



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

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**7:00 P.M.  
455 E. CALAVERAS BOULEVARD  
MILPITAS, CA**

**SWEARING-IN OF NEWLY ELECTED OFFICIALS**

- I. CALL TO ORDER/ROLL CALL**
  - II. REPORT OF ELECTION RESULTS AND ADOPT CERTIFYING RESOLUTION**
  - III. SWEARING IN OF MAYOR BOB LIVENGOOD**  
  
by Honorable Adrienne J. Tissier – San Mateo County Supervisor, 5<sup>th</sup> District
  - IV. PRESENTATION OF COLORS BY HONOR GUARD, PLEDGE OF ALLEGIANCE and NATIONAL ANTHEM**
  - V. SWEARING IN OF NEW COUNCILMEMBERS** by City Clerk  
City Councilmember Debbie Giordano, followed by remarks  
City Councilmember Pete McHugh, followed by remarks
  - VI. REMARKS FROM MAYOR LIVENGOOD**
  - VII. BREAK for reception/refreshments in City Hall Lobby Rotunda**
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**BUSINESS MEETING OF THE CITY COUNCIL**

- VIII. ROLL CALL** - by City Clerk
- IX. APPROVAL OF COUNCIL MEETING MINUTES** – November 18, 2008
- X. SCHEDULE OF MEETINGS** – Council Calendar for December 2008
- XI. 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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- XII. ANNOUNCEMENTS**
- XIII. ANNOUNCEMENT OF CONFLICT OF INTEREST**

#### **XIV. PRESENTATIONS**

- Presentation to outgoing Mayor Jose Esteves
- Presentation to outgoing School Board Member Barbara Santos
- Presentation to outgoing School Board Member Carmen Montano

#### **XV. ELECTION OF VICE MAYOR**

**Recommendation to Appoint Councilmember McHugh as the Vice Mayor (Contact: Mayor Livengood, 586-3000)**

#### **XVI. APPROVAL OF AGENDA**

#### **XVII. CONSENT CALENDAR (Items with asterisk\*)**

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Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a member of the City Council, member of the audience, or staff requests the Council to remove an item from or be added to the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

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- \* **1. Waive Second Reading and Adopt Purchasing Ordinance No. 23.11, Title I, Chapter 2 (Purchasing) of the Milpitas Municipal Code (Staff Contact: Michael Ogaz, 586-3040)**
- \* **2. Adopt a Resolution Approving Sobriety Checkpoint Mini-Grant Program Agreement with the Regents of the University of California Berkeley School of Public Health Traffic Safety Center and California Office of Traffic Safety (Staff Contact: Henry Kwong, 586-2419)**
- \* **3. Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for January 20, 2009 to Hear Objections (Staff Contact: Albert Zamora, 586-3371)**
- \* **4. Adopt a Resolution Approving the Purchase and Installation of Three Smart Pump Control Systems from Knorr Systems, Inc. (Staff Contact: Chris Schroeder, 586-3161)**
- \* **5. Authorize the City Manager to Execute an Agreement with Silicon Valley Unwired for the Operation of the Milpitas WiFi Network (Staff Contact: Bill Marion, 586-2701)**

#### **XVIII. ADJOURNMENT**

**NEXT REGULAR MEETING  
TUESDAY, DECEMBER 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

*The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) by selecting Milpitas Municipal Code link.*

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!**

Current openings are: *Arts Commission (alternate), Public Art Committee (at large) and Mobile Home Park Rental Review Board*

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

### II. REPORT OF ELECTION RESULTS AND ADOPT CERTIFYING RESOLUTION

#### **Report of Municipal Election Results of November 4, 2008 and Resolution to Certify Final Results (Staff Contact: Mary Lavelle, 586-3001)**

**Background:** A general municipal election was held in the City of Milpitas on Tuesday, November 4, 2008 for the offices of Mayor and two Members of the City Council. Election night results (semi-official) indicated the winners were Robert Livengood for Mayor, and Pete McHugh and Debbie Giordano for City Council. Certified final results, however, are not available from the Santa Clara County Registrar of Voters until exactly 28 days following the election date - on Tuesday, December 2, 2008.

