

RESOLUTION NO. _____**A RESOLUTION OF THE MILPITAS REDEVELOPMENT AGENCY AMENDING THE OWNER PARTICIPATION RULES FOR THE MILPITAS REDEVELOPMENT PROJECT AREA NO. 1**

WHEREAS, by Resolution No. 230, adopted on June 3, 1958, the City Council of the City of Milpitas (“City Council”) formed the Milpitas Redevelopment Agency (“Agency”) to formulate a redevelopment project or projects within the City of Milpitas; and

WHEREAS, on September 21, 1976, by Ordinance No. 192, the City Council adopted the redevelopment plan (“Redevelopment Plan” or “Plan”) for the Milpitas Redevelopment Project Area No. 1 (“Original Project Area”); and

WHEREAS, the Redevelopment Plan has been amended a total of twelve (12) times (as amended, the “Existing Plan”) to, among other things, add area to the Original Project Area (as amended, the “Project Area”), merge the Project Area with the Great Mall Redevelopment Project, increase the tax increment and bonded indebtedness limits, and extend the dates to incur debt, repay debt and collect tax increment; and

WHEREAS, on November 2, 1993, by Ordinance No. 192.8, the City Council adopted the redevelopment plan for the Great Mall Redevelopment Project (“Great Mall Redevelopment Plan”); and

WHEREAS, the Great Mall Redevelopment Plan has been amended a total of five (5) times to, among other things, add territory and merge with Project Area No. 1 (the “Merged Project Area”); and

WHEREAS, the Agency again desires to amend the Existing Plan (“Thirteenth Amendment” or “Amendment”) to: 1) extend by 10 years the effectiveness time limit and time period to repay debt/collect tax increment of the Original Project Area and Amendment Areas No. 1 and 2 (collectively, the Original Project Area and Amendment Areas No. 1 and 2 are referred to as the “Amendment Areas”); 2) repeal the debt establishment limit for the Amendment Areas; 3) increase the tax increment limit and bonded indebtedness limit and exclude the Midtown Added Area from the tax increment limit; 4) add projects and facilities to the list of eligible projects and facilities the Agency may fund; 5) reinstate eminent domain over non-residential uses in the Amendment Areas; 6) add territory totaling approximately 600 acres (“Thirteenth Amendment Added Area” or “Added Area”); and 7) make certain technical corrections, and revise and update the various text provisions within the Redevelopment Plan to conform to the requirements of the California Community Redevelopment Law (“CRL”); and

WHEREAS, the Agency is proposing to concurrently amend (the “Sixth Amendment”) the Redevelopment Plan for the Great Mall Redevelopment Project (“Great Mall Project”) to delete a non-contiguous area developed with a freeway sign (“Sixth Amendment Deleted Area”); the area identified for deletion is within the area proposed to be added to Project Area No. 1; and

WHEREAS, on August 4, 2009, by Resolution No. 7909, the City Council designated a redevelopment survey area and directed the Planning Commission of the City of Milpitas (“Planning Commission”) to select the boundaries of the area proposed to be included within the Thirteenth Amendment Added Area from within the boundaries of the redevelopment survey area and formulate a preliminary plan for the redevelopment of the proposed Thirteenth Amendment Added Area; and

WHEREAS, on September 9, 2009, the Planning Commission selected and designated the boundaries of the Thirteenth Amendment Added Area, approved a Preliminary Plan for the Thirteenth Amendment Added Area (“Preliminary Plan”), and submitted said Preliminary Plan to the Agency; and

WHEREAS, on October 6, 2009, the Agency, by Resolution No. RA346, accepted the Preliminary Plan and directed preparation of the Preliminary Report for the Thirteenth Amendment and the transmittal of certain information to taxing officials; and

WHEREAS, the Agency has prepared a proposed Amended and Restated Redevelopment Plan incorporating the Thirteenth Amendment (“Amended and Restated Redevelopment Plan”) and has prepared the form of the proposed Sixth Amendment (collectively, the Thirteenth Amendment and the Sixth Amendment are referred to as the “Amendments”); and

