



**MILPITAS CITY COUNCIL MEETING AGENDA
MILPITAS REDEVELOPMENT AGENCY MEETING AGENDA**

TUESDAY, AUGUST 18, 2009

**7:00 P.M.
455 E. CALAVERAS BOULEVARD**

SUMMARY OF CONTENTS

- I. CALL TO ORDER OF THE CITY COUNCIL by the Mayor**
- II. ROLL CALL by the City Clerk**
- III. PLEDGE OF ALLEGIANCE**
- IV. INVOCATION (Vice Mayor McHugh)**
- V. APPROVAL OF COUNCIL MEETING MINUTES – August 4, 2009**
- VI. SCHEDULE OF MEETINGS – Council Calendars for August and September 2009**
- VII. PRESENTATIONS**
 - Presentation to Milpitas High School Graduate Shontale Taylor
 - Recognition of Mid-Peninsula Housing Coalition for winning Urban Land Institute's 2009 Award for Excellence for the DeVries Place Senior Housing Project
- VIII. PUBLIC FORUM**

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XI. APPROVAL OF AGENDA**
- XII. CONSENT CALENDAR (Items with asterisk*)**

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.

- XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**
 - RA1. Call to Order/Roll Call by the Mayor/Chair**
 - RA2. Approval of Minutes – August 4, 2009**

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

PUBLIC HEARING (RA4 only)

RA4. Authorize the Agency Executive Director to execute the Assignment and Assumption Agreement and the Disposition and Development Agreement to Acquire 5.94 acres of Land Located at 1504-1620 South Main Street (Staff Contacts: James Lindsay, 586-3273, and Bryan Otake, 586-3040)

RA5. Approve FY 2009-10 Budget Amendment to Address State Budget Impact (Staff Contacts: Tom Williams, 586-3050, and Emma Karlen, 586-3145)

***RA6. Adopt a Resolution Granting Final Acceptance of North Main Street Streetscape Phase I, Project No. 8165 (Staff Contact: Steve Erickson, 586-3301)**

***RA7. Authorize the Executive Director/City Manager to Execute a Consulting Services Agreement with Biggs Cardosa Associates, Inc. for Soundwall Renovation, Project No. 8196 (Staff Contact: Steve Erickson, 586-3301)**

RA8. Agency Adjournment

XIV. REPORTS OF OFFICER AND COMMISSIONS

Mayor and Council

1. Report on Personal Rapid Transit (PRT) and Authorize sending a Letter to Santa Clara Valley Transportation Authority Regarding Funding for PRT/ATN (Automated Transit Network) for the Curtis/Yosemite overcrossing (Contact: Mayor Livengood, 586-3051)

*** 2. Consider Mayor's Recommendations for Reappointments to Two Milpitas Commissions (Contact: Mayor Livengood, 586-3051)**

3. Update from Milpitas Unified School District Staff on the "Raising A Reader" Program (Contact: Vice Mayor McHugh, 586-3023)

Sister Cities Commission

*** 4. Approve an Update to the Memorandum of Understanding to Continue the Sister City Relationship with the City of Tsukuba, Japan (Staff Contact: Holly Cuciz, 586-2602)**

XV. NEW BUSINESS

5. Receive Staff Report and Approve the Cardoza Park Renovation Master Plan and Project Phasing, Project No. 5088 (Staff Contacts: Steve Erickson, 586-3301, and Bonnie Greiner, 586-3227)

6. Consider Approval of a Revised Population Estimate for the Purpose of Calculating the Park In-Lieu Fee and Consider Architectural Modifications for the Landmark Tower Project Located at 600 Barber Lane (Staff Contact: Sheldon Ah Sing, 586-3278)

7. Receive Update on the Local Improvements for a Better Tomorrow (LIFT) Zone Project (Staff Contact: James Lindsay, 586-3273)

8. Receive the Monthly Economic Development Report (Staff Contact: Diana Barnhart, 586-3059)

*** 9. Proposal to Make Public a Confidential Attorney Memo Regarding the Order of Council Agenda and Breadth of Conflict of Interest Disclosure (Staff Contact: Michael Ogaz, 586-3040)**

- * 10. **Authorize the City Manger to Execute a Cost Sharing and Reimbursement Agreement for the Transit Area Plan's Piper Montague Subdistrict (Staff Contact: James Lindsay, 586-3273)**
- * 11. **Approve and Certify the Sanitary Sewer Management Plan (Staff Contact: Kathleen Phalen, 586-3345)**

