



**MILPITAS CITY COUNCIL MEETING AGENDA
MAY 6, 2008**

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

**TELECONFERENCE LOCATION OF VICE MAYOR LIVENGOOD
SHERATON HOTEL MAIN LOBBY
1230 J STREET
SACRAMENTO, CA 95814**

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL (6:30 p.m.)**
- II. ADJOURN TO CLOSED SESSION OF CITY COUNCIL**
CONFERENCE WITH LABOR NEGOTIATOR - COLLECTIVE BARGAINING
(Pursuant to CA Government Code §54957.6) City Negotiator: Carmen Valdez
Employee Group: Milpitas Professional and Technical Group (ProTech)
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- 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 Giordano)
- VI. APPROVAL OF COUNCIL MEETING MINUTES** – April 15, 2008
- VII. SCHEDULE OF MEETINGS** - Council Calendar for May 2008
- VIII. PRESENTATIONS**

Proclamations:

- Bike to Work Day – May 15, 2008, and Bike to Work Month - May 2008
- Building Safety Week May 6 to 12, 2008
- Public Works Week, May 18 to 24, 2008
- Water Awareness Month – May 2008
- National Family Month – May 2008
- Buddy Poppy Month – May 2008
- Older Americans Month – May 2008

Certificate of Commendation:

VITA – Volunteer Income Tax Assistance Program Volunteers

- IX. PUBLIC FORUM**

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.

- X. ANNOUNCEMENTS**
- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XII. APPROVAL OF AGENDA**
- XIII. CONSENT CALENDAR (Items with asterisk*)**
- XIV. PUBLIC HEARINGS**
 - 1. Introduce Solid Waste Ordinance Amendment No. 48.20 and Noise Ordinance Amendment No. 196.9, and Authorize the City Manager to Execute Amendments to Allied Waste Solid Waste and Yard Trims Franchise Agreements, Contingent Upon Adoption of these Ordinance Amendments (Staff Contact: Kathleen Phalen, 586-3345)**
 - 2. Request for Entertainment Event Permit for St. James Orthodox Church to Hold a Food Festival on Church Grounds, July 18-20, 2008 (Staff Contact: Mary Lavelle, 586-3001)**
- XV. UNFINISHED BUSINESS**
 - 3. Receive Update on Roadmap for Service Improvements (Staff Contact: Keyvan Irannejad, 586-3244)**
 - 4. Report on Statewide Ballot Propositions 98 and 99 for Possible Endorsement (Staff Contact: Michael Ogaz, 586-3040)**
- XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**
 - RA1. Call to Order by the Mayor/Chair**
 - RA2. Roll Call**
 - RA3. Approval of Minutes (April 15, 2008)**
 - RA4. Approval of Agenda and Consent Calendar (Items with asterisk*)**
 - RA5. Receive Progress Report on Library, Midtown East Parking Garage, North Main Streetscape Projects, and Approve Budget Appropriation, Projects No. 8161, No. 8162, and No. 8165 (Staff Contact: Steve Erickson, 586-3414)**
 - RA6. Receive Staff Report on the Senior Center Facilities Subcommittee Recommendation to Approve the Design Development Drawings for the Senior Center, and Authorize Work to Proceed on the Construction Document Phase, Project No. 8176 (Staff Contacts: Greg Armendariz, 586-3317, and Bonnie Greiner, 586-3227)**
 - RA7. Receive Financial Status Report for the Nine Months Ended March 31, 2008 (Staff Contact: Emma Karlen, 586-3145)**
 - *RA8. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended March 31, 2008 (Staff Contact: Emma Karlen, 586-3145)**

- ***RA9. Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals for Midtown North Main Street Streetscape Improvement Project, Phase 2, Project No. 8165, Federal Aid Project No. RPSTPLE-5314 (003) (Staff Contact: Steve Erickson, 586-3414)**

RA10. Agency Adjournment

XVII. REPORTS OF OFFICER

City Council

- * **5. Consider Mayor's Recommendations for Appointments/Re-Appointment to City Commissions (Contact: Mayor Esteves, 586-3029)**
- * **6. Consider Mayor's Recommendations for Two Donations to VITA Tax Preparation Assistance and to Christian Record Services for Summer Camp for Blind Children (Staff Contact: Mary Lavelle, 586-3001)**

XVIII. NEW BUSINESS

- * **7. Authorize the Purchasing Agent to Dispose of Surplus 1991 Ford F-350 Flatbed Truck at Auction (Staff Contact: Chris Schroeder, 586-3161)**
- * **8. Authorize City Manager to Send Letter to Cupertino Sanitary District and Treatment Plant Advisory Committee Expressing Interest in Acquiring up to 0.75 Million Gallons Per Day of Treatment Capacity at the Water Pollution Control Plant (Staff Contact: Kathleen Phalen, 586-3345)**

XIX. ORDINANCE

- * **9. Waive the Second Reading and Adopt Traffic Ordinance No. 43.209, an Amendment to Section V-100-15.06 of the Milpitas Municipal Code, "Parking Time Limited on Certain Enumerated Streets" (Staff Contact: Jaime Rodriguez, 586-3335)**

XX. RESOLUTIONS

- * **10. Adopt a Resolution Banning the Purchase of Bottled Water for Distribution at City Functions and for Resale to the Public (Staff Contact: Kathleen Phalen, 586-3345)**
- * **11. Adopt a Resolution Requesting the Allocation of Transportation Development Act (TDA), Article 3 Funds for the Enhanced Crosswalk Improvements, Phase I Project (Staff Contact: Jaime Rodriguez, 586-3335)**

