

REGULAR

NUMBER: 209.5

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTION XI-15-4.3 (DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR) OF CHAPTER 15 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of April 20, 2021, upon motion by Vice Mayor Montano and was adopted (second reading) by the City Council at its meeting of May 4, 2021 upon motion by Mayor Tran. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES: (5) Mayor Tran, Vice Mayor Montano, Councilmembers Chua, Dominguez, and Phan

NOES: (0) None

ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:

APPROVED:

Wendy Wood, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:



Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the Legislature of the State of California has, in Government Code Sections 65302, 65560, and 65800, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Milpitas and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare; and

WHEREAS, the City of Milpitas was accepted for participation in the National Flood Insurance Program on October 1, 1991 and the City Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Parts 59 and 60, necessary for such participation; and

WHEREAS, pursuant to the California Health and Safety Code, Division 13, Part 1.5 and Part 2.5, the City of Milpitas is required to administer and enforce the *California Building Standards Code*, and such building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas; and

WHEREAS, the City Council has determined that, in order to ensure compliance with NFIP requirements as specified in Title 44 Code of Federal Regulations, Parts 59 and 60, it is in the public interest to adopt the proposed amendments to the City's floodplain management regulations that are coordinated with the *California Building Standards Code*.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 15, SECTION XI-15-4.3 "Duties and Responsibilities of the Floodplain Administrator"

Title XI (Zoning, Planning and Annexation), Chapter 15 (Floodplain Management Regulations), Section XI-15-4.3 (Duties and Responsibilities of the Floodplain Administrator) of the Milpitas Municipal Code is hereby amended to read as follows:

XI-15-4.3 - Duties and Responsibilities of the Floodplain Administrator

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

- (a) Permit Review. Review all development permits to determine that:
 - (1) Permit requirements of this Chapter have been satisfied;
 - (2) All other required State and Federal permits have been obtained;
 - (3) The site is reasonably safe from flooding; and
 - (4) The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this Chapter, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.
- (b) Review and Use of Any Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section XI-15-3.2, the Floodplain Administrator shall obtain, review and reasonably utilize any

base flood elevation and floodway data available from a Federal or State agency, or other source, in order to administer Section XI-15-5. Any such information shall be submitted to the City Council for adoption.

- (c) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses indicate changes in base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available.
- (d) Notification of Other Agencies. In alteration or relocation of a watercourse:
 - (1) Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation;
 - (2) Submit evidence of such notification to the Federal Insurance Administration, Federal Emergency Management Agency; and
 - (3) Assure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.
- (e) Documentation of Floodplain Development. Obtain and maintain for public inspection and make available as needed the following:
 - (1) Certification required by Section XI-15-5.1(c)(1) (floor elevations);
 - (2) Certification required by Section XI-15-5.1(c)(2) (elevation or floodproofing of nonresidential structures);
 - (3) Certification required by Section XI-15-5.1(c)(3) (wet floodproofing standard);
 - (4) Certification of elevation required by Section XI-15-5.3(b) (subdivision standards);
 - (5) Certification required by Section XI-15-5.6(a) (floodway encroachments).
- (f) Map Determinations. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, for example, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section XI-15-6.
- (g) Remedial Action. Take action to remedy violations of this Chapter as specified in Section XI-15-3.3.

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.