

REGULAR

NUMBER: 38.807

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MILPITAS AND MILPITAS SIGN COMPANY, LLC

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of April 2, 2013, upon motion by Vice Mayor Polanski 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, on January 7, 2011, an application was submitted by Milpitas Sign Company, LLC., 555 12th Street, #950, Oakland, CA 94607, for the construction and operation of two freestanding off-site advertising displays (“Project”) to be located at 1545 California Circle (APN: 22-37-049) and 1301 California Circle (APN: 22-38-002). The properties are located within the Industrial Park Zoning District; and

WHEREAS, the City and the applicant wish to memorialize the rights to design, construct, install, operate, maintain, manage and market advertising opportunities on said advertising display in the document entitled “Development Agreement By and Between the City of Milpitas and Milpitas Sign Company, LLC,” (hereinafter referred to herein as the “Development Agreement”), a draft of which is attached hereto as Exhibit A; and

WHEREAS, the environmental effects of the Project were considered in the Final Environmental Impact Report, State Clearinghouse No. 201062083 (“EIR”) prepared pursuant to the California Environmental Quality Act (“CEQA”) and certified by the Milpitas City Council on April 2, 2013. The terms and conditions of this Development Agreement are consistent with and within the scope of the EIR. Accordingly, no further environmental analysis is necessary or required under CEQA to enter into the Development Agreement and undertake its terms and conditions; and

WHEREAS, on January 23, 2013, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties, and unanimously recommended to the City Council to approve the accompanying sign proposal and the environmental assessment performed by City staff; and

WHEREAS, on April 2, 2013, the City Council held a duly noticed public hearing and considered the proposed Development Agreement for compliance with City of Milpitas Resolution No. 6642 and Government Code Section 65864 *et seq.*

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. FINDINGS

- A. The City Council finds that the proposed Development Agreement is consistent with the City's General Plan and other applicable plans, policies and regulations of the City currently in effect, is not detrimental to the health, safety and general welfare of the citizens of the City, is entered into and constitutes an appropriate exercise of the City's police power, and is entered into in compliance with applicable State law and City Resolution No. 6642, as amended.
- B. The City Council finds that the proposed Development Agreement complies with all the applicable procedural and eligibility requirements for the approval and execution of development agreements set forth in City of Milpitas Resolution No. 6642 and Government Code Section 65864 *et seq.* A valid application was submitted to the Planning & Neighborhood Services Director by an applicant with

proper legal standing. The proposed Development Agreement would eliminate uncertainty in land use planning and help ensure the orderly development of an advertising display in an appropriate zoning district and location. The proposed Development Agreement would also result in a project which would be significantly superior in terms of its overall effect on the environment and the community than would otherwise result without such a development agreement. The proposed Development Agreement would also be beneficial to the health, safety, and general welfare of the community.

- C. The Development Agreement is consistent with the General Plan in that the advertising display would promote business development, appropriately identify local commercial activity and project a positive image of the City and the community.

SECTION 3. APPROVAL AND AUTHORIZATION

The City Council hereby approves and authorizes the City Manager or his or her designee to execute the Development Agreement between the City of Milpitas and Milpitas Auto Properties, LLC, attached hereto as Exhibit A. Within ten (10) days of the effective date of this Ordinance, the City Clerk shall have the Development Agreement recorded with the Santa Clara County Recorder.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.