



**MILPITAS CITY COUNCIL MEETING AGENDA
MARCH 4, 2008**

**6:45 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD**

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL (6:45 P.M.)**
- II. ADJOURN TO CLOSED SESSION OF CITY COUNCIL/REDEVELOPMENT AGENCY**
- CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
Property: Real Property located on East side of Barber Lane, NW of intersection at Montague Expressway and Highway 880 (Pursuant to CA Government Code §54956.8)
Agency Negotiator: City Manager Tom Williams
Negotiating Parties: Piercey Toyota, City of Milpitas
Under Negotiations: Conflict Waiver
- III. CLOSED SESSION ANNOUNCEMENT:** 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 COUNCIL MEETING MINUTES – February 19, 2008**
- VII. SCHEDULE OF MEETINGS (Council Calendar for March 2008)**
- VIII. PRESENTATIONS**
- Proclamations:**
- Jade Ribbon Week – March 16-22, 2008
 - National Purchasing Month – March 2008
 - Certified Government Financial Manager Month –March 2008
 - Science Fair Week – March 10-14, 2008
- 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. **Adopt Resolutions to Authorize the City of Milpitas to Enter into an Associate Membership Agreement with the California Enterprise Development Authority and to Approve the Issuance of \$20,000,000 Revenue Bonds by the California Enterprise Development Authority for the Benefit of the Humane Society Silicon Valley (Staff Contact: Emma Karlen, 586-3145)**

XV. UNFINISHED BUSINESS

- * 2. **Review of The Housing Trust of Santa Clara County Allocation from the City of Milpitas (Staff Contact: Felix Reliford, 586-3071)**
- * 3. **Approve Staff's Outreach Efforts to Assist Milpitas Property Owners with Property Foreclosures (Staff Contact: Felix Reliford, 586-3071)**

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor/Chair

RA2. Roll Call

RA3. Approval of Minutes (February 5, 2008)

RA4. Approval of Agenda and Consent Calendar

RA5. Progress Report and Recommendations on Land Acquisition, Abatement and Site Preparation, Library, Midtown East Parking Garage, and North Main Streetscape Projects No. 8154, No 8161, No. 8162, and No. 8165 (Staff Contact: Steve Erickson, 586-3414)

***RA6. Approve Certificates of Completion for Certain Residential Units within Tract No. 9697 and No. 9699 for KB Home, Project No. 3160 (Staff Contact: Robert Wang, 586-3327)**

***RA7. Authorize and Approve Contract Extension for Audit Services with Maze & Associates Accountancy Corporation (Staff Contact: Emma Karlen, 586-3145)**

RA8. Agency Adjournment

XVII. REPORTS OF OFFICER AND COMMISSION

City Council

- * 4. **Consider Mayor's Recommendation for Appointment to the Citizens Emergency Preparedness Advisory Commission (Contact: Mayor Esteves, 586-3029)**

XVIII. NEW BUSINESS

5. **Consideration of a Request by Fairfield Residential to Reduce the Persons per Household Ratio for the Purpose of Calculating the Park In-Lieu Fee for the Murphy Ranch Apartments (Staff Contact: Sheldon Ah Sing, 586-3278)**

6. **Recommendation to Authorize Assumption of Network Assets from EarthLink Inc. (Staff Contact: Bill Marion, 586-2701)**

- * 7. **Approve Fee Waiver and In-Kind Donation of Equipment, Supplies, and Staffing from City Departments for the 2008 American Cancer Society's Relay for Life Event at the Milpitas Sports Center June 20-21, 2008 (Staff Contact: Aaron Bueno, 586-3226)**

XIX. ORDINANCE

- * 8. **Waive Second Reading and Adopt Ordinance No. 65.137 Requiring Installation of Automatic Gas Shut-Off Devices in New Construction and When Replacing Any Existing Gas Fuel Appliance or When Alteration or Addition to the Existing Gas Fuel Line is Made (Staff Contact: Keyvan Irannejad, 586-3244)**

XX. RESOLUTION

- * 9. **Adopt a Resolution Amending the Current Milpitas Tow Service Agreement with Four Companies and Approve a Tow Rate Increase (Staff Contact: Tom Borck, 586-2434)**

XXI. BIDS AND CONTRACTS

- * 10. **Approve Budget Appropriation for Appropriating Proposition 1B Funds to Street Resurfacing 2008, Project No. 4242 (Staff Contact: Andrew Brozyna, 586-3315)**
- * 11. **Approve Encroachment Agreement with Cisco Systems, Inc., for Installation of Fiber Optic Network Facilities within Public Right of Way, Project No. 3220 (Staff Contact: Robert Wang, 586-3327)**

XXII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 18, 2008 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, CONTACT THE OPEN GOVERNMENT SUBCOMMITTEE
at the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
E-mail: mogaz@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, select Open Government Ordinance under News Features.