The City Council is asked to confirm the Official Canvass of Returns of the November 4, 2008 Municipal Election by Resolution (draft enclosed in the agenda packet). When the final election results are received from the County Registrar on December 2, the resolution will be updated with that information for adoption at the Council meeting.

**Recommendations:**

1. Receive from the City Clerk an oral report of election results and turnout.
2. Adopt a Resolution Confirming the Official Canvass of Returns and Declaring the Results of the General Municipal Election held on November 4, 2008.

### XV. ELECTION OF VICE MAYOR

#### **Recommendation to Appoint Councilmember McHugh as the Vice Mayor (Contact: Mayor Livengood, 586-3000)**

**Background:** Every two years following the municipal election, the Milpitas City Council votes to select one member to serve as the Vice Mayor for a two-year term, upon recommendation from the Mayor. Mayor Livengood recommends Councilmember Pete McHugh serve in the two-year term as Vice Mayor of the City of Milpitas.

**Recommendation:** move to appoint Councilmember McHugh to the position of Vice Mayor for the two year term, from 2008 through 2010.

### XVII. CONSENT CALENDAR (Items with asterisk\*)

- \* 1. **Waive Second Reading and Adopt Purchasing Ordinance No. 23.11, Title I, Chapter 2 (Purchasing) of the Milpitas Municipal Code (Staff Contact: Michael Ogaz, 586-3040)**

**Background:** On November 18, 2008, the City Council introduced this ordinance, which makes a minor clarification to the existing Purchasing Ordinance (Milpitas Municipal Code Title I, Chapter 2) and is necessary to confirm City staff's current practice. The existing ordinance requires that all purchases for goods or services over \$20,000 or more comply with formal bidding procedures, including award to the lowest responsive and responsible bidder, noted in Milpitas Municipal Code I-2.03. The Purchasing Ordinance also authorizes the Purchasing Agent to use Requests For Sealed Proposals (RFP) where the competitive bidding is not practical or advantageous because of several considerations (Milpitas Municipal Code I-2.06). The RFP process allows the City to solicit competitive bids from suppliers for goods and services using more flexible criteria than does the formal bid process. Use of the RFP process would not apply to Public Works Construction where formal bid process is required under Public Contracts Code.

The Council award process contains several exceptions to the formal bidding procedures, but does not include the RFP process as an exception. Consequently, the Municipal Code could be

interpreted to restrict the City's use of the RFP process for purchases of less than \$20,000. This possible construction severely limits staff's ability to procure the goods and services that will best suit the City's needs.

The proposed amendment will include the RFP process as an exception to the formal bid requirements for the purchases of goods or services over \$20,000. This minor amendment would confirm and formalize the City's existing practice.

**Fiscal Impact:** None

**Recommendations:**

1. Waive the second reading of Ordinance No. 23.11
  2. Adopt Ordinance No. 23.11 amending Title I, Chapter 2 (Purchasing) of the Milpitas Municipal Code.
- \* 2. **Adopt a Resolution Approving Sobriety Checkpoint Mini-Grant Program Agreement with the Regents of the University of California Berkeley School of Public Health Traffic Safety Center and California Office of Traffic Safety (Staff Contact: Henry Kwong, 586-2419)**

**Background:** The Regents of the University of California Berkeley, School of Public Health, Traffic Safety Center and the California Office of Traffic Safety are administering the 2009 Sobriety Checkpoint Mini-Grant program that offers mini-grant funds to reimburse law enforcement agencies for overtime expenditures specifically directed towards sobriety checkpoints. The goal of the statewide sobriety checkpoint program is to reduce the number of people killed in alcohol-related crashes. The City of Milpitas Police Department has been approved for a mini-grant of \$17,782.40 to conduct up to two sobriety checkpoints in Milpitas between October 1, 2008 and September 8, 2009.

**Fiscal Impact:** None. Overtime expenditures for the operation of each sobriety checkpoint will be reimbursed by the mini-grant.

