



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Progress Report on The Work Completed and Existing Conditions Analysis from Raimi and Associates and Staff on the Housing Opportunity Zones, Discuss Project Objectives and Priorities, and Provide Direction on Key Planning Concepts and Land Use Strategies (Staff Contact: Ned Thomas, Planning Director, 408-586-3273 and Jay Lee, Principal Planner, 408-586-3077)
Category:	Community Development
Meeting Date:	8/9/2022
	<u>Recommendation:</u> Receive progress report on the work completed and existing conditions analysis from Raimi and Associates and staff on the Housing Opportunity Zones, discuss Project objectives and priorities, and provide direction on key planning concepts and land use strategies.

Background:

Since 1969, California law has required all cities and counties to plan to meet housing goals for residents at all income levels. Every eight years, the California Department of Housing and Community Development (HCD) and the Association of Bay Area Governments (ABAG) distribute the Regional Housing Needs Allocation (RHNA) to each City and County in the Bay Area. The City is then required to perform a comprehensive update to the Housing Element, which is a chapter in the General Plan. The Housing Element identifies specific programs and policies that the City commits to implement to help realize the City's RHNA goals and respond to related needs.

In the 2019-20 Budget Act, Governor Newsom signed into law a \$250 million allocation for California regional and local jurisdictions to prioritize planning activities to accelerate state-wide housing production as part of a broader mandate to address the State's affordable housing shortage and to end homelessness. This allocation includes \$119 million for the Local Early Action Planning Grant (LEAP) for cities and counties. LEAP provides one-time grant funding for cities and counties to update planning documents and implement process and policy improvements to accelerate housing production. LEAP is a non-competitive grant program and a State strategy to help local governments meet their legal obligation to plan for housing for all residents, including low-income residents, as per the City's RHNA obligations.

On June 29, 2020, the City applied to HCD for grant funding through the LEAP Program to create Housing Opportunity Zones (HOZs) in areas of the City prioritized for housing by the City's General Plan. The HOZs will establish various incentives through an overlay zoning district to facilitate and streamline affordable housing production in the City's two Specific Plan areas, four Neighborhood Commercial Mixed Use (NCMU) areas, and the Town Center Zoning District. Incentives include a supplemental density bonus beyond the State Density Bonus, relaxed development standards, streamlined by-right permitting and environmental review, and financial incentives. On September 2, 2020, HCD informed staff that the City of Milpitas has been awarded \$300,000 in grant funds through the LEAP Program to establish HOZs.

On December 12, 2021, the City Council approved and authorized the City Manager to execute a professional services agreement with Raimi and Associates to prepare the HOZs in close coordination with related efforts underway including the Metro and Gateway Specific Plans, the Housing Element Update, and a separate Assessment of Fair Housing. Per the grant agreement, the HOZs must be completed by June 30, 2024.

Analysis:

As identified in the City's LEAP grant application and scope of work with Raimi and Associates, the key goals of the HOZs are to:

1. Streamline the permitting of housing development to meet the housing goals of the City;
2. Allow by-right approval of housing projects if they meet certain objective criteria;
3. Incentivize development of on-site affordable housing; and
4. Encourage different types of special needs housing, including senior living, housing for persons with disabilities, and workforce housing.

The work completed to date includes:

- **Best Practices Memo:** The memo provides an overview of example HOZs from other cities, especially as they relate to the creation of affordable housing units and housing for special needs populations. Three of the examples focus on affordable housing and one on senior housing. Each precedent study identifies strengths and weaknesses that can inform the consideration and development of new HOZs in Milpitas.
- **Planning Documents and Process Assessment:** The assessment memo reviews and summarizes existing planning documents and ordinances that impact the development of housing across the City and identifies strengths that can be enhanced and weaknesses that can be overcome through HOZs.
- **Existing Conditions Analysis:** The analysis of existing conditions examines each potential HOZ area and estimates the feasible development capacity based on Milpitas' current land use and zoning policies and regulations. Topics covered include the existing land use pattern, parcel size, pipeline projects, access to multimodal transportation options, site constraints, and opportunity sites. Staff will present the analysis in greater detail at a future study session with the City Council.
- **Stakeholder Meetings:** Raimi and Associates and City staff presented an overview of HOZs at the May 2022 Community Development Roundtable and subsequently conducted stakeholder interviews with non-profit and for-profit housing developers to better understand the constraints to building both mixed-income and 100 percent affordable housing projects.

Key findings from the background research and analysis and preliminary community outreach include:

- **Development Standards:** Development standards such as low maximum densities, high parking ratios, and high commercial requirements for mixed-use projects are constraints on development of affordable housing for both for-profit and non-profit housing developers. Adjusting these development standards would allow developers to prioritize affordable housing and spread the subsidized cost of the affordable units over a larger number of market rate units.
- **Permitting Process and Impact Fees:** Development fees are higher in Milpitas compared to other jurisdictions in Santa Clara County owing to high entitlement fees for single-family development and high impact fees for multi-family developments. A streamlined permitting process and reduced impact fees for housing projects in HOZs that meet objective standards would help reduce initial development costs and facilitate both mixed-income and 100 percent affordable housing projects.
- **Affirmatively Furthering Fair Housing (AFFH) Compliance:** HOZs can help a local jurisdiction address the potential issue of having a large concentration of affordable units in certain geographic areas (e.g., specific plan areas), which run counter to AFFH requirements in the Fair Housing Act. The Fair Housing Act requires cities to take meaningful actions to overcome patterns of segregation and foster inclusive communities. HOZs will help the City comply with this federal law by promoting a more equitable distribution of affordable housing throughout Milpitas.
- **General Plan Land Use Designations:** The 2040 General Plan aims to create vibrant commercial neighborhood centers through mixed-use development within the Town Center Zoning District and by establishing the Neighborhood Commercial Mixed-Use (NCMU) land use designation to incentivize the redevelopment of older commercial retail centers. Establishing HOZs for these areas will remove

current constraints on mixed-use development in these areas by modifying current policies and development requirements.

General Plan Implementation

The HOZs will be a critical implementation tool of the 2040 General Plan, which identifies several opportunity areas throughout the City for future housing development. These areas include the two Specific Plan areas (Metro Specific Plan and Gateway-Main St. Specific Plan), four NCMU areas, and the Town Center. The City is currently updating its two Specific Plans, and the HOZs will apply to these areas where much of the future housing development is expected to occur. However, the current policies and requirements of the NCMU and TWC land use designations need to be refined to facilitate and incentivize mixed-use redevelopment.

The NCMU land use designation establishes a ratio of one residential dwelling unit per 1,500 square feet of neighborhood-serving retail and commercial services for new mixed-use developments. While the purpose of this requirement is to incentivize the redevelopment of older strip retail centers into new mixed-use projects, redevelopment is unlikely to occur under the current policy framework. Based on the analysis completed for this HOZ project, the consultant team and staff now favor a clear allowable density range rather than a ratio between residential and nonresidential floor area.

For example, the TWC land use designation allows 40 residential dwelling units per acre for mixed-use developments but requires a high floor area ratio (FAR) of 0.35 for nonresidential uses. While the purpose of the nonresidential FAR requirement is to ensure that the Town Center retains its commercial activity over time, it presents a constraint to redevelopment. The current FAR of the Town Center north of Calaveras Boulevard is well below 0.35 and any redevelopment would require an additional 323,000 square feet of nonresidential floor area, which is highly unlikely in the current economic climate. The HOZs will build upon new General Plan policies for the NCMU and TWC areas by providing a more implementable strategy to achieve the overall goal of creating vibrant mixed-use neighborhoods in key areas throughout the City. The HOZs will adopt a place-based approach to facilitate mixed-use redevelopment of specific sites within these areas while allowing viable commercial centers to remain.

Housing Element Implementation

The HOZs will also be a critical implementation tool of the ongoing Housing Element Update, which must be updated every eight years identify adequate sites for new affordable housing to fulfill the City's RHNA. In the upcoming RHNA cycle (2023-2031), the City of Milpitas has been allocated 6,713 units, which is more than double the allocation from the previous cycle. Furthermore, 3,786 of the units must be affordable (i.e., below market rate) with 2,655 of those units at the low- or very-low-income affordability level, which the City has historically struggled to provide.

To address this challenge, the HOZs will focus on providing practical and effective incentives for developers to build affordable housing, especially at deeper affordability levels. The Housing Element Update will rely on the HOZs as a key program to implement its policies and help the City fulfill its housing goals and needs.

Next Steps

Following the City Council study session, the project team will continue to engage the public through additional stakeholder meetings with property owners, community workshops, and online surveys. The project team will also prepare a series of design studies to test the potential effects of the HOZs and develop several alternatives based on the feedback and direction received from the City Council.

Once the alternatives are established, the project team will return to the City Council for another study session to determine the preferred alternative. The project team will continue to meet with the City Council and Planning Commission as the Draft HOZs are developed to ensure that the project meets the needs of the City and community.

Fiscal Impact:

This is an informational item. As such, there is no fiscal impact.

California Environmental Quality Act:

The additional development allowed through the HOZs will be consistent with the Housing Element sites inventory. Therefore, the required environmental review for the HOZs will be completed as part of the environmental review for the Housing Element Update.

Recommendation:

Receive progress report on the work completed and existing conditions analysis from Raimi and Associates and staff on the Housing Opportunity Zones, discuss Project objectives and priorities, and provide direction on key planning concepts and land use strategies.

Attachments:

1. Best Practices Memo
2. Planning Documents and Process Assessment



Milpitas Housing Overlay Zone: Precedent Studies & Incentives Memo

March 24, 2022



1. Introduction

This Precedent Studies & Provisions Memo is intended to provide an overview of example housing overlay zones from other cities, especially as they relate to the creation of affordable housing units and housing for special needs populations.

The memo provides a summary and analysis of four overlay zone frameworks (precedent studies), three focused on affordable housing and one on senior housing. Each precedent study identifies strengths and weaknesses that can inform the consideration and development of a new housing overlay in Milpitas. In addition to the development incentives and bonuses described in each precedent study, the Incentives Structures section of the memo describes the various development incentives and bonuses that could be included in a finalized housing overlay zone and how they interact with existing State housing development incentives. Some incentives can be tied to affordability or age requirements, depending on the population the overlay prioritizes.

2. Precedent Studies

As the City of Milpitas considers a potential new overlay zone designation to align with city-wide housing goals, several precedents have been established both locally in the Bay Area, and at the national scale. Since preserving and promoting affordable housing opportunities has been a priority shared by cities through California and beyond, jurisdictions have taken a number of different approaches to utilizing overlay zones as a regulatory mechanism for setting standards related to the creation of new affordable units, income levels, construction and design standards, and several other topics. Overlay zones are not limited strictly to frameworks oriented around affordable housing but have also been adapted to address other planning challenges, such as provision of housing for senior residents or special needs populations.

This memo provides a summary and analysis of four overlay zone frameworks:

- Cambridge, MA. Affordable Housing Overlay (zoning)
- Berkeley, CA. Affordable Housing Overlay (Housing Element)
- Menlo Park, CA. Affordable Housing Overlay (zoning)
- Perris, CA. Senior Housing Overlay Zone (zoning)

Links to each precedent and their original language can be found in **6. Appendix**.

Comparative Matrix

The following table summarizes the regulatory language and framework of the four precedents. The information has been condensed in this memo.

Precedent Study	Applicability	Interactions with Underlying Zoning	Affordability Requirements	Deed-restriction or affordability agreement?	Incentives
100% Affordable Housing Overlay Cambridge, MA	<ul style="list-style-type: none"> - All zoning districts, except Open Space - Standards apply only to 100% affordable housing projects 	Underlying zoning impacts density and height bonuses	<ul style="list-style-type: none"> - At least 80% of units for households with incomes 80% AMI or below - 50% of for-sale units should be to households with incomes 80% AMI or below at initial occupancy 	Continued affordability agreement	<ul style="list-style-type: none"> - No maximum FAR - Height bonus - No off-street parking minimums - Minimum of 30% open space to lot area ratio - Lower yard setbacks
100% Affordable Housing Overlay Zone Berkeley, CA (Proposed)	<ul style="list-style-type: none"> - R3, R4, MU-R, all C-prefixed districts - Potentially R-1, R-1A, R-2, R-2A - High fire risk area and historical landmarks are exempt - Projects must have 100% affordable units 		Reserved for Extremely Low-, Very Low-, Low-, and Moderate-income households	Deed-restricted	<ul style="list-style-type: none"> - No maximum FAR - Density bonus - Height bonus

Affordable Housing Overlay (AHO) Menlo Park, CA	<ul style="list-style-type: none"> - Menlo Park El Camino Real and Downtown specific plan area; lots zoned R-4-S - Projects must have a mix of affordable and market rate units 	Some Specific Plan development standards cannot be superseded by AHO standards	At least 25% of affordable units must be very low and/or extremely low-income, or at least 15% must be extremely low income	Continued affordability agreement (no less than 55 years)	<ul style="list-style-type: none"> - Density bonus - Height bonus - Parking space requirements per type of affordable unit - Common and/or private open space can be reduced by 50% - Setback reduced to 5' except when more is needed to accommodate increased density and when parcel is next to single-family residential - Possibility of waived processing fees
Senior Housing Overlay (SHO) Zone Perris, CA	<ul style="list-style-type: none"> - Can be combined with any residential or commercial zone district, and lots must be greater than 2 acres but not more than 75 acres 	<ul style="list-style-type: none"> - Surrounding land uses must be compatible with the environment required by seniors - Level of affordability and percentage of affordable units are dependent on redevelopment area classification 	<ul style="list-style-type: none"> - Minimum 1 household member must be age 55+ - Redevelopment area: at least 30% of units for low- and moderate-income households, at least 50% of the 30% for very low-income - Not redevelopment area: at least 3% of units for low- and moderate-income households, at least 40% of the 3% for very low-income households 	Affordability in place for 30 years or how long the redevelopment area agreement specifies (whichever is longer)	<ul style="list-style-type: none"> - Density bonus (up to 50 units/acre) - Development fees waiver

A. Affordable Housing Overlay. Cambridge, MA

The City of Cambridge adopted the 100% Affordable Housing Zoning Overlay in October 2020. This overlay aims to help affordable housing developers build new, permanently affordable housing throughout the city, especially in areas where there are not enough affordable units, and areas where the current zoning makes it difficult to construct affordable housing projects. The standards and incentives of the overlay can only apply to projects where 100% of the units are affordable and available to households earning up to 100% of the Area Median income (AMI).

