



**MILPITAS CITY COUNCIL MEETING AGENDA  
FEBRUARY 17, 2009**

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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 by the Mayor (6:30 p.m.)**
- II. ROLL CALL by the City Clerk**
- III. 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 Groups: Milpitas Professional and Technical Group (ProTech), LIUNA (Mid Management, Confidential Unit), MPOA (Milpitas Police Officers Association), IAFF (International Association of Firefighters). Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- IV. 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
- V. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- VI. INVOCATION (Vice Mayor McHugh)**
- VII. APPROVAL OF COUNCIL MEETING MINUTES – February 3, 2009**
- VIII. SCHEDULE OF MEETINGS – Council Calendars for February and March 2009**
- IX. PRESENTATIONS**
- Milpitas Day at the Oakland A's Donation to Milpitas Parks and Recreation Foundation
  - Commendations to the Milpitas Community Advisory Commission and Emergency Preparedness Commission for the February 5 Town Hall Meeting
  - Commendation to Milpitas High School Graduate Student Steven Fanua for Five Year Scholarship to University of California, Berkeley
- X. 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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- XI. ANNOUNCEMENTS**
- XII. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XIII. APPROVAL OF AGENDA**

**XIV. 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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**XV. PUBLIC HEARING**

- 1. Adopt a Resolution Approving the Citation Homes Central Residential Project Located at 1200 Piper Drive (Staff Contact: Sheldon Ah Sing, 586-3278)**

**XVI. UNFINISHED BUSINESS**

- 2. Consideration for Approval of Final Review of Professional Appearance Policy for the City of Milpitas (Staff Contacts: Tom Williams, 586-3050, and Carmen Valdez, 586-3086)**

**XVII. JOINT REDEVELOPMENT AGENCY, PUBLIC FINANCING AUTHORITY, AND CITY COUNCIL MEETING**

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

**RA2. Approval of Minutes – February 3, 2009**

**RA3. Approval of Agenda and Consent Calendar (Items with asterisk\*)**

**RA4. Adopt a Resolution Authorizing the City Manager/Executive Director to Execute Amendments to the Agreements Affecting Affordable Housing at the KB Home Terra Serena Residential Project (Staff Contact: Felix Reliford, 586-3071)**

**\*RA5. Adopt a Resolution Authorizing the Purchase of Three Affordable Housing Units (Staff Contact: Felix Reliford, 586-3071)**

**\*RA6. Adopt Resolutions of the Milpitas Redevelopment Agency, City of Milpitas, and Milpitas Public Financing Authority Authorizing Investment of Monies in the Local Agency Investment Fund (Staff Contact: Emma Karlen, 586-3145)**

**\*RA7. Approve and Authorize Agency Executive Director to Execute an Agreement with Harris and Associates for Street Resurfacing Project 2009, Project No. 8194 (Staff Contact: Jaime Rodriguez, 586-3335)**

**RA8. Agency/Authority Adjournment**

**XVIII. REPORTS OF OFFICERS**

**City Council**

- \* 3. Consider Mayor's Recommendations for Appointments to the Milpitas Sister Cities Commission (Contact: Mayor Livengood, 586-3051)**

**Rules Subcommittee**

- 4. Report on Santa Clara Valley Transportation Authority Governance and Representation (Contact: Vice Mayor McHugh, 586-3023)**

**Arts Commission**

- \* 5. Approve the Arts Commission Updated Bylaws and 2009 Work Plan (Staff Contact: Renee Lorentzen, 586-3231)

**Public Art Committee**

- \* 6. Approve the Public Art Committee 2009 Master Plan (Staff Contact: Renee Lorentzen, 586-3231)

**XIX. NEW BUSINESS**

- 7. Receive the Economic Development Monthly Update (Staff Contact: Diana Barnhart, 586-3059)
- 8. Receive a Report on City Web Site Redesign (Staff Contact: Bill Marion, 586-2701)

**XX. ORDINANCE**

- \* 9. Waive the Second Reading and Adopt Ordinance No. 17.16 Title I, Chapter 1 (Administration) of the Milpitas Municipal Code (Staff Contact: Michael Ogaz, 586-3040)