**Recommendations:**

1. Adopt a Resolution approving agreement with the Regents of the University of CA Berkeley School of Public Health Traffic Safety Center and the CA Office of Traffic Safety.
  2. Authorize Police Chief to execute the agreement, subject to the approval as to form by the City Attorney.
- \* 3. **Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for January 20, 2009 to Hear Objections (Staff Contact: Albert Zamora, 586-3371)**

**Background:** The County of Santa Clara Department of Agriculture and Environmental Management notified the City of Milpitas that it is commencing its Hazardous Vegetation Abatement (weed abatement) program for the forthcoming 2009 season. The County has requested the City adopt a resolution declaring weeds to be a public nuisance and to schedule a public hearing to hear objections to the proposed destruction and/or removal of weeds. A resolution, declaring weeds on specific properties to be a public nuisance, is adopted by the Council each year and gives affected property owners an opportunity to appear before the Council. The public hearing will be scheduled for January 20, 2009.

**Recommendations:**

1. Adopt a resolution declaring weeds on specific properties to be a public nuisance.
  2. Set the public hearing date and direct City Clerk to advertise the Notice of Public Hearing on Tuesday, January 20, 2009.
- \* 4. **Adopt a Resolution Approving the Purchase and Installation of Three Smart Pump Control Systems from Knorr Systems, Inc. (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** As the final step in the City’s energy efficiency retrofit program, staff recommends the addition of three Smart Pump Control Systems, from Knorr Systems, Inc., one for each of the pools at the Sports Center. The Smart Pump Control System is a fully self-contained closed locked system. The system is the only one that uses patent pending “Flow Control” technology with constant digital feedback flow rate monitoring to maintain a given flow rate in the pool. By adding the control systems to the existing pool pumps we will be able to reduce the flow rates during non-peak use and unoccupied hours while still maintaining water quality and clarity. The energy savings associated with the addition of the new equipment is estimated to be 71,887 kilowatt hours or approximately \$10,064 per year. As a result, the project will have a payback of 3.6 years after the estimated \$5,750 rebates are applied.

Smart Pump Control Systems is the only digital feedback flow rate monitoring system currently approved by the Santa Clara County Environmental Health Department for use in public swimming pools. The Smart Pump Control System is manufactured by H2O Technologies, whose sole distributor in the US is Knorr Systems, Inc. After conducting a good faith review of the available sources, the City’s Purchasing Agent has determined that Knorr System is the only source for a digital feedback flow rate monitoring system that complies with the applicable health regulations. Therefore, staff is requesting that the purchase be authorized as a sole source procurement pursuant to Municipal Code section I-2-3.09, Sole Source Procurement.

**Fiscal Impact:** Total cost is \$42,241. There are sufficient funds in Capital Improvement Project 8182, City Building Improvements, to provide for this expenditure.

**Recommendation:** Adopt a resolution authorizing the purchase of three Smart Pump Control Systems as a sole source procurement and the authorizing the City Manager to execute a contract for the installation of three Smart Pump Control Systems from Knorr Systems, Inc., not-to-exceed \$42,241.00 and subject to approval as to form by the City Attorney.

\* 5. **Authorize the City Manager to Execute an Agreement with Silicon Valley Unwired for the Operation of the Milpitas WiFi Network (Staff Contact: Bill Marion, 586-2701)**

**Background:** In August 2008, Council directed staff to begin negotiations with Silicon Valley Unwired (SVU) to draft an agreement in which SVU would operate the City WiFi (wireless fidelity) network. SVU is a private non-profit corporation and would provide free Internet service to Milpitas residents, businesses, visitors, and city employees. After three years, the City will have the option to assign ownership of the network equipment to SVU, subject to the requirement to continue providing free internet service. Upon acceptance of said assignment, SVU would be responsible for the WiFi network’s maintenance and ultimate replacement. Under the agreement, a steering committee would be established to monitor service levels and deal with customer service issues. The agreement also permits the City Manager to authorize the placement of additional wireless equipment on City facilities to expand or upgrade the WiFi network. The agreement is terminable at will by either party upon 60-days notice. Staff drafted the agreement and it has been reviewed and approved by the City Attorney. The major points of the agreement haven been presented to the Telecommunications Commission for approval.

**Fiscal Impact:** None.

**Recommendation:** Authorize the City Manager to execute an agreement with Silicon Valley Unwired for the operation of the Milpitas WiFi network.

**XVIII. ADJOURNMENT**

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