

**REGULAR**

**NUMBER: 192.25**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS RESCINDING AND REPEALING ORDINANCE NO. 192.23, WHICH APPROVED AND ADOPTED THE SIXTH AMENDMENT TO THE REDEVELOPMENT PLAN FOR THE GREAT MALL REDEVELOPMENT PROJECT, AND RESCINDING AND REPEALING RESOLUTION NO. 7975, AS APPLICABLE TO, AND WHICH WAS ADOPTED PRECEDENT TO AND IN SUPPORT OF, SAID SIXTH AMENDMENT**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of \_\_\_\_\_, 2012, upon motion by Councilmember \_\_\_\_\_, and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, 2012, upon motion by Councilmember \_\_\_\_\_. This 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 City Council of the City of Milpitas (the “City Council”) approved and adopted Ordinance No. 192.23 on May 4, 2010, approving and adopting the Sixth Amendment (the “Sixth Amendment”) to the Redevelopment Plan (the “Redevelopment Plan”) for the Great Mall Redevelopment Project (the “Project”); and

**WHEREAS**, on June 4, 2010, the County of Santa Clara filed a lawsuit challenging the validity of Ordinance No. 192.23, the Sixth Amendment and related actions taken by the City Council and Agency, identified as *County of Santa Clara vs. All Persons Interested, etc., et al.*, San Mateo County Superior Court, Case No. 499976 (the “Validation Action”); and

**WHEREAS**, the Redevelopment Agency of the City of Milpitas (the “Redevelopment Agency”) was designated as the official redevelopment agency to carry out in the City of Milpitas the functions and requirements of the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*) and to implement the Redevelopment Plan, as amended by the Sixth Amendment; and

**WHEREAS**, on February 1, 2012, the Redevelopment Agency was dissolved pursuant to Part 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code (enacted by Stats. 2011, 1st Ex. Sess., ch. 5, effective June 29, 2011, commonly referred to as “AB 1X 26” or the “Redevelopment Dissolution Act”), as modified by the California Supreme Court in its decision rendered December 29, 2011, in *California Redevelopment Association v. Ana Matosantos*, Case No. S194861, and the City of Milpitas became the successor agency (the “Successor Agency”) to the Redevelopment Agency on the same date, charged with the responsibility for winding down the affairs of the Redevelopment Agency; and

**WHEREAS**, the parties to the Validation Action negotiated a settlement of the Validation Action, the terms of which are set forth in a Settlement Agreement dated March 28, 2012 (the “Settlement Agreement”), which Settlement Agreement was approved for the City and the Successor Agency by the City Council on February 21, 2012; and

**WHEREAS**, under the Settlement Agreement, the City Council agreed to rescind and repeal Ordinance No. 192.23 approving and adopting the Sixth Amendment, Ordinance No. 192.24 approving and adopting the Thirteenth Amendment to the Redevelopment Plan for Project Area No. 1, and various resolutions adopted by the City Council and Redevelopment Agency precedent to and in support of the Sixth Amendment and the Thirteenth Amendment.

**NOW, THEREFORE**, the City Council of the City of Milpitas does hereby ordain that:

**Section 1.** Ordinance No. 192.23, entitled “An Ordinance of the City Council of the City of Milpitas Amending Ordinance Nos. 192.8, 192.10, 192.13, 192.17, 192.19, 192.22 and Approving and Adopting the Sixth Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project” is hereby repealed in its entirety.

**Section 2.** The City Council hereby further rescinds and repeals, as applicable to the Sixth Amendment, the following Resolution that was adopted precedent to and in support of the approval and adoption of the Sixth Amendment:

a. Resolution No. 7975, entitled “A Resolution of the City Council of the City of Milpitas Making Findings Based Upon Consideration of the Final Program Environmental Impact Report Prepared for the Proposed Thirteenth Amendment to the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 and the Proposed Sixth Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project.”

**Section 3.** The City Clerk is hereby directed to send a certified copy of this Ordinance to the Successor Agency.

**Section 4.** The City Clerk is hereby directed to record with the County Recorder of Santa Clara County a notice of the repeal of Ordinance No. 192.23 and the Sixth Amendment approved and adopted pursuant thereto.