WHEREAS, on December 1, 2009, by Resolution No. RA349, the Agency approved the Preliminary Report for the Thirteenth Amendment to the Redevelopment Plan for Milpitas Redevelopment Project Area No. 1 and the Sixth Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project and authorized transmittal of the report to the affected taxing agencies, the Department of Finance (“DOF”), the Department of Housing and Community Development (“HCD”) and other interested persons and organizations; and

WHEREAS, on December 1, 2009, by Resolution No. RA350, the Agency received the Amendments and authorized the transmittal of the Amendments to the Planning Commission for its report and recommendation and to the affected taxing agencies and other interested persons and organizations; and

WHEREAS, on December 1, 2009, by Resolution No. RA351, the Agency accepted and authorized the circulation of the Draft Environmental Impact Report prepared for the Amendments; and

WHEREAS, on December 1, 2009, by Resolution No. 7942, the City Council determined that a Project Area Committee need not be formed in the preparation of the Amendments and directed the Amendments be provided to and the Agency consult with residents, property owners, business owners, and existing civic and business organizations; and

WHEREAS, on December 9, 2009, the Planning Commission, by Resolution No. 09-056 determined the Amendments to be consistent with the City of Milpitas General Plan and recommended that the Agency and City Council approve and adopt the Amendments; and

WHEREAS, CRL Section 33339 requires that every redevelopment plan provide for participation in the redevelopment of property in the project area by the owners of all or part of such property; and

WHEREAS, CRL Section 33339.5 requires that every redevelopment agency extend reasonable preferences to persons who are engaged in business in a redevelopment project area to reenter in business within the redeveloped area; and

WHEREAS, Section 33345 of the CRL requires that a redevelopment agency adopt and make available for public inspection within a reasonable time before approving a redevelopment plan, rules to implement the operation of owner participation pursuant to Sections 33339 and 33339.5 in connection with a redevelopment plan; and

WHEREAS, pursuant to CRL Sections 33345 and 33339.5, the Agency prepared and adopted rules implementing the provisions of CRL Sections 33345 and 33339.5 as applicable to the Project Area (the “Owner Participation Rules”) in connection with the Agency’s adoption of the Existing Plan; and

WHEREAS, in connection with the proposed Amendments, it is necessary to amend the Owner Participation Rules to include the area proposed to be added to Project Area No. 1 and amended Owner Participation Rules that include the proposed Added Area have been prepared and are attached to this Resolution.

NOW, THEREFORE, the Board of the Milpitas Redevelopment Agency hereby finds, determines, and resolves as follows:

Section 1: The foregoing recitals are true and correct.

Section 2: The Redevelopment Agency of the City of Milpitas hereby amends the Owner Participation Rules for the purpose of including the area proposed to be added to Project No. 1, and approves and adopts the amended “Rules Governing Participation by Property Owners and the Extension of Reasonable

Preferences to Business Occupants in Milpitas Redevelopment Project Area No. 1,” attached hereto as Attachment A and incorporated herein by reference (the “Amended Owner Participation Rules”). These Amended Owner Participation Rules supplant rules previously adopted by the Agency. The Amended Owner Participation Rules shall be available for public inspection as of this date.

Section 3: The Executive Director of the Agency is hereby authorized and directed to make the Amended Owner Participation Rules available at the offices of the Agency for inspection by all interested persons and to publish a notice of the availability thereof in the newspaper of record.

PASSED, APPROVED AND ADOPTED this ____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, Agency Secretary

Robert Livengood, Chair

APPROVED AS TO FORM:

Michael J. Ogaz, Agency Counsel

ATTACHMENT A

**RULES GOVERNING PARTICIPATION BY PROPERTY OWNERS
AND
THE EXTENSION OF REASONABLE PREFERENCES
TO BUSINESS OCCUPANTS
IN
MILPITAS REDEVELOPMENT PROJECT AREA NO. 1**

As Amended by Resolution No. RA_____
on _____:

