets the thresholds for the state density bonus law. The proposal shall also include calculations showing the maximum base density, the number/percentage of affordable units and identification of the income level at which such units will be restricted, additional market rate units resulting from the density bonus allowable under state density bonus law and the resulting unit per acre density. The density bonus units shall not be included in determining the percentage of base units that qualify a project for a density bonus pursuant to state density bonus law.

ii. Requested Incentive(s). The request for particular incentive(s) shall include a pro forma or other report demonstrating that the requested incentive(s) results in identifiable, financially sufficient and actual cost reductions that are necessary to make the housing units economically feasible. The report shall be sufficiently detailed to allow the city to verify its conclusions. If the city requires the services of specialized financial consultants to review and corroborate the analysis, the applicant will be liable for all costs incurred in reviewing the documentation.

iii. Requested Waiver(s). The written proposal shall include an explanation of the waiver(s) of development standards requested and why they are necessary to make the construction of the project physically possible. Any requested waiver(s) shall not exceed the limitations provided by subsection (C)(5) of this section and to the extent such limitations are exceeded will be considered as a request for an incentive.

iv. Fee. Payment of the fee in an amount set by resolution of the city council to reimburse the city for staff time spent reviewing and processing the state density bonus law application submitted pursuant to this chapter.

2. Density Bonus.

a. A density bonus for a housing development means a density increase over the otherwise maximum allowable residential density under the applicable zoning and land use designation on the date the application is deemed complete. The amount of the allowable density bonus shall be calculated as provided in state density bonus law. The applicant may select from only one of the income categories identified in the state density bonus law and may not combine density bonuses from different income categories to achieve a larger density bonus.

b. In the sole discretion of the city council, the city council may approve a density bonus and/or incentive(s) in accordance with state density bonus law for a project that does not maximize the underlying base zoning density. Additionally, nothing herein prevents the city from granting a greater density bonus and additional incentives or waivers than that provided for herein, or from providing a lesser density bonus and fewer incentives and waivers than that provided for herein, when the housing development does not meet the minimum thresholds.

c. The density bonus provided pursuant to state density bonus law is not additive with and shall not be combined with the density bonus provided pursuant to any other provisions of this chapter.

3. Incentives.

a. The number of incentives granted shall be based upon the number the applicant is entitled to pursuant to state density bonus law.

b. An incentive includes a reduction in site development standards or a modification of zoning code requirements or architectural requirements that result in identifiable, financially sufficient and actual cost reductions. An incentive may be the approval of mixed use zoning (e.g., commercial) in conjunction with a housing project if the mixed use will reduce the cost of the housing development and is compatible with the housing project. An incentive may, but need not be, the provision of a direct financial incentive, such as the waiver of fees.

c. A requested incentive may be denied only for those reasons provided in state density bonus law. Denial of an incentive is a separate and distinct act from a decision to deny or approve the entirety of the project.

4. Discretionary Approval. The granting of a density bonus or incentive(s) shall not be interpreted in and of itself to require a general plan amendment, zoning change or other discretionary approval. If an incentive would otherwise trigger one of these approvals, when it is granted as an incentive, no general plan amendment, zoning change or other discretionary approval is required. However, if the base project without the incentive requires a general plan amendment, zoning change or other discretionary approval, the city retains discretion to make or not make the required findings for approval of the base project.

5. Waivers. A waiver is a modification to a development standard such that construction at the increased density would be physically possible. Modifications to floor area ratio in an amount equivalent to the percentage density bonus utilized shall be allowable as a waiver. Requests for an increase in floor area ratio above that equivalent percentage shall be considered a request for an incentive. Other development standards include, but are not limited to, a height limitation, a setback requirement, an on-site open space requirement, or a parking ratio that applies to a residential development. An applicant may request a waiver of any development standard to make the project physically possible to construct at the increased density. To be entitled to the requested waiver, the applicant must show that without the waiver, the project would be physically impossible to construct. There is no limit on the number of waivers.

6. Local Preference for Type of Incentives and Concessions. The allocation of incentives or a density bonus shall be determined on a case-by-case basis by the approval body in approving the affordable housing plan or equivalent in consideration of the following preferred measures:

a. A waiver and/or modification to the floor area ratio (FAR) or height requirements are the city’s preferred alternatives.

b. A reduction in parking standards beyond that set forth in Government Code Section 65915(p) will be considered on a case-by-case basis. The request shall be accompanied by evidence demonstrating that the city's parking standards physically preclude the utilization of a density bonus or that the project needs for parking can be met due to other factors.

c. A reduction in on-site open space requirements is discouraged unless nearby off-site open space and/or enhancements thereto can be demonstrated to the city's satisfaction to meet project needs.

d. A waiver of or reduction in application fees is not preferred but will be considered on a case-by-case basis.

7. Affordable Housing Agreement. Prior to project approval, the applicant shall enter into an affordable housing agreement or equivalent with the city, to be executed by the approving body guaranteeing the affordability of the rental or ownership units for a minimum of fifty-five years and identifying the type, size and location of each affordable unit and a marketing plan for finding qualified tenants and owners. Such affordable housing agreement shall be recorded in the San Mateo County recorder's office.

8. Design and Quality.

a. Affordable units must be constructed concurrently with market rate units and shall be integrated into the project. Affordable units shall be of equal design and quality as the market rate units. Exteriors, including architecture and elevations, and floor plans of the affordable units shall be similar to the market rate units. Interior finishes and amenities may differ from those provided in the market rate units, but neither the workmanship nor the products may be of substandard or inferior quality as determined by the building official. The number of bedrooms in the affordable units shall be consistent with the mix of market rate units.

b. Parking standards shall be modified as allowable under state density bonus law and anything beyond those standards shall be considered a request for an incentive.

D. Findings.

1. Findings for Approval of State Mandated Density Bonus, Concessions, and Incentives. Before approving an application that includes a request for a density bonus, incentive, concession, waiver, the decision-making body shall make the following findings, as applicable:

a. The residential development is eligible for a density bonus and any concessions, incentives, waivers, or parking reductions requested.

b. Any requested incentive or concession will result in identifiable, financially sufficient, and actual cost reductions based upon appropriate financial analysis and documentation if required.

c. If the density bonus is based all or in part on donation of land, the findings included in Government Code Section 65915(g).

d. If the density bonus, incentive, or concession is based all or in part on the inclusion of a childcare facility, the findings included in Government Code Section 65915(h).

e. If the incentive or concession includes mixed-use development, the findings included in Government Code Section 65915(k)(2).

f. If a waiver is requested, the development standards for which a waiver is requested would have the effect of physically precluding the construction of the residential development with the density bonus, concessions, or incentives permitted.

2. Findings for Denial of Incentives, Concessions or Waivers.

a. If the findings required by subsection (D)(1) of this section can be made, the decision-making body may deny a concession or incentive only if it makes a written finding, supported by substantial evidence, of either of the following:

i. The concession or incentive is not required to provide for affordable rents or affordable ownership costs.

ii. The concession or incentive would have a specific adverse impact upon public health or safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential development was deemed complete.

iii. The concession or incentive would be contrary to state or federal law.

b. If the findings required by subsection (D)(1) of this section can be made, the decision-making body may deny a waiver only if it makes a written finding, supported by substantial evidence, of either of the following:

i. The waiver would have a specific adverse impact upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, and identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.

ii. The waiver would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

iii. The waiver would be contrary to state or federal law.

c. If the findings required by subsection (D)(1) of this section can be made, the decision-making body may deny a density bonus, incentive, or concession that is based on the provision of childcare facilities only if it makes a written finding, based on substantial evidence, that the city already has adequate childcare facilities. (Ord. 752, § 2).

## Article V. Single-Family Residential Large Lot or "R-1LL" District

### 10.05.0500 Purpose.

The purpose of the single-family residential large lot or "R-1LL" district is to provide for detached single-family residential development of the hillside lands in Millbrae for relatively low densities commensurate with the natural topography, tree cover, and surface drainage patterns which typify those areas. This district correlates with the "very low density residential" land use designation of the Millbrae General Plan. (Ord. 726, § 2 (Att. A)).

### 10.05.0510 Uses.

The following uses shall be permitted, conditional, or accessory uses in the R-1LL district:

A. Permitted uses: single-family dwellings and state-regulated residential care facilities.

B. Conditional uses: places of worship, schools (pre-K and K through twelve), country clubs, golf courses, parks, utility services, wireless communications facilities, and bed and breakfasts.

C. Accessory uses: home occupations, short-term residential rentals, accessory dwelling units, and junior accessory dwelling units. (Ord. 726, § 2 (Att. A), Amended by Ord. 771, § 4(C); Ord. 782, § 4).

**10.05.0520 Development standards.**
Development regulations in the R-1LL district are as follows:

A. Lot Minimums.

1. Width:

a. Fifty feet for interior lots.

b. Sixty feet for corner lots.

2. Area: ten thousand square feet.

B. Lot Maximums.

1. Lot coverage: forty percent.

2. Floor area ratio (FAR): fifty-five percent. FAR is as defined in Article II of this chapter and shall also include the following:

a. The floor area of a room with a ceiling greater than nine feet in height shall be calculated as the product of the overall height multiplied by the horizontal floor area and divided by eight; however, in cases where the ceiling slopes at three to twelve or greater, the uppermost five feet will be excluded from the calculation.

b. Crawlspace area greater than two feet above exterior grade will be counted by multiplying the horizontal floor area by the average height of the area, as determined by the height of the finished floor above to the respective corner exterior grade of the building, deducting two feet to allow for typical height of crawlspace and floor joists, and dividing by eight; however, no negative crawlspace area calculation will be considered.

c. In an attic with a roof slope of three to twelve or greater, only the portion of the floor area with a ceiling height of five feet or greater shall be counted.

d. The area of atriums, covered and enclosed courtyards, and all covered decks and balconies shall be counted.

e. The area of all decks and balconies with a floor height above finished grade of seven feet or more shall be counted.

f. One-half of the area of covered patios, decks and balconies with a floor height less than seven feet above finished grade shall be counted.

g. The area of unenclosed front entry porches, and portions thereof, at least ten feet deep shall be counted.

h. FAR exceptions may be granted by the planning commission in the manner provided in Article XXV of this chapter for residences on lots with slopes of thirty percent or greater where total FAR, based upon the net lot area, exceeds fifty-five percent.

i. FAR exceptions may be granted by the planning commission in the manner provided in Article XXV of this chapter for residences on lots with a cumulative easement area of more than ten percent of gross lot area where total FAR, based upon net lot area, exceeds fifty-five percent.

C. Height.

1. Maximum height of structures shall be thirty feet, provided the uppermost five feet shall consist of a roof which slopes toward any adjacent street at a minimum slope of three inches per foot. If the slope is less than three inches per foot, the maximum height shall be twenty-five feet.

2. Exceptions. Upon securing a height exception, chimneys, silos, cupolas, flagpoles, monuments, gas storage holders, radio and other towers, church steeples, and similar structures and mechanical appurtenances may exceed the height limit; provided, that the front, side, and rear setbacks shall each be increased by one foot for each one foot of additional height allowed.

3. All other structures exceeding the maximum allowable height shall require a variance.

D. Setbacks.

1. Ground Floor Setbacks.

Front: twenty feet.

Side:

Five feet interior; however, the width of interior side yards may be reduced to ten percent of the lot width, but in no case to less than three feet.

Ten feet exterior.

Rear: ten feet.

a. Attached ground floor decks greater than one foot above adjacent grade shall meet the above specified setbacks.

b. Residential garage entrances fronting on any exterior lot line shall be located not less than twenty feet from said line, except for alley frontages where the setback may be less than twenty feet; provided, that adequate vehicular maneuvering area is available.

c. The exterior yard on the rear thirty feet of a side fronting lot shall not be less than the front yard required or existing on the first lot to its rear.

d. Where a dwelling unit is located on a lot so that the main entrance is located on the side of the building, the required side setback, from the front setback line to such entrance, shall be not less than ten feet.

e. The width of the interior side yard for lots with single-family dwellings may be reduced to ten percent of the width of the lot, but in no case to less than three feet.

2. Upper Floor Setbacks.

a. For lots at least fifty-five feet wide (as measured at the minimum twenty-foot front setback line).

i. Front: ten feet more than the distance of the exterior building walls below so that the second floor parallels the ground floor at all points along the front facade.

ii. Side: ten feet more than the distance of the exterior building walls below; however, this setback may be reduced by two feet for each one foot that the ground floor setback exceeds the five-foot minimum, for a maximum reduction of six feet.

b. For lots at least forty-five feet but less than fifty-five feet wide (as measured at the minimum twenty-foot front setback line).

i. Front: ten feet more than the distance of the exterior building walls below so that the second floor parallels the ground floor at all points along the front facade.

ii. Side: seven feet more than the distance of the exterior building walls below; however, this setback may be reduced by one foot for each one foot that the ground floor setback exceeds the five-foot minimum, for a maximum reduction of three feet.

c. For lots less than forty-five feet wide (as measured at the minimum twenty-foot front setback line).

i. Front: ten feet more than the distance of the exterior building walls below so that the second floor parallels the ground floor at all points along the front facade.

ii. Side: five feet more than the distance of the exterior building walls below; however, this setback may be reduced by one foot for each one foot that the ground floor setback exceeds the five-foot minimum, for a maximum reduction of two feet.

d. Upper floor encroachments beyond those described above are permissible only upon the securing of a setback exception from the planning commission in the manner provided in Article XXV of this chapter.

3. Encroachments Permissible without Planning Commission Approval.

a. Architectural features on the main building, such as cornices, eaves, canopies, fireplaces, and bay windows, may project not closer than three feet to any interior side lot line and not more than two feet into any required front, rear, or exterior side yard.

b. Open, uncovered raised porches, landings, or outside stairways may project not closer than three feet to any interior side lot line, not more than two feet into any required exterior side yard, and not more than six feet into any required front or rear yard.

E. Density Limit. The minimum lot area per unit shall be ten thousand square feet.

F. Parking.

1. The parking requirements for all permitted, conditional, and accessory uses in the R-1LL district are listed in MMC 10.05.2100 (the “parking requirements table”).

2. A minimum of two side-by-side garage parking spaces are required for each single-family dwelling. Single-family dwellings originally constructed with only one garage parking space and which were built prior to adoption of the two-space requirement shall receive consideration for alternative solutions (per the “single-family parking guidelines”) to this parking requirement, such as tandem garage parking and dedicated surface parking, when garage expansion for side-by-side parking is not feasible. A carport shall not be constructed in lieu of a required garage space, but code compliant and legally permitted carports existing prior to October 13, 2009, shall count as required parking. However, should any carport be removed, it shall not be rebuilt.

G. Other Provisions.

1. There shall be one thousand square feet of open and uncovered space in the rear one-third of the lot area.

2. Not less than sixty percent of the front yard shall be landscaped (as defined in Article II of this chapter) with the exception that all site improvements required to provide disabled accessibility, to the extent not feasible in nonlandscaped areas, may extend into the required landscaped area. The remainder of the front yard may be used for vehicular parking or storage; however, all vehicular parking and storage areas shall be surfaced in compliance with this chapter. (Ord. 726, § 2 (Att. A)).

H, Airport Land Use Compatibility Plan Consistency

All projects must comply with the requirements of the Airport Land Use Compatibility Plan, including Airport Real Estate Disclosure Notices, Airport Noise Evaluation and Mitigation, Avigation Easement, Safety Compatibility

Evaluation, and Airspace Protection Evaluation, as detailed in Article XVI ("Airport Land Use Compatibility Plan Consistency").

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## Article VI. Single-Family Residential or "R-1" District

**10.05.0600 Purpose.**
The purpose of the single-family residential or "R-1" district is to stabilize and protect the detached single-family residential character that comprises most of Millbrae and to promote and encourage a high-quality physical environment best suited for family life on a traditional neighborhood basis. This district correlates with the "low density residential" land use designation of the Millbrae General Plan. (Ord. 726, § 2 (Att. A)).

**10.05.0610 Uses.**
The following uses shall be permitted, conditional or accessory uses in the R-1 district:

A. Permitted uses: single-family dwellings and state-regulated residential care facilities.

B. Conditional uses: places of worship, schools (pre-K and K through twelve), country clubs, golf courses, parks, utility services, wireless communications facilities, and bed and breakfasts.

C. Accessory uses: home occupations, short-term residential rentals, accessory dwelling units, and junior accessory dwelling units. (Ord. 726, § 2 (Att. A); Ord. 409, § 2; Ord. 561, § 3.2, Amended by Ord. 578, §§ 3, 4; Ord. 650, §§ 2, 4; Ord. 691, § 2; Ord. 771, § 4(D); Ord. 782, § 5; 1976 Code §§ 10-1.402 and 10-1.402(2). Formerly 10.05.0130 and 10.05.0150).

**10.05.0620 Development standards.**
Development regulations in the R-1 district are as follows:

A. Lot Minimums.

1. Width:

   a. Fifty feet for interior lots.

   b. Sixty feet for corner lots.

2. Area: five thousand square feet.

B. Lot Maximums.

1. Lot coverage: fifty percent.

2. Floor area ratio (FAR): fifty-five percent.

FAR is as defined in Article II of this chapter and shall also include the following:

a. The floor area of a room with a ceiling greater than nine feet in height shall be calculated as the product of the overall height multiplied by the horizontal floor area and divided by eight; however, in cases where the ceiling slopes at three to twelve or greater, the uppermost five feet will be excluded from the calculation.

b. Crawlspace area greater than two feet above exterior grade will be counted by multiplying the horizontal floor area by the average height of the area, as determined by the height of the finished floor above to the respective corner exterior grade of the building, deducting two feet to allow for typical height of crawlspace and floor joists, and dividing by eight; however, no negative crawlspace area calculation is permitted.

c. In an attic with a roof slope of three to twelve or greater, only the portion of the floor area with a ceiling height of five feet or greater shall be counted.

d. The area of atriums, covered and enclosed courtyards, and all covered decks and balconies shall be counted.

e. The area of all decks and balconies with a floor height above finished grade of seven feet or more shall be counted.

f. One-half of the area of covered patios, decks and balconies with a floor height less than seven feet above finished grade shall be counted.

g. The area of unenclosed front entry porches, and portions thereof, at least ten feet deep shall be counted.

h. FAR exceptions may be granted by the planning commission in the manner provided in Article XXV of this chapter for residences on lots with slopes of thirty percent or greater where total FAR, based upon the net lot area, exceeds fifty-five percent.

i. FAR exceptions may be granted by the planning commission in the manner provided in Article XXV of this chapter for residences on lots with a cumulative easement area of more than ten percent of gross lot area where total FAR, based upon net lot area, exceeds fifty-five percent.

C. Height.

1. Maximum height of structures shall be thirty feet, provided the uppermost five feet shall consist of a roof which slopes toward any adjacent street at a minimum slope of three inches per foot. If the slope is less than three inches per foot, the maximum height shall be twenty-five feet.

See Article XVI ("Airport Land Use Compatibility Plan Consistency") for airspace protection evaluation requirements based on the San Francisco International Airport Land Use Compatibility Plan.

2. Exceptions. Upon securing a height exception, chimneys, silos, cupolas, flagpoles, monuments, gas storage holders, radio and other towers, water tanks, church steeples and similar structures and mechanical appurtenances may be permitted to exceed the height limit for the district; provided, that the front, side and rear yards shall each be increased by one foot for each one foot of additional height allowed.

3. All other structures exceeding the maximum allowable height shall require a variance.

D. Setbacks.

1. Ground Floor Setbacks.

Front: twenty feet.

Side:

Five feet interior; however, the width of interior side yards may be reduced to ten percent of the lot width, but in no case to less than three feet.

Ten feet exterior.

Rear: ten feet.

a. Attached ground floor decks greater than one foot above adjacent grade shall meet the above specified setbacks.

b. Residential garage entrances fronting on any exterior lot line shall be located not less than twenty feet from said line, except for alley frontages where the setback may be less than twenty feet; provided, that adequate vehicular maneuvering area is available.

c. The exterior yard on the rear thirty feet of a side fronting lot shall not be less than the front yard required or existing on the first lot to its rear.

d. Where a dwelling unit is located on a lot so that the main entrance is located on the side of the building, the required side setback, from the front setback line to such entrance, shall be not less than ten feet.

e. The width of the interior side yards on single-family dwellings in the R-1 zone may be reduced to ten percent of the width of such parcel, but in no case to less than three feet.

2. Upper Floor Setbacks.

a. Lots at least fifty-five feet wide (as measured at the minimum twenty-foot front setback line).

i. Front: ten feet more than the distance of the exterior building walls below so that the second floor parallels the ground floor at all points along the front facade.

ii. Side: ten feet more than the distance of the exterior building walls below; however, this setback may be reduced by two feet for each one foot that the ground floor setback exceeds the five-foot minimum, for a maximum reduction of six feet.

b. Lots at least forty-five feet but less than fifty-five feet wide (as measured at the minimum twenty-foot front setback line).

i. Front: ten feet more than the distance of the exterior building walls below so that the second floor parallels the ground floor at all points along the front facade.

ii. Side: seven feet more than the distance of the exterior building walls below; however, this setback may be reduced by one foot for each one foot that the ground floor setback exceeds the five-foot minimum, for a maximum reduction of three feet.

c. Lots less than forty-five feet wide (as measured at the minimum twenty-foot front setback line).

i. Front: ten feet more than the distance of the exterior building walls below so that the second floor parallels the ground floor at all points along the front facade.

ii. Side: five feet more than the distance of the exterior building walls below; however, this setback may be reduced by one foot for each one foot that the ground floor setback exceeds the five-foot minimum, for a maximum reduction of two feet.

d. Encroachments into minimum required front and side setbacks are permissible only upon the securing of a setback exception from the planning commission in the manner provided in Article XXV of this chapter.

3. Encroachments Permissible without Planning Commission Approval.

a. Architectural features on the main building, such as cornices, eaves, canopies, fireplaces, and bay windows, may extend no closer than three feet to any interior side lot line and not more than two feet into any required front, rear, or exterior side yard.

b. Open, uncovered raised porches, landings, or outside stairways may project not closer than three feet to any interior side lot line, not more than two feet into any required exterior side yard, and not more than six feet into any required front or rear yard.

E. Density Limit. The minimum lot area per unit shall be five thousand square feet.

F. Parking.

1. The parking requirements for all permitted, conditional, and accessory uses in the R-1 district are listed in MMC 10.05.2100 (the "parking requirements table").

2. A minimum of two side-by-side garage parking spaces are required for each single-family dwelling. Single-family dwellings originally constructed with only one garage parking space and which were built prior to adoption of the two-space requirement shall receive consideration for alternative solutions (per the "single-family parking guidelines") to this parking requirement, such as tandem garage parking and dedicated surface parking, when garage expansion for side-by-side parking is not feasible. A carport shall not be constructed in lieu of a required garage space, but code compliant and legally permitted carports existing prior to October 13, 2009, shall count as required parking. However, should any carport be removed, it shall not be rebuilt.

G. Other Provisions.

1. Notwithstanding the minimum rear setback requirement, there shall be one thousand square feet of open and uncovered space in the rear one-third of the lot area.

2. Not less than sixty percent of the front yard shall be landscaped (as defined in Article II of this chapter) with the exception that all site improvements required to provide disabled accessibility, to the extent not feasible in nonlandscaped areas, may extend into the required landscaped area. The remainder of the front yard may be used for vehicular parking or storage; however, all vehicular parking and storage areas shall be surfaced in compliance with this chapter. (Ord. 561, § 3.2, Amended by Ord. 603, § 2; Ord. 650, § 3; Ord. 726, § 2 (Att. A); 1976 Code § 10-1.402(1). Formerly 10.05.0140).

H, Airport Land Use Compatibility Plan Consistency

All projects must comply with the requirements of the Airport Land Use Compatibility Plan, including Airport Real Estate Disclosure Notices, Airport Noise Evaluation and Mitigation, Avigation Easement, Safety Compatibility Evaluation, and Airspace Protection Evaluation, as detailed in Article XVI ("Airport Land Use Compatibility Plan Consistency").

## Article VII. Duplex/Triplex Residential or "R-2" District

Prior legislation: 1966 Code § 7903, 1976 Code § 10-1.403 and Ords. 231, 488, 516 and 713.

**10.05.0700 Purpose.**
The purpose of the duplex/triplex residential or "R-2" district is to enable and enhance the residential character of those areas of Millbrae planned for attached single-family housing and to provide a suitable physical environment for family living on a smaller scale at a higher density that allows two or three families on a lot while preserving privacy, open space, and so on. This district correlates with the "medium density" land use designation of the Millbrae General Plan. (Ord. 726, § 2 (Att. A)).

**10.05.0710 Uses.**
The following uses shall be permitted, conditional, or accessory uses in the R-2 district:

A. Permitted uses: single-family dwellings, duplexes, triplexes, and state-regulated residential care facilities.

B. Conditional uses: care facilities, places of worship, schools (pre-K and K through twelve), parks, utility services, wireless communications facilities, and bed and breakfasts.

C. Accessory uses: home occupations, short-term residential rentals, accessory dwelling units, and junior accessory dwelling units. (Ord. 726, § 2 (Att. A), Amended by Ord. 750, § 3; Ord. 771, § 4(E); Ord. 782, § 6).

**10.05.0720 Development standards.**
Development regulations in the R-2 district are as follows:

A. Lot Minimums.

1. Width:

a. Fifty feet for interior lots.

b. Sixty feet for corner lots.

2. Area:

a. Five thousand square feet for interior lots.

b. Six thousand square feet for corner lots.

c. Seven thousand five hundred square feet for triplex lots.

B. Lot Maximums.

1. Lot coverage: fifty percent.

2. Floor area ratio (FAR): eighty-eight percent.

FAR is as defined in Article II of this chapter and shall also include the following:

a. The floor area of a room with a ceiling greater than nine feet in height shall be calculated as the product of the overall height multiplied by the horizontal floor area and divided by eight; however, in cases where the ceiling slopes at three to twelve or greater, the uppermost five feet will be excluded from the calculation.

b. Crawlspace area greater than two feet above exterior grade will be counted by multiplying the horizontal floor area by the average height of the area, as determined by the height of the finished floor above to the respective corner exterior grade of the building, deducting two feet to allow for typical height of crawlspace and floor joists, and dividing by eight; however, no negative crawlspace area calculation is permitted.

c. In an attic with a roof slope of three to twelve or greater, only the portion of the floor area with a ceiling height of five feet or greater shall be counted.

d. The area of atriums, covered and enclosed courtyards, and all covered decks and balconies shall be counted.

e. The area of all decks and balconies with a floor height above finished grade of seven feet or more shall be counted.

f. One-half of the area of covered patios, decks and balconies with a floor height less than seven feet above finished grade shall be counted.

g. The area of unenclosed front entry porches, and portions thereof, at least ten feet deep shall be counted.

h. FAR exceptions may be granted by the planning commission in the manner provided in Article XXV of this chapter for residences on lots with slopes of thirty percent or greater where total FAR, based upon the net lot area, exceeds eighty-eight percent.

i. FAR exceptions may be granted by the planning commission in the manner provided in Article XXV of this chapter for residences on lots with a cumulative easement area of more than ten percent of gross lot area where total FAR, based upon net lot area, exceeds eighty-eight percent.

C. Height.

1. Maximum height of structures shall be thirty feet, provided the uppermost five feet shall consist of a roof which slopes toward any adjacent street at a minimum slope of three inches per foot. If the slope is less than three inches per foot, the maximum height shall be twenty-five feet.

See Article XVI ("Airport Land Use Compatibility Plan Consistency") for airspace protection evaluation requirements based on the San Francisco International Airport Land Use Compatibility Plan.

2. Exceptions. Upon securing a height exception, chimneys, silos, cupolas, flagpoles, monuments, gas storage holders, radio and other towers, church steeples, and similar structures and mechanical appurtenances may be permitted to exceed the height limit for the district; provided, that the front, side and rear yards shall each be increased by one foot for each one foot of additional height allowed.

3. All other structures exceeding the maximum allowable height shall require a variance.

D. Setbacks (All Floors).

1. Duplex:

a. Front: twenty feet.

b. Side:

i. Five feet interior; however, the width of interior side yards may be reduced to ten percent of the lot width, but in no case less than three feet.

ii. Ten feet exterior.

c. Rear: ten feet.

2. Triplex:

a. Front: twenty feet.

b. Side:

i. Five feet interior; however, the width of interior side yards may be reduced to ten percent of the lot width, but in no case less than three feet.

ii. Ten feet exterior.

c. Rear: fifteen feet.

3. Attached ground floor decks greater than one foot above adjacent grade shall meet the above specified setbacks.

4. Residential garage entrances fronting on any exterior lot line shall be located not less than twenty feet from said line, except for alley frontages where the setback may be less than twenty feet; provided, that adequate vehicular maneuvering area is available.

5. The exterior yard on the rear thirty feet of a side fronting lot shall not be less than the front yard required or existing on the first lot to its rear.

6. Where a dwelling unit is located on a lot so that the main entrance is located on the side of the building, the required side setback, from the front setback line to such entrance, shall be not less than ten feet.

7. Encroachments Permissible without Planning Commission Approval.

a. Architectural features on the main building, such as cornices, eaves, canopies, fireplaces, and bay windows, may extend no closer than three feet to any interior side lot line and not more than two feet into any required front, rear, or exterior side yard.

b. Open, uncovered raised porches, landings, or outside stairways may project not closer than three feet to any interior side lot line, not more than two feet into any required exterior side yard, and not more than six feet into any required front or rear yard.

E. Density Limit. The minimum lot area per unit shall be two thousand five hundred square feet.

F. Parking. The parking requirements for all permitted, conditional, and accessory uses in the R-2 district are listed in MMC 10.05.2100 (the "parking requirements table").

G. Other Provisions.

1. For duplexes only, there shall be one thousand square feet of open and uncovered space in the rear one-third of the lot.

2. Not less than forty percent of the front yard shall be landscaped (as defined in Article II of this chapter) with the exception that all site improvements required to provide disabled accessibility, to the extent not feasible in nonlandscaped areas, may extend into the required landscaped area. The remainder of the front yard may be used for vehicular parking or storage; however, all vehicular parking and stage areas shall be surfaced in compliance with this chapter. (Ord. 726, § 2 (Att. A)).