**Section 5.** The City Clerk is hereby directed to transmit a copy of this Ordinance and a copy of the notice recorded pursuant to Section 4 of this Ordinance, to the auditor, assessor and tax collector of the County of Santa Clara, to the governing body of each of the taxing agencies that receives taxes from any property in the Great Mall Redevelopment Project Area and to the State Board of Equalization.

**Section 6.** Effective Date. This Ordinance shall be in full force and effect ninety (90) days after its passage; provided, however, that this Ordinance is contingent upon and shall not take effect unless an ordinance repealing Ordinance No. 192.24 (approving and adopting the Thirteenth Amendment to the Redevelopment Plan for Project Area No. 1) has been adopted and has become effective.

**Section 7.** Severability. If any part of this Ordinance, or the repeal of Ordinance No. 192.23 and the Sixth Amendment as provided for herein, is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance or such repeal, and this City Council hereby declares that it would have passed the remainder of this Ordinance, and the repeal of Ordinance No. 192.23 and the Sixth Amendment, if such invalid portion thereof had been deleted.

**REGULAR**

**NUMBER: 192.26**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS RESCINDING AND REPEALING ORDINANCE NO. 192.24, WHICH APPROVED AND ADOPTED THE THIRTEENTH AMENDMENT TO THE REDEVELOPMENT PLAN FOR THE MILPITAS REDEVELOPMENT PROJECT AREA NO. 1, AND RESCINDING AND REPEALING RESOLUTION NOS. 7975, 7976, 7977, AND 7978, AS APPLICABLE TO, AND WHICH WERE ADOPTED PRECEDENT TO AND IN SUPPORT OF, SAID THIRTEENTH AMENDMENT**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by Councilmember \_\_\_\_\_, and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by Councilmember \_\_\_\_\_. This 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 City Council of the City of Milpitas (the “City Council”) approved and adopted Ordinance No. 192.24 on May 4, 2010, approving and adopting the Thirteenth Amendment (the “Thirteenth Amendment”) to the Redevelopment Plan (the “Redevelopment Plan”) for the Milpitas Redevelopment Project Area No. 1 (the “Project”); and

**WHEREAS**, on June 4, 2010, the County of Santa Clara filed a lawsuit challenging the validity of Ordinance No. 192.24, the Thirteenth Amendment and related actions taken by the City Council and Agency, identified as *County of Santa Clara vs. All Persons Interested, etc., et al.*, San Mateo County Superior Court, Case No. 499976 (the “Validation Action”); and

**WHEREAS**, the Redevelopment Agency of the City of Milpitas (the “Redevelopment Agency”) was designated as the official redevelopment agency to carry out in the City of Milpitas the functions and requirements of the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*) and to implement the Redevelopment Plan, as amended by the Sixth Amendment; and

**WHEREAS**, on February 1, 2012, the Redevelopment Agency was dissolved pursuant to Part 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code (enacted by Stats. 2011, 1st Ex. Sess., ch. 5, effective June 29, 2011, commonly referred to as “AB 1X 26” or the “Redevelopment Dissolution Act”), as modified by the California Supreme Court in its decision rendered December 29, 2011, in *California Redevelopment Association v. Ana Matosantos*, Case No. S194861, and the City of Milpitas became the successor agency (the “Successor Agency”) to the Redevelopment Agency on the same date, charged with the responsibility for winding down the affairs of the Redevelopment Agency; and

**WHEREAS**, the parties to the Validation Action negotiated a settlement of the Validation Action, the terms of which are set forth in a Settlement Agreement dated March 28, 2012 (the “Settlement Agreement”), which Settlement Agreement was approved for the City and the Successor Agency by the City Council on February 21, 2012; and

**WHEREAS**, under the Settlement Agreement, the City Council agreed to rescind and repeal Ordinance No. 192.24 approving and adopting the Thirteenth Amendment, Ordinance No. 192.23 approving and adopting the Sixth Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project, and various resolutions adopted by the City Council and Redevelopment Agency precedent to and in support of the Thirteenth Amendment and the Sixth Amendment.

**NOW, THEREFORE**, the City Council of the City of Milpitas does hereby ordain that:

**Section 1.** Ordinance No. 192.24, entitled “An Ordinance of the City Council of the City of Milpitas Amending Ordinance Nos. 192, 192.1, 192.2, 192.3, 192.4, 192.6A, 192.9, 192.11, 192.12, 192.14, 192.15, 192.16, 192.18 and Approving and Adopting the Thirteenth Amendment to the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1” is hereby repealed in its entirety.