XVI. ORDINANCE

- * 12. **Waive the Second Reading and Adopt Ordinance No. 65.139 Amending the Milpitas Municipal Code by Providing for Additional Building Permit and Plan Review Extension Periods (Staff Contact: Keyvan Irannejad, 586-3244)**

XVII. RESOLUTIONS

- * 13. **Adopt a Resolution Certifying the Annexation of Cerano Apartments and Murphy Ranch Townhomes Project to Community Facilities District No. 2005-1, Project No. 3170 (Staff Contact: Fernando Bravo, 586-3328)**
- * 14. **Adopt a Resolution Approving Public Improvements Plans, new Public Park Plans, Final Map, and Authorize City Manager to Approve a Subdivision Improvement Agreement (Tract 10019) for Cerano Apartments, Project Private Job No. 3170 (Staff Contact: Fernando Bravo, 586-3328)**
- * 15. **Adopt a Resolution Granting Initial Acceptance of Minor Storm Drain at Country Club Drive, Project No. 3700 (Staff Contact: Steve Erickson, 586-3301)**

XVIII. BIDS AND CONTRACTS

- * 16. **Approve First Amendment to the Cooperative Agreement Between City of Milpitas and the Santa Clara Valley Transportation Authority (VTA) for the Route 237/I-880 Interchange and McCarthy Blvd. Median at I-880 Project No. 4170 (Staff Contact: Greg Armendariz, 586-3317)**
- * 17. **Approve a Non-Exclusive Collection, Transportation and Recycling of Non-Putrescible Debris Agreement with Ferma Corporation (Staff Contact: Kathleen Phalen, 586-3345)**
- * 18. **Approve Public Improvement Plans, and Permittee Dedication and Improvement Agreement with Washington Two Investment Group, LLC, for 1312 S. Main Street, Project Private Job No. PJ 2537 (Staff Contact: Fernando Bravo, 586-3328)**

XIX. ADJOURNMENT

NEXT REGULAR MEETING: TUESDAY, SEPTEMBER 1, 2009

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 / 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 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, during normal business hours.

APPLY TO BECOME A CITY COMMISSIONER!

Current vacancies exist for the:

*Arts Commission and Public Art Committee
Community Advisory Commission (alternate)
Economic Development Commission (Retail Rep.)
Emergency Preparedness Commission
Mobile Home Park Rental Review Board
Youth Advisory Commission*

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

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

AGENDA REPORTS

TUESDAY, AUGUST 18, 2009

PUBLIC HEARING (RA4 only)

RA4. Authorize the Agency Executive Director to execute the Assignment and Assumption Agreement and the Disposition and Development Agreement to Acquire 5.94 acres of Land Located at 1504-1620 South Main Street (Staff Contacts: James Lindsay, 586-3273, and Bryan Otake, 586-3040)

Background: South Main Senior Lifestyles LLC (SMSL), the applicant, is proposing to modify approved plans for the 5.94 acres located at 1504-1620 South Main Street to develop a two-phased residential development that maintains the 387 residential units previously approved. Phase 1 of the revised project would consist of 180 senior housing units providing a continuum of services from independent to assisted living, 63 units of which would be affordable to lower income seniors. Phase 2 would consist of 207 multi-family units with no age or income restrictions.

Callahan Property Company Inc. is under contract to purchase the property from Baystone Development for \$12.4 million and is proposing the Agency assume this agreement and enter into a Disposition & Development Agreement (DDA). The following table is a summary of the project milestones with the DDA.

<i>Project Milestone</i>	
RDA would assume the existing purchase and sale agreement between Callahan Property Company Inc. and Baystone and purchase the 5.94 acres for \$12.4 million.	RDA total initial fiscal expenditure would be \$12.4 million. This amount would be recouped by the RDA upon sale of the property to South Main Senior Lifestyles in two phases. All costs of demolition, including those borne by the City for nuisance abatement and hazardous materials remediation, will be borne by the seller and paid out of, or reimbursed as, a credit out of the purchase price.
South Main Senior Lifestyles would purchase 1.94 acres (Phase 1) from the RDA for \$5 million within two years of the RDA purchasing the entire site. SMSL would construct 180 senior housing units on the Phase 1 site which would offer a continuum of services from independent to assisted living, 63 units of which would be affordable to lower income seniors.	SMSL would be required to maintain the services package for independent and assisted living residents at all income levels (refer to Exhibit B Attachment 2 in the DDA) under a 55 year regulatory agreement recorded against the property. The RDA would then provide financial assistance towards the development and operation of the affordable units in the form of a \$7.7 million grant or a long term loan.

