



**MILPITAS CITY COUNCIL MEETING AGENDA  
MAY 15, 2007**

**6:30 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)  
455 E. CALAVERAS BOULEVARD**

**SUMMARY OF CONTENTS**

- I. CALL TO ORDER/ROLL CALL (6:30 p.m.)**
- II. ADJOURN TO CLOSED SESSION**  
**CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**  
(Pursuant to CA Government Code §54957.6) City Negotiator: Carmen Valdez  
Employee Groups: Milpitas Employees Association (MEA), and Milpitas Supervisors Association (MSA). Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to CA Govt. Code §54957.1, including the vote on abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Polanski)**
- VI. APPROVAL OF MINUTES (May 1, 2007)**
- VII. SCHEDULE OF MEETINGS/COUNCIL CALENDAR**
- VIII. PRESENTATIONS**

Proclamations:

Bike to Work Day – May 17, 2007

Memorial Day – May 28, 2007

Small Business Week for the week of May 21-25, 2007

Veterans of Foreign Wars “Buddy Poppy” Month – May 2007

Asian/Pacific Heritage Month – May 2007

Certificate of Appreciation:

Bill Reisinger, Retiring Commissioner and Chair of the Bicycle Pedestrian Advisory Commission

**IX. PUBLIC FORUM**

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Members of the audience are invited to address the Council on any subject not on tonight’s agenda. Speakers must come to the podium, state their name and city of residence for the Clerk’s record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

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- X. ANNOUNCEMENTS**
- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XII. APPROVAL OF AGENDA**

**XIII. CONSENT CALENDAR (Items with Asterisks\*)**

**XIV. PUBLIC HEARING**

1. Consider Approval of 'S' Zone No. SZ2005-2 to Develop a 1.27 Acre Parcel with new 5,706 Square Foot Single-Family Hillside Residence with Grading and Landscaping, Located at 898 Calaveras Ridge Drive, APN 029-06-038, Zoned Single Family Residential-Hillside (R1-H) for Applicant Haresh Panchal (Staff Contact: Kristine Lowe, 586-3278)

**XV. UNFINISHED BUSINESS**

2. Approve Mayor's Recommendation for Councilmember Appointment to Valley Transportation Authority Policy Advisory Committee (Contact: Mayor Esteves, 586-3029)
3. Receive Street Tree Report, and Provide Staff Direction for Improvements or Enhancements to the City of Milpitas Street Tree Planting Program (Staff Contact: Carol Randisi, 586-2601)
4. Receive Report on Funding for Alviso Adobe Project No. 5055 (Staff Contact: Greg Armendariz, 586-3317)
5. Approve Amendments to City Council Handbook (Staff Contact: Peter Spoerl, 586-3040)

**XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

**RA1. Call to Order by the Mayor/Chair**

**RA2. Roll Call**

**RA3. Approval of Minutes (May 1, 2007)**

**RA4. Approval of Agenda and Consent Calendar (Items with Asterisk\*)**

**\*RA5. Approve Partial Certificate of Completion for Certain Residential Units within Tract No. 9698 for KB Home, Project No. 3160 (Staff Contact: Mehdi Khaila, 586-3328)**

**\*RA6. Adopt Resolution Amending the Owner Participation Agreement with DR Horton to Change the Unit Type and Mix for Centria Residential Condominium Project, West Building (Staff Contact: Felix Reliford, 586-3071)**

**\*RA7. Adopt Resolution Granting Final Acceptance: Sports Center Underwater Pool Lighting, Project No. 8163 (Staff Contact: Greg Armendariz, 586-3317)**

**RA8. Agency Adjournment**

**XVII. REPORT OF OFFICER**

**City Council**

6. Resolution of Support for Senate Bill 156, Regarding the Library Construction and Renovation Bond (Contact: Councilmember Debbie Giordano, 586-3032)

**XVIII. NEW BUSINESS**

7. Santa Clara Valley Transportation Authority Staff Presentation of Current Operations (Staff Contact: Mary Lavelle, 586-3001)

8. **Consideration of Regulatory Options Regarding Medical Marijuana Dispensaries (Staff Contact: Peter Spoerl, 586-3040)**
- \* 9. **Approve One Youth Sports Assistance Fund Grant Request (Staff Contact: Aaron Bueno, 586-3226)**

**XIX. ORDINANCES**

10. **Introduce Traffic Ordinance No. 43.208, an Amendment to the Traffic Code to Change the Speed Limit Along a Section of Yosemite Dr. (Staff Contact: Jaime Rodriguez, 586-3335)**
- \* 11. **Waive the Second Reading and Adopt Ordinance No. 101.20 for Amendments to the Contract Between the Board of Administration of California Public Employees' Retirement System (PERS) and the City Council of the City of Milpitas (Staff Contact: Carmen Valdez, 586-3086)**

**XX. RESOLUTIONS**

- \* 12. **Adopt Resolution Directing Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Project No. 9489 (Staff Contact: Mehdi Khaila, 586-3328)**
- \* 13. **Adopt Resolution Directing Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch, Project No. 9474 (Staff Contact: Mehdi Khaila, 586-3328)**
- \* 14. **Adopt Resolution Summarily Vacating Easements for Public Service Utility at Milpitas Town Center Located off Milpitas Blvd., Calaveras Blvd. and Hillview Drive, Project No. 3153 (Staff Contact: Mehdi Khaila, 586-3328)**

