



# MEMORANDUM

Planning Department

**DATE:** March 9, 2020

**TO:** Ned Thomas, Planning Director

**FROM:** Lillian VanHua, Associate Planner

**SUBJECT:** Information regarding the Hillside Combining District – Site Development Standards Interpretation

The purpose of this memorandum is to clarify the most frequently requested exceptions to the Hillside Combining District related to the voter approved limitations.

The following ballot measures were passed in November 2016:

**Measure J:** Any amendments or modifications to the Hillside Ordinance or the land subject to the Hillside Ordinance, under the General Plan, would require voter approval until December 31, 2038.

**Measure K:** GP Guiding Principle 2.a-G-12 "No construction of any residential, commercial or industrial building or structure shall be allowed in any land designated on the General Plan Land Use Map as 'Parks and Open Space (POS)' unless the proposed construction is first approved by a two-thirds vote of the voters of the City at a general or special municipal election." And Policy No. 2.a.-I-2.3 "No land designated on the General Plan Land Use Map as 'Parks and Open Space' may be redesignated for any other land use unless the proposed redesignation of that land is first approved by a two-thirds vote of the voters of the City at a general or municipal election."

## **Types of Permits:**

**Use of a Planned Unit Development (PUD):** A PUD is a zoning classification that allows diversification in uses or development standards, while insuring substantial compliance to the District Regulations. Height limitations may not be amended by a PUD due to the explicit text related to height contained within the Hillside Combining District. Impervious Surface Area and Yard Requirements may be varied with a PUD if each of the required findings can be satisfied.

**Use of a Variance (MMC Section XI-10-57 Variances):** A Variance provides relief from the Zoning Ordinance development standards where such standards deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification due to special circumstances (including, but not limited to size, shape, topography, location or surroundings). A Variance may apply to all sections of the Zoning Ordinance, including the Hillside Combining District. However, height limitations may not be amended by a Variance due to the explicit text related to height contained within the Hillside Combining District. There are five findings, all of which are required for approval of a Variance.

## **Frequently Requested Exceptions to the "H" Development Standards and Staff Comments:**

- A. **Height Regulations** (Code Section 10-45-04-1). "Under no circumstances shall any main building on the west side of the crestline exceed a height of seventeen (17) feet and one (1) story (excluding basements) from the lowest finished grade to the highest ridgeline of the building."
- B. **Height Regulations** (Code Section 10-45-04-3). "Accessory structure(s) shall not exceed seventeen (17) feet and one (1) story from the lowest finished grade to the highest ridgeline of the building anywhere in the hillside."



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Staff Comment: Due to the “under no circumstances” text, there is no circumstance or legal basis for administrative relief that will allow variation to the height limitation through application of a PUD, Variance, or other administrative interpretation.

C. **Yard Requirements** (Code Section XI-10-45.05). “Minimum front yard setbacks shall be twenty-five (25) feet when the average slope of the lot is less than sixteen (16) percent, or when the front yard slope does not exceed sixteen (16) percent; otherwise, the minimum front yard setback shall be forty (40) feet.”

Staff Comment: A PUD or a Variance application may be considered to reduce the 40-foot setback to not less than 25-foot setback only where all five Variance findings may be made in Section XI-10-57.06 F.1), or all three PUD findings may be made in Section XI-10-54.07.B.6(d).

D. **Impervious Surface Coverage** (Code Section 10-45.17-3). “On parcels less than three (3) acres, the amount of impervious surface on the site is limited to eight thousand (8,000) square feet or ten (10) percent of the total lot area, whichever is greater (including the building footprint). The maximum size of the main residence shall not exceed six thousand (6,000) square feet.”

E. **Impervious Surface Coverage** (Code Section 10-45.17-4). “On parcels three acres or greater, the amount of impervious surface on the site is limited to ten (10) percent of the total lot area (including the building footprint). Under no circumstances shall the impervious surface coverage exceed thirty thousand (30,000) square feet. The maximum size of the main residence shall not exceed ten thousand (10,000) square feet.

Staff Comment: A PUD or a Variance application may be considered to increase the quantity of impervious surface for building footprint and the total impervious surface (including building footprint) does not exceed 30,000 square feet, only where all five Variance findings may be made in Section XI-10-57.06 F.1), or all three PUD findings may be made in Section XI-10-54.07.B.6(d).

F. **Special Provisions for PUD's in Hillside** (Section 10-45.07).

Staff Comment: This code section refers to proposed subdivisions with a PUD application, setting forth minimum lot size, lot location, common areas and easements within the overall proposed subdivision. This Section does not allow use of a new PUD zoning classification without a subdivision. A lot-line adjustment (allowed in the Subdivision Map Act for no more than four adjoining parcels) does not constitute a subdivision.

G. **Post-2004 PUD approvals.**

Staff Comment: A few PUD's were approved since 2004 with erroneous assumptions regarding increase in impervious surface and building height. These approvals do not constitute precedence for use of a PUD zoning classification to allow variation or amendment to the site development standards.

H. **Annexations into City and Hillside.** Until December 31, 2038, any amendments to the Urban Growth Boundary would require voter approval except under limited circumstances provided in Policy No. 2.a-l-2.1.

Amendments to the Urban Growth Boundary: Until December 31, 2038, the Urban Growth Boundary may only be amended as follows:

The Urban Growth Boundary may be amended by a vote of the People of the City of Milpitas;



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To comply with the state law regarding the provision of housing for all economic segments of the community, the City Council may amend the Urban Growth Boundary to accommodate lands designated or to be designated for residential uses. No more than 3 acres of land may be brought within the Urban Growth Boundary for this purpose in any calendar year. Land added to the Urban Growth Boundary pursuant to this section must be contiguous to land already within the Urban Growth Boundary. Such amendment may be adopted only if the City Council makes all the following findings, based on substantial evidence:

- a. That the land is to be included within the Urban Growth Boundary not designated as existing regional parks in the Santa Clara County General Plan adopted December 20, 1994, as amended through August 3, 1998; and
- b. That the land is immediately adjacent to: (i) the existing Urban Growth Boundary, and (ii) existing serviceable water and sewer connections;
- c. That the proposed development will consist of primarily low- and very low-income housing pursuant to the Housing Element of this General Plan; and
- d. That there is no existing residentially designated land within the Urban Growth Boundary to accommodate the proposed development and it is not reasonably feasible to accommodate the proposed development by re-designating lands inside the Urban Growth Boundary for low and very low-income housing; and
- e. That the proposed development is necessary to comply with state law requirements for provision of low and very low-income housing and the area of land within the proposed development will not exceed the minimum necessary to comply with state law; or

The City Council may amend the Urban Growth Boundary if it makes both of the following findings:

- f. The application of any aspect of the Urban Growth Boundary above would constitute an unconstitutional taking of a landowner's property; and
- g. That the amendment and associated land use designation under consideration by the City Council will allow additional land uses approved by the City Council only to the minimum extent necessary to avoid said unconstitutional taking of the landowner's property.

*Staff Comment: Since most properties outside of and adjacent to the City's Urban Growth Boundary, have either a General Plan designation of parks and open space or Hillside Very Low Density, and are within or adjacent to the Hillside district, several amendments via a ballot measure would have to be approved in order to accommodate any proposal that is not parks and open space.*