



**MILPITAS CITY COUNCIL MEETING AGENDA  
AUGUST 21, 2007**

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**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 NEGOTIATOR - COLLECTIVE BARGAINING**  
(Pursuant to CA Government Code §54957.6) City Negotiator: Carmen Valdez  
Employee Group: 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 Government Code §54957.1, including the vote on abstention of each member present.
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Gomez)**
- VI. APPROVAL OF MINUTES (August 7 and August 14, 2007)**
- VII. SCHEDULE OF MEETINGS (Council Calendar)**
- VIII. PRESENTATIONS**  
Proclamation: Architecture Week, August 20-24, 2007  
Commendations: to Daniel Huy Pham, Jason Nam Nguyen, and Nam Dinh Ngo upon achieving Eagle Scout status, of Troop 111 of Mt. Hamilton (serving Milpitas and North San Jose)
- 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 HEARINGS**

- 1. Authorize 2007 Edward Byrne Justice Assistance Grant (JAG) (Staff Contact: Charlotte Pang, 586-2432)**
- 2. Approve Community Development Block Grant Funds and Adopt an Amendment to the Action Plan for FY 2007-08 (Staff Contacts: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)**
- 3. Accept the City of Milpitas 2007 Report of Public Health Goals for the Public Water System (Staff Contact: Kathleen Phalen, 586-3345)**
- 4. Authorize Entertainment Permit for St. John the Baptist Catholic Church "Autumn Festival" on September 21-23, 2007 (Staff Contact: Mary Lavelle, 586-3001)**

**XV. UNFINISHED BUSINESS**

- 5. Screening of KB Home Terra Serena Project from the County of Santa Clara Elmwood Correctional Facility (Staff Contact: Felix Reliford, 586-3071)**
- 6. Receive Report on Motion Picture Licensing Fees and Procedures (Staff Contacts: Bonnie Greiner, 586-3227, Richard Pio Roda, 586-3040)**
- 7. Receive Report of Possible Expansion of US Post Office in Milpitas (Staff Contact: Diana Whitecar, 586-3059)**
- 8. Review of Animal Regulations Ordinance (Staff Contacts: Gloria Anaya, 586-3075, and Felix Reliford, 586-3071)**
- 9. Approve and Direct Mailing of Letter Notifying Property Owners of the City's Consideration of Water and Sewer Rate Increases (Staff Contact: Kathleen Phalen, 586-3345)**

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

- RA1. Call to Order by the Mayor/Chair**
- RA2. Roll Call**
- RA3. Approval of Minutes (August 7, 2007)**
- RA4. Approval of Agenda and Consent Calendar**
- RA5. Approve of an Exclusive Negotiations Rights Agreement with Silicon Valley Real Estate I, LLC for the Development of a Hospital, Medical Offices and Hotel at the Intersection of Tasman Drive and I-880 (Staff Contact: Diana Whitecar, 586-3059)**
- \*RA6. Adopt Resolutions Approving the First Amendment to the Agreement of Purchase and Sale and the Amended and Restated Promissory Note Between the City of Milpitas and the Redevelopment Agency of the City of Milpitas (Staff Contacts: Steve Mattas, 586-3040 and Emma Karlen, 586-3125)**
- \*RA7. Adopt Resolutions Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 586-3145)**

- \*RA8. Adopt Resolution Granting Final Acceptance of the Community Center Sunshade, Shade America, Project No. 8102 (Staff Contact: Steve Erickson, 586-3414)
- \*RA9. Approve Certificate of Completion for Certain Residential Units Within Tract No. 9698 for KB Home, Project No. 3160 (Staff Contact: Mehdi Khaila, 586-3328)

**RA10. Agency Adjournment**

**XVII. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES**

**City Council**

- \* 10. Approve Mayor Esteves' Recommendations for Appointments/Re-Appointments to City Commissions (Contact: Mayor Esteves, 586-3029)

**Open Government Subcommittee**

- 11. Approve Open Government Subcommittee Recommendations for Community Notification and Outreach for Planning Review Projects (Staff Contact: Felix Reliford, 586-3071)

**Facilities Naming Subcommittee**

- \* 12. Direct Staff to Develop More Distinctive Street Name Sign Alternatives to Honor Milpitas Veterans (Staff Contact: Jaime Rodriguez, 586-3335)

**XVIII. NEW BUSINESS**

- 13. Adjust City Council Meeting Schedule for 2008 (Staff Contact: Mary Lavelle, 586-3001)

**XIX. RESOLUTIONS**

- \* 14. Adopt Resolution Granting Partial Initial Acceptance of the Sewer Deficiency & Structural Correction Program, Open Cut Phase 3, Project No. 6073 (Staff Contact: Greg Armendariz, 586-3317)
- \* 15. Adopt Resolution Approving Lot Line Adjustment Between Tract No. 9775 (Paragon, Project No. 3204) and Jack-in-the-Box Parcel (Staff Contact: Mehdi Khaila, 586-3328)

**XX. BIDS AND CONTRACTS**

- \* 16. Authorize City Manager to Execute Agreement with Dodson Psomas for the Venus Pump Station, Project No. 6101 (Staff Contact: Greg Armendariz, 586-3317)
- \* 17. Approve Amendment No. 1 to the Cooperative Agreement Between the City of Milpitas and the Santa Clara Valley Transportation Authority (VTA) for the Calaveras Blvd. Widening Project Study Report, Project No. 8187 (Staff Contact: Greg Armendariz, 586-3317)
- \* 18. Approve Amendment No. 5 to the Agreement with Harris & Associates for Plan Check Services and Approve Budget Appropriation (Staff Contact: Mehdi Khaila, 586-3328)
- \* 19. Approve Service Agreements with DataProse, Inc. for Printing, Mailing, E-bill Presentment and E-payment of Utility Bills, and with San Jose Water Company for Remittance Processing of Utility Payments (Staff Contact: Flora Tzeng, 586-3128)

**XXI. CLAIMS AND DEMANDS**

- \* 20. Approve Payment of the CAL-ID Invoice to the City of San Jose in the Amount of \$63,783 (Staff Contact: David Rossetto, 586-2405)

**XXII. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, SEPTEMBER 4, 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 on the following Commissions:

*Arts Commission  
Economic Development Commission (Hotel Rep)  
Mobile Home Park Rental Review Board  
Planning Commission  
Youth Advisory Commission*

Applications are available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or at the City Information Desk. Contact the City Clerk's office (586-3003) for more information.