XXI. BIDS AND CONTRACTS

- * **12. Approve the Agreement with Pyro Spectaculars for the Annual 4th of July Fireworks Display (Staff Contact: Chris Schroeder, 586-3161)**
- * **13. Approve Re-Licensing of the Existing Oracle Software and Twelve Months of Technical Support (Staff Contact: Chris Schroeder, 586-3161)**
- * **14. Approve the Agreements with A & A Recycling and Dependable Waste Solutions for Debris Boxes (Staff Contact: Kathleen Phalen, 586-3345)**
- * **15. Approve Amendment No. 2 to the Agency Agreement with Santa Clara County for the Countywide AB939 Implementation Fee (Staff Contact: Kathleen Phalen, 586-3345)**

- * 16. Approve Amendment No. 3 to the Agency Agreement with Santa Clara County for the Countywide Household Hazardous Waste Collection Program (Staff Contact: Kathleen Phalen, 586-3345)
- * 17. Award Construction Contract to J&M, Inc. for the Sewer Deficiency and Structural Correction Program, Project No. 6073 (Staff Contact: Jeff Leung, 586-3326)
- * 18. Approve Amendment No. 3 to the Contract with Valley Oil (Staff Contact: Chris Schroeder, 586-3162)

XXII. CLAIMS AND DEMANDS

- * 19. Approve Payment Requests to Preston Pipelines, Inc. and National Meter and Automation (Staff Contact: Chris Schroeder, 586-3162)
- * 20. Approve the Standardization of Tazer International Stun Guns and Purchase of Eighteen New Units and Nineteen Audio/Video Add On Modules (Staff Contact: Chris Schroeder, 586-3161)

XXIII. ADJOURNMENT

**NEXT COUNCIL MEETING
BUDGET HEARING
TUESDAY, MAY 13, 2008 AT 6:00 P.M.**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 20, 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

BECOME A CITY COMMISSIONER!

Currently, there are openings for the:

Arts Commission (alternate)

Community Advisory Commission

Economic Development Commission (Hotel Rep)

Mobile Home Park Rental Review Board

Parks, Recreation and Cultural Resources Commission (alternate)

Recycling and Source Reduction Advisory Commission (alternate)

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 HEARINGS

1. Introduce Solid Waste Ordinance Amendment No. 48.20 and Noise Ordinance Amendment No. 196.9, and Authorize the City Manager to Execute Amendments to Allied Waste Solid Waste and Yard Trims Franchise Agreements, Contingent Upon Adoption of these Ordinance Amendments (Staff Contact: Kathleen Phalen, 586-3345)

Background: The City provides residential and commercial garbage and recycling solid waste services through long-term franchise agreements with Allied Waste Services of North America (Allied). In January 2008, the City amended Allied's agreements to adjust customer rates in accordance with contract requirements. At that time, staff informed the Council that, through the rate review process, Allied and City staff had identified several desirable adjustments to the agreement scopes of service that staff would bring later to Council for consideration.

These proposed scope of service changes are summarized in a staff report included in the Council packet. Allied and City staff have concluded that, in aggregate, the costs and savings of the recommended changes balance out and therefore would not impact customer rates. The primary reason for recommending most of these changes is to adjust contract requirements to match evolving market, technology, or customer program monitoring conditions and needs. The changes include items such as reducing the frequency of customer surveys and promotions, shifting task assignments between the City and Allied, adding or removing accepted materials for recycling, defining new container types and sizes, and adding a dry waste definition. Staff believes that these changes are generally not substantial and will have only minor impact on the majority of the City's customers. A couple of recommended changes that residential customers may notice are:

- (1) Reducing the maximum length of excess yard trims bundled waste from five to three feet in order to fit Allied collection equipment; and
- (2) Allowing a one-year trial of a 6:00 AM residential collection start time. Currently, Allied is allowed to start work at 6:00 AM during the summer, but can start no earlier than 7:00 AM during the rest of the year.

Contract documents for reference are available in the City Clerk's office and on the City website.

During the rate discussions, Allied asked the City to amend the agreement to change the way rates are adjusted to account for fuel increases. The existing rate adjustment process does not have a separate fuel component, but instead includes fuel as part of the base rate increase which is set at 75% of the Bay Area consumer price index (CPI) increase. Allied asked that the City instead consider fuel to be an extraordinary cost beyond its control, because fuel costs have been increasing at a much faster rate than the CPI. Allied asked the City to change the contract rate adjustment provisions to include a Bay Area Diesel Fuel Index component, which would more closely track fuel costs. The impact of this change would be to add about \$0.16 per month to the single-family cost. Staff reviewed Allied's request and finds that the fuel increase was handled correctly according to the contract terms. Therefore, staff does not recommend changing the method by which fuel costs are incorporated into rate increases. (It should be noted that changing the contract rate adjustment provisions would need to be conducted in accordance with the Proposition 218 public notice and public protest requirements and so cannot be completed as part of this recommended action.)

The proposed franchise agreement amendments necessitate amendment of the City's solid waste and noise ordinances. As this ordinance adoption cannot be completed until a subsequent Council meeting, staff recommends that Council approve the franchise agreement amendments at this time, conditioned upon the subsequent adoption of the ordinance amendments. The effective date for the ordinances and agreement amendments is tentatively established as June 20, 2008, which is 30 days after the next regularly scheduled Council meeting of May 20, 2008.