1. Development context

The Affordable Housing Overlay (AHO) developed from discussions between the City Council, Housing Committee, and Community Development Department (CDD) regarding how to address the housing crisis and was further mentioned during the "Envision Cambridge" citywide plan process from 2016-2019. CDD developed the overlay and gathered feedback from public hearings, community meetings, and open houses. The AHO was presented as a zoning amendment to the Planning Board and Ordinance Committee, and after several meetings and revisions, they recommended that the City Council adopt the AHO ordinance. The City Council adopted the ordinance on October 5, 2020. To date, approximately 350 new affordable units have been completed under the regulations, with the City currently reviewing projects that could result in additional 300 units.

2. Regulatory Framework

Cambridge's AHO is an amended, new section in the City's Zoning Ordinance. The ordinance contains income and affordability criteria, development and design regulations, and regulatory mechanisms for ensuring the continued affordability of an AHO project's units.

3. Applicability/Area of Influence

The overlay zone applies to all zoning districts of Cambridge, except parcels zoned as Open Space. Regardless of the underlying zoning standards or density requirements, AHO projects can contain single-family, two-family, townhouse, or multi-family dwellings. Projects may also include active, non-residential uses on the ground floor, but only where the underlying zone or an additional overlay district already allow non-residential uses. An AHO project can feature the construction of a new building, or the retrofit of an existing building. The project is permitted "as-of-right" if the project meets all the standards within the overlay and the Design Guidelines established by the CDD.

4. Interaction with underlying zoning

The applicable development and design regulations of an AHO project are determined by the "District Dimensional Standards" of the underlying zoning district. The dimensional standards of the AHO apply in place of the District Dimensional Standards unless the AHO specifies otherwise. As previously stated, the AHO supersedes non-residential underlying zoning districts and allows for the development of housing in districts such as commercial or industrial. In addition, ground floor non-residential uses are allowed in new housing projects where the underlying zoning already allows such uses.

5. Development and Design Regulations

FAR. The floor area ratio (FAR) of an AHO project has no stated maximum or minimum.

- *Exception:* If the standards of the underlying zoning district specify a maximum FAR of less than 1.0, the AHO project cannot exceed an FAR of 2.0.

Lot Area. There is no minimum lot area per dwelling unit requirement for AHO projects.

Height. The height bonus for an AHO project is contingent on the underlying zoning district's allowable building heights.

Underlying zoning district allowable building height	Height Bonus	Exceptions
40 feet or less	Up to 45 feet (no more than 4 stories) if entirely residential; or	
	Up to 50 feet (4 stories above grade) if first floor has active, non-residential use	
Up to 50 feet	Up to 65 feet (no more than 6 stories) if entirely residential; or	<ul style="list-style-type: none"> • When AHO project is adjacent to a non-residential use, parts of the project within 35 feet of a zoning district that allows a maximum building height of 40' will be limited to the overlay provisions of that type of building (i.e., max build to 45' if residential, 50' if first floor is active non-residential) • When the AHO project parcel extends into that district, then the height limitation only extends 35' from the property line.
	Up to 70 feet (6 stories above grade) if first floor has active, non-residential use	
Greater than 50 feet	Up to 80 feet (no more than 7 stories)	<ul style="list-style-type: none"> • When AHO project is adjacent to a non-residential use, parts of the project within 35 feet of a district with zoning that allows a maximum building height of 40' will be limited to a maximum height of 60' (a minimum of 5 stories).

		<ul style="list-style-type: none"> When the AHO project parcel extends into that district, then the height limitation only extends 35' from the property line.
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Parking. AHO projects do not have an off-street parking minimum requirement. However, if a project does not provide off-street parking at a ratio of 0.4 spaces per dwelling unit, the developer must create a Transportation Demand Management program where they:

1. Offer a free annual membership to a bike share program, or a 50% discounted transit combined subway and bus pass for 6 months, to 2 individuals in each household upon their initial occupancy of a unit; and
2. Provide transit information to each household upon their initial occupancy of a unit or provide real-time transit service screen and information in the building lobby.

Open Space. The minimum percentage of open space to lot area of an AHO project is 30%, unless the standards of the underlying zoning district have a less restrictive requirement. This percentage can be lowered to a minimum of 15% if the AHO project includes the protection and preservation of an existing building that is in the State Register of Historic Places. The AHO contains additional guidelines for the placement and characteristics of an AHO project's open space.

Yard Setbacks.

Setback	Requirement	Exceptions
Front	Minimum setback of 15 feet	<ul style="list-style-type: none"> • The underlying zoning standards have a less restrictive requirement, • The project is on a corner lot (may be reduced to minimum of 10'), or • The developer chooses to reduce the setback to the average of the front yard setbacks of the four nearest pre-existing principal buildings that contain at least 2 stories above grade and directly front the same side of the street as the AHO project. • If there are different underlying zoning standards for residential and non-residential uses, the non-residential front yard setback requirement applies to an AHO project with an active non-residential ground floor.
Side	Minimum setback of 7.5 feet	Unless underlying zoning district's residential requirement is less restrictive.
Rear	Minimum rear setback of 20 feet	Unless the underlying zoning district's residential requirement is less restrictive.

Standards for Existing Buildings. Existing buildings used in an AHO project that do not match the development and design regulations can be altered, reconstructed, relocated, and/or enlarged to conform with the AHO regulations. Below are modification standards that are allowed "as-of-right."

- The addition of gross floor area within the interior of the existing building envelope that could violate FAR limitations set by the AHO
- An increase in the number of dwelling units within the existing building if the number of stories above grade is not greater than the existing number of stories above grade, or the existing height divided by 10 feet
- The relocation, enlargement, or addition of openings to the exterior of the building

- The addition of insulation to improve energy efficiency if the new exterior wall conforms to yard setback requirements, does not intrude more than 8 inches into the existing yard setback, or does not decrease the existing open space by more than 5%
- The addition of exterior features to meet accessibility requirements
- Alterations, additions, repair, reconstruction, or replacement of the existing building and pre-existing nonconforming features that do not violate the dimensional requirements set by the AHO

Building and Site Design Standards for New Development. The AHO contains design standards that apply to new construction and the additions to existing structures. Existing buildings that are a part of an AHO project do not have to follow these design standards if the alterations do not "create a condition that is in greater nonconformance with such standards than the existing condition." The complete standards are available in **6. Appendix**.

5. Income and Affordability

An AHO Eligible Household has a gross household income upon initial occupancy of no more than 100% of AMI. Rental and for-sale AHO units are available for AHO Eligible Households, with a preference for Cambridge residents and former Cambridge residents who experienced a no-fault eviction in the last 12 months within Cambridge. This local preference can make projects ineligible from certain federal grants that can help finance the development of affordable housing.

Rental AHO dwelling units:

- The gross household income of the AHO Eligible Household at initial occupancy cannot be more than 100% AMI, but a household exceeding this limit after initial occupancy can continue to rent the unit (cannot exceed 120% AMI for more than one year).
- At least 80% of the units in an AHO project must be reserved for households with incomes no more than 80% AMI.
- Rent, utilities, and fees must be approved by the CDD and cannot be more than 30% of the gross household income of the unit occupants.
- The gross household income of an AHO Eligible Household will be verified annually, or at the times required by a CDD-approved housing subsidy program, to determine the household's continued eligibility and rent.

Owner-occupied AHO dwelling units:

- The gross household income of the AHO Eligible Household at initial occupancy cannot be more than 100% AMI.
- At least 50% of the for-sale units in an AHO project must be reserved for households with incomes no more than 80% AMI.
- The initial sale price of a unit must be approved by the CDD, and the monthly housing payment cannot exceed 30% of the household's monthly income.

6. Regulatory Mechanisms

Deed Restrictions. AHO units are “created and conveyed subject to recorded covenants approved by CDD” to guarantee the permanent availability of the dwelling units to AHO Eligible Households.

Application process and approval. Each AHO project must follow a review and community engagement process.

- The developer must schedule two design consultations with the Planning Board, who will determine if the project meets the regulations of the overlay.
- The developer must host at least two community meetings for the residents of the neighborhood surrounding the proposed project site. At the first meeting, the developer shares initial analysis and gathers feedback from the community before design begins. At the second meeting, the developer shares preliminary project designs and receives design feedback.

7. Strengths

- **AHO projects must contain 100% affordable units.** By requiring that all units of a project be reserved for household earning up to 80% and 100% of the AMI, the City commits to prioritizing low-income housing construction and ensuring that any additions to the housing stock utilizing the overlay’s incentives are affordable units.
- **Application and review process.** The review process includes mandatory community engagement procedures that allow community members to voice their opinions over changes occurring in their neighborhood. Additionally, the advisory design review process is straightforward and thoroughly explained in the AHO ordinance text.
- **Applicability of the overlay zone.** The AHO allows for the creation of affordable housing in zoning districts that have previously not allowed residential uses. In Milpitas, a housing overlay zone with similar regulations would allow areas of the city that are currently zoned and operate as commercial to accommodate new housing construction, without having to undergo a re-zoning process to amend the allowable uses in a commercial district. As an example, if all institutional-zoned parcels in Milpitas could accommodate housing, the City may be able to approve affordable housing projects for teachers and school staff much quicker, and without having to undergo the re-zoning process.

8. Weaknesses

- **100% AMI Standard.** Cambridge’s AMI is different from the AMI in Milpitas. Milpitas is located in Santa Clara, a county with high cost of living that can make 80% AMI unattainable for some Milpitas residents. In 2021, 80% AMI for a family of four was \$117,750 and 30% AMI (usually considered extremely low-income) was \$49,700. An overlay in Milpitas may need to use different affordability requirements that are more appropriate to the city’s context. Additionally, Cambridge requires the monitoring of income levels for rental and for-sale units. It may be difficult to enforce or monitor income requirements of certain units once they are sold.

- **Applicability of the overlay zone.** The AHO allows for the creation of affordable housing in all zoning districts, except Open Space. The overlay creates near-universal standards for parcels throughout the city, but each has different geographic contexts, transportation accessibility, and proximity to community services and amenities. Not all parcels in a city will be the best locations to place low-income housing and some may even contribute to the historic marginalization of low-income communities.
- **Affordable housing construction in Industrial Zoning Districts.** If AHO projects are constructed in areas with primarily industrial uses, these projects could contribute to the historical, unjust practice of placing low-income housing next to pollution-generating uses. Communities that have higher exposure rates to pollutants can lead to increased negative health impacts. Additionally, industrial zones may have underlying restrictive covenants related to the presence of hazardous waste and materials, which could prohibit the construction of housing. In Milpitas, there may be industrial districts that are more suitable for housing construction than others. A comprehensive study of industrial parcels would be needed to understand the socio-environmental effects of allowing low-income housing in these areas.
- **Modernization of older public housing.** For projects retrofitting existing buildings that already feature affordable housing, Cambridge's AHO standards lack anti-displacement measures to ensure future spaces for existing tenants. Consequently, the responsibility of ensuring housing security is left up to individual developers to voluntarily offer as a form of community benefits. For example, Jefferson Park Federal is a project that is replacing former federal public housing buildings with new fully, affordable housing units. The Cambridge Housing Authority has promised to ensure no permanent displacement of the buildings' original tenants and assisted in relocating the original tenants into other units while construction occurs. This assurance is not a product of a regulatory standard in the AHO, but a key value of the Authority when the project was initially being developed.

B. Affordable Housing Overlay. Berkeley, CA

1. Development context

In November 2021, the City Council of the City of Berkeley recommended the City Manager to consider a 100% Affordable Housing Overlay designation, and to integrate it into the ongoing Housing Element Update process. The implementation of the overlay would require the development of objective design standards, or form-based standards, and the development of an advisory Design Review process that will guide the design of qualifying affordable housing projects. Additionally, General Plan amendments would need to be created that allow 100% affordable housing projects, in order to remain consistent with existing densities described in the General Plan. As of March 2022 however, draft regulatory text has not yet been made publicly available, and the ongoing Housing Element work has not yet engaged fully with the topic of an overlay designation. The proposal that was presented to the City Council and City Manager has been released and contains goals, preliminary standards, and requirements that will be included in the final regulatory text.

2. Regulatory Framework

The overlay proposal includes preliminary requirements and standards for affordable housing projects that would utilize the overlay incentives.