H, Airport Land Use Compatibility Plan Consistency

All projects must comply with the requirements of the Airport Land Use Compatibility Plan, including Airport Real Estate Disclosure Notices, Airport Noise Evaluation and Mitigation, Avigation Easement, Safety Compatibility Evaluation, and Airspace Protection Evaluation, as detailed in Article XVI ("Airport Land Use Compatibility Plan Consistency").

## Article VIII. Multifamily Residential or "R-3" District

Prior legislation: 1966 Code §§ 7905 and 8133 – 8146, 1976 Code §§ 10-1.405, 10-1.415 and 10-1.603 – 10-1.616, and Ords. 231, 249, 270 and 632.

### 10.05.0800 Purpose.

The purpose of the multifamily residential or "R-3" district is to enable and enhance the residential character of those areas of Millbrae designated for apartment living by requiring adequate amounts of cooperatively used service facilities and outdoor open space at the highest residential densities available in Millbrae. This district correlates with the "higher density" land use designation of the Millbrae General Plan. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.601; 1966 Code § 8131. Formerly 10.05.0770).

### 10.05.0810 Uses.

The following uses shall be permitted, conditional, or accessory uses in the R-3 district:

A. Permitted uses: single-family dwellings, duplexes, triplexes, multiple-family dwellings, care facilities, and state-regulated residential care facilities.

B. Conditional uses: rooming and boarding houses, clubs and lodges, community centers, places of worship, schools (pre-K and K through twelve), parks, utility services, wireless communications facilities, medical offices, professional offices, bed and breakfasts, and commercial lodging.

C. Accessory uses: home occupations, short-term residential rentals, accessory dwelling units, and junior accessory dwelling units. (Ord. 726, § 2 (Att. A); Ord. 231, Amended by Ord. 483, § 1; Ord. 771, § 4(F); Ord. 782, § 7; 1976 Code § 10-1.602; 1966 Code § 8132. Formerly 10.05.0780).

**10.05.0820 Development standards.**
Development regulations in the R-3 district are as follows:

A. Lot Minimums.

1. Width:

a. Fifty feet for interior lots.

b. Sixty feet for corner lots.

2. Area:

a. Five thousand square feet for interior lots.

b. Sixty thousand square feet for corner lots.

B. Lot Maximums.

1. Lot coverage: seventy-five percent.

2. Floor area ratio (FAR): no limit.

C. Height.

1. Maximum height of structures shall be forty feet.

See Article XVI ("Airport Land Use Compatibility Plan Consistency") for airspace protection evaluation requirements based on the San Francisco International Airport Land Use Compatibility Plan.

2. Exceptions. Upon securing a height exception, chimneys, silos, cupolas, flagpoles, monuments, gas storage holders, radio and other towers, church steeples and similar structures and mechanical appurtenances may be permitted to exceed the height limit for the district; provided, that the front, side and rear yards shall each be increased by one foot for each one foot of additional height allowed.

3. All other structures exceeding the maximum allowable height shall require a variance.

D. Setbacks.

1. Front: twenty feet.

2. Side:

a. Ten percent of lot width, but in no case less than five feet or more than twenty feet.

b. Interior side yards shall be increased beyond the five-foot minimum by two feet for each ten feet, or portion thereof, that the building exceeds twenty-four feet in height.

3. Rear: five feet minimum, plus two feet for each ten feet, or portion thereof, that the building exceeds twenty-four feet in height.

4. Attached ground floor decks greater than one foot above adjacent grade shall meet the above specified setbacks.

5. Multiple-family dwellings where there are two or more structures located on one lot shall have a minimum of ten feet between buildings.

6. Residential garage entrances fronting on any exterior lot line shall be located not less than twenty feet from said line, except for alley frontages where the setback may be less than twenty feet; provided, that adequate vehicular maneuvering area is available.

7. The exterior yard on the rear thirty feet of a side fronting lot shall not be less than the front yard required or existing on the first lot to its rear.

8. Where a dwelling unit is located on a lot so that the main entrance is located on the side of the building, the required side setback, from the front setback line to such entrance, shall be not less than ten feet.

9. Encroachments Permissible without Planning Commission Approval.

a. Architectural features on the main building, such as cornices, eaves, canopies, fireplaces, and bay windows, may extend no closer than three feet to any interior side lot line and not more than two feet into any required front, rear, or exterior side yard.

b. Open, uncovered raised porches, landings, or outside stairways may project not closer than three feet to any interior side lot line, not more than two feet into any required exterior side yard, and not more than six feet into any required front or rear yard.

E. Density Limit. The minimum lot area per unit shall be one thousand square feet.

F. Parking. The parking requirements for all permitted, conditional, and accessory uses in this district are listed in MMC 10.05.2100 (the “parking requirements table”).

G. Other Provisions. Not less than fifty percent of the front yard shall be landscaped (as defined in Article II of this chapter) with the exception that all site improvements required to provide disabled accessibility, to the extent not feasible in nonlandscaped areas, may extend into the required landscaped area. The remainder of the front yard may be used for vehicular parking or storage; however, all vehicular parking and stage areas shall be surfaced in compliance with this chapter. (Ord. 726, § 2 (Att. A)).

H, Airport Land Use Compatibility Plan Consistency

All projects must comply with the requirements of the Airport Land Use Compatibility Plan, including Airport Real Estate Disclosure Notices, Airport Noise Evaluation and Mitigation, Avigation Easement, Safety Compatibility Evaluation, and Airspace Protection Evaluation, as detailed in Article XVI (“Airport Land Use Compatibility Plan Consistency”).

## Article IX. Office Combining District or “-O” District

**10.05.0900 Purpose.**
The purpose of the office combining or “-O” district is to allow office uses by conditional use permit. The use of this district shall be limited to lots that: (A) are zoned residential; (B) abut commercial zoning; and (C) are located on a block where the change from a residential zone to a nonresidential zone occurs within the block face. (Ord. 473, § 1, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.7(1)01. Formerly 10.05.0970).

**10.05.0910 Uses.**
The following uses shall be permitted, conditional, or accessory uses in the -O district:

A. Permitted uses: none.

B. Conditional uses: general offices, medical offices, professional offices.

C. Accessory uses: none. (Ord. 473, § 1, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.7(1)02. Formerly 10.05.0980).

**10.05.0920 Initiation of combining district.**
Initiation of the "-O" combining district with any R (residential) districts set forth in MMC 10.05.0300 shall be made by an application to the city council which includes proof that the requested location is zoned residential, that it abuts commercial zoning, and that the change from the residential zone to the nonresidential zone occurs within the blockface.

Subsequent to city council approval of the establishment of an office combining district, a conditional use permit shall be reviewed by the planning commission in the manner provided in Article XXV of this chapter. (Ord. 726, § 2 (Att. A)).

**10.05.0930 Development standards.**
Standards for building site and height, lot width, maximum lot coverage, front, side and rear yards, and coverage shall be the same as for the residential district to which the combining district is attached.

A. Parking. The parking requirements for all permitted, conditional, and accessory uses in this district are listed in MMC 10.05.2100 (the "parking requirements table").

B. Design Review. Any conditional use permit for an office use involving a new structure, new parking facilities, or exterior alterations to an existing building shall be subject to design review approval in the manner provided in Article XXV of this chapter. (Ord. 473, § 1, Amended by Ord. 726, § 2 (Att. A); 1976 Code §§ 10-1.7(1)03 – 10-1.7(1)05. Formerly 10.05.0990 – 10.05.1010).

## Article X. Commercial or "C" District

Prior legislation: 1966 Code §§ 7906 – 7908, 1976 Code §§ 10-1.406, 10-1.407 and 10-1.408 and Ords. 231, 253, 270, 488, 518, 612 and 632.

**10.05.1000 Purpose.**
The purpose of the commercial or "C" district is to provide for general commercial uses which do not necessarily specialize in serving the pedestrian shopper, but rather, because of the character of their products or services, are more appropriately, although not exclusively, located along major thoroughfares away from more centralized shopping areas. This district correlates with the "general commercial" land use designation of the Millbrae General Plan. (Ord. 726, § 2 (Att. A)).

**10.05.1010 Uses.**
The following uses shall be permitted, conditional, or accessory uses in the C district:

A. Permitted uses: general restaurants, take-out only restaurants, general offices, medical offices, professional offices, banks, dry cleaners, laundromats, personal care-related uses, repair shops (not auto-related), pet grooming, convenience stores, retail uses totalling five thousand square feet or less of gross floor area, retail uses totalling five thousand one to ten thousand square feet of gross floor area, and emergency, transitional, and supportive housing. Also permitted is any change in use where available on-site parking would be at least fifty percent of required parking, provided the new use is one of the aforementioned uses. In multitenant buildings, required parking shall be the total required for all the tenants; for purposes of calculating total required parking, retail use shall be assumed where there is any vacancy in the building.

B. Conditional uses: flats, multiple-family dwellings, care facilities, rooming and boardinghouses, temporary homeless shelters, clubs and lodges, community centers, places of worship, colleges and universities, schools (pre-K and K through twelve), trade and vocational schools, tutoring and instruction, parks, utility services, wireless communications facilities, bars, drive-in restaurants, indoor commercial recreation, outdoor commercial recreation, parking lots and structures, hospitals, medical clinics, mortuaries, animal hospitals, pet daycare, retail uses totalling greater than ten thousand square feet of gross floor area, supermarkets, automotive repair and painting, automobile sales and service, carwashes, fuel and service stations, commercial lodging, gun shops, liquor stores, pawn shops,

smoke shops, drive-through facilities, and outdoor display of merchandise. Also conditional is any change in use where available on-site parking would be less than fifty percent of required parking. In multitenant buildings, required parking shall be the total required for all the tenants; for purposes of calculating total required parking, retail use shall be assumed where there is any vacancy in the building.

C. Accessory uses: drive-through facilities, home occupations, outdoor dining, outdoor display of merchandise, short-term residential rentals, and accessory dwelling units. (Ord. 726, § 2 (Att. A), Amended by Ord. 748, § 5; Ord. 771, § 4(G); Ord. 782, § 8).

**10.05.1020 Development standards.**
Development regulations in the C district are as follows:

A. Lot Minimums.

1. Width: twenty-five feet.

2. Area: two thousand five hundred square feet.

B. Lot Maximums.

1. Lot coverage: one hundred percent.

2. Floor area ratio (FAR): no limit.

C. Height.

1. Maximum height of structures shall be forty feet.

See Article XVI ("Airport Land Use Compatibility Plan Consistency") for airspace protection evaluation requirements based on the San Francisco International Airport Land Use Compatibility Plan.

2. Exceptions: Upon securing a height exception, chimneys, silos, cupolas, flagpoles, monuments, gas storage holders, radio and other towers, water tanks, church steeples, and similar structures and mechanical appurtenances may be permitted to exceed the height limit; provided, that the front, side, and rear yards shall each be increased by one foot for each one foot of additional height allowed.

3. Height exceptions may be granted by the planning commission in the manner provided in Article XXV of this chapter for any building erected to a height exceeding the maximums specified; provided, that the cubic volume of the building shall not be increased beyond that possible for a building erected within the height limits specified.

4. All other structures exceeding the maximum allowable height shall require a variance.

D. Setbacks.

1. Front: none; but ten feet when adjacent to an alley or any "R" district.

2. Side: none; but ten feet when adjacent to an alley or any "R" district.

3. Rear: none; but ten feet when adjacent to an alley or any "R" district.

4. Residential garage entrances fronting on any exterior lot line shall be located not less than twenty-five feet from said line, except for alley frontages where the setback may be less than twenty feet; provided, that adequate vehicular maneuvering area is available.

E. Parking.

1. The parking requirements for all permitted, conditional, and accessory uses in this district are listed in MMC 10.05.2100 (the "parking requirements table").

2. Any change in use within an existing building or site, or portion thereof, where total available on-site parking would be less than fifty percent of the total parking required for the building or site shall first be required to obtain approval of a conditional use permit from the planning commission in accordance with the provisions of Article XXV of this chapter. (Ord. 726, § 2 (Att. A)).

**10.05.1030 Emergency, transitional, and supportive housing.**

A. Purpose. The purpose of this provision is to allow for the development of needed emergency, transitional, and supportive housing.

B. Requirements. All emergency, transitional, and supportive housing facilities shall be subject to the following requirements:

1. No individual or household may be denied emergency shelter because of an inability to pay.

2. Proximity to Other Shelters. No emergency shelter shall be located closer than three hundred feet to another emergency shelter.

3. Vehicle Parking. An emergency shelter shall provide off-street parking spaces at the ratio of 0.35 parking spaces for every bed, rounded up to the nearest whole parking space; plus one parking space for each employee who is working at the same time as another employee; plus all parking spaces required under the Americans with Disabilities Act.

4. Bicycle Parking. An emergency shelter shall provide a minimum of one bicycle space for every five beds.

5. Shelter Capacity. No emergency shelter shall contain more than ten beds. The maximum number of beds in all emergency shelters in the city shall not be less than the number of unsheltered homeless persons in Millbrae as determined in San Mateo County's most recent homeless survey.

6. Client Waiting Areas. Client waiting areas shall be sized and located appropriately to keep clients from waiting in the public right-of-way.

7. Length of Stay. The length of stay per individual in an emergency shelter shall not exceed six months in any consecutive twelve-month period, unless no other suitable housing is available.

8. Screening of Outdoor Uses. An emergency shelter shall not allow or include any of the following to occur in any location incidental to the shelter that is visible from adjoining properties or the public right-of-way, unless entirely screened from public view: designated outdoor smoking area; outdoor waiting and client intake area; outdoor public telephones; and outdoor refuse area.

9. Exterior Lighting. Lighting in or on an emergency shelter shall be stationary, directed away from adjacent properties and public rights-of-way, and of an intensity that is consistent with existing lighting in the surrounding area in which the shelter is located.

10. Laundry Facilities. An emergency shelter shall provide laundry facilities to serve the persons residing in the shelter.

11. Personal Property Storage. An emergency shelter shall provide secure areas for temporary storage of personal property of the persons residing in the shelter.

C. Facility Management Plans. All emergency, transitional, and supportive housing facilities shall have a facility management plan subject to the following requirements:

1. The operator of an emergency shelter shall prepare and submit to the city manager (or designee) for approval a management plan that includes all the following:

a. A staff training program to meet the needs of the emergency shelter residents;

b. Adequate security measures to protect emergency shelter residents and the neighboring land uses;

c. On-site management and security personnel who must be present at all times when the emergency shelter is in operation; and

d. A list of services provided to assist emergency shelter residents with obtaining permanent housing and income.

2. The operator shall, at all times, comply with and perform all terms and conditions of the approved management plan.

3. All emergency, transitional, and supportive housing facilities shall be in, and shall maintain at all times, good standing with city, county, and/or state licenses, as may be required by these jurisdictions for the owner(s), operator(s), and/or staff of the proposed facility. (Ord. 748, § 6).

D. Airport Land Use Compatibility Plan Consistency

All projects must comply with the requirements of the Airport Land Use Compatibility Plan, including Airport Real Estate Disclosure Notices, Airport Noise Evaluation and Mitigation, Avigation Easement, Safety Compatibility Evaluation, and Airspace Protection Evaluation, as detailed in Article XVI ("Airport Land Use Compatibility Plan Consistency").

**Article XI. Downtown and El Camino Real Specific Plan "DTECRSP" District ~~Downtown Improvement Area or "DIA" District~~**

~~Prior legislation: 1976 Code § 10-1.407(2) and Ords. 670 and 692.~~

**10.05.1100 Purpose.~~—~~**

**~~Purpose.~~**

The purpose of the Downtown and El Camino Real Specific Plan is to enhance the quality of life by providing a road-map for future growth that emphasizes transit-oriented, mixed-use development that provides a mix of housing, restaurants, general commercial, hotels, offices, and entertainment uses. ~~The purpose of the downtown improvement area or "DIA" district is to designate and promote the orderly development of Millbrae's downtown as a distinct and specialized business district central to the entire city by strengthening its economic vitality and consumer variety through the concentration of quality small-scale retail, restaurant, and personal service uses and by encouraging upgrades of building exteriors, signage, and overall streetscape throughout the district. This district correlates with the "general commercial" land use designation of the Millbrae General Plan. (Ord. 726, § 2 (Att. A)).~~

**~~10.05.1110 Definitions.~~**

~~The following definitions shall apply within the DIA district:~~

~~A. "Primary frontage" means the ground floors of all buildings and all vacant lands facing either side of Broadway or the west side of El Camino Real between Taylor Blvd. and Victoria Ave.~~

~~B. "Secondary frontage" means the upper floor(s) of all buildings facing either side of Broadway or the west side of El Camino Real between Taylor Blvd. and Victoria Ave., as well as all floors of all buildings and all vacant lands facing the south side of Taylor Blvd., either side of Barclay Ave., Hillcrest Blvd., and Santa Cruz Ave., or the north~~

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~~side of Victoria Ave. between El Camino Real and a point approximately one hundred feet west of Broadway. (Ord. 726, § 2 (Att. A)).~~

**10.05.111~~2~~0 Uses.**

The following uses shall be permitted, conditional, or accessory uses in the ~~DIA~~ Downtown and El Camino Real Specific Plan district:

A. ~~A.~~ Permitted Uses.

Those uses which are permitted in the Downtown and El Camino Real Specific Plan are permitted. ~~1. Primary frontage: convenience stores and retail uses totalling five thousand square feet or less of gross floor area, without regard to the amount of available on-site parking.~~

~~2. Secondary frontage: banks, dry cleaners, laundromats, personal care-related uses, repair shops (not auto-related), convenience stores, and retail uses totalling five thousand square feet or less of gross floor area, without regard to the amount of available on-site parking.~~

B. Conditional Uses.

Those uses conditionally allowed in the Downtown and El Camino Real Specific Plan may be permitted subject to the approval of a Conditional Use Permit by the Planning Commission. ~~1. Primary frontage: classes incidental to retail uses, tutoring and instruction, utility services, wireless communication facilities, bars, general restaurants, take-out only restaurants, indoor commercial recreation, parking lots and structures, retail uses totaling five thousand one to ten thousand square feet of gross floor area, liquor stores, smoke shops, outdoor dining, and outdoor display of merchandise, without regard to the amount of available on-site parking.~~

~~2. Secondary frontage: apartments, triplexes, multifamily dwellings, clubs and lodges, community centers, classes incidental to retail uses, trade and vocational schools, tutoring and instruction, utility services, wireless communication facilities, bars, general restaurants, indoor commercial recreation, general offices, medical offices,~~

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professional offices, parking lots and structures, retail uses totalling five thousand one to ten thousand square feet of gross floor area, and outdoor display of merchandise, without regard to the amount of available on-site parking.

3. Relocating a Nonconforming Use. The relocation of an existing nonconforming use within the DIA to another location within the DIA may be allowed on a one-time basis per business entity, provided all of the following criteria are met:

a. The business entity shall have been located and continually in operation within the DIA since March 11, 1997.

b. The property containing the new DIA location shall be owned by the business owner at the time the relocation is requested.

c. The business shall not engage in any prohibited uses at the new location not conducted by the business at the original location at the time the relocation request is submitted to the city.

d. The square footage of the business at the new location shall not be increased by more than ten percent unless required by law.

C. Accessory Uses.

1. Primary frontage: outdoor dining and outdoor display of merchandise.

2. Secondary frontage: home occupations, short-term residential rentals, outdoor display of merchandise, and accessory dwelling units. (Ord. 726, § 2 (Att. A), Amended by Ord. 771, § 4(H); Ord. 782, § 9).

**10.05.1130 Development standards.**

All uses in the Downtown and El Camino Real Specific Plan district are subject to the development standards specified in the Downtown and El Camino Real Specific Plan, including but not limited to, off-street parking and loading, setbacks, building heights, and floor area ratio requirements. Development regulations in the DIA district are as follows:

A. Lot Minimums.

1. Width: twenty-five feet.

2. Area: two thousand five hundred square feet.

B. Lot Maximums.

1. Lot coverage: one hundred percent.

2. Floor area ratio (FAR): no limit.

C. Height. Maximum height of structures shall be three stories or forty feet.

1. Height exceptions may be granted by the planning commission in the manner provided in Article XXV of this chapter for chimneys, silos, cupolas, flagpoles, monuments, gas storage holders, radio and other towers, church

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~~steeples and similar structures and mechanical appurtenances that exceed the specified height limit; provided, that the front, side and rear yards shall each be increased by one foot for each one foot of additional height limit allowed.~~

~~2. Height exceptions may be granted by the planning commission in the manner provided in Article XXV of this chapter for any building erected to a height exceeding the maximums specified; provided, that the cubical contents of the building shall not be increased beyond that possible for a building erected within the height limits specified.~~

~~3. All other structures exceeding the maximum allowable height shall require a variance.~~

~~D. Setbacks.~~

~~1. Front: zero; except ten feet when adjacent to an alley or an "R" district.~~

~~2. Side: zero; except ten feet when adjacent to an alley or an "R" district.~~

~~3. Rear: zero; except ten feet when adjacent to an alley or an "R" district.~~

~~4. Residential garage entrances fronting on any exterior lot line shall be located not less than twenty feet from said exterior line, except for alley frontages.~~

~~E. Parking. The parking requirements for all of the permitted, conditional and accessory uses in this district are listed in MMC 10.05.2100 (the "parking requirements table"). (Ord. 726, § 2 (Att. A)).~~

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## Article XII. Industrial or "I" District

Prior legislation: 1966 Code § 7909, 1976 Code § 10-1.409 and Ords. 231, 394 and 632.

### 10.05.1200 Purpose.

The purpose of the industrial or "I" district is to provide viable industrial areas for selected manufacturing/assembly operations, bulk wholesale establishments, and certain large-scale commercial uses so they may locate and operate away from the more restricting influences of nonindustrial uses while still maintaining an environment free from offensive or objectionable noise, dust, odor, lighting, and other nuisances. This district correlates with the "industrial" land use designation of the Millbrae General Plan. (Ord. 726, § 2 (Att. A)).

### 10.05.1210 Uses.

The following uses shall be permitted, conditional, or accessory uses in the I district:

A. Permitted uses: temporary homeless shelters, dry cleaners, repair shops (not auto related), light manufacturing, general warehousing, and mini storage. Also permitted is any change in use where available on-site parking would be at least fifty percent of the new total required parking; provided, that the new use is one of the aforementioned uses. In multitenant buildings, required parking shall be the total required for all the tenants; for purposes of calculating total required parking, light manufacturing use shall be assumed where there is any vacancy in the building.

B. Conditional uses: colleges and universities, outdoor commercial recreation, hospitals, medical clinics, mortuaries, personal care-related uses, animal hospitals, animal kennels, pet daycare, pet grooming, automotive repair and painting, automobile sales and service, carwash, fuel and service stations, heavy manufacturing, bulk materials and heavy equipment sales and service, fleet vehicle-related uses, outdoor storage, sexually oriented businesses, drive-through facilities, and outdoor display of merchandise. Also conditional is any change in use where available on-site parking would be less than fifty percent of the total required parking. In multitenant buildings, required parking shall be the total required for all the tenants; for purposes of calculating total required parking, light manufacturing use shall be assumed where there is any vacancy in the building.

C. Accessory uses: drive-through facilities and outdoor display of merchandise. (Ord. 726, § 2 (Att. A)).

### 10.05.1220 Development standards.

Development regulations in the I district are as follows:

A. Lot Minimums.

1. Width: one hundred feet.

2. Area: ten thousand square feet.

B. Lot Maximums.

1. Lot coverage: fifty percent.

2. Floor area ratio (FAR): none.

C. Height.

1. Maximum height of structures shall be forty feet.

See Article XVI ("Airport Land Use Compatibility Plan Consistency") for airspace protection evaluation requirements based on the San Francisco International Airport Land Use Compatibility Plan.

2. Height exceptions may be granted by the planning commission in the manner provided in Article XXV of this chapter for chimneys, silos, cupolas, flagpoles, monuments, gas storage holders, radio and other towers, water tanks, church steeples and similar structures and mechanical appurtenances that exceed the specified height limit; provided, that the front, side and rear yards shall each be increased by one foot for each one foot of additional height limit allowed.

3. Height exceptions may be granted by the planning commission in the manner provided in Article XXV of this chapter for any building erected to a height exceeding the maximums specified; provided, that the cubical contents of the building shall not be increased beyond that possible for a building erected within the height limits specified.

4. All other increases in the maximum allowable height shall require a variance.

D. Setbacks.

1. Front: twenty-five feet.

2. Side: ten feet.

3. Rear: ten feet.

E. Parking.

1. The parking requirements for all of the permitted, conditional and accessory uses in this district are listed in MMC 10.05.2100 (the "parking requirements table").

2. Any change in use within an existing building or site, or portion thereof, where total available on-site parking would be less than fifty percent of the total parking required for the building or site shall first be required to obtain approval of a conditional use permit from the planning commission in accordance with the provisions of Article XXV of this chapter. (Ord. 726, § 2 (Att. A)).

**10.05.1230** Airport Land Use Compatibility Plan Consistency

All projects must comply with the requirements of the Airport Land Use Compatibility Plan, including Airport Real Estate Disclosure Notices, Airport Noise Evaluation and Mitigation, Avigation Easement, Safety Compatibility Evaluation, and Airspace Protection Evaluation, as detailed in Article XVI ("Airport Land Use Compatibility Plan Consistency").

## Article XIII. Public Facilities or "PF" District

**10.05.1300 Purpose.**
The purpose of the public facilities or "PF" district is to accommodate government offices/operations, community centers/educational facilities, facilities or structures that support or strengthen the economic sustainability of the city, and public utility installations by concentrating, dispersing, or sequestering them as appropriate. This district correlates with the "utilities and public facilities" land use designation of the Millbrae General Plan. (Ord. 749, § 2).

**10.05.1310 Uses.**
The following uses shall be permitted, conditional, or accessory uses in the PF district:

A. Permitted uses: governmental offices/operations, community centers/educational facilities, and facilities or structures that support or strengthen the economic sustainability of the city.

B. Conditional uses: utility services and wireless communication facilities.

C. Accessory uses: parking lots and structures. (Ord. 749, § 2).

**10.05.1320 Development standards.**
Development regulations in the PF district shall be as specified in the conditional use permit. (Ord. 726, § 2 (Att. A)).

**10.05.1330** Airport Land Use Compatibility Plan Consistency

All projects must comply with the requirements of the Airport Land Use Compatibility Plan, including Airport Real Estate Disclosure Notices, Airport Noise Evaluation and Mitigation, Avigation Easement, Safety Compatibility Evaluation, and Airspace Protection Evaluation, as detailed in Article XVI ("Airport Land Use Compatibility Plan Consistency").

## Article XIV. Open Space or "OS" District

**10.05.1400 Purpose.**
The purpose of the open space or "OS" district is to preserve and protect the publicly owned areas of Millbrae that are still in their natural state and which are intended for passive recreation, as well as to accommodate existing and future city parks which are intended for active recreation. This district correlates with the "park and open space" land use designation of the Millbrae General Plan. (Ord. 726, § 2 (Att. A); Added by Ord. 337, § 3; 1976 Code § 10-1.701; 1966 Code § 8200. Formerly 10.05.0930).

**10.05.1410 Uses.**
The following uses shall be permitted, conditional, or accessory uses in the OS district:

A. Permitted uses: open space and parks.

B. Conditional uses: wireless communication facilities.

C. Accessory uses: none. (Ord. 726, § 2 (Att. A); Added by Ord. 337, § 3; 1976 Code §§ 10-1.702, 10-1.703; 1966 Code §§ 8201, 8202. Formerly 10.05.0940 and 10.05.0950).

**10.05.1420 Development standards.**
Development regulations in the OS district including lot minimums, lot maximums, setbacks, height and off-street parking shall be determined on a case-by-case basis for each project. (Ord. 726, § 2 (Att. A); Added by Ord. 337, § 3; 1976 Code § 10-1.704; 1966 Code § 8303. Formerly 10.05.0960).

## Article XV. Planned Development or "PD" District

Prior history: 1966 Code §§ 8102 – 8120, 1976 Code § 10-1.414 and Ord. 231.

**10.05.1500 Purpose.**
Where a special design proposal for a large-scale development makes it desirable to apply regulations more flexible than those contained elsewhere in this chapter, a planned development or "PD" district may be established. The purpose of such district is to grant diversification in the location of structures and other site qualities while ensuring adequate standards relating to public health, safety, welfare, comfort and convenience. This article establishes the procedures for securing the planned development district zone designation and for reviewing development plans for any project proposed for "PD" zoning. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.501. Formerly 10.05.0300).

**10.05.1505 Size.**
The planned development or "PD" district may be established only on areas of not less than two acres. Adjacent land can be added to an existing "PD" district in an amount less than the required minimum, and such areas may have a plan for development independent of the plan approved for the adjacent PD district. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.502. Formerly 10.05.0310).

**10.05.1510 Uses and conceptual development plan.**
Any use consistent with the Millbrae General Plan may be permitted, provided such use exists or has been designated in a conceptual development plan as specified in MMC 10.05.1520 and approved by the city council pursuant to provisions of this chapter. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.503. Formerly 10.05.0320).

**10.05.1515 Initiation of zoning district.**
Initiation of a change of zoning district to planned development or "PD" district shall be made by the city council, the parcel owner(s) or their authorized agent in the manner provided in Article XXVIII of this chapter and shall be based upon a conceptual development plan as specified in MMC

10.05.1520. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.504. Formerly 10.05.0330).

**10.05.1520 Conceptual development plan requirements.**
A. The conceptual development plan for a planned development district shall depict the proposed development concept in sufficient detail so as to enable the city council to render a zoning decision. The conceptual development plan shall be in the form of one or more maps and other materials describing or showing all of the following:

1. The site proposed for planned development including its size and perimeter dimensions;

2. The location and dimension of any existing property lines within the site;

3. Contact information of the owner(s) and developer(s) of the site;

4. The width, location, and names of surrounding or adjoining streets, as well as any proposed street alignments within the site and their connection to existing streets;

5. The character, use, and density/intensity of all abutting and all street-adjacent properties;

6. The existing and proposed topography of the site displayed at not less than two-foot contour intervals;

7. The locations and capacities of existing utilities in the vicinity of the site including any proposed or required extensions to the site;

8. The location of any structure(s) existing upon the site designated for retention or removal and the proposed location of future structure(s);

9. Areas of the site proposed for various categories of land use (such as residential, commercial, parking, circulation, recreation, and open space), development standards for each proposed land use (such as building heights and setbacks, dwelling units per acre and/or floor area ratio, and parking standards), and a tabular summary of estimates of the resulting population densities and/or building intensities;

10. Architectural sketches of all proposed buildings, design guidelines to achieve the proposed architectural concepts, and the intended use of all proposed buildings;

11. Conceptual landscape plan indicating areas of hardscape, softscape, and other proposed amenities;

12. A narrative description of all proposed site improvements; and

13. The data, analyses, and supporting information required to carry out the environmental review specified in subsection B of this section.