TABLE OF CONTENTS

	<u>PAGE</u>
I. [SECTION 100] PURPOSE AND INTENT.....	1
II. [SECTION 200] DEFINITIONS	1
III. [SECTION 300] OPPORTUNITIES FOR OWNER PARTICIPATION AND PREFERENCES TO BUSINESS OCCUPANTS TO RE-ENTER IN BUSINESS WITHIN REDEVELOPED AREA	2
A. [SECTION 301] OPPORTUNITIES FOR OWNER PARTICIPATION.....	2
B. [SECTION 302] PREFERENCES FOR PERSONS ENGAGED IN BUSINESS IN THE PROJECT AREA	2
IV. [SECTION 400] METHODS OF PARTICIPATION, AND LIMITATIONS THEREON	2
A. [SECTION 401] METHODS OF PARTICIPATION	2
B. [SECTION 402] LIMITATIONS ON PARTICIPATION OPPORTUNITIES.....	2
C. [SECTION 403] CONFLICTS BETWEEN POTENTIAL PARTICIPANTS	3
V. [SECTION 500] CONFORMING OWNERS.....	3
VI. [SECTION 600] METHODS FOR EXTENDING REENTRY PREFERENCES, AND LIMITATIONS THEREON	3
A. [SECTION 601] METHODS FOR EXTENDING REENTRY PREFERENCES	3
B. [SECTION 602] LIMITATIONS ON THE EXTENSION OF PREFERENCES.....	4
C. [SECTION 603] CONFLICTS BETWEEN BUSINESS OCCUPANTS SEEKING SIMILAR PREFERENCES.....	4
VII. [SECTION 700] PARTICIPATION PROCEDURES.....	4
A. [SECTION 701] NOTICE AND STATEMENT OF INTEREST	4
B. [SECTION 702] PARTICIPATION AGREEMENTS.....	5
1. [Section 703] General.....	5
2. [Section 704] Contents	5
3. [Section 705] Approval of Agreements.....	5
VIII. [SECTION 800] ENFORCEMENT	5
IX. [SECTION 900] AMENDMENT OF RULES	6
“Statement of Interest in Participating” Form.....	7

**RULES GOVERNING PARTICIPATION BY PROPERTY OWNERS AND THE EXTENSION OF
REASONABLE PREFERENCES TO BUSINESS OCCUPANTS IN
MILPITAS REDEVELOPMENT PROJECT AREA NO. 1**

I. [SECTION 100] PURPOSE AND INTENT

These rules are adopted by the Milpitas Redevelopment Agency ("Agency") to implement the provisions of the Redevelopment Plan for Milpitas Redevelopment Project Area No. 1 ("Project" or Project Area") regarding participation by property owners and the extension of reasonable preferences to business occupants within the Project Area. These rules set forth the procedures governing such preferences and participation and supplant the rules previously adopted by the Agency.

The California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) requires the adoption of these rules by the Agency to provide for participation in the redevelopment of the Project Area by owners of real property and the extension of preferences to persons engaged in business within the boundaries of the Project Area to reenter the redeveloped area to the maximum extent feasible consistent with the objectives of the redevelopment plan for the Project ("Redevelopment Plan" or "Plan").

II. [SECTION 200] DEFINITIONS

As used herein, the following definitions apply:

- (1) "Redevelopment Plan" means the Amended and Restated Redevelopment Plan for Milpitas Redevelopment Project Area No. 1, as adopted by the City Council of the City of Milpitas on _____, 2010 by Ordinance No._____.
- (2) "Project Area" means the area described in the "Legal Description of the Project Area Boundaries" (Attachment No. 1 of the Amended and Restated Redevelopment Plan and shown on the "Project Area Map" (Attachment No. 2 of the Amended and Restated Redevelopment Plan).
- (3) "Agency" means the Milpitas Redevelopment Agency.
- (4) "Owner" means any person, persons, corporation, association, partnership, or other entity holding fee title to or a long term lease of real property in the Project Area for so long as such Owner holds such title or long term lease.
- (5) "Long Term Lease" means a lease of real property with a term of twenty (20) years or more, with at least five (5) years remaining on such term.
- (6) "Participation Agreement" means an agreement entered into by an Owner with the Agency providing for such Owner to participate in the redevelopment of property within the Project Area in accordance with the provisions of the Redevelopment Plan and these rules.
- (7) "Participant" means an Owner who has entered into a Participation Agreement with the Agency.
- (8) "Business Occupant" means any person, persons, corporation, association, partnership, or other entity engaged in a lawful business within the Project Area for so long as such Business Occupant remains in business within the Project Area.