**XXI. BIDS AND CONTRACTS**

- \* 15. **Authorize City Manager to Execute Contract Agreement with Smith & Associates to Determine the Average Market Value of One Acre of Land for Calculating Park In-Lieu Fees (Staff Contact: Felix Reliford, 586-3071)**
- \* 16. **Approve and Authorize the City Manager to Execute Amendment No. 2 to the Agreement with RMC Water and Environment, Inc. for the Developers Water and Sewer Impact Fee Analysis and Connection Fee Update (Staff Contact: Kathleen Phalen, 586-3345)**
- \* 17. **Award Construction Contract to Norwood Construction for Milpitas Communications Enhancement Project – Phase 1, Project No. 4232 (Staff Contact: Jaime Rodriguez, 586-3335)**
- \* 18. **Authorize the City Engineer to Execute Contract Change Order No. 1 with Blocka Construction Inc., for Well Upgrade Program, Project No. 7076 – Phase II, Pinewood Well (Staff Contact: Andrew Brozyna, 586-3315)**
- \* 19. **Approve Budget Appropriation for Park Renovation Project with Cupertino Electric, Project No. 5082 (Staff Contact: Greg Armendariz, 586-3317)**
- \* 20. **Award the Bid for Burn Room Panel Replacement to Nielsen Building Systems, Inc. (Staff Contact: Chris Schroeder, 586-3161)**
- \* 21. **Award Bid to Frontier Ford for Purchase of a Pickup Truck (Staff Contact: Chris Schroeder, 586-3161)**

- \* 22. Approve the Contract with Pyro Spectacular for the Annual 4<sup>th</sup> of July Fireworks Display and Receive Staff Update (Staff Contact: Dale Flunoy, 586-3228)

**XXII. CLAIMS AND DEMANDS**

- \* 23. Approve Payment of Annual Maintenance Fees for the Police Records Management System (Staff Contact: Bill Marion, 586-2701)
- \* 24. Approve Payment Request to National Meter and Automation for Badger Meters for Replenishment Water Meters (Staff Contact: Chris Schroeder, 586-3162)

**XXIII. ADJOURNMENT**

**CITY COUNCIL BUDGET HEARING  
WEDNESDAY, MAY 16, 2007, AT 6:00 P.M.**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, JUNE 5, 2007, AT 7:00 P.M.**

**KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City exist to conduct the people's business.

This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE,

CONTACT THE OPEN GOVERNMENT SUBCOMMITTEE

at the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

E-mail: [rpioroda@ci.milpitas.ca.gov](mailto:rpioroda@ci.milpitas.ca.gov) / Fax: 408-586-3030 / Phone: 408-586-3040

A free copy of the Open Government Ordinance is available from the City Clerk's Office or by visiting the City's website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov), select Open Government Ordinance under News Features.

**BECOME A CITY COMMISSIONER!**

Currently, there are openings in the following Commissions:

*Bicycle Pedestrian Advisory Commission*

*Community Advisory Commission*

*Economic Development Commission (rep. for Hotel Industry)*

*Mobile Home Park Rental Review Board*

*Planning Commission*

*Recycling & Source Reduction Advisory Commission*

Applications are available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or outside the City Council Chambers.

Contact the City Clerk's Office (586-3003) for more information.

## AGENDA REPORTS

### XV. PUBLIC HEARING

1. **Consider Approval of ‘S’ Zone No. SZ2005-2 to Develop a 1.27 Acre Parcel with new 5,706 Square Foot Single-Family Hillside Residence with Grading and Landscaping, Located at 898 Calaveras Ridge Drive, APN 029-06-038, Zoned Single Family Residential-Hillside (R1-H) for Applicant Haresh Panchal (Staff Contact: Kristine Lowe, 586-3278)**

**Background:** The project site is a 1.27-acre vacant parcel (Lot 4) located at the northernmost portion of the Calaveras Ridge Estates subdivision (PUD 23.5) within the Hillside zoning district (R1-H), and west of the Crestline Zone of Protection. The applicant is proposing a single-story dwelling with a basement. The architecture is characterized as Mediterranean Contemporary style with elements that consist of stucco exterior with masonry veneers of earth tone colors, recessed windows, a rounded window for the library at the rear of the residence, elevated entry foyer, low roof pitch with concrete roof tiles, and an 8' tall wrought iron fence along the front property line with a 9' tall arched entry gate.

**Development Standards:** The project site is located in the Calaveras Ridge Estates Planned Unit Development (PUD 23.5) and is subject to specific design requirements. As proposed, the project complies with the PUD development standards by maintaining the required 40-foot front, rear, and side setbacks and a required 3-car garage. In addition, the project is in conformance with the Hillside development standards in terms of height, design, grading, impervious coverage, views/privacy, natural landscape, and perception of excessive bulk.

**Landscaping:** Proposed ground covers, shrubs, vines and trees are in conformance with the Hillside Landscaping Policy (Resolution No. 6066) for Hillside development.

**Geological and Geotechnical:** The project site is located within the Alquist Priolo Special Study Zone, which requires a geological and geotechnical study to identify any significant seismic fault and/or slope instability hazards. Based on the Fault Investigation Report for the proposed Residential Development 898 Calaveras Ridge dated February 3, 2006, staff recommends the applicant incorporate the recommendations of this report into the project to minimize potential hazards.

On April 25, 2007, the Planning Commission recommended approval to the City Council for the construction of a 5,706 square foot single family residence with grading and landscaping.

**Grading:** Approximately 2,393 cubic yards are proposed to be cut but will be used in landscaping or export. Whenever there is grading in excess of 1,500 cubic yards, the Planning Commission shall review the proposed Grading Plan and recommend approval to the City Council. Upon review of the grading plan, the Planning Commission recommended the proposed grading plan in that the essential natural hillside characteristics, such as land form, vegetation, and scenic qualities, will be maintained.

**Recommendation:** Move to approve ‘S’ Zone Application No. SZ2005-2, subject to the noted Findings and Conditions, recommended by the Planning Commission.