BECOME A CITY COMMISSIONER!

Currently, there are openings for the:
Arts Commission (Alternates)
Citizens Emergency Preparedness Advisory Commission (Alternate)
Community Advisory Commission, Economic Development Commission (Hotel Rep)
Mobile Home Park Rental Review Board, Planning Commission
Parks, Recreation and Cultural Resources Commission (Alternate)
Recycling and Source Reduction Advisory Commission (Alternates)
Telecommunications Commission

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

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at 586-3001 or send an email to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the Council Chambers for all meetings. TDD phone number (408)586-3013.

AGENDA REPORTS

XIV. PUBLIC HEARING

- 1. Adopt Resolutions to Authorize the City of Milpitas to Enter into an Associate Membership Agreement with the California Enterprise Development Authority and to Approve the Issuance of \$20,000,000 Revenue Bonds by the California Enterprise Development Authority for the Benefit of the Humane Society Silicon Valley (Staff Contact: Emma Karlen, 586-3145)**

Background: Humane Society Silicon Valley, a California nonprofit public benefit corporation (“Humane Society”), is in the process of acquiring, constructing, equipping and furnishing an approximately 48,000 square foot animal community center to be located at 901 Ames Avenue, Milpitas (the “Facilities”), and the Humane Society is an independent, non-profit animal shelter that provides a comprehensive program of adoptions, animal care, education outreach, animal behavior help line and an affordable medical center for spay/neuter, vaccinations, animal testing and microchips. The Humane Society provides emergency treatment for all animals as required and offers humane, compassionate euthanasia when all other efforts fail. The Humane Society is currently located at 2530 Lafayette Street in Santa Clara. Upon completion of the Facilities, the Humane Society will relocate its operations to 901 Ames Avenue. The Facilities are expected to provide significant benefits to the residents of the City of Milpitas (the “City”) through the services to be provided by the Humane Society. The Facilities will also create employment opportunities for residents of the City over the long term.

The Humane Society has requested the California Enterprise Development Authority’s (the “Authority”) assistance in financing the Facilities with tax-exempt and/or taxable revenue bonds. The Authority is a joint powers authority whose purpose is to issue tax-exempt and taxable conduit revenue bonds to fund industrial and commercial development projects and other public purpose projects within the current and future member jurisdictions. The financing of the Facilities for the Humane Society involves the issuance of tax-exempt and/or taxable bonds and may be completed through the Authority only if the City joins the Authority as an associate member and approves the financing. Once a member, other for-profit and nonprofit corporations with projects in the City of Milpitas may utilize the Authority’s services as well. The Facilities have already received all necessary discretionary permits.

The Authority will issue revenue bonds not to exceed \$20,000,000 for the benefit of the Humane Society. The Authority will loan the proceeds of the Bonds to the Humane Society to, among other things, finance, refinance or reimburse the Corporation for the cost of the Facilities. Because interest on the Bonds will be tax-exempt, such public hearing and approval of the Bonds by the City is required by the Internal Revenue Code of 1986. The Authority’s issuance of the Bonds will result in a more economical and efficient issuance process because of the Authority’s expertise in the issuance of conduit revenue bonds.

Fiscal Impact: None. Conduit revenue bonds are a special, limited obligation of the Authority payable solely through the payment of principal and interest from the borrower. In most cases the bonds will be secured by a letter of credit from a bank with a minimum rating of A/A-1 from Standard and Poor’s or comparable minimum rating from another nationally recognized rating agency, be secured with a municipal bond insurance policy or be privately placed with a sophisticated investor. As such, any bonds issued by the Authority will not be a direct or indirect obligation of the Authority, the City or any member of the Authority. Neither the faith or credit, nor the taxing power of the City, any member of the Authority, the State or any political subdivision is pledged to the repayment of the bonds.