3. Applicability/Area of Influence

The overlay would apply to parcels in the following zoning districts:

- Multiple-family Residential (R3)
- Multi-family Residential (R4)
- Mixed Use-Residential (MU-R)
- Commercial Districts (all C-prefixed districts)

The overlay could also apply to parcels in the following zoning districts, but would require further study to determine project feasibility:

- Single-family Residential (R-1)
- Limited Two-family Residential (R-1A)
- Restricted Two-family Residential (R-2)
- Restricted Multiple-family Residential (R-2A)

Parcels located in CalFire Very High Fire Hazard Severity Zones, City of Berkeley Fire Zones 2 and 3, or are designated City, State, and Federal Historical Landmarks, would be exempt from the overlay.

4. Development and Design Regulations

In R3, R4, MU-R, C-prefixed districts, the following standards and bonuses would apply:

- A local density bonus that reflects the provision of AB 1763 (in addition to any State density bonuses)
- No limits on FAR
- Up to 80% lot coverage

In R-1, R-1A, R-2, R-2A zones, the following standards and bonuses would apply:

- A local bonus inclusive of existing density bonuses
- No limits on FAR
- Up to 80% lot coverage

5. Regulatory Mechanisms

Deed Restrictions and Income Requirements. Units within qualifying 100% affordable housing projects would be deed-restricted for Low, Very Low, Extremely Low-, and Moderate-Income households.

Application process and approval. Projects that comply with the overlay's design standards and income requirements would have ministerial approval. The advisory Design Review process would review if the project met the overlay's guidelines. If the guidelines were not met, the Design board would provide suggested changes to the developer that would allow the project to meet the standards.

6. Strengths

- **Excluding parcels in fire hazard zones.** By not allowing affordable housing development in fire-risk areas, the City is decreasing the potential of low-income family displacement in the event of a wildfire.
- **Overlay as a part of the Housing Element.** The AHO proposal states that it will be a part of the state-mandated Housing Element, which describes the city's plans to accommodate future housing growth. As a part of the Housing Element, it would better ensure that the overlay is implemented.

7. Weaknesses

- **Overlay language not yet finalized.** Berkeley's AHO is still a proposal that will be incorporated into a different regulatory document, and it cannot be thoroughly compared to other overlay zones that have been adopted into zoning codes and ordinances.
- **100% Affordable Units.** Restricting the benefits of an Overlay to 100% affordable housing can be seen as a constraint. By limiting the pool of which types of projects can leverage the incentives can limit the overall production of affordable housing. In addition, constrained availability of public funds and the need for local municipalities to provide matching funds can be a limiting factor.

C. Affordable Housing Overlay. Menlo Park, CA

1. Development context

Menlo Park's Affordable Housing Overlay (AHO) is meant to implement the goals of the Housing Element and encourage the development of affordable housing for low, very low, and extremely low-income households. The AHO was adopted by the City Council in June 2013 as a part of a settlement agreement (*Peninsula Interfaith Action, et al. v City of Menlo Park*) that also required the City to update its 1992 Housing Element. As of March 2022, the City's 2023-2031 Housing Element Update is ongoing and has proposed updating the AHO to include a maximum density bonus of 100 dwelling units/acre for 100% affordable housing projects, extending the AHO coverage area, and modifying the fee waivers and development standards. These updates are not yet final, and the discussion presented below is based on the current, adopted overlay language.

2. Regulatory Framework

Menlo Park's AHO contains income and affordability criteria, development and design regulations, and regulatory mechanisms for ensuring the continued affordability of an AHO project's units.

3. Applicability/Area of Influence

The overlay applies to parcels within the Menlo Park El Camino Real and Downtown Specific Plan area and those zoned as R-4-S (AHO) (high density residential, special – affordable housing overlay). Qualifying projects must have at least 5 units and accommodate a full range of income levels.

4. Interaction with underlying zoning

The overlay has been applied to specific parcels as a zoning classification (R-4-S AHO) and applies to the parcels identified in the El Camino Real and Downtown Specific Plan. The Specific Plan establishes development standards that can be paired with the standards of the AHO, and the AHO identifies the Specific Plan guidelines that cannot be substituted.

- *Exceptions:*

- For parcels within the Specific Plan boundaries, the maximum FAR will be limited to the public benefit levels for the area the parcel is in. Each Specific Plan area has a different maximum FAR depending on the parcel's land use and location within the area.
 - El Camino Real North: 1.10, 1.50 FAR
 - El Camino Real South: 1.50, 1.75 FAR
 - Station: 1.75, 2.25 FAR
 - Downtown: 1.0, 2.25 FAR
- Front and side setback facing a public right-of-way.
- Building facade height.
- Massing and modulation standards including major portions of a building facing a street should be parallel to the street, building breaks, building facade modulation, and building profile, and upper story facade length.

5. Development and Design Regulations

Density bonus.

- An AHO project that provides 21% low-income units is entitled to a 36.5% density bonus. With each additional percentage of low-income units above 21% (or the percentage used for low-income units when there is a mix of low and very low-income units), project is entitled to an additional 1.5% density bonus up to a cumulative maximum bonus of 60%.
- An AHO project that provides 12% very low-income units is entitled to a 37.5% density bonus. With each additional percentage of very low-income units above 12% (or the percentage used for very low-income units when there is a mix of low and very low-income units), project is entitled to an additional 2.5% density bonus up to a cumulative maximum of 60%.

FAR. There is no stated maximum or minimum FAR. An AHO project can increase its floor area ratio "by an amount that corresponds to the increase in allowable density" determined by the density bonus guidelines.

- Projects can add an additional 5% or other increase that is "reasonably sufficient to make development of low and very low income multiple-bedroom units and family housing feasible."

Coverage.

- "Any applicable maximum building coverage and/or allowable paving requirement shall be increased by 5% and the minimum open space requirement reduced by 10% from the underlying zoning designation."

Height.

- An AHO project that can have up to a 45% AHO density bonus can have a maximum height of 4 stories (no more than 48').
- An AHO project that can have an AHO density bonus greater than 45% and has at least 50% of its affordable units reserved for very low and extremely low-income households (or 25% of the affordable units reserved for extremely low-income households), can have a maximum of 5 stories (no more than 60').

Parking. The parking requirements of the underlying zoning designation apply to AHO projects. The following guidelines only apply to the affordable units within a project:

Unit Type	Required Parking Space(s)
Studio	0.8
1-bedroom	1
2-bedroom or larger	1.5
Senior housing units	0.8 or less

For projects within the Caltrain station area identified in the Specific Plan, each affordable unit can have a reduction of 0.2 parking spaces from the minimum listed here.

- AHO projects within the Specific Plan area can conform to the parking requirements listed in the AHO or adhere to the parking requirements of the specific plan, whichever is less.
- Parking spaces for affordable units do not need to be covered or located in a garage or carport.
- Provided long-term bicycle parking should not be more than 0.5 spaces per unit.
- Any requirement for electric vehicle parking or recharging stations can be reduced by 50% or project can provide an equivalent number of car sharing spaces.

Open Space. Common and private open space can be reduced by up to 50% from the underlying zoning requirements, in addition to reductions needed to "physically accommodate the increased density provided for" by the ordinance.

Setbacks. In addition to reductions needed to "physically accommodate the increased density provided for" by the ordinance, required setbacks can be reduced by 5 feet.

- *Exception:* When an AHO project parcel is next to a parcel zoned for single-family residential, the underlying zoning requirement still applies.

Design.

- AHO projects will be reviewed for compliance with adopted objective design standards, and projects within the Specific Plan area must follow the architectural control process described in the plan. No other review is required unless the developer requests a variance from the AHO requirements.
- Low and very low-income units must be built at the same time, and to the same quality standard, as market rate units. They must also be integrated into the project.
- The number of bedrooms in low and very low-income units must be consistent with the mix in market rate units.

6. Income and Affordability

To be eligible for bonuses and incentives, AHO projects with more than 5 but less than 100 units must have at a minimum: 21% of all units reserved for low-income households, or 12% of units reserved for very low-income households.

- If the project proposes to have both low and very low-income units, the minimum percentage of units shall be more than necessary to reach a 35% state density bonus.
- The below market rate units a project is required to include due to the City's Below Market Rate Housing Program cannot be counted to reach these AHO requirements.

To be eligible for the density bonuses and incentives, AHO projects with more than 100 units must have at a minimum: 21% of all units reserved for low-income households, or 12% of all units reserved for very low-income households.

- If the project proposes to have both low and very low-income units, the minimum percentage of units shall be more than necessary to reach *more than* a 35% state density bonus.
- The below market rate units a project is required to include due to the City's Below Market Rate Housing Program cannot be counted to reach these AHO requirements.

In addition to the aforementioned income criteria concerning low-income and very-low income households, the AHO also includes a secondary requirement, where:

- 25% of the affordable units must be reserved for very low and/or extremely low-income households, **or**
- 15% of the affordable units must be reserved for extremely low-income households

In practice, a 100-unit project would need to adhere to one of the following methods in order to qualify for the AHO bonuses:

- Method 1a: A minimum of 21 units reserved for low-income households (21% of all 100 units), where 6 of these units (25% of the 21 affordable units, rounded up) are reserved for very-low and/or extremely-low income households

- Method 1b: A minimum of 21 units reserved for low-income households, where 4 of these units (15% of 21 affordable units, rounded up) are reserved for extremely-low income households
- Method 2a: A minimum of 12 units (12% of all 100 units) reserved for very-low income households
- Method 2b: A minimum of 12 units reserved for very-low income households, where 2 of these units (15% of 12 affordable units, rounded up) are reserved for extremely-low income households

A key provision of the AHO is that the low or very low income percentage required to qualify for the AHO shall not include the below market rate units required to be provided by for-sale residential development project and commercial development projects pursuant to the city's below market rate housing program or Inclusionary Housing requirement.

7. Regulatory Mechanisms

Continued affordability.

- Project developers must create an agreement with the city to ensure the continued affordability of the affordable dwelling units for no less than 55 years.

Waivers.

- AHO projects with at least 50% of all project units reserved for low-income households (or 20% for very low-income households) are entitled to a fee waiver for all processing fees related to development applications.
- All AHO projects are entitled to a reduction in all other fees in an amount that corresponds to the increase in allowable density, though the waiving of certain fees is subject to discretionary review by the city council.

8. Strengths

- **Affordability requirements.** The AHO provides incentives to projects with 50% or less affordable units, an affordability percentage that can allow use of more private financing for these projects compared with 100% affordable housing projects.
- **Affordability agreement.** The overlay includes a 55-year continued affordability agreement, which allows the rental price of the unit to stay affordable and can lead to housing security for low-income families.
- **Fee waivers.** Fee waivers incentivize increases in the number of low (or very low) income units.
- **Design quality.** The AHO includes a condition that requires developer to construct affordable units to the same quality standard as market-rate units and for the affordable units to be integrated with the entire project building. This is an important aspect to include in the overlay that ensures that the lower and higher income units are fully integrated.

9. Weaknesses

- **Incentives.** Many of the development standard exceptions can be obtained by using the recently revised State Density Bonus Law provisions.
- **Parking requirements.** The reductions for parking could be higher, making the provision of additional affordable units more financially viable.

D. Senior Housing Overlay Zone. Perris, CA

The Senior Housing Overlay (SHO) Zone from the City of Perris is meant to encourage the development of senior housing in compatible neighborhoods and create more housing opportunities for very low- and moderate-income seniors.

1. Development context

The Senior Housing Overlay Zone was adopted by the City Council of Perris in 2013. Since then, [Perris Station](#) is an example project that made use of the SHO. The 84-unit senior housing project opened in 2015.

2. Regulatory Framework

Perris' SHO contains affordability requirements, density and parking incentives, and detailed building and site design guidelines.

3. Applicability/Area of Influence

The SHO Zone can be applied to a lot that is at least 2 acres, but not larger than 75 acres, in any residential or commercial district. The current and proposed surrounding land uses must be free from health and safety issues and be compatible with the environment required by seniors. SHO projects are allowed to have multifamily residential, attached single-family residential, and detached single-family residential units that can be rentals, condominiums, cooperative, or other fee-simple ownership units.

4. Interaction with underlying zoning

SHO projects can be on parcels in residential or commercial district. Projects must follow the standards of the underlying zone, except when the development and design regulations of the SHO say otherwise. Parts of the City are in a redevelopment area, and SHO projects within that area are subject to different SHO development and design regulations than those outside of the redevelopment area.

5. Development and Design Regulations

Density. The maximum allowable density of an SHO project is 50 dwelling units/acre. This incentive can override the underlying zone density requirements.

Parking. SHO projects must provide 1.15 parking spaces per dwelling unit.

Setback. The setback of the building along all street frontages must be half the length of the building wall but cannot be less than 20 feet.

Building and Site Design Standards. The SHO specifies development criteria that dictates the design of the building, site, accessibility features, circulation, landscaping, open space, and recreational facilities. It also lists security and maintenance considerations. For the full list of standards, refer to the original SHO language (link provided in **6. Appendix**)

6. Income and Affordability

Age requirement:

- At least one household member must be 55 years or older.

Projects within redevelopment area:

- At least 30% of the dwelling units will be reserved and affordable for low- and moderate-income households.
- At least 50% of the 30% mentioned above will be reserved and affordable for very low-income households.
- These dwelling units can be rental and/or for-sale units.
- The City may require more stringent income requirements if it has provided financial assistance to the development project.

Projects outside redevelopment area:

- At least 3% of the dwelling units will be reserved and affordable for low- and moderate-income households.
- At least 40% of the 3% mentioned above will be reserved and affordable for very low-income households.
- These dwelling units can be rental and/or for-sale units.

7. Regulatory Mechanisms

Deed Restrictions. The affordability restrictions must remain in place for 30 years or the time period specified by the land use controls of the redevelopment area, whichever is longer.

