

## MEASURE J

### CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE J

In September of 1992, the City Council adopted Ordinance No. 38.672, generally known as the "Hillside Ordinance." The primary regulations of the Hillside Ordinance are set forth in Section 45 of Chapter 10 of Title XI of the Milpitas Municipal Code, which section is entitled "H" Hillside Combining District, although the Hillside Ordinance also made several conforming changes to other provisions of the Milpitas Municipal Code. The stated purpose of the Hillside Ordinance is to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular problems associated with development of hillside areas, including but not limited to geologic problems, slope, safe access and visibility.

The City of Milpitas General Plan governs the direction of future land use and development within the City of Milpitas. The General Plan designates certain property within the hillside area of the City as "Hillside Very Low, Hillside Low, and Hillside Medium."

On November 2, 2004, a majority of the eligible voters voting on the ballot measure approved Ordinance No. 264 to mandate that, until December 31, 2018, any amendments or modifications to the Hillside Ordinance or the land subject to the Hillside Ordinance, under the General Plan, require voter approval.

Measure J would amend Ordinance No. 264 to extend the termination date of December 31, 2018 to December 31, 2038. On June 21, 2016, the Milpitas City Council approved the placement of Measure J on the ballot for consideration by the voters.

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

If Measure J is not approved, the current requirement that any amendments or modifications to the Hillside Ordinance or the land subject to the Hillside Ordinance, under the General Plan, be subject to voter approval would expire on December 31, 2018. After December 31, 2018, the Hillside Ordinance or the land subject to the Hillside Ordinance, under the General Plan, may be amended at any time by the City Council or the voters by initiative measure.

Measure J requires simple majority approval of the voters to pass.

**The above statement is an impartial analysis of Measure "J". If you desire a copy of the Measure, please call the elections official's office at (408) 586-3001 and a copy will be mailed at no cost to you.**

/s/ Christopher J. Diaz  
City Attorney

## ARGUMENT IN FAVOR OF MEASURE J

A Yes vote on Measure J continues to give Milpitas voters a stronger say in the future of hillside development. The Hillside Combining District Ordinance (Hillside Ordinance) was adopted in 1992 "...to promote the orderly development of the hillside area of the City by application of regulations and requirements established to meet particular problems associated with development of hillside areas, including geologic problems, safe access, and visibility." The Hillside Ordinance resulted from a 2004 City Council appointed a Hillside Review committee comprised of property owners, citizens, developers, planning commissioners.

In 1998, Milpitas voters approved the Urban Growth Boundary prohibiting the extension of city services into the hillsides beyond a defined boundary line. Development within that boundary is governed by the Hillside Ordinance. A Yes vote continues hillside protection requiring any change to the Hillside Ordinance to be adopted by a vote of the people.

Our hillsides area valuable natural resource for the entire community, but they are also unstable with multiple earthquake faults and landslides. The cost for city services to hillside homes far exceeds the cost of providing these services to residents on the valley floor. Hillside development must continue to be governed by the Hillside Ordinance, subject to the will of Milpitas residents.

This measure gives the people of Milpitas the "final say" on amendments and modifications to the Hillside Ordinance and General Plan land use designations for hillside property for another 20 years.

This ballot measure costs Milpitas taxpayers absolutely nothing. It gives you, the voter, the right to make changes. Vote Yes on Measure J.

/s/ Garry Barbadillo  
Councilmember

/s/ Marsha Grilli  
Councilmember

## REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE J

Those in favor of Measure J say that the future of hillside development is in the voters hands. Well, let's look at what happened in the last 20 years this has been in force. There's no development in the lower hills. None, zero, nada. That is because regulations on development have been so restrictive that it is impossible to jump the hurdles. The property rights of hillside property owners have been seriously eroded. Those who say Measure J protects the hills for everyone but they fail to mention the harm to the hillside property owners.

All Milpitas lose. You lose the supply of upscale housing so that if you desire a view property you must leave Milpitas for other venues. There is no move-up housing for above moderate income homeowners. You lose the entrepreneurial spirit that is necessary to fund schools, museums, live theaters and other civic pleasures.

The city does not subsidize hillside utilities except to the extent afforded to any other property owner in the city. In many cases the hillside property owner pays for utilities with or without Urban Growth Boundaries.

All hillside development must, by law, undergo detailed analysis by state licensed geologists and no building can be done within 25 feet of a geologic hazard. The Crosley fault runs under and along Evans road at the foothill.

Let the property owners work with certified city planners who have the expertise in land development and zoning. Vote no on Measure J.

/s/ Richard Ruth  
Resident, Retired

## ARGUMENT AGAINST MEASURE J

Zoning laws have been in the judicial system for over 100 years. Throughout zoning history, amendments, clarifications and rewrites have been made because of issues such as undue hardship, practical difficulties, special conditions, spirit of the law, service to public interest. Even variances are allowed to permit more profitable use, effect of adjacent uses, effect of size, shape and grade of a lot or the existence of natural resources unusable because of zoning restrictions or changes when the zoning law is ambiguous. For most of those 100 years applicants have been able to work with professional zoning and planning public officials to change or modify a zoning law directly.

This is helpful because the effects of any change can be balanced against public interest and is not costly to the city or the applicant.

But what this ordinance does is drive the cost of modification up substantially and takes the outcome out of the hands of the professional. The applicant now has to gather signatures and form a proposal for a ballot measure then the city has to schedule the ballot election and pay the election cost, which in Milpitas can be upwards of \$100,000. It takes away from the applicant any opportunity to get relief by putting the solution to a zoning problem in the hands of a non-professional public determination. In the event of a negative result at the ballot box the applicant loses valuable time and money and is obliged to try again.

It is not a fair and equitable means to modify a zoning law for a hillside property that no other property owner in Milpitas is subject to therefore a "NO" vote is required

If this ordinance is approved by the voters it will be effective for 22 years.

/s/ Richard Ruth  
Resident, Retired

## REBUTTAL TO ARGUMENT AGAINST MEASURE J

A "Yes" vote on Measure J continues the enjoyment of the valuable natural resource that the Hillside brings the city of Milpitas.

Measure J extends the people's decision to require that any amendments or modification of the Hillside Ordinance or the Land subject to the Hillside Ordinance require voter approval, until December 31, 2038.

Historically, the Hillside Ordinance was adopted after extensive public input and findings that required a need for an application of certain requirements and regulations. This is to encourage its responsible development because of its unique attributes.

Passage of Measure J guarantees that these set of protections for the Hillsides cannot be removed by any third party interests other than that of the people through their votes

Unfortunately, the lone opposition who forwarded the argument against Measure J did not take into consideration the mandate of the people when they adopted the original Measure protecting the Hillside in 2004, the specific safety provisions of the municipal code ought to be preserved, and has ignored the Milpitas residents desire to continue to preserve the Hillsides. The generalities of his argument was lacking consideration of the specific conditions and developmental policies concerning the Hillsides. It was focused more on his individual needs and the affected few, while less mentioning the majority who would be affected if the Hillsides are not preserved.

Let us continue to enjoy the beauty of our Hillsides.

Please join us in voting "YES" Measure J.

/s/ Garry Barbadillo  
Councilmember

/s/ Marsha Grilli  
Councilmember