## AGENDA REPORTS

### XIV. PUBLIC HEARINGS

**1. Authorize 2007 Edward Byrne Justice Assistance Grant (JAG) (Staff Contact: Charlotte Pang, 586-2432)**

**Background:** The Edward Byrne Memorial Justice Assistance Grant Program (JAG) supports law enforcement activities to prevent and control crime.

JAG funding is a formula based on population and crime statistics, in combination with a minimum allocation to ensure that each state and territory receives an appropriate share. JAG funds can be used for technical assistance, training, personnel, equipment, supplies, contractual support, and information systems for criminal justice.

The 2007 allocation for the City of Milpitas is \$20,929, with no city matching funds required. Police staff requests the designated allotment be used to fund the training for a department polygraph examiner and to fund the training and equipment purchase for two bicycle officers.

**Recommendations:**

1. Open Public Hearing for comments.
2. Close the Public Hearing.
3. Authorize the Police Department to submit the application for the JAG 2007 grant funding, and upon receipt of the allotment, approve an appropriation in the amount of \$20,929 into the police department operating budget.

**2. Approve Community Development Block Grant Funds and Adopt Amendment to the Action Plan for FY 2007-08 (Staff Contacts: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)**

**Background:** On April 17, 2007, City Council approved the annual CDBG funding allocations for FY 2007-08 and adopted the one-year action plan. During that Council meeting, the Economic & Social Opportunities (ESO) organization withdrew its application. ESO had been recommended for funding in the amount of \$81,348 of non-public services funds. As a result, City Council requested that staff seek agencies that could provide similar services, such as wheelchair ramps and grab bars installation. Deadline for applications (with emphasis on ADA accessibility) was June 4, 2007, and two applications were received:

- Rebuilding Together (formerly Christmas in April) for safety repairs/accessibility/mobility improvements to very low-income homeowners; and
- City of Milpitas, Parks and Recreation Services for playground equipment replacement for Calle Oriente Park.

Copies of the applications are included in the Council's agenda packet.

On August 1, 2007, the Community Advisory Commission (CAC) held a public hearing and reviewed both applications. The CAC recommended total funding in the amount of \$81,348; \$10,000 for Rebuilding Together and \$71,348 to Milpitas Parks and Recreation Services. The applicants have been notified of the City Council public hearing and have been advised to be present to answer any questions the Council might have.

Also, due to newly funding of these two agencies, the one-year Action Plan needs to be amended to incorporate these changes.

**Recommendations:**

1. Open the Public Hearing on the CDBG funding process for an amendment to the Action Plan for FY 2007-08.
2. Close the Public Hearing.
3. Approve funding recommendations for two additional programs for FY 2007-08.
4. Adopt an amendment to the One-Year Action Plan FY 2007-08.

**3. Accept the City of Milpitas 2007 Report of Public Health Goals for the Public Water System (Staff Contact: Kathleen Phalen, 586-3345)**

**Background:** Every three years, the State of California Department of Public Health requires public water systems serving more than 10,000 service connections to prepare a written report on any chemical, microbiological, or radiological contaminants at concentrations exceeding either a Public Health Goal (PHG) or a Maximum Contaminant Level Goal (MCLG). These goals are not regulatory drinking water standards (known as Maximum Contaminant Levels or MCLs), but are values thought by either the federal or state government to have potential public health impacts. Reports cover three calendar years of water quality data and are to be completed by the July 1 after the third year. The City is required to hold a public hearing to receive comment on the report at any regularly scheduled public meeting “reasonably” after report completion and then notify the State of the hearing.

**Discussion:** Staff completed the “City of Milpitas 2007 Report on Public Health Goals for the Public Water System,” included in the Council agenda packet, by the July 1, 2007 deadline after reviewing all water monitoring data for the calendar years 2004 through 2006. This review identified the following exceedances of public health goals:

- **Lead** – The City analyzed 37 water samples from on-site home taps in 2004 for lead. Seven samples exceeded the Public Health Goal (PHG) of 2 ppb. No sample exceeded the regulatory action level of 15 ppb. Lead, when present, is believed to have resulted from corrosion of lead solder in home plumbing because it was not detected in the municipal supply. Suppliers can reduce lead concentrations from home plumbing by reducing the corrosivity of supplied water. However, the California Department of Public Health has determined that the City’s wholesale suppliers have already implemented optimum corrosion controls and no further action is necessary. Customers with lead-solder plumbing can further reduce their exposure by not drinking or cooking with “first flush” water (water that sits overnight in home plumbing.)
- **Copper** – Copper, like lead, is most commonly the product of corrosion of copper from home plumbing. The City tested 37 samples of water from on-site home taps in 2004 and found three samples exceeding the PGH of 170 ppb. No samples exceeded the regulatory action level of 1300 ppb. As with lead, corrosivity adjustment of supplied water is the preventive action, but as noted above, the City’s suppliers have already optimized reduction of the corrosivity of their water. No further action is necessary.
- **Coliform** – Coliform bacteria are abundantly present in nature and so are considered a potential indicator of contamination. The City tested 3,925 water samples for coliform bacteria and found two positive results. Subsequent resampling at these same stations did not reproduce positive results. The two positive results do not exceed the regulatory maximum contaminant limit (MCL) (greater than 5% of total results in a weekly sample batch are positive) but do exceed the MCL Goal (greater than 0% positive.) No further action is necessary.