Waivers. The City can waive park development fees for qualified SHO projects.

Application process and approval.

- The Planning Commission will host a public hearing to consider the proposed project and determine whether to recommend approval or disapproval to the city council. They will recommend approval if the project meets the requirements of the SHO.
- The City Council will conduct a public hearing to determine whether the SHO should apply to the project. It must meet the following guidelines:
 - "The proposed project at its specific location is necessary and desirable to provide a facility that will contribute to the general well-being of seniors as well as the local neighborhood, community, and region.
 - The location of the project and the mix of uses is not detrimental to the health, safety, or welfare of its residents, employees, or those working or residing in the area.
 - The proposed project will provide a superior community that will support the unique needs and lifestyles of seniors.
 - That the granting of this permit will not adversely affect the public welfare and will be consistent with the city's general plan and any other relevant plans of any government agency."
- By granting an SHO project permit, the City Council reserves the right to modify the project plans or create conditions the project must meet to ensure public health, safety, and welfare and meet the objectives of the SHO Zone.

8. Strengths

- **Building and site design standards.** The Senior Housing Overlay includes detailed and specific design parameters developers must follow. With these guidelines, the City has clear expectations about the living environment senior housing developments should create and maintain.
- **Affordability agreement.** The overlay includes a 30-year continued affordability agreement, which allows the rental price of the unit to remain affordable.

9. Weaknesses

- **Affordability requirements.** The affordability requirements for projects outside of redevelopment areas of the city are very low and would not produce a substantial amount of affordable senior units or justify the benefits conferred to the project by the SHO. The affordability requirements for projects in redevelopment areas are even not very high given the objectives of this type of special zoning. Developers can see this low requirement as an incentive to prioritize housing construction in non-redevelopment areas, leaving other areas of the city without as much new senior housing. If the City's intention was to spur more senior housing in these other areas, this is unclear.
- **The project approval process is discretionary.** The project approval process is not as streamlined as other cities and it is discretionary to the City Council's interpretations of public health needs. In one way, the City has more oversight over what is built, but it could be seen as a disincentive by developers who would want to develop and construct projects on a faster timeline. Specific public health considerations could have been included in the building and site design standards section.

- **Limited applicability.** The minimum parcel size of 2 acres excludes the potential of projects on smaller sites. There are many examples of successful affordable or mixed-income senior housing projects with 50 units on one acre. The high minimum project size may be adequate in some areas but likely has the unintended consequence of excluding potential projects as infill in many older, more developed neighborhoods.

3. Incentives

It is important to note that Milpitas must also address a significant number of recently adopted state-level legislation and regulatory mechanisms pertaining specifically to affordable housing. Many of these laws establish a variety of incentives whose purpose is to encourage the construction of new housing, and in some instances have already resulted in significant revisions to local planning practices and regulatory language. Examples of relevant state law have been included throughout this section.

A. Streamlined Permitting Process

A streamlined, predictable permitting process can incentivize more developers to construct affordable housing. Many cities require a multistep discretionary review process to ensure a proposed project complies with the City's Zoning Code, and this approval process can extend the project timeline while adding more costs onto the developer. A clear permitting process can lower these initial development costs and expedite affordable housing projects. There are a variety of strategies municipalities can take to streamline their permitting process for affordable housing projects.

By-right/as-of-right approval

By-right (also known as "as-of-right," administrative review, ministerial review) development approval is granted to a project that has conformed to the zoning and building code requirements and qualifies for construction without having to go through a discretionary approval process. The project still needs to apply for permits but by qualifying for by-right development, the developer can cut down the time and money spent on having their proposed project approved. Some cities pair by-right approval with a design review.

For example, Cambridge's Affordable Housing Overlay "as-of-right" approval applies to projects that follow all the regulations and objective design standards of the overlay, go through a two-meeting advisory design review, and host two community engagement meetings. The expectations and requirements of the developer for these meetings are clearly listed in the Overlay ordinance.

In Menlo Park, Affordable Housing Overlay projects outside of the Downtown specific plan area only need a compliance review to determine the project's compliance with adopted objective design standards. Projects within the specific plan area must go through the architectural control process

described in the specific plan. If the developer requests a variance from adopted regulations and design standards, discretionary action will be required.

Milpitas could consider a streamlined permitting process specific to an overlay zone that is complementary and consistent with other existing regulations and state housing laws. Similar to the way that recent state legislation has already introduced mandated streamlined permitting processes related to specific types of development projects (among these, rooftop solar with AB 2188 in 2015 and streamlined residential review with SB 330 and changes to the Housing Accountability Act in 2019), the introduction of a new affordable housing overlay zone could provide a broader definition of projects eligible for a streamlined review.

B. Bonus Development

Density bonuses allow developers that prioritize affordable housing to construct more units to spread the subsidized cost of the affordable units over a larger number of market rate units. Accompanying height bonuses allow for the larger floor area to be accommodated on the site.

Additional Density/FAR Bonuses

Many cities build on the existing state density bonuses to further incentivize affordable housing development. A density bonus allows a project to have an increase in dwelling units per acre. A FAR bonus allows buildings to have an increase in the total floor area. To accommodate additional units allowed by density bonuses, some overlays have removed the maximum FAR limit for applicable projects. For example, Cambridge's overlay does not have a max FAR (unless the underlying zoning specifies a max 1.0 FAR, then applicable projects can have up to 2.0 FAR). Menlo Park also does not specify a max FAR, and notes that the FAR of projects can increase by the amount needed to accommodate increased density.

Beyond their inclusion in overlay zones however, Milpitas should first contend with prevailing state laws regarding density bonuses attributed to affordable housing. AB 1763 (2019) and AB 2345 (2020) constitute the most applicable and comprehensive examples, as they collectively establish several regulations that link ranges of density bonuses with affordability levels. AB 1763 more than doubles the density bonus for eligible projects where all units are affordable to low and very-low income level residents. AB 2345 accommodates density bonuses on a slide scale between 35% and 50%. The bonus is linked to several other conditions and criteria including income criteria, parking, and concessions for provision of senior housing.

For a new overlay zone to be meaningful, any provisions should be written to exceed the stated minimums, especially with regards to the required metrics for very low income- and low income-households; the bonuses in AB 2345 are currently triggered at 15% and 24% respectively.

Additional Height Allocation

Allowing additional building heights or stories in an overlay can incentivize developers to pursue a project because developers can meet "the economy of scale" needed to construct affordable housing. Increased height allowances can enable buildings to have additional uses on the ground floor, whether it be building amenities or community commercial uses. For example, Cambridge's AHO increases allowable building heights from the underlying zoning's requirements and allows an additional 5' when the first floor has an active non-residential use.

Other overlays choose to link the new allowable building heights to the density bonus a project qualifies for and the number of affordable units it includes. In Menlo Park, a project with a 45% density bonus can have up to 4 stories (or 48'), while a project with a 45% density bonus and with 25% of the units reserved for extremely low-income households can have up to 5 stories (or 60'). Milpitas already has two precedents to consider when approaching additional height allocations. The High-Rise (-HR) Overlay District is an existing designation that can be combined with any zoning district along with infill projects located along freeways and expressways. While a new overlay zone oriented around affordable housing may be introduced, the City could first consider expanding the existing -HR designations onto new applicable parcels through a zoning map amendment, rather than nest such language into a new overlay regulation.

With the recent completion of the Milpitas BART station, AB 1763 (2019) also offers a unique perspective on regulating building height increases within an incentive structure. AB 1763 allows eligible 100% affordable housing developments built within a half-mile of a major transit stop an increase in building height by 3 additional stories or 33 feet. The bill allows this additional density to operate *atop* any other density bonuses. The result can be a substantial increase in total development potential, as seen in a recently approved housing development in nearby San Mateo where the application of AB 1763 allowed an initially proposed 164-unit, 5-story project to expand into a 225-unit, 7-story project. Although this stipulation may not apply city-wide, Milpitas could first consider the potential development capacity of parcels within a half-mile radius of the BART station, or other qualifying transit hubs, as an alternative to a new overlay zone.

Building & Site Design

Setback and off-street parking reductions can allow housing projects to increase their size and density, in turn creating more units. Setbacks create distance between a building and the property boundaries, and smaller setback minimum requirements mean that developers can use a greater area of the lot for the building.

Off-street parking requirements are usually met by constructing parking spaces underneath the building, on the ground floor, or in an adjoining parking lot. Reducing the required minimum parking spaces can allow for more development potential ((i.e., community amenities, green spaces, additional units) on a site as well as reduce development costs. With reduced or no minimum parking requirements, a developer can still choose to

provide more parking if needed. Additionally, removing parking minimums can incentivize building occupants to use alternative modes of transportation.

C. Fee Waivers

Development fees, permitting fees, and/or processing fees are typically required from developers when submitting a project proposal. Affordable housing overlays can be structured to waive certain fees for projects that reach specific affordability requirements. For example, Menlo Park waives processing fees for projects that have at least 50% of the units reserved for low-income households or 20% of the units reserved for very low-income households. The City of Perris' Senior Housing Overlay Zone waives the development fees for all projects that qualify under this overlay.

While Milpitas could waive some or all of the fees to incentivize housing projects, the City would need to evaluate how to fund the services that the fees are used to provide. Considerations may include waiving or reducing Planning Entitlement, Transit/Traffic Impact, or Parks fees, or revising the types of projects that are subject to these fees. In particular, the city should carefully assess whether qualifying multifamily projects within a newly proposed overlay zone would be subject to all typical fees – the prospect of a reduced set of mandatory fees could serve as an attractive incentive for developers.

D. Other Incentives

- **100% AHO vs not-100% AHO consideration.** Adopting a 100% Affordable Housing Overlay can incentivize non-profit and affordable housing developers to construct projects in Milpitas as it signals that the City is prioritizing the development of housing for its low-income residents, a demographic that struggles to find housing options that match their incomes. But having a mixed Affordable Housing Overlay allows other types of projects with different income mixes (and a broader variety of financing) to be constructed. Other types of possible incentives will be studied further after consultation with developers in Milpitas area to identify what would make it attractive to build more affordable housing.
- **Socio-economic benefits.** The creation of an affordable housing overlay zone can bring about socio-economic benefits for the city, and for the tenants and owners of affordable units. The Berkeley overlay proposal calls out how the intent of affordable housing overlays is not just to produce more housing, but to promote the more equitable distribution of affordable housing throughout a city. This is especially important in areas that have been shaped by class and racial segregation and where it persists to this day. When affordable housing is allowed to develop in high-opportunity neighborhoods, there are more opportunities than before for lower-income households to live and participate in those neighborhoods. More residents of a city can have the option to live in neighborhoods that typically have greater access to transit, education, and community amenities. Depending on the overlay's provisions, it can also incentivize a greater mix of incomes within individual buildings.

5. Conclusion

A housing overlay that is developed in Milpitas will have to consider the city's housing needs and environmental context to create an overlay that best suits the City's conditions and housing goals. There are a variety of incentives and strategies that an overlay can include to encourage the development of a particular type of housing, but it must be done in conjunction with existing state housing bonuses and incentives.

A few considerations for the city to consider in developing a AHO in Milpitas:

- The extent to which an AHO can build upon the SDBL and other recent State provisions for incentivizing housing production.
- The amount of financial incentives including fee waivers that the City can offer to prioritize the development of affordable housing.
- How to address the potential issue that the concentration of affordable units in certain geographic areas may run counter to AFFH requirements, especially if Housing Element sites are located with the overlay zone.

The precedent examples shall be helpful in informing the development of a Milpitas-specific overlay zone. Next steps include stakeholder interview and further analysis of target areas and applicable regulations.

6. Appendix

Overlay Zone Text and Resources

Cambridge, MA

- Regulatory text: <https://www.cambridgema.gov/-/media/Files/CDD/Housing/Overlay/adoptedahoordinance.pdf>
- Supporting Documentation:
 - https://www.cambridgema.gov/-/media/Files/CDD/Housing/Overlay/zngamend_aho_designguidelines_20200728v2.pdf
 - <http://rwinters.com/insideout/2018sept18/OverlayProposal2018Sept13.pdf>
 - <https://courbanize.com/projects/jeffersonparkfederal/information>
 - <https://www.wickedlocal.com/story/cambridge-chronicle-tab/2021/08/16/op-ed-cambridges-affordable-housing-overlay-already-producing-350-new-affordable-homes/8129618002/>

Berkeley, CA

- Regulatory text (DRAFT): <https://www.berkeleyside.org/wp-content/uploads/2021/11/2021-11-09-Item-09-Affordable-Housing-Overlay.pdf>

- Supporting Documentation:
 - <https://www.berkeleyside.org/2021/11/10/affordable-housing-berkeley>
 - <https://beyondchron.org/berkeleys-next-big-step-a-100-affordable-housing-overlay/>
 - <https://www.dailycal.org/2021/11/11/berkeley-city-council-approves-affordable-housing-overlay-social-housing-measures/>

Menlo Park, CA

- Regulatory text: <https://www.codepublishing.com/CA/MenloPark/#!/MenloPark16/MenloPark1698.html>
- Supporting Documentation:
 - El Camino Real and Downtown Specific Plan: <https://www.menlopark.org/DocumentCenter/View/290/Specific-Plan---Complete?bId=1>
 - <https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/housing-element-update/20220212-housing-element-update-community-meeting-presentation.pdf>
 - <https://covid19.sccgov.org/sites/g/files/exjcpb766/files/Documents/santa-clara-county-2021-area-median-income-ami-chart.pdf>

Perris, CA

- Regulatory text: https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT19ZO_CH19.86SEHOOVZOSH
- Supporting Documentation:
 - <https://ktgy.com/work/perris-station-senior-apartments/>

Other sources

- [https://www.planetizen.com/definition/right-development#:~:text=A%20by%2Dright%20approval%20\(also,construction%20without%20requiring%20discretionary%20approval](https://www.planetizen.com/definition/right-development#:~:text=A%20by%2Dright%20approval%20(also,construction%20without%20requiring%20discretionary%20approval)

TECHNICAL MEMO

City of Milpitas Planning Documents and Process Assessment

March, 2022



Submitted by Raimi + Associates

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1. Introduction

i. Overview

Several factors have made the goal of creating and preserving housing, especially affordable and special needs housing, a challenge in the City of Milpitas. Along with increasing land and construction costs, current plans and regulations can also severely limit where and how much new affordable housing can be built. Zoning laws may impose standards such as density limits and parking requirements or delays in the permitting process can become burdensome for some housing projects.