B. Prior to submission of the development plan to the planning commission, an environmental review of the plan shall be conducted to the extent required by and in full accordance with the California Environmental Quality Act.

C. The planning commission and city council may require such other information as deemed necessary which may include but not be limited to economic analyses, thoroughfare plans, public services, facilities plans and utilities services plans. All of the information and materials required for any development plan as specified in subsections A and B of this section shall be at the applicant's own cost and expense. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.505. Formerly 10.05.0340).

**10.05.1525 Action on change of zoning.**

A. The planning commission and city council shall consider the proposed change of zoning district and shall take such action as deemed suitable in the manner provided in Article XXVIII of this chapter. If the city council approves the conceptual development plan and zone change, the PD zone shall be indicated on the official zoning map of the city; however, no development of the site of the planned development district shall be undertaken until an application for a precise development plan as described in MMC 10.05.1540 has been approved by the planning commission pursuant to MMC 10.05.1550.

B. In approving any petition for a planned development district, the planning commission and city council shall make the following findings:

1. The requested PD zone is consistent with the Millbrae General Plan;

2. The development standards of the requested PD zone will provide adequate protection for the surrounding land uses; and

3. The design guidelines of the requested PD zone will assure architectural compatibility with the surrounding area and/or will set a high standard of architectural quality for the surrounding area. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.506. Formerly 10.05.0350).

**10.05.1530 Amendment of conceptual development plan.**

The approval of any conceptual development plan for a planned development district may be modified or amended by ordinance in the manner provided in Article XXVIII of this chapter in the same manner as for the institution of the planned development district upon any land. Such procedures may be initiated by the owners of the lands affected, by the planning commission, or by the city council; provided, that any change initiated by the planning commission or the city council shall be commenced by the adoption of a resolution of intention in the manner provided in Article XXVIII of this chapter. The change or changes shall cause a map of the proposed modifications or amendments to be prepared by the developer and filed with the planning commission in the same manner as a petition for amendment is filed in the manner provided in Article XXVIII of this chapter. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.507. Formerly 10.05.0360).

**10.05.1535 Phasing of conceptual development plan.**

Where it appears that the area proposed for planned development zoning is of considerable extent, the petition for rezoning shall specify upon the conceptual development plan a phasing schedule providing for completion and presentation of separate plans for each part. Upon approval of this phasing schedule by the city council, the developer shall cause the precise development plan for each part to be prepared and submitted in accordance with such schedule. Nothing contained in this section shall be construed to require the planning commission or city council to accept precise development plans in stages or phases except as heretofore provided. The planning

commission and city council may, if they so determine, require that a precise development plan or a part thereof shall be submitted for approval at the same time the conceptual development plan is filed with a petition requesting planned development district zoning. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.508. Formerly 10.05.0370).

**10.05.1540 Application for precise development plan.**
Following approval of the conceptual development plan of any planned development district, the petitioner shall submit to the planning commission a precise development plan or, in the event of the approval of a phasing schedule of precise development plans as specified in MMC 10.05.1535, the first phase of such precise development plan. Any proposed use involving a new structure or new parking facility, or exterior alterations to an existing building, shall be subject to design review as set forth in MMC 10.05.1550. The application shall be accompanied by required fees and plans showing the details of the proposed use. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.509. Formerly 10.05.0380).

**10.05.1545 Precise development plan requirements.**
Precise development plans shall be detailed refinements of the development concept and as such shall represent development consistent with the approved conceptual development plan. Development plans shall, at a minimum, contain the following:

A. A comprehensive site plan showing the location, size, and dimensions of all proposed structures (such as buildings, fences, and related appurtenances), streets, parking, open spaces, and service areas/facilities. Such plan shall include a detailed statement of all land uses to be established, the areas to be occupied by each use, and the resulting residential densities and/or nonresidential building intensities;

B. Detailed engineering site plans including proposed finished grades, drainage facilities as approved by the city engineer, and permanent boundary survey monuments tied to the nearest city survey station;

C. A detailed landscape plan depicting all existing plant materials (by species, size, and condition) designated for retention or removal, all proposed plant materials (by species, size, and quantity), and any other amenities (such as water features, seating, and decorative lighting);

D. A master sign program describing in detail, in both narrative and graphic form, the size, type, color, material, font, and placement of all permanent signage, as well as provisions for temporary signs;

E. Architectural drawings (floor plans, roof plans, elevations, and sections) of all proposed buildings, as well as depictions of all other structures (such as fences, walls, and trash enclosures) as appropriate;

F. Detailed engineering plans for the delivery of public utilities to the site including all off-site improvements and connections necessary to serve the site. Such engineering plans shall include underground service of utilities, which shall be required, within the areas of the plan;

G. A detailed traffic study analyzing trips generated by the development relative to current traffic volumes on adjacent streets and intersections, and including proposed traffic improvements needed to mitigate any adverse impacts;

H. Other pertinent information as may be deemed necessary by the planning commission to determine that the contemplated arrangement of use(s) warrants the approval and application of development standards differing from those ordinarily applicable under this chapter;

I. A development schedule indicating the approximate date when commencement and completion of construction will occur and the anticipated progress of development under the proposed development plan; and

J. A comprehensive project description, including justification for any modification to regulations and requirements ordinarily applicable to the particular uses under the terms of this chapter. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.510. Formerly 10.05.0390).

**10.05.1550 Planning commission action on precise development plan.**

A. The planning commission shall consider the proposed precise development plan, or any appropriate phase thereof, at a public hearing, notice of which shall be given in the time and manner provided in Article XXVIII of this chapter, modifying the notice form to read as follows: "NOTICE OF PUBLIC HEARING ON A PRECISE DEVELOPMENT PLAN WITHIN THE PLANNED DEVELOPMENT DISTRICT." In addition, such notice shall contain a statement of the modification proposed to be considered of any regulations and requirements ordinarily applicable to the uses under the terms of this chapter, a general statement of the nature of the precise development plan and the location of the area included within the precise development plan.

B. The planning commission shall consider drawings, sketches, site and landscape plans, and any other information deemed relevant to ensure that the architectural, landscaping, and general appearance of the proposed structure(s) and grounds shall be in keeping with the character of the neighborhood; shall not be detrimental to the orderly, harmonious and safe development of the city; shall not impair the desirability of investment or occupation in the neighborhood in which the structure(s) is/are proposed to be erected; and are in compliance with the development standards and design guidelines contained in the conceptual development plan. In granting any approval, the planning commission shall make the following findings:

1. That the proposed development conforms to the overall intent of the development plan, and will produce an environment of stable, desirable character and high-quality development with uses that contribute to the environmental quality of the stated area; and

2. That the proposed development provides overall standards of population densities, of open space, of circulation and off-street parking and other general conditions of use at least equivalent to those required by the development plan or by the terms of this chapter in districts where similar uses are permitted; and

3. That the proposed development plan shall represent a development of sufficient harmony within itself and with adjacent areas to justify any exceptions to the normal regulations within this chapter; and

4. That fire protection is adequate; and

5. That drainage is adequate; and

6. That capacity of utilities and infrastructure, including size and location of streets and sidewalks, is adequate or will be installed/improved to an adequate level prior to the granting of a certificate of occupancy; and

7. That recreation is adequately provided for in the area or adequate in-lieu fees are paid.

C. Following the close of the public hearing, the planning commission may approve, approve with conditions, or disapprove any or all of the architectural, landscaping, or site plans submitted in connection with the application for approval. If approved by the planning commission, the approval shall be effective for a period of one year from the date of final approval thereof or within any shorter or longer period of time not to exceed three years, if so designated by the planning commission. The planning commission shall have authority to extend the period of any approval; provided, that a written request for such extension is submitted prior to the date of expiration of the original approval and a notice of hearing has been given in the time and manner provided in Article XXIX of this chapter. Any approvals granted in accordance with the terms of this chapter shall, without further action, become null and void if not used or extended according to these procedures. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.511. Formerly 10.05.0400).

**10.05.1555 Appeal, appeal period and acknowledgment of conditions.**

If a plan or an extension is approved, approved with conditions, or disapproved by the planning commission, the applicant or any protestant may appeal the decision of the planning commission to the city council in the manner provided in Article XXVII of this chapter. Notwithstanding the failure of any person to appeal the decision of the planning commission and within ten days of the date of the action of the planning commission, the city council, or any member thereof, may request a review of the action of the planning commission. Said request for review shall be submitted in writing to the city clerk. City council review shall proceed in the manner provided in Article XXVII of this chapter. The action of the planning commission shall be suspended pending a final determination by the city

council. In any case, permits shall not be issued until the required ten-day period has elapsed without the filing of the appeal or a final decision has been made by the city council. Approvals shall have no force or effect until the applicant acknowledges receipt thereof and acceptance of any conditions thereto. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.512. Formerly 10.05.0410).

**10.05.1560 Modification of precise development plan.**

A. The permittee under any approved precise development plan may request modification of such plan by applying to the community development department. Minor adjustments to the original precise development plan may be made by the director of community development or designee, provided said adjustments are technical corrections which do not have a significant impact on the aesthetics of the project, nor conflict with the intent of the plans originally adopted by the planning commission. Major adjustments shall be reviewed and approved by the planning commission in the same manner and following the same procedure as set forth in MMC 10.05.1550. Although approval of any modification by the city council is not required, the decision of the planning commission granting or denying the modification shall be subject to review by the city council under the same procedures provided for in Article XXVII of this chapter.

B. In considering any modification, the director of community development or designee, the planning commission, and/or the city council shall consider the following:

1. Changed conditions which have occurred since the original approval of the precise development plan; and

2. Changes in the basic premises used in arriving at the original approval including, but not limited to, engineering data, economic circumstances, and actions of other public bodies including eminent domain proceedings. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.513. Formerly 10.05.0420).

**10.05.1565 Subdivision.**

Where from the nature of the size, location, shape or topography of the parcel of land, or where from the nature of the improvements or development shown on the conceptual or precise development plan, or any combination of these factors, it appears to the planning commission or the city council that a future division of ownership or subdivision of said parcel would be required for orderly development by the delineation of subdivided lot lines at the time of initial development, the planning commission or the city council may require the filing of tentative and/or final subdivision maps, as provided in the subdivision regulations of this chapter and state law, as well as the performing of any other acts required in such regulations. Where any subdivision regulation requires any specific act of the landowner or subdivider, the approval of any conceptual development plan or precise development plan shall not become effective until compliance has been made with such subdivision regulation. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.514. Formerly 10.05.0430).

**10.05.1570 Effect.**

No building or zoning permit shall be issued in any case until the approval of a precise development plan of the planned development district has become effective, and then only in accordance with the conditions thereof. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.515. Formerly 10.05.0440).

**10.05.1575 Special fees.**

The city council may set a fee schedule to be paid, in addition to any other fee which may be required, to cover the portion of the cost burden of required infrastructure in connection with the issuance of a permit for any building or structure. Lands within the planned development district, which lands are retained in large parcels as acreage or otherwise not divided, shall be subject to those special fees or charges upon lands within the city in accordance with the requirements of resolutions, regulations, or ordinances of the city. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.516. Formerly 10.05.0450).

**10.05.1580 Revocation.**

A. In any case where the terms of approval of a precise development plan of the planned development district, or the approved development schedule contained therein, have not been or are not complied with, the planning commission shall give to the permittee written notice of intention to consider revocation of the approval of a precise development plan at least ten days in advance of a planning commission hearing thereon with public notice of such hearing in the time and manner as provided in Article XXVIII of this chapter. After conclusion of said hearing, the

planning commission may recommend that the city council revoke said approval. The city council shall act thereon within thirty days after receipt of the recommendation of the planning commission.

B. In any case where an application for approval of a precise development plan of a planned development district has not been filed within the specified time period established by the planning commission or city council, if any, or where action has been taken to revoke the approval of any precise development plan in accordance with this section, the planning commission or the city council may, by adoption of a resolution of intention in accordance with the provisions of Article XXVIII of this chapter, initiate proceedings to change the planned development district to a different zoning district. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.517. Formerly 10.05.0460).

**10.05.1585 Improvements and dedications.**

A. In the event that a subdivision map is not required for approval of any precise development plan of a planned development district, such approval shall not become effective until conveyances for any required public easements, streets, rights-of-way, or other public areas have been filed with the city clerk and accepted by the city council.

B. Where any land is to be conveyed for public use, a title report issued by a title insurance company in the name of the owner of the land, issued to or for the benefit and protection of the city, showing all parties whose consent is necessary and the nature of their interests therein, shall be filed with the conveyances of said land.

C. Where public improvements are to be constructed or where improvements are to be made upon lands to be conveyed to the city, the landowner shall execute and file an agreement with the city providing for the installation of such improvements at the landowner's cost and expense, and in accordance with the approved development schedule contained in the development plan. The agreement shall be accompanied by labor, material and performance bonds. Such improvement agreement and bonds provided for in this chapter shall be considered in a like manner as are requirements upon improvement agreements and bonds under regulations for subdivisions in the city. Such improvement agreement and bonds shall be deemed to include and cover the installation of landscaping and planting as required by any approved plan thereof, whether such landscaping and planting shall be upon public or private lands. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.518. Formerly 10.05.0470).

**10.05.1590 Control of development schedule.**

The director of community development shall compare the actual development accomplished in the planned development with the approved development schedule and shall report findings to the planning commission if the owners or permittees are failing or have failed to meet the approved schedule. The planning commission may, by adoption of a resolution of intention, initiate proceedings to change conditions of approval or requirements related to the development schedule pursuant to the process for approving the plan as set forth in this article. (Ord. 726, § 2 (Att. A); Ord. 643, § 2; 1976 Code § 10-1.519. Formerly 10.05.0480).

**10.05.1595** Airport Land Use Compatibility Plan Consistency ~~and Maximum Height~~

All projects must comply with the requirements of the Airport Land Use Compatibility Plan, including Airport Real Estate Disclosure Notices, Airport Noise Evaluation and Mitigation, Avigation Easement, Safety Compatibility Evaluation, and Airspace Protection Evaluation, as detailed in Article XVI ("Airport Land Use Compatibility Plan Consistency").

~~and airspace protection evaluation requirements~~

**Article XVI. Airport Land Use Compatibility Plan Consistency ~~Grand Boulevard Planned Development or "GBPD" District~~**

**10.05.1600 ~~Purpose.~~Application**

This section establishes standards and requirements related to consistency with the Comprehensive Airport Land Use Compatibility Plan for the Environs of San Francisco International Airport (ALUCP). The following requirements and criteria shall be incorporated into all applicable projects.

A. Airport Real Estate Disclosure Notices

All new development is required to comply with the real estate disclosure requirements of state law (California Business and Professions Code Section 11010(b)(13). The following statement must be included in the notice of intention to offer the property for sale or lease:

"Notice of Airport in Vicinity. This property is presently located in the vicinity of an airport, within what is known as an airport in fluence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you."

B. Airport Noise Evaluation and Mitigation

All projects shall comply with the Noise Compatibility Policies of the ALUCP. Uses shall be reviewed per the Noise/Land Use Compatibility Criteria listed in Table IV-1 of the ALUCP. Uses listed as "conditionally compatible" shall be required to mitigate impacts to comply with the interior (CNEL 45 dB or lower, unless otherwise stated) and exterior noise standards established by the ALUCP or Millbrae General Plan, whichever is more restrictive. Unless otherwise precluded by State law, all projects shall be consistent with ALUCP Policy NP-4 Residential Uses within CNEL 70 dB Contour.

C. Avigation Easement

Any action that would either permit or result in the development or construction of a land use considered to be conditionally compatible with aircraft noise of CNEL 65 dB or greater (as mapped in the ALUCP) shall include the

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grant of an avigation easement to the City and County of San Francisco prior to issuance of a building permit(s) for any proposed buildings or structures, consistent with ALUCP Policy NP-3 Grant of Avigation Easement.

D. Safety Compatibility Evaluation

All uses must comply with Safety Compatibility Policies of the ALUCP. Project applicants shall be required to evaluate potential safety issues if the property is located within any of the Safety Compatibility Zones established in ALUCP Policy SP-1 and depicted in Exhibit IV-8 of the ALUCP.

All projects located within a Safety Compatibility Zone shall be required to determine if the proposed land use is compatible with the Safety Compatibility Land Use Criteria as noted in ALUCP Policy SP-2 and listed in Table IV-2 of the ALUCP.

E. Airspace Protection Evaluation

All projects shall comply with Airspace Protection Policies of the ALUCP.

1. Notice of Proposed Construction or Alteration

Project applicants shall be required to file Form 7460-1, Notice of Proposed Construction or Alteration, with the Federal Aviation Administration (FAA) for any proposed new structure and/or alterations to existing structures (including ancillary antennae, mechanical equipment, and other appurtenances) that would exceed the FAA notification heights as depicted in ALUCP Exhibit IV-11. Any project that would exceed the FAA notification heights shall submit a copy of the findings of the FAA's aeronautical study, or evidence demonstrating exemption from having to file FAA Form 7460-1, as part of the development permit application. Temporary cranes or other

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equipment used to construct or modify a structure which are taller than the structure itself must be submitted as separate Form 7460-1 cases.

2. Maximum Compatible Building Height

No structure may exceed the lower of either 1) the maximum height determined by the FAA to not be a hazard to air navigation, or 2) the height shown on the SFO ALUCP Critical Aeronautical Surfaces map. Building heights must receive a Determination of No Hazard from the FAA.

For avoidance of doubt, the lower of the two heights identified by the ALUCP and the FAA shall be the controlling maximum height.

The Critical Aeronautical Surfaces and FAA analysis use elevations above the origin of the North American Vertical Datum of 1988 rather than height above ground level. Therefore, if a proposed project changes the ground elevation of the site, the maximum height of the building would change accordingly.

3. Other Flight Hazards

Within Airport Influence Area (AIA) B, certain land use characteristics are recognized as hazards to air navigation and, per ALUCP Policy AP-4, need to be evaluated to ensure compatibility with FAA rules and regulations. These characteristics include the following:

a. Sources of glare, such as highly reflective buildings, building features, or blight lights including search lights, or laser displays, which would interfere with the vision of pilots in command of an aircraft in flight.

b. Distracting lights that could be mistaken for airport identification lightings, runway edge lighting, runway end identification lighting, or runway approach lighting.

c. Sources of dust, smoke, water vapor, or steam that may impair the visibility of a pilot in command of and aircraft in flight.

d. Sources of electrical/electronic interference with aircraft communications/navigation equipment.

e. Any use that creates an increased attraction for wildlife, particularly large flocks of birds, that is inconsistent with FAA rules and regulations, including but not limited to FAA rules and regulations, including but not limited to FAA Order 5200.5A, Waste Disposal Site On or Near Airports and FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants On or Near Airports and any successor or replacement orders or advisory circulars.

~~The Grand Boulevard Planned Development or "GBPD" district is intended to facilitate intensified redevelopment of the El Camino Real corridor through pedestrian-oriented, transit-oriented, mixed-use projects. It enables the use of regulations that are more flexible than those contained elsewhere in this chapter. When applied to individual sites, this district grants variability in the size and placement of structures and other site improvements while protecting public health, safety, welfare, comfort, and convenience. This article establishes the procedures for securing the Grand Boulevard Planned Development zoning classification and for reviewing development plans for any project proposal for "GBPD" zoning. (Ord. 726, § 2 (Att. A)).~~

**~~10.05.1605 Size.~~**
~~The Grand Boulevard Planned Development District may be established on a parcel of any size, provided it has direct frontage along El Camino Real. One or more contiguous parcels, also of any size, may be merged with a parcel having direct frontage along El Camino Real to form a GBPD district. (Ord. 726, § 2 (Att. A)).~~

**~~10.05.1610 Uses and conceptual development plan.~~**
~~Any use consistent with the Millbrae General Plan may be permitted, provided such use exists or has been designated in a conceptual development plan as specified in MMC 10.05.1620 and approved by the city council pursuant to provisions of this chapter. (Ord. 726, § 2 (Att. A)).~~

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**10.05.1615 Initiation of zoning district.**

Initiation of a change of zoning district to Grand Boulevard Planned Development district shall be made by the city council, the parcel owner(s) or their authorized agent in the manner provided in Article XXVIII of this chapter and shall be based upon a conceptual development plan as specified in MMC 10.05.1620. (Ord. 726, § 2 (Att. A)).

**10.05.1620 Conceptual development plan requirements.**

A. The conceptual development plan for a Grand Boulevard Planned Development district shall depict the proposed development concept in sufficient detail so as to enable the city council to render a zoning decision. The conceptual development plan shall be in the form of one or more maps and other materials describing or showing all of the following:

1. The site proposed for planned development including its size and perimeter dimensions;

2. The location and dimension of any existing property lines within the site;

3. Contact information of the owner(s) and developer(s) of the site;

4. The width, location, and names of surrounding or adjoining streets, as well as any proposed street alignments within the site and their connection to existing streets;

5. The character, use, and density/intensity of all abutting and all street-adjacent properties;

6. The existing and proposed topography of the site displayed at not less than two-foot contour intervals;

7. The locations and capacities of existing utilities in the vicinity of the site including any proposed or required extensions to the site;

8. The location of any structure(s) existing upon the site designated for retention or removal and the proposed location of future structure(s);

9. Areas of the site proposed for various categories of land use (such as residential, commercial, parking, circulation, recreation, and open space), development standards for each proposed land use (such as building heights and setbacks, dwelling units per acre and/or floor area ratio, and parking standards), and a tabular summary of estimates of the resulting population densities and/or building intensities;

10. Architectural sketches of all proposed buildings, design guidelines to achieve the proposed architectural concepts, and the intended use of all proposed buildings;

11. Conceptual landscape plan indicating areas of hardscape, softscape, and other proposed amenities;

12. A narrative description of all proposed site improvements; and

13. The data, analyses, and supporting information required to carry out the environmental review specified in subsection B of this section.

B. Prior to submission of the development plan to the planning commission, an environmental review of the plan shall be conducted to the extent required by and in full accordance with the California Environmental Quality Act.

C. The planning commission and city council may require such other information as deemed necessary which may include but not be limited to economic analyses, thoroughfare plans, public services, facilities plans and utilities services plans. All of the information and materials required for any development plan as specified in subsections A and B of this section shall be at the applicant's own cost and expense. (Ord. 726, § 2 (Att. A)).

**10.05.1625 Action on change of zoning.**

A. The planning commission and city council shall consider the proposed change of zoning district and shall take such action as deemed suitable in accordance with the provisions of Article XXVIII. If the city council approves the conceptual development plan and zone change, the GBPD zone shall be indicated on the official zoning map of the city; however, no development of the site of the Grand Boulevard Planned Development district shall be undertaken

until an application for a precise development plan as described in MMC 10.05.1640 has been approved by the planning commission pursuant to MMC 10.05.1650.

B. In approving any petition for a GBPD district, the planning commission and city council shall make the following findings:

1. The requested GBPD zone is consistent with the Millbrae General Plan;

2. The development standards of the requested GBPD zone will provide adequate protection for the surrounding land uses; and

3. The design guidelines of the requested GBPD zone will assure architectural compatibility with the surrounding area and/or will set a high standard of architectural quality for the surrounding area. (Ord. 726, § 2 (Att. A)).

**10.05.1630 Amendment of the conceptual development plan.**
The approval of any development plan for a Grand Boulevard Planned Development district may be modified or amended by ordinance in the manner provided in Article XXVIII of this chapter in the same manner as for the institution of the Grand Boulevard Planned Development district upon any land. Such procedures may be initiated by the owners of the lands affected, by the planning commission, or by the city council; provided, that any change initiated by the planning commission or the city council shall be commenced by the adoption of a resolution of intention, in the manner provided in Article XXVIII of this chapter. The change or changes shall cause a map of the proposed modifications or amendments to be prepared by the developer and filed with the planning commission in the same manner as a petition for amendment is filed in the manner provided in Article XXVIII of this chapter. (Ord. 726, § 2 (Att. A)).

**10.05.1635 Phasing of conceptual development plan.**
Where it appears that the area proposed for Grand Boulevard Planned Development zoning is of considerable extent, the petition for rezoning shall specify upon the conceptual development plan a phasing schedule providing for completion and presentation of separate plans for each part. Upon approval of this phasing schedule by the city council, the developer shall cause the precise development plan for each part to be prepared and submitted in accordance with such schedule. Nothing contained in this section shall be construed to require the planning commission or city council to accept precise development plans in stages or phases except as heretofore provided. The planning commission and city council may, if they so determine, require that a precise development plan or a part thereof shall be submitted for approval at the same time the conceptual development plan is filed with a petition requesting Grand Boulevard Planned Development district zoning. (Ord. 726, § 2 (Att. A)).

**10.05.1640 Application for precise development plan.**
Following approval of the conceptual development plan of any Grand Boulevard Planned Development district, the petitioner shall submit to the planning commission a precise development plan or, in the event of the approval of a phasing schedule of precise development plans as described in MMC 10.05.1635, the first phase of such precise development plan. Any proposed use involving a new structure or new parking facility, or exterior alterations to an existing building, shall be subject to design review pursuant to MMC 10.05.1650. The application shall be accompanied by required fees and plans showing the details of the proposed use. (Ord. 726, § 2 (Att. A)).

**10.05.1645 Precise development plan requirements.**
Precise development plans shall be detailed refinements of the development concept and as such shall represent development consistent with the approved conceptual development plan. Precise development plans shall, at a minimum, contain the following:

A. A comprehensive site plan showing the location, size, and dimensions of all proposed structures (such as buildings, fences, and related appurtenances), streets, parking, open spaces, and service areas/facilities. Such plan shall include a detailed statement of all land uses to be established, the areas to be occupied by each use, and the resulting residential densities and/or nonresidential building intensities;

B. Detailed engineering site plans including proposed finished grades, drainage facilities as approved by the city engineer, and permanent boundary survey monuments tied to the nearest city survey station;

C. A detailed landscape plan depicting all existing plant materials (by species, size, and condition) designated for retention or removal, all proposed plant materials (by species, size, and quantity), and any other amenities (such as water features, seating, and decorative lighting);

D. A master sign program describing in detail, in both narrative and graphic form, the size, type, color, material, font, and placement of all permanent signage, as well as provisions for temporary signs;

E. Architectural drawings (floor plans, roof plans, elevations, and sections) of all proposed buildings, as well as depictions of all other structures (such as fences, walls, and trash enclosures) as appropriate;

F. Detailed engineering plans for the delivery of public utilities to the site including all off-site improvements and connections necessary to serve the site. Such engineering plans shall include underground service of utilities, which shall be required, within the areas of the plan;

G. A detailed traffic study analyzing trips generated by the development relative to current traffic volumes on adjacent streets and intersections, and including proposed traffic improvements needed to mitigate any adverse impacts;

H. Other pertinent information as may be deemed necessary by the planning commission to determine that the contemplated arrangement of use(s) warrants the approval and application of development standards differing from those ordinarily applicable under this chapter;

I. A development schedule indicating the approximate date when commencement and completion of construction will occur and the anticipated progress of development under the proposed development plan; and

J. A comprehensive project description, including justification for any modification to regulations and requirements ordinarily applicable to the particular uses under the terms of this chapter. (Ord. 726, § 2 (Att. A)).

**10.05.1650 Planning commission action on precise development plan.**

A. The planning commission shall consider the proposed precise development plan, or any appropriate phase thereof, at a public hearing, notice of which shall be given in the time and manner provided in Article XXVIII of this chapter, modifying the notice form to read as follows: "NOTICE OF PUBLIC HEARING ON A PRECISE DEVELOPMENT PLAN WITHIN THE GRAND BOULEVARD PLANNED DEVELOPMENT DISTRICT." In addition, such notice shall contain a statement of the modification proposed to be considered of any regulations and requirements ordinarily applicable to the uses under the terms of this chapter, a general statement of the nature of the precise development plan and the location of the area included within the precise development plan.

B. The planning commission shall consider drawings, sketches, site and landscape plans, and any other information deemed relevant to ensure that the architectural, landscaping, and general appearance of the proposed structure(s) and grounds shall be in keeping with the character of the neighborhood; shall not be detrimental to the orderly, harmonious and safe development of the city; shall not impair the desirability of investment or occupation in the neighborhood in which the structure(s) is proposed to be erected; and are in compliance with the development standards and design guidelines contained in the conceptual development plan. In granting any approval, the planning commission shall make the following findings:

1. That the proposed development conforms to the overall intent of the development plan, and will produce an environment of stable, desirable character and high-quality development with uses that contribute to the environmental quality of the stated area; and

2. That the proposed development provides overall standards of population densities, of open space, of circulation and off-street parking and other general conditions of use at least equivalent to those required by the development plan or by the terms of this chapter in districts where similar uses are permitted; and

3. That the proposed development plan shall represent a development of sufficient harmony within itself and with adjacent areas to justify any exceptions to the normal regulations within this chapter; and

4. That fire protection is adequate; and

5. That drainage is adequate; and

6. That capacity of utilities and infrastructure, including size and location of streets and sidewalks, is adequate or will be installed/improved to an adequate level prior to the granting of a certificate of occupancy; and

7. That recreation is adequately provided for in the area or adequate in-lieu fees are paid.

C. Following the close of the public hearing, the planning commission may approve, approve with conditions, or disapprove any or all of the architectural, landscaping, or site plans submitted in connection with the application for approval. If approved by the planning commission, the approval shall be effective for a period of one year from the date of final approval thereof or within any shorter or longer period of time not to exceed three years, if so designated by the planning commission. The planning commission shall have authority to extend the period of any approval; provided, that a written request for such extension is submitted prior to the date of expiration of the original approval and a notice of hearing has been given in the time and manner provided in Article XXIX of this chapter. Any approvals granted in accordance with the terms of this chapter shall, without further action, become null and void if not used or extended according to these procedures. (Ord. 726, § 2 (Att. A)).