### XV. UNFINISHED BUSINESS

2. **Approve Mayor’s Recommendation for Councilmember Appointment to Valley Transportation Authority Policy Advisory Committee (Contact: Mayor Esteves, 586-3029)**

**Background:** This item was continued from the May 1, 2007 City Council meeting. Mayor Esteves recommends that Councilmember Polanski be appointed to the Santa Clara Valley Transportation Authority (VTA) Policy Advisory Committee, which meets monthly on second Thursdays, at 4:00 PM at the VTA in San Jose.

**Recommendation:** Approve the appointment of Councilmember Polanski to the VTA PAC, as recommended by the Mayor.

**3. Receive Street Tree Report, and Provide Staff Direction for Improvements or Enhancements to the City of Milpitas Street Tree Planting Program (Staff Contact: Carol Randisi, 586-2601)**

**Background:** This item was continued from the May 1, 2007 City Council meeting. At the request of Councilmember Debbie Giordano, a staff presentation will be provided to address concerns regarding the need to “re-forest” street trees in older Milpitas residential neighborhoods, which, over the years, have lost the original street trees.

**Recommendation:** Receive street tree report, and provide staff direction for improvements or enhancements to the City of Milpitas Street Tree Planting Program.

**4. Receive Report on Funding for Alviso Adobe Project No. 5055 (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** This item was continued from the May 1, 2007 City Council meeting. At the April 17 City Council meeting, staff was asked to provide a report on a funding proposal for the Alviso Adobe Project. A staff presentation will be provided at the May 15 Council meeting to provide detail information on specific grants, which staff will pursue and other possible funding that may be available for the project.

**Recommendation:** Provide staff with comments and direction on the Alviso Adobe Project and its funding.

**5. Approve Amendments to City Council Handbook (Staff Contact: Peter Spoerl, 586-3040)**

**Background:** This item was continued from the May 1, 2007 City Council meeting. At the April 17 City Council meeting, Council discussed the possibility of amending the City Council Handbook to clarify the role of the Vice Mayor with respect to ceremonial functions and engagements in the absence of the Mayor. By a voice roll call of 4-1, the Council voted to amend the section setting forth the Mayor’s duties and responsibilities, adding language to provide that in the event the Mayor cannot attend a ceremonial event, the Vice Mayor shall serve in his or her stead, and that in the event neither the Mayor or Vice Mayor can attend, the role would be filled by one of the remaining Councilmembers on a rotating basis.

The relevant provisions of the City Council Handbook are set forth on Page 3 of the Handbook. Under the section titled Mayor, the Handbook provides that “[t]he Mayor is the official head of the City of Milpitas for all ceremonial purposes.” The handbook currently provides that the Mayor presides at all Council meetings, and that in the absence of the Mayor, the Vice Mayor is the presiding officer. The draft resolution (in the agenda packet) would add language to the “Mayor” section providing that in the Mayor’s absence, the Vice Mayor shall be the official head of the City for ceremonial purposes, and that in the event that both the Mayor and Vice Mayor are absent, the remaining Councilmembers shall serve in that capacity on a rotating basis as administered by City staff.

Also, staff recommends two minor edits on Page 8 to correct the website address in third paragraph to end with “.gov” (not .us) and on Page 9 in the second to last paragraph, note each speaker will be allocated three minutes (not two).

**Recommendations:** To amend the City Council Handbook: (1) adopt a Resolution to provide that the Vice Mayor shall serve as the ceremonial head of the City in the Mayor’s absence, and that, in the event both the Mayor and Vice Mayor are absent, one of the remaining City Council

members shall serve as the ceremonial head of the City on a rotating basis to be administered by City staff; and (2) move to approve minor edits to pages 8 and 9.

## **XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

**RA1. Call to Order by the Mayor/Chair**

**RA2. Roll Call**

**RA3. Approval of Minutes (May 1, 2007)**

**RA4. Approval of Agenda and Consent Calendar**

**\*RA5. Approve Partial Certificate of Completion for Certain Residential Units within Tract No. 9698 for KB Home, Project No. 3160 (Staff Contact: Mehdi Khaila, 586-3328)**

**Background:** On January 18, 2005, the City of Milpitas Redevelopment Agency and KB Home South Bay, Inc., entered into a Disposition and Development Agreement (DDA) concerning the residential development, Terra Serena, north and east of the county's Elmwood Correctional Facility. The recorded grant deed, which conveyed the subject real property from the Agency to KB Home, requires that the Redevelopment Agency issue a Certificate of Completion upon the completion of the infrastructure improvements in accordance with the DDA. Certain improvements have been satisfactorily completed to serve certain residential units as shown on the Partial Certificate of Completion, and therefore, occupancy may be granted to only those housing units.

**Recommendation:** Authorize the Agency Executive Director to execute the Partial Certificate of Completion for certain residential units for KB Home Terra Serena Project No. 3160, subject to approval of the City Attorney as to form.

**\*RA6. Adopt Resolution Amending the Owner Participation Agreement with DR Horton to Change the Unit Type and Mix for Centria Residential Condominium Project, West Building (Staff Contact: Felix Reliford, 586-3071)**

**Background:** At its meeting on August 16, 2005, the Redevelopment Agency approved the Memorandum of Understanding (MOU) and Owner Participation Agreement (OPA) with Fairfield Great Mall LLC for the development of a 481-unit for-sale condominium project at the southwest corner of South Main Street and Great Mall Parkway. On November 23, 2005, Fairfield Great Mall LLC sold the project to DR Horton, which has changed the name of the project to "Centria."