This memo reviews and summarizes some of the existing planning documents and ordinances that impact the development of housing and identifies strengths that can be enhanced and weaknesses that can be overcome through the Housing Overlay Zone project. The HOZ aims to address these challenges through relaxing requirements, providing incentives, and streamlining the permitting process to help the City's developers and housing partners access new opportunities and allow for balanced and equitable growth in the city. This memo will help develop recommendations guiding land use, developmental standards, and processes in the next phase of the Housing Overlay Zone project.

ii. Key Takeaways

- The General Plan goals and actions aim to create vibrant commercial neighborhood centers through placemaking strategies and mixed-use development that encourage social gatherings.
- While the current General Plan designations NCMU and TWC allow mixed use, low FAR limits and the bundling of residential development with the amount of commercial space developed considerably limits the scope of constructing mixed use projects.
- The revised density limits in the draft Metro Specific Plan have the potential to be further intensified based on the proposed height limits taking advantage of the State Density Bonus Law. The Zoning Ordinance would need to be amended after the adoption of the Metro Specific Plan.
- Density Bonus and other State laws provide for additional floor area, additional density, and a reduction in parking requirements. The HOZ may need to go significantly beyond state legislation to be effective on properties where state density bonus laws apply.
- The City's current Affordable Housing Ordinance requires a minimum of 15% of units to be affordable, pay an in-lieu fee, or dedicate land. The HOZ could further incentivize inclusionary units, or it will need to relate to projects exceeding the 15% required by the AHO.
- Development Process timelines for Milpitas are in line with surrounding communities and not seen as a significant burden to development.
- Development Fees are higher in Milpitas compared to other jurisdictions in Santa Clara County owing to high entitlement fees for single-family development and high impact fees for multi-family developments. The high impact fees are due to the Transit Area Development Impact fee (TADIF) for sites within the TASP area and high park in lieu fees for sites outside the TASP area.

2. Documents and Policies Reviewed

This memo summarizes relevant planning legislation and processes that regulate the development of housing and will inform the development of the Housing Overlay Zone. Specifically, the following regulatory planning and policy documents have been included in this memo.

Table 2-1 Overview of Plans and Policies Reviewed

Name of Plan/Policy	Adoption Date/Status	Relevance
Milpitas General Plan	Adopted 2021	Outlines city-wide land use goals and actions and provides land use designations including the mix of residential and commercial use.
Milpitas Metro Specific Plan	Public Draft 2021	Proposes redevelopment of industrial uses near the Great Mall area with increased intensities and mix of uses.
Midtown Specific Plan	Adopted March 2002 Updated 2010	Provides a new vision for approximately 1,000 acres with a focus on housing and employment. An update to the plan was initiated in 2021 and is not covered under this memo.
Zoning Code		Establishes zoning districts and defines the type of development, use, densities, height, and parking requirement for each district.
City Density Bonus Ordinance & State of California's Density Bonus Law	City's DBO last amended in 2008	Provides density bonuses on a sliding scale for different affordability criteria.
Affordable Housing Ordinance	July 2018 Amended 2022	Requires all developments with 10+ units to provide 15% affordable units.

3. Planning Review

i. Milpitas General Plan

The Milpitas General Plan, adopted in 2021, includes multiple high-density residential designations, two specific plan areas, and two mixed-use zones. For the HOZ project, this report will review the Town Center (TWC) and Neighborhood Commercial Mixed-Use (NCMU) designations in detail and highlight other potentially relevant designations.

General Plan Goals, Policies, and Actions.

The General Plan Goals, Policies, and Actions set out three main goals for the commercial centers included in the TWC and NCMU plan areas -the first is to support and maintain commercial centers that serve residential neighborhoods, the second is to focus on placemaking in any redevelopment of these commercial centers to create public gather places and opportunities for outdoor uses such as outdoor cafes and other amenities, and the third is to encourage mixed-use development including residential multi-family development to "encourage social interactions." While these goals reflect the positive outcomes of potential redevelopment and reinvestment in underperforming and aging commercial centers, there are other goals and policies that may be contradictory or limit potential redevelopment. Specifically, the NCMU and TWC designations have requirements that significantly limit the feasibility of mixed-use projects. Generally, the Goals and Policies outline that in the NCMU zone, redevelopment results in "no net loss of viable commercial space." This language is ambiguous and as the retail market continues to evolve, the viability and type of commercial spaces come into question. In other jurisdictions, a net loss in commercial space is often witnessed when single use shopping centers are redeveloped as mixed-use projects, with commercial FAR ranging between 10% to 25%.

The Actions in the General Plan give direct guidance on the creation of new zoning standards to support the NCMU designation and update the TC zone to reflect the guidance of the TWC designation. The actions also outline research and flexibility in standards to develop a citywide Retail Strategy and update the Zoning Ordinance to help ensure that commercial centers remain competitive and successful, as well as undertake strategic initiatives and flexible development standards for the adaptive re-use of aging centers. These actions allow more flexibility in the ability to meet the goals and policies for redevelopment of the mixed-use centers.

EXCERPT FROM GENERAL PLAN

Goal LU-6 *Support commercial centers that serve residential neighborhoods and provide for a variety of convenient, successful and attractive commercial uses throughout the city.*

LU 6-1 *Ensure new development in Neighborhood Commercial Mixed Use (NCMU) areas includes adequate commercial components to retain commercial uses as the dominant use type, and that the redevelopment of aging centers results in no net loss of viable commercial space. The City Council may consider opportunities to waive commercial requirements in mixed use areas for 100% affordable projects that increase the affordable housing stock within Milpitas for "very low income" and "low income" categories.*

LU 6-2 As commercial centers are proposed for redevelopment, create a vibrant public realm through placemaking techniques like public gathering places, features and focal elements including outdoor cafes and other outdoor uses and amenities.

LU 6-3 Minimize the visual impact of large parking lots by locating them away from public streets and reclaim unneeded and underutilized paved areas that could be converted to neighborhood-enhancing features such as, gathering areas, pocket parks, or other community focused amenities.

LU 6-4 Maintain viable neighborhood-serving commercial uses throughout the City in order to serve surrounding neighborhoods and minimize vehicle miles traveled. Encourage a diverse mix of commercial uses including retail, service, office, entertainment, and assembly uses.

LU 6-5 Promote reinvestment in strip commercial and shopping centers and maintain, revitalize, and redevelop aging and underperforming centers.

LU 6-6 Encourage redevelopment and intensification of mixed-use areas by allowing stand-alone vertical mixed-use, or integrated horizontal mixed-use projects in mixed use areas, consistent with the Land Use Map and policies and actions included in this element.

CD 9-3 Encourage the incorporation of publicly accessible spaces, such as plazas and pocket parks, into new and existing commercial, multi-family, and mixed-use developments to encourage social interaction. The spaces should be appropriately scaled and programmed and compliment the characteristics of the district and/or neighborhood and the surrounding development.

EXCERPT FROM GENERAL PLAN

Action LU-1a Update the City's Zoning Map as appropriate to ensure consistency with the land use designations shown on Figure LU-1.

Action LU-1b Review the Zoning Ordinance and update as appropriate to reflect Land Use goals, policies, and implementation actions included in this Plan. Specific updates include but are not limited to: 1) Creation of specific new zoning standards to support the Neighborhood Commercial Mixed-Use (NCMU) and Neighborhood Commercial (NC) land use designations to ensure that NCMU and NC areas remain primarily neighborhood serving.

Action LU-6a Continue to review development applications to ensure land use compatibility as new development applications are brought forward. Where potential impacts are identified seek opportunities to reduce impacts through site planning and design techniques including but not limited to buffering of uses, clustering, or other planning tools as necessary to reduce potential impacts to sensitive receptors.

Action LU-6b Monitor emerging trends in retail and other commercial uses, regularly engage representatives of the business community and citizen leaders, and update the Zoning Ordinance to help ensure that commercial centers remain competitive and successful.

Action ED-1i Develop, implement and update at least every 5 years, a citywide Retail Strategy, to reduce retail vacancies and strengthen the City's retail tax base.

Action ED-1j To encourage redevelopment of underperforming commercial corridors and retail centers (i.e. Serra Center, Main St.), maintain flexible zoning standards allowing both vertical and horizontal mixed uses.

Action ED-3a Encourage the renovation and/or redevelopment of existing outdated facilities that have strong linkages to transit and nearby retail and recreational amenities.

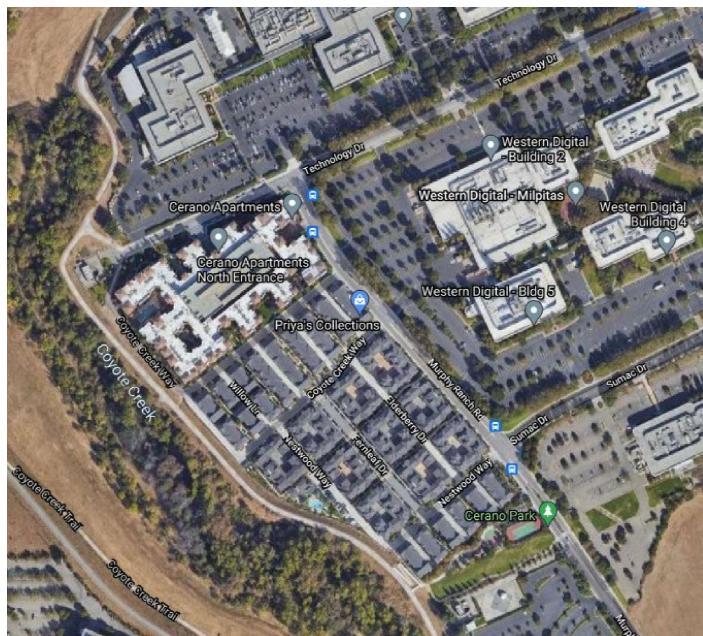
Action ED-3b Undertake strategic initiatives to attract private investment in well-located properties that are currently vacant and/or underutilized.

Action ED-3d Maintain flexible development standards to accommodate a wide range of commercial space needs and facilitate the adaptive reuse of older properties.

General Plan Designations

Residential Designations (LDR, MDR, HDR, VHDR). The residential GP designations are almost exclusively built at the upper end of the density for each designation. They are only relevant to the HOZ if other areas in Milpitas are rezoned to these designations through a Specific Plan or specific project. This seems to be a typical pattern in the City in multiple locations.

QUESTION: What is the history of non-residential properties being rezoned for housing? Should the HOZ look for these types of opportunities? Example: Cerano Apartments, Murphy Ranch Road (Previously zoned Light Industrial or Industrial Park, now zoned Urban Residential)



Neighborhood Commercial Mixed (NCMU). The NCMU designation is a new land use designation in the 2021 General Plan Update. The NCMU designation is located in four areas across the City and includes three different commercial and industrial zoning districts. The new designation allows for the development of housing on properties in the NCMU designation but includes strict limits on the amount of residential that is allowed in relation to the amount of commercial space provided. It is unlikely that a mixed-use project would be feasible if a new zoning district was created that instituted the residential to non-residential ratio requirements of the General Plan designation. The General Plan does not include a density for residential in the NCMU designation. Assuming 1,000 gross square feet per unit on average, the density of the NCMU designation would be 21 dwelling units per acre but would require 0.75 commercial to get to 21 dwelling units per acre. The General Plan does allow for discretionary approval for residential-only projects if the project is 100% affordable to the "low" and "very low" income categories.

"FLOOR AREA RATIO. Floor area ratio, referred to as FAR, is used to express the building intensity for nonresidential uses, such as commercial, industrial, community facilities, and the non-residential component of mixed-use projects. FAR refers to the ratio of the total floor area of a building or buildings on a site, excluding parking structures and outdoor storage areas, to the lot area of the site."

EXCERPT FROM GENERAL PLAN

NEIGHBORHOOD COMMERCIAL MIXED-USE (NCMU) (FAR UP TO 0.75, AND UP TO 1 UNIT PER 1,500 SQUARE FEET OF NONRESIDENTIAL DEVELOPMENT). The Neighborhood Commercial Mixed-Use (NCMU) designation is intended to accommodate a mix of commercial and residential uses with an emphasis on commercial activity as the primary use, and residential uses, hotel, and office development allowed on a limited basis. The NCMU designation encourages active neighborhood serving uses at the ground level, including grocery stores, specialty retail, restaurants, plazas, or walk-in personal services such as banks and salons at FARs up to 0.75. This designation also provides opportunities for vertical or horizontal mixed-use residential development to provide for area vibrancy and to encourage the redevelopment of aging commercial centers by allowing Multifamily dwelling units at a rate of 1 unit per 1,500 square feet of new or rehabilitated neighborhood-serving retail and commercial services. The City Council may consider the approval of residential-only projects in the NCMU land use designation, provided the project is 100% affordable to the "low" and "very low" income categories, in order to increase the stock of affordable housing in Milpitas. Projects with a residential component are subject to additional policy direction (Policy LU 6-1) to ensure that NCMU areas continue to primarily serve surrounding neighborhoods with commercial services.

