



**MILPITAS CITY COUNCIL MEETING AGENDA  
SEPTEMBER 2, 2008**

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

**SUMMARY OF CONTENTS**

- I. CALL TO ORDER/ROLL CALL (6:30 p.m.)**
- II. ADJOURN TO CLOSED SESSION OF CITY COUNCIL**  
**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**  
(Pursuant to CA Government Code § 54956.9)  
Milpitas Mills Limited Partnership v. City of Milpitas, Milpitas Redevelopment Agency, et al.,  
Santa Clara Superior Court Case #108CV119458
- 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 (Vice Mayor Livengood)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – August 19, 2008**
- VII. SCHEDULE OF MEETINGS – Council Calendar for September 2008**
- VIII. PRESENTATION**  
**Special Presentation:** Receive and welcome the visiting delegation from the Philippines – Province of  
Nueva Vizcaya, led by Governor Luisa Lloren Cuaresma – Present Key to the City.
- 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 asterisk\*)**
- XIV. PUBLIC HEARINGS**
  - 1. Consideration of an Entertainment Event Permit for St. John the Baptist Catholic Church to hold Annual "Autumn Festival" on September 19 – 21, 2008 (Staff Contact: Mary Lavelle, 586-3001)**

2. **Adopt a Resolution Establishing a Transit Area Development Impact Fee, Introduce Ordinance No. 208.43 Excluding Development in the Transit Area from the Existing Sewer Treatment Plant Fee, and Introduce Ordinance No. 277 Clarifying the Existing Development Impact Fee Program (Staff Contacts: James Lindsay, 586-3273, and Bryan Otake, 586-3042)**

**XV. UNFINISHED BUSINESS**

3. **Review the Emergency Action for Response and Repair of the Emergency Water Intertie Crossing on I-880 between Dixon Landing Road and McCarthy Boulevard, and Continue the Emergency Action (Staff Contact: Greg Armendariz, 586-3317)**

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

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

**RA2. Roll Call**

**RA3. Approval of Minutes (August 19, 2008)**

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

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

**RA6. Receive City of Milpitas Unaudited Financial Status Report for the Fiscal Year Ended June 30, 2008 (Staff Contact: Emma Karlen, 586-3145)**

**\*RA7. Approve Fiscal Year 2007-08 Year End Budget Adjustments (Staff Contact: Emma Karlen, 586-3145)**

**\*RA8. Receive the FY2008-09 Final Budget and the 2008-2013 Final Capital Improvement Program (Staff Contact: Emma Karlen, 586-3145)**

**\*RA9. Approve Three Certificates of Completion for Certain Residential Units within Tracts No. 9697, No. 9698, and No. 9699 for KB Home, Project No. 3160 (Staff Contact: Robert Wang, 586-3327)**

**RA10. Agency Adjournment**

**XVII. REPORTS OF OFFICER AND COMMITTEE**

**City Council**

- \* **4. Consider Mayor's Recommendations for Appointments/Re-appointments to Milpitas Commissions (Contact: Mayor Esteves, 586-3029)**

**Public Art Committee**

- 5. Approve Public Art Program Reorganization (Staff Contact: Diana Whitecar, 586-3059)**

**XVIII. NEW BUSINESS**

6. **Approve FY 2006-07 Accounts Receivable Write-offs (Staff Contact: Emma Karlen, 586-3145)**

- \* **7. Approve Letter for Mayor's Signature Supporting Senate Bill 1625 for Expanded Bottle/Can Recycling Law (Staff Contact: Kathleen Phalen, 586-3345)**

**XIX. RESOLUTION**

- 8. Adopt a Resolution Delegating Authority to the Director of Public Works to Take Emergency Action and to Award Emergency Contracts Without Giving Notice Soliciting Competitive Bids; Receive a Report on an Emergency Water Main Repair at Abel Street, and Approve Payment of \$60,168.89 to Preston Pipeline (Staff Contact: Greg Armendariz, 586-3317)**

**XX. BIDS AND CONTRACTS**

- \* 9. Authorize the City Engineer to Execute a Contract Change Order with J&M Inc. for Sewer Deficiency and Structural Correction Program, Project No. 6073 (Staff Contact: Jeff Leung, 586-3326)**
- \* 10. Authorize the City Engineer to Execute Contract Change Order No. 6 with DeSilva Gates Construction for Street Resurfacing 2008, Project No. 4242 (Staff Contact: Jeff Leung, 586-3326)**
- \* 11. Approve and Authorize the City Manager to Execute Amendment No. 2 to the Agreement with Sugimura Finney Architects for Tasman Extension – Great Mall Parkway to I-880, Project No. 4133, and Approve a Budget Appropriation (Staff Contact: Greg Armendariz, 586-3317)**

**XXI. ADJOURNMENT**

**NEXT REGULAR MEETING  
TUESDAY, SEPTEMBER 16, 2008**

**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](mailto: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](http://www.ci.milpitas.ca.gov)*

Materials related to an item on this agenda submitted to the City Council/Redevelopment Agency after initial distribution of the agenda packet are available for public inspection at the City Clerk's Office/Information Desk at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, and at the Milpitas Library during normal business hours.