**Recommendations:**

1. Open Public Hearing for public comments.
2. Close the Public Hearing.
3. Accept the 2007 Public Health Goals Report.

4. **Authorize Entertainment Permit for St. John the Baptist Catholic Church “Autumn Festival” on September 21-23, 2007 (Staff Contact: Mary Lavelle, 586-3001)**

**Background:** St. John the Baptist Catholic Church submitted an application for an Entertainment Event Permit to hold its third annual Autumn Festival on church grounds at 279 So. Main Street (between Abel and Main Streets) over the weekend, Friday – Sunday, September 21-23, 2007. Hours will be from 5:00 – 11:00 PM on Friday, 11:00 AM - 10:00 PM on Saturday, and 11:00 AM - 8:00 PM on Sunday. Additionally, St. John’s requests a waiver of the Fire Inspection fee (approx. \$624) and electrical permit fees (approx. \$145).

The application was reviewed and approved by appropriate City departments and the public hearing advertised as required by municipal code. Appropriate conditions were stated by the Planning, Building, Engineering, Finance and Police Departments, as noted in the agenda materials. Also, a current insurance certificate is required to be submitted to the City prior to the start of the festival.

**Recommendation:** Move to approve the Entertainment Event Permit, including fee waivers, for St. John the Baptist Catholic Church third “Autumn Festival” on September 21, 22 and 23, 2007.

**XV. UNFINISHED BUSINESS**

5. **Screening of KB Home Terra Serena Project from the County of Santa Clara Elmwood Correctional Facility (Staff Contact: Felix Reliford, 586-3071)**

**Background:** At the August 7, 2007, City Council meeting, Councilmember Giordano directed staff to agendize the consideration of additional screening of KB Home’s Terra Serena houses from the County of Santa Clara Elmwood Correctional Facility.

The existing KB Home project currently includes a 15-18 foot high block wall that is located along the southern property boundary between the KB Home development and Elmwood Correctional Facility. The block wall is adjacent to the linear parking, which also includes landscape screening with trees and plants. The block wall covers the entire length of the linear park from S. Abel Street to Thompson Street. On the opposite side of the KB Home development, a smaller block wall is constructed adjacent to the Sylvia Gardens homes.

With regarding to potential screening along the east side of S. Abel Street across the street from the KB Home condominium project, there appears to be limited space for the construction of any type of screening. Existing roadway, security fence, smaller structures (guards sign-in kiosk and signage) and Lower Penitencia Creek appear to prohibit or limit the options for additional screening.

Staff contacted the County of Santa Clara Elmwood Correctional Facility in regards to any future plans for additional screening along S. Abel Street. As of the date of this report submitted to the Council, staff received no response and will report to the Council at the meeting.

**Recommendation:** Receive staff report on screening of KB Home project from the county’s Elmwood Correctional Facility.

6. **Receive Report on Motion Picture Licensing Fees and Procedures (Staff Contacts: Bonnie Greiner, 586-3227, and Richard Pio Roda, 586-3040)**

**Background:** At the request of Councilmember Giordano, this item is on the agenda for review of the City's Motion Picture Licensing procedures as related to the public viewing of movies, including those shown at the Barbara Lee Senior Center.

For the past year and a half, the Senior Center has rented movies and shown them at no charge on Monday afternoons. The Senior Center recently received a letter from the Motion Picture Licensing Corporation indicating the Senior Center was in violation of the Public Performance Provisions of the U.S. Copyright Act, 17 USC §101 and §106, and is required by law to purchase a yearly license (the Motion Picture Licensing Corporation's fee is \$255.00) to continue showing movies in this manner. Due to the low attendance at the showings (average of 3-4 participants per movie), staff decided to agendize for the Senior Advisory Commission review and discussion to pay for the yearly license to continue showing movies at the Senior Center.

After much discussion, the Senior Advisory Commission agreed with staff's recommendation to discontinue viewing the movies and not purchase the movie license due to the program's low attendance. Since the cancellation of the movies, no complaints were received on the cancellation of the movies.

The Motion Picture Licensing Corporation (MPLC) also sent a separate letter to the City's Parks and Recreation Services Department regarding the viewing of movies at City Recreation facilities, and that such viewing violated the public performance provisions of the U.S. Copyright Act, 17 USC §101 and §106. Motion pictures in videocassette/DVD format were being shown at these centers by either renting or purchasing the movies from a video or local retail store. Similar to the letter sent to the Senior Center, this letter states that the public performance of motion pictures and other audio-visual programs performed from videos, or certain other transmissions are intended for personal or private use only, and it is illegal without a separate public performance exhibition license to show these products in a public facility to members of the public. The license offered for purchase is an annual license and varies from location to location; it cannot be done under an umbrella license for the City of Milpitas. According to the information provided by the MPLC, the cost of the license per year for unlimited exhibitions at the Barbara Lee Senior Center would be \$255, and at the Teen Center the license fee would be \$460 for a year of unlimited exhibitions, which is being paid currently.

As for movies shown at the "Movies in the Park" venue, these movies are rented and shown by an independent contractor the City hired, Swank Motion Pictures, and all fees include any licensing fees that need to be paid are done through the City's contract with the vendor.

In discussing the movie options with Senior Center staff, they suggested purchasing a motion picture license when the new Senior Center facility opens. Staff proposes having an LCD projector, which could be used to show movies on a large screen in the main auditorium (vs. on a television screen as is done currently), potentially increasing attendance.