If FAR limit does not apply to residential floor area:

Assuming 1,000 gross sf per unit. 1,000 sf residential for every 1,500 sf of commercial. 40% residential:60% commercial. 0.5 FAR residential: 0.75 FAR commercial = 21 dwelling units per acre

Town Center (TWC). The TWC designation updates the previous Town Center designation to allow for residential use to occur within a horizontal or vertical mixed-use project. Residential only projects are not permitted. The purpose for allowing residential is to "increase economic support to the commercial uses." This designation allows for up to 40 units per acre and requires a minimum of 0.35 FAR for non-residential uses. In our experience, we rarely see a 0.35 FAR in a vertical mixed-use project, the amount of parking needed typically makes this amount of commercial infeasible. A range of 0.10 to 0.20 FAR for commercial. Is more common vertical mixed-use or a mix of vertical and horizontal mixed-use projects. In addition to

the restrictive nature of the minimum commercial FAR requirement, the maximum density of 40 dwelling units per acre is not a typical density for vertical mixed-use projects. In a podium mid-rise building type, 40 dwelling units per acre can generally fit in typically 2 floors of residential, whereas a more typical mixed-use project includes 4 or 5 story residential floors. The above analysis is typical for single projects, the redevelopment of the large format shopping centers will require more analysis and site testing to understand the how the minimum commercial FAR and maximum density would play out in a more horizontally focused mixed-use project with structured or rooftop parking. If the zoning is set per the General Plan guidance, the HOZ may provide the opportunity to increase densities to a more typical building type while providing additional affordable housing above the AHO's 15% requirement. As part of this analysis, a more detailed economic analysis may be beneficial in the Existing Conditions phase of the project.

EXCERPT FROM GENERAL PLAN

TOWN CENTER (TWC) (UP TO 40 UNITS PER ACRE AND FAR UP TO 0.85). *This designation provides for a variety of commercial, professional, civic, restaurants, hotels, residential, and entertainment uses. Projects may consist of a wholly non-residential development, or a mixed-use residential project that integrates residential and nonresidential uses vertically or horizontally. Residential-only projects are not permitted. Residential developments up to 40 units per acres may be permitted within the Town Center as part of a mixed-use development project to increase economic support to the commercial uses. Developers wanting to maximize the residential component of the parcel are required to provide a minimum FAR of 0.35 for the non-residential component. Sites developed with a mix of uses, or non-residential uses, must adhere to a FAR maximum of up to 0.85.*

ii. Specific Plans

There are two specific plan areas in Milpitas. Both specific plan areas are currently undergoing an update. The Metro Specific Plan, formerly the Transit Area Specific Plan, has a Public Draft available for review. This document does not review content for the Midtown Specific Plan/Main Street Gateway Specific Plan since that update process has just started and new content is not yet available.

Milpitas Metro Specific Plan/Transit Area Specific Plan (2021 Admin Draft)

The Milpitas Metro Specific Plan (Metro plan) creates eight land use classifications and zoning districts that are specific to the Metro plan area. The Metro plan estimates an addition of 5,000 to 7,000 new residential units within its boundaries. The Metro plan does not have a specific affordable housing strategy that is different from city-wide inclusionary housing ordinance.

"The currently calculated draft capacity for additional residential units in Milpitas Metro is 5,000-7,000 total, with 2,000-4,000 units on the Great Mall site, and 3,000 units on other sites. When the Housing Element is developed, the City will determine which sites to include in the Housing Element."

Zoning Districts. Of the eight new zoning designations in the Metro Specific Plan, five districts allow residential development. The plan also identifies "Areas of Change" that include potential development

sites within the plan area since much of the land has been developed in the last 15 years under the TASP plan. Table 3-1 below is excerpted from the draft plan and shows preliminary densities and heights and associated zoning districts. The FAR's and densities are net, excluding required streets and open spaces. The plan also states that the HOZ may allow for increased housing densities in the plan area.

"The City is developing Housing Opportunity Zones (HOZ), which will designate opportunity areas for increased housing densities. Proposed development projects in the HOZ will be eligible for additional densities provided that they comply with City requirements including design standards and affordable housing requirements."

Many sites within the "Areas of Change" are located in the Great Mall site and designated Residential Retail High Density Mixed Use (RRMU) which allows for up to 85 units per acre on a residential only project or up to 2.5 FAR in mixed-use project with upper floor residential up to 85 feet in height. These numbers are in-line with the allowed FAR but a typical mid-rise residential only or mixed-use building with 5 residential floors could produce up to 120 to 140 dwelling units per acre. The difference between allowed density and estimated density per prototypical building type provides an opportunity for the HOZ to create an incentivized structure for additional density that is above what is allowed according to State Density Bonus law. Similarly, the housing densities in the MFH and VHD classifications are artificially low compared to the height limits. The URR classification's density of up to 120 units per acre is more in-line with a prototypical building type at 6 stories with associated affordable housing density bonuses.

Table 3-1 Metro Plan Residential Land Use Designations

Land Use Designation	Density (units per acre)	Maximum Height	Active Use Requirements	Zoning
Residential Retail High Density Mixed Use (RRMU)	Mixed Use ¹ : 1-2.5 FAR Residential Only: 40-85 units/ac	85 feet Within 60 feet of adjacent existing residential zoned parcels, building height shall be stepped down to be the same max height plus 10 feet of the adjacent parcel.	Ground floor retail and active uses are required on 80 percent of the ground floor facade along any Shopping Street.	Metro High Density Mixed Use (MXD2-Metro)
Boulevard Very High Density Mixed Use (BVMU)	Mixed Use ¹ : 2.5-5.0 FAR	275 feet 50 percent of base footprint above 85 feet and 25	Ground floor retail and active uses are required on 80 percent of the ground floor	Metro Very High Density Mixed Use

	Residential Only: 85-250 units/ac	percent of base footprint to a maximum height of 275 feet tall	facade along any Shopping Street.	(MXD3-Metro)
Multi-Family High Density Residential (MFH)	Residential: 30-40 units/ac	75 feet	N/A	Metro Multi-Family High Density Residential (R3-Metro)
Multi-Family Very High Density Residential (VHD)	Residential: 40-85 units/ac	35-85 feet	N/A	Metro Multi-Family Very High Density Residential (R4-Metro)
Urban Residential (URR)	Residential: 70-120 units/ac	6 stories and 75 feet	N/A	Metro Urban Residential (R5-Metro)

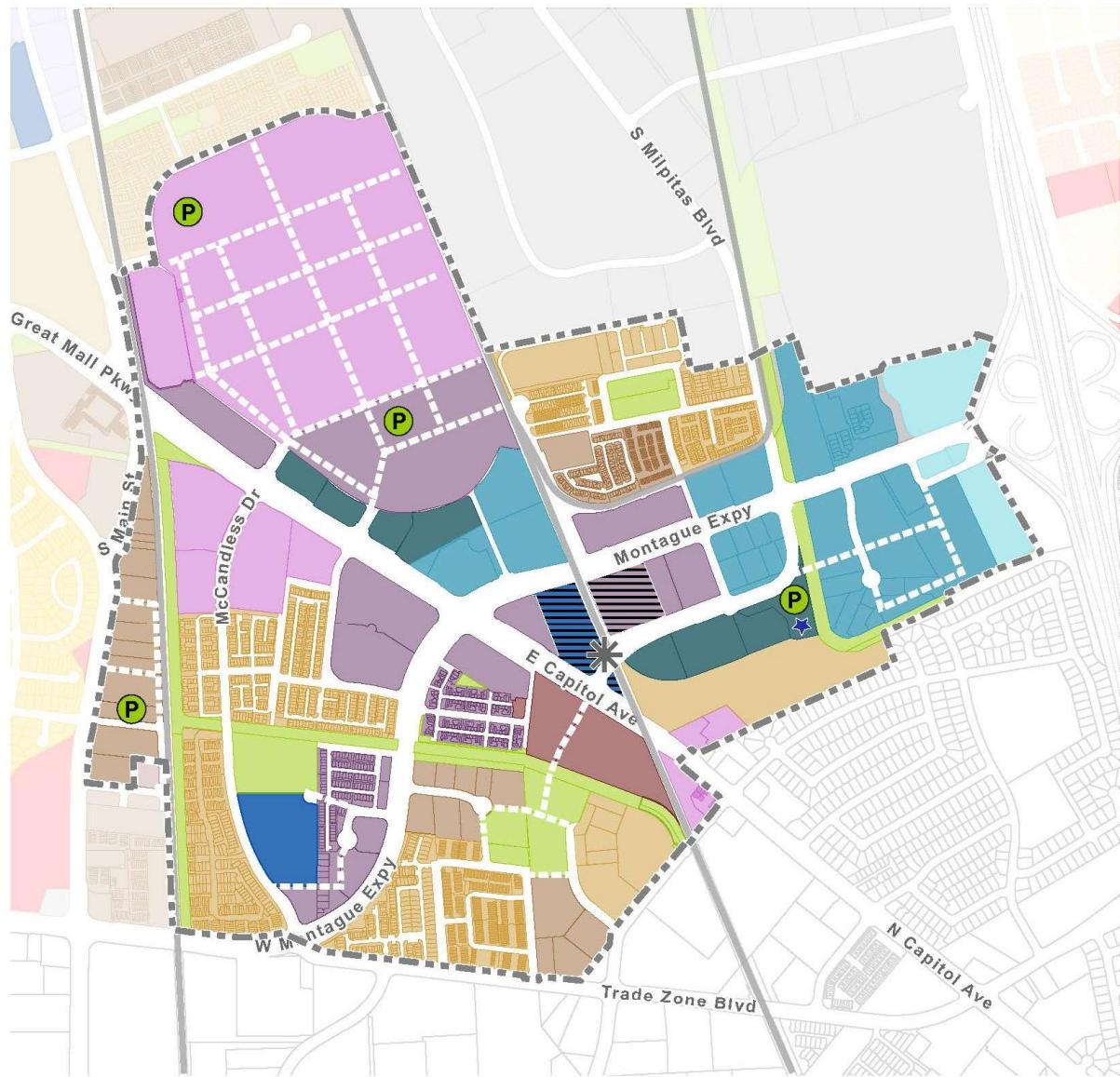
¹ On Housing Element opportunity sites, upper story non-residential uses are prohibited.

Parking. The Metro plan includes a significant reduction in parking requirements from the city-wide zoning code. The Metro plan introduces a maximum allowed parking ratio and a minimum number of spaces per unit without specifying number of bedrooms. In addition to the requirements in the table below, further reductions are possible conditionally.

Table 3-2 Metro Specific Plan Parking Requirement

Land Use	Minimum Requirement	Maximum Requirement
Residential/Lodging	0.5 spaces per unit	1.5 spaces per unit
Non-Residential	1 space per 1,000 sf	2 spaces per 1,000 sf

LAND USE

MILPITAS METRO 

--- Milpitas Metro

* BART Station

★ Police Substation*

(P) Park*

— Railway

— Transit Center

- █ Public Facilities (PF)
- █ Boulevard Very High Density Mixed Use (BVMU) 85-250 units/acre; 2.5-5.0 FAR
- █ Permanent Open Space (POS)
- █ Business Park Research & Development, Lower Density (BPRD-L); 1.0-2.5 FAR
- █ Residential Retail High Density Mixed Use (RRMU) 40-85 units/acre; max 2.5 FAR
- █ Business Park Research & Development, Higher Density (BPRD-H); 1.0-2.5 FAR
- █ Business Park Research & Development, Residential (BPRD-R); 1.0-5.0 FAR
- █ Multi-Family Residential High Density (MFH) 30-40 units/acre
- █ Multi-Family Residential, Very High Density (VHD) 40-85 units/acre
- █ Urban Residential (URR) 70-120 units/acre

*Location is approximate and shall be determined through the implementation of the MMSP.

GIS data provided by: General Plan - City of Milpitas / Roads - US Census Bureau 2019 TIGER / Basemap - ESRI

Updated Feb 7, 2022

iii. Zoning/Municipal Code

Neighborhood Commercial Mixed-Use (NCMU)

The areas identified in the General Plan NCMU designation include three zoning districts (see table below). These zoning districts do not allow residential uses and have floor area and height limits that would be restrictive to developing residential and mixed-use residential projects. The zoning district will need to be updated within the HOZ process.

Town Center (TWC)

The TWC General Plan designation includes only one zoning district, TC (see table below). The maximum FAR in the zoning district is in line with the TWC designation at 0.85 FAR. The TC Zone does not allow residential uses, but three residential projects have been approved and built within the district. The zoning district will need to be updated during the HOZ process to allow for residential uses per the General Plan designation. As noted in the General Plan review, the maximum density of 40 dwelling units per acre may limit economic feasibility. The existing maximum building height of 35 feet would force projects into a horizontal mixed-use format. To achieve a vertical mixed-use product in the 40 dwelling units per acre density, a minimum of 4 stories and 50 feet of height would be needed. If through the HOZ or through the writing of new zoning greater densities were allowed, vertical mixed-use projects would be more feasible at 6 to 8 stories and up to 85 feet in height.