**Section 2.** The City Council hereby further rescinds and repeals, as applicable to the Thirteenth Amendment, the following resolutions that were adopted precedent to and in support of the approval and adoption of the Thirteenth Amendment:

a. Resolution No. 7975, entitled “A Resolution of the City Council of the City of Milpitas Making Findings Based Upon Consideration of the Final Program Environmental Impact Report Prepared for the Proposed Thirteenth Amendment to the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 and the Proposed Sixth Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project”;

b. Resolution No. 7976, entitled “A Resolution of the City Council of the City of Milpitas Finding and Determining That the Use of Monies From the Low and Moderate Income Housing Fund Outside the Boundaries of the Milpitas Redevelopment Project Area No. 1, as Amended by the Proposed Thirteenth Amendment, Will Benefit the Project Area, and Authorizing the Expenditure of Such Funds”;

c. Resolution No. 7977, entitled “A Resolution of the City Council of the City of Milpitas Electing to Receive a Portion of the Tax Increments Allocated From the Milpitas Redevelopment Project Area No. 1 Pursuant to Health and Safety Code Sections 33607.5 and 33607.7”; and

d. Resolution No. 7978, entitled “A Resolution of the City Council of the City of Milpitas Electing to Receive That Portion of the Tax Increments From the Proposed Thirteenth Amendment Added Area Attributable to Tax Rate Increases Imposed for the Benefit of the City of Milpitas After the Adoption of the Proposed Thirteenth Amendment to the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 Pursuant to Health and Safety Code Section 33676.”

**Section 3.** The City Clerk is hereby directed to send a certified copy of this Ordinance to the Successor Agency.

**Section 4.** The City Clerk is hereby directed to record with the County Recorder of Santa Clara County a notice of the repeal of Ordinance No. 192.24 and the Thirteenth Amendment approved and adopted pursuant thereto.

**Section 5.** The City Clerk is hereby directed to transmit a copy of this Ordinance and a copy of the notice recorded pursuant to Section 4 of this Ordinance, to the auditor, assessor and tax collector of the County of Santa Clara, to the governing body of each of the taxing agencies that receives taxes from any property in the Milpitas Redevelopment Project Area No. 1 and to the State Board of Equalization.

**Section 6.** Effective Date. This Ordinance shall be in full force and effect ninety (90) days after its passage.

**Section 7.** Severability. If any part of this Ordinance, or the repeal of Ordinance No. 192.24 and the Thirteenth Amendment as provided for herein, is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance or such repeal, and this City Council hereby declares that it would have passed the remainder of this Ordinance, and the repeal of Ordinance No. 192.24 and the Thirteenth Amendment, if such invalid portion thereof had been deleted.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, ACTING AS SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT AGENCY PURSUANT TO PART 1.85 OF DIVISION 24 OF THE HEALTH AND SAFETY CODE, RESCINDING AND REPEALING FORMER MILPITAS REDEVELOPMENT AGENCY RESOLUTION NOS. RA366, RA369, RA370, RA371 AND RA372 WHICH WERE ADOPTED PRECEDENT TO AND IN SUPPORT OF THE SIXTH AMENDMENT TO THE REDEVELOPMENT PLAN FOR THE GREAT MALL REDEVELOPMENT PROJECT AND/OR THE THIRTEENTH AMENDMENT TO THE REDEVELOPMENT PLAN FOR THE MILPITAS REDEVELOPMENT PROJECT AREA NO. 1, AND AUTHORIZING THE CITY MANAGER TO TAKE ACTIONS APPROPRIATE TO PROVIDE NOTICE OF THE REPEAL OF THE SIXTH AMENDMENT AND THE THIRTEENTH AMENDMENT ON BEHALF OF THE CITY, ACTING AS SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT AGENCY**

**WHEREAS**, on May 4, 2010, the City Council of the City of Milpitas (the “City Council”) approved and adopted Ordinance No. 192.23 approving and adopting the Sixth Amendment (the “Sixth Amendment”) to the Redevelopment Plan for the Great Mall Redevelopment Project (the “Great Mall Project”), and Ordinance No. 192.24 approving and adopting the Thirteenth Amendment (the “Thirteenth Amendment”) to the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 (“Project Area No. 1”); and