III. [SECTION 300] OPPORTUNITIES FOR OWNER PARTICIPATION AND PREFERENCES TO BUSINESS OCCUPANTS TO RE-ENTER IN BUSINESS WITHIN REDEVELOPED AREA

A. [Section 301] Opportunities for Owner Participation

Owners of real property within the Project Area shall be extended reasonable opportunities to participate in the redevelopment of property in the Project Area if such Owners agree to participate in the redevelopment in conformity with the Redevelopment Plan and these rules.

B. [Section 302] Preferences for Persons Engaged in Business in the Project Area

Business Occupants engaged in business in the Project Area shall be extended reasonable preferences to re-enter in business within the redeveloped area if they otherwise meet the requirements prescribed by the Redevelopment Plan and these rules.

IV. [SECTION 400] METHODS OF PARTICIPATION, AND LIMITATIONS THEREON

A. [Section 401] Methods of Participation

Participation methods include remaining in substantially the same location either by retaining all or portions of the property, or by retaining all or portions of the property and purchasing adjacent property from the Agency, or joining with another person or entity for the rehabilitation or development of the Owner's property and, if appropriate, other property, or submitting to the Agency for its consideration another method of participation proposal pursuant to these rules. An Owner who participates in the same location may be required to rehabilitate or demolish all or part of his/her existing buildings, or the Agency may acquire the buildings only and then remove or demolish the buildings. Participation methods also include the Agency buying land and improvements at fair market value from Owners and offering other parcels for purchase and rehabilitation or development by such Owners, or offering an opportunity for such Owners to rehabilitate or develop property jointly with other persons or entities.

B. [Section 402] Limitations on Participation Opportunities

Participation opportunities shall necessarily be subject to and limited by factors such as the following:

- (1) The elimination and changing of some land uses;
- (2) The construction, realignment, abandonment, widening, opening and/or other alteration or elimination of public rights-of-way;
- (3) The removal, relocation, and/or installation of public utilities and public facilities;
- (4) The ability of potential Participants to finance the proposed acquisition, development or rehabilitation in accordance with the Redevelopment Plan;
- (5) The ability and experience of potential Participants to undertake and complete the proposed rehabilitation or development;
- (6) Any reduction in the total number of individual parcels in the Project Area;
- (7) The construction or expansion of public improvements and facilities, and the necessity to assemble areas for such;
- (8) Any change in orientation and character of the Project Area;

- (9) The necessity to assemble areas for public and/or private development;
- (10) The requirements of the Redevelopment Plan and applicable rules, regulations, and ordinances of the City of Milpitas;
- (11) Any design guide adopted by the Agency pursuant to the Redevelopment Plan; and
- (12) The feasibility of the potential Participant's proposal.

C. [Section 403] Conflicts Between Potential Participants

If conflicts develop between the desires of potential Participants for particular sites or land uses, the Agency is, subject to the limitation factors above, authorized to establish reasonable priorities and preferences among the potential Participants and to determine a solution by consideration of such factors as:

- (1) A Participant's length of occupancy in the Project Area;
- (2) Accommodation of as many potential Participants as possible;
- (3) Ability to perform;
- (4) Similar land use to similar land use; and
- (5) Conformity with intent and purpose of the Redevelopment Plan and these rules.

Participation to the extent feasible shall be available for two or more persons, firms or institutions to join together in partnerships, corporations, or other joint entities.

V. [SECTION 500] CONFORMING OWNERS

The Agency may, in its sole and absolute discretion, determine that certain real properties within the Project Area presently meet the requirements of the Redevelopment Plan, and the Owners of such property will be permitted to remain as conforming Owners without an Owner Participation Agreement with the Agency, provided such Owners continue to operate, use and maintain the real property within the requirements of the Redevelopment Plan.