**XXI. RESOLUTIONS**

- \* 10. Adopt a Resolution Authorizing the City Manager to Execute a Lease Agreement with Key Government Financial for Network Equipment in the Amount of \$385,786.82 (Staff Contact: Bill Marion, 586-2701)
- \* 11. Adopt a Resolution and Authorize the City Manager to Execute Amendment No. 1 to the Subdivision Improvement Agreement for MIL Aspen Family Apartments, Project No. 3199, to Provide Consistency with the Owner's Participation Agreement (OPA) Dated April 17, 2007 (Staff Contact: Fernando Bravo, 586-3328)
- \* 12. Adopt a Resolution Certifying the Annexation of MIL Aspen Family Apartments Project No. 3199 into Community Facilities District No. 2005-1 (Staff Contact: Fernando Bravo, 586-3328)
- \* 13. Adopt a Resolution Granting Initial Acceptance for Tract 9697 at the KB Home Terra Serena Project No. 3160 (Staff Contact: Fernando Bravo, 586-3328)
- \* 14. Adopt a Resolution Approving a Plan for the Use of Proposition 1B Funds from the State of California for the Street Resurfacing Project 2009, Project No. 8194 (Staff Contact: Jaime Rodriguez, 586-3335)
- \* 15. Adopt a Resolution Authorizing the City Manager to Execute a Contract with ACCO Engineered Systems for the Not-To-Exceed Amount of \$40,000 for Annual HVAC Maintenance and Repair (Staff Contact: Chris Schroeder, 586-3161)

**XXII. BID AND CONTRACT**

- \* 16. Approve Agreement with Tax Compliance Services for Transient Occupancy Tax Auditing and Consulting Services (Staff Contact: Emma Karlen, 586-3145)

**XXIII. ADJOURNMENT**

**NEXT REGULAR MEETING  
TUESDAY, MARCH 3, 2009  
Milpitas City Council Agenda  
( F I N A L )**

**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 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: 408-586-3056 / 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 the 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.

**APPLY TO BECOME A CITY COMMISSIONER!**

Current vacancies exist for the:

*Arts Commission (alternate)*

*Public Art Committee*

*Emergency Preparedness Commission (Industry Rep)*

*Mobile Home Park Rental Review Board*

*Planning Commission (alternate)*

*Sister Cities Commission (alternates)*

*Telecommunications Commission (MUSD Rep.)*

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

### XVII. PUBLIC HEARING

#### 1. **Adopt a Resolution Approving the Citation Homes Central Residential Project Located at 1200 Piper Drive (Staff Contact: Sheldon Ah Sing, 586-3278)**

**Background:** The Citation Residential Project consists of a Major Tentative Map (MT08-04), a Site Development Permit (SD08-02), and a Conditional Use Permit (UP08-049) to create three parcels with ancillary lots for private streets; dedication of right-of-way for new public streets and a new public park; and provision for utilities for the purpose of accommodating future residential development plans. This proposal includes development plans for up to 639 dwelling units to be located in three buildings and a vesting tentative map for condominium purposes. The proposed project is within the Piper-Montague Sub-District of the Transit Area Specific Plan located just east of the Great Mall and across Montague Expressway from the future BART station.

A detailed description of the project can be found in the Planning Commission staff report included in the Council's agenda packet. The Planning Commission recommended approval of the project at its January 28, 2009 meeting (attachment D).

**Fiscal Impact:** None.

**Attachments:**

- A. Resolution approving map, site permit and conditional use permit
- B. Street Sections for Transit Area Specific Plan
- C. Valley Transportation Authority "Y" Overlay
- D. 1-28-09 Planning Commission Report and meeting minutes
- E. Citation Project Plans

**Recommendations:**

- 1. Following public comments, move to close the public hearing.
- 2. Adopt a Resolution approving actions related to the Citation Homes Residential Project for 639 dwelling units at 1200 Piper Drive.

### XVIII. UNFINISHED BUSINESS

#### 2. **Consideration for Approval of Final Review of Professional Appearance Policy for the City of Milpitas (Staff Contacts: Tom Williams, 586-3050, and Carmen Valdez, 586-3086)**

**Background:** At the January 6, 2009 Council meeting, staff was directed to review the proposed appearance policy and come back to the City Council with a final recommendation. Included in the agenda packet for Council review is the final proposed Policy. Staff has presented the proposed policy to union representatives and is now ready to seek final approval from the Council.

**Fiscal Impact:** None

**Recommendation:** Approve the Professional Appearance Policy for the City of Milpitas, effective upon adoption.

### XVII. JOINT REDEVELOPMENT AGENCY, PUBLIC FINANCING AUTHORITY, AND CITY COUNCIL MEETING

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

**RA2. Approval of Minutes – February 3, 2009**

**RA3. Approval of Agenda and Consent Calendar** (Items with asterisk\*)

**RA4. Adopt a Resolution Authorizing the City Manager/Executive Director to Execute Amendments to the Agreements Affecting Affordable Housing at the KB Home Terra Serena Residential Project (Staff Contact: Felix Reliford, 586-3071)**

**Background:** On May 18, 2004, the Milpitas Redevelopment Agency (RDA) and the City of Milpitas entered into a Memorandum of Understanding (MOU) with the County of Santa Clara (County) and KB Home South Bay Inc. (KB Home) to establish parameters for the development of affordable housing. The County sold the Elmwood property to the RDA, which in turn conveyed the property to KB Home. On January 18, 2005, the City Council/RDA approved the Elmwood Residential Project and the RDA entered into a Disposition and Development Agreement (DDA) with KB Home that incorporated the following affordable housing parameters:

- A total of 208 affordable housing units would be created.
- 85 moderate-income units would be provided in the condominiums. The RDA would provide a \$50,000 loan to each of these buyers as down payment assistance.
- 25 moderate-income units would be provided in the townhomes. The RDA would provide direct assistance to homebuyers in the form of grants or loans.
- The following minimum affordable sale prices were established:
  - 1-bedroom - \$290,000
  - 2-bedroom - \$330,000
  - 3-bedroom - \$370,000
  - 4-bedroom - \$400,000
- No fewer than 57 very low income and 41 low or very low-income rental units would be provided on the DeVries site previously owned by the RDA.
- The RDA would receive \$6 million for the DeVries housing project; \$5 million from KB Home and \$1 million from the County through the infrastructure account established for the Elmwood Project.

The DDA also includes a requirement that KB Home construct a connection from Thompson Street to Abbott Avenue if the City provided the necessary right-of-way prior to July 2010. This connection was being considered at one time due to redevelopment plans being considered for the Milpitas Unified School District (MUSD) property located along Abbott Avenue. The infrastructure account established for the project set aside \$1.37 million for the design and construction of the connection.

The construction of the Elmwood Project, known now as Terra Serena, is complete and all the homes on the west side of Abel Street have been sold.

**ISSUES**

67 of the 85 affordable condominium units on the east side of Abel Street remain unsold. The current housing market and stricter lending requirements have created unforeseen challenges in finding qualified buyers for these affordable units. The stricter requirements have disqualified many of the buyers interested in the units and the significant reduction of housing prices has resulted in market prices being very similar to the minimum sales prices established in the DDA. This provides little or no incentive for buyers to purchase affordable units, which come with 45-year resale restrictions that limit equity growth.

*Efforts Made to Find Affordable Buyers*

Over the past two and half years, City staff and KB Home have advertised on five different occasions (June 2006 - November 2008) to attract homebuyers for the purchase of the affordable units.

More than 580 applications were reviewed after the first four rounds of advertising. The scope of advertising was increased in November 2008 to include the entire Bay Area, with advertising in the San Francisco Chronicle, San Jose Mercury News and the Contra Costa Times. Only nine

applications were received from that most recent effort. KB Home has reduced the sales price of the affordable units to the minimum price floors established in the DDA and also provided incentives up to an additional \$20,000 towards closing costs, if financed through their preferred lender.

*Abbott / Thompson Connection*

The City has not pursued the additional right-of-way needed for the Abbott / Thompson connection because there are no longer any foreseeable plans to redevelop the MUSD property along Abbott Avenue.

**PROPOSED AMENDMENTS**

City staff, the County, and KB Home have been working together to draft the amendments to the DDA and MOU to address the issues discussed above. The following amendments would only affect the unsold condominiums on the east side of Abel Street:

1. Establish an in-lieu housing payment of \$1,702,000 to remove the affordable restrictions on 46 of the 67 remaining unsold affordable units (\$37,000 for each unit). This would be paid in equal parts to the RDA and to the County. \$3.15 million (\$2.3 million from the unused down payment loans and \$851,000 from the in-lieu fee) would be uncommitted, returned to the RDA's Low & Moderate Income Housing Fund to be used for other projects. The total number of affordable units within the Terra Serena project would be reduced from 110 to 64.
2. Reduce the minimum sale price of the remaining 21 units from \$290,000 to \$226,500 for a 1-bedroom unit and from \$330,000 to \$246,500 for a 2-bedroom unit. The RDA would still provide the \$50,000 down payment assistance loans for these units. The combination of the reduced unit price and the down payment assistance would allow these units to be affordable to low income instead of moderate-income households.
3. Remove the obligations related to the Abbott / Thompson street connection from the DDA and unencumber \$1.32 million of the \$1.37 million set-aside amount to the RDA. The remaining \$50,000 will be used to cover the final invoice for the approved infrastructure work and extended project management costs.

The MOU amendment (1 and 2 above) requires the approval of both the RDA and the County Board of Supervisors since the County was a party to the MOU. It is anticipated that the Board of Supervisors will consider the amendment on February 24. The DDA amendment requires only the approval of the RDA. Therefore, the DDA amendment includes a statement that if the County Board of Supervisors does not approve the amendment to the MOU, then the DDA amendment will become void and ineffective.