**WHEREAS**, on June 4, 2010, the County of Santa Clara filed a lawsuit challenging the validity of Ordinance No. 192.23, Ordinance No. 192.24, the Sixth Amendment, the Thirteenth Amendment and related actions taken by the City Council and Agency, identified as *County of Santa Clara v. All Persons Interested, etc., et al.*, San Mateo County Superior Court, Case No. 499976 (the “Validation Action”); and

**WHEREAS**, the Redevelopment Agency of the City of Milpitas (the “Redevelopment Agency”) was designated as the official redevelopment agency to carry out in the City of Milpitas the functions and requirements of the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*) and to implement the Redevelopment Plans for the Great Mall Project and Project Area No. 1, as amended; and

**WHEREAS**, on February 1, 2012, the Redevelopment Agency was dissolved pursuant to Part 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code (enacted by Stats. 2011, 1st Ex. Sess., ch. 5, effective June 29, 2011, commonly referred to as “AB 1X 26” or the “Redevelopment Dissolution Act”), as modified by the California Supreme Court in its decision rendered December 29, 2011, in *California Redevelopment Association v. Ana Matosantos*, Case No. S194861, and the City of Milpitas became the successor agency (the “Successor Agency”) to the Redevelopment Agency on the same date, charged with the responsibility for winding down the affairs of the Redevelopment Agency; and

**WHEREAS**, the parties to the Validation Action negotiated a settlement of the Validation Action, the terms of which are set forth in a Settlement Agreement dated March 28, 2012 (the “Settlement Agreement”), which Settlement Agreement was approved for the City and the Successor Agency by the City Council on February 21, 2012; and

**WHEREAS**, under the Settlement Agreement, the City Council agreed to rescind and repeal Ordinance No. 192.23 approving and adopting the Sixth Amendment, Ordinance No. 192.24 approving and adopting the Thirteenth Amendment, and various resolutions adopted by the City Council and Redevelopment Agency precedent to and in support of the Sixth Amendment and/or the Thirteenth Amendment.

**NOW, THEREFORE**, the City Council of the City of Milpitas, acting as Successor Agency to the former Milpitas Redevelopment Agency pursuant to Part 1.85 of Division 24 of the Health and Safety Code, hereby finds, determines, and resolves as follows:

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

2. The City Council hereby rescinds and repeals the following resolutions that were adopted precedent to and in support of the approval and adoption of the Sixth Amendment and/or the Thirteenth Amendment:
  - a. Redevelopment Agency Resolution No. RA366, adopted on March 2, 2010, entitled “A Resolution of the Milpitas Redevelopment Agency Amending the Owner Participation Rules for the Milpitas Redevelopment Project Area No. 1”; and
  - b. Redevelopment Agency Resolution No. RA369, adopted on April 20, 2010, entitled “A Resolution of the Milpitas Redevelopment Agency Amending the July 2005 – June 2010 Implementation Plan”; and
  - c. Redevelopment Agency Resolution No. RA370, adopted on April 20, 2010, entitled “A Resolution of the Milpitas Redevelopment Agency Certifying the Final Program Environmental Impact Report Prepared for the Proposed Thirteenth Amendment to the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1 and the Proposed Sixth Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project”; and
  - d. Redevelopment Agency Resolution No. RA371, adopted on April 20, 2010, entitled “A Resolution of the Milpitas Redevelopment Agency Making Certain Findings in Connection with the Proposed Thirteenth Amendment to the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1”; and
  - e. Redevelopment Agency Resolution No. RA372, adopted on April 20, 2010, entitled “A Resolution of the Milpitas Redevelopment Agency Finding and Determining That the Use of Monies From the Low and Moderate Income Housing Fund Outside the Boundaries of the Milpitas Redevelopment Project Area No. 1, as Amended by the Proposed Thirteenth Amendment, Will Benefit the Project Area, and Authorizing the Expenditure of Such Funds.”
  
3. The City Council hereby directs the City Manager, following adoption by the City Council of ordinances repealing Ordinance No. 192.23 and Ordinance No. 192.24, to take actions appropriate to provide notice of the repeal of those ordinances, including the recordation of notice of the repeal of the Sixth Amendment and the Thirteenth Amendment in the official land records of the County of Santa Clara and providing written notice of the repeal to the County of Santa Clara taxing officials, all taxing entities that receive property taxes from the Great Mall Project and/or Project Area No. 1, the State Board of Equalization and any other interested persons.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 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