Recommendations:

1. Open the public hearing to receive public comments.
2. Close the public hearing.
3. Adopt a resolution authorizing the City to enter into an Associate Membership Agreement with the California Enterprise Development Authority.
4. Adopt a resolution approving the issuance of tax-exempt and/or taxable revenue bonds not to exceed \$20 million by the California Municipal Finance Authority for the benefit of the Humane Society of Silicon Valley.

XV. UNFINISHED BUSINESS

- * **2. Review of The Housing Trust of Santa Clara County Allocation from the City of Milpitas (Staff Contact: Felix Reliford, 586-3071)**

Background: At its meeting on February 19, 2008, Councilmember Giordano directed staff to report back to the City Council on how The Housing Trust of Santa Clara County has allocated donations from the City of Milpitas. Since its conception in 1999, Milpitas has donated the following funds to The Housing Trust from its Redevelopment Agency 20% Low-Income Housing Set-Aside Fund:

<u>Year</u>	<u>Donation</u>
2001	\$500,000
2005	\$150,000
2007	<u>\$150,000</u>
Total:	<u>\$800,000</u>

To date, Milpitas has donated \$800,000 to The Housing Trust of Santa Clara County. The funding has been allocated in the following manner:

<u>Projects</u>	<u>Funding Allocated</u>
DeVries Place Senior Housing (102 units)	\$500,000
Acquisition of Single-Family Home (5 Units/Seniors)	\$100,000
First-time Homebuyer Loans (48 Milpitas Residents)	\$312,000

In the past, the Council adopted a policy requiring that the funding donated to The Housing Trust of Santa Clara County must be used within Milpitas for affordable housing projects and/or loans to benefit Milpitas residents. The \$800,000 allocated by the Council has been leveraged to benefit over 200 Milpitas residents and over \$50 million in capital investment. For every dollar Milpitas has contributed to The Housing Trust of Santa Clara County, the funding has been leveraged at a ratio of \$1 to \$62.

Overall, The Housing Trust has invested \$27 million donated by the public and private sectors. It has been leveraged to more than \$1.22 billion and created 6,648 housing opportunities, including: 1) 2,005 First-time homebuyers, 2) 1,258 affordable rental units, and 3) assisted 3,385 people with shelter or special-needs.

Fiscal Impact: To date, \$800,000 has been allocated.

Recommendation: Receive report on review of The Housing Trust of Santa Clara County’s allocation from the City of Milpitas.

- * **3. Approve Staff’s Outreach Efforts to Assist Milpitas Property Owners with Property Foreclosures (Staff Contact: Felix Reliford, 586-3071)**

Background: At its meeting on January 15, 2008, Councilmember Giordano directed staff to research the options available to assist Milpitas residents who may be dealing with foreclosure

procedures on their property. Staff has conducted the research and provides the various options that are available to assist individual property owners.

Federal and State Government Response

The state and federal governments have taken a number of steps to ease the impact of the mortgage crisis, as described below. These steps are not without controversy, however, with some believing that they are too limited in scope and others considering them a bail-out for the investment community and people who made the decision to accept a risky loan.

- **HOPE NOW**-The Bush Administration recently announced the availability of the Hope Now Plan, which will provide mortgage relief to qualifying sub-prime borrowers who have continued to make their current mortgage payment, but who will fall behind when their mortgage rates reset upward, freezing their introductory interest rates for five years. It is estimated that up to 1.2 million homeowners could qualify for this program.
- **Project Life Line**- Recently announced by the Bush Administration, this program would require a 30-day suspension of foreclosure to allow the lender and borrower to work out an arrangement of payment.
- **FHA Secure**- The Bush Administration initiative will allow the Federal Housing Administration to assist homeowners who have good credit histories but cannot make their current payments.
- **Legislation**-Legislation now pending in Congress seeks to increase the size of mortgages that can be insured by the Federal Housing Administration and to reduce the requirements for down payments. If signed into law, this would enable many homeowners to refinance their current loans into FHA loans with more favorable terms. Also, legislation that would change the tax code to eliminate the requirement that taxes be paid on forgiven mortgage debt is winding its way through Congress.
- **Federal Reserve**-On December 19, 2007, the Federal Reserve proposed additional policies to curb abusive sub-prime mortgage lending practices, which include: 1) prohibiting lenders from extending loans without considering a borrowers ability to repay the loan, 2) requiring lenders to verify the borrower's income and assets, 3) allowing prepayment penalties only if certain conditions are met, and 4) requiring creditors to establish escrow accounts for taxes and insurance.
- **State Response**- In November, Governor Schwarzenegger launched a \$1.2 million public awareness campaign to educate homeowners about mortgage relief options. The Governor also reached an agreement with four loan services (Countrywide, GMAC, Litton and Home Esq.) that collectively represent 25% of the market to streamline the loan modification process for sub-prime borrowers living in their homes. In addition, he also lobbied Congress to increase the federal loan limits. Because housing values throughout California typically exceed the \$417,000 loan limit that Fannie Mae will insure or buy, California homebuyers must often resort to more expensive jumbo loans that further increase the costs of housing.