*RDA Affordable Housing Requirements*

Redevelopment law requires 15% of all residential units in the redevelopment project area to be affordable; 6% to very low income households and 9% to low and moderate income households. When considered with the DeVries Place project, the redevelopment project area gained a total of 786 new housing units through the implementation of the DDA and MOU. If the proposed amendments were approved, the following affordability percentages would result:

- 102 very-low income rental units (13% of the 786 units)
- 21 low-income and 44 moderate income townhome and condominium units (8% of 786 units)

At its meeting on January 14, 2009, the Planning Commission reviewed the proposed amendments and recommended approval to the City Council/RDA.

**Fiscal Impact:** A total of \$4.47 million would be uncommitted/returned to the RDA, \$3.15 million to the housing fund and \$1.32 million to the general RDA fund.

**Recommendation:** Adopt a resolution authorizing the City Manager/Executive Director to execute these three amendments to the Memorandum of Understanding, Disposition and

Development Agreement, and Regulatory Agreement for the KB Home Terra Serena Residential Project, subject to the approval of the City Attorney/Agency Counsel.

**\*RA5. Adopt a Resolution Authorizing the Purchase of Three Affordable Housing Units (Staff Contact: Felix Reliford, 586-3071)**

**Background:** The City received notices from three owners wishing to sell their affordable housing units. The locations of the units and resale prices/income levels are identified below:

<u>Address</u>	<u>Project</u>	<u>Sale Price</u>
127 Parc Place	Parc Place	\$344,114 (moderate income)
347 Imagination Place	Parc Metropolitan	\$251,337 (low income)
48 Rain Walk	Parc Metropolitan	<u>\$347,725 (moderate income)</u>
		\$943,176 Total

Pursuant to the resale agreement, the Redevelopment Agency (RDA) will assist sellers in finding a qualified buyer within ninety days of being notified of their desire to sell the unit. If a qualified buyer is not found within that period, then the RDA has the option to purchase the unit or remove the affordable housing restriction so the unit can be sold at fair market value. Staff has been unable to identify any eligible buyers at the contracted resale prices given the current downturn in the housing market and stricter lending requirements.

**Authorization to Purchase the Affordable Units**

Staff requests authorization for the Agency/City to purchase the three units for a total price of \$943,176 using RDA's Low & Moderate Income Housing (Housing) Fund. These purchases would allow additional time to find qualified buyers and not lose the affordable housing restriction. If enough buyers cannot be found within the next four months, staff will return to the Agency to receive authorization to reduce the sale prices to the next lower income bracket to further attract eligible homebuyers.

The RDA has authorized previous purchases of affordable units, under different market conditions, and those units were sold and the proceeds returned to the RDA's Housing Fund.

**Fiscal Impact:** None, as there is adequate funding the RDA's Housing Fund budget for this purpose.

**Recommendation:** Adopt a resolution authorizing the purchase of three affordable housing units, at the request of the owners.

**\*RA6. Adopt Resolutions of the Milpitas Redevelopment Agency, City of Milpitas, and Milpitas Public Financing Authority Authorizing Investment of Monies in the Local Agency Investment Fund (Staff Contact: Emma Karlen, 586-3145)**

**Background:** The Milpitas Redevelopment Agency, the City of Milpitas, and the Milpitas Public Financing Authority have been participating in the State's Local Agency Investment Fund (LAIF) since 1977. LAIF periodically requests participants to update their investment resolutions. Staff reviewed the existing resolutions of the three entities and determined that these resolutions need to be updated due to administration and personnel changes.

**Fiscal Impact:** None.

**Recommendation:** Adopt three Resolutions of the Redevelopment Agency, City Council, and Public Financing Authority authorizing investment of monies in the Local Agency Investment Fund.

- \*RA7. Approve and Authorize Agency Executive Director to Execute an Agreement with Harris and Associates for Street Resurfacing Project 2009, Project No. 8194 (Staff Contact: Jaime Rodriguez, 586-3335)**

**Background:** The City solicited Requests for Proposals for a Civil Engineering – Street Design consultant in December 2008 to establish a list of qualified consultants to assist the City in the design of roadway resurfacing projects. Harris & Associates from Gilroy was selected through the City’s consultant selection process.

Staff recommends approval of an agreement for services with Harris & Associates for the design of the Street Resurfacing Project 2009 Program, Project No. 8194. The program includes the design of three projects: Slurry Seal 2009, Roadway Resurfacing 2009, and Crack Seal 2009. Staff negotiated a scope and fee for these services not to exceed \$150,000, which is considered reasonable for the work.

**Fiscal Impact:** None. There are sufficient funds in the project budget for these consultant services.

**Recommendation:** Approve and authorize the Agency Executive Director to execute an agreement with Harris and Associates, for consulting services for the Street Resurfacing Project 2009, Project No. 8194.