In the event that any of the conforming Owners desire to (1) construct any additional improvements or substantially alter or modify existing structures on any of the real property described above as conforming, or (2) acquire additional property within the Project Area, then, in such event such conforming Owners may be required by the Agency to enter into an Owner Participation Agreement with the Agency.

VI. [SECTION 600] METHODS FOR EXTENDING REENTRY PREFERENCES, AND LIMITATIONS THEREON

A. [Section 601] Methods for Extending Reentry Preferences

Whenever a Business Occupant will be displaced by Agency action from the Project Area, if any, the Agency will, prior to such displacement, determine: 1) whether such Business Occupant desires to relocate directly to another location within the Project Area, or 2) if suitable relocation accommodations within the Project Area are not available prior to displacement, whether such Business Occupant would desire to re-enter in business within the Project Area at a later date should suitable accommodations become available. For those Business Occupants who desire to relocate directly to another Project Area location, the Agency will make reasonable efforts to assist such Business Occupants to find accommodations at locations and rents suitable to their needs. A record of the

Business Occupants who cannot be or do not want to be directly relocated within the Project Area, but who have stated that they desire to re-enter into business in the Project Area whenever suitable locations and rents are available, will be maintained by the Agency. The Agency will make reasonable efforts to assist such Business Occupants to find re-entry accommodations at locations and rents suitable to their needs.

In order to implement the operation of this Section 601, the Agency will provide in all Participation Agreements, disposition and development agreements, and other agreements, as applicable, that in the renting or leasing of premises rehabilitated or developed pursuant to such agreements the Participant or developer will give reasonable preferences (over other potential tenants or lessees) to Business Occupants who will be or who have been displaced from their places of business to lease or rent premises within the newly rehabilitated or developed facilities.

B. [Section 602] Limitations on the Extension of Preferences

Re-entry preferences shall necessarily be subject to and limited by factors such as the following:

- (1) The extent to which suitable relocation or re-entry accommodations exist or are rehabilitated or developed within the Project Area;
- (2) The extent to which suitable relocation or re-entry accommodations are available to displaced Business Occupants within an acceptable time period or at rents and other terms that are acceptable to such displaced Business Occupants, and within their financial means; and
- (3) The requirements of the Redevelopment Plan or any design guide adopted by the Agency pursuant to the Redevelopment Plan.

C. [Section 603] Conflicts Between Business Occupants Seeking Similar Preferences

If conflicts develop between Business Occupants who seek similar preferences (e.g., two or more occupants who desire to relocate directly to or to re-enter in business at the same premises), the Agency is, subject to the limitation factors above, authorized to establish reasonable priorities and preferences among such occupants and to determine a solution by consideration of such factors as:

- (1) Length of time in the Project Area;
- (2) Accommodation of as many Business Occupants as possible;
- (3) Appropriateness of the type of business within the proposed premises and/or at the proposed location;
- (4) The feasibility of business success; and
- (5) Conformity with the intent and purpose of the Redevelopment Plan and these rules.

VII. [SECTION 700] PARTICIPATION PROCEDURES

A. [Section 701] Notice and Statement of Interest

Before entering into any Participation Agreements, disposition and development agreements, exclusive negotiation agreements, or taking other actions which may involve the acquisition of real property in the Project Area, the Agency shall first notify Owners of property which may be acquired and call upon them to submit Statements of Interest in Participating in the proposed development or in otherwise participating in the redevelopment of the Project Area.

The Agency shall deliver to each Owner of real property which may be acquired, a Statement of Interest in Participating form at least forty-five (45) days prior to considering any of the actions requiring acquisition of real property. Those desiring to submit Statements of Interest in Participating must complete and submit such statements to the Agency within thirty (30) days of receipt. Such statements shall include information requested by the Agency and shall be in the form requested by the Agency.

Any Owner may also submit such a statement at any time before such notification.