**10.05.1655 Appeal, appeal period, and acknowledgment of conditions.**

If a plan or an extension is approved, approved with conditions, or disapproved by the planning commission, the applicant or any protestant may appeal the decision of the planning commission to the city council in the manner provided in Article XXVII of this chapter. Notwithstanding the failure of any person to appeal the decision of the planning commission and within ten days of the date of the action of the planning commission, the city council, or any member thereof, may request a review of the action of the planning commission. Said request for review shall be submitted in writing to the city clerk. City council review shall proceed in the manner prescribed in Article XXVII of this chapter. The action of the planning commission shall be suspended pending a final determination by the city council. In any case, permits shall not be issued until the required ten-day period has elapsed without the filing of the appeal or a final decision has been made by the city council. Approvals shall have no force or effect until the applicant acknowledges receipt thereof and acceptance of any conditions thereto. (Ord. 726, § 2 (Att. A)).

**10.05.1660 Modification of precise development plan.**

A. The permittee under any approved precise development plan may request modification of such plan by applying to the community development department. Minor adjustments to the original precise development plan may be made by the director of community development or designee, provided said adjustments are technical corrections which do not have a significant impact on the aesthetics of the project, nor conflict with the intent of the plans originally adopted by the planning commission. Major adjustments shall be reviewed and approved by the planning commission in the same manner and following the same procedure as set forth in MMC 10.05.1650. Although approval of any modification by the city council is not required, the decision of the planning commission granting or denying the modification shall be subject to review by the city council under the same procedures provided for in Article XXVII of this chapter.

B. In considering any modification, the director of community development or designee, the planning commission, and/or the city council shall consider the following:

1. Changed conditions which have occurred since the original approval of the precise development plan; and

2. Changes in the basic premises used in arriving at the original approval including, but not limited to, engineering data, economic circumstances, and actions of other public bodies including eminent domain proceedings. (Ord. 726, § 2 (Att. A)).

**10.05.1665 Subdivision.**

Where from the nature of the size, location, shape or topography of the parcel of land, or where from the nature of the improvements or development shown on the conceptual or precise development plan, or any combination of these factors, it appears to the planning commission or the city council that a future division of ownership or subdivision of said parcel would be required for orderly development by the delineation of subdivided lot lines at the time of initial development, the planning commission or the city council may require the filing of tentative or final subdivision maps, as provided in the subdivision regulations of this chapter and state law, as well as the performing

of any other acts required in such regulations. Where any subdivision regulation requires any specific act of the landowner or subdivider, the approval of any conceptual development plan or precise development plan shall not become effective until compliance has been made with such subdivision regulation. (Ord. 726, § 2 (Att. A)).

**10.05.1670 Effect.**
No building or zoning permit shall be issued in any case until the approval of a precise development plan of a Grand Boulevard Planned Development district has become effective, and then only in accordance with the conditions thereof. (Ord. 726, § 2 (Att. A)).

**10.05.1675 Special fees.**
The city council may set a fee schedule to be paid, in addition to any other fee which may be required, to cover the portion of the cost burden of required infrastructure in connection with the issuance of a permit for any building or structure. Lands within the Grand Boulevard Planned Development district, which lands are retained in large parcels as acreage or otherwise not divided, shall be subject to those special fees or charges upon lands within the city in accordance with the requirements of resolutions, regulations, or ordinances of the city. (Ord. 726, § 2 (Att. A)).

**10.05.1680 Revocation.**
A. In any case where the terms of approval of a precise development plan of Grand Boulevard Planned Development district, or the approved development schedule contained therein, have not been or are not complied with, the planning commission shall give to the permittee written notice of intention to consider revocation of the approval of a precise development plan at least ten days in advance of a planning commission hearing thereon with public notice of such hearing in the same time and manner as provided in Article XXIX of this chapter. After conclusion of said hearing, the planning commission may recommend that the city council revoke said approval. The city council shall act thereon within thirty days after receipt of the recommendation of the planning commission.

B. In any case where an application for approval of a precise development plan of a Grand Boulevard Planned Development district has not been filed within the specified time period established by the planning commission or city council, if any, or where action has been taken to revoke the approval of any precise development plan in accordance with this section, the planning commission or the city council may, by adoption of a resolution of intention as provided in Article XXVIII of this chapter, initiate proceedings to change the Grand Boulevard Planned Development district to a different zoning district. (Ord. 726, § 2 (Att. A)).

**10.05.1685 Improvements and dedications.**
A. In the event that a subdivision map is not required for approval of any precise development plan of a Grand Boulevard Planned Development district, such approval shall not become effective until conveyances for any required public easements, streets, rights-of-way, or other public areas have been filed with the city clerk and accepted by the city council.

B. Where any land is to be conveyed for public use, a title report issued by a title insurance company in the name of the owner of the land, issued to or for the benefit and protection of the city, showing all parties whose consent is necessary and the nature of their interests therein, shall be filed with the conveyances of said land.

C. Where public improvements are to be constructed or where improvements are to be made upon lands to be conveyed to the city, the landowner shall execute and file an agreement between himself and the city providing for the installation of such improvements at the landowner's cost and expense, and in accordance with the approved development schedule contained in the development plan. The agreement shall be accompanied by labor, material and performance bonds. Such improvement agreement and bonds provided for in this chapter shall be considered in a like manner as are requirements upon improvement agreements and bonds under regulations for subdivisions in the city. Such improvement agreement and bonds shall be deemed to include and cover the installation of landscaping and planting as required by any approved plan thereof, whether such landscaping and planting shall be upon public or private lands. (Ord. 726, § 2 (Att. A)).

**10.05.1690 Control of development schedule.**
The director of community development shall compare the actual development accomplished in the planned development with the approved development schedule and shall report findings to the planning commission if the owners or permittees are failing or have failed to meet the approved schedule. The planning commission may, by

~~adoption of a resolution of intention, initiate proceedings to change conditions of approval or requirements related to the development schedule pursuant to the process for approving the plan as set forth in this article. (Ord. 726, § 2 (Att. A)).~~

## Article XVII. Millbrae Station Area Planned Development or "MSAPD" District

**10.05.1700 Purpose.**
In order to implement the Millbrae Station Area Specific Plan ("MSASP"), the "Millbrae Station Area Planned Development" or "MSAPD" district is established. The general purpose of such district is to prescribe planning and design principles for area development in accordance with the Millbrae Station Area Specific Plan. In addition to furthering the general principles of the Millbrae zoning ordinance, the specific purposes of the MSAPD district include the following:

A. To create a framework for the area-wide development of common architectural and open space elements and a pedestrian and vehicular circulation system linking buildings and uses together in a flexible, logical and orderly manner.

B. To establish area-specific design guidelines and development standards to produce an attractive, coherent and efficient environment.

C. To establish area-wide development capacity consistent with the Millbrae General Plan.

D. To permit area development while ensuring adequate standards relating to public health, safety, welfare, comfort and convenience.

This article establishes the procedures for securing a conditional use permit or a site development plan for any project located in the Millbrae Station Area Planned Development district. (Ord. 726, § 2 (Att. A); Ord. 643, § 3; 1976 Code § 10-1.5(1)01. Formerly 10.05.0490).

**10.05.1705 Millbrae Station Area Specific Plan.**
The MSASP was initially adopted by the city council on November 24, 1998, and amended on February 9, 2016. All notations, references, and other information shown in the MSASP are incorporated by reference and shall be deemed as much a part of this title as if the matter and information set forth in the plan were fully described in this chapter. (Ord. 758, § 2; Ord. 726, § 2 (Att. A); Ord. 643, § 3; 1976 Code § 10-1.5(1)02. Formerly 10.05.0500).

**10.05.1710 Uses and design review.**
Site-specific uses consistent with the Millbrae Station Area Specific Plan shall be permitted as outlined in the MSASP. Conditional uses shall be permitted through the conditional use permit process as provided in Article XXV of this chapter. Any proposed use involving any new structure or exterior alterations to an existing structure shall be subject to design review as provided in Article XXV of this chapter. (Ord. 726, § 2 (Att. A); Ord. 643, § 3; 1976 Code § 10-1.5(1)03. Formerly 10.05.0510).

**10.05.1715 Site development plan.**
A. Site development plans shall be detailed refinements of the MSASP development concept and as such shall represent development consistent with the adopted Millbrae Station Area Specific Plan. Any proposed use in the MSAPD that involves the construction of a new structure or parking facility structure shall require the submittal and approval of a site development plan pursuant to this article. Site development plans shall, at a minimum, contain the following:

1. A site plan including boundary designations of the perimeter of the site;

2. The location and dimension of any existing property lines within the site;

3. The names of the owner or owners and developers of the site;

4. The width, location and names of surrounding or adjoining streets, street alignments within the site and their connection to existing streets;

5. The character and use of adjoining properties;

6. A comprehensive development plan showing the dimensions and locations of proposed structures, buildings, streets, parking, yards, open spaces and other public or private facilities. Such plan shall include a detailed statement of all uses proposed to be established, a narrative description of all improvements proposed to be installed, and a designation of the areas to be occupied by each use, with the resulting densities of persons and building intensities;

7. Detailed engineering site plans including proposed finished grades and drainage facilities proposed as approved by the city engineer, and permanent boundary survey monuments tied to the nearest city survey station;

8. Detailed engineering plans for the provisions of public utilities for the site including a description of the location and capacities of existing utilities in the vicinity of the site, tentative extensions to the site, and provisions for off-site connections and facilities necessary to serve the site. Such engineering plans shall include underground service of utilities within the areas of the plan;

9. The location of any structures upon the site designated for retention or removal;

10. Landscaping, fencing, screening and signage plans in detail;

11. The areas proposed for various categories of land use and a tabular summary of estimates of population densities and building intensities;

12. Architectural drawings demonstrating the design and character of the proposed structures, buildings, uses and facilities and the physical relationship of all elements;

13. A development schedule indicating the approximate date when commencement and completion of construction will occur and the anticipated progress of development under the proposed site development plan;

14. Data and studies regarding the impact of the site development plan on the MSASP area as a whole, including traffic and other infrastructure analysis as required;

15. Other pertinent information as may be deemed necessary by the planning commission or city council to determine that the contemplated arrangement and/or use(s) comply with the development standards and design guidelines of the Millbrae Station Area Specific Plan; and

16. The data, analyses and information required to carry out the environmental review specified in subsection B of this section.

B. Prior to submission of the development plan to the planning commission, an environmental review of the plan shall be conducted to the extent required by and in full accordance with the California Environmental Quality Act.

C. The planning commission and city council may require such other information as deemed necessary which may include but not be limited to economic analyses, thoroughfare plans, public services, facilities plans and utilities service plans. All of the information and materials required for any site development plan as specified in subsections A and B of this section shall be provided at the applicant's own cost and expense. (Ord. 726, § 2 (Att. A); Ord. 643, § 3; 1976 Code § 10-1.5(1)04. Formerly 10.05.0520).

**10.05.1720 Planning commission action on site development plans.**

A. The planning commission shall consider the proposed site development plan, or any appropriate phase thereof, at a public hearing, notice of which shall be given in the time and manner provided in Article XXIX of this chapter, modifying the notice form to read as follows: "NOTICE OF PUBLIC HEARING ON A SITE DEVELOPMENT PLAN WITHIN THE MILLBRAE STATION AREA PLANNED DEVELOPMENT DISTRICT." In addition, such notice shall contain a statement of the modification proposed to be considered of any regulations and requirements ordinarily applicable to the uses under the terms of this chapter, a general statement of the nature of the site development plan and the location of the area included within the site development plan.

B. The planning commission shall consider the site development plan, accompanying documents and any other information deemed relevant to ensure that the architectural, landscaping and general appearance of the proposed building(s) or structure(s) and grounds shall be in keeping with the character of the neighborhood; shall not be detrimental to the orderly, harmonious and safe development of the city; shall not impair the desirability of investment or occupation in the neighborhood in which the building(s) or structure(s) is proposed to be erected; and are in compliance with the development standards and design guidelines contained in the Millbrae Station Area Specific Plan.

C. Following the close of the public hearing, the planning commission may approve, conditionally approve, or deny approval of the site development plan. In granting any approval, the planning commission shall make the following findings:

1. That the proposed development conforms to the overall intent of the Millbrae Station Area Specific Plan, and will produce an environment of stable, desirable character and produce high-quality development with uses that contribute to the visual identity and environmental quality of the station area; and

2. That the proposed development complies with goals, policies, objectives, development standards and design guidelines of the MSASP, and provides overall standards of population densities, of open space, of circulation and off-street parking and other general conditions of use at least equivalent to those required by the MSASP or by the terms of this chapter in districts where similar uses are permitted; and

3. That the proposed site development plan represents a development of sufficient harmony within itself and with adjacent areas; and

4. That fire protection is adequate; and

5. That drainage is adequate; and

6. That capacity of utilities and infrastructure, including size and location of streets and sidewalks, are adequate or will be installed/improved to an adequate level prior to the granting of a certificate of occupancy; and

7. That recreation is adequately provided for in the area (or adequate in-lieu fees are paid).

D. If a site development plan is approved by the planning commission, the approval shall be effective for a period of one year from the date of final approval thereof or within any shorter or longer period of time not to exceed three years, if so designated by the planning commission. The planning commission shall have the authority to extend the period of any approval provided that a written request for such extension is submitted prior to the date of expiration of the original approval and a notice of hearing has been given in the time and manner provided in Article XXIX of this chapter. Any approvals granted in accordance with the terms of this chapter shall, without further action, become null and void if not used or extended according to these provisions. (Ord. 726, § 2 (Att. A); Ord. 643, § 3; 1976 Code § 10-1.5(1)05. Formerly 10.05.0530).

**10.05.1725 Appeal, appeal period and acknowledgment of conditions.**

If a site development plan, or extension thereof, is approved, approved with conditions, or disapproved by the planning commission, the applicant or any protestant may appeal the decision of the planning commission to the city council in the manner provided in Article XXVII of this chapter. Notwithstanding the failure of any person to appeal the decision of the planning commission and within ten days of the date of the action of the planning commission, the city council, or any member thereof, may request a review of the action of the planning commission. Said request for review shall be submitted in writing to the city clerk. City council review shall proceed in the manner provided in Article XXVII of this chapter. The action of the planning commission shall be suspended pending a final determination by the city council. In any case, permits shall not be issued until the required ten-day period has elapsed without the filing of an appeal or a final decision has been made by the city council. Approvals shall have no force or effect until the applicant acknowledges receipt thereof and acceptance of any conditions thereto. (Ord. 726, § 2 (Att. A); Ord. 643, § 3; 1976 Code § 10-1.5(1)06. Formerly 10.05.0540).

**10.05.1730 Modification of site development plans.**

A. The permittee under any approved site development plan may request modification of such plan by applying to the community development department. Minor adjustments to the original development plan may be made by the director of community development or designee, provided said adjustments are technical corrections which do not have a significant impact on the aesthetics of the project, nor conflict with the intent of the development plans originally adopted by the planning commission. Major adjustments shall be reviewed and approved by the planning commission in the same manner and following the same procedure as set forth in MMC 10.05.1720. Although approval of any modification by the city council is not required, the decision of the planning commission granting or denying the modification shall be subject to review by the city council under the same procedures provided for in Article XXVII of this chapter.

B. In considering any modification, the director of community development or designee, the planning commission, and/or the city council shall consider the following:

1. Changed conditions which have occurred since the original approval of the site development plan; and

2. Changes in the basic premises used in arriving at the original approval, including but not limited to engineering data, traffic data, economic circumstances, and actions of other public bodies including eminent domain proceedings. (Ord. 726, § 2 (Att. A); Ord. 643, § 3; 1976 Code § 10-1.5(1)07. Formerly 10.05.0550).

**10.05.1735 Subdivision.**

Where from the nature of the size, location, shape or topography of the parcel of land, or where from the nature of the improvements or development shown on the development plan or any combination of these factors, it appears to the planning commission or the city council that a future division of ownership or subdivision of said parcel would be required for orderly development by the delineation of subdivided lot lines at the time of initial development, the planning commission or the city council may require the filing of parcel, tentative and/or final subdivision maps, as provided in the subdivision regulations of this chapter and state law, and the performing of any other acts required in such regulations. Where any requirement of the subdivision regulations require any specific act of the landowner or subdivider, the approval of any site development plan shall not become effective until compliance has been made with such subdivision regulation. (Ord. 726, § 2 (Att. A); Ord. 643, § 3; 1976 Code § 10-1.5(1)08. Formerly 10.05.0560).

**10.05.1740 Effect.**

No building or zoning permit shall be issued in any case until the approval of a site development plan has become effective, and then only in accordance with the conditions thereof. (Ord. 726, § 2 (Att. A); Ord. 643, § 3; 1976 Code § 10-1.5(1)09. Formerly 10.05.0570).

**10.05.1745 Special fees.**

The city council may set a fee schedule to be paid, in addition to any other fee which may be required, to cover the portion of the cost burden of required infrastructure in connection with the issuance of a permit for any building or structure. Lands within the MSAPD district which are retained in large parcels as acreage or otherwise not divided shall be subject to those special fees or charges in accordance with the requirements of resolutions, regulations or ordinances of the city. (Ord. 726, § 2 (Att. A); Ord. 643, § 3; 1976 Code § 10-1.5(1)10. Formerly 10.05.0580).

**10.05.1750 Revocation.**

In any case where the terms of approval of a site development plan or the approved development schedule contained therein have not been or are not complied with, the planning commission shall give to the permittee written notice of intention to consider revocation of the approval of a site development plan at least ten days in advance of a planning commission hearing thereon with public notice of such hearing given in the same time and manner as provided in Article XXIX of this chapter. After conclusion of said hearing, the planning commission may recommend that the city council revoke said approval. The city council shall act thereon within thirty days after receipt of said recommendation of the planning commission. (Ord. 726, § 2 (Att. A); Ord. 643, § 3; 1976 Code § 10-1.5(1)11. Formerly 10.05.0590).

**10.05.1755 Improvements and dedications.**

A. In the event that a subdivision map is not required for approval of any site development plan, such approval shall not become effective until conveyances for any required public easements, streets, rights-of-way, or other public areas have been filed with the city clerk and accepted by the city council.

B. Where any land is to be conveyed for public use, a title report issued by a title insurance company in the name of the owner of the land, issued to or for the benefit and protection of the city, showing all parties whose consent is necessary and the nature of their interests therein, shall be filed with the conveyances of said land.

C. Where public improvements are to be constructed or where improvements are to be made upon lands to be conveyed to the city, the property owner shall execute and file an agreement between himself and the city providing for the installation of such improvements at the landowner's cost and expense, and in accordance with the approved development schedule contained in the site development plan. The agreement shall be accompanied by labor, material, and performance bonds. Such improvement agreement and bonds provided for in this chapter shall be considered in a like manner as are requirements upon improvement agreements and bonds under regulations for subdivisions in the city. Such improvement agreement and bonds shall be deemed to include and cover the installation of landscaping and planting as required by any approved plan thereof whether such landscaping and planting shall be upon public or private lands. (Ord. 643, § 3, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.5(1)12. Formerly 10.05.0600).

**10.05.1760 Control of development schedule.**

The director of community development or designee shall compare the actual development accomplished under a site development plan with the approved development schedule and shall report findings to the planning commission if the owners or permittees are failing or have failed to meet the approved schedule. The planning commission may, by adoption of a resolution of intention, initiate proceedings to change conditions of approval or requirements related to the development schedule pursuant to the process for approving the plan as set forth in this article. (Ord. 643, § 3, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.5(1)13. Formerly 10.05.0610).

**10.05.1760** Airport Noise Evaluation

See Article XVI ("Airport Land Use Compatibility Plan Consistency") for airport noise evaluation and mitigation requirements based on the San Francisco International Airport Land Use Compatibility Plan.

## Article XVIII. Millbrae Station Area Specific Plan Development Impact Fee

**10.05.1800 Authority.**

This article is enacted pursuant to Government Code Sections 66000 et seq. (the "Mitigation Fee Act") and the police power granted to cities in the Constitution of the State of California. (Ord. 658, § 2, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.5(2)01. Formerly 10.05.0620).

**10.05.1805 Definitions.**

For purposes of this article, the following terms, phrases, words and their derivations shall have the meanings respectively ascribed to them by this section:

"Applicant" means any person who, after the effective date of the ordinance codified in this article, seeks to develop land within the MSASP area requiring issuance of a building permit.

"Building permit" means any permit, such as electrical, plumbing, or moving permit, required for construction, reconstruction, remodeling, or moving a structure within or into the city.

"Development" or "development project" means any project within the MSASP area that requires a building permit. The term "development" or "development project" also includes projects for the erection of manufactured housing or structures, and structures moved into the city which require city permits.

"Development impact fee" or "fee" means a monetary exaction, other than a tax or special assessment, which is charged by the city to an applicant in connection with approval of a development for the purpose of defraying all or

a portion of the cost of facilities related to a development project within the MSASP area, but does not include city-wide fees, school fees, fees specified in Section 66477 of the California Government Code, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864 of Article 4, Division 1, Title 7 of the California Government Code) or fees collected pursuant to any agreement with the redevelopment agency.

"Facilities" means public improvements, public services, and community amenities described in the Feasibility Report and its technical evaluations, which are required to support new development within the MSASP.

"Feasibility Report" means that report issued by West Yost Associates dated December 2015, entitled "Millbrae Station Area Specific Plan," which describes the facilities, estimates the cost for implementation of improvements.

"MSASP" means the Millbrae Station Area Specific Plan adopted by the city council on February 9, 2016, as it may hereinafter be amended.

"MSASP area" means the area subject to the Millbrae Station Area Specific Plan, adopted on February 9, 2016, as that plan may hereinafter be amended.

"Nexus Study" means that report issued by Economic and Planning Systems, Inc., dated February 3, 2017, entitled "Millbrae Station Area Specific Plan Development Impact Fee Study," which allocates the costs estimated in the Feasibility Report for the implementation of improvements and allocates them to individual land uses within the MSASP area.

"Resolution" means the resolution referred to in MMC 10.05.1820. (Ord. 658, § 2, Amended by Ord. 726, § 2 (Att. A); Ord. 758, § 3; Ord. 765, § 2; 1976 Code § 10-1.5(2)02. Formerly 10.05.0630).

**10.05.1810 Purpose.**
The city council finds that the impact of anticipated development pursuant to the Millbrae Station Area Specific Plan will result in unacceptable decreases in the level of public services and additional burdens on existing city facilities and infrastructure. To prevent these undesirable consequences, the city has determined that certain facilities must be provided at a rate that will accommodate the expected growth in the MSASP area. The city council also desires to ensure that this new development will pay its fair share of the cost of these facilities necessitated by development pursuant to the MSASP. (Ord. 658, § 2, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.5(2)03. Formerly 10.05.0640).

**10.05.1815 Application.**
This article applies to fees charged as a condition of development approval within the MSASP area to defray the cost of the facilities required to serve new development within the city. This article does not replace other city-wide fees, exactions imposed pursuant to the Subdivision Map Act or other measures required to mitigate site-specific impacts of a development project, including, but not limited to, mitigations pursuant to the California Environmental Quality Act; regulatory and processing fees; fees required pursuant to a development agreement; funds collected pursuant to a reimbursement agreement that exceed the applicant's share of public improvement costs; or assessment district proceedings, benefit assessments, or taxes. (Ord. 658, § 2, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.5(2)04. Formerly 10.05.0650).

**10.05.1820 Establishment of development impact fees and providing for their adoption by resolution of the city council.**
A. Development impact fees are established and imposed on the issuance of all building permits for development within the MSASP area to finance the cost of the following categories of facilities:

1. Utilities infrastructure;
2. Traffic improvement measures;
3. Increased parkland and recreation facilities;
4. Public safety improvements.

B. The city council shall from time to time adopt, after a noticed public hearing, the resolution establishing specific development impact fees. In adopting the resolution, the city council shall:

1. Identify the purpose of the fee;

2. Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified as required by the Mitigation Fee Act;

3. Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed;

4. Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed; and

5. Establish a fee schedule. (Ord. 658, § 2, Amended by Ord. 726, § 2 (Att. A); Ord. 765, § 3; 1976 Code § 10-1.5(2)05. Formerly 10.05.0660).

**10.05.1825 Imposition of development impact fee.**
All applicants are required to pay the development impact fee established by MMC 10.05.1820 as the same may be applicable, in the manner, amount, and for the purposes specified, as follows:

A. Residential Construction. The fee shall be charged for each new dwelling unit. No fee is applicable to a development project for remodeling or for an addition to an existing unit not resulting in a new unit.

B. Commercial Office, Retail and All Other Construction. The fee shall be charged on a per square foot basis for all new gross floor area, including additions where floor area is increased. No fee is applicable for remodeling or restoration only, where the structure is improved or replaced but the floor area is not increased.

C. Hotel. The fee shall be charged for each separately rentable hotel room. (Ord. 658, § 2, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.5(2)06. Formerly 10.05.0670).

**10.05.1830 Timing of development impact fee payment.**
A. The development impact fee established pursuant to this article shall be paid for each approved development project at the time of the issuance of the first required building permit, except as otherwise provided in this article. Any fee imposed on a development that is residential in nature, however, shall be collected in accordance with the provisions of the Mitigation Fee Act, as the same presently exists or may hereafter be amended from time to time. The fee shall apply to all development projects submitted for a building permit after the effective date of the ordinance codified in this article.

B. No city official may issue a building permit for a development until the development impact fee with respect to any such development required by this article has been paid. In no event may a city official issue a certificate of occupancy, or certify a final inspection, as the case may be, for a development which has not paid a required development impact fee. (Ord. 658, § 2, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.5(2)07. Formerly 10.05.0680).

**10.05.1835 Authority for additional mitigation.**
The development impact fee collected pursuant to this article is not intended to replace, satisfy the need for or limit any requirements for the mitigation of impacts which are not specifically identified in the Feasibility Report and Nexus Study, which may result from a development project or which are imposed upon development projects as part of the development review process. (Ord. 658, § 2, Amended by Ord. 726, § 2 (Att. A); Ord. 765, § 4; 1976 Code § 10-1.5(2)08. Formerly 10.05.0690).

**10.05.1840 Exemptions.**
A. The following shall be exempted from payment of the development impact fee:

1. Alterations, renovations or expansion of an existing residential building or structure where no additional dwelling units are created and the use is not changed; provided, however, that the expansion of an existing commercial or industrial building or structure shall not be exempt from the fee established in this article. For

purposes of this section, “expansion” is defined as any increase in the gross floor area of the existing building or structure and “change of use” is defined as the initiation of a use which requires approval of a conditional use permit, development plan or zoning change.

2. The replacement of a destroyed or partially destroyed or damaged building or structure with a new building or structure of the same size and use.

3. City facilities, including, but not limited to, parks, buildings and infrastructure as well as any other public facilities which are entitled under state law to an exemption from development fees.

B. Any claim of exemption from the imposition of the development impact fee must be made no later than the time for application for fee refunds as set forth in MMC 10.05.1855(A). (Ord. 658, § 2, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.5(2)09. Formerly 10.05.0700).

**10.05.1845 Fee credits.**

A. Replacement Construction. Development projects, which would otherwise be subject to the fee under this article, but that will replace structures that were partially or totally destroyed by fire, flood, earthquake, mudslide, or other casualty or act of God, are entitled to a fee credit for that portion of the development project that is replacing construction that was partially or totally destroyed, provided the construction was a lawful use under this title, including a legal nonconforming use, at the time of such destruction. The community development director or designee shall include such a credit in determining the fee in accordance with the fee schedule set forth in the resolution and such credit shall be applicable only to development on the same site.

B. Applicant Construction of Facilities.

1. In-Lieu Fee Credits Due.

a. The community development director or designee may adjust the fee imposed pursuant to this article in consideration of certain facilities constructed or paid for by the applicant. At the discretion of the community development director or designee, an applicant may be entitled to a credit for the value of such facilities to the extent they are identified in the Feasibility Report and Nexus Study and the applicant: (i) constructs the facilities, (ii) finances the facilities by cash or pays the assessments of an assessment district or participates in the formation of a community facilities district, or (iii) a combination of the above.

b. An amount of in-lieu credit that is greater than the fee required under this article may be reserved and credited toward the fee of any subsequent phases of the same development, if determined appropriate by the community development director or designee. The community development director or designee may set a time limit for reservation of the credit.

2. No In-Lieu Fee Credits Due for Site-Related Improvements. Credit shall not be given for site-related improvements, including, but not limited to, traffic signals, right-of-way dedications, or providing paved access to the development, which are specifically required by the development project in order to serve it and which do not constitute facilities.

3. Determination of Credit. The community development director or designee shall determine whether facilities are eligible for credit or reimbursement. The applicant seeking credit and/or reimbursement for construction of the facilities, or dedication of land or rights-of-way, shall submit such documentation, including, without limitation, engineering drawings, specifications, and construction cost estimates, and utilize such methods as may be appropriate and acceptable to the community development director or designee to support the request for credit or reimbursement. The community development director or designee shall determine credit for construction of the facilities based upon either these cost estimates or upon alternative engineering criteria and construction cost estimates if the director determines that such estimates submitted by the applicant are either unreliable or inaccurate.

4. Time for Making Claim for Credit. Any claim for credit must be made no later than the application for a building permit. Any claim not so made shall be deemed waived.

5. Transferability of Credit – Council Approval. Credits shall not be transferable from one development project to another without the approval of the city council.

C. Payment of Park In Lieu Fees. Development fees under this chapter shall be reduced by any payment under Chapter 10.20 MMC.

D. Appeal of Determinations of Community Development Director. Determinations made by the community development director or designee pursuant to the provisions of this section may be appealed to the city council by filing a written request with the city manager within ten days of the determination of the community development director or designee, together with the applicable fee established by resolution of the city council. (Ord. 658, § 2, Amended by Ord. 698, § 1; Ord. 726, § 2 (Att. A); Ord. 765, §§ 5, 6; 1976 Code § 10-1.5(2)10. Formerly 10.05.0710).

**10.05.1850 Appeal.**

An applicant for a development project may file a written appeal regarding the imposition and/or calculation of the fee, provided applicant has tendered payment in full of the required fee. Appeals must be filed within ten days of applicant's tender of payment of the fee to the city. An appeal of the imposition and/or calculation of the fee for a development project not requiring a planning application shall be made to and filed with the community development director or designee. An appeal of the imposition and/or calculation of the fee for a development project requiring a planning application or from the decision of the community development director shall be made to the city council and filed with the city clerk. The appellant shall state in detail the factual basis for the appeal and shall bear the burden of proof in presenting substantial evidence to support the appeal.