**RA8. Agency/Authority Adjournment**

**XVIII. REPORTS OF OFFICERS**

**City Council**

- \* 3. Consider Mayor’s Recommendations for Appointments to the Milpitas Sister Cities Commission (Contact: Mayor Livengood, 586-3051)**

**Background:** Mayor Livengood recommends the following Milpitas residents be appointed to the Sister Cities Commission:

Appoint Dana Arbaugh (current Alternate No. 1) as a regular member to a term that expires in September 2010.

Appoint Marsha Binh Tran (current Alternate No. 2) as a regular member to a term that expires in September 2009.

**Recommendation:** Consider the recommendations from Mayor Livengood, and move to approve his two appointments to the Milpitas Sister Cities Commission.

**Rules Subcommittee**

- 4. Report on Valley Transportation Authority Governance and Representation (Contact: Vice Mayor McHugh, 586-3023)**

**Background:** The Rules Committee met on Friday, February 4. At that meeting, the two members sought an update on the matter of the City of Milpitas’ representation on the Milpitas-Gilroy-Morgan Hill (MGM) grouping of the Santa Clara Valley Transportation Authority.

**Recommendation:** Vice Mayor McHugh will seek an update from staff and/or the Mayor on the status of representation on the MGM group of the VTA.

**Arts Commission**

- \* 5. Approve the Arts Commission Updated Bylaws and 2009 Work Plan (Staff Contact: Renee Lorentzen, 586-3231)**

**Background:** At its January 26, 2009 Arts Commission meeting, the Commission approved changes to its current By Laws and approved a 2009 Work Plan. The updated By Laws require the Commission to meet every other month with meetings to begin at 6:00 pm. The updated ByLaws list the Arts Commission's regularly scheduled meetings as January, March, May, July, September and November. These months also coincide with scheduled Phantom Art Gallery Openings for which the Commission is present.

The Commission's 2009 Work Plan identifies the Commission's ongoing programs and events. New to this Work Plan is the Commission's goal to attend all Milpitas Arts and Culture grant program events and present a Commendation to recipients for their contribution to the arts in Milpitas. This presentation will further City Commission exposure as well as the grant program.

**Fiscal Impact:** None.

**Recommendation:** Approve the updated Arts Commission By-Laws and 2009 Work Plan.

### **Public Art Committee**

- \* 6. **Approve the Public Art Committee 2009 Master Plan (Staff Contact: Renee Lorentzen, 586-3231)**

**Background:** At the January 26, 2009 Public Art Committee meeting, the Committee approved its 2009 Master Plan which outlines Public Art Installation projects the Committee members would like to facilitate in 2009. Projects listed are based on City projects as well as those the Committee has an interest in pursuing for the benefit of the community.

All projects will return individually to the City Council for budget and location approval, beginning with the relocation of the Cartwheel Kids and replacement of art in front of City Hall, in the spring.

**Fiscal Impact:** None.

**Recommendation:** Approve the Public Art Committee 2009 Master Plan.

## **XXIII. NEW BUSINESS**

7. **Receive the Economic Development Monthly Update (Staff Contact: Diana Barnhart, 586-3059)**

**Background:** During the last month, local, state and federal economies continued to decline with record numbers of layoffs, business and plant closures. NAIBT Commercial Vacancy reports show increased vacancies in most business types: Office, Research and Development (R&D), Manufacturing and Warehouse. Fortunately, Milpitas experienced a decrease in Manufacturing space in 2008 with only an 8.7% vacancy rate compared to an 11% vacancy rate in 2007. Unfortunately, all other categories showed increased vacancies: Office vacancies grew to 11.3% from 5.8% in 2007; R&D vacancies increased to 19% from 17.2% in 2007; and, Warehouse vacancies increased to 8.4% from 5.3% in 2007. One positive in this slowdown is a decline in lease rates, which creates a more competitive market for those companies looking to relocate or expand.

**Local Preference Ordinance:** The concept for a Local Preference Policy was scheduled to be presented to the Economic Development Subcommittee at its meeting on February 9, 2009.

**Business Incentives:** Requests for business incentives continue to increase, ranging from deferment of fees to sales tax deferment. Until a policy is in place, staff is evaluating each request on an individual basis and finding some requests are comparison shopping and others seem a legitimate business concern. As noted in the last report, staff will be working with the Economic Development Subcommittee in the formulation of a policy.

## Business Outreach

1. Hotel Roundtable: The Mayor's Hotel Roundtable on February 2 was attended by all the major hoteliers in the City, including the General Managers and Directors of Sales and Marketing. Gleaned from the meeting was the desire to partner with the City to help advertise local events and to partner with the Great Mall as a shopping destination. They indicated that their target market is within a 40 to 50 mile radius as it is a reasonable driving distance for customers. As a result of the meeting, it is likely that the hoteliers will continue to meet and work together for success during this downturn in the business traveler market. Only one hotel noted a strong second quarter 2009, but agreed with others that the rest of 2009 did not bode well for overnight stays.
2. Mervyn's Redevelopment: A meeting was held with the Mayor, property owners and brokers for the Mervyn's properties in late January. They were very interested in the City's position and supported concerns about the desire for quality temporary tenants, as they would like to lease the space until permanent tenants are secured. They indicated that they have Letters of Intent for the space from two retailers that are not currently in the Milpitas retail trade area.