**BECOME A CITY COMMISSIONER!**

Currently, there are openings for the:

*Community Advisory Commission (Alternate)*

*Emergency Preparedness Commission (Industry Rep)*

*Mobile Home Park Rental Review Board*

*Recycling and Source Reduction Advisory Commission*

*Youth Advisory Commission (Alternate)*

Applications are available online at [www.ci.milpitas.ca.gov](http://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](mailto: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. **Consideration of an Entertainment Event Permit for St. John the Baptist Catholic Church to hold Annual “Autumn Festival” on September 19-21, 2008 (Staff Contact: Mary Lavelle, 586-3001)**

**Background:** St. John the Baptist Catholic Church submitted an application for an Entertainment Event Permit to hold its Fourth Annual Autumn Festival on church grounds at 279 South Main Street (between Abel and Main Streets) over the weekend, Friday through Sunday, September 19 to 21, 2008. Hours will be from 5:00 to 11:00 p.m. on Friday, 11:00 a.m. to 10:00 p.m. on Saturday, and 11:00 a.m. to 8:00 p.m. on Sunday. Additionally, St. John’s requested a waiver of the Fire Inspection fee (approximately \$624) and electrical permit fees (approximately \$145).

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

**Fiscal Impact:** Receipt of \$15.00 application fee.

**Recommendations:**

1. After holding a public hearing for testimony, move to close the public hearing.
  2. Move to approve the Entertainment Event Permit, including fee waivers, for St. John the Baptist Catholic Church’s “Autumn Festival” on September 19 to 21, 2008.
2. **Adopt a Resolution Establishing a Transit Area Development Impact Fee, Introduce Ordinance No. 208.43 Excluding Development in the Transit Area from the Existing Sewer Treatment Plant Fee, and Introduce Ordinance No. 277 Clarifying the Existing Development Impact Fee Program (Staff Contacts: James Lindsay, 586-3273, and Bryan Otake, 586-3042)**

**Background:** The Transit Area Specific Plan, adopted on June 3, 2008, includes a detailed description of public facilities required to serve the Transit Area. A Financing Plan for the Transit Area was conceptually approved by the Council on June 3, 2008, and contains specific fiscal policies, identified public facilities costs, and recommended financing mechanisms to pay for the needed public facilities. The Financing Plan established the need for the creation of a Transit Area Development Impact Fee as a means of assuring that new development within the Transit Area pays its proportionate share of the costs of needed public facilities. A resolution would establish the following fee schedule for all new development in the Transit Area:

- a) Residential – \$23,800 per unit
- b) Commercial – \$16.70 per square foot
- c) Office – \$25.00 per square foot
- d) Hotel – \$9,000 per room
- e) Other Uses – The fee amount for uses not specifically defined shall be determined by the Director of Finance. A focused Nexus study may be required of the applicant to make the determination.

The Financing Plan has evolved into the Transit Area Infrastructure Financing Technical Report which is now serving as the necessary technical analysis to establish the above fees pursuant to the Mitigation Fee Act (AB 1600). The Technical Report contains the Basic Infrastructure Program which lists the individual public improvements and their estimated costs. The fee program includes annual adjustments so that the design and construction costs of each infrastructure item would be automatically adjusted each fiscal year using the Engineering News

Record San Francisco Construction Cost Index. The land costs of each item would be adjusted using the fair market value for one acre of land in the City as determined by the City Council pursuant to the Subdivision Ordinance.

The Basic Infrastructure Program includes a sewer treatment plant capacity purchase of \$8 million for the Transit Area. Ordinance No. 208.43 would exclude development within the Transit Area from the existing sewer treatment plant fee since the Transit Area Development Impact Fee already accounts for the cost of the needed capacity. Ordinance No. 277 contains minor explanations and amendments to the existing development impact fee program in order to streamline and clarify the purpose and procedures to continue to ensure that any development fees collected comply with requirements of the Mitigation Fee Act.

**Fiscal Impact:** The new Transit Area Development Impact Fee will provide a funding source for the public facilities needed to serve new development in the Transit Area.

**Recommendation:** Staff recommends the City Council:

1. Close the public hearing after receiving testimony
2. Adopt a resolution establishing the fee schedule for the Transit Area Development Impact Fee.
3. Waive the first reading of Ordinance No. 277 beyond the title.
4. Introduce Ordinance No. 277.
5. Waive the first reading of Ordinance No. 208.43 beyond the title.
6. Introduce Ordinance No. 208.43.