Fiscal Impact: There is no fiscal impact from the recommended action.

Recommendations:

1. Open the Public Hearing for public comments.
2. Close the Public Hearing.
3. Waive the first reading beyond the title of Ordinance No. 48.20
4. Introduce Ordinance No. 48.20.
5. Waive the first reading beyond the title of Ordinance No. 196.9.
6. Introduce Ordinance No. 196.9.
7. Authorize City Manager to execute the Allied Waste Solid Waste and Yard Trims franchise agreements, subject to approval by the City Attorney, conditioned upon adoption of the Solid Waste Ordinance No. 48.20 and Noise Ordinance No. 196.9.

2. Request for Entertainment Event Permit for St. James Orthodox Church to Hold a Food Festival on Church Grounds, July 18-20, 2008 (Staff Contact: Mary Lavelle, 586-3001)

Background: St. James Orthodox Church at 195 N. Main St. submitted an application in April for an Entertainment Event Permit to hold a Church Food Festival and celebration on their church property over the weekend of July 18-20, 2008. Proposed hours of operation for the festival are from 4:00 – 10:00 PM on Friday, 10:00 AM – 10:00 PM on Saturday, and 11:00 AM to 8:00 PM on Sunday.

The application was reviewed by all necessary City department staff. The public hearing was advertised in the local newspaper on April 24. Appropriate conditions were stated by several city departments, as noted in the agenda packet attachments.

Fiscal Impact: \$15 application fee received. Appropriate Building and Fire Marshal inspection fees will be paid.

Recommendation: Move to approve the Entertainment Event Permit for St. James Orthodox Church to hold a Food Festival for the dates of July 18 -20, 2008.

XV. UNFINISHED BUSINESS

3. Receive Update on Roadmap for Service Improvements (Staff Contact: Keyvan Irannejad, 586-3244)

Background: At the Open Government Subcommittee meeting on December 12, 2007, Vice Mayor Livengood requested a report to the City Council on record research of construction documents, plans and permits. Since the last report submitted to the City Council on August 8, 2007, on Roadmap for Service Improvements, additional improvements have taken place that have streamlined the permitting process in order to provide more fiscally sound, proactive and effective customer service. An update to report on accomplishments and objectives in further improvements and streamlining of the permitting process will be presented to the City Council at the meeting.

Fiscal Impact: None

Recommendation: Receive staff report on updates to the roadmap for service improvements with regard to Building Department permit streamlining.

4. Report on Statewide Ballot Propositions 98 and 99 for Possible Endorsement (Staff Contact: Michael Ogaz, 586-3040)

Background: At the City Council meeting of April 1, 2008, Councilmember Giordano asked that staff report back at the next meeting with background analysis and a position that the Council might consider regarding Propositions 98 and 99 (eminent domain) on the June 3 ballot.

A review of the two propositions indicates they both limit the power of public entities to use eminent domain for acquisition of property for private use. Proposition 98, offered by the Howard Jarvis Taxpayers Association, proposes a blanket prohibition applying to all private property. Proposition 99, backed by the League of California Cities, applies only to owner-occupied residences and therefore presents a much narrower limitation. However, other differences between the two propositions are of greater significance.

In drafting Proposition 98, the proponents included language that prohibits limiting the price a private owner may charge to use his property. This language will likely have the effect of eliminating existing rent control ordinances and inclusionary ordinances providing for affordable housing. Of immediate concern to the City of Milpitas is that this proposed Constitutional Amendment also includes language that prohibits zoning, land use or environmental regulations that act to “transfer an economic benefit to one or more private persons at the expense of the property owner.” This threatens the essence of land use regulation.

While many land use restrictions are for the general benefit of the public, there are often individuals who receive particular benefit. The next door neighbor will benefit from the set backs, density, height limitations, etc., contained in the zoning code that restrict construction of a new adjacent residence. Under Proposition 98, this could be viewed as a transfer of private economic benefit and makes the regulation a “taking” for private use that is prohibited. It has the potential to severely limit the City’s ability to utilize its zoning code and regulate the direction of future growth.

In comparison, Proposition 99 does not affect the City’s land use regulations except in the area of eminent domain. It protects an owner occupied residence from eminent domain if the property is to be conveyed to a private person. It does not protect commercial or non-owner occupied residential properties beyond the current law which requires they be taken only for a “public use.” In many cases, however, public entities have found that it is in the public interest, and thus considered to be for “public use” to convey property to private persons, as in the case of assemblages for redevelopment purposes. Thus, the protection afforded by Proposition 99 is a limited one.

A comparison chart of the two Propositions is included as an attachment. The League of California Cities supports Proposition 99 and opposes Proposition 98.

Fiscal Impact: None identified.

Recommendation: That the City Council consider endorsement of these two Propositions. Staff recommends the City Council oppose Proposition 98 and support Proposition 99.

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor/Chair

RA2. Roll Call

RA3. Approval of Minutes (April 15, 2008)

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

RA5. Receive Progress Report on Library, Midtown East Parking Garage, North Main Streetscape Projects, and Approve Budget Appropriation, Projects No. 8161, No. 8162, and No. 8165 (Staff Contact: Steve Erickson, 586-3414)

Background: Construction continues on the new 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, drywall, mechanical, electrical, and plumbing fixture work continue. Exterior site work around the perimeter of the library in preparation for final paving, concrete flat work, and landscaping is also underway. Staff has also issued Notices to Proceed to the furniture vendors and held pre-construction meetings in preparation for the procurement and installation of furnishings.