The recent closure of several Home Depot and Home Depot Expo Centers in the South and East Bay increased the number of larger buildings competing for the same tenants. Large apparel and department store tenants similar to Mervyn's are not looking to expand into the Milpitas Mervyn's properties. The City will sustain sales tax revenue from the site; but it will not likely be as strong as Mervyn's, which consistently was in the top ten sales tax generators for individual businesses.

3. Corporate Outreach: Meetings are being scheduled for the Mayor - the first one with Linear Technology.

Redevelopment Activities: Planning staff is working on the environmental document for a Great Mall Project Area amendment that will be presented to the City Council/Redevelopment Agency for consideration at the March 17, 2009 meeting.

Marketing: The City will continue participating in the February "Shop and Dine" promotion with the Milpitas Post and will also have a prominent ad in the 2009 Welcome Guide. Staff is proceeding with placement of the "Stop & Shop" banners in the City Hall Lobby and the Council Chambers, as requested by the Mayor.

### Retail News:

1. Great Mall: Consistent with the sales information from the Great Mall, Simon Property Group, the Great Mall parent company, posted a 6.5% increase in revenues from a year ago. In a press release from CEO David Simon, he stated, "We recognized well over a year ago that the economy was deteriorating and adopted aggressive cost control measures, significantly reduced our development spending, and enhanced our liquidity position. The retail environment has been and will continue to be challenging in the upcoming months, however, we are experienced in working through difficult times." The firm said net operating income (NOI) in its regional mall portfolio will be flat for the rest of the year, but added that its premium outlet portfolio NOI is set to grow by as much as five percent. This would include the Great Mall. The Simon Property Group also owns Stanford Shopping Center in Palo Alto and is pursuing expansion plans at that site.

The Building Department reports that a permit application has been received for a new Kenneth Cole store in the Great Mall.

2. Wal-Mart: The local Wal-Mart General Manager reported that Milpitas Wal-Mart sales for December 2008 were up 14% over December 2007. This exceeds the national Wal-

Mart sales for the holidays. Wal-Mart has submitted a planning application to expand the local store to include a grocery sales and a medical/vision center.

**Fiscal Impact:** There is no fiscal impact associated with this report.

**Recommendation:** Receive the monthly Economic Development report from the Economic Development Manager.

**8. Receive a Report on City Web Site Redesign (Staff Contact: Bill Marion, 586-2701)**

**Background:** For the past several months, Information Services staff has been working on a project to redesign the City's web site. The current design is more than eight years old and the growing volume of information has made finding a particular item difficult. The goal of the redesign is to create a site that is cleaner, simpler and easier to use. Staff will make a brief presentation to demonstrate the new web site. Staff will also update the City Council on Govdelivery.com.

**Fiscal Impact:** None.

**Recommendation:** Receive report on City web site redesign, and status of implementing the Govdelivery.com service.

**XXIV. ORDINANCE**

**\* 9. Waive the Second Reading and Adopt Ordinance No. 17.16 Title I, Chapter 1 (Administration) of the Milpitas Municipal Code (Staff Contact: Michael Ogaz, 586-3040)**

**Background:** Ordinance No. 17.16 amending the Schedule of Misdemeanors in the Milpitas Municipal Code Title I, Chapter 1 Section 4.09-3 to correct inconsistencies with Title V, Chapter 210, Animal Regulation was introduced at the February 3, 2009 City Council meeting. Ordinance No. 17.16 is ready for the second reading and adoption.

**Fiscal Impact:** None

**Recommendations:**

1. Waive the second reading of Ordinance No. 17.16.
2. Adopt Ordinance No. 17.16 amending Title I, Chapter 1 (Administration) of the Milpitas Municipal Code.

**XXV. RESOLUTIONS**

**\* 10. Adopt a Resolution Authorizing the City Manager to Execute a Lease Agreement with Key Government Financial for Network Equipment in the Amount of \$385,786.82 (Staff Contact: Bill Marion, 586-2701)**

**Background:** In 2000, the City Council approved the purchase of approximately \$450,000 of network equipment in order to upgrade the existing telecommunications network for planned technology projects as well as to support the new City Hall. The upgrade was completed in 2001 and the network has now been in operation for over eight years. The planned life of this type of equipment is generally five years. At the beginning of FY 2008-09 staff began a design project for a replacement network. The design was completed and staff then explored various options to acquire the necessary equipment. The original 2001 upgrade was funded by a technology bond issued in 2000. A Technology Replacement Fund has been established but would require in excess of four years to accumulate sufficient funds to purchase the equipment for the network upgrade.