**Recommendation:** Receive the staff report on the matter of motion picture licensing.

**7. Receive Report on Possible Expansion of US Post Office in Milpitas (Staff Contact: Diana Whitecar, 586-3059)**

**Background:** At previous City Council meetings, Councilmember Giordano expressed interest in opening a second Post Office location in the northern part of Milpitas. Local Post Office staff indicated that typically population determines a Post Office location. Local Post Office staff suggested that City Staff meet with local District Post Office officials to determine if increased population in the Milpitas – south Fremont corridor warrants the location of an additional post office in the north Milpitas area. As of the date of this report, the meeting has not been held, but staff will make a verbal report at the City Council meeting.

**Recommendation:** Receive staff report on the possible location of a second Post Office site in north Milpitas.

**8. Review of Animal Regulations Ordinance (Staff Contacts: Gloria Anaya, 586-3075, and Felix Reliford, 586-3071)**

**Background:** At the August 7, 2007, City Council meeting, Councilmember Giordano requested that staff provide a report regarding the Animal Regulations Ordinance. The existing Animal Regulations Ordinance provides that a dog may be classified as potentially dangerous at one of the following five levels based upon the specific behavior exhibited by the dog:

1. **Level 1** behavior is established if a dog at large is found to menace, chase, display threatening or aggressive behavior toward or otherwise threaten or endanger the safety of any domestic animal.
2. **Level 2** behavior is established if a dog at large is found to menace, chase, display threatening or aggressive behavior toward or otherwise threaten or endanger the safety of any human.
3. **Level 3** behavior is established if a dog at large aggressively bites or causes physical injury to any person or domestic animal and may be established if a dog that has been classified as a level 1 or level 2 potentially dangerous dog repeats behavior defined in level 1 or 2 behavior within the 12 month period after the owner receives notice of level 1 or level 2 classification.
4. **Level 4** behavior is established if a dog, while under restraint, aggressively bites any human or causes physical injury to any human or domestic animal.
5. **Level 5** behavior is established if either (a) a dog whether or not confined, causes the serious injury or death of any human, (b) a dog while at large kills any domestic animal, (c) a dog engages in or is found to have been trained to engage in exhibitions of fighting, or (d) a dog that has been classified as a level 4 potentially dangerous dog repeats the behavior defined as level 4 behavior after the owner receives notice of the Level 4 classification.

The ordinance provides for very specific requirements for a classified dog depending on the level of classification as follows:

Level 1 and 2 classification: Confinement, owner is required to keep dog confined to the owner's premises behind a solid 6 foot fence or other such enclosure as may be approved by the Administrator, or shall keep dog under physical restraint by means of a leash not to exceed six feet in length and capable of restraining at least 4 times the weight of the dog, so long as the dog is not tie to a post, pole, or other object which enables the dog to be closer than six feet to any street or sidewalk. Dog may be permitted off the owner's premises only when securely muzzled and leashed on a leash not to exceed 3 feet in length which is capable of restraining 4 times the weight of the animal and dog must be under the control of a person 18 years or older.

Level 3 and 4 classification: requires a dangerous animal permit which must be renewed annually, can be confined indoors, enclosed in a house, apartment, building or similar structure only if the windows and doors are secured to prevent dog from exiting without assistance. Persons must post "beware of dog" or "beware of dangerous animal" signs. Dog is required to be confined in a kennel or Pen when not confined indoors, kennel/pen must meet ordinance specifications per section 5.10-4 and must be approved by City staff. Dog may be permitted off the owner's premises only when securely muzzled and leashed on a leash not to exceed 3 feet in length and capable of retraining four times the weight of the dog, and which is attached to a commercial quality walking harness which fastens securely across the shoulders and midchest, encompassing the rib area and upper abdomen.

Level 5 classification has the same requirements as a level 4 and in addition, if a level 5 dog is determined to be a danger to the public health and safety, it may be impounded and may be destroyed.

The ordinance also requires that levels 3-5 be identified with a tattoo or microchip and must be registered with the City.

In regards to the recent Barker Street incident reported in the local newspapers, that dog had no prior incidents and the injuries suffered by the postal carrier were from a fall while running away from the dog and not from a bite. Despite this unfortunate incident, staff assessed that it was an isolated incident and that the current ordinance is effective. No changes to the Ordinance are recommended at this time.

Included in the Council's agenda packet is a copy of the current City of Milpitas Animal Regulation Ordinance.

**Recommendation:** Receive staff report on the current animal regulation ordinance.

**9. Approve and Direct Mailing of Letter Notifying Property Owners of the City's Consideration of Water and Sewer Rate Increases (Staff Contact: Kathleen Phalen, 586-3345)**

**Background:** On August 7, 2007, Council held a public hearing where it received comment and then introduced ordinances for water and sewer rate increases. Council directed staff to bring back the following items for further consideration and direction:

1. Revised draft property owner Proposition 218 notification letter.
2. Analysis of options in the event that the City does not raise sewer and water rates by adoption of ordinances.
3. Setting the date of the Protest Public Hearing.

**Discussion:** The following documents included in the Council agenda packet are provided in response to Council's direction.

Revised Draft Property Owner Proposition 218 Notification Letter - The following information has been added to the front of the draft notification letter to clarify and emphasize what actions property owners need to take if they wish to protest the rate increases. The letter contains all legally required notice information.

- The City is considering raising water and sewer rates in response to increased costs to purchase and distribute water and collect and treat sewage. However, if more than one-half of the property owners submit a written protest to the City, the City cannot raise water or sewer rates.
- This notice of possible rate increases is being sent to all property owners in the City of Milpitas (approximately 16,000) that have a water or sewer account with the City in accordance with Proposition 218 requirements. Proposition 218 is a California initiative passed by the voters of the State of California. The City of Milpitas must comply with Proposition 218 requirements for notification when proposing to increase property-related fees and taxes which include the language of this notice, provide a public hearing, and provide information about how to submit a written protest for utility rates.
- If you do not want the City to raise water or sewer rates, you need to submit a written protest to the City on or before November 6. For your convenience, there is a tear off ballot included in this notice that you may use to submit your written protest.