Resources

The League of California Cities and government agencies provide several websites to assist property owners dealing with foreclosures:

- www.cacities.org/subprime: Provides a clearinghouse of information on the subprime mortgage crisis, including helpful links and local, state and federal government updates on the issues.
- www.hud.gov/foreclosure-hud: Provides tips for avoiding foreclosures and other resources
- www.nw.org: Neighbor Works is a highly respected non-profit organization that specializes in assisting people to improve their housing and options for homeownership.
- www.fha.gov/foreclosure: Federal Housing Administration website that offers how to keep your family home.
- www.995hope.org: Homeownership Preservation Foundation provides counseling assistance
- www.dfeh.ca.gov: Department of Fair Employment and Housing investigate and/or resolve housing complaints of unlawful discrimination in housing or lending practices.

- www.responsibilitieslending.org/consumers: Provides educational materials and assistance on mortgage lending, payday lending, and foreclosure resources.

Legislative Action

Currently, these bills are working their way through the U.S. Congress:

- H.R. 1852, the Expanding Homeownership Act of 2007, which would increase FHA loan limits in high cost areas such as California to enable borrowers to utilize the program rather than go into the subprime market. H.R. 1852 would also expand homeownership opportunities by having the option of zero or lower down payments for FHA loans.
- H.R. 3648, would amend the Internal Revenue Code of 1986 to exclude discharges of indebtedness on principal residences from the gross income.
- H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act 2007, which would require greater accountability measures for mortgage lenders and originators.
- S. 2452, would amend the Trust in Lending Act to provide protection to consumers with respect to high cost loans.

The State of California Redevelopment Association Housing Committee has been working to develop a number of responses to the mortgage crisis, which include:

- Acquiring affordability covenants for income-eligible homeowners facing foreclosure to restructure their current mortgage. This may require State legislative authorization.
- Using the 20% Low Income Housing Set Aside funding for credit counseling. This would undoubtedly require State legislation to make this an eligible 20% expense.
- Providing a new source of affordable house mortgage financing for income eligible homeowners faced with foreclosure through a pooled bond issued by the California Housing Finance Authority.

As these federal and state bills work their way through the committees, staff will keep the Council informed and recommend letters of support for the proposed legislation. Staff recommends that the Council authorize staff to provide the appropriate information on the City’s Website and Cable television station to Milpitas residents dealing with property foreclosures.

Fiscal Impact: None

Recommendations:

1. Authorize staff to provide the appropriate information on the City’s Website and on Cable television to assist Milpitas residents with property foreclosures.
2. Direct staff to report back to Council requesting approval of letters of support for federal and state legislation dealing with property foreclosures.

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor/Chair

RA2. Roll Call

RA3. Approval of Minutes (February 19, 2008)

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

RA5. Progress Report and Recommendations on Land Acquisition, Abatement and Site Preparation, Library, Midtown East Parking Garage, and North Main Streetscape Projects No. 8154, No 8161, No. 8162, and No. 8165 (Staff Contact: Steve Erickson, 586-3414)

Background: Construction continues on the new Milpitas Library and Streetscape projects. Staff will provide a brief presentation on their progress.

Library, Project No. 8161

S. J. Amoroso continues with construction of the library. Installation of windows, curtain walls, internal partition walls, raised flooring systems, stair systems, roofing, mechanical, electrical, and plumbing fixture work continue. The contractor continues to make progress on the milestone to enclose the structure and make it weather tight.

Land Acquisition, Abatement & Site Prep, Project No. 8154

On July 20, 2005 the City Council approved a consulting agreement with SCS Engineers in the amount of \$345,000 for environmental services for the parking garage, library, and streetscape projects. The work included hazmat testing, soil sampling and testing, and design services for abatement. A previous agreement amendment in the amount of \$120,000 has been approved.