The city council or community development director or designee, as the case may be, shall uphold the fee and deny the appeal if it finds that there is a reasonable relationship between the development project's impact on the facilities and the amount of the fee. The city council or the community development director or designee, as the case may be, shall consider the land use category determination, and the substance and nature of the evidence, including the fee calculation method, supporting technical documentation, and the appellant's technical data. Based on the evidence, the city council or community development director or designee, as the case may be, may also modify the fee. All appeals shall be decided within sixty days of the date of filing and a written notice of decision of the appeal shall be provided to the applicant. (Ord. 658, § 2, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.5(2)11. Formerly 10.05.0720).

**10.05.1855 Refund of fee.**

A. In the event (1) a building permit or conditional use permit expires or is canceled, (2) no fee paid has been expended, (3) no construction has taken place, and (4) the use has never occupied the site, the community development director or designee may, upon the written request of the applicant, order return of the fee and interest earned on it, less administrative costs. If a building permit expires without commencement of construction, then the applicant shall be entitled to a refund, without interest, of the fee paid as a condition of issuance of the building permit. The applicant must submit a written request for such a refund to the city manager within thirty days of the expiration of the permit. Failure to timely submit the required request for refund shall constitute a waiver of any right to the refund.

B. In the event any fee collected pursuant to this article remains unexpended, the city council shall make the following findings, for the fifth fiscal year following the first deposit into such account, and every five years thereafter, with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted: (1) identify the purpose to which the fee is to be put; (2) demonstrate a reasonable relationship between the fee and the purpose for which it was charged; (3) identify all sources and amounts of funding anticipated to complete financing the facilities; and (4) designate the approximate dates on which such funding is expected to be deposited into the appropriate fund.

C. The unexpended portion of the fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to subsection B of this section, shall be refunded to the then current record owner or owners of lots or units of the development project on a prorated basis.

D. The provisions of California Government Code Section 66001(d), (e) and (f), as the same may be amended from time to time, shall apply fully to any refund of fees, and the provisions of subsection C of this section shall be

subordinate to applicable state law and shall be applied consistent therewith. (Ord. 658, § 2, Amended by Ord. 698, § 1; Ord. 726, § 2 (Att. A); 1976 Code § 10-1.5(2)12. Formerly 10.05.0730).

**10.05.1860 Accumulation and use of funds.**

A. Revenues collected from development impact fees shall be used for the purpose of (1) paying the actual or estimated costs of constructing and/or improving the facilities, including any required acquisition of land or rights-of-way therefor; (2) reimbursing the city for the development project's share of those facilities already constructed by the city or to reimburse the city for costs advanced, including, without limitation, administrative costs and costs of financing incurred to construct specific facilities; (3) reimbursing other developers who have constructed facilities described in the Feasibility Report and Nexus Study, where the scope of those facilities exceeded that needed to mitigate the impact of the applicant's development project; or (4) paying costs required for the administration of this article.

B. In the event that bonds or similar debt instruments are issued for advanced provision of the facilities for which the development impact fee may be expended, revenues from such fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type to which the fees involved relate.

C. The city shall deposit, invest, account for, and expend the revenues from the development impact fees in accordance with the Mitigation Fee Act, as the same may be amended from time to time.

D. Revenues from the fees may be used to provide refunds (as specified in MMC 10.05.1855). (Ord. 658, § 2, Amended by Ord. 726, § 2 (Att. A); Ord. 765, § 6; 1976 Code § 10-1.5(2)13. Formerly 10.05.0740).

**10.05.1865 Annual review.**

A. Except for the first year following the enactment of this article, sixty days following the end of the city's fiscal year, the fee shall be automatically adjusted in accordance with the change in the Engineering Construction Cost Index, as most recently published by Engineer News Record, for the elapsed time period from the previous July 1st. No later than sixty days following the end of the city's fiscal year, the city manager shall prepare a report to the city council ("report") identifying the total amount of fee collected pursuant to MMC 10.05.1830, the facilities constructed, and the facilities to be constructed.

B. At a noticed public hearing, the city council shall review estimated costs of the facilities described in the report and the continued need for these facilities. The city council may revise the development impact fee to include requisite additional facilities or improvements not previously anticipated or foreseen. Such revisions shall comply with the Mitigation Fee Act.

C. The report prepared by the city manager and its review by the city council, as well as any findings thereon, shall be subject to the provisions of the Mitigation Fee Act, to the extent applicable. (Ord. 658, § 2, Amended by Ord. 698, § 1; Ord. 726, § 2 (Att. A); 1976 Code § 10-1.5(2)14. Formerly 10.05.0750).

**10.05.1870 Severability.**

The provisions of this article shall not apply to any person or to any property as to whom or which it is beyond the power of the city to impose the fee provided in this article. If any sentence, clause, section or part of this article, or any fee imposed upon any person or entity, is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality or invalidity shall affect only such sentence, clause, section or part of this article, or the individual application subject to challenge, and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this article, or its effect on other persons or entities. It is declared to be the intention of the city council that this article would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section or part of this article not been included herein; or had such person or entity been expressly exempted from the application of this article. To this end, the provisions of this article are severable. (Ord. 658, § 2, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.5(2)15. Formerly 10.05.0760).

## Article XIX. Accessory Uses

**10.05.1900 Drive-through facilities.**

A. Requirements.

1. A drive-through facility may occur only in conjunction with a permitted business establishment;

2. A drive-through facility shall serve only one business establishment;

3. A drive-through facility must be located on the same parcel as the business establishment it serves;

4. No drive-through facility shall block or in any way impede vehicular access to, from, or within the parcel upon which it is located;

5. No drive-through facility shall block or in any way impede minimum required pedestrian access to, from, or within the parcel upon which it is located;

6. All drive-through facilities shall provide a stacking lane of sufficient length to accommodate the number of customer vehicles queuing at the anticipated rate of arrival at and departure from the premises;

7. In its review of individual applications for drive-through facilities, the planning commission may find additional requirements necessary and may impose such requirements through design review and/or by special conditions of approval.

B. Prohibited Activities. A drive-through facility shall not be utilized for vehicular parking, loading/unloading, or any purpose other than the temporary queuing of customer vehicles.

C. Permits. A conditional use permit, approved by the city's planning commission, shall be required for all drive-through facilities. Where the applicant is not the owner of the lot upon which the drive-through facility is proposed, the application shall be signed by the property owner or designated representative.

D. Applications. Conditional use permit applications shall be submitted on the appropriate city form to the planning division in accordance with the provisions of Article XXV of this chapter.

E. Not Transferable. Conditional use permits for drive-through facilities shall not be transferred or assigned to any other person, premises, or business activity. (Ord. 726, § 2 (Att. A)).

**10.05.1910 Home occupations.**

A. Requirements.

1. The principal use of the dwelling unit must be as a residence and the home-based business must be secondary;

2. The dwelling unit must be the primary residence of the owner of the home-based business, as well as for all employees who work at the dwelling unit, while all other employees, if any, must work off site;

3. Signage, or any other form of on-site advertising associated with the home-based business, is not allowed, excluding signage on vehicles;

4. All business activity occurring at the residence must be conducted entirely inside the dwelling unit or within another fully enclosed, legal, permanent structure on the same property;

5. No customers shall come to the dwelling. The only exception shall be for an educational, instructional, or consultation activity which is by appointment only and involves no more than one customer at a time;

6. If the business involves the sale of goods, the goods shall not be sold from the premises, except for items purchased by customers via the Internet or other remote means where the purchased items are shipped from the home or another location directly to the customer;

7. Vehicular deliveries or pick-ups associated with the home-based business shall not exceed the level that is customarily associated with residential occupancy of a dwelling unit;

8. If the business involves either the production or sale of goods, the quantity of stock, products, materials, or equipment that may be stored on the premises shall:

a. Be limited to that which fits inside the dwelling or within another fully enclosed, legal, permanent structure on the same property;

b. Not occupy the required on-site parking for the residence; and

c. Not restrict the use of the garage for parking;

9. High-power or high-capacity mechanical or electrical equipment shall not be installed in the dwelling unit for the primary purpose of serving the home-based business; such equipment shall only be installed as is necessary or convenient for domestic purposes;

10. The exterior appearance of the building(s) in which the home-based business is conducted shall not be altered expressly for the business activity;

11. Only one vehicle, to be parked on the premises or on any adjacent public street or alley, shall be used per home occupation permit. Trucks used in conjunction with a home-based business shall have a bed not longer than eight feet, excluding the tailgate, and shall be limited to a manufacturer's capacity rating not greater than one ton. There shall be no on-site parking or parking on any adjacent public street or alley of trailers or semi-trailers, or any additional vehicles used in conjunction with the business.

B. Prohibited Activities.

1. Home-based businesses conducted in a manner that causes the premises to differ from its residential character in terms of colors, materials, construction, or lighting;

2. Home-based businesses that emit excessive sounds, noises, smoke, odors, vibrations, liquid or solid waste, television or radio interference, or create any other impacts constituting a nuisance;

3. Home-based businesses that involve hazardous materials or chemicals, with the exception of very small production businesses such as jewelry making, gift basket arranging, or needlework;

4. Barbershop, beauty salon, massage business, automobile repairing, painting or detailing, medical clinic, dog kennel or other boarding of pets, dog training, recording studio, and other activities considered to be of similar character by the community development director or designee that demonstrate any of the aforementioned impacts; however, certain businesses may be permitted to use the home for office purposes when the service is performed exclusively off site, such as mobile pet grooming, mobile automotive dent repair, mobile windshield repair, and outcall massage.

C. Permits. No person shall commence or carry on any home-based business, as set forth above, within the city without first having received all required permits from the city. The community development director or designee shall issue a home occupation permit when the home-based business meets all aforementioned requirements and does not involve any of the aforementioned prohibited activities. Every home-based business shall fully comply with all city, county, and state codes, ordinances, rules, and regulations. More than one home occupation permit may be issued at the same dwelling unit address.

D. Applications. Home occupation permit applications shall be submitted on the appropriate city form to the planning division by the person wishing to conduct the home-based business. Where the applicant is not the owner of the lot upon which the home-based business is proposed, the application must be signed by the property owner or designated representative. The applicant must submit proof of residency at the address for which the home occupation permit is requested.

E. Not Transferable. A home occupation permit shall not be transferred or assigned to any other person, premises, or business activity.

F. Notices and Appeals. Within ten business days after the submittal of an application for a home occupation permit, the community development director or designee shall either approve or deny the permit. If denied, notice of such action shall be provided to the applicant by mail to the address appearing on the application. Appeals of a staff denial shall be made to the planning commission in the manner provided in Article XXVII of this chapter.

G. Suspension, Revocations, and Appeals.

1. Any home occupation permit issued pursuant to the provisions of this chapter may be suspended or revoked by the community development director or designee for any of the following reasons:

a. The home-based business is in violation of any conditions of approval or of any city, county and/or state code, ordinance, rule, or regulation, including the provisions of this chapter;

b. The home-based business is being conducted in a disorderly manner or to the detriment of the general public or surrounding property;

c. The home-based business activity is different from that for which the permit was issued;

d. The home-based business has been inactive for more than ninety consecutive days.

2. The suspension or revocation of a home occupation permit shall occur by written notice from the community development director or designee to the permit holder. The notice shall contain a brief statement of the grounds for suspending or revoking the permit and such notice shall be sent to the permittee at the address appearing on the permit. Appeals of the community development director's or designee's determination shall be made to the planning commission as set forth in Article XXVII of this chapter.

H. Business License Required. No home occupation permit shall be issued without the applicant possessing or simultaneously applying for a city of Millbrae business license. (Ord. 726, § 2 (Att. A); Amended by Ord. 756, § 6).

**10.05.1920 Outdoor dining.**

A. Requirements.

1. Outdoor dining may occur only in conjunction with an approved indoor restaurant;

2. Outdoor dining may serve more than one indoor restaurant, but must be located on the same parcel(s) as the indoor restaurants it is intended to serve;

3. No outdoor dining area shall block or in any way impede vehicular access to, from, or within the parcel upon which it is located;

4. No outdoor dining area shall block or in any way impede minimum required pedestrian access to, from, or within any public right-of-way;

5. No outdoor dining area shall block or in any way impede minimum required emergency egress from the premises.

B. Prohibited Activities. An outdoor dining area shall not be utilized for any commercial purpose other than eating and drinking.

C. Permits.

1. A conditional use permit, approved by the planning commission, shall be required for all outdoor dining areas located within the ~~DIA~~ DTECRSP zone;

2. An encroachment permit, approved by the city's engineering division, shall be required for all outdoor dining areas located either partially or wholly within a public right-of-way; provided, that a conditional use permit, if required, has first been approved. If approved, all encroachment permits for outdoor dining areas shall be subject to review for renewal on an annual basis.

D. Applications.

1. Conditional use permit applications shall be submitted on the appropriate city form to the planning division in accordance with the provisions of Article XXV of this chapter. Where the applicant is not the owner of the lot upon which the outdoor dining is proposed, the application shall be signed by the property owner or designated representative;

2. Encroachment permit applications shall be submitted on the appropriate city form to the engineering division by the person wishing to conduct the outdoor dining. Where the applicant is not the owner of the lot upon which the outdoor dining is proposed, the application shall be signed by the property owner or designated representative.

E. Not Transferable. Conditional use permits and encroachment permits for outdoor dining areas shall not be transferred or assigned to any other person, premises, or business activity. (Ord. 726, § 2 (Att. A)).

**10.05.1930 Outdoor display of merchandise.**

A. Requirements.

1. Outdoor displays of merchandise may occur only in conjunction with an approved indoor commercial business;

2. An outdoor display of merchandise must be located on the same parcel as the indoor commercial business it advertises;

3. All outdoor displays of merchandise located within any public right-of-way must be removed during all hours that the business is closed;

4. No outdoor display of merchandise shall block or in any way impede vehicular access to, from, or within the parcel upon which it is located;

5. No outdoor display of merchandise shall reduce the visibility of vehicles or pedestrians within any public right-of-way;

6. No outdoor display of merchandise shall block or in any way impede minimum required pedestrian access to, from, or within any public right-of-way;

7. No outdoor display of merchandise shall block or in any way impede minimum required emergency egress from the premises.

B. Prohibited Activities. No outdoor display of merchandise shall function as a business activity separate from the business it advertises.

C. Permits. A conditional use permit, approved by the city's planning commission, shall be required for all outdoor displays of merchandise. An encroachment permit, approved by the city's engineering division, shall be required for all outdoor displays of merchandise located either partially or wholly within a public right-of-way; provided, that a conditional use permit has first been approved. If approved, all encroachment permits for outdoor displays of merchandise shall be subject to review for renewal on an annual basis.

D. Applications.

1. Conditional use permit applications shall be submitted on the appropriate city form to the planning division in accordance with the provisions of Article XXV of this chapter. Where the applicant is not the owner of the lot upon which the outdoor display of merchandise is proposed, the application shall be signed by the property owner or designated representative;

2. Encroachment permit applications shall be submitted on the appropriate city form to the engineering division by the person wishing to conduct the outdoor display of merchandise. Where the applicant is not the

owner of the lot upon which the outdoor display of merchandise is proposed, the application shall be signed by the property owner or designated representative.

E. Not Transferable. Conditional use permits and encroachment permits for outdoor displays of merchandise shall not be transferred or assigned to any other person, premises, or business activity. (Ord. 726, § 2 (Att. A)).

**10.05.1940 Short-term residential rental.**

A. Requirements.

1. Only single-family homes, units in duplexes, triplexes, and multifamily dwellings, and accessory dwelling units may be rented, in whole or in part, as short-term residential rentals provided they are located in a zoning district where allowed as accessory uses.

2. Short-term residential rentals are subject to the operating restrictions set forth in Chapter 7.30 MMC.

B. Permits. No person may operate a short-term residential rental without a short-term residential rental permit as described in Chapter 7.30 MMC. (Ord. 771, § 4(I)).

## Article XX. Accessory Structures

**10.05.2000 Accessory buildings.**

Accessory buildings shall not be constructed prior to the construction of the main building. Where an accessory structure is attached to the main building, it shall be made structurally a part of and have a common roof and wall with the main building, and shall comply in all respects with the requirements of this chapter applicable to the main building.

A. Additional Development Standards in “R” Districts.

1. Detached accessory buildings shall be located in the rear one-half of the lot area.

2. Detached accessory buildings shall be located at least ten feet from any dwelling existing or under construction on the same lot, or any abutting lot.

3. Accessory buildings shall not be located within five feet of any property line of the lot or any alley.

4. On corner lots, accessory buildings shall not project beyond the required or existing front yard of the abutting lot.

5. The maximum height of an accessory building shall be twelve feet. (Ord. 726, § 2 (Att. A); Ord. 231, Amended by Ord. 246, § 2 and Ord. 436, § 4; 1976 Code § 10-1.813; 1966 Code § 8340. Formerly 10.05.1140).

**10.05.2010 Fences, walls, and dense planting.**

On-premises fences, walls, fence/wall combinations, and dense planting may be erected and maintained in any district subject to the following:

A. Height Limits. Fences, walls, fence/wall combinations, and dense planting shall not exceed the height limits set forth in Table 2 below.

1. Measurement of Height. Height shall be measured from finished grade. For fences, walls, and dense planting which face a street or alley, the measurement shall be taken on the side facing the street or alley. In all other cases, the highest adjoining level of finished grade shall be used. Measured height shall include the exposed portion of any retaining wall. No portion of a fence, wall, or planting may exceed the maximum permitted height unless a fence exception or administrative approval pursuant to subsections D (Fence Exceptions) and E (Review Required) of this section is first obtained.

**Table 2 – Height of Fences, Walls, and Dense Planting**

| Yards | Height (feet)[b] |
|---|---|
| Within required front yards[a] | 2.5'[c] |
| Within required side and rear yards abutting a street or alley[a] | 2.5'[c] |
| Within exterior yard on the rear 30 feet of a corner lot which abuts a side fronting lot[e] | 2.5'[c] |
| Within the corner setback area[d] | 2.5' |
| Within required side and rear yard not abutting a street or alley | 6.0'[c] |
| Fences outside of required yards | |
| – Facing any street or alley | 6.0'[c] |
| – All others | 8.0'[c] |
| (a) Additional Setback Required. Any solid fence or wall over twelve inches in height shall provide and maintain a minimum of two feet of live landscaping abutting a street or alley.<br>(b) See subsection (A)(1) of this section for measurement of height.<br>(c) Additional Height Permitted. Support posts, columns or gates, not exceeding an additional six inches in height, and/or supported decorative ornaments or light fixtures, not exceeding an additional twelve inches in height, shall be permitted (maximum of eighteen inches if both are used) provided posts and/or columns are spaced at least six feet apart on center.<br>(d) See MMC 4.20.010 and 4.20.020.<br>(e) See subsection D of this section for additional setback requirements. | |

B. Prohibited Fences and Materials. The following fences are prohibited:

1. Chain link fences and gates on residential properties within the front yard and within any side or rear yards facing a street or alley.

2. Electrically charged fences.

3. Barbed wire, razor wire, or similar fencing on residential properties. This restriction does not include wrought iron or similar decorative fencing.

4. Any fence over, or within three feet of, any utility or public utility easement unless an encroachment permit is first obtained.

C. Conditional Fences and Materials. Security fences containing barbed or razor wire, while discouraged, may be permitted on nonresidential properties subject to obtaining a zoning permit issued administratively by the community development department and appealable to the planning commission. Design review shall be conducted pursuant to standards adopted by the city council. The community development department may require public noticing of such zoning permit, as appropriate.

D. Fence Exceptions. An exception to any of the requirements of this section may be granted in accordance with the provisions and procedures for obtaining a fence exception as set forth in Article XXV of this chapter, if the findings listed below are made, except that life safety exceptions required for compliance with the Uniform Building Code may be granted administratively by the community development department following design review, no exception may be granted to the requirements of subsection B of this section (Prohibited Fences and Materials), and noticing may be reduced to a one-hundred-foot radius. An application for a fence exception shall be accompanied by

a fee, set by the city council, and include detailed plans, list of materials and justification of need for the proposed use, and findings as stated below.

Fences taller than prescribed in Table 2 may be approved by the planning commission upon presentation of a fence exception, subject to the following findings:

1. The resulting fence or wall shall not obstruct the visibility of pedestrians, bicyclists, or motorists from adjacent streets, alleys or driveways;

2. The fence or wall height, location, and design are in scale and harmonious with the character of the neighborhood;

3. Granting the exception will not be materially detrimental to other property in the neighborhood in which the fence or wall is located; and

4. The fence or wall is not inconsistent with any policies of the city's General Plan.

E. Review Required. The decision whether the fence, wall, or dense planting will meet the intent of the prescribed standards of this section shall be made by the community development department staff in the plan-check process and may require detailed plans. Any application for a planning commission fence exception shall require architectural review. Architectural review, when necessary, shall be conducted pursuant to standards adopted by the city council. (Ord. 726, § 2 (Att. A); Ord. 231, Amended by Ord. 429, § 1 and Ord. 650, § 5; 1976 Code § 10-1.809; 1966 Code § 8320. Formerly 10.05.1100).

## Article XXI. Parking Regulations

**10.05.2100 Minimum off-street parking requirements.**
All permitted and conditional uses shall provide the minimum off-street parking according to the zoning district in which they are located as set forth in Table 3 below. Minimum off-street parking standards for parcels in the Millbrae Station Area Specific Plan and Downtown and El Camino Real Specific Plan are specified in the Specific Plans, unless noted otherwise.

**Table 3 – Off-Street Parking Requirements**

| Land Use Categories | Specific Land Uses | Minimum Off-Street Parking |
|---|---|---|
| Household Living | Single-Family Dwellings | 2 garage spaces per unit. |
| | Apartments | As specified by conditional use permit. |
| | Duplexes | 2 garage spaces per unit. |
| | Triplexes | 2 garage spaces per unit. |
| | Multiple-Family Dwellings | **C~~,~~ ~~DIA~~ District~~s~~:** 1.5 garage spaces per unit.<br><br>**R-3 District:** Studio apartments: 1 garage space per unit.<br>One bedroom units: 1.5 garage spaces per unit.<br>Two or more bedroom units: 2 garage spaces per unit. |
| Group Living | Care Facilities | As specified by conditional use permit. |
| | Rooming and Boardinghouses | 1 parking space for each guest room. |
| | State-Regulated Residential Care Facilities | Maintain parking as required by code for the original residential land use. |

| Land Use Categories | Specific Land Uses | Minimum Off-Street Parking |
|---|---|---|
| | Temporary Homeless Shelters | 1 parking space for each 4 beds. |
| Community Service | Clubs and Lodges | 1 parking space for each 4 seats in any assembly hall. |
| | Community Centers | As specified by conditional use permit. |
| | Places of Worship | 1 parking space for each 4 seats. |
| Educational | Colleges and Universities | As specified by conditional use permit. |
| | Classes Incidental to Retail Uses | No additional parking requirement. |
| | Schools (Pre-K and K through 12) | As specified by conditional use permit. |
| | Trade and Vocational Schools | As specified by conditional use permit. |
| | Tutoring and Instructional | As specified by conditional use permit. |
| Parks and Open Space | Country Clubs | 1 parking space for each 750 square feet of gross floor area. |
| | Golf Courses | 1 parking space for each 750 square feet of gross floor area. |
| | Open Space | N/A |
| | Parks | As specified by conditional use permit. |
| Utilities | Utility Services | 1 parking space for each 1,000 square feet of gross floor area. |
| | Wireless Communication Facilities | No additional parking spaces required where wireless communication facilities are not the principal land use.<br>All other: 1 parking space. |
| Eating and Drinking | Bars | 1 parking space for each 2.5 seats in premises primarily selling alcohol for consumption on site. |
| | Drive-In Restaurants | 1 parking space for each 2.5 seats in restaurants. |
| | General Restaurants | **C District:** 1 parking space for each 2.5 seats.<br>~~**DIA:** Restaurants located on the ground floor of existing buildings shall be exempt from off-street parking or parking in-lieu fees.~~ |
| | Take-Out Only Restaurants | **C District:** 1 parking space for each 2.5 seats.<br>~~**DIA:** Restaurants located on the ground floor of existing buildings shall be exempt from off-street parking or in-lieu fees.~~ |
| Entertainment | Indoor Commercial Recreation | 1 parking space for each 4 seats in theaters.<br>5 parking spaces for each lane in any bowling alley.<br>1 parking space for each 750 square feet of gross floor area for all other uses. |
| | Outdoor Commercial Recreation | As specified by conditional use permit. |
| Offices | General Offices | 1 parking space for each 300 square feet of gross floor area. |
| | Medical Offices | |
| | Professional Offices | |
| Parking | Parking Lots and Structures | See Parking Layout Standards Table (MMC 10.05.2120). |
| Personal Services | Banks | 1 parking space for each 300 square feet of gross floor area. |
| | Dry Cleaners | |

| Land Use Categories | Specific Land Uses | Minimum Off-Street Parking |
|---|---|---|
| | Hospitals | As specified by conditional use permit. |
| | Laundromats | 1 parking space for each 200 square feet of gross floor area. |
| | Medical Clinics | As specified by conditional use permit. |
| | Mortuaries | 1 parking space for each 4 seats in the chapel. |
| | Personal Care-Related Uses | 1 parking space for each 300 square feet of gross floor area.<br><br>~~**DIA:** Personal service uses located on the ground floor of existing buildings shall be exempt from a use permit for any off-street parking or parking in-lieu fees.~~ |
| | Repair Shops – Not Automobile Related | 1 parking space for each 300 square feet of gross floor area. Subject to obtaining a use permit, all or a portion of the off-street parking requirement may be satisfied by the payment to the city of an in-lieu fee as established by the city council.<br><br>~~**DIA:** All retail business establishments located on the ground floor of existing buildings shall be exempt from a use permit for any off-street parking or parking in-lieu fees.~~ |
| Pet-Related Services | Animal Hospitals | 1 parking space for each 300 square feet of gross floor area. |
| | Animal Kennels | 1 parking space for each 1,000 square feet of gross floor area. |
| | Pet Daycare | 1 parking space for each 500 square feet of gross floor area. |
| | Pet Grooming | 1 parking space for each 300 square feet of gross floor area. |
| Retail Sales | Convenience Stores | 1 parking space for each 200 square feet of gross floor area. |
| | Retail Uses 5,000 Square Feet or Less | 1 parking space for each 200 square feet of gross floor area. Subject to obtaining a use permit, all or a portion of the off-street parking requirement may be satisfied by the payment to the city of an in-lieu fee as established by the city council.<br><br>~~**DIA:** All retail businesses located on the ground floor of existing buildings shall be exempt from a use permit for any off-street parking or parking in-lieu fees.~~ |
| | Retail Uses 5,001 – 10,000 Square Feet | |
| | Retail Uses 10,001 – 25,000 Square Feet | |
| | Retail Uses Greater Than 25,000 Square Feet | |
| | Supermarkets | 1 parking space for each 200 square feet of gross floor area. |
| Vehicle Related | Automotive Repair and Paint | 1 parking space for each 750 square feet of gross floor area. |
| | Automobile Sales and Service | 1 parking space for each 400 square feet of gross floor area. Subject to obtaining a use permit, all or a portion of the off-street parking requirement may be satisfied by the payment to the city of an in-lieu fee as established by the city council. |
| | Carwash | As specified by conditional use permit. |
| | Fuel and Service Stations | 1 parking space per employee and 1 parking space for each 2 service bays. |
| Visitor Accommodations | Bed and Breakfasts | 1 parking space per guest room. |
| | Commercial Lodging | |
| Manufacturing | Heavy Manufacturing | 1 parking space for each 1,000 square feet of gross floor area. |
| | Light Manufacturing | 1 parking space for each 750 square feet of gross floor area. |
| Warehouse, Storage and Bulk Materials | Bulk Materials, Heavy Equipment Sales and Service | 1 parking space for each 1,000 square feet of gross floor area. |

| Land Use Categories | Specific Land Uses | Minimum Off-Street Parking |
|---|---|---|
| | Fleet Vehicle-Related Uses | As specified by conditional use permit. |
| | General Warehousing | 1 parking space for each 1,000 square feet of gross floor area. |
| | Mini Storage | |
| | Outdoor Storage | As an accessory use to a permitted or conditional use; parking required as specified by conditional use permit. |
| Adult Businesses | Gambling Establishments | 1 parking space for each 100 square feet of gross floor area. |
| | Gun Shops | 1 parking space for each 200 square feet of gross floor area. |
| | Liquor Stores | |
| | Pawn Shops | |
| | Sexually Oriented Businesses | |
| | Smoke Shops | |
| Accessory Uses (Allowed Only in Conjunction with Principal Uses) | Drive-Through Facilities | No additional parking required, but length of stacking lane(s) as specified by conditional use permit. |
| | Home Occupations | No additional parking required. |
| | Outdoor Dining | No additional parking required. |
| | Outdoor Display of Merchandise | No additional parking required. |
| Other | Any change in use in the C or I zones where available on-site parking would be less than 50% of the total required parking. | As specified by conditional use permit. |

(Ord. 726, § 2 (Att. A)).

**10.05.2110 Parking lots and spaces.**
Any public or private parking lot, or parking area, established to meet the requirements of this chapter for off-street parking spaces shall afford adequate provision for ingress or egress to any parking spaces. Where a lot does not abut on a public or private alley or access easement, there shall be provided an access driveway of not less than ten feet in width to any single-family, duplex or multiple-dwelling composed of less than nine units, and not less than twenty feet in width to all other uses leading to the parking or garage areas required by this chapter. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.817; 1966 Code § 8360. Formerly 10.05.1180).

**10.05.2120 Improvement of parking areas.**
Every parcel of land hereafter used as an automobile or trailer sales lot, or as a public or private parking lot or parking area, including any commercial parking lot shall be developed and maintained in accordance with the following requirements:

A. Off-street parking lots or parking areas for more than five vehicles shall be effectively screened on each side which adjoins or faces premises situated in any “R-1” or “R-2” district or public building, by a masonry wall or solid fence of acceptable design. Such wall or fence shall be not less than three feet or more than six feet in height and shall be maintained in good condition without any advertising thereon. The space between such wall or fence and the side lot line-adjoining premises or the front lot line-facing premises, in any “R-1” or “R-2” district, shall be landscaped with grass, hardy shrubs, or evergreen ground cover and maintained in good condition and, in case the capacity of the parking area exceeds thirty vehicles, it shall be screened by a masonry wall of six feet in height.