EXCERPT FROM ZONING CODE *Town Center (TC) Zone. The purpose and intent of this zone is to provide for an area that supports a wide range of administrative, business, entertainment, dining, and cultural activities in the geographic center of the City to suit the varying lifestyles of residents and visitors alike. The area is easily accessible via the City's transportation network.*

Table 3-3 FAR and Height Requirement by Zoning District

Zone	Floor Area Ratio (FAR)	Building Height
Zoning Districts within NCMU		
Neighborhood Commercial (C1)	0.35 FAR	35 ft/ 2.5 stories
General Commercial (C2)	0.50 FAR	no building height maximum
Industrial Park (MP)	0.5 FAR	35 ft/3 stories
Zoning Districts within TWC		
Town Center (TC)	0.85 FAR	35 ft/3 stories or higher with conditional use permit

Parking

The following tables show minimum requirements for the different land uses in the zoning designations relevant to the HOZ. The zoning code does allow for shared parking through a conditional use permit.

Table 3-4 Parking Requirements for Mixed and Multi-family Zoning Districts

Mixed-Use + Multi-Family	Minimum Parking Spaces Required (parenthesis inclusive of guest parking)
<i>Studio</i>	<i>1 space per unit (1.15)</i>
<i>1 Bedroom</i>	<i>1.5 spaces per unit (1.75)</i>
<i>2-3 Bedroom</i>	<i>2 spaces per unit (2.15)</i>
<i>4 or more</i>	<i>3 spaces + 1 per additional bedroom (3.15)</i>
<i>Senior Housing</i>	<i>1 space per unit + 2 per manager's unit</i>
<i>Guest Parking</i>	<i>15% of the total required (structured) 20% of the total required (private garages)</i>
<i>Bicycle Parking</i>	<i>5% of the total required (Residential + Commercial Uses)</i>
<i>Ground Floor Retail</i>	<i>1 per 250 sq. ft.</i>
<i>Office</i>	<i>If building is 1,000 sq. ft. or smaller: 1 per 250 sq. ft.; If building is larger than 1,000 sq. ft.: 3.3 per 1,000 sq. ft.</i>
<i>Other Uses</i>	<i>Refer to specific uses in table</i>

Table 3-5 Parking Requirements for Commercial Zoning Districts

Commercial Use (single-use)	Minimum Parking Spaces Required
<i>Commercial Services¹ (floral shops, barber shops, dry cleaners, Laundromats, photocopy shops)</i>	<i>1 per 200 sq. ft.</i>
<i>General Retail and Convenience Stores</i>	<i>1 per 200 sq. ft.</i>
<i>Financial institutions (banks, savings and loans, etc.)</i>	<i>1 per 180 sq. ft.</i>
<i>Offices, administrative and business services</i>	<i>1 per 240 sq. ft.</i>
<i>Bars, Drinking Establishments</i>	<i>1 per 30 sq. ft.</i>
<i>Restaurants (Sit Down)</i>	<i>1 per 39 square feet of dining area.</i>
<i>Restaurants (Take Out)</i>	<i>1 per 2.5 seats (indoor/outdoor) plus 1 per 60 sq. ft. GFA for the ordering or take out area.</i>

Shared parking may be applied in the following situations:

1. In mixed-use developments, which include one or more businesses that are complementary, ancillary, or support other activities. A typical mix of uses includes, but is not limited to: residential, office, restaurants, retail, colleges, churches, cinemas, and special event situations if they can demonstrate that demand patterns vary among uses.
2. In shopping centers, when more than twenty percent (20%) of gross leasable area is occupied by dining and entertainment uses, (not including pad restaurants, unless they are located within 300 feet of the main shopping center building) shared parking may be applied.

Required Review. Shared parking proposals may be allowed with the approval of a Conditional Use Permit, in accordance with Subsection 57.04, Conditional Use Permits, of this Chapter.

iv. Density Bonus Ordinance

(Title XI-10-54.15 of the Zoning Code and Sections 65915 – 65918 of Ca Government Code)

The City of Milpitas' Density Bonus Ordinance (DBO) was last amended in 2008. The State of California's Density Bonus Law (SDBL) explicitly supersedes any local ordinances and takes precedence when there is any conflict between the two, however, a city may provide additional density bonus over the minimum state requirement. The SDBL has been extensively amended over the last five years with multiple State laws. This report will primarily describe the SDBL and only the features of the DBO that are unique and not superseded by state law. The focus of this report is also primarily on aspects relevant to the goals of the HOZ.

Description of relevant City and State Density Bonus Regulations:

The State Density Bonus Law allows developers of projects with five or more dwelling units to obtain more favorable local development requirements in exchange for building or donating land for affordable or senior units. The SDBL (found in California Government Code Sections 65915 – 65918) provides incentives similar to what could be included in a Housing Overlay Zone to encourage the development of housing, including increase in project densities and reduction of parking or development standards depending on the amount of affordable housing or other specified community benefits (Nave, 2021).

Local jurisdictions are required to grant a density bonus and other incentives or concessions to housing projects which contain one of the following:

- At least 5% of the housing units restricted to very low-income residents.
- At least 10% of the housing units restricted to lower income residents.
- At least 10% of the housing units in a for-sale common interest development restricted to moderate income residents.
- 100% of the housing units (other than manager's units) restricted to very low, lower and moderate-income residents (with a maximum of 20% moderate).
- At least 10% of the housing units targeted for transitional foster youth, disabled veterans or homeless persons, with rents restricted at the very low-income level.
- The project donates at least one acre of land to the city for very low-income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing.
- The project is a senior citizen housing development (no affordable units required).

The amount of the density bonus is set on a sliding scale, based upon the percentage of affordable units at each income level. Base density allowed is calculated based on either the zoning district or General Plan land use designation, whichever allows higher density. Affordable projects with as little as 5% Very Low income or 10% Low Income units are eligible for up to 50% increase in density. Projects which have all affordable units are eligible for an 80% increase in density.

In Milpitas, If the housing development meets criteria- at least 5% of the housing units restricted to very low-income residents or at least 10% of the housing units restricted to lower-income residents, the density bonus shall be an increase of 20% over the maximum allowable residential density under the general plan and zoning ordinance. If the housing development meets criterion- Ten percent (10%) of the total dwelling units in a condominium project restricted to moderate income, the density bonus shall be an increase of five (5%) percent over the maximum allowable residential density under the general plan and zoning ordinance.

Parking

Upon the developer's request, the city or county may not require more than the following parking ratios for a density bonus project (inclusive of parking for persons with disabilities):

- Studio or 1 Bedroom – 1 space
- 2 or 3 Bedroom – 1.5 spaces
- 4 Bedroom 2.5 spaces

Even lower parking ratios apply to affordable housing projects that are within specific proximity of transit services and facilities (although local jurisdictions can require higher parking ratios if supported by a parking study).

Concession and Waivers

In addition to the density bonus, the city or county is also required to provide one or more "incentives" or "concessions" to each project which qualifies for a density bonus. A concession or incentive is defined as reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements, or other regulatory incentives or concessions which actually result in identifiable and actual cost reductions. The number of required incentives or concessions is based on the percentage of affordable units in the project, with the larger the percentage of affordable units and the higher.

If any other city development standard would physically prevent the project from being built at the permitted density and with the granted concessions/incentives, the developer may propose to have those standards waived or reduced. The city is not permitted to apply any development standard which physically precludes the construction of the project at its permitted density and with the granted concessions/incentives other than those that would cause a problem for public health, safety, the environment, historical property, or would be contrary to law.

Bonus related to proximity to transit

Height or FAR limits in the local zoning are development standards for which waivers can be requested for a density bonus project. Eligible 100% affordable housing developments built within a half-mile of a major transit stop may increase building height by 3 additional stories or 33 feet over any prescribed zoning standard and have no other limit on density.

The SDBL also requires that cities and counties provide a "development bonus" to commercial developers who partner with affordable housing developers for the construction of affordable housing on the commercial project site, or offsite within the jurisdiction located near schools, employment and a major transit stop. Unlike the primary Density Bonus Law, there is no fixed amount of increased density available. Instead, the development bonus can be any mutually agreeable incentive, including up to a 20% increase in development intensity, floor area ratio, or height limits, up to a 20% reduction in parking requirements, or other exceptions (Meyers Nave, 2021).

Under new amendments effective in 2019, a local jurisdiction is also permitted under the SDBL to grant a floor area ratio bonus rather than a traditional density bonus to certain high density affordable housing projects adjacent to public transit. This option would need to be specifically adopted by the Milpitas City Council as an amendment to the City's DBO since it is not automatically available. Eligible projects are also entitled to special parking ratios of one-tenth of a parking space per affordable unit and one-half space per market rate unit. To be eligible for the floor area ratio bonus, the project must restrict at least 20 percent of the units to very low-income tenants, must be located within a transit priority area or near a major transit stop, and must be in compliance with local height limits. (Meyers Nave, 2021).

Analysis of how these standards relate to HOZ goals

Milpitas has not had much affordable housing development of any type, so a variety of categories of incentives in the HOZ would be appropriate. The HOZ Existing Conditions Report, and the Housing Element are examining the inventory and pipeline of housing concurrently and the need for different types of housing. It is important to grant additional waivers from zoning standards to facilitate development that provides more affordability: One set of waivers in addition to the SDBL could apply to projects with 50% affordable housing, and a larger waiver could apply to 100% affordable projects. These waivers can exceed SDBL because the amount of affordable housing will exceed what is required in the State law.

In addition to amending the base commercial/mixed use zoning to have FAR density consistent with the NCMU and TWC, there is an opportunity for the HOZ to also consider an additional FAR bonus for residential projects with 50% or 100% Affordable units. This could include an amendment to Section XI-10-54.14 of the Zoning along with the creation of the HOZ section of the code.

V. Affordable Housing Ordinance

(Title XII-Chapter 1 of the Municipal Code – Housing Section)

The City of Milpitas' Affordable Housing Ordinance (AHO) came into effect in July 2018 and was recently amended in February 2022. The AHO sets out the minimum percentage of affordable dwelling units, compared to the SDBL and the HOZ provisions which are optional for developments providing much higher percentages of affordable housing onsite. The AHO requires all new residential projects with ten or more units to develop 15% of the total number of units as affordable units. This Report summarizes the most relevant provisions and identify issues that impact the HOZ goals and objectives.

Description of relevant AHO Regulations:

The required income levels for inclusionary units are very broad: rental developments may provide either very-low or low-income units, and ownership development may provide very-low-, low-, or moderate-income units.

The Ordinance provides incentives to developers to provide affordable housing units on site, however, a developer may satisfy the affordable housing requirement in other ways. All exceptions to the AHO requirement require City Council approval prior to the approval for development of the project.

- **Pay fees in lieu of creation of affordable units.** Ownership housing projects must request and secure approval from the City Council for paying fees in lieu of construction, whereas rental projects do not need special approval for this option. The affordable housing fees are adopted by City Council Resolution and adjusted annually for inflation. This section was updated after initial adoption to make it more likely for ownership projects to provide affordable units on site.
- **Construct affordable units off-site.** With the approval of the City Council, the developer may conditionally construct affordable units at another location within the city.
- **Dedicate land.** The City Council may conditionally permit an applicant to dedicate land to the City or a City-designated local non-profit housing developer in lieu of construction of some or all the required affordable units.
- **Transfer credit.** Affordable unit credits are issued for each additional affordable unit constructed over the required number. The applicant may then use the credits to satisfy the requirements for another project in the City.
- **Transfer equivalent square foot.** The applicant may choose to provide more units in an overall development; however, the gross square footage of the proposed affordable units cannot be less than the square footage of the required affordable units.

Table 3-6 Residential Projects Affordable Housing Fee

Building Permit Application Date	Ownership	Ownership	Ownership	Rental
	Single Family (Fee/Sq Ft)	Townhome (Fee/Sq Ft)	Condominium (Fee/Sq Ft)	Apartment (Fee/Sq Ft)
July 1, 2019 – June 30, 2020	\$33.00	\$33.00	\$33.00	\$33.00
July 1, 2020 – June 30, 2021	\$35.13	\$35.13	\$35.13	\$35.13
July 1, 2021 – June 30, 2022	\$37.11	\$37.11	\$37.11	\$37.11
Each Subsequent Fiscal Year	Adjusted by Rate Index per Affordable Housing Ordinance			

Non-Residential Affordable Housing Impact Fee

Any non-residential development in the City is subject to payment of a non-residential affordable housing impact fee. Some non-residential uses such as day care, nursery, school facilities, hospitals are exempt from this impact fee. Other uses not listed in the ordinance may be exempt if the City Council determines that the development will have a minimal impact upon the demand for affordable housing. The impact fee is be calculated on a per square foot basis for net new gross floor area. Thus far, the pipeline non-residential projects have not reached the building permit approval stage, so no impact fee has been collected by the City. The non-residential requirement in the NCMU and TWC zone will lead to higher affordable housing impact fee for new projects in these zones.

Table 3-7 Non-Residential Projects Affordable Housing Impact Fee

Building Permit Application Date	Commercial (Office, Retail and Hotel) (Fee/Sq Ft)	Industrial (R&D, Manufacturing and Warehouse) (Fee/Sq Ft)
July 1, 2019 – June 30, 2020	\$4.00	\$1.00
July 1, 2020 – June 30, 2021	\$6.00	\$3.00

July 1, 2021 – June 30, 2022	\$8.00	\$4.00
Each Subsequent Fiscal Year	Adjusted by Rate Index per Affordable Housing Ordinance	

Incentives to Encourage On-Site Construction of Affordable Units

If an applicant provides affordable units in excess of 20 percent of the total number of units in the project the City provides the following incentives:

1. Planning waivers: Director of Planning shall grant up to two of the waivers listed below that help increase the feasibility of the construction of affordable units. The applicant will receive an additional two waivers from the list below for every additional 5 percent of affordable units provided above the 20 percent.