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. The installation of median landscaping continues and the contractor is preparing for final paving. Construction is being staged to maintain traffic and access.

Budget Appropriation

On March 4, 2008, the Council/Agency approved a cost-share agreement between the City of Milpitas and Santa Clara Valley Transportation Authority (VTA) for the removal of bus transfer terminals at North Main Street and Weller Lane and for the construction of bus stop improvements under the 237 overpass. The VTA's share for this work is \$33,750. A budget appropriation is requested to appropriate these funds back into the North Main Street Streetscape project.

Fiscal Impact: None, the requested \$33,750 budget appropriation to the North Main Street Streetscape Project, Project No. 8165, will be funded by VTA as its cost share.

Recommendations:

1. Receive Progress Report on the new Library, Midtown East Parking Garage, and North Main Streetscape Projects No. 8161, 8162, and 8165.
2. Approve \$33,750 budget appropriation from the Santa Clara Valley Transportation Agency into the North Main Street Streetscape Improvements Project, Project No. 8165.

RA6. Receive Staff Report on the Senior Center Facilities Subcommittee Recommendation to Approve the Design Development Drawings for the Senior Center, and Authorize Work to Proceed on the Construction Document Phase, Project No. 8176 (Staff Contacts: Greg Armendariz, 586-3317, and Bonnie Greiner, 586-3227)

Background: At the October 16, 2007, City Council meeting, the Agency/Council received a staff report and approved the schematic design for the new Senior Center and authorized staff to proceed with the design development phase of the project.

Since October, staff has been working closely with Noll & Tam Project Architects on the design details of the interior and exterior of the new facility, including building and fire code review. Concurrently, staff is also working on securing the additional \$1.5 million needed for construction of the project.

On Monday April 21, 2008, the Senior Center Facilities Subcommittee received an update on the draft of the design development plans from Noll & Tam Architects. The Facilities Subcommittee recommends design development plans for approval by the Agency/Council.

A progress report on the design will be provided by the Architect and staff at the Council/Agency meeting.

Fiscal Impact: None

Recommendations:

1. Receive staff report on the status of the new Senior Center, Project No. 8176.
2. Accept the Senior Center Facilities Subcommittee's recommendation and approve the design development drawings for the new Senior Center.
3. Authorize design work to proceed to the Construction Document Phase.

RA7. Receive Financial Status Report for the Nine Months Ended March 31, 2008 (Staff Contact: Emma Karlen, 586-3145)

Background: In FY2007-08, staff originally projected the General Fund revenue to be \$55.6 million. As of March 31, 2008, the General Fund received approximately \$34.2 million in revenues, approximately 61.5% of budget. Compared to last year at this time, the General Fund already received 62.8% of the actual revenue. Sales tax revenue receipts declined about 9.5% while building permits revenue and private job revenue were also lower than last year. Although the decline in sales tax revenue was partially offset by increases in property tax revenue and transient occupancy tax revenue, staff projected that FY2007-08 General Fund revenue would be below budget by approximately \$1.2 million. The total revised revenue is estimated to be \$54.3 million.

The General Fund expenditures at the end of March were at 70% of the budget appropriations. Departments continued to monitor their spending carefully. Staff believes that with the cost savings on expenditures, the General Fund will most likely close out the FY2007-08 budget year without any use of the reserve despite revenue shortfall. The Council also approved a not to exceed \$6 million loan payment from RDA to balance the General Fund budget. In the event that there is more expenditure savings, the amount of loan payment required from RDA will be less than \$6 million.

The Redevelopment Agency Project Fund is in a better financial situation than originally anticipated. Tax increment revenue and interest income are higher than original projection by \$720,000. The original budget projected the use of fund balance in the amount of \$11.6 million, but with better than projected revenue and a slight savings in expenditures, staff anticipated the use of fund balance to be \$10.8 million.

Fiscal Impact: None.

Recommendation: Receive financial status report for the nine months ended March 31, 2008.

***RA8. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended March 31, 2008 (Staff Contact: Emma Karlen, 586-3145)**

Background: In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended March 31, 2008 is submitted for your review and acceptance.

The Portfolio Summary Report included in the Council's packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of March 31, 2008.

As of March 31, 2008, the principal cost and market value of the City's investment portfolio was \$211,638,207 and \$215,024,911 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended March 31, 2008 was 4.30%. The comparative benchmarks for the same period were 3.52% for LAIF (Local Agency Investment Fund) and 3.53% for the 12-month average yield of the 2 year Treasury Note. Excluding the long-term GNMA securities and investment of the bond proceeds, the weighted average maturity of the portfolio was 431 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

Fiscal Impact: Not Applicable

Recommendation: Receive the investment report for the quarter ended March 31, 2008.

***RA9. Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals for Midtown North Main Street Streetscape Improvement Project, Phase 2, Project No. 8165, Federal Aid Project No. RPSTPLE-5314 (003) (Staff Contact: Steve Erickson, 586-3414)**

Background: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The project provides for an all-new pedestrian friendly streetscape along North Main Street from the 237 off-ramp south to Carlo Street to support the new library and other Midtown improvements. It will provide new pavement, sidewalks, median, street furniture, traffic signals, and landscape improvements. The project will also provide a pavement seal and new pavement striping to Weller Lane and cul-de-sac improvements to Winsor Avenue at the new parking garage. The project will provide a new water line, connecting the existing waterlines, from Carlo Street to Calaveras Boulevard to improve flow and quality. The water line work included in the project will be funded from the North Main Street Utilities Project, Project No. 8153.