B. Any off-street parking lot, parking area, or parking space, and related driveway, shall be surfaced with asphalt, cement, or comparable material so as to provide a durable and dustless surface, and shall be so graded and drained as to dispose of all surface water accumulated within the parking and related driveway area, and shall be so

arranged and marked so as to provide for orderly and safe ingress, egress, maneuvering, loading/unloading, and parking of vehicles.

C. Any lighting used to illuminate any off-street parking lot or parking area shall be so arranged as to reflect the light away from the adjoining premises in any "R" district.

D. All public and private parking spaces established to meet the requirements of this chapter for off-street parking spaces shall meet the minimum requirements illustrated in Table 4 below.

**Table 4 – Parking Layout Standards**

| Parking Stall Minimum Dimensions (in feet) | | | |
|---|---|---|---|
| **Type of Parking (also see NOTES below)** | **Stall Width (side to side)** | **Stall Length (end to end)** | **Aisle Width (stall to stall)** |
| Single-Family, Duplex, and Triplex | | | |
| Garage parking | 10.0 | 20.0 | N/A |
| Surface parking | 8.0 | 16.0 | N/A |
| Oversize (at least 10% of total auto parking provided)[1][2][3][4] | | | |
| 0 degrees (1- or 2-way flow) | 10.0 | 26.0 | 12.0 / 24.0 |
| 30 degrees (1-way flow) | 10.0 | 20.0 | 15.0 |
| 45 degrees (1-way flow) | 10.0 | 20.0 | 18.0 |
| 60 degrees (1-way flow) | 10.0 | 20.0 | 21.0 |
| 75 degrees (1-way flow) | – | – | – |
| 90 degrees (2-way flow) | 10.0 | 20.0 | 24.0 |
| Standard[1][2][3][4] | | | |
| 0 degrees (1- or 2-way flow) | 9.0 | 24.0 | 12.0 / 24.0 |
| 30 degrees (1-way flow) | 9.0 | 18.0 | 15.0 |
| 45 degrees (1-way flow) | 9.0 | 18.0 | 18.0 |
| 60 degrees (1-way flow) | 9.0 | 18.0 | 21.0 |
| 75 degrees (1-way flow) | – | – | – |
| 90 degrees (2-way flow) | 9.0 | 18.0 | 24.0 |
| Unistall (when used, may be up to 100% of all auto parking provided)[1][2][3][4] | | | |
| 0 degrees (1- or 2-way flow) | 8.5 | 22.0 | 12.0 / 24.0 |
| 30 degrees (1-way flow) | 8.5 | 17.0 | 15.0 |

| Parking Stall Minimum Dimensions (in feet) | | | |
|---|---|---|---|
| **Type of Parking (also see NOTES below)** | **Stall Width (side to side)** | **Stall Length (end to end)** | **Aisle Width (stall to stall)** |
| 45 degrees (1-way flow) | 8.5 | 17.0 | 18.0 |
| 60 degrees (1-way flow) | 8.5 | 17.0 | 21.0 |
| 75 degrees (1-way flow) | – | – | – |
| 90 degrees (2-way flow) | 8.5 | 17.0 | 24.0 |
| Compact (up to 25% of total auto parking provided)[1][2][3][4] | | | |
| 0 degrees (1- or 2-way flow) | 8.0 | 20.0 | 12.0 / 24.0 |
| 30 degrees (1-way flow) | 8.0 | 16.0 | 15.0 |
| 45 degrees (1-way flow) | 8.0 | 16.0 | 18.0 |
| 60 degrees (1-way flow) | 8.0 | 16.0 | 21.0 |
| 75 degrees (1-way flow) | – | – | – |
| 90 degrees (2-way flow) | 8.0 | 16.0 | 24.0 |
| Motorcycle (2-stall minimum in all cases) | | | |
| 0 degrees (1- or 2-way flow) | 4.0 | 10.0 | 12.0 / 24.0 |
| 30 degrees (1-way flow) | 4.0 | 8.0 | 15.0 |
| 45 degrees (1-way flow) | 4.0 | 8.0 | 18.0 |
| 60 degrees (1-way flow) | 4.0 | 8.0 | 21.0 |
| 75 degrees (1-way flow) | – | – | – |
| 90 degrees (2-way flow) | 4.0 | 8.0 | 24.0 |
| Bicycle (at least 10% of auto parking provided; 2-bike minimum) | | | |
| | Sited, sized, and designed as appropriate | | |

NOTES:

(1) Shall be “double-striped” (two sets of lines separating each stall).

(2) Shall be “short-striped” (leaving the first couple of feet at the entrance to each stall unstriped).

(3) Handicapped accessible parking is exempt from (1) and (2), but must meet all applicable ADA requirements.

(4) On-street parking is exempt from (1) and (2), but is subject to review and approval by the city’s public works department.

(Ord. 726, § 2 (Att. A); Ord. 231, Amended by Ord. 516, § 3; 1976 Code § 10-1.818; 1966 Code § 8361. Formerly 10.05.1190).

**10.05.2130 Loading spaces.**

A. In any district, in connection with every building or part thereof hereafter erected and having a gross floor area of ten thousand square feet or more, which is to be occupied by manufacturing, storage, warehouse, wholesale store, laundry, dry cleaning plant or other uses similarly requiring the receipt or distribution by vehicles of material or merchandise but not including retail stores and personal service establishments, there shall be provided and maintained on the same lot with such building at least one off-street loading space plus one additional such loading space for each twenty thousand square feet or major fraction thereof of gross floor area so used in excess of twenty thousand square feet. Such loading space shall not be less than twelve feet in width, fifty feet in length, and having a clear height of sixteen feet.

B. Each loading space may occupy all or any part of any required yard or court space except the front yard, and shall be located no closer than fifty feet to any other lot in any "R" district, unless wholly within a completely enclosed building or surrounded on all sides by a masonry wall not less than eight feet in height. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.819; 1966 Code § 8362. Formerly 10.05.1200).

## Article XXII. Exterior Lighting

**10.05.2200 Reserved.**

(Ord. 726, § 2 (Att. A)).

## Article XXIII. Landscaping

**10.05.2300 Reserved.**

(Ord. 726, § 2 (Att. A)).

## Article XXIV. Nonconformities

Prior legislation: 1966 Code § 8503, 1976 Code § 10-1.904 and Ords. 231 and 561.

**10.05.2400 General.**

Except as otherwise provided in this article, nonconforming lots, uses, or structures existing on the effective date of this chapter may be continued, although the particular nonconformity does not conform to the regulations specified by this chapter for the district in which it is located. However, no such nonconformity may be extended to occupy a greater area of land or structure than is occupied on the effective date of this chapter. If any nonconformity is discontinued or abandoned, any subsequent use of such land or structure shall conform to the regulations specified for the district in which it is located. (Ord. 231, Amended by Ord. 643, § 5; Ord. 726, § 2 (Att. A); 1976 Code § 10-1.901; 1966 Code § 8500. Formerly 10.05.1220).

**10.05.2410 Nonconforming lots.**

If, prior to the effective date of this chapter, any parcel of land has dimensions or is of a size not in compliance with the regulations of the district in which it is located, such parcel may be developed to the extent possible while conforming to all applicable regulations of the district in which it is located. (Ord. 231, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.902; 1966 Code § 8501. Formerly 10.05.1230).

**10.05.2420 Nonconforming uses.**

A. A nonconforming use may be changed to another nonconforming use of the same or more restrictive classification upon the securing of a conditional use permit.

B. If a nonconforming use is replaced by a more restrictive nonconforming use, the occupancy thereafter may not revert to a less restrictive use.

C. If a nonconforming use is wholly discontinued for a period of ninety days, such use shall be deemed to have been abandoned and all future uses shall comply with the regulations of the particular district in which the land or building is located, except if discontinuation of the use:

1. Is pursuant to a valid order of a court of law;

2. Facilitates a required upgrade, retrofit, restoration, remediation, fire suppression, or ADA accommodation. (Ord. 726, § 2 (Att. A)).

**10.05.2430 Nonconforming structures.**

Any structure existing at the date of the adoption of this chapter, or any amendments thereto, which is nonconforming in either location or design shall not be enlarged, extended, reconstructed, or structurally altered (hereinafter collectively referred to as the "work") except in the following situations:

A. With approval of a conditional use permit when:

1. The work increases the extent (such as lengthening an encroaching building wall) but does not intensify the degree (such as further encroachment of a building wall) of nonconformity; or

2. Replacement or restoration of more than fifty percent of the total square footage of any nonconforming building, except single-family dwellings, is performed.

B. Without approval of a conditional use permit when:

1. Such work is required by law;

2. The work will result in eliminating the nonconforming element(s) of the structure;

3. Normal maintenance, in the form of necessary nonstructural repairs and incidental alterations which do not extend or intensify the degree of nonconformity, is performed;

4. Work on a single-family dwelling that does not extend or intensify the degree of nonconformity may be made as with a conforming structure by securing the required building permit(s), which is a ministerial process. The decision that the work would or would not increase the nonconformity shall be made in the plan-check process. Any work which alters the existing single-story character of the dwelling shall be subject to architectural review as prescribed in this chapter;

5. Work on a single-family dwelling damaged by fire, explosion, flood, earthquake, or similar catastrophe to restore or replace the dwelling according to the same zoning standards in effect at the time of its construction; provided, that:

a. All health and safety provisions of the latest edition of the building code are satisfied; and

b. The total floor area does not exceed that of the former structure; or

6. Work on all other buildings damaged by fire, explosion, flood, earthquake, or similar catastrophe to restore or replace no more than fifty percent of the total floor area according to the same zoning standards in effect at the time of its construction; provided, that:

a. All health and safety provisions of the latest edition of the building code are satisfied; and

b. The total floor area does not exceed that of the former structure. (Ord. 231, Amended by Ord. 245, § 1; Ord. 561, § 3.4; Ord. 726, § 2 (Att. A); 1976 Code § 10-1.903; 1966 Code § 8502. Formerly 10.05.1240).

**10.05.2440 Nonconformance due to rezoning.**

The foregoing provisions of this chapter shall apply to lots, uses, and structures which hereafter become nonconforming due to the rezoning of any property under the provisions of this chapter. An existing land use for which a conditional use permit is required by the terms of this chapter shall be considered a nonconforming use, unless and until the required conditional use permit is obtained. (Ord. 231, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.905; 1966 Code § 8504. Formerly 10.05.1260).

**10.05.2450 Effect on construction underway.**
Nothing contained in this chapter shall be deemed to require any change in the plans, construction, or designated purpose of any structure for which a building permit has been properly issued, in accordance with the regulations then in effect and upon which actual construction has been started prior to the effective date of this chapter, or any amendments thereto; provided, that, in all cases, actual construction shall be diligently carried on to completion of the structure. (Ord. 231, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.906; 1966 Code § 8505. Formerly 10.05.1270).

## Article XXV. Design Review, Zoning Permits, Conditional Uses, Exceptions, Variances and Revocations

Prior legislation: 1966 Code §§ 8606 – 8610, 8612, 8621 – 8626, 8628 and 8660 – 8662, 1976 Code §§ 10-1.1003 – 10-1.1008, 10-1.1010 – 10-1.1016 and 10-1.1018 – 10-1.1021 and Ords. 231, 504 and 578.

**10.05.2500 Design review permits.**
A. Each application for a permit for the construction, alteration, or exterior modification of a building or for any discretionary entitlement requiring approval under this title shall be subject to design review. Design review for all single-family, duplex, triplex, and multifamily residential development shall be conducted pursuant to the "Residential Design Review Guidelines" adopted by the planning commission and approved by the city council.

B. Staff Design Review. Each application for a building permit for the construction, alteration, or exterior modification of a building shall be initially reviewed by community development department staff to determine if the proposal is consistent with the provisions of this chapter.

1. The following types of applications shall be forwarded by staff to the planning commission for final action:

a. Second floor or higher additions to existing residential development with the exception of second floor or higher additions to single-family detached dwellings in which the proposed addition to the second floor and/or higher floor totals no more than five hundred square feet;

b. All newly proposed buildings;

c. Significant exterior alterations to any existing development, as determined by staff; and

d. Any applications for which a conditional use permit, exception, and/or variance, or any modification thereto or time extension thereof, is/are required or requested.

2. All other applications shall receive final action by staff.

3. To facilitate final action by staff, and prior to issuance of any building permit(s), the applicant shall provide sufficient documentation, which may include, but is not limited to, the materials listed in subsection C of this section, as required by staff to determine whether the proposed improvements comply with the policies of the city council. Plans shall be of sufficient clarity to graphically depict the location, nature, and extent of the work proposed and its relationship to the surrounding built environment, and shall conform to the provisions of adopted design guidelines and all applicable city regulations. In the event that the plans as submitted do not fully depict the proposed work, the community development director or designee may require that the plans be redrawn to meet the submittal standards prior to consideration. Buildings which present significant bulk compared to others nearby or which may have a significant impact on neighboring views, privacy, or solar access may be referred, at the discretion of city staff and at the applicant's expense, to the city's design consultant for review. Staff shall direct the applicant to change the proposed design as necessary to comply with these standards prior to review by the planning commission or the issuance of any permits.

4. Final action by staff shall be in the form of approval of a zoning permit.

C. Planning commission design review shall occur as follows:

1. Applications shall be considered at a duly noticed public hearing of the planning commission and shall be accompanied by any or all of the following materials together with any other information as may be required by the planning commission:

a. Site plans showing the relationship of the site to existing or planned streets, paving, sidewalk, and utility lines; proposed ingress and egress patterns; the location of any existing or proposed structures; front, rear, and side setbacks related to the boundaries of the property; the distance from the back of sidewalk to face of garage(s); exterior lighting; walls, fences, or other devices used for screening or separation; proposed grading and any other reshaping of the earth upon the site; and proposed drainage plan;

b. Architectural drawings or sketches showing plans and elevations of all exterior sides of all proposed structure(s) including height, bulk, types of exterior colors, materials, and textures, and at least one perspective drawing that clearly illustrates what the structure(s) will look like upon completion;

c. Landscape and irrigation plans showing the proposed location and identification of existing and proposed plants, erosion control and drainage features, and other landscape amenities, a plant list of the botanical name, common name, quantity, and size of all new plant materials, and provisions for landscape maintenance;

d. Soils and/or geologic reports, signed by a professional licensed to prepare such reports, when requested by the building official; and

e. Samples of all proposed colors and materials.

2. Findings. The design review application materials shall be evaluated by the planning commission in relation to the following findings required for approval:

a. The architectural, landscaping, and general appearance of the proposed building or structure and grounds are in keeping with the character of the neighborhood;

b. The project complies with all applicable development regulations;

c. The project complies with the intent of the adopted design review guidelines, including a finding that the project will not cause a significant visual impact to neighboring views from principal rooms of a residence unless it is proven by the applicant that there is no other viable or cost-effective alternative; and

d. The proposal is not detrimental to the orderly, harmonious and safe development of the city and will not impair the desirability of investment or occupation in the neighborhood in which the building or structure is proposed to be erected.

D. Approval. For design review applications requiring planning commission action, the planning commission shall approve, approve with conditions, or disapprove the applications. If approved, the approval shall be effective for a period of one year from the date of approval thereof or within any shorter or longer period of time not to exceed three years, if so designated by the commission. The planning commission shall have authority to extend the period of any prior approval; provided, that a written request for such extension is submitted prior to the date of expiration of the original approval and a hearing has been held, notice of which shall be given in the time and manner provided in Article XXIX.

E. Appeal Period. Planning commission design review approval shall not be final until ten days have elapsed from the granting thereof, and in case an appeal is filed in the manner provided in Article XXVII of this chapter, shall not be issued until a decision thereon shall have been made by the city council.

F. Effective Action. No building permit shall be issued until a design review application has been approved by the planning commission or the community development director or designee, as the case may be, and until the applicant has submitted construction plans for the project that are found by city staff to be in substantial compliance with the approved plans/exhibits, as well as with all other applicable city policies, ordinances, and regulations and the California Building Codes.

G. Adherence to Final Approval. Following approval of a design review permit by the planning commission (or, if appealed, upon approval by the city council) and subsequent to building permit issuance, the applicant shall fully construct or otherwise implement all aspects of said approval as depicted on the approved plans/exhibits. The applicant shall not selectively alter or omit any aspects of said approval since doing so may result in denial of the certificate of occupancy or final inspection.

H. Fee. The city council may, by resolution, set a fee to be paid at the time an application for design review is made and which shall be in addition to any other fee which may be required to be paid in connection with the issuance of any permit for any structure. (Ord. 726, § 2 (Att. A), Amended by Ord. 750, § 4).

**10.05.2510 Zoning permits.**

Zoning permits shall be required for all structures hereinafter erected, constructed, altered, repaired, or moved within or into any district established by this chapter, and for the use of vacant land, or for a change in the character of the use of land, within any district established by this chapter. The application for a zoning permit shall be accompanied by a fee, set by the city council, and sufficient plans to clearly indicate the proposed use to be made of the land or structure. No building permit shall be issued until the zoning permit portion thereof has been completed by the community development director or designee and any required or requested conditional use permit, exception, or variance has been issued and become effective. (Ord. 231, Amended by Ord. 726, § 2 (Att. A); 1976 Code § 10-1.1001; 1966 Code § 8600. Formerly 10.05.1280).

**10.05.2520 Conditional use permits.**

A. Conditional use permits may be revocable, conditional, and/or valid for a stated time period, and shall be issued only as provided in this article for any of the uses or purposes for which such permits are required by this chapter. The planning commission may impose such conditions as it deems necessary to enforce the intent of this chapter and may require tangible guarantees or evidence that such conditions are being or will be complied with.

B. Applications for conditional use permits shall be made in writing by the owners of the property, or their agent, on a form prescribed by the community development department. Lessees, purchasers in escrow, optionees, or other persons may act as agents upon filing with the application a copy of an instrument signed by an owner and designating such agent. The application shall be accompanied by a fee, set by the city council, as well as any plans or other exhibits describing the details of the proposed use to be made of the land or structure.

C. Combined Proceedings. Where the proposed use requires issuance of a conditional use permit under the terms of this chapter and is also subject to design review or exceptions and/or variances are requested in conjunction with the application, all requests may be combined into one application for concurrent processing and review; however, the fees required for each component of such combined application shall be collected in full.

D. Findings. The conditional use permit application materials shall be evaluated by the planning commission in relation to the following findings required for approval:

1. The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use; and

2. The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to property and improvements in the neighborhood of such proposed use.

E. Failure to Act. Failure of the planning commission to act within sixty days of the filing of an application for a conditional use permit shall be deemed a denial of the requested conditional use permit.

F. Public Hearing. A public hearing shall be held upon each application for a conditional use permit, or for the modification, extension, or revocation of an approved conditional use permit. Notice of the public hearing shall be given in the time and manner provided in Article XXIX.

G. Appeal Period. Conditional use permits shall not be issued until ten days have elapsed from the granting thereof, and in case an appeal is filed pursuant to Article XXVII of this chapter, shall not be issued until a decision thereon shall have been made by the city council.

H. Acknowledgment. Conditional use permits shall not have any force and effect until the permittee acknowledges receipt thereof and acceptance of any conditions thereto.

I. Revocation.

1. A conditional use permit granted in accordance with the terms of this chapter may be revoked by the city council, in the manner hereinafter set forth, if any conditions or terms of such permits are violated or compliance with the provisions of this chapter is not demonstrated.

2. Public Hearing. Before the city council considers revocation of any conditional use permit, the planning commission shall hold a duly noticed public hearing thereon after giving written notice thereof to the permittee at least ten days in advance of such hearing and in the time and manner provided in Article XXIX of this chapter. Within five days thereafter, the planning commission shall transmit a report of its findings and its recommendations on the revocation to the city council.

3. Suspension of Permits. The building official shall not issue any building permit(s) that may still be outstanding at the time that proceedings to consider the revocation of a conditional use permit are initiated. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1002; 1966 Code § 8605. Formerly 10.05.1290).

**10.05.2530 Exceptions.**

A. Exceptions, as specified in this chapter, for permission to deviate from specific development standards shall require planning commission review for approval. In accordance with the intent of this chapter, the planning commission may grant all, none, or part of the deviation(s) sought.

B. Applications for exceptions shall be made in writing by the owners of the property, or their agent, on a form prescribed by the community development department of the city. Lessees, purchasers in escrow, optionees, or other persons may act as agents upon filing with the application a copy of an instrument signed by an owner and designating such agent. The application shall be accompanied by a fee, set by the city council, as well as plans and/or other exhibits describing the details of the proposed deviation(s) from the minimum required or maximum allowable development standard(s), and evidence justifying the exception.

C. Combined Proceedings.

1. When the exception is requested in conjunction with an application for a conditional use permit, design review, and/or variance, all requests may be combined into one application for concurrent processing and review; however, the fees required for each component of the combined application shall be collected in full and the planning commission may take individual final actions on each component.

2. When more than one exception is requested for a single project, they shall be combined into one application for concurrent processing and review; however, the fees required for each such exception shall be collected in full and the planning commission may take individual final actions on each exception.

D. Findings. The exception application materials shall be evaluated by the planning commission in relation to the following findings required in order to approve any exception:

1. The deviation granted from the minimum required or maximum allowable development standard prescribed for the zoning district in which the project site is located will not, under the circumstance of the particular case, be detrimental to property and improvements existing upon any abutting parcel; and

2. The deviation granted from the minimum required or maximum allowable development standard prescribed for the zoning district in which the project site is located will, under the circumstance of the particular case, be compatible with the property and improvements existing or proposed upon the project site.

E. Failure to Act. Failure of the planning commission to act within sixty days of the filing of an application for an exception shall be deemed a denial of the requested exception.

F. Public Hearing. A public hearing shall be held upon each application for an exception. Notice of the public hearing shall be given in the time and manner provided in Article XXIX of this chapter.

G. Appeal Period. Exceptions shall not be issued until ten days have elapsed from the granting thereof, and in case an appeal is filed as provided in Article XXVII of this chapter, shall not be issued until a decision thereon shall have been made by the city council.

H. Acknowledgment. Exceptions shall not have any force and effect until the permittee acknowledges receipt thereof and acceptance of any conditions thereto. (Ord. 726, § 2 (Att. A)).

**10.05.2540 Variances.**

A. Variances are required to deviate from the strict application of the terms of this chapter when no other form of regulatory relief is provided in this title. However, a variance may neither be applied for nor granted to allow any land use within a district in which such use is prohibited under the regulations of that district. All variances require planning commission review for approval. In accordance with the intent of this chapter, the planning commission may grant all, none, or part of the deviation(s) sought. Furthermore, a variance is rightfully considered only when all other options for full compliance have been exhausted.

B. Applications for variances shall be made in writing by the owners of the property, or their agent, on a form prescribed by the community development department of the city. Lessees, purchasers in escrow, optionees, or other persons may act as agents upon filing with the application a copy of an instrument signed by an owner and designating such agent. The application shall be accompanied by a fee, set by the city council, as well as any plans or other exhibits describing the details of the proposed deviation(s) from the minimum required or maximum allowable development standard(s), and evidence justifying the variance.

C. Combined Proceedings.

1. When the variance is requested in conjunction with an application for a conditional use permit, design review, or exception, all requests may be combined into one application for concurrent processing and review; however, the fees required for each component of the combined application shall be collected in full and the planning commission may take individual final actions on each component.

2. When more than one variance is requested for a single project, they shall be combined into one application for concurrent processing and review; however, the fees required for each such variance shall be collected in full and the planning commission may take individual final actions on each variance.

D. Findings. The variance application materials shall be evaluated by the planning commission in relation to the following findings required in order to approve any variance:

1. Any variance granted shall be subject to such conditions as will assure that the deviation thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zoning district in which the subject property is situated; and

2. That because of special circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, the strict application of zoning regulations is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification.

E. Failure to Act. Failure of the planning commission to act within sixty days of the filing of an application for a variance shall be deemed a denial of the requested variance.

F. Public Hearing. A public hearing shall be held upon each application for a variance. Notice of the public hearing shall be given in the time and manner provided in Article XXIX of this chapter.

G. Appeal Period. Variances shall not be issued until ten days have elapsed from the granting thereof, and in case an appeal is filed as provided in Article XXVII of this chapter, shall not be issued until a decision thereon shall have been made by the city council.

H. Acknowledgment. Variances shall not have any force and effect until the permittee acknowledges receipt thereof and acceptance of any conditions thereto. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1009; 1966 Code § 8620. Formerly 10.05.1360).

**10.05.2550 Expiration and extension of permits.**
Any design review permit, zoning permit, conditional use permit, exception, or variance granted in accordance with the terms of this chapter shall, without further action, become null and void if a building permit application is not submitted within one year from the date of approval thereof or within any shorter or longer period of time not to exceed three years, if so designated by the planning commission or city council, unless extended by action of the planning commission. A public hearing shall be held prior to any such extension and notice of such hearing shall be in the time and manner provided in Article XXIX of this chapter. (Ord. 726, § 2 (Att. A); Ord. 643, § 6; Ord. 231; 1976 Code § 10-1.1017; 1966 Code § 8650. Formerly 10.05.1440).

## Article XXVI. Interpretations and Determinations

Prior legislation: 1966 Code § 8902, 1976 Code § 10-1.1303 and Ord. 231.

**10.05.2600 General.**
Except as specifically provided herein, this chapter shall not be interpreted to repeal, abrogate, annul, or in any way affect any existing provision of any law or ordinance or regulations or permits previously adopted or issued relating to the erection, construction, moving, alteration, or enlargement of any structure or improvement; provided, however, in any instances where this chapter imposes greater restrictions upon the erection, construction, establishment, moving, alteration, or improvement of structures or the use of any land or structure than are imposed or required by an existing law, ordinance, or regulation, the provisions of this chapter shall control. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1301; 1966 Code § 8900. Formerly 10.05.1650).

**10.05.2610 Administrative interpretations.**
If any ambiguity arises concerning the appropriate classification of a particular use within the meaning and intent of this chapter, or with respect to matters of height, setback, area, boundaries, or other development parameter as set forth in this chapter, the director of community development or designee shall consider all pertinent facts, judge the intent of the provision(s) in question, and render a determination in writing, including the basis for the determination, to the inquiring party. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1302; 1966 Code § 8901. Formerly 10.05.1660).

**10.05.2620 Planning commission interpretations.**
A. At the sole discretion of the director of community development or designee, such needed interpretations may be deferred to the planning commission for determination.

B. The planning commission shall consider all pertinent facts, judge the intent of the provision(s) in question, and render a determination in writing by resolution which shall also set forth the commission's findings. (Ord. 726, § 2 (Att. A)).

**10.05.2630 Codification of interpretations.**
All administrative and planning commission determinations shall be codified to the extent possible and as soon as practicable. (Ord. 726, § 2 (Att. A)).

## Article XXVII. Appeals

Prior legislation: 1966 Code § 8700, 1976 Code § 10-1.1101 and Ord. 231.

**10.05.2700 Appeals of interpretations and determinations.**
A. Any administrative interpretation made by the director of community development or designee may be appealed to the planning commission by any person, provided such appeal is submitted within ten days of notification of such administrative interpretation. The planning commission shall review the appeal at the earliest available planning commission public hearing, notice thereof to be given in the time and manner as provided in Article XXIX of this chapter.

B. In the case when the petitioner is not satisfied with the action of the planning commission in deciding any appeal of an administrative interpretation of the provisions of this chapter, or any action of the planning commission in making a determination on any provisions of this chapter, the petitioner may appeal such action to the city council, provided such appeal is submitted within ten days of the planning commission determination.

C. The city council shall review the appeal at the earliest available city council public hearing, notice thereof to be given in the time and manner provided in Article XXIX of this chapter. Such determination shall be by resolution of the city council and shall be rendered not more than forty-five days after receipt of the resolution of the planning commission.

1. Whenever the city council is called upon to determine whether or not the use of land or any structure in any zoning district is similar in character to the particular uses allowed in a district, the city council shall consider the following factors as criteria for their determination, in addition to other comparisons:

a. Effect upon the public health, safety, and general welfare of the neighborhood involved and the city at large;

b. Effect upon traffic conditions; and

c. Effect upon the orderly development of the area in question and the city at large in regard to the general planning of the whole community. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1102; 1966 Code § 8701. Formerly 10.05.1500).

**10.05.2710 Appeals of planning commission action.**
Any final action of the planning commission taken at any public hearing on any design review permit, conditional use permit, exception, variance, or other matter for which the commission has final approval authority may be appealed to the city council by any person, provided such appeal is submitted within ten days of the planning commission action. (Ord. 726, § 2 (Att. A)).

**10.05.2720 Appeal procedure.**
Appeals shall be made in writing and filed with the city clerk, accompanied by a fee set by the city council. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1103; 1966 Code § 8702. Formerly 10.05.1510).

**10.05.2730 Public hearing.**
Upon receipt of such appeal, the city council shall set the matter for public hearing, notice thereof to be given in the time and manner as provided in Article XXIX of this chapter; provided, that where such appeal concerns itself with interpretation of, or determination under, the provisions of this chapter, the posting of notices shall not be required. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1104; 1966 Code § 8703. Formerly 10.05.1520).

**10.05.2740 Planning commission report.**
Notice shall be given to the planning commission of such appeal and a report shall be submitted by the planning commission to the city council, setting forth the reasons for the action taken by the planning commission. Such report shall be submitted in writing and be represented at the city council hearing. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1105; 1966 Code § 8704. Formerly 10.05.1530).

**10.05.2750 Decision.**
The decision of the city council shall be rendered not more than forty-five days after the close of the hearing. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1106; 1966 Code § 8705. Formerly 10.05.1540).

**10.05.2760 City council review.**
A. In the absence of an appeal by any person of the decision of the planning commission and within ten days of the date of the action of the planning commission, the city council, or any member thereof, may request a review of the action of the planning commission in connection with any application for the granting of any design review permit, conditional use permit, exception, or variance. Said request for review shall be submitted in writing to the city clerk.

B. The action of the planning commission concerning any application which is to be reviewed shall be suspended pending a final determination by the city council.