Staff recommends that SCS Engineers perform additional services for soil sampling, testing, groundwater investigation to comply with requests from the County Department of Environmental Health, and consulting services related to lead based paint removal within the historic grammar school. Agreement Amendment No. 2 is proposed for these services and staff negotiated a scope and fee for these services not to exceed \$50,000, which is considered reasonable for the work. Approval of this second amendment brings the total contract amount to \$515,000. There are sufficient funds in the project budget to cover these expenses.

Midtown East Parking Garage Emergency Phone Station, Project No. 8162

The project is being advertised for bids.

N. Main Streetscape, Project No. 8165

JJR Construction continues work on the first phase of the N. Main Streetscape from Weller Lane to the 237 off-ramp. Installation of new street lighting, traffic signal underground, landscape, irrigation, and other improvement work continues. Construction is being staged to maintain traffic and access.

Staff is recommending a Cost Share Agreement between the City and Santa Clara County Valley Transportation Authority be approved for the removal of the old bus stop terminal shelters at Weller and Main Street. The appearance of the old shelters does not fit with the new Streetscape and Library improvements, and the bus terminal was relocated to the Great Mall several years ago. The City was responsible for the maintenance and graffiti removal on the shelters, so their removal will result in savings in maintenance costs. The cost to remove the shelters is \$27,500, and the City's share of the work is \$13,750.

The VTA has also requested the installation of northbound bus stop improvements under the 237 overpass near Quincy's BBQ be included in Phase II of the Streetscape project. The cost of these improvements is estimated at \$20,000, and VTA will pay 100% of this cost.

Fiscal Impact: There are sufficient funds in the project budgets to cover these additional expenses requested.

Recommendations:

1. Receive Progress Report from staff on the Library, Midtown East Parking Garage, and North Main Streetscape Projects.
2. Approve and Authorize the City Manager to execute the Cost Share Agreement between the Valley Transportation Authority for removal of the Weller/Main Bus Stop Shelters and construction of stop improvements under the Highway 237 overpass, CIP No. 8165.
3. Approve Amendment No. 2 to the agreement with SCS Engineers, Project No. 8154, in the amount of \$50,000, subject to approval as to form by the City Attorney.

***RA6. Approve Certificates of Completion for Certain Residential Units within Tract No. 9697 and No. 9699 for KB Home, Project No. 3160 (Staff Contact: Robert Wang, 586-3327)**

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 South Abel Street. The recorded grant deed, which conveyed the 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 Certificate of Completion, and therefore a certificate of completion may be granted to only those housing units.

Fiscal Impact: None

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

***RA7. Authorize and Approve Contract Extension for Audit Services with Maze & Associates Accountancy Corporation (Staff Contact: Emma Karlen, 586-3145)**

Background: The City entered into a contract for audit services with Maze and Associates, a Certified Public Accounting firm on April 19, 2005. The scope of the service includes issuance of audit reports on the financial statements of the City, Redevelopment Agency, Milpitas Public Financing Authority, Single Audit, and Transportation Development Act. The contract covers the financial reporting period from fiscal years 2004-05 through 2006-07 with an option to extend the contract to include fiscal years 2007-08 and 2008-09, subject to the annual review and recommendation of the Director of Finance. Maze and Associates has provided the City with an engagement letter to conduct audit services for fiscal year 2007-08 for a fee not to exceed \$87,155. Pursuant to the agreement, the fee is based on the FY 2006-07 audit fees adjusted by the Bay Area Consumer Price Index.

Fiscal Impact: Sufficient funds are available from the FY 2007-08 budget for this service.

Recommendation: Authorize the extension of the contract for audit services with Maze and Associates Accountancy Corporation for fiscal year 2007-08.

RA8. Agency Adjournment

XVII. REPORTS OF OFFICER AND COMMISSION

City Council

*** 4. Consider Mayor's Recommendation for Appointment to the Citizens Emergency Preparedness Advisory Commission (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends the following Milpitas resident be appointed:

Appoint Stephen Strauss to the Citizens Emergency Preparedness Advisory Commission as Alternate No. 2 to a term that expires in June 2009.

Fiscal Impact: None

Recommendation: Consider Mayor's recommendation for the Citizens Emergency Preparedness Advisory Commission and vote to appoint Steven Strauss.

