

REGULAR

NUMBER: 192.22

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING ORDINANCES NO. 192.8, NO. 192.10, NO. 192.13, NO. 192.17 AND NO. 192.19 AND APPROVING AND ADOPTING THE FIFTH AMENDMENT TO THE REDEVELOPMENT PLAN FOR THE GREAT MALL REDEVELOPMENT PROJECT

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of April 21, 2009 upon motion by Vice Mayor McHugh and was adopted (second reading) by the City Council at its meeting of _____, 2009 upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City Council of the City of Milpitas (the “City Council”) has received from the Milpitas Redevelopment Agency (the “Agency”) the proposed Fifth Amendment (the “Fifth Amendment”) to the Redevelopment Plan (the “Redevelopment Plan”) for the Great Mall Redevelopment Project (the “Project”), a copy of which is on file at the office of the City Clerk at 455 East Calaveras Boulevard, Milpitas, California, together with the Report of the Agency to the City Council on the proposed Fifth Amendment (the “Agency’s Report”), including: (1) the reasons for amending the Redevelopment Plan; (2) the current Implementation Plan for the Project Area; and (3) the Negative Declaration on the proposed Fifth Amendment; and

WHEREAS, the proposed Fifth Amendment would extend the time limit for effectiveness of the Redevelopment Plan from November 2, 2010, to November 2, 2033; and

WHEREAS, the Agency prepared and circulated a Negative Declaration (the “Negative Declaration”) on the proposed Fifth Amendment in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*), the Guidelines for Implementation of the California Environmental Quality Act (14 Cal. Code Regs. Section 15000 *et seq.*), and environmental procedures adopted by the Agency pursuant thereto; and

WHEREAS, the Agency and the City Council have reviewed and considered the Negative Declaration on the proposed Fifth Amendment and have determined that there is no substantial evidence that the proposed Fifth Amendment will have a significant effect on the environment; and

WHEREAS, the City Council and the Agency held a joint public hearing in the City Council Chambers, 455 East Calaveras Boulevard, Milpitas, California, on April 21, 2009, to consider the approval and adoption of the proposed Fifth Amendment; and

WHEREAS, a notice of said hearing was duly and regularly published in a newspaper of general circulation in the City of Milpitas, once a week for four successive weeks prior to the date of said hearing, and a copy of said notice and the affidavit of publication is on file with the City Clerk; and

WHEREAS, copies of the notice of joint public hearing were mailed by first-class mail to the last known address of each assessee of each parcel of land in the Project Area as shown on the last equalized assessment roll of the County of Santa Clara; and

WHEREAS, copies of the notice of joint public hearing were mailed by first-class mail to all residential and business occupants within the Project Area; and

WHEREAS, copies of the notice of joint public hearing were mailed by certified mail with return receipt requested to the governing body of each taxing agency which receives taxes from property in the Project Area; and

WHEREAS, the City Council has considered the Agency’s Report, the proposed Fifth Amendment, and the Negative Declaration, has provided an opportunity for all persons to be heard and has received and considered all evidence and testimony presented for or against any and all aspects of the proposed Fifth Amendment; and

WHEREAS, no written objections to the proposed Fifth Amendment were received, either before or at the noticed public hearing, from an affected taxing entity or property owner; and

WHEREAS, all actions required by law have been taken by all appropriate public bodies.

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

Section 1. The purpose and intent of the City Council with respect to the Fifth Amendment is to promote the full and effective implementation of the Redevelopment Plan for the Project.

Section 2. The City Council hereby finds and determines that:

(a) It is necessary and desirable to amend the Redevelopment Plan in the manner set forth in the proposed Fifth Amendment in order to carry out the redevelopment of the Project Area and make possible the full achievement of the goals and objectives of the Redevelopment Plan. This finding is based upon the fact that, without additional time, the Agency's redevelopment efforts may be impaired because existing freeway signage would not be available to support the Project Area and the fact that the Agency needs a longer period of time to maintain development standards and controls to assure Project Area stabilization.

(b) The proposed Fifth Amendment will aid in the redevelopment of the Project Area in conformity with the Community Redevelopment Law and in the interests of the public peace, health, safety, and welfare. This finding is based upon the facts that continued implementation of the Redevelopment Plan will serve to continue to improve and stabilize physical and economic conditions in the Project Area and that additional time is necessary to achieve the full and effective implementation of the Redevelopment Plan.

(c) The proposed Fifth Amendment is economically sound and feasible. This finding is based upon the fact that the proposed Fifth Amendment is limited to extending the duration of the Redevelopment Plan and does not make any changes to the activities authorized by the Redevelopment Plan or the means of financing those activities. Under the Redevelopment Plan, the Agency is authorized to finance its activities with financial assistance from the City, State of California, federal government, donations, loans from private financial institutions or any other available source, public or private.

(d) The proposed Fifth Amendment is consistent with the General Plan of the City of Milpitas. This finding is based upon the fact that the Redevelopment Plan provides for land uses in the Project Area that are consistent with the City's General Plan and the fact that the proposed Fifth Amendment is limited to extending the time limit on the effectiveness of the Redevelopment Plan and does not make any changes that affect the City's General Plan.

(e) The carrying out of the Redevelopment Plan, as it is proposed to be amended by the Fifth Amendment, would promote the public peace, health, safety, and welfare of the City of Milpitas and will effectuate the purposes and policy of the Community Redevelopment Law. This finding is based upon the facts that redevelopment will benefit the Project Area by coordinating public and private actions to stimulate development and improve the physical and economic conditions of the Project Area, and that additional time is necessary to achieve the full and effective implementation of the Redevelopment Plan.