C. Following its review at a public hearing, the city council, by the affirmative vote of a majority of its members, may:

1. Approve the permit as requested when such permit is deemed to be in the public interest; or

2. Impose additional conditions or modify conditions previously imposed by the planning commission; or

3. Deny the permit when such denial is deemed to be in the public interest.

D. Failure of the city council to act upon the appeal by a majority vote shall be deemed as approval of the action of the planning commission. A tie vote by the city council will not overturn the action of the planning commission and the action of the planning commission will stand. (Ord. 726, § 2 (Att. A); Added by Ord. 254, § 2; 1976 Code § 10-1.1107; 1966 Code § 8706. Formerly 10.05.1550).

## Article XXVIII. Amendments

Prior legislation: 1966 Code § 8806, 1976 Code § 10-1.1207 and Ord. 231.

### 10.05.2800 General.

Except as otherwise provided in this article, any amendment to this chapter shall be initiated and adopted as other provisions of this code are amended or adopted. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1201; 1966 Code § 8800. Formerly 10.05.1560).

### 10.05.2810 Rezonings.

Any amendment to this chapter which changes any property from one zoning district to another, imposes any regulation upon property not theretofore imposed, or removes or modifies any such regulation shall be initiated and adopted by ordinance as hereinafter set forth in this article. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1202; 1966 Code § 8801. Formerly 10.05.1570).

### 10.05.2820 Initiation.

A. Any amendment of the nature specified in MMC 10.05.2810 may be initiated by:

1. The filing with the planning commission of a resolution of intention of the city council;

2. Adoption of a resolution of intention by the planning commission; or

3. Filing with the planning commission a petition of one or more record owners of property (or their authorized agent) which is the subject of the proposed amendment.

B. Where such petition is filed by an agent, it shall be accompanied by a copy of the instrument signed by an owner and designating the agent. A petition for amendment shall be on a form designated by the community development department and shall be accompanied by a fee, as set by the city council. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1203; 1966 Code § 8802. Formerly 10.05.1580).

### 10.05.2830 Public hearing.

Upon receipt of a petition or resolution of intention of amendment, the planning commission shall set a date for a public hearing thereon, but not later than forty-five days after the receipt of said petition or resolution. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1204; 1966 Code § 8803. Formerly 10.05.1590).

### 10.05.2840 Notice of hearing.

The public hearing shall be noticed in the time and manner as provided in Article XXIX of this chapter. The city council, at its discretion, may cause additional notice of any public hearing to be given by postcard through the United States mail with postage prepaid and using addresses from the most recently adopted county tax roll. (Ord. 726, § 2 (Att. A); Ord. 231, Amended by Ord. 504, § 3; 1976 Code § 10-1.1205; 1966 Code § 8804. Formerly 10.05.1600).

**10.05.2850 Form of notice.**
Each posted notice of any rezoning pursuant to MMC 10.05.2810 shall consist of the words "Notice of Proposed Zoning Change" in letters not less than one inch in height, and in addition thereto, a statement in small letters setting forth a general description of the property proposed to be affected, the existing and proposed zoning district designations, the time and place of the public hearing thereon, and such other information as the planning commission deems necessary. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1206; 1966 Code § 8805. Formerly 10.05.1610).

**10.05.2860 Planning commission action.**
After the close of the public hearing, or continuation thereof, the planning commission shall make a report of its findings and its recommendation with respect to the proposed amendment. The report shall include a list of persons who testified at the hearing, a summary of the facts adduced at the hearing, the findings of the commission, and copies of any maps or other data and/or documentary evidence submitted in connection with the proposed amendment. A copy of such report and recommendation shall be transmitted to the city council within ninety days after the first notice of hearing thereon; provided, however, that such time may be extended with the consent of the city council or the petitioner for such amendment. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1208; 1966 Code § 8815. Formerly 10.05.1630).

**10.05.2870 City council action.**
Upon receipt of the recommendation of the planning commission, the city council shall set the matter for public hearing to be held within but not later than forty-five days of receipt of the planning commission recommendation, notice thereof to be given in the time and manner provided in Article XXIX of this chapter. After the conclusion of such hearing or continuations thereof, the city council may, within one year, adopt the proposed amendment or any part thereof set forth in the petition or resolution of intention in such form as the council deems desirable. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1209; 1966 Code § 8816. Formerly 10.05.1640).

## Article XXIX. Public Hearings

**10.05.2900 Noticing.**
When a provision of this chapter requires notice of public hearing to be given, notice of hearing shall be given as follows:

A. Notice of the hearing shall be published one time not less than ten days prior to the hearing in a newspaper of general circulation in the city, and posted not less than ten days prior to the hearing in at least three public places along the streets upon which the property which is the subject of the hearing (herein called "subject property") abuts.

The declaration or affidavit of the person purported to have posted the copies of the notice of hearing shall establish conclusively that such posting was accomplished.

B. Notice of the hearing shall be mailed or delivered at least ten days prior to the hearing to the owner of the subject property or the owner's duly authorized agent, and to the project applicant.

C. Notice of the hearing shall be mailed or delivered at least ten days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within three hundred feet of the subject property.

D. Notice of the hearing shall be mailed or delivered at least ten days prior to the hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, for which the subject property is proposed to be used, whose ability to provide those facilities and services may be significantly affected.

E. In the case of a proposed amendment to the text of the Millbrae zoning ordinance, notice of the hearing shall be published one time not less than ten days prior to the hearing in a newspaper of general circulation in the city. (Ord. 726, § 2 (Att. A)).

## Article XXX. Enforcement Procedure and Penalties

**10.05.3000 Enforcement.**
It shall be the duty of the building official of the city to enforce the provisions of this chapter pertaining to the use of land and structures and the erection, construction, reconstruction, moving, alteration, or addition to any structure. Any permit or license of any type issued by any department or officer of the city, issued in conflict with the provisions of this chapter, is declared to be null and void. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1401; 1966 Code § 8950. Formerly 10.05.1680).

**10.05.3010 Abatement.**
Any structure erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this chapter and any use of land or structures operated or maintained contrary to the provisions of this chapter are declared to be public nuisances. The city attorney, upon order of the city council, shall commence the necessary action or proceedings for the abatement, removal, and enjoinment thereof in the manner prescribed by law in the courts which may have jurisdiction to grant such relief as will accomplish such abatement and restraint. The remedies provided for in this section shall be in addition to any other remedy or remedies or penalties provided in this chapter or any other law or ordinance. (Ord. 726, § 2 (Att. A); Ord. 231; 1976 Code § 10-1.1402; 1966 Code § 8951. Formerly 10.05.1690).

## Article XXXI. Development Impact Fees

**10.05.3100 Authority.**
This article is enacted pursuant to the police power granted to the city in the Constitution of the State of California, and consistent with Government Code Section 66000 et seq. (Ord. 777, § 2).

**10.05.3105 Definitions.**
For purposes of this article, the following terms, phrases, words and their derivations shall have the meanings respectively ascribed to them by this section:

“Accessory dwelling unit” means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.

“Applicant” means any person who, after the effective date of the ordinance codified in this article, seeks to develop land within the city requiring issuance of a building permit.

“Building permit” means any permit, such as electrical, plumbing, or moving permit, required for construction, reconstruction, remodeling, or moving a structure within or into the city.

“Development” or “development project” means any project within the city that requires a building permit. The term “development” or “development project” also includes projects for the erection of manufactured housing or structures, and structures moved into the city which require city permits.

“Development impact fee” or “fee” means a monetary exaction, other than a tax or special assessment, which is charged by the city to an applicant in connection with approval of a development for the purpose of defraying all or a portion of the cost of facilities related to a development project within the city, but does not include MSASP area fees, school fees, fees specified in Section 66477 of the California Government Code, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864 of Chapter 4, Division 1, Title 7 of the California Government Code) or fees collected pursuant to any agreement with the former redevelopment agency.

“Mitigation Fee Act” means Chapter 5 of Division 1 of Title 7 of the Government Code, beginning with Section 66000, as may be amended from time to time. (Ord. 777, § 2).

**10.05.3110 Purpose.**
The city council finds that the impact of anticipated development within the city will result in unacceptable decreases in the level of public services and additional burdens on existing city facilities and infrastructure. To prevent these undesirable consequences, the city has determined that certain facilities must be provided at a rate that will accommodate this expected growth. The city council also desires to ensure that this new development will pay its fair share of the cost of these facilities necessitated by that new development. (Ord. 777, § 2).

**10.05.3115 Application.**
This article applies to fees charged as a condition of development approval within the city to defray the cost of the facilities required to serve new development within the city. This article does not replace other city-wide fees, exactions imposed pursuant to the Subdivision Map Act, or other measures required to mitigate site-specific impacts of a development project, including, but not limited to, mitigations pursuant to the California Environmental Quality Act; regulatory and processing fees; fees required pursuant to a development agreement; funds collected pursuant to a reimbursement agreement that exceed the applicant's share of public improvement costs; or assessment district proceedings, benefit assessments, or taxes. (Ord. 777, § 2).

**10.05.3120 Establishment of development impact fees and providing for their adoption by resolution of the city council.**
A. The city council may establish development impact fees on the issuance of all building permits for development within the city to finance the cost of additional public facilities necessary to mitigate the impacts upon existing public facilities caused by new development in the city.

B. The city council shall from time to time adopt, after a noticed public hearing, the resolution establishing specific development impact fees. In adopting the resolution, the city council shall:

1. Identify the purpose of the fee;

2. Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified as required by the Mitigation Fee Act;

3. Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed;

4. Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed;

5. Determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed; and

6. Establish a fee schedule.

C. Unless otherwise provided in the resolution imposing the fee, on January 1st of each year after the enactment of each fee, the fee shall be automatically adjusted in accordance with the change in the Engineering Construction Cost Index, as most recently published by Engineering News-Record, for the previous calendar year. (Ord. 777, § 2).

**10.05.3125 Imposition of development impact fee.**
Unless otherwise specified in the resolution imposing the fee, all applicants are required to pay the applicable development impact fees established pursuant to this article as follows:

A. Residential Developments. Except as specified in MMC 10.05.3130, the fee shall be charged for each new dwelling unit.

B. Nonresidential Developments. Except as specified in MMC 10.05.3130, the fee shall be charged on a per square foot basis for all new gross floor area, including additions where floor area is increased.

C. Hotel. Notwithstanding subsection B of this section, the fee shall be charged for each separately rentable hotel room.

D. The community development director may set a fee consistent with the Mitigation Fee Act and the criteria set forth in the resolution imposing the fee for projects that do not squarely fit within the development categories listed in this section. (Ord. 777, § 2).

**10.05.3130 Exemptions.**

A. Notwithstanding MMC 10.05.3125, the following projects are exempted from payment of the development impact fee:

1. Alterations, renovations or expansion of an existing residential building or structure where no additional dwelling units are created and the use is not changed; provided, however, that the expansion of an existing commercial or industrial building or structure shall not be exempt from the fee established in this article. For purposes of this section, "expansion" is defined as any increase in the gross floor area of the existing building or structure and "change of use" is defined as the initiation of a use which requires approval of a conditional use permit, development plan or zoning change.

2. The replacement of a destroyed or partially destroyed or damaged building or structure with a new building or structure of the same size and use.

3. The remodeling or restoration of a nonresidential building or structure where the building or structure is improved or replaced, but the floor area is not increased.

4. Accessory dwelling units of less than seven hundred fifty square feet. Accessory dwelling units of more than seven hundred fifty square feet are charged proportionately in relation to the square footage of the primary dwelling unit.

5. City facilities, including, but not limited to, parks, buildings and infrastructure as well as any other public facilities which are entitled under state law to an exemption from development fees.

B. Any claim of exemption from the imposition of the development impact fee must be made no later than the time for application for fee refunds as set forth in MMC 10.05.1855(A). (Ord. 777, § 2).

**10.05.3135 Timing of development impact fee payment.**

A. The development impact fee established pursuant to this article must be paid for each approved nonresidential development project at the time of the issuance of the first required building permit. No city official may issue a building permit for a nonresidential development project until the development impact fee with respect to any such development required by this article has been paid.

B. All fees imposed on a residential development project with one unit must be collected prior to the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. For residential developments containing more than one unit, all fees must be paid when the first unit in the development receives its final inspection or certificate of occupancy, whichever occurs first.

C. Notwithstanding any other provision of this article, the community development director may specify an earlier date for payment of fees imposed pursuant to this article where permissible under Section 66007 of the Government Code.

D. Upon issuance of a building permit for a residential development project that has not yet paid all fees imposed pursuant to this article, the community development director may require the applicant for the building permit to enter into a contract to pay the fees within the time period specified in this section, which will constitute a lien on the property as further detailed in Section 66007 of the Government Code.

E. In no event may a city official issue a certificate of occupancy, or certify a final inspection, as the case may be, for a development which has not paid a required development impact fee. (Ord. 777, § 2).

**10.05.3140 Authority for additional mitigation.**

The development impact fee collected pursuant to this article is not intended to replace, satisfy the need for or limit any requirements for the mitigation of impacts which are not specifically identified in the resolution imposing the

fee, which may result from a development project or which are imposed upon development projects as part of the development review process. (Ord. 777, § 2).

**10.05.3145 Fee credits.**

A. Applicant Construction of Facilities.

1. In-Lieu Fee Credits Due.

a. The community development director or designee may adjust the fee imposed pursuant to this article in consideration of certain facilities constructed or paid for by the applicant. At the discretion of the community development director or designee, an applicant may be entitled to a credit for the value of such facilities to the extent they are identified in the resolution imposing the fee and the applicant: (i) constructs the facilities, (ii) finances the facilities by cash or pays the assessments of an assessment district or participates in the formation of a community facilities district, or (iii) a combination of the above.

b. An amount of in-lieu credit that is greater than the fee required under this article may be reserved and credited toward the fee of any subsequent phases of the same development, if determined appropriate by the community development director or designee. The community development director or designee may set a time limit for reservation of the credit.

2. No In-Lieu Fee Credits Due for Site-Related Improvements. Credit shall not be given for site-related improvements, including, but not limited to, traffic signals, right-of-way dedications, or providing paved access to the development, which are specifically required by the development project in order to serve it and which do not constitute facilities.

3. Determination of Credit. The community development director or designee shall determine whether facilities are eligible for credit or reimbursement. The applicant seeking credit and/or reimbursement for construction of the facilities, or dedication of land or rights-of-way, shall submit such documentation, including, without limitation, engineering drawings, specifications, and construction cost estimates, and utilize such methods as may be appropriate and acceptable to the community development director or designee to support the request for credit or reimbursement. The community development director or designee shall determine credit for construction of the facilities based upon either these cost estimates or upon alternative engineering criteria and construction cost estimates if the director determines that such estimates submitted by the applicant are either unreliable or inaccurate.

4. Time for Making Claim for Credit. Any claim for credit must be made no later than the application for a building permit. Any claim not so made shall be deemed waived.

5. Transferability of Credit – Council Approval. Credits shall not be transferable from one development project to another without the approval of the city council.

B. Appeal of Determinations of Community Development Director. Determinations made by the community development director or designee pursuant to the provisions of this section may be appealed to the city council by filing a written request with the city manager within ten days of the determination of the community development director or designee, together with the applicable fee established by resolution of the city council. (Ord. 777, § 2).

**10.05.3150 Appeals and refunds.**

A. An applicant for a development project may file a written appeal regarding the imposition and/or calculation of the fee pursuant to the procedures set forth in MMC 10.05.1850. Unless expressly specified by the city council, the applicability of the decision in any appeal is limited to the project at issue.

B. An applicant for a development project may request a refund of a fee paid pursuant to the procedures set forth in MMC 10.05.1855. (Ord. 777, § 2).

**10.05.3155 Accumulation and use of funds.**

A. Revenues collected from development impact fees shall be used for the purpose of (1) paying the actual or estimated costs of constructing and/or improving the facilities specified in the resolution imposing the fee, including

any required acquisition of land or rights-of-way therefor; (2) reimbursing the city for the development project's share of those facilities specified in the resolution imposing the fee already constructed by the city or to reimburse the city for costs advanced, including, without limitation, administrative costs and costs of financing incurred to construct specific facilities; (3) reimbursing other developers who have constructed facilities specified in the resolution imposing the fee in lieu of payment of impact fees, where the scope of those facilities exceeded that needed to mitigate the impact of the applicant's development project; or (4) paying costs required for the administration of this article, including, without limitation, reasonable costs of outside consultant studies related thereto, costs of program development, and legal costs.

B. The city shall deposit, invest, account for, and expend the revenues from the development impact fees in accordance with the Mitigation Fee Act. (Ord. 777, § 2).

**10.05.3160 Review of fee.**

A. For each fee imposed pursuant to this article, no later than one hundred eighty days following the end of the city's fiscal year, the city manager must prepare a report to the city council ("report") at a regularly scheduled public meeting, in a form compliant with the Mitigation Fee Act, which must include the total amount of fees collected, the facilities constructed, and the facilities to be constructed.

B. Every fifth fiscal year following the first deposit of fees collected pursuant to this article, the city council shall do the following based on the report with respect to any fees remaining unexpended, whether committed or uncommitted: (1) identify the purpose to which the fee is to be put; (2) demonstrate a reasonable relationship between the fee and the purpose for which it was charged; (3) identify all sources and amounts of funding anticipated to complete financing the facilities; and (4) designate the approximate dates on which such funding is expected to be deposited into the appropriate fund. The unexpended portion of the fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to this section shall be refunded to the then current record owner or owners of lots or units of the development project on a prorated basis where required by the Mitigation Fee Act. (Ord. 777, § 2).

**10.05.3170 Specific plan reimbursement fees.**

A. Authorization and Purpose. For each specific plan or amendment to an existing specific plan, the city council may impose fees on subsequent applicants for governmental approvals under that specific plan or amendment, in accordance with the procedures set forth in Sections 66016-19 and 65456 of the Government Code. The purpose of the fee is to ensure that persons who benefit from the specific plan share in the costs of developing and administering the specific plan, which result in savings to them by reducing the cost of documenting environmental consequences and advocating changed land uses which may be authorized pursuant to the specific plan, and to reimburse the city for its costs incurred in the preparation, adoption, amendment, and administration of the specific plan.

B. Amount of Fee. The reimbursement fees must be based on documented, city-approved costs incurred in the preparation, adoption, amendment, and administration of a specific plan, including the preliminary application and costs incurred to achieve compliance with the California Environmental Quality Act. The city council may establish and amend the amount of the fees by resolution from time to time to account for the ongoing costs of administering the plan.

C. Fee Schedule. The reimbursement fees imposed on each applicant must be a prorated amount in accordance with the applicant's relative benefit derived from the specific plan for which the fee is imposed, as nearly as can be estimated, unless otherwise stated in Government Code Section 65456, as may be amended from time to time.

D. Payment of Fee. Unless otherwise stated in the adopting resolution, reimbursement fees are levied on a per parcel basis with the entire reimbursement fee for a particular parcel due prior to the approval of the first governmental approvals required to be consistent with the specific plan on the parcel for which the fee is imposed. The reimbursement fee for a given specific plan or amendment is applicable only once to any particular parcel.

E. Use of Funds. All reimbursement fees collected for a particular plan, and any interest accrued thereon, must be placed in a separate fund and may only be used for the purpose of the fee. Parties who previously paid for the costs of preparation, adoption, amendment, and administration of a specific plan, including the preliminary application

and costs incurred to achieve compliance with the California Environmental Quality Act, will be reimbursed for the fair share of their costs. The adopting resolution will determine the method for the allocation of the fee.

F. Appeals. An applicant for a development project may file a written appeal regarding the imposition and/or calculation of the fee pursuant to the procedures set forth in MMC 10.05.1850. Unless expressly specified by the city council, the applicability of the decision in any appeal is limited to the project at issue.

G. Refunds. No applicant is entitled to a refund of the fee collected if, for any reason, the development on the parcel subject to the fee does not proceed.

H. Statute of Limitations. Except as provided in Government Code Section 66020 or in the adopting resolution, any judicial action or proceeding to attack, review, set aside, void or annul a fee adopted pursuant to this section must be commenced within one hundred twenty days of the adoption of the adopting resolution. (Ord. 784, § 1).

## Article XXXII. Accessory Dwelling Units

### 10.05.3200 Definitions.

A. "Accessory dwelling unit" or "ADU" means an attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary dwelling. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel that the single-family or multifamily dwelling is or will be situated. "Accessory dwelling unit" includes an efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code, or a manufactured home, as defined in Section 18007 of the California Health and Safety Code. An accessory dwelling unit is not an accessory structure, as defined in MMC 10.05.0200, nor is it subject to the requirements of Article XX of this chapter. Notwithstanding the forgoing sentence, an accessory structure, as defined in MMC 10.05.0200 may be converted into an accessory dwelling unit or a portion of an accessory dwelling unit in compliance with the requirements of this article.

B. "Junior accessory dwelling unit" or "JADU" means a unit that is no more than five hundred square feet in size and contained entirely within a single-family dwelling or attached garage. A junior accessory dwelling unit shall contain at least an efficiency kitchen that includes a cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the junior accessory dwelling unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure. A junior accessory dwelling unit is not an accessory structure, as defined in MMC 10.05.0200, nor is it subject to the requirements of Article XX of this chapter.

C. "Primary dwelling" or "primary dwelling unit" means a building designed and used exclusively for residential occupancy and which, at a minimum, contains one kitchen, bathroom facilities, and sleeping quarters. For purposes of this article, the single-family or multifamily residence in which an accessory dwelling unit or junior accessory dwelling unit is located within, attached to, or detached from is considered the primary dwelling. (Ord. 782, § 1).

### 10.05.3210 Purpose and applicability.

A. The purpose of this article is to provide for accessory dwelling units and junior accessory dwelling units in accordance with applicable state law.

B. In cases of conflict between this article and any other provision of this title, the provisions of this article shall prevail. To the extent that any provision of this article is in conflict with state law, the applicable provision of state law shall control, but all other provisions of this article shall remain in full force and effect. (Ord. 782, § 1).

### 10.05.3220 Applications and processing.

A. A permit application to create a junior accessory dwelling unit or an accessory dwelling unit shall be ministerially considered and approved, without discretionary review or a hearing, within sixty days of receipt of a complete application that meets the requirements of this article if there is an existing single-family or multifamily dwelling on the lot. Incomplete applications will be returned with an explanation of the additional information that is required.

B. Notwithstanding subsection A of this section, if the permit application to create a junior accessory dwelling unit or an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the application for the junior accessory dwelling unit or accessory dwelling unit shall not be acted upon until the application for the new single-family dwelling is approved. Thereafter, the permit application for the junior accessory dwelling unit or accessory dwelling unit shall be ministerially considered and approved, without discretionary review or a hearing, within sixty days of receipt of a complete application that meets the requirements of this article. Occupancy of the junior accessory dwelling unit or accessory dwelling unit shall not be allowed until the city approves occupancy of the single-family dwelling.

C. All permit applications for junior accessory dwelling units or accessory dwelling units shall be accompanied by an application fee.

D. All junior accessory dwelling units and accessory dwelling units are subject to applicable city building inspection fees and permit fees. (Ord. 782, § 1).

**10.05.3230 Locations allowed.**

A. Accessory dwelling units are permitted uses in all areas zoned to allow single-family or multifamily dwelling residential use.

B. Junior accessory dwelling units may be developed on any legally created lot zoned to allow single-family residential use and shall be located within the walls of the existing or proposed primary dwelling.

C. Accessory dwelling units may be located in any of the following places on a legally created lot that is zoned to allow single-family or multifamily dwelling residential use and contains a proposed or existing primary dwelling:

1. Attached to an existing or proposed primary dwelling.

2. Located within the walls of an existing or proposed primary dwelling.

3. Located within, or attached to, an existing accessory structure, as defined in MMC 10.05.0200.

4. Detached from an existing or proposed primary dwelling.

5. On a lot with an existing multifamily dwelling structure, an attached accessory dwelling unit is permitted within the portions of the existing multifamily dwelling structure(s) that are not used as livable space, including, without limitation, storage rooms, boiler rooms, passageways, attics, basements, or garages; provided, that the accessory dwelling unit complies with the California Building Standards Code as set forth in MMC Title 9 for dwellings. The number of attached accessory dwelling units permitted on a lot with an existing multifamily dwelling structure shall be at least one and up to twenty-five percent of the existing multifamily dwelling units on the lot.

6. On a lot with an existing multifamily dwelling structure, up to two detached accessory dwelling units are permitted; provided, that the accessory dwelling structures' heights do not exceed sixteen feet and four-foot side and rear yard setbacks are maintained.

D. An accessory dwelling unit may be allowed in conjunction with a junior accessory dwelling unit on a lot with an existing or proposed single-family residence when the requirements of this article are met.

E. Accessory dwelling units or junior accessory dwelling units cannot be constructed on any easements located on the lot. (Ord. 782, § 1).

**10.05.3240 General requirements.**

A. Junior Accessory Dwelling Units.

1. The number of junior accessory dwelling units on lots zoned for single-family residential use is limited to one per lot with a proposed or existing single-family residence.

2. Owner Occupancy. Owner occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted is required. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

3. Junior accessory dwelling units shall not be sold separately from the primary dwelling.

4. Junior accessory dwelling units may be rented independently of the primary dwelling.

5. Junior accessory dwelling units may not be rented for fewer than thirty consecutive calendar days. Junior accessory dwelling units may not be used as short-term residential rentals pursuant to the Short-Term Residential Rental Ordinance in Chapter 7.30 MMC.

6. Prior to issuance of a building permit for a junior accessory dwelling unit, the owner shall record a deed restriction, which shall run with the land, and be in a form prescribed by the city attorney, filed with the community development department, and contain the following:

a. A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers; and

b. A restriction on the size and attributes of the junior accessory dwelling unit consistent with this article.

B. Accessory Dwelling Units.

1. The number of accessory dwelling units on lots zoned for single-family residential use is limited to one per lot.

2. Accessory dwelling units shall not be sold separately from the primary residence, except where permitted by Section 65852.26 of the California Government Code, as may be amended.

3. Accessory dwelling units may be rented independently of the primary dwelling.

4. Accessory dwelling units may not be rented for fewer than thirty consecutive calendar days. Accessory dwelling units may not be used as short-term residential rentals pursuant to the Short-Term Residential Rental Ordinance in Chapter 7.30 MMC.

5. For applications received prior to January 1, 2025, there is no requirement for a legal owner of the parcel to reside in either the primary dwelling or the accessory dwelling unit on the parcel. (Ord. 782, § 1).

**10.05.3250 Development standards.**

A. Junior accessory dwelling units and accessory dwelling units shall comply with all applicable building code requirements for dwellings. In no event will an accessory dwelling unit or junior accessory dwelling unit be required to provide fire sprinklers if fire sprinklers are not required for the primary dwelling.

B. All development standards contained in the underlying zoning district shall apply to junior accessory dwelling units and accessory dwelling units unless they are inconsistent with the provisions of this article, in which case the development standards of this article shall apply.

C. The development standards contained in this article will be waived to the extent necessary to ministerially approve accessory dwelling units and junior accessory dwelling units in accordance with Government Code Section 65852.2(e)(1).

D. Junior Accessory Dwelling Units.

1. General Requirements. No junior accessory dwelling unit shall be smaller than the size required to allow an efficiency unit pursuant to Health and Safety Code Section 17958.1, as may be amended. A junior accessory

dwelling unit may, but is not required to, include separate sanitation facilities. If separate sanitation facilities are not provided, the junior accessory dwelling unit shall share sanitation facilities with the primary residence.

2. Height. Maximum height of the junior accessory dwelling unit shall be the same as the height requirements for a single-family structure.

3. Floor Area and Kitchen. A junior accessory dwelling unit shall not exceed five hundred square feet in size, shall be contained entirely within the walls of a single-family residence, and shall contain at least an efficiency kitchen that includes a cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the junior accessory dwelling unit.

4. Entrances. A junior accessory dwelling unit shall have a separate entrance from the primary dwelling unit.

5. Balconies and Decks. No balcony, deck or open stair landing of a junior accessory dwelling unit that faces the rear or side property line nearest the junior accessory dwelling unit shall be permitted, unless needed to allow ingress and egress. Exceptions to this development standard may be granted by the planning commission in the manner provided in Article XXV of this chapter.

6. Parking. Junior accessory dwelling units shall not be required to provide for any additional parking or make up for any parking displaced by their construction, including conversion of all or part of an existing garage.

E. Accessory Dwelling Units.

1. General Requirements. No accessory dwelling unit shall be smaller than the size required to allow an efficiency unit pursuant to Health and Safety Code Section 17958.1, as may be amended.

2. Height and Stories.

a. The maximum height of an attached accessory dwelling unit shall be sixteen feet, measured from finished grade to roof ridge, from all corners of the structure. The maximum plate height of detached accessory dwelling units shall be nine feet. An attached accessory dwelling unit shall not contain more than one story.

b. The maximum height of a detached accessory dwelling unit shall be sixteen feet, measured from finished grade to roof ridge, from all corners of the structure. The maximum plate height of detached accessory dwelling units shall be nine feet. A detached accessory dwelling unit shall not contain more than one story.

3. Floor Area. The total floor area of an attached or detached accessory dwelling unit shall be a minimum of one hundred fifty square feet and shall not exceed eight hundred fifty square feet for an accessory dwelling unit that contains a studio or one bedroom or one thousand square feet for an accessory dwelling unit that contains more than one bedroom. The total floor area of an accessory dwelling unit attached to an existing primary dwelling shall not exceed fifty percent of the floor area of the existing primary dwelling (garage and shed areas excluded).

4. Entrance. An accessory dwelling unit shall have a separate entrance from the primary dwelling unit.

5. Setbacks. Except as specified below, an accessory dwelling unit shall be required to comply with the setback requirements of the zone in which the unit is to be located.

a. Conversions. No setback is required for an existing legally permitted living area or accessory structure converted to an accessory dwelling unit, or for a new accessory dwelling unit constructed in the same location and built to the same dimensions as an existing legally permitted structure.

b. For all new attached or detached accessory dwelling units, a minimum setback of four feet is required from the rear and side property lines. The minimum separation from an accessory dwelling unit to

the existing or proposed single-family, duplex or triplex, multifamily building, or other accessory structure shall be five feet. Detached accessory dwelling units shall be located within the rear half of the lot, unless such a requirement would preclude the construction of a detached accessory dwelling unit that is up to eight hundred square feet and up to sixteen feet in height with four-foot side and rear yard setbacks.