XVIII. NEW BUSINESS

5. Consideration of a Request by Fairfield Residential to Reduce the Persons per Household Ratio for the Purpose of Calculating the Park In-Lieu Fee for the Murphy Ranch Apartments (Staff Contact: Sheldon Ah Sing, 586-3278)

Background: On October 16, 2007, the City Council approved the Murphy Ranch development allowing 659 residential units, including 374 apartments. The total park dedication requirement of the project was calculated at 9.18 acres based on the population density calculation in the subdivision ordinance (XI-1-9.05) which estimates 1,835 people living in the project. The approved plans included dedication of an acre of land that would be combined with the Hetch-Hetchy right-of-way to create a two acre public park. The plans also show 3.6 acres of private usable open space within the project. The City Council approved the remaining 3.5 acres in required parkland to be provided via an in-lieu fee estimated to be \$8.4 million.

The formula for the park in-lieu fee calculation is spelled out in the subdivision ordinance and uses demographic information from the Census and the State Department of Finance to arrive at the persons per household ratios shown in the table below. These ratios are used to estimate the population of a project to determine the required parkland.

Residential Unit Type	Persons per Household
Single Family Home	3.87
Single Family Attached	3.07
Buildings w/ 2-4 units per building	3.13
Buildings w/ 5+ units per building	2.52

Pursuant to Section 9.05-2 of the subdivision ordinance, applicants can submit a study on the estimated household sizes for their project to the City for approval when they object to the population density calculation in the ordinance. Fairfield Residential is objecting to the 2.52 persons per household ratio for the apartment units within the Murphy Ranch project. Fairfield contends that based on the mix of unit types for its apartment project and the data from its existing projects, the ratio should be 2.08 persons per household. This would reduce the project's park in-lieu fee to \$7.3 million, a \$1.1 million savings to the project.

Staff applied the population density formula using demographic data for the cities where Fairfield's other projects are located and found the number of persons per household to be consistently lower than Milpitas' ratio. Staff also compared the bedroom mix of the other Fairfield projects to the Murphy Ranch apartments and found that the Murphy Ranch project had a higher percentage of 2 and 3 bedroom units than the majority of the other projects. All of the data supporting these conclusions has been included in the Council's agenda packet.

Fiscal Impact: The Park Fund would receive \$1.1 million less in lieu-fees from the Murphy Ranch project if the reduced persons per household ratio is used.

Recommendation: Staff recommends that the City Council deny the request of Fairfield Residential to use the reduced persons per household ratio in calculating the park in-lieu fee for the Murphy Ranch Apartments.

6. Recommendation to Authorize Assumption of Network Assets from EarthLink Inc. (Staff Contact: Bill Marion, 586-2701)

Background: In late 2005 the City was approached by EarthLink Inc., with a proposal to offer WiFi (wireless access) service within the City of Milpitas. This proposal involved the mounting of devices on City light poles and traffic light poles within the public right of way. This would provide wireless Internet service to nearly all residential and commercial areas of the City. An

agreement with EarthLink was approved in March of 2006 and construction of the network was completed in December of 2006. Due to a re-organization of EarthLink's business units, the company decided to transition away from wireless services and concentrate on its traditional lines of business. In lieu of selling the Milpitas network, EarthLink has offered to transfer the network assets to the City in exchange for an early termination of their agreement.

Fiscal Impact: Increase in services and supplies estimated at \$10,000 per year, to be offset by proceeds from the sale of surplus equipment.

Recommendations:

1. Direct staff to negotiate and draft an agreement with EarthLink Inc., for the transfer of WiFi network assets to the City of Milpitas.
 2. Authorize the City Manager to execute an agreement with EarthLink Inc., for the transfer of assets to City of Milpitas, subject to approval as to form by the City Attorney.
 3. Direct staff to return with a progress report on assumption of the EarthLink network and recommendations for the disposition of surplus equipment.
- * 7. **Approve Fee Waiver and In-Kind Donation of Equipment, Supplies, and Staffing from City Departments for the 2008 American Cancer Society's Relay for Life Event at the Milpitas Sports Center June 20-21, 2008 (Staff Contact: Aaron Bueno, 586-3226)**

Background: For the past nine years, the American Cancer Society, with the volunteer support of numerous Milpitas community members and businesses, has hosted the annual Relay for Life fundraising event at the Milpitas Sports Center.