## XV. UNFINISHED BUSINESS

### 3. **Review the Emergency Action for Response and Repair of the Emergency Water Intertie Crossing on I-880 between Dixon Landing Road and McCarthy Boulevard, and Continue the Emergency Action (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** On August 19, 2008, pursuant to Section 20168 of the Public Contract Code, the City Council adopted Resolution No. 7777/RA311 finding that emergency response and repair of the City's emergency water intertie pipeline crossing on I-880 between Dixon Landing Road and McCarthy Boulevard was needed. This water line is listed as an emergency facility in the City's Water Emergency Response Plan because it supplies fire flow pressure to the McCarthy Blvd. developments. Council authorized the Public Works Director to administer the emergency response and repair to restore this water line without a competitive bid solicitation in order to safeguard life, health, and property. For the emergency project to continue, the Public Contract Code requires that the City Council review this emergency action at each subsequent regularly scheduled meeting and determine by four-fifths vote that the emergency status should continue until such time as the action is terminated.

Subsequent to the August 19 Council meeting, the Public Works Director authorized Preston Pipeline to complete the repair of the failed water pipe by inserting a smaller 12-inch PVC pipe inside the existing 14-inch ductile iron pipe. Preston Pipeline will work from insertion and extraction pits on McCarthy Blvd. and an easement off of California Circle. The work is expected to take four weeks and will require traffic control on McCarthy Boulevard. It will not interrupt regular water service to the McCarthy Blvd. businesses. Preston Pipeline has ordered needed materials and will excavate on both sides of the freeway the first week of September. They will install the new pipe and complete reconnections by the third week of September. They will then backfill and repave in the fourth week to complete the project on September 26. The urgent need to repair this essential component of fire fighting capability in the McCarthy Boulevard area remains.

**Fiscal Impact:** None. The cost of the emergency response and repair will be paid from the Department of Public Works utilities maintenance budget, which has sufficient funds for this purpose.

**Recommendation:** Staff recommends that the City Council determine by a four-fifths vote to continue to find the existence of an emergency situation requiring emergency action for response and repair of the emergency water intertie crossing on I-880 between Dixon Landing Road and McCarthy Boulevard, pursuant to Section 22050 of the Public Contract Code.

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

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

**RA2. Roll Call**

**RA3. Approval of Minutes** (August 19, 2008)

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

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

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

### **Library, Project No. 8162**

S. J. Amoroso continues with finishes including installation of drywall, flooring, paint, electrical, and plumbing fixtures. Exterior site and flat work continues in front of the library along North Main Street. The furniture, casework, and signage subcontractors are in the production phase. The work is on schedule and budget.

### **Midtown East Parking Garage, Project No. 8161**

Shop drawings to be used for the fabrication of the railing for the historic fire truck were submitted and are in review. The subcontractor verified dimensions and the locations of railing imbeds within the garage floor on August 5. Staff anticipates fabrication and installation of the railings to commence within a month upon return of approved shop drawings.

### **North Main Streetscape, Project No. 8165**

The first phase of the streetscape project constructed by JJR Construction received initial acceptance on August 5, and the project is now within the one-year warranty period.

The second phase of the project was also awarded to Joseph Albanese Construction on August 5. Staff has issued the Notice of Award to the contractor and is awaiting return of the signed contract. The contractor has indicated the intention to commence work by September 2.

**Fiscal Impact:** None.

**Recommendation:** Receive Progress Report on the Library, Midtown East Parking Garage, and North Main Streetscape Projects No. 8161, No. 8162, and No. 8165.

**RA6. Receive City of Milpitas Unaudited Financial Status Report for the Fiscal Year Ended June 30, 2008 (Staff Contact: Emma Karlen, 586-3145)**

**Background:** Staff is in the process of preparing the Fiscal Year 2007-08 year end report for the City's financial audit. The unaudited financial report indicates that total General Fund revenue was below budget projection by approximately \$1.1 million. The biggest shortfall came from sales tax revenue which was below budget by \$2.5 million. Investment income and intergovernmental revenue were also below budget by \$334,000 and \$232,000 respectively. Investment income was less than projected due to lower interest yield on securities and lower cash flow for investment. Intergovernmental revenue was less than budget primarily due to lower motor vehicle in-lieu fees. The decline in these revenues was partially offset by revenue increase

in property tax revenue and transient occupancy tax revenue. Property tax revenue and transient occupancy tax revenue were above budget by about \$587,000 (3.6%) and \$872,000 (17%) respectively. Fire Permits and inspection fees also exceeded budget by \$255,000 due to fee increase approved by the City Council in FY 2008.