6. Architectural Compatibility. An accessory dwelling unit, whether attached or detached, shall be compatible with the architectural style, exterior materials, and colors of the existing or proposed primary dwelling unit, and the quality of the materials shall be the same or exceed that of the primary dwelling. The following architectural elements are components that will be considered in determining compatibility with the single-family dwelling unit: roof material, roof slope, exterior material, exterior color, window type, window design, window color, and window recess. Accessory dwelling units shall be consistent with applicable residential design standards. The appearance of the single-family residence shall remain that of a single-family residence, as determined by the community development director or his/her designee.

7. Balconies and Decks. No balcony, deck or open stair landing of an accessory dwelling unit that faces the rear or side property line nearest the accessory dwelling unit shall be permitted, unless needed to allow ingress and egress. Exceptions to this development standard may be granted by the planning commission in the manner provided in Article XXV of this chapter.

8. Parking. Parking for an accessory dwelling unit shall be as follows:

a. Except as provided in subsection (E)(8)(b) of this section, there must be one parking space per accessory dwelling unit. Accessory dwelling unit parking requirements are in addition to the parking required for the primary dwelling as provided in MMC 10.05.2100. Parking spaces for an accessory dwelling unit may be provided as tandem parking on a driveway or in setback areas, unless the community development director makes specific findings that tandem parking or parking in setback areas is not feasible because of specific site or regional topographical conditions and/or fire and life safety conditions.

b. No parking may be required for an accessory dwelling unit if any of the following apply:

i. The accessory dwelling unit is part of the proposed or existing primary dwelling or an accessory structure.

ii. The accessory dwelling unit is located within one-half mile walking distance of public transit. For purposes of this section, “public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

iii. The accessory dwelling unit is located within an architecturally and historically significant district.

iv. When on-street parking permits are required but not offered to the occupants of the accessory dwelling unit.

v. When a designated parking, pick-up or drop-off area for one or more car-share vehicles is located within one block of the accessory dwelling unit.

c. When a garage, carport, or covered parking structure is demolished to construct an accessory dwelling unit within the demolished structure’s footprint, or converted to an accessory dwelling unit, such off-street parking spaces need not be replaced, including the parking required pursuant to subsection (E)(8)(a) of this section. (Ord. 782, § 1).

**10.05.3260 Utilities and impact fees.**

A. No accessory dwelling unit shall be permitted if the public works department determines that there is a lack of adequate water or sewer service to the property.

B. Except as provided in subsection C of this section, an accessory dwelling unit may be required to have a new or separate utility connection, including a separate sewer lateral, between the accessory dwelling unit and the utility.

A connection fee or capacity charge may be charged that is proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This connection fee or capacity charge shall not exceed the reasonable cost of providing this service.

C. The following are exempt from any requirement to install a new or separate utility connection and to pay any associated connection fees or capacity charges:

1. A junior accessory dwelling unit that complies with this article.

2. An accessory dwelling unit located within the proposed space of a single-family primary dwelling or existing space of a single-family primary dwelling or accessory structure, unless the accessory dwelling unit was constructed with a new single-family home.

D. All utility extensions shall be placed underground.

E. Impact Fees.

1. No impact fees may be imposed on a junior accessory dwelling unit or accessory dwelling unit that is less than seven hundred fifty square feet in size. For purposes of this section, "impact fees" include the fees specified in Sections 66000 and 66477 of the Government Code, but do not include utility connection fees or capacity charges.

2. For accessory dwelling units that have a floor area of seven hundred fifty square feet or more, impact fees shall be charged proportionately in relation to the square footage of the primary dwelling unit. (Ord. 782, § 1).

**10.05.3270 Delay of enforcement of building standards.**

A. For purposes of this section, "building standards" refers to those provisions of the State Building Standards Code enforced by the city pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the California Health and Safety Code.

B. Until January 1, 2030, any notice to correct a violation of any provision of any building standard applicable to an accessory dwelling unit that is issued to the owner of an accessory dwelling unit built prior to the adoption of the ordinance codified in this article shall include a statement that the owner has a right to request a delay in enforcement of the building standard for an accessory dwelling unit pursuant to this section.

C. The owner of an accessory dwelling unit that was built prior to the adoption of the ordinance codified in this article who receives a notice to correct a violation of a building standard may submit an application, in a form prescribed by the city, to the building official requesting enforcement of the violation be delayed for up to five years. The application will be granted if the building official determines that correcting the violation is not necessary to protect health and safety. In making this determination, the building official shall consult other regulations of the State Fire Marshal pursuant to Section 13146 of the California Health and Safety Code.

D. No applications for delayed enforcement of building standards violations pursuant to this section shall be approved on or after January 1, 2030. However, any delay that was approved by the city before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the approval of the application pursuant to this section.

E. This section shall remain in effect until January 1, 2035, and as of that date is repealed. (Ord. 782, § 1).

## Article XXXIII. Affordable Housing On-Site and In-Lieu Fee Requirements

**10.05.3300 Purpose and intent.**

The purpose of this article is to establish requirements for the provision of inclusionary affordable housing designated as deed restricted for very low, low, and moderate income households in conjunction with new development projects in the city of Millbrae. These requirements will mitigate the impacts of residential projects on the need for affordable housing by increasing the supply of affordable housing to a broad range of households with

varying income levels within the city and will implement the city of Millbrae housing element. This article will also establish the requirement for an affordable housing in-lieu fee on residential development projects consisting of four to nine units, or when the calculation of the affordable units in development projects of ten or more units results in a fractional unit of less than one-half. The fee is to be contributed to the city's affordable housing fund and used to fund the development of affordable housing and related programs in the city of Millbrae. (Ord. 787, § 1).

**10.05.3310 Definitions.**

A. "Affordable housing agreement" means the agreement between the city and an applicant governing how the applicant will comply with the requirements of this article and the Affordable Housing Requirements and Program Regulations adopted by the city council.

B. "Affordable housing fund" means the fund designated by the city to maintain and account for all monies received pursuant to this article.

C. "Affordable housing in-lieu fees" means the fee paid by developers of residential development projects to mitigate the impacts that such developments have on the demand for affordable housing, which may be paid for fractional unit requirements and by developers of residential development projects with four to nine units.

D. "Affordable Housing Requirements and Program Regulations" means the requirements adopted by the city council for implementation and administration of this article.

E. "Affordable rent" means the total monthly housing expenses for a rental affordable unit not exceeding the rents specified by Section 50053 of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910 through 6924. The city may permit alternative criteria, when necessary, to be consistent with pertinent state and federal statutes and regulations governing publicly assisted rental housing. As used in this article, "affordable rent" shall include the total of monthly payments by the tenant for all of the following:

1. Use and occupancy of the affordable unit and land and all facilities associated with the affordable unit, including but not limited to parking (whether unbundled or not), bicycle storage, storage lockers, and use of all common areas;

2. Any additional separately charged fees or service charges assessed by the owner, other than security deposits;

3. An allowance for utilities paid by the tenant as established by the San Mateo County Housing Authority which may be updated from time to time, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuel, but not telephone service, cable TV or Wi-Fi/internet; and

4. Any other interest, taxes, fees or charges for use of the land or affordable unit or associated facilities and assessed by a public or private entity other than the owner, and paid by the tenant.

F. "Affordable ownership cost" means the maximum purchase price that will be affordable to the specified households at the specified income levels, calculated in accordance with Health and Safety Code Section 50052.5. The affordable sales price shall include a reasonable down payment, and monthly housing payments (including interest, principal, mortgage insurance, property taxes, homeowners insurance, homeowners' association dues, property maintenance and repairs, and a reasonable allowance for utilities), all as determined by the city.

G. "Affordable unit" means a residential dwelling unit in a residential development project that is occupied by, or available to, moderate, low, very low or extremely low income households at an affordable rent or an affordable ownership cost as required by this article.

H. "Area median income" means the median income applicable to San Mateo County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the city of Millbrae in the event that such median income figures are no longer published periodically in the California Code of Regulations.

I. "Building permit" includes full structural building permits as well as other related permits such as grading, shoring, garage or foundation-only permits.

J. “Common ownership or control” means property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent or more of the interest in the property.

K. “Decision-making authority” means the city staff person or body authorized to approve or deny an application for a planning entitlement or building permit for a development project.

L. “Developer” means the person(s) or legal entity(ies), who also may be the property owner(s), who is seeking development project entitlements or permits from the city or developing a particular development project in the city.

M. “Extremely low income households” means households with incomes no greater than the maximum income for extremely low income households applicable to San Mateo County as defined in California Health and Safety Code Section 50106, published annually by the city for each household size, by the California Department of Housing and Community Development (HCD) in California Code of Regulations Title 25, Section 6932 (or its successor provision).

N. “For-sale unit” means a residential dwelling unit that may be sold individually in conformance with the Subdivision Map Act including condominiums. For-sale units also include units that are converted from rental units to for-sale units.

O. “Household” means one person living alone or two or more persons sharing residency in one dwelling unit.

P. “Inclusionary unit” is an affordable unit required by this article.

Q. “Low income households” means households with incomes no greater than the maximum income for low income households applicable to San Mateo County as defined in California Health and Safety Section 50079.5 and published annually for each household size, by the California Department of Housing and Community Development (HCD) in California Code of Regulations Title 25, Section 6932 (or its successor provision).

R. “Market rate unit” means a dwelling unit in a residential development project which is not an affordable unit.

S. “Moderate income households” means households with incomes no greater than the maximum income limits for moderate income households in San Mateo County, as defined in California Health and Safety Code Section 50093 and published annually for each household size by the California Department of Housing and Community Development (HCD) in California Code of Regulations Title 25, Section 6932 (or its successor provision).

T. “Planning entitlement” means any discretionary approval of a development project, including, without limitation, a general or specific plan adoption or amendment, rezoning, tentative subdivision map, parcel map, conditional use permit, variances, or design review.

U. “Rental unit” means a dwelling unit that is intended to be offered for rent or lease and that cannot be sold individually in conformance with the Subdivision Map Act.

V. “Residential development project” means an application for a planning permit or building permit at one location to create one or more additional dwelling units, convert nonresidential uses to dwelling units, subdivide a parcel to create one or more separately transferable parcels intended for residential development, or implement a condominium conversion, including development constructed at one time and in phases. “One location” includes all adjacent parcels of land under common ownership or control, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the developer.

W. “Very low income households” means households with incomes no greater than the maximum income limit for very low income households applicable to San Mateo County, as defined in California Health and Safety Code Section 50105 and published annually for each household size by the California Department of Housing and Community Development (HCD) in California Code of Regulations Title 25, Section 6932 (or its successor provision). (Ord. 787, § 1).

**10.05.3320 Administration.**

A. The city council shall adopt and may amend from time to time by resolution the Affordable Housing Requirements and Program Regulations consistent with the provisions of this article and the housing element for the purpose of carrying out the administration of this article. A copy of the Affordable Housing Requirements and Program Regulations shall be on file and available for public examination in the office of the city clerk and posted on the city's website.

B. The community development director or designee is responsible for administering this article. As part of the administration of this article, the director may:

1. Interpret the provisions of this article and the Affordable Housing Requirements and Program Regulations.

2. Develop, publish and from time to time update or amend operational procedures and requirements, such as rules for determining the number of required inclusionary units, pricing (based on county and state guidelines), tenant eligibility, occupancy requirements, application processes, wait list management, income verification requirements, annual recertification, rejection of ineligible applicants and eligibility termination. (Ord. 787, § 1).

**10.05.3330 Exemptions.**

The following residential development projects are exempt from the provisions of this article:

A. Residential development projects which are developed in accordance with the terms of a development agreement adopted by ordinance pursuant to the authority and provisions of California Government Code Section 65864 et seq., and that is executed prior to the effective date of the ordinance codified in this chapter; provided, that such residential development projects shall comply with any affordable housing requirements included in the development agreement or any predecessor ordinance in effect on the date the development agreement was executed.

B. Residential development projects exempted by California Government Code Section 66474.2 or 66498.1; provided, that such residential development projects shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was deemed substantially complete.

C. Residential development projects exempted by California Government Code Section 65589.5(o) or successor provision; provided, that such residential developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date that a preliminary application for the development containing all of the information required by Government Code Section 65941.1 was submitted to the city.

D. Any structure proposed to repair or replace a building that was damaged or destroyed by fire or other calamity, so long as the total number of units, square footage and land use of the building remains the same, and construction of the replacement building begins within one year of the damage's occurrence.

E. Residential development project consisting of three or fewer net new residential dwelling units, accessory dwelling units, or junior accessory dwelling units.

F. Residential development projects for which a complete city of Millbrae housing development preliminary application has been filed no later than the effective date of this article; provided, that such residential developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was deemed complete.

G. Residential development projects for which an application for a city of Millbrae housing development planning entitlement has been deemed complete no later than the effective date of this article; provided, that such residential developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was deemed complete.

H. Residential development projects not subject to a planning entitlement where a complete and adequate building permit application for the vertical (including the "structural" or "above ground" construction) has been submitted the city no later than the effective date of this article. (Ord. 787, § 1).

**10.05.3340 Inclusionary housing requirements.**

A. Developers of residential development projects must comply with the requirements set forth in this article and in the Affordable Housing Requirements and Program Regulations. Residential development projects (including mixed-use projects containing residential units) of ten or more units shall provide on-site inclusionary units in compliance with the percentages and specific income levels contained in the Affordable Housing Requirements and Program Regulations, unless otherwise exempted under this article or in the Affordable Housing Requirements and Program Regulations. Residential development projects comprised of rental units may utilize alternative means of compliance as provided in the Affordable Housing Requirements and Program Regulations. To the extent permitted by law, the city's objective is to obtain actual inclusionary units within each development rather than off-site units or land dedication.

B. Inclusionary units that satisfy the requirements of this article may be counted toward the number of affordable units required to qualify for a density bonus under California Government Code Sections 65915 through 65918. To be eligible, the affordable units shall meet all of the applicable requirements of California Government Code Section 65915 and the requirements for inclusionary units adopted in this article and in the Affordable Housing Requirements and Program Regulations.

C. An affordable housing agreement acceptable to the city attorney shall be recorded against the residential development project before approval of any final or parcel map, or issuance of any building permit for the residential development project, whichever occurs first. The affordable housing agreement shall comply with the Affordable Housing Requirements and Program Regulations. (Ord. 787, § 1).

**10.05.3350 Requirements for affordable housing in-lieu fee.**

A. An affordable housing in-lieu fee to be paid to the city's affordable housing fund may be imposed on residential development projects (including mixed-use projects containing residential units) as established by resolution adopted by the city council, and may be amended from time to time by the council.

B. Payment of the affordable housing in-lieu fee shall be added as a condition of approval for any residential development projects required to pay the affordable housing in-lieu fee.

C. For mixed-use projects, any applicable affordable housing in-lieu fee will be imposed on that portion of the project that consists of new residential development; the affordable housing commercial linkage impact fee in Article XXXIV of this chapter will apply to the commercial portion of a mixed-use project.

D. Timing of Payment. All fees shall be paid prior to issuance of the first building permit for the project. The fees shall be calculated based on the fee in effect as established by city council resolution at the time the fee is paid, unless otherwise required by state law. A developer may pay all or a portion of the fee owed at any time prior to issuance of the building permit, at the rate in effect at the time payment is made. For phased projects, the amount due shall be paid on a pro rata basis based on the ratio of the square footage of the phase being constructed to the entire square footage of the approved development, and each portion shall be paid prior to the issuance of any building permit for each phase.

E. On July 1st of each year after the enactment of the affordable housing in-lieu fee, the fee shall be automatically adjusted in accordance with the change in the Engineering Construction Cost Index for San Francisco, California, as most recently published by Engineering News-Record, for the elapsed time period from the previous July 1st. (Ord. 787, § 1).

**10.05.3360 Affordable housing fund.**

An affordable housing fund is established to receive all housing impact fees and other funds collected under this article and Article XXXIV of this chapter which shall be deposited into the city's affordable housing fund.

A. All affordable housing in-lieu fees collected under this article shall be deposited into the city's affordable housing fund. The monies in the affordable housing fund and all earnings from investment of the moneys in the

affordable housing fund shall be expended exclusively to increase and improve the supply of housing affordable to extremely low income, very low income, lower income, and moderate income households in the city, consistent with the goals and policies contained in the city's housing element and Affordable Housing Requirements and Program Regulations, and for administration and compliance monitoring of the affordable housing program.

B. The fund shall be administered by the finance director, who may develop procedures to implement the purposes of the fund consistent with the requirements of this article and subject to any adopted budget of the city and generally applicable accounting and procurement processes. (Ord. 787, § 1).

**10.05.3370 Waiver.**

A. As part of an application for a planning entitlement, a developer may request that the requirements of this article be waived or modified by the decision-making body, based upon a showing that applying the requirements of this article would result in an unconstitutional taking of property or would result in any other unconstitutional result.

1. Any request for a waiver or modification of the provisions of this article shall be submitted concurrently with the planning entitlement application(s). The developer shall set forth in detail, the factual and legal basis for the claim, including all supporting technical documentation.

2. Any request for a waiver or modification based on this section shall be reviewed and considered at the same time as the planning entitlement application(s). The city council may, from time to time, establish by resolution, a processing fee for review of any request for modification.

B. The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the city attorney, after the adoption of written findings based on legal analysis and the evidence. If a waiver or modification is granted, any change in the project shall invalidate the waiver or modification, and a new application shall be required for a waiver or modification pursuant to this section. (Ord. 787, § 1).

**10.05.3380 Enforcement.**

A. The city attorney is authorized to enforce the provisions of this article and all affordable housing agreements, regulatory agreements, and all other covenants or restrictions placed on inclusionary units, by civil action and any other proceeding or method permitted by law. Failure or refusal to comply with the Affordable Housing Requirements and Program Regulations promulgated under this article shall be deemed a violation of this article.

B. Failure of any official or agency to fulfill the requirements of this article shall not excuse any developer or owner from the requirements of this article. No permit, license, map, or other approval or entitlement for a residential project shall be issued, including without limitation, a final inspection or certificate of occupancy, until all applicable requirements of this section have been satisfied.

C. The remedies provided for in this article shall be cumulative and not exclusive and shall not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity. (Ord. 787, § 1).

## Article XXXIV. Affordable Housing Commercial Linkage Impact Fee

**10.05.3400 Purpose and intent.**

The purpose of this article is to establish requirements for an affordable housing commercial linkage impact fee applicable to new commercial development projects to address the impacts of their projects on the demand for affordable housing by contributing to the supply of housing for households with extremely low, very low, low, and moderate incomes. These requirements will increase the supply of affordable housing to a broad range of households with varying income levels within the city and will help implement the city of Millbrae housing element by creating a fiscal mechanism to meet the demand for additional affordable housing created by new commercial development. (Ord. 787, § 1).

**10.05.3410 Definitions.**

A. "Affordable housing commercial linkage impact fee" means the fee paid by developers of commercial development projects to mitigate the impacts that such developments have on the demand for affordable housing in the city.

B. “Affordable housing fund” means the fund designated by the city to maintain and account for all monies received pursuant to this article.

C. “Affordable unit” means a residential dwelling unit in a residential development project or mixed-use development project that is occupied by, or available to, moderate, low, very low or extremely low income households at an affordable rent or an affordable ownership cost, as those terms are defined in and as required by Article XXXIII of this chapter.

D. “Building permit” includes full structural building permits as well as other related permits such as grading, shoring, garage or foundation-only permits.

E. “Commercial” includes nonresidential or nonpublic or non-quasi-public uses including but not limited to:

1. Hotel uses includes full-service hotels, limited-service hotels, motels, and other short-term lodging designed for stays of under thirty days.

2. Retail, restaurants and service uses including but not limited to retail stores, commercial recreation and entertainment uses, eating and drinking establishments, personal services such as nail salons and dry cleaners, fitness facilities, gyms, service stations, auto sales, and other stores.

3. Office uses including but not limited to a range of offices including general offices, and those specialized for accounting, medical, legal, life sciences, laboratory, technology, biotechnology, or research and development uses.

4. Other commercial uses determined to be sufficiently similar by the community development director pursuant to MMC 10.05.0400.

F. “Commercial development project” means an application for a planning permit or building permit that includes the new construction of gross square feet of space for commercial use or the conversion of residential use to commercial use. This includes mixed-use development projects which include both a commercial and a residential component. The conversion of an existing noncommercial space to commercial space is included.

G. “Decision-making authority” means the city staff person or body authorized to take final action, subject to appeal, on an application for a planning entitlement or building permit for a development project.

H. “Developer” means the person(s) or legal entity(ies), who also may be the property owner(s), who is seeking development project entitlements or permits from the city or developing a particular development project in the city.

I. “Planning entitlement” means any discretionary approval of a development project, including, without limitation, a general or specific plan adoption or amendment, rezoning, tentative subdivision map, parcel map, conditional use permit, variances, or design review. (Ord. 787, § 1).

**10.05.3420 Administration.**

A. The city council may adopt and may amend from time to time by resolution the affordable housing commercial linkage impact fees consistent with the provisions of this article. A copy of the affordable housing commercial linkage impact fees shall be on file and available for public examination in the office of the city clerk and posted on the city’s website.

B. The director of community development or their designee is responsible for administering this article and establishing rules and regulations for this purpose. All such rules and regulations must be in written form and posted on the city’s website or otherwise made publicly available. As part of the administration of this article, the director may interpret the provisions of this article. (Ord. 787, § 1).

**10.05.3430 Exemptions.**

The following commercial development projects are exempt from the provisions of this article:

A. City buildings and facilities and those public facilities entitled to an exemption under law.

B. Commercial development projects which are developed in accordance with the terms of a development agreement adopted by ordinance pursuant to the authority and provisions of California Government Code Section 65864 et seq., and that is executed prior to the effective date of the ordinance codified in this chapter; provided, that such commercial development projects shall comply with any affordable housing requirements included in the development agreement or any predecessor ordinance in effect on the date the development agreement was executed.

C. Commercial development projects exempted by California Government Code Section 66474.2 or 66498.1; provided, that such commercial development projects shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was deemed substantially complete.

D. Commercial development projects on property eligible for the California property tax welfare exemption that is (1) used exclusively for charitable purposes and (2) owned or held in trust by a nonprofit corporation operating for charitable purposes with a current tax-exempt letter from the Internal Revenue Service or the Franchise Tax Board.

E. Any structure proposed to repair or replace a commercial building that was damaged or destroyed by fire or other calamity, so long as the square footage and land use of the building remains the same, and construction of the replacement building begins within one year of the damage's occurrence.

F. Commercial development projects for which an application for a city of Millbrae planning entitlement has been deemed complete no later than the effective date of this article; provided, that such commercial developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was deemed complete.

G. Commercial development projects not subject to a planning entitlement where a complete and adequate building permit application for the vertical (including the "structural" or "above ground" construction) has been submitted to the city no later than the effective date of this article. (Ord. 787, § 1).

**10.05.3440 Requirements for affordable housing commercial linkage impact fee.**

A. An affordable housing commercial linkage impact fee to be paid to the city's affordable housing fund is hereby imposed on all commercial development projects, including mixed-use projects, regardless of zoning designation of the project site, unless otherwise exempted under this article or by resolution of the city council.

B. All affordable housing commercial linkage impact fees collected under this article shall be deposited into the city's affordable housing fund, which shall be established as provided in MMC 10.05.3360, Affordable housing fund.

C. Payment of the affordable housing commercial linkage impact fee shall be required as a condition of approval for all development projects subject to this article.

D. For mixed-use projects, the affordable housing commercial linkage impact fee is imposed on that portion of the project that consists of new commercial development; while the inclusionary unit requirement imposed by Article XXXIII of this chapter, including any applicable affordable housing in-lieu fees for residential projects, will apply to the residential portion of a mixed-use project.

E. The amount of the affordable housing commercial linkage impact fee, as further described in the fee resolution, is imposed on a per square foot basis for net new gross floor area, except for visitor accommodations, as defined in MMC 10.05.0410, where the fee is based on a per room basis. The formula below shall be used in calculating the amount of the commercial linkage fee:

1. All affordable housing commercial linkage impact fees for commercial development projects, including new construction and conversion of a residential use to a commercial use, shall be calculated using the gross floor area of net new nonresidential space as specified in MMC 10.05.0200, except for visitor accommodations where the fee is based on a per room basis, excluding structured or below ground parking and nonhabitable accessory structures.

2. In calculating the affordable housing commercial linkage impact fee, a credit shall be given for the square footage of commercial uses that were constructed with the benefit of city approvals and permits on the same parcel as the new commercial project and are demolished no more than one year prior to the issuance of a building permit for the new commercial development project.

F. All fees shall be paid prior to issuance of the first building permit for the project, at the rate in effect at the time payment is made. The fees shall be calculated based on the fee in effect as established by resolution adopted by the city council at the time the fee is paid. For phased projects, the amount due shall be paid on a pro rata basis across the entire square footage of the approved development, and each portion shall be paid prior to the issuance of any building permit for each phase.

G. On July 1st of each year after the enactment of the fees, the affordable housing commercial linkage impact fees shall be automatically adjusted in accordance with the change in the Engineering Construction Cost Index for San Francisco, California, as most recently published by Engineering News-Record, for the elapsed time period from the previous July 1st.

H. Area Standard Wage Agreement. Commercial development projects where the developer voluntarily enters into an area standard wage agreement to pay "area standard wages," which are defined as the general prevailing wage determinations for San Mateo County as made by the State of California Director of the Department of Industrial Relations, may be entitled to a partial credit of the applicable commercial linkage fee. The amount of any credit and terms of any agreement may be established by resolution of the city council. (Ord. 787, § 1).

**10.05.3450 Alternatives to the payment of the affordable housing commercial linkage impact fee.**

A. As an alternative to compliance with the basic provisions included in MMC 10.05.3440, developers of commercial development projects may propose the construction of affordable units on site or an alternative mitigation program proposed by the developer and the community development director, such as the provision of off-site affordable units, donation of land for the construction of affordable units, or purchase of existing units for conversion to affordable units.

1. The city council may adopt, by resolution, the percentage of affordable units needed to mitigate the impact of commercial development projects on the need for affordable housing.

2. Any affordable rental or for-sale units proposed as an alternative to the payment of the affordable housing commercial linkage fee shall be subject to the requirements described in Article XXXIII of this chapter and in the city's Affordable Housing Requirements and Program Regulations as adopted by resolution of the city council.

B. If the developer seeks an alternative to the payment of the affordable housing commercial linkage impact fee, then the application for the first approval of a commercial development project for which the alternative is sought shall include an affordable housing plan as specified in the Affordable Housing Requirements and Program Regulations that describes how the alternative will comply with the provisions of this article. No affordable housing plan is required if the developer proposes only to pay the affordable housing commercial linkage impact fee.

1. Development projects requesting an alternative to payment of the affordable housing commercial linkage impact fee require that an affordable housing plan be submitted in conformance with this article and the Affordable Housing Requirements and Program Regulations prior to the application being deemed complete.

2. The affordable housing plan shall be processed concurrently with all other permits required for the commercial development project. Before approving the affordable housing plan, the decision-making body shall find that the affordable housing plan conforms to this article and the Affordable Housing Requirements and Program Regulations. A condition shall be attached to the first approval of any commercial development project to require recordation of an affordable housing agreement, as described in Article XXXIII of this chapter, prior to the approval of any final or parcel map or building permit for the development project.

3. The approved affordable housing plan may be amended prior to the issuance of any building permit for the commercial development project. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance

with the original affordable housing plan and conditions of approval. Other modifications to the affordable housing plan shall be approved by the same body that approved the original affordable housing plan.

4. An affordable housing agreement, as described in Article XXXIII of this chapter, acceptable to the community development director or designee and city attorney, shall be recorded against the commercial development project prior to the approval of any final subdivision or parcel map or issuance of any building permit, whichever occurs first. The affordable housing agreement shall specify the number, type, location, size, and phasing of all affordable units, provisions for income certification, and screening of potential purchasers or renters of units, and resale control mechanisms, consistent with the approved affordable housing plan, as determined by the community development director or designee.

C. The decision-making body may approve, or conditionally approve, an affordable housing plan that proposes on-site construction of affordable units if the decision-making body determines, based on substantial evidence, that:

1. The proposed affordable units comply with the Affordable Housing Requirements and Program Regulations, including that the affordable units be made available for occupancy concurrently with the market rate units or occupancy of commercial use; and

2. The affordable units will mitigate the impact of the project on the need for affordable housing as adopted by city council resolution.

D. If a developer proposes off-site affordable housing units or any other alternative in the affordable housing plan, the decision-making body may approve such a proposal if it finds that the proposal satisfies all of the following conditions in addition to the conditions required under subsection C of this section:

1. Financing, or a viable financing plan, is in place for the proposed affordable units;

2. The proposed location is suitable for the proposed affordable housing, is consistent with the housing element, general plan, and zoning, and will not tend to cause or contribute to residential segregation; and

3. The off-site affordable units will be available for occupancy concurrently or prior to the commercial development project. (Ord. 787, § 1).

**10.05.3460 Impact fee waiver or modification.**

A. As part of an application for a planning entitlement, a developer may request that the requirements of this article be waived or modified by the decision-making body, based upon a showing that applying the requirements of this article would result in an unconstitutional taking of property or would result in any other unconstitutional result.

1. Any request for an impact fee waiver or modification shall be submitted concurrently with the development planning entitlement application(s). The developer shall set forth in detail, the factual and legal basis for the claim, including all supporting technical documentation.

2. Any request for a waiver or modification based on this section shall be reviewed and considered at the same time as the development planning entitlement application(s). The city council may, from time to time, establish by resolution, a processing fee for review of any request for modification.

The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the city attorney, after the adoption of written findings based on legal analysis and the evidence. If a waiver or modification is granted, any change in the project shall invalidate the waiver or modification, and a new application shall be required for a waiver or modification pursuant to this section. (Ord. 787, § 1).

**10.05.3470 Enforcement.**

A. Payment of the affordable housing commercial linkage impact fee is the obligation of the developer of a project. The city may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.

B. The city attorney shall be authorized to enforce the provisions of this article and any affordable housing agreements, and all other covenants or restrictions placed on affordable units, by civil action and any other proceeding or method permitted by law.

C. Failure of any official or agency to fulfill the requirements of this article shall not excuse any developer or owner from the requirements of this article. No permit, license, map, or other approval or entitlement for a commercial development project shall be issued, including, without limitation, a final inspection or certificate of occupancy, until all applicable requirements of this article have been satisfied.

D. The remedies provided for in this article shall be cumulative and not exclusive and shall not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity. (Ord. 787, § 1).