

ORDINANCE NO. 739

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MILLBRAE, CALIFORNIA, DETERMINING IT WILL COMPLY WITH
THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM
PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA
HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE
CONTINUED EXISTENCE AND OPERATION OF THE
REDEVELOPMENT AGENCY OF THE CITY OF MILLBRAE**

WHEREAS, the City Council of the City of Millbrae (“City”) approved and adopted the Redevelopment Plan for the Millbrae Redevelopment Project Area (“Redevelopment Plan”) covering certain properties within the City (the “Project Area”);

WHEREAS, the Redevelopment Agency of the City of Millbrae (“Agency”) is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*) (“CRL”);

WHEREAS, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy;

WHEREAS, over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area’s economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, to name a few;

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature has recently enacted and the Governor has signed, companion bills AB x1 26 and AB x1 27, requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments;

WHEREAS, specifically, AB x1 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011;

WHEREAS, AB x1 27 provides that a community may participate in an “Alternative Voluntary Redevelopment Program,” in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code;

WHEREAS, the Alternative Voluntary Redevelopment Program requires that the community agree by ordinance to remit specified annual amounts to the county auditor-controller;

WHEREAS, under the threat of dissolution pursuant to AB x1 26, and upon the contingencies and reservations set forth herein, the City shall make the Fiscal Year 2011-2012 community remittance, currently estimated to be One Million Eight Hundred Fifty-Two Thousand, Three Hundred Fifty Eight Dollars (\$1,852,358), as well as the subsequent annual community remittances as set forth in the CRL;

WHEREAS, the City reserves the right to appeal the California Director of Finance's determination of the Fiscal Year 2011-12 community remittance, as provided in Health and Safety Code Section 34194;

WHEREAS, the City understands and believes that an action challenging the constitutionality of AB x1 26 and AB x1 27 will be filed on behalf of cities, counties and redevelopment agencies;

WHEREAS, while the City currently intends to make these community remittances, they shall be made under protest and without prejudice to the City's right to recover such amounts and interest thereon, to the extent there is a final determination that AB x1 26 and AB x1 27 are unconstitutional;

WHEREAS, the City reserves the right, regardless of any community remittance made pursuant to this Ordinance, to challenge the legality of AB x1 26 and AB x1 27;

WHEREAS, to the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligation of AB x1 26 and AB x1 27, the City shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

THE CITY COUNCIL OF THE CITY OF MILLBRAE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Participation in the Alternative Voluntary Redevelopment Program. In accordance with Health and Safety Code Section 34193, and based on the Recitals set forth above, the City Council hereby determines that the City shall comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB x1 27.

Section 3. Payment Under Protest. Except as set forth in Section 4, below, the City Council hereby determines that the City shall make the community remittances set forth in Health

and Safety Code section 34194 *et seq.*

Section 4. **Effect of Stay or Determination of Invalidity.** The City shall not make any community remittance in the event a court of competent jurisdiction either grants a stay on the enforcement of AB x1 26 and AB x1 27 or determines that AB x1 26 and AB x1 27 are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or the time for filing an appeal therefrom has lapsed. Any community remittance shall be made under protest and without prejudice to the City's right to recover such amount and interest thereon in the event that there is a final determination that AB x1 26 and AB x1 27 are unconstitutional. If there is a final determination that AB x1 26 and AB x1 27 are invalid, this Ordinance shall be deemed to be null and void and of no further force or effect.

Section 5. **Implementation.** The City Council hereby authorizes and directs the City Manager to take all actions and execute all documents necessary to implement this Ordinance, including but not limited to notifying the San Mateo County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of the adoption of this Ordinance and the City's agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as set forth in AB x1 27.

Section 6. **Additional Understandings and Intent.** It is the understanding and intent of the City Council that, once the Agency is again authorized to enter into agreements under the CRL, the City will enter into an agreement with the Agency as authorized pursuant to Section 34194.2, whereby the Agency will transfer annual portions of its tax increment to the City in amounts not to exceed the annual community remittance payments to enable the City, directly or indirectly, to make the annual remittance payments. The City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the remittance payments.

Section 7. **CEQA.** The City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a "project," but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Mateo in accordance with CEQA Guidelines.

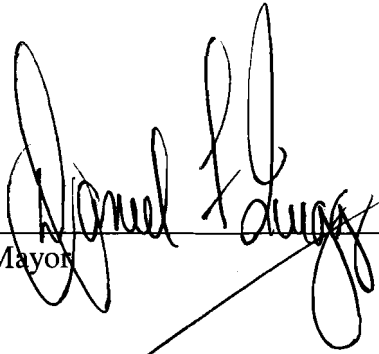
Section 8. **Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to 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. Certification; Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of Millbrae, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code § 36933.

Section 10. Effective Date. This Ordinance shall become effective thirty (30) days from its adoption.


INTRODUCED and ordered posted/published this 26th day of July, 2011.

ADOPTED this 1st day of August, 2011.



Mayor

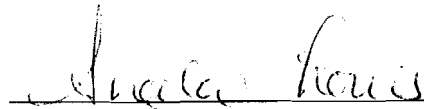
ATTEST:



City Clerk

I do hereby certify that the foregoing Ordinance was duly and regularly passed and adopted by the City Council of the City of Millbrae this 10th day of May 2011, by the following vote:

AYES:	COUNCILMEMBERS:	Quigg, Colapietro, Papan, Holoher, and Seto
NOES:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None
ABSTAIN:	COUNCILMEMBERS:	None
EXCUSED:	COUNCILMEMBERS:	None



CITY CLERK