The estimate for the work is approximately \$2,900,000, and advertisement of the project for bid proposals will not proceed until after Caltran's issues the E-76 Notice to Proceed. A copy of the project plan title sheet is included in the agenda packet. Complete plans and specifications are available for review in the office of the CIP Manager.

Fiscal Impact: None. Sufficient funds are available in the project budgets.

Recommendations:

1. Approve plans and specifications for Midtown North Main Street Streetscape Improvement Project, Phase 2, Project No. 8165, Federal Aid Project No. RPSTPLE-5314 (003).
2. Authorize advertising the Midtown North Main Street Streetscape Improvement Project, Phase 2, Project No. 8165, Federal Aid Project No. RPSTPLE-5314 (003), for bid proposals.

RA10. Agency Adjournment

XVII. REPORTS OF OFFICER

City Council

* 5. **Consider Mayor's Recommendations for Appointments/Re-Appointment to City Commissions (Contact: Mayor Esteves, 586-3029)**

Economic Development Commission:

Re-appoint Zeya Mohsin as Alternate No. 2 to a term that expires in April 2010.

Parks, Recreation, and Cultural Resources Commission:

Appoint Vishnu Mathur (from Telecommunications Commission) as Alternate No. 2 to a term that expires in June 2009.

Recycling and Source Reduction Advisory Commission:

Appoint Echo Arthur (from Sister Cities Commission) as Alternate No. 1 to a term that expires in October 2009.

Telecommunications Commission:

Appoint Sumeet Ahuja as Alternate No. 2 to a term that expires in January 2010.

Fiscal Impact: None

Recommendation: Consider Mayor's recommendations for Commission appointments/re-appointment and vote on four appointments.

* 6. **Consider Mayor's Recommendations for Two Donations to VITA Tax Preparation Assistance and to Christian Record Services for Summer Camp for Blind Children (Staff Contact: Mary Lavelle, 586-3001)**

Background: Mayor Esteves has received two requests for donations. The first one is a request for a donation to Christian Record Services, a non-profit organization based in Lincoln, NE. It operates summer and winter camping programs for blind children, including many in California. Mr. Ely Eborra sent the Mayor an email requesting funds to support the camp this year and noted that three camp attendees were from Milpitas last year. This year's request is for \$560.

The second request Mayor Esteves received is for a donation of \$620 to the VITA program which provides income tax preparation assistance at the Milpitas library for elderly, disabled, low-income and limited English speaking residents. The organization provided an e-mail request detailing the expenditures for which the donation is requested, including computer-related supplies.

Fiscal Impact: Donations would be made out of the City Council's Unallocated Community Promotions Budget. The balance was \$6,200, and if the two donations totaling \$1,180 are authorized by City Council, the remaining balance in that line of the FY 2007-08 budget would be \$5,320.

Both requests were presented to the Finance Subcommittee on April 9, and recommended to the City Council for approval.

Recommendation: Move to authorize the Mayor's request for two donations to non-profit organizations: (1) \$620 to Volunteer Income Tax Assistance program at the Milpitas Library, and (2) \$560 donation to Christian Record Services camp for blind children.

XVIII. NEW BUSINESS

* 7. **Authorize the Purchasing Agent to Dispose of Surplus 1991 Ford F-350 Flatbed Truck at Auction (Staff Contact: Chris Schroeder, 586-3161)**

Background: The City has one vehicle, a 1991 Ford F-350 flatbed truck; License #344386 that has reached the end of its useful life. The cost to maintain the vehicle exceeds its value and it has been removed from service. The value of the vehicle at auction is estimated to be approximately \$2,000. Staff requests authorization to dispose of the vehicle at auction pursuant to section I-2-8.03 of the Municipal Code "Disposal of more than \$1,000."

Fiscal Impact: Revenue from disposal of this vehicle will go back to the Equipment Replacement Fund to supplement future capital outlay purchases.

Recommendation: Approve the request to auction the surplus 1991 Ford F-350 Flatbed truck.

- * **8. Authorize City Manager to Send Letter to Cupertino Sanitary District and Treatment Plant Advisory Committee Expressing Interest in Acquiring up to 0.75 Million Gallons Per Day of Treatment Capacity at the Water Pollution Control Plant (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The San Jose/Santa Clara Water Pollution Control Plant (WPCP) treats wastewater from tributary agencies, including Milpitas, prior to discharge to San Francisco Bay. Each agency has capacity rights guaranteed by a Master Agreement with the WPCP. The four components of the capacity rights are the volume of wastewater and the concentrations of suspended solids, ammonia, and biochemical oxygen demand (BOD). In June 2006, Milpitas increased its capacity rights from 12.5 to 13.5 million gallons per day (MGD) by purchasing 1 MGD from West Valley Sanitation District. In the most recent annual measurement, Milpitas was using about 10.2 MGD of its capacity rights.

The City's projected future capacity need is defined in its Sewer Master Plan. The 2004 plan estimated the City's need at build out to be 13.0 MGD. Adding the Transit Area and accounting for other land use changes increases this projection to 14.2 MGD, which is 0.7 MGD more than the City's current rights. Therefore, staff inquired if any other tributary agencies would be interested in selling excess capacity and Cupertino Sanitary District (District) responded positively. On March 20, 2007, Council approved a cost-sharing agreement with the District to quantify the amount of its excess capacity and to determine the fair market price. The study confirmed that the District has excess capacity for flow up to 1 MGD. It also has proportional excess treatment capacity for suspended solids and ammonia, but it does not have excess BOD capacity.