- Only one protest will be counted for each property. You may submit a written protest by one of the following methods:
  - E-mail the City Clerk at [mlavelle@ci.milpitas.ca.gov](mailto:mlavelle@ci.milpitas.ca.gov)
  - Mail to City Clerk, City Hall, 455 E. Calaveras Blvd, Milpitas, CA 95035
  - Hand deliver to the City Clerk at the Information Desk at the address above
  - Bring written protest to November 6 City Council public hearing

If more than 50% of property owners submit a written protest to the City during the 45-day protest period, the City cannot act to raise water or sewer rates.

- If less than 50% of property owners submit a written protest, the City has the discretion to consider raising utility rates up to the amount shown on this notice. The City Council will decide after hearing comments at the public hearing on the date and location identified in this notice.

Analysis of Options if rates are not increased – The memorandum included in the Council packet shows the impact on the water and sewer funds if increased rates are not adopted this year. The analysis also evaluates the following options available to the City to compensate for the resulting shortfall:

- Accept the reduced fund balances this year and plan to reanalyze revenue needs for rate increases next year.
- Reduce utility expenses by reducing transfers to the Capital Improvement Program.
- Reduce utility expenses by reducing the City’s operating costs.
- Add funding from the general fund or other sources.

Setting Protest Hearing Date: Staff recommends setting the protest public hearing on November 6, as this is the first regularly scheduled Council meeting that will allow sufficient time to mail the notification and a 45-day protest period. The anticipated schedule to complete the rate adjustment includes these milestones:

August 7	Council conducted a public hearing for the first reading of ordinances setting water, recycled water, and sewer rates.
August 21	Council to receive this report and provide staff direction to mail the Proposition 218 notification letter.
September 21	The Proposition 218 letters must be mailed no later than this date to provide 45 days for protests before the November 6 Council meeting.
November 6	Council conducts public protest hearing. If there is not a majority protest, Council will decide whether to adopt ordinances setting water, recycled water, and sewer rates.
December 6	New rates will become effective 30 days following adoption, if the ordinances are adopted on November 6.

**Recommendations:**

1. Accept report of analysis of options in the event that the City does not raise sewer and water rates.
2. Direct Staff to mail the Proposition 218 letters no later than September 21 to all affected property owners, notifying those affected of the Protest Hearing date.
3. Set November 6 as the Public Hearing date to hear protests, and to adopt new water and sewer rates by ordinance, conditioned upon not receiving a majority protest.

## XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

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

**RA2. Roll Call**

**RA3. Approval of Minutes** (August 7, 2007)

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

**RA5. Approve of an Exclusive Negotiations Rights Agreement with Silicon Valley Real Estate I, LLC for the Development of a Hospital, Medical Offices and Hotel at the Intersection of Tasman Drive and I-880 (Staff Contact: Diana Whitecar, 586-3059)**

**Background:** The Redevelopment Agency acquired 3.34 acres at the intersection of Tasman Drive and I-880 in 2000 for the purpose of a Class A hotel development. The property was acquired from the Valley Transportation Authority (VTA) for forty-eight dollars (\$48.00) per square foot or approximately \$7,000,000. The Agency entered into Exclusive Negotiations with Western International Realty for the development of a Marriott Renaissance full service hotel on the property. Unfortunately, the economic downturn diminished the need for additional hotel rooms and the negotiations were not completed.

In August 2006, representatives associated with the Piercey Toyota dealership, the Milpitas Automotive Group, indicated an interest in developing the site as a Class A office tower that would house Toyota's regional offices and the development and sales arm of the Toyota racing group. The Agency approved an Exclusive Negotiations Rights Agreement for this project, but the Agreement was never executed. One of the main issues associated with non-execution of the ENRA with the Automotive Group was the lack of a Class A office market in Milpitas.

More recently representatives of Kansas based Nueterra Real Estate and a local commercial broker approached the City in their research to find appropriate space for a hospital and medical offices. Nueterra represents a group of nearly 80 local physicians who will own and operate the medical facilities. After several months of searching for a site, Nueterra reconnected with staff and suggested a mixed use project consisting of a hotel, the hospital and medical offices be developed on the Agency-owned property at Tasman, in conjunction with the contiguous property owned by the VTA.

Since that time, staff has held several meetings with the physician representatives, Nueterra and VTA. Staff believes that a project incorporating these two elements will be beneficial to the City, offering additional medical services and creating a new revenue stream of Transient Occupancy Tax (TOT) from the Hotel. VTA staff also acknowledged the strength that this project offers to users of the Light Rail service and its value to help increase ridership.

Nueterra and the physicians group have created a new development group, Silicon Valley Real Estate I, LLC, to pursue the exclusive rights agreement and to proceed with development negotiations. Staff is cognizant of prior interests expressed by Agency Board members to secure reimbursement of the Agency's acquisition costs as a minimum return on investment and have advised Nueterra of this interest.

Terms of the proposed ENRA are:

- Developer will design and construct a multi-story hotel, hospital and medical offices to create landmark structures in Redevelopment Project Area No. 1.
- Term is for 120 days with an option for a 60-day extension.

- Developer deposits with the City an amount not to exceed \$50,000 that will be used for staff time associated with design and permit reviews, City Attorney's costs and for financial and economic analysis associated with project review.
- Developer prepares submittals for design and permit review in accordance with schedule agreed upon with City Development Review Team.
- City reviews submittals and returns comments to Developer in accordance with the agreed upon schedule.
- Both parties will agree upon deviations from the schedule.
- Agency will assist the development group in meetings with the VTA regarding use of VTA owned property adjacent to the Agency owned property.