The City of Milpitas has a long history of supporting this annual June event with services, staff support, and equipment on varying levels. The Relay for Life representative has prepared a complete list of requested items for fee waiver or donations for the City Council to consider for approval.

Fiscal Impact: Relay for Life is requesting that City Council approve the waiver or donation of the following, for a total of \$3,615.50.

Provided here are estimated departmental costs associated with each requested item:

Recreation Services:

• Use of Football Field- June 20 to June 21, 2008	\$1,125
\$150.00 deposit	
\$960.00 rental fees (\$15 application fee, 48 hours @ \$20.00 per hour)	
• Use of white event fencing for Kids Camp area	\$ no cost
Volunteer's pickup, set-up and return	
• Use of Mobile Stage*	\$775
\$700.00 (2 days @ 350.00 per day)	
\$75.00 in part-time staff time (5 hrs @ \$15.00)	
* Towing to be paid by Relay for Life/ACS	
• Use of two EZ-Up shade structures	\$ no cost
<u>Volunteers pickup, set-up, and return</u>	
Total from Recreation Services	<u>\$1,900</u>

Parks Services:

- Use of Football Public Address system
- Trash cans/ Garbage cans
- Field Prep and track dragging for event
- Water/ irrigation turned off during event
- Restrooms opened and secured as needed

• Weekend Crew point of contact during the event Staffing (10 hours @ 40.00 per hr)	\$400
• Use of sand for luminaries	
• <u>Use of two (2) John Deere tractors</u>	\$200
Total from Park Services	\$600

Fire Department

• Fire site/ event inspection & permits for tents/canopies Site Plan and Review	\$370.50
• Provision of First Aid by Fire Aides during event	\$ no cost
• Provide Safe House \$50.00 Towing and fuel \$ 0 Volunteer Fire Aides	\$50
• Use of four generators Picked up and delivered by volunteers	\$ no cost
• Community Fire Aides supplies, food	\$250
• <u>Two Emergency Medical Technicians</u>	\$ no cost
Total from Fire Department	\$670.50

Police Department:

• Officers to escort funds during the evening	\$300
• Police Command RV for on-site banking	\$ no cost
• <u>Use of two 10x 20 canopies</u>	\$ no cost
Total from Police Department	\$300

Building Department:

• <u>Temporary Electrical Permit</u>	\$145
Total from Building Department	\$145

Recommendation: Approve Milpitas Relay for Life requests for fee waivers and in-kind donation of equipment, supplies and staffing totaling \$3,615.50 for the June 20-21, 2008 American Cancer Society Relay for Life fundraising event at the Milpitas Sports Center.

XIX. ORDINANCE

- * **8. Waive Second Reading and Adopt Ordinance No. 65.137 Requiring Installation of Automatic Gas Shut-Off Devices in New Construction and When Replacing Any Existing Gas Fuel Appliance or When Alteration or Addition to the Existing Gas Fuel Line is Made (Staff Contact: Keyvan Irannejad, 586-3244)**

Background: On February 19, 2008, the City Council introduced Ordinance No. 65.137 to amend the existing ordinance requiring installation of Automatic Gas Shut-off Devices for new construction. The amendment would add the requirement for the installation of Automatic Gas Shut-off Devices when replacing any existing gas fuel appliance or when alteration or addition to the existing gas fuel line is made, as recommended by the Citizens Emergency Preparedness Advisory Commission (CEPAC).

Fiscal Impact: None

Recommendations:

1. Waive the second reading of Ordinance No. 65.137.
2. Adopt Ordinance No. 65.137 enacted as Chapter 170, Title II of the Milpitas Municipal Code to require the installation of Excess Flow Gas Shut-Off Devices (non-motion sensitive) or Seismic Gas Shut-Off Devices that are activated by motion in new construction or when replacing any existing gas fuel appliance or when alteration or addition to the existing gas fuel line is made.

XX. RESOLUTION

- * **9. Adopt a Resolution Amending the Current Milpitas Tow Service Agreement with Four Companies and Approve a Tow Rate Increase (Staff Contact: Tom Borck, 586-2434)**

Background: The proposed modifications to the current Milpitas City Tow Agreement are compatible with the California Highway Patrol’s (CHP) Tow Service Agreement. Each of the current tow services operating on the Milpitas City Tow Truck Rotation List adheres to the CHP Tow Service Agreement. This modified agreement standardizes tow company business procedures, promotes quality business practices, requires continual in-service training, requires adherence to OSHA safety procedures, establishes standards for drug testing, standardizes professional appearance, ensures high quality equipment, enhances the City’s ability to address failures to comply with the regulations and limits the number of active tow companies to four.