On the expenditure side, the report shows that City departments achieved savings in General Fund operating expenditures of 6.7% (approximately \$5 million), resulting in a net savings of \$3.9 million (\$1.1 million revenue shortfall offset by \$5 million in expenditure savings). However, even with a net savings of \$3.9 million, the General Fund still needs to rely on the RDA loan payment to close out the budget year. The original budget anticipated draw down of \$6 million RDA loan payment. Staff now recommends a draw down of \$2.1 million only due to achieved net savings of \$3.9 million. The undesignated General Fund reserve will remain unchanged at approximately \$15.2 million thus providing about 21% reserve for the FY 2009 budgeted expenditures.

**Fiscal Impact:** N/A

**Recommendation:** Receive Unaudited Financial Status Report for the Fiscal Year ended June 30, 2008.

**\*RA7. Approve Fiscal Year 2007-08 Year End Budget Adjustments (Staff Contact: Emma Karlen, 586-3145)**

**Background:** Finance staff is in the process of closing the City and Redevelopment Agency revenue and expenditures accounts for the Fiscal Year 2007-08. To maintain conformity with the City's budgeting policies and to prepare for the annual external audit, year-end budget adjustments are necessary to address items that were not known at the time the FY 2007-08 budget was developed.

All funds, department and project budgets have been reviewed to determine necessary adjustments. A summary of the various budget transfers and appropriations is included.

The overall fiscal impact of the budget adjustments is a net \$528,216 reduction to the fund balances of various funds, but there is no fiscal impact to the General Fund. There are sufficient balances in these various funds to support the additional budget appropriations or adjustments.

The detail for each budget adjustment item is described below.

**Budget requests that do not impact Fund Balances:**

1. Transfer \$8,100 budget appropriation from the Building and Safety Division to the Planning and Neighborhood Department for the administration of Housing and Community Development (HCD) grants. The FY 2007-08 budget allocated the budget to each department based on estimated staff time. There is sufficient funding allocated to the Building and Safety Division for this purpose that can be transferred to the Planning and Neighborhood Department without impacting the fund balance of the Housing and Community Development Fund.
2. Increase the budget appropriation of Capital Improvement Project No. 8157 Abel Street Midtown Improvements in the amount of \$17,390. The funding source is from developer contributions.
3. Increase the budget appropriation of Capital Improvement Project No. 4047 Dixon Landing Road/I-880 Interchange in the amount of \$18,448. The funding source is from developer contributions.

4. Transfer \$75,000 from the Traffic Impact Fee Fund to Capital Improvement Project No. 8165 Midtown EIR Amendment. The Traffic impact fee was paid by the developer and needs to be appropriated to this project.
5. Re-open Capital Improvement Project No. 8187 Carlo Street and Calaveras Boulevard Ramp Conversion Study for additional work. This project was scheduled to close in June 2008.

Additional budget appropriations for operating expenditures and capital improvement projects:

1. Increase the budget appropriation of the Planning and Neighborhood Services Department in the amount of \$514,000 due to additional Housing Rehab loans approved and disbursed in FY 2007-08. Funding is available from the Housing and Community Development Loan Fund, which is fully reimbursable by Community Development Block Grant (CDBG).
2. Increase the budget appropriation of the Non-Departmental budget by \$51,414 for technology equipment purchase. The City received a \$47,414 grant from Association of Bay Area Governments (ABAG) for purchase of new mobile computer equipment for public safety vehicles. The remaining \$4,000 for the purchase will come from the Technology Equipment Replacement Fund.
3. Increase the budget appropriation of Capital Improvement Project No. 4234, Minor Traffic Projects, in the amount of \$10,216. The funding source for the appropriation is from the Street Operating Fund.

**Fiscal Impact:** The overall fiscal impact of these budget adjustments will be \$528,216 net reduction to the fund balances of various funds. There are sufficient balances in these funds to cover the additional appropriations. A summary of the various budget transfers and appropriations is included.

**Recommendation:** Approve the Fiscal Year 2007-08 year-end budget appropriations and transfers as itemized in the budget change form which is included in the Agency/Council agenda packet.

**\*RA8. Receive the FY2008-09 Final Budget and the 2008-2013 Final Capital Improvement Program (Staff Contact: Emma Karlen, 586-3145)**

**Background:** Transmitted herewith are the FY2008-09 Final Budget and the 2008-2013 Final Capital Improvement Program incorporating the changes approved by the City Council/Agency during the May 13, 2008 budget hearing. The budget appropriations total \$151,287,507, which includes \$26,231,000 for Capital Projects in the first year of the five-year plan that was adopted by the City Council on June 3, 2008. Submitted with the documents is the out-of-state travel schedule showing the travel destination and purpose.

**Fiscal Impact:** None. Budget approved on June 3, 2008.

**Recommendation:** Receive the Final Budget for the FY2008-09 and the 2008-2013 Capital Improvement Program.

**\*RA9. Approve Three Certificates of Completion for Certain Residential Units within Tracts No. 9697, No. 9698, 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 subject real property from the Agency to KB Home, requires that the Redevelopment Agency issue a Certificate of Completion upon the completion of the infrastructure improvements in accordance with the Disposition and Development Agreement

(DDA). Certain improvements have been satisfactorily completed to serve residential units as shown on the attached Certificates of Completion, and therefore certificate of completion may be granted to those housing units.