On June 20, 2006, DR Horton requested an amendment to the OPA to reduce the number of units in the project from 481 to 464 units. The Redevelopment Agency's funding and total number of affordable housing units was reduced to reflect the new 464-unit project.

At this time, DR Horton is requesting a second amendment to the OPA to permit a change in the housing unit type and mix previously approved for the project. The Centria Project original and amended proposals to the OPA are stated below.

**Original Proposal**

101 units (680-978 sq. ft.)  
186 units (1,016-1,221 sq. ft.)  
40 units (1,434 sq. ft.)  
327 Units Total

**Amended Proposal**

89 units (680-975 sq. ft.)  
205 units (1,000-1,222 sq. ft.)  
33 units (1,342-1,454 sq. ft.)  
327 Units Total

The proposed amendment to the OPA would only change the housing unit type and mix in the West Building of the Centria Project. The total of 464 units (137 units in the East Building) would remain the same. The developer's rationale for the proposed amendment is because of the

required architectural revisions mandated by the Fire Code requirements. The stack of five units of three bedroom units was required to have a greater fire separation clearance to the windows, thus necessitating the change from 3-bedroom units to 2-bedroom units. Also, a vertical stack of four units above the garage tunnel entrance requires architectural revisions to meet the Fire Code.

Included in the Redevelopment Agency's agenda packet is the letter from DR Horton requesting the amendment to the OPA and draft Resolution for adoption of the proposed amendment.

**Recommendation:** Adopt a Resolution amending the Owner Participation Agreement with D.R. Horton to change the housing unit type and mix for the West Building of the Centria Project.

**\*RA7. Adopt Resolution Granting Final Acceptance: Sports Center Underwater Pool Lighting, Project No. 8163 (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** This project, which was initially accepted on February 7, 2006, has passed the one-year warranty period. A satisfactory final inspection has been made of the public improvements that included replacement of the under water pool lights with upgraded electrical panels and transformers at the Sports Center pools for compliance with the California Health Code, Section 116049.1 (a-f) and AB2687. Therefore, the Council may grant final acceptance and the contractor's bond may be released.

**Recommendation:** Adopt a Resolution granting final acceptance and release of the contractor's bond for Project No. 8163.

**RA8. Agency Adjournment**

**XVII. REPORT OF OFFICER**

**City Council**

**6. Resolution of Support for Senate Bill 156, Regarding the Library Construction and Renovation Bond (Contact: Councilmember Debbie Giordano, 586-3032)**

**Background:** Councilmember Giordano requests that the City Council consider supporting current legislation in the state Senate affecting libraries and cities. She received the request for Milpitas' support as liaison from the City of Milpitas on the Joint Powers Authority Board for the Santa Clara County Library.

In the agenda packet for Council review are a draft sample resolution and the text of the Senate legislative bill.

**Recommendations:**

1. Hear report of Councilmember Giordano.
2. Adopt Resolution supporting California State Senate Bill 156, to enact the California Reading and Literacy Improvement and Public Library Construction and Renovation Bond Act of 2008, and to go before the voters of the State of California, whose approval would make \$4 billion available for libraries.

**XVIII. NEW BUSINESS**

**7. Santa Clara Valley Transportation Authority Staff Presentation of Current Operations (Staff Contact: Mary Lavelle, 586-3001)**

**Background:** The Secretary of the Board of Directors for the Santa Clara VTA contacted the City Clerk, requesting that VTA staff come before the Council to make a presentation. The

discussion will cover three critical areas of VTA's operations that will impact transportation services throughout the County.

VTA staff seeks feedback from the City Council on its Comprehensive Operations Analysis.

**Recommendation:** Hear oral report of Valley Transportation Authority staff and provide comments.

**8. Consideration of Regulatory Options Regarding Medical Marijuana Dispensaries (Staff Contact: Peter Spoerl, 586-3040)**

**Background:** On August 2, 2005, following previous discussion of the issue during meetings of May 17 and June 7, the City Council, by a 4-1 vote, adopted urgency Ordinance No. 270, establishing a 45-day moratorium on the establishment and operation of medical marijuana dispensaries. On September 6, 2005, the City Council, by a vote of 4-1, voted to extend the initial moratorium for a period of 22 months and fifteen days as permitted under state law. The current moratorium will expire on July 23, 2007. The purpose of this agenda item is to seek direction from the City Council as to how to address regulation of medical marijuana within City limits upon expiration of the urgency moratorium.

**State Law: Compassionate Use Act (Prop 215) and the Medical Marijuana Program (SB 420)**

In 1996, California voters enacted the Compassionate Use Act of 1996 ("Act"), now codified in Health & Safety Code Section 11362.5. The Act permits possession and cultivation of marijuana for limited medical treatment purposes, subject to certain conditions.

Effective January 1, 2004, the California Legislature enacted Sections 11362.7 through 11362.83 ("SB 420"), which created a state-approved voluntary medical marijuana identification card program, established the quantity of marijuana that a qualified patient or primary caregiver may possess, and provided for additional immunities from state marijuana laws, among other provisions.

Under the Act, qualified patients may possess and cultivate limited amounts of marijuana for approved medical indications under the supervision of a primary caregiver. There is no limit to the number of patients a primary caregiver may serve, so long as all patients "reside in the same city or county" as the primary caregiver. Although neither the Act nor SB 420 defines "dispensary," and there is nothing in either law that affirmatively requires cities and counties to permit facilities to distribute medical marijuana, SB 420 provides that qualified patients and primary caregivers shall not be subject to criminal sanction solely because they meet "collectively and cooperatively to cultivate marijuana for medical purposes."