**Recommendation:** Move to approve the Exclusive Negotiations Rights Agreement (ENRA) with Silicon Valley Real Estate I, LLC.

**\*RA6. Adopt Resolutions Approving the First Amendment to the Agreement of Purchase and Sale and the Amended and Restated Promissory Note Between the City of Milpitas and the Redevelopment Agency of the City of Milpitas (Staff Contacts: Steve Mattas, 586-3040, and Emma Karlen, 586-3125)**

**Background:** On September 7, 2004 the Redevelopment Agency entered into a purchase and sale agreement with the City to purchase eight parcels of land (together, the "Property") owned by the City. Six of the parcels were leased back to the City by separate agreement. One of the remaining two parcels was sold to Mid-Peninsula Affordable Housing Associates for the construction of affordable housing in August 2006, and the other remaining parcel was sold to Santa Clara County in July 2007.

The Agency gave the City a promissory note for the purchase price of the Property in the principal amount of \$29,300,000 ("Loan"). The Agency and the City have subsequently discovered that, although all of the properties were owned by the City, Agency funding was included in the original purchase price on four of the parcels, as permitted by and in accordance with, the Community Redevelopment Law.

The proposed First Amendment to the Agreement of Purchase and Sale and the Amended and Restated Promissory Note will (1) reduce the purchase price of the Property from \$29,300,000 to \$20,455,191 to reflect the prior Agency financial assistance, (2) establish a 40 year term for the Loan, (3) amend the promissory note to reflect the deferred principal payment, and (4) clarify the maximum interest payable under the promissory note.

**Recommendation:** Adopt the Redevelopment Agency and City Council Resolutions to amend the Agreement of Purchase and Sale and to amend and restate the related Promissory Note.

**\*RA7. Adopt Resolutions Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 586-3145)**

**Background:** The investment laws require all local agencies to develop an annual investment policy that must be considered by the legislative body of the local agency at a public meeting. The Annual Investment Policy (the Policy) for the City of Milpitas is submitted for your review and approval. Finance staff continues to monitor changes to the Government Code in regards to investment parameters and allowable investments that may impact the City's investment policy. There are no proposed changes to the Annual Investment Policy this year.

The Policy is in compliance with the provisions of the California Government Code, Sections 53600 through 53609, the authority governing investments for municipal governments.

**Recommendation:** Adopt City Council and Redevelopment Agency Resolutions regarding the Annual Investment Policy for the City of Milpitas.

**\*RA8. Adopt Resolution Granting Final Acceptance of the Community Center Sunshade, Shade America, Project No. 8102 (Staff Contact: Steve Erickson, 586-3414)**

**Background:** This contract with Shade America, initially accepted on April 18, 2006, has passed the one-year warranty period. A satisfactory final inspection has been made of the public improvements that included installation of Shade Structure at the Community Center Tot Lot. Therefore, the Agency may grant final acceptance and the contractor's bond may be released.

**Recommendation:** Adopt a Resolution granting final acceptance and release of the bond with Shade America for Project No. 8102.

**\*RA9. Approve 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. The recorded grant deed, which conveyed the subject real property from the Agency to KB Home, required 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 attached Certificate of Completion, and therefore certificate of completion may be granted to only those housing units.

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

**RA10. Agency Adjournment**

**XVII. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES**

**City Council**

**\* 10. Approve Mayor Esteves' Recommendations for Appointments/Re-Appointments to City Commissions (Contact: Mayor Esteves, 586-3029)**

**Background:** Mayor Esteves recommends the following Milpitas residents be appointed and re-appointed:

**Bicycle, Pedestrian Advisory Commission:**

Newly appoint Cheng-Wei Pei as Alternate No. 2 to a term that expires in August 2009.

**Parks, Recreation and Cultural Resources Commission:**

Re-appoint Raymond Serena to a term that expires in June 2010.

**Youth Advisory Commission:**

Re-appoint Jason Nguyen to a term that expires in September 2008.

Appoint Josephine Fong (current Alternate No. 1) as a regular member to a term that expires in September 2008.

**Recommendation:** Approve the Mayor's recommendations for appointments/re-appointments.

## Open Government Subcommittee

### **11. Approve Open Government Subcommittee Recommendations for Community Notification and Outreach for Planning Review Projects (Staff Contact: Felix Reliford, 586-3071)**

**Background:** At the June 6, 2007, City Council Open Government Subcommittee directed staff to contact and survey other cities within the surrounding area to determine their processes and procedures related to community notification and outreach, regarding the review of specific planning projects (General and Zoning Amendments, Use Permits, Variances, Environmental Review and Community Meetings). Staff contacted the cities of Cupertino, Fremont, Mountain View, Palo Alto, Santa Clara and Sunnyvale.

The degree of community notification and outreach for the review of planning projects varied from city to city. Included in the Council's agenda packet is a copy of the survey.

At its meeting on July 11, 2007, staff presented the survey information to the Open Government Subcommittee. After discussing the matter next on August 8, the Open Government Subcommittee directed staff to agendize this matter for the entire City Council review in order to consider the preparation and adoption of a future ordinance amendment. Specifically, the Open Government Subcommittee is recommending:

- Increasing the public hearing notification process from 300 feet to 1,000 feet for General Plan, Zoning Ordinance Amendments and Use Permit applications.
- Increasing the public hearing notification process from 300 feet to 500 feet for Variance applications.
- Conducting at least one community meeting on General Plan, Zoning Ordinance Amendments and Environmental Review of projects with significant environmental impacts
- Provide a ¼ Page ad notice in the Community Section (first 10 pages) of the local newspaper to inform the public of General Plan, Zoning Ordinance Amendments, Use Permits and Variances. This notification would not replace the legal notification at the rear of the newspaper, but would provide an additional notification to the public.