Through the California Department of General Services under the CalNet II program, the City can obtain a no-interest lease through the equipment manufacturer for a period of five years. There are no fees associated with the program and the lease includes provisions for termination should the City be unable to fund the annual payment. The annual payment would be \$77,157.36 and would commence in FY 2008-09 and terminate in FY 2012-13. At the completion of the lease, the equipment would become the property of the City. The lease agreement documents are included in the agenda packet, along with a staff report further explaining the transaction.

Pursuant to Municipal Code Section I-2-3.08, the City may participate in cooperative agreements entered into by state agencies, which used competitive negotiations or bidding procedures at least as restrictive as the City's. The purchase of the network equipment from Key Government Financial through the CalNet II program would not require a formal bid, since the CalNet II program is an agreement that was competitively negotiated and/or used bidding procedures at least as restrictive as the City's.

**Fiscal Impact:** Funding for the annual lease payments would require annual appropriation in the Equipment Replacement Fund. There is sufficient funding in the Equipment Replacement fund for the first annual payments.

**Recommendation:** Adopt a resolution authorizing the City Manager to execute a lease agreement with Key Government Financial for network equipment in the amount of \$385,786.82, subject to approval as to form by the City Attorney and appropriate the first annual lease payment for \$77,157.36 from the Information Technology Replacement Fund.

- \* 11. **Adopt a Resolution and Authorize the City Manager to Execute Amendment No. 1 to the Subdivision Improvement Agreement for MIL Aspen Family Apartments, Project No. 3199, to Provide Consistency with the Owner's Participation Agreement (OPA) Dated April 17, 2007 (Staff Contact: Fernando Bravo, 586-3328)**

**Background:** In April 2007, the City Council approved the execution of a Subdivision Improvement Agreement (SIA) for the construction of the MIL Aspen Family Apartments. On April 17, 2007, the Milpitas Redevelopment Agency (Agency) adopted a resolution approving the execution of the Owner's Participation Agreement (OPA). The SIA conditioned certain City impact fees to be paid prior to building permit issuance. However, in the OPA, the Agency agreed to defer the payment of the impact fees until the later of (i) date of the issuance of a final certificate of occupancy for the project, or (ii) the closing of the conventional permanent loan for the project, but in no event later than twenty-four (24) months following the issuance of the final certificates of occupancy.

The purpose of this amendment is to revise the SIA conditions related to payment of the City's impact fees to be consistent with the terms and obligations of the OPA. Included in the Council agenda packet are a copy of the resolution and Amendment No. 1 to the Subdivision Improvement Agreement. Copies of the executed 152 page OPA, and a copy of the executed 23 page SIA are available in the City Clerk's office.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution and authorize the City Manager to execute Amendment No. 1 to the Subdivision Improvement Agreement for MIL Aspen Family Apartments to provide consistency with the Owner's Participation Agreement (OPA) dated April 17, 2007.

- \* 12. **Adopt a Resolution Certifying the Annexation of MIL Aspen Family Apartments Project No. 3199 into Community Facilities District No. 2005-1 (Staff Contact: Fernando Bravo, 586-3328)**

**Background:** MIL Aspen Associates is the owner of real property commonly known as Aspen Family Apartments (APN 086-22-043 to 086-22-045). This property lies within the boundaries of a special tax district, Community Facilities District 2005-1 (CFD 2005-1). State law and

Resolution No. 7521, adopted by the City Council on May 17, 2005, authorize the City to annex properties that lie within the map boundaries of CFD 2005-1 under a simplified annexation process without further public hearing or formal election upon the property owner's written, unanimous consent.

MIL Aspen Associates, by voluntary agreement memorialized in a condition of approval for its tentative map approved by the Planning Commission on March 28, 2007, agreed to petition the City to annex its property into CFD 2005-1. Such an annexation would subject the Aspen Family Apartments property to the collection of a special tax that would pay for the provision of certain public City services in the area.

MIL Aspen Associates' written consent and approval and other legally required materials and documents are attached to the resolution, which is included in the Council packet documents.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution certifying and annexing APN 086-22-043 to 086-22-045, MIL Aspen Family Apartments, Project No. 3199 into Community Facilities District No. 2005-1.