The Agency shall consider such statements as are submitted on time and shall seek to develop reasonable participation for those submitting such statements whether to stay in place or to move to another location. The Agency may in its sole discretion determine that a participation proposal is not feasible or in the best interest of the Project or the community, or is otherwise limited by one or more of the criteria set forth in Section 402 hereof. In such event, the Agency may select a developer from among prospective participants submitting Statements of Interest in Participating and others invited to submit proposals. The Agency also has the option to select none of the proposals, and, if deemed desirable, to solicit new participation or development proposals.

B. [Section 702] Participation Agreements

1. [Section 703] General

Public and private Owners wishing to develop or improve their properties within the Project Area may be required, as a condition to Agency approval of such development, to enter into a binding, written Participation Agreement with the Agency if the Agency determines it is necessary to impose upon such property any of the standards, restrictions and controls of the Redevelopment Plan or of any design guide adopted by the Agency pursuant to the Redevelopment Plan.

2. [Section 704] Contents

A Participation Agreement shall obligate the Owner, and the Owner's heirs, successors and assignees to acquire, rehabilitate, develop and use the property, as may be applicable, in conformance with the Redevelopment Plan and/or to be subject to such other provisions and conditions of the Redevelopment Plan as the Agency may require for the period of time that the Redevelopment Plan is in force and effect, excepting those provisions related to non-discrimination and non-segregation which shall run in perpetuity.

Each Participation Agreement will contain such terms and conditions and will require the potential Participant to join in the recordation of such documents as the Agency may require in order to insure the property will be acquired, rehabilitated, developed and used in accord with the Redevelopment Plan and the agreement. Participation Agreements will be effective only if approved by a majority vote of the members of the Agency.

3. [Section 705] Approval of Agreements

All Participation Agreements must be approved by the Agency Board before they are effective. Participation Agreements will be effective only if approved by a majority vote of the members of the Agency.

VIII. [SECTION 800] ENFORCEMENT

In the event a property is not acquired, developed, rehabilitated, or used in conformance with the Redevelopment Plan, with an Agency determination of conformance, or a Participation Agreement, then the Agency is authorized to: (1) purchase the property; (2) purchase any interest in the property sufficient to obtain conformance; or (3) take any other appropriate action sufficient to obtain such conformance. The Agency shall not acquire real property retained or developed under an approved Participation Agreement if the Participant fully performs under the agreement.

IX. [SECTION 900] AMENDMENT OF RULES

The Agency may amend these rules at any regular meeting or duly called special meeting held after their adoption, but only after notice to the Agency members and the public. The text of the proposed change shall be furnished along with the notice of the meeting. Such notice shall be delivered at least fourteen (14) days before the date of the meeting at which the proposed amendment will be considered. The method of notice is at the discretion of the Agency.

No such amendment shall retroactively impair the rights of any parties who have executed Participation Agreements with the Agency in reliance upon these rules as presently constituted.

MILPITAS REDEVELOPMENT AGENCY
STATEMENT OF INTEREST IN PARTICIPATING

I hereby express my interest in participating in the Milpitas Redevelopment Project Area No. 1 and submit the following information:

1. Name: _____ Daytime Telephone: _____
2. Home Address: _____
3. My present involvement in the Project Area is: (check a or b)
- a) I now own property in the Project:
- b) I now lease property in the Project:
- Explain: (use additional sheets if necessary) _____
- _____
4. Address of Business: _____
- _____
5. Name of Business(es) located on my property, if any; _____
6. I own do not own business(es) located on my property (check one)
7. If you do not own the business(es) located on your property, please list the name(s), address(s) and telephone number(s) of the owner(s) on a separate sheet
8. If I participate: (check a, b or c)
- a) I would like to continue at the same location
- b) I would like to change my present location
- c) I would like to acquire real property for expansion (indicate approximate requirements; use additional sheets if necessary) _____
- _____

REMARKS: (use additional sheets if necessary) _____

I understand that submission of this Statement of Interest in Participating form does not obligate me to participate in the Milpitas Redevelopment Project Area No. 1.

Signed _____ Date _____