**Federal Law: The Controlled Substances Act**

The Federal Controlled Substances Act ("CSA") makes it "unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance." Although there are exceptions to this prohibition, the only exception available to drugs categorized as "schedule I" drugs is for government-approved research projects. Marijuana is categorized as a "schedule I" drug under the CSA. The Supreme Court has not addressed whether the Compassionate Use Act or any other state medical marijuana laws are preempted by federal law, though it has ruled that there is no "medical necessity" defense to marijuana possession under the CSA, and further has ruled that Congress has authority to prosecute individual possession and cultivation of marijuana under the CSA despite state laws decriminalizing such possession. In early 2005, federal drug enforcement agents conducted several raids of medical marijuana dispensaries in both Los Angeles and San Francisco and certain other Northern California cities.

**How Cities Currently Address Medical Marijuana**

Among California cities generally, the majority of cities have enacted moratoriums, while some have adopted ordinances prohibiting or regulating dispensaries. A handful of cities administratively allow dispensaries as already-permitted uses (examples: pharmacy, medical clinic). Many cities have simply not addressed the issue.

#### Remaining Options for Addressing Medical Marijuana

As discussed above, the City has already adopted and extended an urgency moratorium under applicable state law, which will expire on July 23, 2007 and may not be extended further. The following are additional options available to the City in addressing this issue.

1. Administer Current Zoning to Include Dispensaries. The City may continue to enforce its current laws and allow dispensaries as certain permitted uses, including pharmacies, medical clinics, and other medical uses. One problem with this approach is that the City would be unable to impose restrictions on location or operation. Additionally, where such uses are permitted as of right, it could potentially be more difficult to suspend or revoke operations.
2. Adopt Legislation Allowing Dispensaries When Consistent with State and Federal Law. This approach has been followed in a few jurisdictions, including Pittsburg and Union City. Under the approach, cities amend their municipal code to provide that no land use may be approved or allowed whose underlying activity conflicts with either State or Federal law.
3. Adopt Legislation Regulating Dispensaries. The City may adopt an ordinance regulating dispensaries. The ordinance could be drafted to regulate both the location and/or operation of dispensaries in zoning and/or health and safety chapters. Downsides of dispensaries (even where regulated) include: unauthorized distribution; public consumption; marijuana DUIs; resale; loitering; inadequate property maintenance; robbery and other crimes; violence; complaints from neighboring residents and businesses; and illegality under federal law.

If the City wishes to pursue this approach, the zoning code would be amended to include “Medical Marijuana Dispensary” as a defined term.

The ordinance could be drafted to restrict such uses to certain zones after receipt of a conditional use permit, which could limit the following:

- distance from schools, parks, and child care facilities
- distance from other dispensaries
- number of dispensaries within the city

To regulate operation, permit conditions could include:

- limit number of plants per facility per patient
- limit ounces of marijuana per facility per patient
- limit person on-site to those over 18 (unless a qualified caregiver)
- limit hours of operation
- prohibit loitering around the dispensary and parking lot
- require strict background checks for employees
- maintain detailed records of patients and caregivers
- allow city to have access to books and records
- require that dispensary have security plan including alarms, signage, and lights
- require dispensary to provide regular maintenance for litter, graffiti, etc.
- ban smoking, ingestion, or other consumption on the premises and surrounding areas
- compatibility with surrounding uses
- possession of business license
- payment of regulatory fees (covering processing, monitoring, and other administration)

4. Adopt Legislation Prohibiting Dispensaries. At least 19 cities have banned medical marijuana dispensaries. Most cities who follow this approach adopt findings citing adverse secondary impacts of such facilities, including increased traffic, noise and criminality. Americans for Safe Access, a non-profit advocacy group devoted to lobbying and litigating on behalf of medical marijuana users, has brought suit against a number of cities who have adopted outright prohibitions, seeking declarations that the prohibition is unlawful and unconstitutional, injunctions against enforcement, and attorneys' fees. To date, none of these lawsuits has been successful, and the City Attorney is aware of no prohibition invalidated by court decree.

**Recommendation:** Review the staff report and provide direction regarding the regulation of medical marijuana dispensaries in Milpitas.

\* **9. Approve One Youth Sports Assistance Fund Grant Request (Staff Contact: Aaron Bueno, 586-3226)**

**Background:** On June 20, 2006, the Milpitas City Council approved and appropriated \$8,000 for the Youth Sports Assistance Fund for the 2006-2007 budget year. Included in the Council packet for review and consideration is one (1) Group Youth Sports Assistance Fund application.

One (1) Group Youth Sports Assistance Fund application was received from Southpaw Prep basketball club in the amount of \$1,000 for purchase of a video camera, which will assist training, education and college recruitment.

There is currently a balance of \$1,000 in the 2006-2007 Youth Sports Assistance Fund. The Parks, Recreation and Cultural Resources Commission (PRCRC) reviewed the application on May 7, 2007 and recommended granting the organization \$1,000 with Council approval.

**Recommendation:** Approve one (1) Group Youth Sports Assistance Fund request, granting \$1,000 to Southpaw Prep, and leaving a grant fund balance of \$0.00 for the remainder of the fiscal year.

**XIX. ORDINANCES**

**10. Introduce Traffic Ordinance No. 43.208, an Amendment to the Traffic Code to Change the Speed Limits Along a Section of Yosemite Dr. (Staff Contact: Jaime Rodriguez, 586-3335)**

**Background:** The City prepares Engineering and Traffic Surveys to determine the appropriate speed zone boundaries and speed limits on City streets, which in turn allows for the use of radar equipment in police enforcement. City Council action is required whenever an Engineering and Traffic Survey recommends rezoning of the speed zone boundaries or modification to the posted speed limit of a street.