**Fiscal Impact:** None

**Recommendation:** Authorize the Agency Executive Director to execute three 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 Agency Counsel as to form.

**RA10. Agency Adjournment**

**XVII. REPORTS OF OFFICER AND COMMITTEE**

**City Council**

**\* 4. Consider Mayor's Recommendations for Appointments/Re-appointments to Milpitas Commissions (Contact: Mayor Esteves, 586-3029)**

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

**Community Advisory Commission:**

Appoint Viramrinder Meharu (current Alternate No. 1) as a regular member to a term that expires in January 2012.

Appoint Rajeev Madnawat (current Alternate No. 3) as a regular member to a term that expires in January 2012.

Appoint Nika Ma Chen (current Alternate No. 4) as Alternate No. 1 to a term that expires in January 2009.

Appoint Phong Nguyen as Alternate No. 3 to a term that expires in January 2010.

**Economic Development Commission:**

Appoint Minh Nguyen (current Alternate No. 1) as the Commercial Real Estate Representative to a term that expires in April 2011.

Appoint Zeya Mohsin (current Alternate No. 2) as Alternate No. 1 to a term that expires in April 2009.

Appoint Chandru Bhambhra as Alternate No. 2 to a term that expires in April 2010.

**Senior Advisory Commission:**

Appoint Bernice Wrinkle (current Alternate No. 1) as a regular member to a term that expires in December 2009.

Appoint Estrella Gilana (current Alternate No. 2) as Alternate No. 1 to a term that expires in December 2009.

Appoint Karen Adams as Alternate No. 2 to a term that expires in December 2008.

**Sister Cities Commission:**

Re-appoint Dana Arbaugh as Alternate No.1 to a term that expires in September 2010.

**Telecommunications Commission:**

Re-appoint Idrees Munir a term that expires in January 2010.

**Youth Advisory Commission:**

Re-appoint Richard Albana to a term that expires in September 2009.

Re-appoint Sareen Sandhu to a term that expires in September 2009.

Appoint Ryan Ng (current Alternate No. 1) as a regular member to a term that expires in September 2009.

Appoint Brian Leon (current Alternate No. 2) as a regular member to a term that expires in September 2009.

Appoint Lovin Cortez (current Alternate No. 3) as a regular member to a term that expires in September 2009.

Appoint Anthony Vu to a term that expires in September 2009.

Appoint Dilpreet Khalsa to a term that expires in September 2009.

Appoint Jennifer Shen to a term that expires in September 2009.

Appoint Patricia Do to a term that expires in September 2009.

Appoint Audrey Frey as Alternate No. 1 to a term that expires in September 2009.

Appoint Samuel Lai as Alternate No. 2 to a term that expires in September 2009.

**Recommendation:** Consider Mayor's recommendations for appointments/re-appointments to Commissions and vote on appointments.

### **Public Art Committee**

#### **5. Approve Public Art Program Reorganization (Staff Contact: Diana Whitecar, 586-3059)**

**Background:** At the City Council Budget Hearing on May 13, Councilmember Gomez requested information, with City Council concurrence, on the two City arts groups and recommendations for combining them.

At the Public Art Committee meeting on June 16, staff recommended that the Public Art Committee be disbanded, retaining the Arts Commission in its existing form and addressing public art through project oriented committees staffed by project staff and representatives of the project specific Advisory Commission. Public Art Committee members expressed mixed concerns, but recommended, among other things, that if the public art process needed to change it should not be staff driven. Staff revised its recommendation to utilize the Milpitas Alliance for the Arts (MAFTA) for the public outreach, but this did not ease concerns from Committee members. At the suggestion of the City Manager, staff met again with the Committee at their August 18 meeting to discuss Public Art Committee status.

Prior to the meeting, each Committee member was interviewed to assess their individual interests and concerns about the public art program, staffing, and any other issue associated with the public art program. In summary, most all Committee members wished to retain the Public Art Committee if only to provide stewardship for the active continuation of the City's Public Art Program. While some members had very strong positions as to specific roles of the Arts Commission and other Council Advisory and community groups involved in the public art process, the majority desired to find a way to continue a Public Art Committee.

The August 18 meeting of the Public Art Committee was very positive and every member participated actively. Led by Chair Bill Foulk, a series of straw votes were taken to consider Public Art Committee reorganization. The votes included reconstituting the Public Art Committee to reduce its size, to determine membership voting status, and whether to include members of the particular stakeholder Council Advisory Commission where art was being considered.

