

RESOLUTION NO. 9

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER MILPITAS REDEVELOPMENT AGENCY REQUESTING RECORDS FROM THE MILPITAS ECONOMIC DEVELOPMENT CORPORATION AND RELATED OR SUPPORTING DOCUMENTS FROM THE CITY AND THE CITY AS SUCCESSOR AGENCY, PURSUANT TO THE PUBLIC RECORDS ACT

WHEREAS, the California State Legislature enacted Assembly Bill x1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code section 33000 et seq.), as amended by Assembly Bill 1484, Statutes of 2012, enacted June 27, 2012 (the Dissolution Law); and

WHEREAS, pursuant to Health and Safety Code section 34177, the Oversight Board (the Oversight Board) of the Successor Agency of the former Milpitas Redevelopment Agency (the Successor Agency) shall direct the expeditious wind down the affairs of the redevelopment agency consistent with its fiduciary responsibilities to holders of enforceable obligations and the taxing entities; and

WHEREAS, the State Controller s Office has determined that in 2011, within the claw back period of the Dissolution Law, the City of Milpitas (the City) caused the unauthorized transfer of approximately \$147,108,600 in redevelopment agency assets to the City and the Milpitas Economic Development Corporation (the MEDC); and

WHEREAS, on August 28, 2012, the State Controller s Office ordered the City and the MEDC to immediately reverse all unallowable transfers of assets received from the former redevelopment agency and return such assets to the Successor Agency for disposition by the Oversight Board; and

WHEREAS, to date, the City and the MEDC have failed to comply with the State Controller s Order; and

WHEREAS, pursuant to Health and Safety Code section 34167, the Oversight Board is charged with preservation of assets of the former Redevelopment Agency and as fiduciary to the affected taxing entities and holders of enforceable obligations is obligated to investigate and pursue all assets within its purview under the Dissolution Law; and

WHEREAS, the Oversight Board in furtherance of its duties took the following actions at the October 4, 2012 board meeting:

(1) Board Member Knopf presented the City Manager to the Successor Agency with a written request for copies of incorporation documents and a summary of all contracts entered into by the MEDC and an accounting of how much has been expended to date; and

(2) The Oversight Board approved a motion by Member Knopf, seconded by Member Murdter, to place on the next agenda discussion of MEDC expenditures and possible consideration of an injunction of continued MEDC spending; and

(3) On an additional motion by Vice Chair Mendizabal, seconded by member Phuong Le, the Oversight Board requested the following documents and information of the MEDC: (1) Summary of all contracts entered into by the Economic Development Corporation (EDC) since its incorporation, including date of effectiveness, term, names of contracting parties, purpose, dollar amount, and total amount expenditure to date; and,

(2) Copies of the EDC s incorporation documents filed with the Secretary of State, including but not limited to by-laws and officers, including any amendments thereto; and

WHEREAS, the following events transpired on October 11, 2012:

(1) In an email sent to the Oversight Board at 9:05 am on October 11, 2012, the City Clerk /Successor Agency Secretary/ MEDC Secretary (City Clerk) partially responded to the Oversight Board s records request by providing the articles of incorporation and three contracts of the MEDC regarding: (1) a contract awarded June 21, 2011 for design services for City Hall audio visual upgrade, (2) the January 17, 2012 award of a construction contract for City Hall audio visual upgrade, (3) the January 17, 2012 award of a construction contract for maintenance of Wrigley Ford Creek to be paid out of the Library Project - CIP 8162; and

(2) At the Oversight Board meeting, the Chair again directed Successor Agency Staff to place the discussion of MEDC expenditures and possible consideration of an injunction of continued MEDC spending on the next agenda in order that the Board may have discussion; and

WHEREAS, Successor Agency staff has failed to provide information as directed by the Oversight Board on October 4, 2012 regarding all contracts entered into by MEDC since formation, including such contracts as, for example: (1) approving a \$200,000 contract on January 17, 2012, to make improvements to the City s Police Department Evidence Room; (2) the MEDC contract in the amount of \$65,000 approved February 7, 2012, to engage the firm of Fairbank, Maslin, et. al., to poll likely voter support for a potential citywide sale tax increase for essential city services; or, (3) the \$80,000 contract awarded June 19, 2012, to Goldfarb, Lipman to provide legal and litigation services to resist the impending State Controller s Order to reverse asset transfers; and

WHEREAS, beyond violating the State Controller s Order and the Dissolution Law, the MEDC/City s expenditures of illegitimately held redevelopment agency assets may violate other provisions of the Community Redevelopment Act among other California law; and

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board requests the following documents pursuant to the Public Records Act:

(1) all documents of the MEDC regarding the transfer of assets to, and use by the MEDC;

(2) all documents of the City, and of the City as Successor Agency, related to transfer of assets to and use by the MEDC;

(3) all documents related to Assessor s Parcel Numbers 86-41-016, 86-41-017, 86-41-018, 1740-1830 McCandless Drive, including but not limited to assignment to the MEDC of the Purchase and Sale Agreement approved February 15, 2011, between the RDA/City and Mission West Properties;

(4) an initial budget report on MEDC s expenditures and reimbursements to date since the transfer of assets, as well as monthly, budget status reports, including the litigation expenses incurred;

(5) the remaining balance of assets received from the former Milpitas Redevelopment Agency;

(6) any and all contracts between MEDC and the City, the former RDA, the Successor Agency, or third parties, and the amount of funds expended to date and the amount of funds remaining under each such contract;

(7) all documents relating to findings of eligibility made for Fiscal Years 2010-2011, 2011-2012, and 2012-2013 required under California Redevelopment Law for MEDC financed programs, projects, contracts for professional services, and expenditures and reimbursement for staff and elected officials, including but not limited to relevant findings by the City or by MEDC pursuant to Health and Safety Code section 33445, section 33445.1, section 33678, section 33679, and Article XIII B of the California Constitution for all expenditures of and reimbursement by the MEDC since its formation, including but not limited to the following: (a) a contract awarded by the MEDC on January 17, 2012 for City Hall audio/visual upgrades (CIP No. 9001); (b) a construction contract awarded January 17, 2012 for maintenance of Wrigley Ford Creek ;(c) a contract awarded by the MEDC on January 17, 2012 for Police Department Evidence Room Improvements (CIP No. 9003); (d) a contract with the firm of Fairbank, Maslin, Maullin, Metz & Associates to conduct a random sample survey of likely voters to support a City sales tax increase; and, (e) the June 19, 2012 contract of the MEDC with the firm of Goldfarb Lipman attorneys to provide litigation services; and

(8) formation and organizing documents, including current composition of the MEDC Board and allocation of city staff to staff the MEDC; and

(9) Budget and funding documents including but not limited to any and all documents regarding annual MEDC reimbursement to the City or to the Successor Agency and reimbursement amounts to date by the MEDC of the City and/or of Successor Agency for staff and MEDC Board members.

PASSED AND ADOPTED this 14th day of November, 2012 by the following vote:

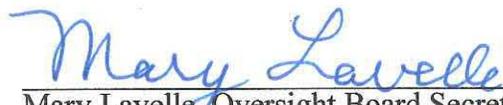
AYES: (6) Chair Gage, Vice Chair Mendizabal and Board Members Gomez, Grilli, Knopf and Murdter

NOES: (1) Board Member Karlen

ABSENT: (0)

ABSTAIN: (0)

ATTEST:


Mary Lavelle, Oversight Board Secretary

APPROVED:


Donald Gage, Chair