Milpitas has some excess BOD capacity and so can delay purchase of additional BOD at this time. The WPCP is currently working on a Master Plan Study that will evaluate WPCP process improvements and future WPCP expansion options. Study results are expected in 3-4 years. At the time of expansion, Milpitas will have an opportunity to participate in the purchase of additional BOD or other treatment components if needed. Alternately, the City may seek to purchase BOD from another tributary agency.

Enclosed in the Council packet is an April 10, 2008 letter from the District to the City of San Jose stating that it has 0.5 MGD excess capacity available for Milpitas to purchase. District staff told the City that 0.5 MGD is actually the minimum transfer they wish to consider but its Board may consider a larger transfer depending on the City's interest. Therefore, staff recommends proceeding with an expression of interest in purchasing up to 0.75 MGD capacity from the District. This would increase the City's capacity rights to 14.25 MGD.

Enclosed in the Council packet is a draft letter of purchase interest for up to 0.75 MDG from the District. The preliminary cost estimate to purchase 0.75 MGD is \$4,900,000. This estimate will be adjusted to fair market value once the effective date of sale is established. Given that the acquisition will need to be approved by the WPCP Treatment Plant Advisory Committee and the San Jose, Santa Clara, and Milpitas City Councils, staff expects that will be January 1, 2009.

Fiscal Impact: The estimated cost of \$4,900,000 is included in the proposed FY09 Non-Departmental budget to be funded by the Sewer Fund and Treatment Plant Fund. Impact fees will be imposed upon new development to recoup this cost.

Recommendations:

1. Authorize the City Manager to sign the letter of interest to purchase up to 0.75 MGD of Water Pollution Control Plant treatment capacity from the Cupertino Sanitary District.
2. Direct staff to proceed with capacity procurement with the Cupertino Sanitary District and the Water Pollution Control Plant Treatment Plant Advisory Committee.

XIX. ORDINANCE

- * **9. Waive the Second Reading and Adopt Traffic Ordinance No. 43.209, an Amendment to Section V-100-15.06 of the Milpitas Municipal Code, “Parking Time Limited on Certain Enumerated Streets” (Staff Contact: Jaime Rodriguez, 586-3335)**

Background: This ordinance was first introduced during the April 15, 2008 City Council meeting. The ordinance amends Subsection V-100-15.06 of the Milpitas Municipal Code, Parking Time Limited on Certain Enumerated Streets, to remove, modify and add time-time parking restrictions on City streets.

Time-limit parking restrictions are proposed for modification the following street sections to better accommodate parking demands for new businesses in the area:

Street	Segment	Duration	Time
.6 Thompson St	West Side from Great Mall Pkwy to Alvarez Common	3 Hours	Any Time
.7 Thompson St	East Side from Alvarez Common to Machado St	3 Hours	Any Time

The following street sections are proposed for removal so that no parking limit restrictions apply during the day:

Street	Segment	Duration	Time
.8 Thompson St	East Side from Machado St to Great Mall Pkwy	4 Hours	7 am to 8 pm

This section of Thompson St. will be replaced with No Parking restrictions from 8:00 PM to 7:00 AM only to restrict parking along the frontage of Elmwood Correction Facility during nighttime.

Fiscal Impact: There is no fiscal impact.

Recommendation: Waive the second reading and adopt Traffic Ordinance No. 43.209, an Amendment to Section V-100-15.06 of the Milpitas Municipal Code, Parking Time Limited on Certain Enumerated Streets.

XX. RESOLUTIONS

- * **10. Adopt a Resolution Banning the Purchase of Bottled Water for Distribution at City Functions and for Resale to the Public (Staff Contact: Kathleen Phalen, 586-3345)**

Background: On April 1, 2008, the City Council received a staff report reviewing the City's purchases of bottled water and recommending substitution of municipal tap water as feasible. Council directed staff to prepare a resolution for Council action to ban the purchase of bottled water for City functions and for resale to the public. Council directed that purchase and use of bottled water for emergency storage and for distribution to City field personnel for health and safety hydration be excluded from this ban. Staff has prepared this resolution, included in the Council packet, for Council action.

Fiscal Impact: None

Recommendation: Adopt a Resolution Banning the Purchase of Bottled Water for Distribution at City Functions and for Resale to the Public.

- * 11. **Adopt a Resolution Requesting the Allocation of Transportation Development Act (TDA), Article 3 Funds for the Enhanced Crosswalk Improvements, Phase I Project (Staff Contact: Jaime Rodriguez, 586-3335)**

Background: The City of Milpitas receives grant funding from the Transportation Development Act (TDA) Article 3 fund each year for sidewalk and bicycle projects. The guaranteed funding is based on population; the 2008-09 funding for Milpitas is estimated at \$42,285, but may vary based on the total number of applications.

Staff submitted a grant proposal to the Santa Clara Valley Transportation Authority for the release of this funding for a proposed Enhanced Crosswalk Improvements project. The project will include the installation of American Disabilities Act compliant handicap ramps and the installation of high-visibility crosswalk that utilize enhanced roadway markings, signs and technology improvements. The locations of improvements will be determined later. When the City obtains a grant approval and an exact grant amount is determined, staff will pursue a midyear CIP project approval from Council.