The final vote of the Public Art Committee was to recommend to the City Council that the Public Art Committee be reconstituted to a nine member Committee, appointed by the Mayor and City Council and responsible to the City Council. The newly formed Public Art Committee would include three voting members from the Arts Commission, three voting members from Milpitas Alliance for the Arts (MAFTA), one community-at-large member from the local art community, and two voting members from each Advisory Commission for a specific project (such as the Senior Center project).

If the City Council approves this recommendation, staff recommends that the Council also direct the Arts Commission to place on its September meeting agenda, appointment recommendations to the new Public Art Committee, to issue an invitation to the Milpitas Alliance for the Arts (MAFTA) to recommend three individuals for appointment consideration, and to advertise the community-at-large artist appointment through the City Clerk's office.

Once the City Council approves the new Committee members, a meeting will be held to recommend revisions to the Public Art Policy and Manual to reflect these changes. Public Art Committee members will be in attendance at the Council meeting when this item is discussed.

**Fiscal Impact:** There is no fiscal impact created by these recommendations.

**Recommendation:** Approve the recommendations of the Public Art Committee to reduce the size of the Committee as described above, direct the Arts Commission to recommend three members to sit on the Public Art Committee, request the Milpitas Alliance for the Arts (MAFTA) recommend three member applicants, and advertise for one community-at-large member.

**XVIII. NEW BUSINESS**

**6. Approve FY 2006-07 Accounts Receivable Write-offs (Staff Contact: Emma Karlen, 586-3145)**

**Background:** Attached in your packet is a list of accounts receivable from FY 2006-07 that have remained unpaid. Staff requests that the City Council approve the write-offs. When invoices were first sent to customers, normal accounting procedures required us to record accounts receivable and revenues as the expectation was that the City would be able to collect within a short period of time. However, when the accounts receivable have been outstanding for more than a year, and after the Finance Department has exhausted all the currently available collection methods, it would be prudent to write off these accounts so as not to overstate the City’s assets.

The attached list identifies each account by category, payee name and amount. It should be noted that the City’s collection rate is high by industry standards. The proposed write-offs amount of \$92,867.58 is approximately 0.31% of all the amounts invoiced during the same period. The following table shows the write-off rate by invoice category:

	Invoiced amounts	Proposed write-off amounts	% of invoiced amt
Utility accounts & related svcs	\$ 24,027,266	\$ 54,194	0.23%
Animal Violations	15,300	2,700	17.65%
NBO Violations	14,300	6,500	45.45%
Fire permits	184,288	1,005	0.55%
False Alarms	51,175	1,600	3.13%
DUI cost recoveries	14,637	6,120	41.81%
Treatment Plant fees	398,378	6,703	1.68%
Private development jobs	1,421,371	8,201	0.58%
Misc. other	3,846,769	701	0.02%
Bounced checks		5,144	
<b>Total</b>	<b>\$ 29,973,484</b>	<b>\$ 92,868</b>	<b>0.31%</b>

There are several categories of accounts for which the write-off amounts are high. They are animal violations, Neighborhood Beautification Ordinance (NBO) violations and Driving Under the Influence (DUI) cost recoveries. The collection of DUI cost recoveries was transferred to the District Attorney’s office in FY2007-08 as they can administer this function more effectively. As for the animal violations and NBO violations, the City’s current Municipal Code allows the City to take action to abate a public nuisance and recover its costs via the administrative hearing and lien procedures of the Neighborhood Beautification Ordinance. However, such procedures are available only when such nuisances are related to the condition of properties or structures. The City could consider amending the Municipal Code to expand what delinquent abatement costs, fines or charges could be collected via the property tax roll. Collecting via the tax roll is more advantageous than the lien procedures. Under the lien procedures, the City can recover its charges only when the property owner sells or refinances the property whereas property tax must be paid annually.

**Fiscal Impact:** Reduction of \$92,867.58 to various City fund balances.

**Recommendations:**

1. Approve the FY 2006-07 Accounts Receivable Write-offs.
2. Provide direction to staff to amend the City's Municipal Code to enable collection of unpaid public nuisance charges via the property tax roll.

\* 7. **Approve Letter for Mayor's Signature Supporting Senate Bill 1625 for Expanded Bottle/Can Recycling Law (Staff Contact: Kathleen Phalen, 586-3345)**

**Background:** California's Bottle and Can Recycling Law requires that regulated containers be assigned a refund value that can be redeemed by consumers when they recycle the containers. Currently, refundable containers are limited to those used for beer and malt beverages, soft drinks, water, sport drinks and other specified beverages sold in glass, plastic and aluminum containers. These redeemable containers represent only half of all the plastic bottles produced.

The remaining non-refundable plastic containers are discarded as litter or disposed as landfill waste. Plastic bottles are a major source of trash along creek banks and beaches. Expanding the redemption program to include all plastic bottles will significantly reduce the amount of plastic litter pollution. Plastic waste is especially hazardous in the aquatic environment because the non-biodegradable material is mistakenly ingested by birds and other marine animals.