One study recently completed resulted in the need to change posted speed limits or speed zone boundaries, as follows:

| Street       | Speed Zone Segment                      | Existing Speed Limit | Proposed Speed Limit |
|--------------|---|----------------------|----------------------|
| Yosemite Dr. | Milpitas Blvd. to Sinclair Frontage Rd. | 40-MPH               | 35-MPH               |

**Recommendations:**

1. Waive the first reading beyond the title of Ordinance No. 43.208.
2. Introduce Ordinance No. 43.208 amending Chapter 100, Title V (Traffic) of the Milpitas Municipal Code.

\* **11. Waive the Second Reading and Adopt Ordinance No. 101.20 for Amendments to the Contract Between the Board of Administration of California Public Employees' Retirement**

**System (PERS) and the City Council of the City of Milpitas (Staff Contact: Carmen Valdez, 586-3086)**

**Background:** On April 17, 2007, Ordinance No. 101.20 was introduced to amend the contract with the Public Employees Retirement System (PERS) to provide Section 21547.7 benefits for local fire members only. Costs were disclosed as is required under Government Code Section 7507. Staff recommends the City Council waive the second reading and adopt Ordinance No. 101.20.

**Recommendations:**

1. Waive the second reading of Ordinance No. 101.20.
2. Adopt Ordinance No. 101.20, amending the contract between the Board of Administration of California Public Employees' Retirement System (PERS) and the City Council of the City of Milpitas.

**XX. RESOLUTIONS**

- \* 12. **Adopt Resolution Directing Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Project No. 9489 (Staff Contact: Mehdi Khaila, 586-3328)**

**Background:** Landscaping and Lighting Maintenance Assessment District (LMD) No. 98-1 provides for servicing and maintaining the public landscaping along Sinclair Frontage Road, Los Coches Creek and Berryessa Creek abutting the Sinclair Horizon residential subdivision. The Landscaping and Lighting Act of 1972, requires adoption of the subject resolution, the preparation of an annual engineer's report and its subsequent approval by the City Council following a public hearing (scheduled for June 19, 2007). Upon conclusion of the public hearing, the assessment for the work is added to the property tax bills for those property owners included within the boundaries of the district.

**Recommendation:** Adopt Resolution directing the preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District (LMD) No. 98-1.

- \* 13. **Adopt Resolution Directing Preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch, Project No. 9474 (Staff Contact: Mehdi Khaila, 586-3328)**

**Background:** Landscaping and Lighting Maintenance Assessment District No. 95-1 (LMD 95-1), provides for servicing and maintaining the public landscaping and additional lighting along North McCarthy Boulevard and the Gateway landscaping on Ranch Drive.

The Landscaping and Lighting Act of 1972, requires adoption of the subject resolution, the preparation of an annual engineer's report and its subsequent approval by the City Council following a public hearing (scheduled for June 19, 2007). Upon conclusion of the public hearing, the assessment for the work is added to the property tax bills for those property owners included within the boundaries of the district.

**Recommendation:** Adopt Resolution directing the preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance Assessment District (LMD) No. 95-1.

- \* 14. **Adopt Resolution Summarily Vacating Easements for Public Service Utility at Milpitas Town Center Located off Milpitas Blvd., Calaveras Blvd. and Hillview Drive, Project No. 3153 (Staff Contact: Mehdi Khaila, 586-3328)**

**Background:** At its September 20, 2005 meeting, the City Council approved the Permittee Dedication and Improvement Agreement to accommodate the renovation of Milpitas Town Center. The related public improvements (water main, sanitary sewer main and storm drain main)

have now been relocated. The new easements for the relocated facilities also have been dedicated on the new parcel map. Therefore, the subject easements are no longer necessary and can be summarily vacated in accordance with State law.

**Recommendation:** Adopt Resolution summarily vacating the specified portions of the public service utilities easement at the Milpitas Town Center.

## XXI. BIDS AND CONTRACTS

- \* 15. **Authorize City Manager To Execute Contract Agreement with Smith & Associates to Determine the Average Market Value of One Acre of Land for Calculating Park In-Lieu Fees (Staff Contact: Felix Reliford, 586-3071)**

**Background:** In November 2001, the City Council adopted Ordinance No.18.31 amending the procedure by which park in-lieu fees are calculated. If a new residential project does not propose to provide adequate parkland, the developer is required to pay an in-lieu fee to the City. The ordinance also requires that the City Council annually adopt a resolution setting the fair market value of one acre of land to be used in the park in-lieu fee calculation. Smith & Associates has been identified, through the consultant selection process, to be qualified to perform the appraisal, provide four-year annual updates and provide peer review of appraisals submitted by developers. Smith & Associates has conducted the appraisal since 2002. The five-year contract will not exceed a total of \$27,500 and will be funded by the Planning Division's budget for consultant services.

**Recommendation:** Authorize the City Manager to execute a contract agreement with Smith & Associates, in the amount not to exceed \$27,500 to perform an initial appraisal of one acre of land within the City and provide four annual updates for the period 2008-2012.

- \* 16. **Approve and Authorize the City Manager to Execute Amendment No. 2 to the Agreement with RMC Water and Environment, Inc. for the Developers Water and Sewer Impact Fee Analysis and Connection Fee Update (Staff Contact: Kathleen Phalen, 586-3345)**

**Background:** On November 8, 2006, Council approved an Agreement with RMC Water and Environment, Inc. to perform a Developers Utility Impact Fee Analysis and Connection Fee Update study. Council amended the Agreement on March 6, 2007 to revise land uses in the City's sewer and water distribution system model, update sewer and water impact fees, and review the treatment plant fee rate structures for adequate cost recovery. Staff now requests Council approval for a second amendment to the agreement to provide additional analyses, which will result in an update of the City's Water and Sewer Master Plan capacity projections.

