

REGULAR

***14**

NUMBER: 289

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING CHAPTERS 4 AND 5 TO TITLE I OF THE MILPITAS MUNICIPAL CODE RELATING TO CONTRACT AND SETTLEMENT AUTHORITY

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of May 19, 2015, upon motion by Councilmember Giordano 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 May 5, 1998, the Milpitas City Council adopted Resolution No. 6765 authorizing the City Attorney to approve settlement of any legal claim against the City of Milpitas in an amount not to exceed Ten Thousand Dollars (\$10,000), and the City Manager and City Attorney collectively have authority to approve settlement of any claim against the City of Milpitas in an amount not to exceed Thirty-Five Thousand Dollars (\$35,000); and

WHEREAS, on August 3, 1999, the City Council adopted Resolution No. 6910 authorizing the Risk Manager of the City of Milpitas to approve settlement of any legal claim against the City of Milpitas in an amount not to exceed Ten Thousand Dollars (\$10,000), and the City Manager and City Attorney collectively have authority to approve settlement of any claim against the City of Milpitas in an amount not to exceed Thirty-Five Thousand Dollars (\$35,000); and

WHEREAS, the Milpitas Purchasing Ordinance codified in Chapter 2 of Title I of the Milpitas Municipal Code sets forth the procurement authority and process for purchase of supplies and services; and

WHEREAS, the City of Milpitas desires to add Chapters 4 and 5 to Title I of the Milpitas Municipal Code to codify the aforementioned Resolutions, standard operating procedures, and current practices relating contract and settlement authority.

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. ADDITION OF CHAPTER 4 TO TITLE I OF THE MILPITAS MUNICIPAL CODE

Chapter 4 of Title I is added to the Milpitas Municipal Code to read as follows:

CHAPTER 4 - CONTRACT AUTHORITY

Sections:

Section 1 - Scope of Contract Authority

I-4-1.01

The term "Contract," for the purpose of this Chapter, means the following:

- a. Agreements for the construction of public works projects;
- b. Agreements for the lease or purchase of supplies, materials and equipment;
- c. Leases, licenses and other agreements for the use of real property;
- d. Agreements for professional services;
- e. Agreements for personal services, including agreements with independent contractors and employees;
- f. Agreements relating to the grant of funds by the City and to the City; and
- g. Temporary construction easements not exceeding one year.

I-4-1.02

The term "Contract," for the purpose of this Chapter, except as provided in Section I-4-2.02, shall not include:

- a. Unless specifically authorized under Section I-4-2.02, agreements for the transfer of title to or substantial permanent interest in real property, including:

1. Grant deeds;
 2. Quit claim deeds; and
 3. Easements.
- b. Agreements for the acceptance or donation of personal property, real property, or otherwise, to or by the City.

I-4-1.03

The term "total cumulative monetary value of" means the contract obligations, including all amendments, involving the transfer to or from the City of money, goods, other value, or tangible or intangible personal property or an interest in real property having a dollar value in the amount stated.

Section 2 - Contract Authority of the City Manager

I-4-2.01

The City Manager is authorized to enter into and execute for and on behalf of the City of Milpitas, without the prior approval of the City Council, any Contract, for which:

- a. Funds have been appropriated; and
- b. There is an unexpended and unencumbered balance of such appropriation sufficient to pay the Contract expense; and
- c. The total cumulative monetary value of the Contract does not exceed One Hundred Thousand Dollars (\$100,000).

The contract authority of the City Manager in this Section does not include the authority to execute any Contracts within the authority of the City Attorney.

I-4-2.02

In addition, the City Manager is authorized to execute for and on behalf of the City of Milpitas a certificate of acceptance of an instrument conveying to the City any interest in real property, where such conveyance is:

- a. Of real property, or an interest therein, to be used for a public purpose; and
- b. Required as a condition of:
 1. A parcel map or tentative subdivision map approved pursuant to Chapter 1 of Title XI of the Municipal Code; or
 2. A development permit approved pursuant to Chapter 10 of Title XI of the Municipal Code; and
- c. The real property has been determined to present no significant toxics liability.

Section 3 - Contract Amendment Authority

I-4-3.01

The City Manager is authorized to enter into and execute for and on behalf of the City of Milpitas, without the prior approval of the City Council, any amendment to a Contract that was executed pursuant to their respective authority under this Chapter, which does not increase the compensation for the Contract to accomplish the following:

- a. To extend the term of the Contract for a period not to exceed six (6) consecutive months from the last City Council approved termination date; or
- b. To make minor revisions to the scope of services; or
- c. To make clerical corrections.