<i>Project Milestone</i>	
<p>SMSL would purchase the remaining site area (Phase 2) from the RDA within six years of the RDA purchase of the entire site. The Phase 2 site area would be used to construct 207 multi-family units with no age or income restrictions.</p>	<p>The price will be based on market value at the time of purchase but will be at least \$7.4 million which would enable the RDA to be reimbursed for the original \$12.4 million purchase price of the 5.94 acres. All units in Phase 2 shall be “fair market” for rent or sale units.</p>

Economic & Planning Systems has reviewed the draft DDA, pursuant to California Health and Safety Code Government Code Section 33433, and found that the \$12.4 million purchase price represents the fair market value of the property at its highest and best use value (refer to the report entitled “Review of South Main Street Senior Housing Project” on file with the City Clerk). Its review also concluded that the \$7.7 million RDA grant was necessary for financial feasibility for the senior housing project given that 63 units (35%) will be made affordable at below market rates; 20% to very low income and 15% to low-income households.

The proposed DDA and project would result in the elimination of blight by removing non-conforming buildings and land uses as well as remediation of hazardous materials located on the site. The project is also consistent with the Agency's five-year implementation plan, in that Phase I would add approximately \$50 million dollars of new assessed value resulting in \$400,000 in property tax increment to the RDA. The entire project (Phases I and II) would result in an assessed value of \$120 million dollars and create property tax increment revenue in the range of \$900,000 annually. Moreover, the project would support local economic development and retail sales tax revenue to the city by adding approximately 700 to 800 new residents who will create a demand for goods and services.

Conclusion: There are no facilities in the City that offer a package of continuum services for seniors allowing them to age in place within one location. Given the City’s aging population, a project providing such services is highly desirable. The purchase price and financial assistance request is consistent with California Redevelopment Law and is necessary to ensure the project’s feasibility. In addition, the project will also help achieve the RDA’s objectives by creating approximately \$400,000 per year in additional property tax increment to the Agency, eliminating blight, and furthering the objectives in the RDA’s five-year implementation plan. The entire project (Phases 1 and 2) would generate an estimated \$900,000 annually.

Fiscal Impact: execution of the assignment and assumption agreement will require a budget appropriation from the undesignated fund balance of the Housing Set Aside Fund.

Attachments:

1. Disposition and Development Agreement
2. Resolution
3. Budget Change Form

Recommendations:

1. Adopt a Resolution authorizing the Agency Executive Director to execute the Assignment and Assumption Agreement, and the Disposition and Development Agreement for South Main Senior Lifestyles LLC (SMSL) at 1504-1620 South Main Street in Milpitas, and making statutory findings in connection with CEQA and Community Redevelopment Law.
2. Approve a budget change form.

RA5. Approve FY 2009-10 Budget Amendment to Address State Budget Impact (Staff Contacts: Tom Williams, 586-3050, and Emma Karlen, 586-3145)

Background: The State of California Legislature adopted the Fiscal Year 2009-10 Budget, which was signed by the Governor on July 28, 2009. To balance the state budget, the Governor proclaimed a fiscal emergency, allowing the borrowing of property tax from local municipalities pursuant to Proposition 1A adopted in 2004. Impacts to the City of Milpitas include the state borrowing \$1.7 million of property tax - which must be paid back in three years with interest - and taking \$11.8 million from the Redevelopment Agency.

To address the state borrowing of \$1.7 million General Fund property tax, City staff is recommending one of three alternatives:

- 1) Advance the money from the General Fund undesignated reserve. The General Fund is estimated to have an undesignated reserve of approximately \$14.7 million at June 30, 2009. This will leave a balance of about \$13 million in the General Fund undesignated reserve which, at approximately 19% of budgeted expenditures, is in compliance with the budget policy.
- 2) Advance the money from the 2% Transient Occupancy Tax Fund that is designated for library and performance arts programs. This Fund is estimated to have an unencumbered fund balance of approximately \$5.9 million at June 30, 2009.
- 3) Advance \$1 million from the 2% Transit Occupancy Tax Fund and \$0.7 million from the Public Art Fund. The Public Art Fund is estimated to have an unencumbered fund balance of approximately \$847,000 at June 30, 2009.

Staff recommends amending the Redevelopment Agency budget to add an expenditure line item entitled Education Revenue Augmentation Fund (ERAF) payment for \$11.8 million. The ERAF payment will reduce the Agency Fund's undesignated reserve to approximately \$23.2 million in FY 2009-10.