\* **13. Adopt a Resolution Granting Initial Acceptance for Tract 9697 of the KB Home Terra Serena Project No. 3160 (Staff Contact: Fernando Bravo, 586-3328)**

**Background:** On September 19, 2006, the City entered into a Subdivision Improvement Agreement with KB Home South Bay Inc., for the construction of certain public improvements to serve its residential development on South Abel Street. The developer has completed public improvements consisting of fire hydrants, sewer mains, water mains, and service laterals for the project. These improvements, therefore, are ready for initial acceptance, subject to the usual one-year warranty period in accordance with the Subdivision Improvement Agreement. No further reduction of the developer's faithful performance bond is necessary. The bond, which was reduced to \$91,600 (10% of the original amount) by the City Council on October 21, 2008, will continue in effect for the duration of one-year warranty period.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution granting initial acceptance of subdivision improvements for Tract 9697 of the KB Home Terra Serena Project No. 3160.

\* **14. Adopt a Resolution Approving a Plan for the Use of Proposition 1B Funds from the State of California for the Street Resurfacing Project 2009, Project No. 8194 (Staff Contact: Jaime Rodriguez, 586-3335)**

**Background:** At the November 7, 2006 election, statewide voters approved Proposition 1B, authorizing the State of California to sell \$17 billion in bonds for State and local Transportation Improvement Projects. Staff is working to secure Proposition 1B Funds from the State of California. The funds will be used for street pavement preservation projects including asphalt overlay and slurry seal pavement treatments.

The total Proposition 1B allocation for Milpitas is \$2.0 million, of which the City received \$1.07 million last year. The City anticipates the remaining Proposition 1B Fund distribution of \$989,623, pending the approval of a revised State of California budget.

As part of the Proposition 1B Fund distribution, the City is required to adopt a resolution approving a plan for the use of these funds. The Public Works Director recommends that the City Council approve the allocation of any Proposition 1B monies to street pavement program conducted under the Street Resurfacing Project 2009, Capital Improvement Project No. 8194, as the official Proposition 1B Plan for the City of Milpitas. The actual streets to receive pavement treatments with these funds will be prioritized based on pavement condition, and final

determination made depending on the timing of the distribution of funds from the State. The State Proposition 1B guidelines do not require the City to name specific streets at the funding application stage when, as in the case here, the City intends to use such monies solely for street pavement projects.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution approving the plan for the use of Fiscal Year 2008-09 Proposition 1B Funds toward street resurfacing, Project No. 8194.

**\* 15. Adopt a Resolution Authorizing the City Manager to Execute a Contract with ACCO Engineered Systems for the Not-To-Exceed Amount of \$40,000 for Annual HVAC Maintenance and Repair (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** ACCO Engineered Systems won the bid for the original installation of the HVAC system when the City Hall was built. Since then the City has had in place an open ended contract for the maintenance service. Due to the customized and proprietary nature of the software used in the HVAC control system, on August 2, 2005 Council approved ACCO Engineered Systems maintenance and repair services as a sole source purchase pursuant to Municipal Code section I-2-3.09 "Sole Source Procurement." In the past, each repair job has been handled individually by issuing purchase requisition or contract. The proposed contract will annualize the service agreement thus streamlining the paperwork. This is a one year contract with two (1) year renewal options.

**Fiscal Impact:** None. This is a programmed expense approved in the FY2008-09 budget for Facilities Maintenance.

**Recommendation:** Adopt a resolution authorizing the City Manager to execute a contract with ACCO Engineered Systems for the not-to-exceed amount of \$40,000 for annual HVAC maintenance and repair, subject to approval as to form by the City Attorney.

**XXVI. BID AND CONTRACT**

**\* 16. Approve Agreement with Tax Compliance Services for Transient Occupancy Tax Auditing and Consulting Services (Staff Contact: Emma Karlen, 586-3145)**

**Background:** In March 2000, the City entered into an agreement with Tax Compliance Services (TCS) to provide consultation and auditing services of the City's transient occupancy tax revenues. TCS has been instrumental in assisting staff with transient occupancy tax compliance issues and conducting training for hotel operators. The audits have resulted in finding more than \$459,000 missed revenues. The most recent audit found that most hotels are in compliance. The audit results clearly demonstrate a successful joint effort in training local operators on the City's ordinance and enabling the City to collect revenue timely and accurately. There are 19 hotels/motels within the City of Milpitas that file their returns monthly and all the payments are current.

The most recent contract with TCS has expired. TCS has proposed to continue its service for three more years at a fixed fee of \$17,500 per year. The City collects approximately \$6 million transient occupancy tax annually. An audit finding of 1% error due to under-reporting will more than offset the audit and consultant fee.

**Fiscal Impact:** \$17,500 annually, offset by Transient Occupancy Tax revenues.

**Recommendation:** Approve the agreement with Tax Compliance Services to provide transient occupancy tax auditing and consulting services, subject to approval as to form by the City Attorney.

**XXIII. ADJOURNMENT**

**NEXT REGULAR MEETING  
TUESDAY, MARCH 3, 2009**