The City's Water and Sewer Master Plans are based on the land use data available in June 2001, including the Midtown Specific Plan. Subsequent significant planned land use changes include the Transit Area Specific Plan and numerous miscellaneous General Plan Amendments. In addition, there are several large water and sewer industrial customers that have changed operations or left Milpitas over the past six years, thereby reducing their demand on the City's utility services. Additional analysis to quantify these impacts will give the City more accurate projections of its long-term infrastructure and treatment capacity needs. The results will be brought back to Council for approval as Water and Sewer Master Plan Amendments.

The scope of work of the second amendment to the agreement consists of:

- (1) Using the City's hydraulic model to analyze impacts from the new planned developments on upstream and downstream infrastructure, the Santa Clara Valley Water District turnout capacity, and the Milpitas pressure reducing valves (PRVs) capacity,
- (2) Defining the recycled water infrastructure needed for the Transit Area Specific Plan, and
- (3) Determining the amount that large industrial water customers have permanently reduced water and sewer use through changed ownership or operations and quantifying this

impact on the City's projected capacity needs for treatment, distribution and collection system capital improvements, and cost and revenue assessments.

RMC developed the City's hydraulic models and has reviewed other water and sewer fees for the City, and so is well qualified to conduct this work. Staff is negotiating an amended scope of work with RMC Water and Environment at a cost for these additional tasks. The amendment cost was not available at the time of agenda preparation and so will be presented at the Council meeting.

**Recommendation:** Approve and authorize the City Manager to execute Amendment No. 2 to the Agreement with RMC Water and Environment, Inc. to increase the scope of work at an additional cost for the Developers Water and Sewer Impact Fee Analysis and Connection Fee Update.

\* 17. **Award Construction Contract to Norwood Construction for Milpitas Communications Enhancement Project – Phase 1, Project No. 4232 (Staff Contact: Jaime Rodriguez, 586-3335)**

**Background:** This project provides for the installation of fiber optic and traffic signal communication cables between the Department of Public Works and the Main Fire Station. The project will also provide a connection to the new City facilities on N. Main St. including the Library and the West Parking Garage.

On April 3, 2007 the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals. The scope of work includes the installation of communications cables, conduits, and pull boxes. The Engineer's estimated construction cost was \$366,375.

The project was advertised and five sealed bid proposals were received and opened on April 26, 2007. The bid results are as follows:

| No. | Bidder                     | Bid Amount             |
|-----|----------------------------|------------------------|
|     | <i>Engineer's Estimate</i> | \$366,375              |
| 1.  | Norwood Construction       | \$329,505 (Low-Bidder) |
| 2.  | St. Francis Electric       | \$336,860              |
| 3.  | Republic ITS               | \$405,403              |
| 4.  | Golden State Utility       | \$406,550              |
| 5.  | Tennyson Electric          | \$600,500              |

Sufficient funds are available to award this project from the following fund sources:

CP4232 – Milpitas Communication Enhancements  
CP8093 – Telecommunications Infrastructure  
CP8153 – N. Main St Utilities

Staff recommends award of this contract to the lowest responsible bidder, Norwood Construction in the amount of \$329,505.

**Recommendation:** Award Construction Contract for the Milpitas Communications Enhancement Project – Phase 1, Project No. 4232, to Norwood Construction, in the amount of \$329,505.

\* 18. **Authorize the City Engineer to Execute Contract Change Order No. 1 with Blocka Construction Inc., for Well Upgrade Program, Project No. 7076 – Phase II, Pinewood Well (Staff Contact: Andrew Brozyna, 586-3315)**

**Background:** The City Council awarded this project to Blocka Construction, Inc. on November 7, 2006, and construction is underway. The completed project will provide needed improvements

to the Pinewood Well system, which include sealing the leaking wellhead, and installation of a new chlorination/ammonia system as required by the State Department of Health Services. This well is part of City's emergency water supply system.

Staff recommends additional work to convert the existing pump shaft assembly from an oil lubrication system to a water lubrication system. This work is necessary since oil lubrication systems are not utilized for wells under artesian pressure, a condition that has gradually transpired at Pinewood Well since it was constructed in 1978. Performing this work will reduce the possibility of the pump shaft seizing during operation. Additional benefits to performing this work include the reduction of maintenance costs, and upgrading the well pump to current municipal standards.

Staff has negotiated a fee not to exceed \$49,543.36 with the Contractor for this additional work, and the approval of a contract change order is requested. Sufficient funds are available in the project budget for this change order.

**Recommendation:** Authorize the City Engineer to execute the Contract Change Order for Blocka Construction, Inc. for Project No. 7076, in the amount of \$49,543.36.

- \* 19. **Approve Budget Appropriation for Park Renovation Project with Cupertino Electric, Project No. 5082 (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** This project provides for PG&E electrical power of irrigation controller at Hetch Hetchy Right of Way at Washington Dr. A budget appropriation in the amount of \$4,500 from the Parks Fund is required for the work.

**Recommendation:** Approve a budget appropriation for \$4,500 for Project No. 5082.

- \* 20. **Award the Bid for Burn Room Panel Replacement to Nielsen Building Systems Inc., (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** Staff sent out for bids on February 24 for the replacement of the insulation burn room panels in the fire training tower with a new insulation system. The Fire Department conducts live fire training drills at the training tower. The existing panels, which are fifteen (15) years old, have exceeded their life expectancy and are broken and cracked due to the intense heat generated during live fire drills. The new panel system will reduce maintenance costs and extend the life of the training tower. Bids were mailed to eleven contractors, advertised in the Milpitas Post and on the City web page.