Fiscal Impact: \$1.7 million revenue borrowing from the City budget and \$11.8 million revenue taking from the Redevelopment Agency budget.

Recommendation: Utilize \$1.7 million from the General Fund reserves to cover the state borrowing of \$1.7 million until it is repaid by the state pursuant to Proposition 1A; and, amend the Redevelopment Agency budget to include the \$11.8 million required by the state Education Revenue Augmentation Fund shift.

***RA6. Adopt a Resolution Granting Final Acceptance of North Main Street Streetscape Phase I, Project No. 8165 (Staff Contact: Steve Erickson, 586-3301)**

Background: This project provided for a new pedestrian-friendly streetscape along North Main Street to support the DeVries Senior Housing, new Library, County Health Center, and other Midtown improvements. The project was initially accepted and has passed the one-year warranty period. Therefore, the Redevelopment Agency/City Council may grant a final acceptance and the contractor's bond may be released.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting final acceptance of North Main Street Streetscape Phase I, Project No. 8165 and release of the contractor's bond.

***RA7. Authorize the Executive Director/City Manager to Execute a Consulting Services Agreement with Biggs Cardosa Associates, Inc. for Soundwall Renovation, Project No. 8196 (Staff Contact: Steve Erickson, 586-3301)**

Background: In accordance with the City’s consultant selection procedure, Biggs Cardosa Associates, Inc. has been selected to perform the design services for the Soundwall Renovation, Project No. 8196. The scope of work shall provide for renovation of City sound walls along N. Milpitas Blvd., Escuela Parkway, Jacklin Road at Horcajo, La Palma, Hillview Drive at Tulacitos Creek, Nicklaus at N. Park Victoria, and other locations. Portions of the walls have deteriorated and will need to be structurally repaired or completely replaced. The current phase of work includes the east side of North Milpitas Blvd. from Berryessa Creek to Escuela Parkway; south side of Escuela Parkway from North Milpitas Blvd. to Tramway Drive; and east of Horcajo Circle/ La Palma.

Staff negotiated a scope and fee with Biggs Cardosa Associates, Inc. for these services for the not to exceed amount of \$28,500, which is considered reasonable for the work.

Fiscal Impact: None. Sufficient funds are available in the project budget to cover this expense.

Recommendation: Authorize the Agency Executive Director to approve an agreement with Biggs Cardosa Associates, Inc. for consulting services for the Soundwall Renovation, Project No. 8196 for an amount not to exceed \$28,500.

RA8. Agency Adjournment

XIV. REPORTS OF OFFICER AND COMMISSIONS

Mayor and Council

- 1. Report on Personal Rapid Transit (PRT) and Authorize sending a Letter to Santa Clara Valley Transportation Authority Regarding Funding for PRT/ATN (Automated Transit Network) for the Curtis/Yosemite overcrossing (Contact: Mayor Livengood, 586-3051)**

Background: Mayor Livengood will report to the City Council on the issue of “Personal Rapid Transit” and a local proposal for its use in the City of Milpitas.

Included in the agenda packet is information on PRT from the City of San Jose and related materials.

Recommendation: Authorize sending a letter from the City of Milpitas to the Santa Clara Valley Transportation Authority regarding funding for PRT/ATN (Automated Transit Network) for the Curtis/Yosemite overcrossing.

- * 2. Consider Mayor’s Recommendations for Reappointments to Two Milpitas Commissions (Contact: Mayor Livengood, 586-3051)**

Background: Mayor Livengood recommends the following Milpitas residents be reappointed to two Milpitas Commissions:

Bicycle Pedestrian Advisory Commission

Reappoint Rene Briones to a term that expires in August 2012.

Reappoint Aaron Faupell as Alternate No. 2 to a term that expires in August 2011.

Parks, Recreation and Cultural Resources Commission

Reappoint Rebecca Villalobos as Alternate No. 2 to a term that expires in June 2011.

Recommendation: Consider the recommendations from Mayor Livengood, and move to approve his recommended reappointments to two Milpitas Commissions.

- 3. Update from Milpitas Unified School District Staff on the “Raising A Reader” Program (Contact: Vice Mayor McHugh 586-3023)**

Background: At the request of the Vice Mayor, this item was placed on the agenda to receive an update from School District staff regarding the “Raising a Reader” program. It was established as a joint venture between the City and the Milpitas Unified School District to promote reading as well as to educate parents and guardians about the importance of reading for school success. The program provides participants with the tools and materials they need to make daily reading practical in their homes.