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

2. Fee deferral:

- **Development Processing Fees.** The City Manager may approve deferred payment of City processing fees applicable to the review and processing of the project. The terms and payment schedule of the deferred fees shall be subject to the approval of the City Manager.
- **Development Impact Fees.** The City Manager may authorize the deferred payment of development impact fees applicable to affordable units. Approval of this incentive requires demonstration by the Applicant that the deferral increases the project's feasibility. The applicant must provide appropriate security to ensure future payment of such fees.

Analysis of how these standards relate to HOZ goals

The AHO is a minimum requirement for projects with ten or more dwelling units, regardless of whether it is residential only or a mixed-use project. This ordinance is also applicable regardless of zoning district. If the income levels and number of affordable housing units meet the requirements for Density Bonus Law, the project would be eligible for the benefits under SDBL or any local density bonus.

vi. SB 35

California Senate Bill 35 (SB 35) is a state law (California Government Code Section 65400 and 65582.1) that streamlines the development review process for affordable housing projects in local jurisdictions that have not made adequate progress toward meeting their Very-Low- and Low-income Regional Housing Needs Allocations (RHNA). Projects in Milpitas with 50% affordable housing (as defined in the California Government Code) are eligible for SB 35 streamlining.

SB 35 requires jurisdictions to review applications within 60 days for developments with 150 or fewer units and within 90 days for developments with over 150 units to determine if the project qualifies for streamlined review. If the application is deemed eligible for streamlined review, the city must then review and approve the project within 90 days after application submittal.

Exemption from CEQA is one of the major benefits for projects using SB 35. However, If HOZ eligible projects are allowed to be approved by-right with no discretionary actions, this may eliminate the CEQA requirement for these regardless of SB 35 eligibility.

The City of Milpitas has not adopted any specific guidance regarding SB 35 projects. **Thus far, the City has only one project (112 below-market-rate, 100% affordable) in the pipeline that qualifies for SB 35 streamlined approval.** Other project details are discussed in the sections below.

Example SB 35 Project

Density Bonus

The City has only one project (112 below-market-rate, 100% affordable) in the pipeline that qualifies for SB 35 streamlined approval. The project site, located within the Transit Area Specific Plan (Milpitas Metro Plan) planning area and within one-half mile of high-quality public transit (Great Mall VTA light rail station), takes advantage of the State Density Bonus Law where there is no maximum density limit if the project is in close proximity to transit. The project is proposed at a density of 117 units per acre where the base density under the General Plan allows 41-60 units per acre. The project site is located in the R4-TOD Multi-family Very High-Density Residential Zoning District with a Transit-Oriented Development Overlay which allows 41-60 dwelling units per acre.

Parking

The proposed project includes no vehicular parking. Pursuant to Government Code Section 65913.4(e)(1)(A), the City is prohibited from imposing automobile parking standards on a project deemed eligible for streamlined review under SB 35 when it is located within ½-mile of public transit.

Concessions and Waivers

Per Density Bonus Law, the applicant requested the maximum four concessions allowed (modifications to Front Yard Setback, Side Yard Setback, Rear Yard Setback, and Residential Open Space) -- resulting in 'actual and identifiable cost reductions.' The applicant also requested two waivers (Private Open Space and On-Street Bicycle Parking) to enable the project to be built at the proposed density.

Development Fees

The project is required to pay the Transit Area Specific Plan Development Impact Fee (TADIF) set at \$44,009 per residential unit. Projects with more than 20 units are required to devote at least one half of one percent of the Building Development Cost towards the purchase and installation of public art at the project site. The project was not exempt from TADIF or the public art requirement.

4. Development Process Review

i. Project Review & Permitting

Standardized and transparent project review and streamlined permit processing are critical steps to assist the development of housing projects in the city. This section reviews the various steps in the project review process and analyzes estimated timelines for approvals to identify barriers or constraints to realize the housing goals stated in the General Plan and the Specific plans including the Housing Element. This review is based on information provided by City staff and the city website and will need to be corroborated and refined with discussions with housing developers. A summary of relevant issues and recommendations will be part of the HOZ Existing Conditions Analysis as well as the Constraints section of the Housing Element after stakeholder meetings with developers, both for-profit and not-for-profit.

Process

Project review in Milpitas is conducted in two phases: the first is the planning/zoning entitlement approval and second is the building permit approval. In the first phase, Planning staff and relevant City departments determine whether the project is consistent with the General Plan, Specific plans, the Zoning ordinance and other relevant regulatory requirements. Uses that are permitted by-right in a zoning district may only require administrative review by Planning staff. More complex development projects or uses that require a Conditional Use Permit are reviewed by the Planning Commission and/or the City Council.

Following the approval of the appropriate planning entitlements, the building permit applications are reviewed by different City departments to check for consistency in the design and requirements for safety and improvements. The developers are expected to pay all the associated planning fees, impact fees and other fees in advance of building permit approval.

The different stages outlined for a developer in the City's Development Review handbook are as follows-

1. **Pre-application Meeting and Review.** The City offers a pre-application meeting and review session to facilitate the processing of development proposals. The pre-application process provides an opportunity for applicants to receive early feedback from City staff before project plans are finalized.
2. **Planning Review and Processing.** After the application is formally submitted, Planning staff and other City Department staff review the submitted materials within 30 days to make sure all necessary information is included. For large projects, meetings with the community and with decision-makers may be recommended to receive feedback for public hearings.
3. **Noticing and Decision Making.** Prior to issuing the approval, Planning staff prepares the required staff report, conditions of approval, and findings of approval. A public hearing is scheduled where the Planning staff present the project to the hearing body with a staff recommendation and answer any questions related to the project.

4. **Permitting.** The Building Safety and Housing Department issues building permits by reviewing construction plans to make sure the project complies with applicable State and local laws. During this stage, other City Departments and Outside Agencies may need to review the project as necessary. The applicant is required to pay all the associated fees during the building permit application submission.
5. **Construction.** After procuring all the necessary planning and building permit, the project moves into the construction and inspection phase with the Milpitas Building Safety and Housing Department to ensure that the construction is as per approval and that the building is safe for occupancy. The Certificate of Occupancy is awarded at the end of this phase.

Timelines

Delays due to permitting can lead to increased project costs which can serve as a constraint to housing production and affordability. Table 4-1 below shows the average processing times for different residential development applications and building permits from 2019. In Milpitas, provided the project is consistent with the City's Zoning Ordinance, General Plan, or any applicable Specific Plan, simple projects' planning application permit reviews are estimated to take about 1 month. For complex projects, without CEQA requirements, the planning permit review process can take up to 6 months and with CEQA can take more than 11 months. The Planning Commission and City Council have two regularly scheduled public meetings every month.

Table 4-1 Processing Times for Applications and Building Permits

Type of Development	Months (Planning Application)*	Months (Building Permit)*
ADU Ministerial (by-right)	0 to 1 month	1 to 6 months
Ministerial (by-right) Includes projects that comply with applicable building, zoning and development regulations.	0 to 1 month	1 to 6 months
Discretionary (Staff) Includes coastal development permits, neighborhood development permits, neighborhood use permits	0 to 1 month	2 to 12 months
Discretionary (Hearing Officer) Includes variances, certain site development permits, and certain conditional use permits	2 to 4 months	6 to 18 months
Discretionary (Planning Commission)	3 to 12 months	12 to 24 months

Includes certain conditional use permits, certain site development permits, and planned development permits		
Discretionary (Planning Commission and City Council)	3 to 12 months	12 to 24 months

Includes tentative maps, condominium conversion maps, easement vacations, public right-of-way vacations, rezoning, and land use plan amendments

**Based on City of Milpitas submission to Santa Clara County Collaborative*

Milpitas's review and approval timelines are longer than average times taken by other jurisdictions in Santa Clara County. Streamlining the permitting and approval processes further can assist developers and property owners interested in developing housing in Milpitas. Issues and opportunities to improve timelines will be further explored in discussions with developers in the next phase of the project.

California's Housing Accountability Act (HAA) requires local governments to process and review, approve, or disapprove housing developments within very tight timeframes if an applicant requests this (Government Code section 65589.5)

In these cases, a city must review and notify an applicant within 30 days as to whether the application is complete. After completeness, the City must determine if a project is consistent with objective standards (specifically defined) that must be identified and set at the time of Pre-application or Completeness review. The City must provide written notice of inconsistency (if applicable) to the applicant within 30 days of application for projects with 150 or fewer units (60 days for more than that). Any discretionary hearings or internal review must be completed within these timeframes. Projects qualifying for HOZ incentives will almost always qualify under the HAA provisions for "Housing for Very Low, Low- or Moderate-Income Households" which is subject to further streamlining provisions. Based on preliminary data from other cities in Santa Clara County, these processing times do not provide any extraordinary constraint to development but can be further streamlined.

A project meeting the Very Low/Moderate standard may not be disapproved, rejected, or otherwise made infeasible unless extensive findings are made including that the project would "have a specific, adverse impact upon public health or safety and there is no feasible method to mitigate or avoid the impact..." unless the local government has met or exceeded its RHNA, or project denial or conditions are required to comply with specific state or federal law. Compared to these HAA standards, the City of Milpitas' development review times most recently documented would likely need to be accelerated for projects that meet the criteria. The averages shown in the table above are not outside of the range of time frames reported by other cities in Santa Clara County and are not high enough to constitute a significant constraint to the typical development.

ii. Fees

Local governments collect fees from new developments to cover administrative costs and to provide improved infrastructure to serve the residents of that development. These payments are required upfront during the plan review period, however, a deferral may be provided to a developer if they provide on-site affordable units as stated in the AHO.

Table 4-2 Different Fees associated with Residential Developments

Fee Type	Single Family	Multifamily Small (per unit)	Multifamily Large (per unit)
Entitlement Fees	\$17,359	\$3,671	\$367
Building Permit Fees	\$23,110	\$13,111	\$6,616
Engineering Fees	\$25,000	\$5,000	\$1,000
Fire Fees	\$1,120	\$568	\$353
Impact Fees (non TASP)	\$0	\$29,064	\$29,064
Other	\$10,600	\$3,468	\$3,264
TOTAL	\$77,797	\$54,882	\$40,664
Santa Clara County Average*	\$74,831	\$34,752	\$27,563

*Based on Draft Presentation from Santa Clara County Collaborative Meeting March 10, 2022

Compared to other cities in Santa Clara County, Milpitas has higher fees per unit for single and multi-family developments. Milpitas has the highest Entitlement Fees in the County for single family developments and high impact fees for multi-family developments. Impact Fees and other Developmental Fees are explored in detail in the following sections.

Impact Fees

The Calaveras Widening Traffic Impact Fee is collected to widen Calaveras Boulevard to mitigate the traffic impacts caused by new development in the area outside the TASP. Additionally, the Transit Area

Development Impact fee (TADIF) is collected to fund the planning and development of the transit area outlined in the TASP near the Great Mall to support the community with appropriate utilities, parks, services, and roadways. This fee compensates the City for costs of roads and a significant amount of infrastructure that normally would have been paid by developers for off-site improvements required in this area. The different impact fees applicable for residential projects are explained below.

Table 4-3 Different Impact Fees for Residential Developments

Impact Fees	Amount (as of June 2021)	
	In TASP	Not in TASP
Transit Area Development Impact fee (TADIF)	\$44,090 per unit	\$0
Calaveras Widening Traffic Impact Fee (5 or more units)	\$0	\$314 per unit
Public Art Fee	0.5% of construction cost	0.5% of construction cost
Park-in Lieu Fee	\$4,500	\$28,750
Total	~\$48,590	~\$29,064

Based on City of Milpitas submission to Santa Clara County Collaborative

The average impact fee per unit for a multi-family project in Milpitas in the TASP area is \$48,500 which includes the TADIF which applies to a limited area for very specific required infrastructure. The typical impact fee per unit in other parts of the city would be \$29,064 for traffic impacts and parks. The Park-in Lieu Fee makes up 99% of impact fees outside of the TASP. A comparison of impact across different jurisdictions is shown in the table below.

Table 4-4 Comparison of Impact Fees for Multi-family and Single-family Developments

Unit Type	Milpitas	Santa Clara*	Mountain View*	Fremont**
Multi-family	\$29,064	\$10,750	\$34,000	\$22,331
Single family	\$0	\$54	\$71,347	\$35,334

* Based on Draft Presentation from Santa Clara County Collaborative Meeting March 10, 2022

**(Terner Center for Housing Innovation, Residential Impact Fees in California, 2019) <https://www.hcd.ca.gov/policy-research/plans-reports/docs/impact-fee-study.pdf>

Optional: Other and Development Taxes

Table 4-5 Additional Fees and Taxes for Residential Developments

Type of Dwelling	Amount (as of June 2021)	
	Single Family	Multi-Family
Storm Drain Fee	\$1,100 to \$6,469 based on lot size	\$16,771 per acre
Water Connection Fee	\$1,910	\$1,164
Sewer Connection Fee	\$1,908	\$1,406
Wastewater Treatment Plant	\$880	\$690
School Fee	\$4.08 per sf	

Based on City of Milpitas submission to Santa Clara County Collaborative

5. References

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