The following is a recap of the two bids received.

| <u>Bidder</u>             | <u>Total Bid</u> |
|---------------------------|------------------|
| Universal Building System | \$74,000.00      |
| Nielsen Building Systems  | \$64,280.00      |

Funds are available from the Fire Department Operating Budget for this purchase.

**Recommendation:** Award the bid for Burn Room Panel Replacement to Nielson Building Systems Inc., and authorize the City Manager to sign a contract for the not to exceed amount of \$64,280.00, subject to approval as to form by the City Attorney.

- \* 21. **Award Bid to Frontier Ford for Purchase of Pickup Truck (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** The current fiscal year's budget includes enough funds to purchase a 2008 Ford F-350 pickup truck with a service body. This new vehicle will be used primarily by Fleet Maintenance personnel for service and repair work in the field. Purchasing worked with Fleet

Maintenance staff to develop specifications on the vehicle and service body and bids were sent to seven (7) regional Bay Area Ford dealers on Purchasing's bidders list. In addition, the bid was advertised in the Milpitas Post and on the City website.

Four bids were received and are summarized below:

| <u>Bidder</u> | <u>Total Bid</u> |
|---------------|------------------|
| Frontier Ford | \$ 31,751.73     |
| S & C Ford    | \$ 32,140.35     |
| Downtown Ford | \$ 33,804.56     |
| Hoblit Group  | \$ 37,090.62     |

Sufficient funding has been allocated in the FY 06/07 Fleet Maintenance operating budget for the purchase of the vehicle.

**Recommendation:** Award the bid for one 2008 Ford F-350 pickup truck with service body to Frontier Ford, in the amount of \$31,751.73 including sales and tire tax.

\* 22. **Approve the Contract with Pyro Spectacular for the Annual 4<sup>th</sup> of July Fireworks Display and Receive Staff Update (Staff Contact: Dale Flunoy, 586-3228)**

**Background:** The Fourth of July is traditionally marked by a display of fireworks. There are only two Fireworks vendors in the Bay Area. With offices in Oakland, Pyro Spectacular is the only full service provider of "Pyromusical" fireworks displays in the Bay Area. They are also the premier provider of pyrotechnic devices and aerial fireworks displays in the world. Based on their track record of excellence, safety, and custom designed set pieces and bright work, Pyro Spectacular has been the vendor of choice for the Milpitas Fire Department and the City of Milpitas for the past ten years. Staff is requesting that these services be purchased as the sole source procurement, as sanctioned in Section I-2-3.09 of the Milpitas Municipal Code. There are sufficient funds available in the Parks and Recreation Services Special Events account for this purchase.

Independence Day events are scheduled for Wednesday, July 4, 2007. The schedule consists of a free pool party at the Milpitas Sports Center from 1:00 – 5:00 p.m., and concludes with the Red, White and BOOM fireworks show at the Milpitas Sports Center football field with gates opening at 7:30 p.m. The local band, "The Silicon Valley Houserockers", will perform from 8:00 – 9:15 p.m., followed by the fireworks show at approximately 9:30 p.m.

**Recommendation:** Accept the staff report and authorize the City Manager to execute the contract with Pyro Spectacular for the July 4<sup>th</sup> fireworks, subject to approval as to form by the City Attorney, in an amount not to exceed \$21,000.

## **XXII. CLAIMS AND DEMANDS**

\* 23. **Approve Payment of Annual Maintenance Fees for the Police Records Management System (Staff Contact: Bill Marion, 586-2701)**

**Background:** In December of 1996, the City entered into an agreement with Tiburon, Inc. (CompuDyne Public Safety) to provide a Police Records Management System (RMS). A provision of this agreement included an annual payment for maintenance and support. This support is required to obtain on-going technical support and periodic upgrades for the police records system. The term of the current maintenance agreement will expire on June 30, 2007 and payment of the annual support is required. As Tiburon, Inc. (CompuDyne Public Safety) is the only source for maintenance, staff requests that the annual maintenance payment be a sole source procurement as sanctioned in section I-2-5.03-4 of the Milpitas Municipal Code. Cost of the maintenance is \$39,421.00 and funding for this expenditure is included in the Information Services Budget.

**Recommendation:** Approve payment of annual maintenance fees for the Police Records System in the amount of \$39,421 to Tiburon, Inc.

- \* 24. **Approve Payment Request to Badger Meters for Replenishment Water Meters (Staff Contact: Chris Schroeder, 586-3162)**

**Background:** In accordance with Ordinance No. 23.10 of the Municipal Code, Purchasing has prepared the following request over \$ 20,000 for approval: \$ 20,870.00 to National Meter and Automation for 252 stock replenishment water meters.

Eight years ago the City went out to bid for water meters and Badger was the only company that could meet City specifications for quality, service, and anti-tampering prevention. Badger has been the City's standard brand of choice since then. National Meter and Automation, Inc. is the sole authorized distributor of Badger meters for California. Staff is requesting that the equipment be purchased as a sole source procurement as authorized in section I-2-5.03-4 of the Milpitas Municipal Code. Staff also recommends that Badger meters be the standardized brand of water meters as allowed under Municipal Code Section I-2-3.13.

Funds are available from the Public Works Utilities Capital Outlay Budget for this purchase.

**Recommendation:** Approve the payment request to National Meter and Automation Inc. and approve the Badger meters to be the standardized brand of water meters as allowed under Municipal Code Section I-2.3.13.

**XXIII. ADJOURNMENT**

**CITY COUNCIL BUDGET HEARING  
WEDNESDAY, MAY 16, 2007, AT 6:00 P.M.**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, JUNE 5, 2007, AT 7:00 P.M.**