

**REGULAR**

**NUMBER: 282**

**TITLE: AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AGREEING, UNDER PROTEST, TO COMPLY WITH THE PROVISIONS OF THE ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM PURSUANT TO ABX1 27 TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE MILPITAS REDEVELOPMENT AGENCY WHICH WOULD OTHERWISE BE SUBJECT TO SUSPENSION AND DISSOLUTION**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_ and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, 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

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, the Milpitas Redevelopment Agency (“Agency”) is a redevelopment agency organized and existing under the California Community Redevelopment Law (Health & Safety Code § 33000 *et seq.*) (“CRL”) and has been authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council of the City of Milpitas (“City Council” or “City,” as applicable); and

**WHEREAS**, pursuant to the CRL, the City Council (1) approved and adopted the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 (“Project No. 1”) on September 21, 1976, by Ordinance No. 192, and (2) approved and adopted the Redevelopment Plan for the Great Mall Redevelopment Project (“Great Mall Project”) on November 2, 1993, by Ordinance No. 192.8 (together, the “Project Areas”); and

**WHEREAS**, the Agency is vested with the responsibility for implementing and carrying out the Redevelopment Plans for Project No. 1 and the Great Mall Project; and

**WHEREAS**, in connection with approval and adoption of the State Budget for Fiscal Year 2011-12, the California Legislature has approved, and the Governor has signed (i) ABX1 26 (Stats. 2011, chap. 5, “ABX1 26”), which immediately suspends all otherwise legal redevelopment activities and incurrence of indebtedness, and dissolves redevelopment agencies effective October 1, 2011 (the “Dissolution Act”); and (ii) ABX1 27 (Stats. 2011, chap. 6, “ABX1 27”), which allows communities to avoid the consequences of the Dissolution Act and continue their redevelopment agency if the community agrees to comply with the alternative voluntary redevelopment program described in Section 2 of ABX1 27 adding Part 1.9 (commencing with section 34192) of Division 24 of the Health and Safety Code (the “Alternative Redevelopment Program”); and

**WHEREAS**, the Alternative Redevelopment Program requires the participating communities to remit, annually, “voluntary” payments to school entities and special districts; and

**WHEREAS**, the City Council believes the Dissolution Act and Alternative Redevelopment Program violate the Constitution of the State of California; and

**WHEREAS**, specifically, the City Council believes that ABX1 26 and ABX1 27 are inconsistent with various constitutional provisions which protect city and county property tax revenues and redevelopment agency tax increment revenues, including but not limited to Article XIII A, section 25.5, Article XIII A, section 1, Article XIII, section 24, Article XVI, section 6, Article XIII B and Article XVI, section 16, of the California Constitution, and are therefore unlawful and unenforceable; and

**WHEREAS**, as of the effective date of ABX1 26 and ABX1 27 – June 29, 2011 – all redevelopment agencies in the State of California must suspend any new redevelopment activities and are allowed to operate only for the purpose of protecting existing assets and paying existing obligations until October 1, 2011, at which time they shall be officially dissolved and all remaining assets and obligations shall be transferred to a successor agency; and

**WHEREAS**, in order to enable the continued operation and unrestricted activities of the Agency to serve the essential role of implementing the Redevelopment Plans for Project No. 1 and the Great Mall Project and eliminating blight in the Project Areas, increasing, improving, and preserving the supply of affordable housing in the community, and revitalizing the properties and businesses within the Project Areas, the City Council desires to agree to participate in the Alternative Redevelopment Program; and

**WHEREAS**, the City is the lead agency concerning this Ordinance pursuant to the California Environmental Quality Act (codified as Public Resources Code Section 21000 *et seq.*) (“CEQA”) and the State CEQA Guidelines; and

**WHEREAS**, City staff has determined that this Ordinance is exempt from CEQA, pursuant to CEQA Guidelines Section 15378(b)(4), because the community remittances authorized hereunder are a government

funding mechanism and fiscal activity, and do not involve any commitment to any specific project that may result in a potentially significant environmental impact.

**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. PARTICIPATION IN THE PROGRAM UNDER PROTEST AND WITHOUT PREJUDICE**

In accordance with Health and Safety Code Section 34193, the City Council hereby agrees, under protest, to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by ABX1 27, without prejudice to the rights of the City (a) to challenge the validity of the Dissolution Act and the Alternative Redevelopment Program, (b) to review and appeal the amounts of community remittances required by the Alternative Redevelopment Program, (c) in the event a court of competent jurisdiction grants an injunction or stay enjoining the effectiveness of the Dissolution Act and/or the Alternative Redevelopment Program, to withhold community remittances while that injunction or stay is in effect, (d) in the event the Dissolution Act and/or the Alternative Redevelopment Program is declared invalid by a court of competent jurisdiction, to obtain a refund of any community remittances paid pursuant to the Alternative Redevelopment Program and this Ordinance, and (e) to subsequently determine, based on circumstances and information then available to the City Council, including the amounts of required community remittances, that it is not in the best interests of the City to continue to participate in the Alternative Redevelopment Program, in which case the City Council shall formally repeal this Ordinance and the Agency shall be subject to the Dissolution Act.

**SECTION 3. INTENT TO USE AGENCY FUNDS**

It is the understanding and intent of the City Council in enacting this Ordinance that the Alternative Redevelopment Program (in particular CRL Section 34194.2) permits the City to enter into an agreement with the Agency pursuant to which the Agency would annually transfer portions of its tax increment to the City to enable the City to make the annual remittance payments required under the Alternative Redevelopment Program. The City Council hereby approves and authorizes the execution of an agreement pursuant to CRL Section 34194.2, in a form approved by the City Attorney.

**SECTION 4. IMPLEMENTATION**

The City Council hereby authorizes and directs the City Manager to take any action and execute any documents necessary to implement this Ordinance, including but not limited to the execution of an agreement with the Agency as described in Section 3, and notification to the county auditor-controller of the County of Santa Clara, the Controller of the State of California, and the California Department of Finance of the adoption of this Ordinance and the City Council's agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by ABX1 27.

**SECTION 5. CEQA**

The City Council determines that approval of this Ordinance is exempt from CEQA, pursuant to CEQA Guidelines Section 15378(b)(4), because such approval is not considered a project subject to CEQA review; the community remittances authorized hereunder are a government funding mechanism and fiscal activity and do not involve any commitment to any specific project that may result in a potentially significant environmental impact.

**SECTION 6. NOTICE OF EXEMPTION**

The City Council hereby authorizes and directs that a Notice of Exemption shall be filed with the County Clerk of the County of Santa Clara, California, within five (5) working days following the date of adoption of this Ordinance.

**SECTION 7. CUSTODIAN OF RECORDS**

The documents and materials that constitute the record of proceedings on which these findings are based are located at the City Clerk's office located at City Hall, 455 East Calaveras Boulevard, Milpitas, California 95035. The custodian for these records is Mary Lavelle, City Clerk.

**SECTION 8. SEVERABILITY**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

**SECTION 9. PUBLICATION**

The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published in accordance with Government Code § 36933 of the State of California.

**SECTION 10. EFFECTIVE DATE**

This Ordinance shall become effective thirty (30) days from its adoption and passage.