Senator Ellen Corbett introduced SB 1625, *Plastic Bottle Recycling and Marine Debris Pollution Prevention*, which will make all plastic bottles redeemable, including food product bottles, cosmetic product bottles and cleaning product bottles. It will also end the exclusion given to certain paperboard and aseptic containers. A copy of the support letter is included in the Council packet.

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

**Recommendation:** Approve letter for Mayor's signature supporting Senate Bill 1625, expanding California's Bottle/Can Recycling Law.

**XIX. RESOLUTION**

8. **Adopt a Resolution Delegating Authority to the Director of Public Works to Take Emergency Action and to Award Emergency Contracts Without Giving Notice Soliciting Competitive Bids; Receive a Report on an Emergency Water Main Repair at Abel Street, and Approve Payment of \$60,168.89 to Preston Pipeline (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** State law allows the City Council to delegate authority to City staff to award emergency contracts for the repair or replacement of public facilities without seeking competitive bids. Staff recommends that Council adopt a resolution to delegate this authority to the Public Works Director, as this position is charged with the responsibility of restoring damaged public facilities, such as utilities and streets, to safeguard life, health, and property. Adoption of such a resolution would require an affirmative vote by four-fifths of the Council.

Examples of events that could require the Public Works Director's emergency response include earthquakes, utility failure, flooding, and landslide. Whenever the Public Works Director takes emergency action, State law requires that, as the authorized city official, he or she make after the fact reports to the City Council as to the reasons why the emergency action was necessary and why the emergency would not permit a delay resulting from a competitive solicitation for bids. Furthermore, pursuant to City of Milpitas restrictions, payments over \$20,000 would require City Council approval.

If the Council were to approve this resolution, the Public Works Director, under the authority granted therein, requests reporting emergency work and authorization for the payment of a \$60,168.89 invoice to Preston Pipeline for the emergency repair of a water main break at Abel Street. On July 20, 2008 at approximately 7:30 p.m., the Department of Public Works (DPW) responded to a call concerning flooding on Abel Street near Weller Lane. A 12-inch diameter asbestos cement water pipe had sheared apart, releasing water and approximately 10 cubic yards of overlying soil and sediments into the street. Twelve employees worked through the night to remove the sediment and clean up the street, gutters and catch basins. The Department of Public Works (DPW) called Preston Pipeline who immediately mobilized to excavate and repair the failed pipe by installing a new PVC pipe and pipe joint couplings. Preston completed this work and disinfected and flushed the line to return it to service by 3:30 a.m. The flooding waters had lifted and undermined the surrounding street pavement, a concrete sidewalk, and a driveway approach. Preston Pipeline restored these facilities by saw-cutting and removing the damaged surfaces, placing and compacting new soil and aggregate base, repaving the street, and placing new concrete for the sidewalk and driveway approach.

**Fiscal Impact:** There is no fiscal impact from these actions. The delegation of authority to the Public Works Director is revenue neutral. Sufficient funds are available in the Department of Public Works utility maintenance budget to pay Preston Pipeline's invoice of \$60,168.89 for the Abel Street water main repair.

**Recommendations:** Staff recommends that Council adopt a Resolution (by a four-fifths vote) delegating to the Public Works Director the authority to make emergency repairs or replacements to public facilities without soliciting competitive bids. Staff further seeks authorization to pay \$60,168.89 to Preston Pipeline for an emergency repair.

## **XX. BIDS AND CONTRACTS**

- \* **9. Authorize the City Engineer to Execute a Contract Change Order with J&M Inc. for Sewer Deficiency and Structural Correction Program, Project No. 6073 (Staff Contact: Jeff Leung, 586-3326)**

**Background:** The City Council, at its May 6, 2008 meeting, awarded this project to J&M, Inc. to replace damaged sewer mains. 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 Elm Avenue

Final completion of the project is anticipated in September 2008. Unforeseen site conditions have required the use of larger rocks to stabilize the trench bottom to lay the new sewer main. It is estimated that the additional costs will be \$50,000.

**Fiscal Impact:** None. There are sufficient funds in the project budget.

**Recommendation:** Authorize the City Engineer to execute a contract change order with J&M, Inc., in the not-to-exceed amount of \$50,000.