Kathy Lincoln will present an overview of the current program and continuing efforts to keep the community informed.

Fiscal Impact: None.

Recommendation: Receive report from Milpitas Unified School District staff on the “Raising A Reader” program.

Sister Cities Commission

- * 4. **Approve an Update to the Memorandum of Understanding to Continue the Sister City Relationship with the City of Tsukuba, Japan (Staff Contact: Holly Cuciz, 586-2602)**

Background: The City of Tsukuba, Japan (formerly Kukizaki) was the first Sister City that was established with Milpitas in 1996. The most recent extension of the Memorandum of Understanding (MOU) took place on February 17, 2004, when the City of Milpitas updated and extended its MOU with Tsukuba through December 2008. Over the past year, staff and the Sister Cities Commission have worked with Tsukuba to update the MOU. The Sister Cities Commission unanimously recommends that the updated MOU should be extended for five years beginning September 1, 2009. Tsukuba is agreeable to this term. The most recent visit from Tsukuba was a student exchange that took place in June 2008. The MOU proposes at least one cultural exchange to each city.

Fiscal Impact: None.

Recommendation: Approve the updated Memorandum of Understanding as recommended by the Sister Cities Commission, to continue a Sister City relationship with the City of Tsukuba, Japan for five years beginning September 1, 2009.

XVI. NEW BUSINESS

5. **Receive Staff Report and Approve the Cardoza Park Renovation Master Plan and Project Phasing, Project No. 5088 (Staff Contacts: Steve Erickson, 586-3301, and Bonnie Greiner, 586-3227)**

Background: This project is included in the 5-year Capital Improvement Program and provides for renovations of Cardoza Park. On August 3, 2009, staff presented a Master Plan for the renovation of Cardoza Park to the Parks, Recreation and Cultural Resources Commission (PRCRC) as an informational item. The Master Plan concept for Cardoza Park recommends the complete renovation of the existing park, which was constructed in 1973, and has served out its useful life. New park features could include the addition of a community/recreation building, expanded picnic areas, the relocation and expansion of the amphitheatre, updated playgrounds for different age groups, a water play area, basketball courts, and seating with shade opportunities. Total cost to complete all Master Plan improvements is approximately \$11 million. Therefore, staff proposes to complete the project in three phases and to look for funding and grant opportunities for the completion of Phases 2 and 3. Gates & Associates is the architect that created the Master Plan and the firm is ready to commence with design of the first project phase.

Staff will provide a brief presentation describing the recommended concept plan in more detail for the Council's consideration.

Fiscal Impact: None. Sufficient funds for design and construction of Phase 1 playground renovation are available in the current CIP. Future funding will be required for the subsequent phases of the renovation.

Recommendation: Receive staff report and approve Cardoza Park Renovation Master Plan and Project Phasing, Project No. 5088.

6. Consider Approval of a Revised Population Estimate for the Purpose of Calculating the Park In-Lieu Fee and Consider Architectural Modifications for the Landmark Tower Project Located at 600 Barber Lane (Staff Contact: Sheldon Ah Sing, 586-3278)

Background: On November 18, 2008, the City Council approved the Landmark Tower project consisting of a 375 unit 18-story mixed use building. When the project was approved, the Park in Lieu fee was estimated to be \$4,638,685. The City's Subdivision Ordinance (Section 9.05-2) allows the applicant to submit justification that the estimated household sizes for the project will be different than those used in the Park in Lieu calculation. The applicant's study estimates 1.45 persons per dwelling versus the 2.5 persons per dwelling used in the standard calculation. If allowed, this adjustment reduces the estimated in-lieu fee to \$2.1 million.

The applicant has also offered to grant public access to the project's half-acre roof garden during operating hours of the building. This permanent access would be recorded as an easement with the final map. The dedication of a public access easement is similar to the dedication of land and can be used as a land credit toward the project's park obligations. The value of those improvements on the roof garden covered by the easement can also be credited against the park in-lieu fee. Pending preparation of an appropriate supporting study, staff estimates that if such public access easement is granted with the final map, then no additional park in-lieu fee will be required.

As required by the Council, the applicant has modified the look of the building to create greater continuity between the granite base and the rest of the building. The original architectural concept included a four-story base with a dark brown granite veneer. The fifth through 18th floors included lighter colored concrete with glass fenestration and some granite trim. The applicant has revised the architecture by eliminating the granite trim on the upper stories and has changed the first and second floors to include lighter colored granite. The changes provide incompatible contrasts. Elevations of the original and revised plans will be available for Council comment. It is recommended that the applicant consider the comments of Council and work with staff to further refine the exterior plans to provide for greater architectural consistency.