Fiscal Impact: None. State Transportation Development Act (TDA) funding will pay for the proposed project.

Recommendation: Adopt a Resolution Requesting the Allocation of Transportation Development Act, Article 3 Funds for the Enhanced Crosswalk Improvements – Phase I Project.

XXI. BIDS AND CONTRACTS

- * 12. **Approve the Agreement with Pyro Spectaculars for the Annual 4th of July Fireworks Display (Staff Contact: Chris Schroeder, 586-3161)**

Background: The Fourth of July is traditionally marked by a display of fireworks. There are only two fireworks vendors in the Bay Area. With offices in Oakland, Pyro Spectaculars is the only full service provider of "Pyromusical™" fireworks displays in the Bay Area. The company is also the premier provider of pyrotechnic devices and aerial fireworks displays in the world. Based on its track record of excellence, safety, custom designed set pieces and bright work, Pyro Spectaculars has been the vendor of choice for the City of Milpitas for the past eleven years. Staff is recommending that this service be awarded as a sole source procurement as sanctioned in section I-2-5.03-4 of the Municipal Code.

Fiscal Impact: \$21,000. Funds for this purchase are available from the Recreation Services operating budget.

Recommendation: Authorize the City Manager to execute the contract with Pyro Spectaculars for the annual Fourth of July fireworks display, subject to approval as to form by the City Attorney, in an amount not-to-exceed \$21,000.

* 13. **Approve Re-Licensing of the Existing Oracle Software and Twelve Months of Technical Support (Staff Contact: Chris Schroeder, 586-3161)**

Background: Approximately eight years ago, the City made the decision to purchase Oracle software. Oracle runs on City servers as the back end application, which allows various departments operating software such as the Finance System, the Police Records System, and the City's Document Management System to store data and operate on the network. By renegotiating the licenses and reducing the number of user seats, the City was able to achieve GSA discounted pricing equivalent to 51% off retail. Because the software is already in place and is critical to the operation of the City, staff requests that this purchase be made as a sole source procurement as authorized in section I-2-5.03-4 of the Milpitas Municipal Code.

Fiscal Impact: \$54,689.40. Funds for this purchase are available from CIP No. 8131 - Information Management Capital Improvement Project and the Information Services operating budget.

Recommendation: Approve a re-licensing of the existing Oracle software, including twelve months of technical support, and authorize the City Manager to execute a contract with Oracle USA for the not-to-exceed amount of \$54,689.40, subject to the approval as to form of the City Attorney.

* 14. **Approve the Agreements with A & A Recycling and Dependable Waste Solutions for Debris Boxes (Staff Contact: Kathleen Phalen, 586-3345)**

Background: In accordance with Title V, Chapter 200 of the Milpitas Municipal Code, debris box haulers are required to enter into a standard three-year agreement with the City authorizing them to collect and dispose of non-organic solid waste and/or construction and demolition debris from the City of Milpitas. The agreement specifies that the haulers pay the City a compensatory fee equal to 12% of gross receipts collected or received. Staff reviewed two separate applications submitted by A & A Recycling and by Dependable Waste Solutions, and finds them both to be in accordance with the City's requirements.

Fiscal Impact: None.

Recommendations:

1. Approve an agreement with A & A Recycling for a debris box, subject to approval as to form by the City Attorney, and
2. Approve an agreement with Dependable Waste Solutions for a debris box, subject to approval as to form by the City Attorney.

* 15. **Approve Amendment No. 2 to the Agency Agreement with Santa Clara County for the Countywide AB939 Implementation Fee (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The Santa Clara County Integrated Waste Management Program collects landfill tipping fees (AB939 fees) from waste haulers on behalf of all jurisdictions in the County to fund solid waste reduction activities. The City entered into the original "Agency Agreement for County-Wide AB939 Implementation Fee" with the County on April 18, 2006 to establish AB939 fees to be added to landfill tipping fees for FY07, FY08 and FY09. The first amendment to the agreement, approved May 1, 2007, increased the FY08 fee by \$0.20, from \$3.35 to \$3.55 per collection ton. The County now recommends continuing the \$3.55 per ton fee through FY09 and asks all participating agencies to approve a second amendment with this fee before July 1,

2008. The County estimates it will collect about \$136,300 in fees for Milpitas in FY09. The \$0.20 per ton increment provides about \$13,300 of this estimated revenue.

Fiscal Impact: None.

Recommendation: Approve Amendment No. 2 to the Agency Agreement with Santa Clara County for the Countywide AB939 Implementation Fee, subject to approval as to form by the City Attorney.

- * **16. Approve Amendment No. 3 to the Agency Agreement with Santa Clara County for the Countywide Household Hazardous Waste Collection Program (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The Santa Clara County Integrated Waste Management Program collects tipping fees (AB939 fees) from landfills on behalf of all jurisdictions in the County to fund solid waste program activities. A portion of these fees is used to fund the Countywide Household Hazardous Waste (HHW) Collection Program. The County holds any excess AB939 fee revenue and places it into individual City Discretionary Funds to be used for additional services or to be refunded to cities at the end of the fiscal year.

Council approved the original “Agency Agreement for County-Wide Household Hazardous Waste Collection Program” with Santa Clara County on April 18, 2006. The apportioned funding for the program is based on an assumed participation level of 3% of the City’s households. Since FY07, Milpitas household participation has exceeded 3%, so for the past two years the City has amended the agreement to provide supplemental funding from its City Discretionary Fund.