I-4-3.02

In addition, the City Manager is authorized to approve assignments to contracts previously approved by the City Council when he or she has determined that the proposed assignee is at least as responsible and capable of performing the agreement as the original contractor.

Section 4 - Limitations on Contract Authority

I-4-4.01

This Chapter shall not authorize any City officer or official to enter into and execute any Contract which such officer or official is otherwise prohibited from entering into and executing under the provisions of the Municipal Code, or any other applicable law, or by any resolution or action of the City Council; or which may expose the City to an extraordinary risk which the City Council has not authorized.

I-4-4.02

The contract authority under this Chapter is in addition to the contract authority set forth in Chapter 2 of Title I of the Municipal Code.

SECTION 3. ADDITION OF CHAPTER 5 TO TITLE I OF THE MILPITAS MUNICIPAL CODE

Chapter 5 of Title I is added to the Milpitas Municipal Code to read as follows:

CHAPTER 5 - SETTLEMENT AUTHORITY

Sections:

Section 1 - Settlement Authority of City Attorney

I-5-1.01

The City Attorney is authorized to compromise and settle claims and actions for damages against the City, and/or against its officers and employees for conduct within the course and scope of their employment with the City where:

- a. The amount to be paid by the City does not exceed Ten Thousand Dollars (\$10,000).
- b. The amount to be paid by the City does not exceed Thirty-Five Thousand Dollars (\$35,000) if the City Manager also concurs with the compromise or settlement.
- c. The City Attorney is authorized to enter into agreements on behalf of the City and its officers and employees as necessary to effectuate any authorized compromise and settlement.
- d. The City Attorney shall report annually to the City Council the claims or actions against the City settled for an amount greater than Ten Thousand Dollars (\$10,000).

Section 2 - Settlement Authority of the Risk Manager

I-5-2.01

a. The Risk Manager is authorized to compromise and settle any claims against the City for damages or claims for other money owed to the City where the amount to be paid does not exceed Ten Thousand Dollars (\$10,000), provided the Risk Manager deems the compromise and settlement to be in the City's best interest. For purposes of any compromise and settlement pursuant to this provision, the Risk Manager is authorized to enter into any agreement for or on behalf of the City necessary to effectuate the compromise and settlement. To the extent the full amount owing to the City on any claim is not collected due to a compromise and settlement pursuant to this provision, the uncollected amount shall be deemed written off as uncollectible.

b. The Risk Manager shall report annually to the City Council the claims or actions against the City settled pursuant to this Section I-5-2.01.

Section 3 - Write-off of Uncollectible Accounts

I-5-3.01

The City Manager and the Director of Finance, jointly, are authorized to write off as uncollectible up to Fifty Thousand Dollars (\$50,000) in total annually (and up to Ten Thousand Dollars (\$10,000) for any single account or claim) on all accounts or claims which the City may have against all persons when the City Manager and Director of Finance determine that the claim is:

- a. Uncollectible;
- b. Possibly collectible but collection would not be reasonably cost effective taking into consideration the probable necessary cost to the City in pursuing collection and the likelihood of collection; or
- c. Not a valid, enforceable claim of the City.

I-5-3.02

Notwithstanding Section I-5-3.01, the Director of Finance is authorized to write-off as uncollectable up to Ten Thousand Dollars (\$10,000) on each unpaid account if the difference between the amount owed to the City on the unpaid account and the settlement amount does not exceed Ten Thousand Dollars (\$10,000), whenever the Director of Finance deems the write off to be in the City's best interest.

I-5-3.03

A write-off pursuant to this Section is authorized solely to facilitate the keeping of the books of account of the City, and under no circumstances shall any such write-off be deemed to constitute a relinquishment or abandonment by the City of any such account or claim, and nothing in these sections shall be deemed or construed to prevent the City from collecting or enforcing payment of any such account or claim at any time.

I-5-3.04

Except as provided in this Section, no account or claim of the City shall be written off as uncollectible without the express authorization of the City Council.

SECTION 4. REPEALING ACTION

The City Council hereby repeals City Council Resolution No. 6765 adopted on May 5, 1998, and Resolution No. 6910 adopted on August 3, 1999, to be effective when this Ordinance No. 289 is effective.

SECTION 5. 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 6. 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.