(f) The proposed Fifth Amendment will not result in the temporary or permanent displacement of any occupants of housing facilities in the Project Area. This finding is based upon the fact that the proposed Fifth Amendment is limited to extending the time limit on the effectiveness of the Redevelopment Plan and does not make changes to any of the activities authorized by the Redevelopment Plan.

(g) The full and effective redevelopment of the Project Area could not reasonably be expected to be accomplished by private enterprise acting alone without the aid and assistance of the Agency. This finding is based upon the facts that continued freeway signage is necessary to the economic viability of the Project Area and that continued maintenance of development standards and controls is needed to assure Project Area stabilization, neither of which can occur without the existence of the Project Area and the actions of the Agency.

(h) The time limitation contained in the proposed Fifth Amendment is reasonably related to the ability of the Agency to complete redevelopment of the Project Area. This finding is based upon the fact that the extended duration provided by the Fifth Amendment is the maximum currently allowed by the Community Redevelopment Law and the fact that a shorter time limitation would impair the Agency's ability to provide freeway signage needed to promote and support the economic viability of the Project Area and would impair the

Agency's ability to maintain development standards and controls over a period of time sufficient to assure Project Area stabilization.

Section 3. In order to implement and facilitate the effectuation of the proposed Fifth Amendment, certain official actions must be taken by the City Council; accordingly, the City Council hereby: (a) pledges its cooperation in helping to carry out the Redevelopment Plan, as amended by the Fifth Amendment; (b) directs the various officials, departments, boards, and agencies of the City of Milpitas having administrative responsibilities in the Project Area likewise to cooperate to such end and to exercise their respective functions and powers in a manner consistent with the Redevelopment Plan, as amended by the Fifth Amendment; (c) stands ready to consider and take appropriate action on proposals and measures designed to effectuate the Redevelopment Plan, as amended by the Fifth Amendment; and (d) declares its intention to undertake and complete any proceeding, including the expenditure of moneys, necessary to be carried out by the City under the provisions of the Redevelopment Plan, as amended by the Fifth Amendment.

Section 4. Having received no written objections to the Fifth Amendment from an affected taxing entity or property owner, and having considered all evidence and testimony presented for or against any aspect of the Fifth Amendment, the City Council hereby overrules all objections to the Fifth Amendment.

Section 5. The Redevelopment Plan, as adopted and amended by Ordinance Nos. 192.8, 192.10, 192.13, 192.17 and 192.19, is hereby further amended as set forth in the Fifth Amendment attached hereto as Attachment A. As so amended, the Redevelopment Plan is hereby incorporated herein by reference. The Executive Director of the Agency is hereby authorized to combine the Redevelopment Plan, as amended by the Fifth Amendment, into a single document, and said document, when filed with the City Clerk and the Secretary of the Agency, shall constitute the official Redevelopment Plan for the Great Mall Redevelopment Project.

Section 6. The City Clerk is hereby directed to send a certified copy of this Ordinance to the Agency, and the Agency is hereby vested with the responsibility for carrying out the Redevelopment Plan, as amended by the Fifth Amendment.

Section 7. The City Clerk is hereby directed to record with the County Recorder of Santa Clara County a notice of the approval and adoption of the Fifth Amendment pursuant to this Ordinance, containing a statement that proceedings for the redevelopment of the Project Area pursuant to the Redevelopment Plan, as amended by the Fifth Amendment, have been instituted under the Community Redevelopment Law.

Section 8. The City Clerk is hereby ordered and directed to certify to the passage of this Ordinance and to cause the same to be published once in a newspaper of general circulation, published and circulated in the City of Milpitas.

Section 9. If any part of this Ordinance or the Fifth Amendment which it approves is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance or of the Fifth Amendment, and this City Council hereby declares that it would have passed the remainder of this Ordinance or approved the remainder of the Fifth Amendment if such invalid portion thereof had been deleted.

Section 10. This Ordinance shall be in full force and effect ninety (90) days after its adoption.

Attachment A

**FIFTH AMENDMENT TO THE
REDEVELOPMENT PLAN FOR THE
GREAT MALL REDEVELOPMENT PROJECT**

The Redevelopment Plan (the “Redevelopment Plan”) for the Great Mall Redevelopment Project (the “Project”), as adopted by the City Council of the City of Milpitas on November 2, 1993, by Ordinance No. 192.8, and amended on December 6, 1994, by Ordinance No. 192.10 (“First Amendment”), on October 16, 2001, by Ordinance No. 192.13 (“Second Amendment”), on October 3, 2006, by Ordinance No. 192.17 (“Third Amendment”) and on November 29, 2006, by Ordinance No. 192.19 (“Fourth Amendment”), is hereby further amended as set forth in the following paragraph 1:

1. Section 800 of the Redevelopment Plan is hereby amended in its entirety to read as follows (additions are shown in bold and by underlining; deletions are shown in bold and by strikethrough):

VIII. ~~§800~~ DURATION OF THIS PLAN

Except for the nondiscrimination and nonsegregation provisions, which shall run in perpetuity, the provisions of this Plan shall be effective, and the provisions of other documents formulated pursuant to this Plan may be made effective, for forty (40) years from the date of adoption of this Plan by the City Council on November 2, 1993, by Ordinance No. 192.8.

After the time limit on the effectiveness of this Plan, the Agency shall have no authority to act pursuant to this Plan except to pay previously incurred indebtedness and to enforce existing covenants or contracts.