- \* **10. Authorize the City Engineer to Execute Contract Change Order No. 6 with DeSilva Gates Construction for Street Resurfacing 2008, Project No. 4242 (Staff Contact: Jeff Leung, 586-3326)**

**Background:** At its April 1, 2008 meeting, the City Council approved award of this project to DeSilva Gates Construction for street resurfacing work. Major construction of the project is complete and punch list work is underway. Final completion of the project is anticipated in September 2008. Street reconstruction and roadway marking installations were made on the following streets:

- Milpitas Boulevard between Tramway Drive and Hanson Court
- Landess Avenue between Park Victoria Drive and Clear Lake Avenue
- Smithwood Street between Marylinn Drive and Rudyard Drive
- Yosemite Drive between Sinclair Frontage Road and Vista Way
- Arizona Avenue between Jacklin Road and north of Oregon Way
- Temple Drive between Calaveras Boulevard and Canton
- Gadsden Drive between Calaveras Boulevard and Canton Drive
- Dempsey Road between Yosemite Drive and Chewpon Avenue
- Hammond Way between 400-ft north of Curtis Avenue and end-of-street
- Watson Court
- Pecten Court
- Silvera Street
- Louise Court

Repair of base failures on the following streets also occurred:

- McCarthy Boulevard between State Route 237 and the northerly City limits
- Ranch Drive

During the last year, as asphalt pricing has fluctuated, Caltrans developed standard specifications with provisions to adjust unit pricing of asphalt based on Bay Area price index. This specification was included in the contract in order to assure competitive bidding. Asphalt pricing continued to increase from bid date to placement date of asphalt and thus a contract increase is required. Staff recommends a contract change order not to exceed \$140,000.

**Fiscal Impact:** None. There are sufficient funds in the project budget.

**Recommendation:** Authorize the City Engineer to execute contract change order No. 6 for Street Resurfacing 2008, Project No. 4242, with DeSilva Gates Construction in the not-to- exceed amount of \$140,000.

- \* 11. **Approve and Authorize the City Manager to Execute Amendment No. 2 to the Agreement with Sugimura Finney Architects for Tasman Extension – Great Mall Parkway to I-880, Project No. 4133, and Approve a Budget Appropriation (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** The Valley Transportation Agency (VTA) has notified Milpitas that the State Transportation Improvement Program (STIP) funding for Tasman Extension – Great Mall Parkway to I-880, Project No. 4133, has been accelerated and moved up the funding list by at least 3 years. With Council’s recent approval of the Transit Area Specific Plan (TASP), the design and completion of these landscape improvements are very timely considering these improvements also serve as a gateway into the TASP.

The State Transportation Improvement Program (STIP) grant will provide Milpitas with \$1.8 million in order to design and construct the Tasman Extension – Great Mall Parkway to I-880 improvements by the end of 2009.

The Council had previously directed staff to prioritize Hwy 237/I880 Interchange landscape project, over Tasman Extension – Great Mall Parkway to I-880 project, in order to leverage the partial funding available on each of these two major gateway landscape projects. Staff has been working with VTA and Caltrans to advance the design of the Hwy 237/I880 interchange design, and resolve the complexities introduced by the of the I-880 High Occupancy Vehicle (HOV) widening project, recently approved by voters through Proposition 1B. Meanwhile, the Tasman Extension – Great Mall Parkway to I-880 project design is at approximately 75% complete at this time. With the newly available State Transportation Improvement Program (STIP) grant, it is now recommended that the Tasman Extension – Great Mall Parkway to I-880 plans be completed for bidding by Spring 2009 and construction by Summer 2009.

On February 19, 2002, the City Council awarded a consultant contract to Sugimura & Associates, now Sugimura Finney Architects, in the amount of \$71,900 for design services for Tasman Extension – Great Mall Parkway to I-880, from I-880 to south of the City limits.

The contract with Sugimura Finney Architects was amended on November 4, 2003, in the amount of \$25,000, to address poor soils and drainage problems in the medians. The previously prepared plans and specifications now require some adjustments for completion to ready them for advertising and bidding. This will include some additional areas of landscaping of medians south of Montague Expressway and incorporate approximately 4000 lineal feet of a new recycle water main. This new recycled water main will serve both the new median landscaping and the development projects of the Transit Area Specific Plan.

Staff recommends approval of a new agreement amendment No. 2 to the agreement with Sugimura Finney Architects to include additional areas of landscaping with recycle water main connections, and to complete and update the plans for bidding. Staff has negotiated a scope of work and fee not-to-exceed \$375,708, which is considered reasonable.

**Fiscal Impact:** A budget appropriation in the amount of \$260,000, from the Recycled Water Fund, to the Tasman Extension – Great Mall Parkway to I-880, Project No. 4133, is required.

**Recommendations:**

1. Authorize the City Manager to execute Amendment No. 2 to the Agreement with Sugimura Finney Architects for the Tasman Extension – Great Mall Parkway to I-880, Project No. 4133, in the amount not-to-exceed \$375,708, subject to approval as to form by the City Attorney.
2. Approve Budget Appropriation, in the amount of \$260,000, from the Recycled Water Fund to the Tasman Extension – Great Mall Parkway to I-880, Project No. 4133.

**XXI. ADJOURNMENT**

**NEXT REGULAR MEETING  
TUESDAY, SEPTEMBER 16, 2008**