The City Attorney reviewed the Subcommittee recommendations and would assist staff in drafting the ordinance, if directed by the City Council.

**Recommendation:** Approve the recommendations of the Open Government Subcommittee and direct staff to return to the City Council with a draft ordinance amending the regulations regarding community notification and outreach process with the review of planning projects.

## Facilities Naming Subcommittee

### **\* 12. Direct Staff to Develop More Distinctive Street Name Sign Alternatives to Honor Milpitas Veterans (Staff Contact: Jaime Rodriguez, 586-3335)**

**Background:** Streets named after local Veterans who have served the country are noted with the use of a small American flag symbol on the street name signs. The flag symbol and its honorable intent are unknown and unnoticed by many residents. A more distinctive street name sign designed to honor and bring attention to the sacrifices of Veterans of Milpitas should be developed, at the request of Vice Mayor Livengood.

**Recommendation:** Per the Subcommittee's recommendation, direct staff to develop more distinctive street name sign alternatives to honor Milpitas Veterans.

## XVIII. NEW BUSINESS

### 13. Adjust City Council Meeting Schedule for 2008 (Staff Contact: Mary Lavelle, 586-3001)

**Background:** In 2008, the first Tuesday in the month of January will fall on the New Year's Day Holiday, January 1, 2008. The third Thursday, January 15, 2008 would be the regular meeting date for the second City Council meeting in the month.

The Mayor and City Council are requested to adjust the meeting schedule in one of the following ways (noting that there are five Tuesdays in January 2008):

- 1) Move the first meeting of the month to the second Tuesday, on January 8, 2008
- 2) Move the first meeting of the month one day forward to Wednesday, January 2 (same evening that CAC meets)
- 3) Move the first meeting to January 8, and the second meeting to January 22, allowing two weeks between regular meetings
- 4) Cancel the first meeting, and meet only once on January 15, 2008

Regarding the City Council's summer time meeting schedule, it has been recent tradition to cancel one or both of the July regular City Council meetings in Milpitas. City Council may act to do one of the following:

- 1) Cancel the July 1, 2008 meeting and meet once on July 15, 2008
- 2) Cancel both meetings for the month of July 2008

City staff has begun to prepare year-long calendars for next year and have inquired of the City Council as to what schedule will be followed in 2008. Staff requests that the City Council act on an affirmative meeting schedule for 2008 for its regular business meetings.

**Recommendation:** Amend the 2008 City Council meeting schedule, directing changes in January and July as requested.

## XIX. RESOLUTIONS

### \* 14. Adopt Resolution Granting Partial Initial Acceptance of the Sewer Deficiency & Structural Correction Program, Open Cut Phase 3, Project No. 6073 (Staff Contact: Greg Armendariz, 586-3317)

**Background:** The project provides for the replacement of sewer mains due to structural deficiencies, differential settlement, and damaged sewer lines discovered with the City's video inspection program. The sewer mains in this project require frequent maintenance. Replacement of these mains will reduce the required maintenance effort. This phase of the project provides for sewer line replacements at:

1. 750 Terra Bella Drive northerly to Valencia Drive,
2. 791 Valencia Drive to 751 Valencia Drive, and
3. Corinthia Drive at Martil Way to 739 Corinthia Drive.

The City Council awarded the project to Precision Engineering on April 3, 2007. The project has been successfully completed, with the exception of Site C1 (750 Terra Bella Drive northerly to Valencia Drive). Additional monitoring of the performance of this line during the warranty period is necessary. Staff recommends that Council grant a partial initial acceptance and authorize the reduction of the contractor's faithful performance bond to 10% of the contract amount, plus the amount of the item on the Delayed Item Agreement, for a total amount of \$89,341.60.

**Recommendation:** Adopt a Resolution granting partial initial acceptance of Project No. 6073, subject to the one year warranty period and reduction of the faithful performance bond to \$89,341.60.

- \* 15. **Adopt Resolution Approving Lot Line Adjustment Between Tract No. 9775 (Paragon, Project No. 3204) and Jack-in-the-Box Parcel (Staff Contact: Mehdi Khaila, 586-3328)**

**Background:** The property owners wish to adjust the common lot line between Parcel A of Tract Map 9775 (Paragon Condominiums) and Jack-in-the-Box Parcel. The proposed adjustment is necessary to accommodate Paragon's on-site circulation improvements currently under construction. Planning and Building Divisions have no objection to the proposed adjustment.

**Recommendation:** Adopt a Resolution authorizing the lot line adjustment between Jack in the Box and Tract No. 9775 of the Paragon housing development.

## XX. BIDS AND CONTRACTS

- \* 16. **Authorize City Manager to Execute Agreement with Dodson Psomas for the Venus Pump Station, Project No. 6101 (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** This project is included in the approved five-year Capital Improvement Program (CIP). This project will provide for the design and construction of rehabilitation at the Venus Way Sewer Pump Station. The existing pump station was constructed over 30-years ago and requires pump replacement, sandblasting and recoating of the wet well, miscellaneous valve and electrical component replacement, vault lid replacement, level controls upgrade, and installation of an electrical transfer switch.

In August of 2005, Council authorized the City Manager to execute a contract with the firm of Kennedy/Jenks Consulting Engineers to provide the engineering design services required for this project. However, the City and Kennedy/Jenks were unable to come to an agreement as to the terms of the contract. Due to funding constraints and changes in the project scope, the project was put on hold.

Staff interviewed several professional consultants in conformance with the City's consultant selection process, and recommends that Dodson Psomas provide the professional engineering services required to design the improvements for this project. Staff negotiated a scope and fee for these services not to exceed \$90,000, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

**Recommendation:** Authorize the City Manager to execute the agreement amendment with Dodson Psomas for Project No. 6101, in the amount of \$90,000, subject to approval as to form by the City Attorney.