This third amendment provides supplemental funding of \$7,000 from the City’s Discretionary Fund for the City’s FY09 HHW participation. The County asks that all agencies needing to provide supplemental funding approve similar amendments before July 1, 2008.

Fiscal Impact: None. The County will draw funding from the City’s Discretionary Fund, which is held by the County.

Recommendation: Approve Amendment No. 3 to the Agency Agreement with Santa Clara County for the Countywide Household Hazardous Waste Collection Program, subject to approval as to form by the City Attorney.

- * **17. Award Construction Contract to J&M, Inc. for the Sewer Deficiency and Structural Correction Program, Project No. 6073 (Staff Contact: Jeff Leung, 586-3326)**

Background: On April 1, 2008, the City Council approved the project plans and specifications and authorized the advertisement for construction bids. The project provides for the replacement of sewer mains due to structural deficiencies, differential settlement, and damaged discovered with the City's video inspection program. This phase of the project will provide for sewer line replacements at:

1. Louise Court
2. Moonlight Circle
3. Heath Street from Redwood Avenue to Marylinn Drive (portion is add alternate)

The Engineer’s Estimate was \$580,000 for the base bid. The project was advertised and sealed bid proposals were opened on April 23, 2008. Eight bid proposals were received ranging from \$374,530 to \$584,000. The lowest responsible bidder is J & M, Inc. with a bid of \$374,530. Due to the competitive pricing, staff recommends including the add alternate work on Heath Street in the amount of \$110,445.

Fiscal Impact: Sufficient funds are available in the project budget to award this project.

Recommendation: Award a Construction Contract to J&M, Inc. for Project No. 6073 in the amount of \$484,975, which includes the add alternate work, subject to approval of the City Attorney as to form.

* 18. **Approve Amendment No. 3 to the Contract with Valley Oil (Staff Contact: Chris Schroeder, 586-3162)**

Background: In February 2007, the City Council awarded a new bid to Valley Oil Company for a multi-year contract for the purchase and delivery of diesel and unleaded fuel to various locations around the City. Fuel is a volatile commodity; its price is based on the Oil Price Information Service (OPIS) Pad 4/5 Index plus a set margin for the contractor. This Amendment increases the contract amount from \$595,000 to a maximum compensation amount of \$715,000, an increase of \$120,000, which reflects the increase in wholesale fuel prices paid by the contractor, as well as projected City usage and is sufficient to cover fuel costs through the end of FY 2007-08.

Fiscal Impact: \$120,000. There are sufficient funds in the Public Works Department budget for this fuel purchase.

Recommendation: Approve Amendment No. 3 to the Valley Oil Company Contract for the increased amount of \$120,000 for a total not-to-exceed amount of \$715,000, subject to approval as to form by the City Attorney.

XXII. CLAIMS AND DEMANDS

* 19. **Approve Payment Requests to Preston Pipelines, Inc. and National Meter and Automation (Staff Contact: Chris Schroeder, 586-3162)**

Background: In accordance with Ordinance No. 23.10 of the Municipal Code, Purchasing has prepared the following requests over \$ 20,000 for approval:

National Meter and Automation - \$22,732.50

Purchase of (200) 5/8" X 3/4" and (100) 1 inch Badger water meters from National Meter and Automation, which is the sole manufacturer of Badger brand Water meters. The City Council previously approved Badger brand water meters to be the City's standard brand in May 2007.

Preston Pipelines, Inc. - \$16,163.92 – Repair Date 4/1/08

Emergency repair of the manifold assembly at Calaveras turnout.

Preston Pipelines, Inc. - \$19,608.30 – Repair Date 12/13/07

Emergency repair of the 16 inch steel water line on Sinclair frontage.

Preston Pipelines, Inc. - \$7,375.03 – Repair Date 1/17/08

Emergency repair of sewer lateral on Yosemite Dr.

Preston Pipelines, Inc. - \$3,146.03 – Repair Date 12/26/07

Emergency repair of 6-inch water distribution line on Mazey St.

Total Fiscal Impact: \$69,025.78. Funds are available from the Public Works Utilities Capital Outlay Budget for these purchases.

Recommendation: Approve payment of \$22,732.50 to National Meter and Automation for 300 Badger water meters, and \$46,293.28 to Preston Pipelines, Inc. for four emergency pipe repairs.

- * 20. **Approve the Standardization of Tazer International Stun Guns and Purchase of Eighteen New Units and Nineteen Audio/Video Add On Modules (Staff Contact: Chris Schroeder, 586-3161)**

Background: The City has purchased twenty-nine Tazer International stun guns over the last four years. The City has also invested in supplies, parts and training of staff to operate this equipment. Staff therefore recommends that the stun guns manufactured by Tazer International be the standardized brand for the City of Milpitas, as allowed under Municipal Code Section I-2-3.13, Standardization. The Police Department also wishes to purchase eighteen new units and nineteen audio/video recording add-on modules using the 2008 State COPS grant.

Fiscal Impact: \$24,077.07. Funds for this purchase are available from the 2008 State COPS grant.

Recommendation: Approve the standardization request and the purchase of eighteen new Tazer International stun guns and nineteen audio/video recording add-on modules from ProForce Law Enforcement for the not-to-exceed amount of \$24,077.85.

XXIII. ADJOURNMENT

**NEXT COUNCIL MEETING
BUDGET HEARING
TUESDAY, MAY 13, 2008 AT 6:00 P.M.**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 20, 2008 AT 7:00 P.M.**