Additionally, City Council Resolution No. 6629 (Section 15) adopted on March 18, 1997 allows for rate schedules to be consistent with other tow services in the County and for an annual adjustment, provided a survey of rates has been conducted by the Police Department. A survey was conducted in January 2008 and current tow fees are below the county averages. The most recent adjustment occurred over two years ago on August 16, 2005. The requested rate changes will offset the increased operational costs associated with fuel, insurance, labor, etc.

ROTATION TOW FEES	CURRENT	COUNTY AVERAGE	PROPOSED
Basic Rate	\$125.00	\$145.00	\$145.00
Labor Rate	\$31.25 per ¼ hour	\$43.50 per ¼ hour	\$43.50 per ¼ hour
Storage	\$40.00	\$43.18	\$43.00
Road Service Call	\$62.50	101.50	\$100.00
Extended distance	\$5.00	N/A	\$5.00
Gate Fee	\$62.50	\$68.63	\$68.50
Evidence Tow	\$30.00	\$72.50	\$70.00
City vehicle tows within 10 miles	\$10.00	\$72.50	\$10.00
City vehicle tows outside 10 miles	\$10.00 plus \$4.50 per mile over 10	\$72.50	\$70.00
City vehicle calls within 10 miles of the city garage	No charge	\$72.50	No charge
City vehicle call outside of 10 miles from the city garage	\$10.00	\$72.50	\$70.00

Fiscal Impact: Approximately \$800.00 additional revenue annually. The Council’s Finance Subcommittee was scheduled to review the rates proposal on February 27, 2008.

Recommendation: Adopt a resolution authorizing an amendment to Tow Service Agreements with companies on the Milpitas Tow Truck List, and an increase in towing rates.

XXI. BIDS AND CONTRACTS

- * **10. Approve Budget Appropriation for Appropriating Proposition 1B Funds to Street Resurfacing 2008, Project No. 4242 (Staff Contact: Andrew Brozyna, 586-3315)**

Background: On February 19, 2008, the City Council approved the project plans and specifications and adopted a Resolution for filing a plan with the State for the use of Proposition 1B funds. The good news is the City has already received the grant funds. The project provides roadway reconstruction on Smithwood Street between Marylann Drive and Ruyard Drive, Silvera Street, Watson Court, Louise Court, Landess Avenue between Park Victoria Drive and

Clear Lake Avenue, and approximately 400 lineal feet of Hammond Way north of Curtis Avenue; roadway resurfacing on California Circle between I-880 Off Ramp and Fairview Way, Pecten Court, Gadsden Drive between Calaveras Boulevard and Canton Drive, Milpitas Boulevard between Hanson Court and Tramway Drive, Yosemite Drive between Sinclair Frontage Road and Vista Way, Temple Drive between Calaveras Boulevard and Canton Drive, and Dempsey Road between Yosemite Drive and Chewpon Avenue; and repair of base failures on McCarthy Blvd. between State Route 237 On-Off Ramp North and northerly city limits, and Ranch Drive.

Specific appropriation of the Proposition 1B funds into the Street Resurfacing 2008 Project No. 4242 is requested at this time.

Fiscal Impact: None. The state grant in the amount of \$1,070,700.96 has been deposited into the City account.

Recommendation: Authorize the appropriation of Proposition 1B Funds (\$1,070,700) into the Street Resurfacing 2008 Project, Project No. 4242, by approving the budget change form.

- * 11. **Approve Encroachment Agreement with Cisco Systems, Inc., for Installation of Fiber Optic Network Facilities within Public Right of Way, Project No. 3220 (Staff Contact: Robert Wang, 586-3327)**

Background: Cisco Systems, Inc., is requesting permission to install private underground fiber optic lines in Alder Drive for its communication network of its campus buildings. An encroachment agreement has been prepared to allow the installation, which is acceptable to the City staff.

Fiscal Impact: None

Recommendation: Approve the Encroachment Agreement with Cisco Systems, Inc., Project No. 3220, for installation of fiber optic network facilities within public right-of-way and authorize the City Manager to execute the agreement, subject to the approval of the City Attorney as to form.

XXII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 18, 2008 AT 7:00 P.M.**