- \* 17. **Approve Amendment No. 1 to the Cooperative Agreement Between the City of Milpitas and the Santa Clara Valley Transportation Authority (VTA) for the Calaveras Blvd. Widening Project Study Report, Project No. 8187 (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** At the Council meeting on March 20, 2007, staff presented an option to convert the existing eastbound Calaveras Blvd on-ramp to an eastbound off-ramp. This off-ramp would provide direct access to Main St. from eastbound Calaveras Blvd. At this meeting, staff was directed to develop a Caltrans-requested traffic operations study and begin design of the new off-ramp. The City has an existing contract with the VTA for the Boulevard over-crossing replacement plan study. Amendment No. 1 will allow for the completion of the off-ramp traffic study and design of ramp conversion using funds from new Capital Improvement Project No. 8187.

VTA has agreed to a cost proposal of \$250,000 for the design work including additional traffic and storm water studies. This cost is reasonable for the work involved and funds are available in Project budget. The design work is planned to be completed by spring 2008. Construction is proposed for summer and fall of 2008, provided Caltrans final approvals are obtained in a timely manner.

**Recommendation:** Approve Amendment No. 1 to the Cooperative Agreement Between the City of Milpitas and the Santa Clara Valley Transportation Authority (VTA) for the Calaveras Blvd. Widening Project Study Report.

\* **18. Approve Amendment No. 5 to the Agreement with Harris & Associates for Plan Check Services and Approve Budget Appropriation (Staff Contact: Mehdi Khaila, 586-3328)**

**Background:** On March 2, 2004, the City Council approved an agreement with Harris & Associates to provide engineering plan check services to work at City Hall on some major development projects. It is anticipated that these engineering services will be required through the summer of 2008. In order to meet project schedules, staff recommends that the agreement with Harris & Associates be amended for time extension and to increase the contract amount by \$100,000, bringing the total amount to \$740,000. Harris & Associates' services are related to private development projects on as needed basis, which are fully reimbursed from developer funds. Included in the Council's packet are copies of the proposed amendment to the existing agreement and the budget change form.

**Recommendations:**

1. Approve Amendment No. 5 to the Agreement with Harris & Associates and authorize the City Manager to execute the amendment, subject to approval as to form by the City Attorney.
2. Approve a budget appropriation in the amount of \$100,000 from the General Fund to the Engineering budget, to be reimbursed by private development funds.

\* **19. Approve Service Agreements with DataProse, Inc. for Printing, Mailing, E-bill Presentment and E-payment of Utility Bills, and with San Jose Water Company for Remittance Processing of Utility Payments (Staff Contact: Flora Tzeng, 586-3128)**

**Background:** The City's current agreement with San Jose Water for printing, mailing of utility bills and remittance processing of utility payments expired on June 30, 2007. The annual cost for this contract is \$86,700 including pass-through costs for postage and forms. Link-2-Gov is the City's current provider for e-payment, where customers can pay utility bills electronically at the City's website or via Interactive Voice Recording by phone. The annual cost for the contract with Link-2-Gov is \$62,900. The combined annual cost for printing, mailing, remittance processing, and e-payment is \$149,600.

A Request for Proposal for similar services was issued on March 12, 2007 and six vendors submitted proposals. Based on review of technology, experience, customer service and price, DataProse, Inc. has been selected to provide printing, mailing, e-bill presentment and e-payment of utility bills. San Jose Water Company has been selected to provide remittance processing of utility payments.

Staff negotiated with both companies a three-year agreement with the option of three one-year extensions. The cost of DataProse, Inc.'s service will be \$90,000 annually which includes pass-through postage and forms. The cost of San Jose Water's service will be \$16,000 annually. The combined annual cost for printing, mailing, remittance processing, e-Presentment and e-Payment will be \$106,000, a savings of \$43,600 annually.

With the DataProse's contract, in addition to being able to make electronic payments at the City's website, the utility customers will be able to view and receive their bills on line. Potentially, there will be additional savings in postage. DataProse does not provide Interactive Voice Recording by phone, therefore, this payment service will no longer be available. However, utility customers can continue to pay by credit card online, by automatic debit of their checking or savings account, by mail or in person. The City also accepts phone checks.

**Recommendation:** Authorize the City Manager to execute contracts with DataProse Inc. to provide services for printing, mailing, e-bill Presentment and e-Payment of utility bills for a total amount of \$90,000 annually, along with San Jose Water Company providing service for the remittance processing of utility payments for an amount of \$16,000 annually.

## **XXI. CLAIMS AND DEMANDS**

### **\* 20. Approve Payment of the CAL-ID Invoice to the City of San Jose in the Amount of \$63,783 (Staff Contact: David Rossetto, 586-2405)**

**Background:** CAL-ID is an automated fingerprint storage and retrieval system that enhances investigative procedures for law enforcement agencies in Santa Clara County. In 1989, the City Council adopted a resolution for the City of Milpitas to enter into an annual agreement with the County and other local cities to participate in the CAL-ID system. The City Council at its November 6, 2000 meeting, adopted Resolution No. 7038 which allowed the CAL-ID system to be operated from year to year without being subject to annual amendment, updates the prior agreement, formalizes the existence and regulates the use of reserve funds.

Milpitas' share of the annual cost is \$63,783 for Fiscal Year 2007-08. This amount represents an increase of \$5,508 from FY 2006-2007. Funds for this have been included in the 2007-08 Police Department budget.

**Recommendation:** Approve CAL-ID invoice to the City of San Jose in the amount of \$63,783.

## **XXII. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, SEPTEMBER 4, 2007 AT 7:00 P.M.**