Applicant TP Pham LLC requested permit extensions beyond those allowed in the Municipal Code. The project's Site Development Permit and Conditional Use Permit are both due to expire on May 18, 2010 and the tentative map will expire on November 18, 2012. The City Council may grant one additional time extension for a project for a period of 18 months for the Site Development Permit and Conditional Use Permit and two years for the tentative map. If such extensions are granted in the future, then the permits would expire in November 2011 and the tentative map would expire on November 2014. A project's approvals become vested once a foundation is completed or an easement has been recorded on the property. Any future modifications approved by the City will also reset the permit expiration date, except for the tentative map.

Fiscal Impact: None.

Recommendations:

1. Approve the reduction of Park in Lieu Fees from \$4,638,685 to \$2,100,000 based upon the demographic information provided by applicant TP Pham LLC for Landmark Tower and provide credit to the applicant for the public roof top park/garden in lieu of any remaining fees.
2. Approve the architectural refinements to the exterior elevation.

7. Receive Update on the Local Improvements for a Better Tomorrow (LIFT) Zone Project (Staff Contact: James Lindsay, 586-3273)

Background: Mayor Livengood initiated a neighborhood improvement program for the properties located between Adams Avenue and East Calaveras Boulevard known as the Local Improvements for a Better Tomorrow (LIFT) Zone. These properties have not been maintained to acceptable standards over the years resulting in visual blight and poor living conditions. A map showing the boundaries of the initial study area identifying the owners of each property is included in the agenda packet. Also provided is a conceptual improvement plan for the study area.

A presentation will be given at the Council meeting highlighting the completed milestones and next steps for the project.

Fiscal Impact: None.

Recommendation: Receive status update on the LIFT Zone area of Milpitas.

8. Receive the Monthly Economic Development Report (Staff Contact: Diana Barnhart, 586-3059)

Background:

Hotel Outreach: Phase I of the Conference Center feasibility study will be completed by Integra Realty Resources in mid-August. During July, the consultant interviewed other conference center facility managers and area hoteliers as part of the study. The Mayor hosted a second meeting of the hoteliers on August 10 for them to meet the new Great Mall General Manager and encourage joint marketing programs. The Great Mall is promoting a "Shop & Stay" program with the local hotels that was well received. Other collaborative options include how the City can participate and add extra value. Hoteliers indicated that leasing is flat, but that planning for 2010 included more business travel. The extended stay hotels noted that their weekend rates were up with family "Staycationers." One hotel reported that its summer weekend occupancy rates were 80 to 90 percent. However, hotel tax revenues have dropped considerably during the same time frame.

SVUnwired Milpitas: The service was made available to the general public on June 16, and started out with 50 users a day. SVUnwired Milpitas recently reported that use had increased to 600 simultaneous users at one point. The operators are confident that most of the system "bugs" have been worked out and want to start promoting the network heavily. Over the summer, 10 new nodes were added and the system will be able to handle any increased usage. SVU had hoped to be able to have outreach meetings over the summer, but now would like to focus in on not only promoting the service, but also where additions should be prioritized. Speedtest.net recently ranked Milpitas in the top ten California cities with the fastest upload internet speeds. Stanford University headed the list.

Great Mall: Michael Rohde, the new Great Mall General Manager formerly with Cupertino Square (Vallco Shopping Center) began with the Great Mall in June. He advised that the Forever 21 expansion (33,000 sq. ft.) is scheduled for completion prior to the 2009 Holiday shopping season. The new Coach store opened on Saturday, August 8 and sales were very strong, anticipating sales from this store reaching nearly \$20 million per year. Olive Garden will be opening at the Great Mall as well and another nationally known retailer will be opening in the

first quarter of 2010 in the former Steve & Barrie's location. With the leasing of the Steve & Barrie's site, the Great Mall has a 92% occupancy.

IHOP: recently the building permit was issued and construction activity is well underway. International House of Pancakes anticipates a November opening.

Kovio: Kovio, located on South Hillview Avenue, was featured on the front page of the August 10th Mercury News Business Section. Kovio is expanding its operations and will be hiring about 40 new entry level manufacturing positions in the early fall. Staff coordinated a meeting with Kovio, NOVA (who will manage the hiring and target it to Milpitas residents) and the State Employment Training Panel to provide training funds to Kovio for this expansion.

Fiscal Impact: None. There is no fiscal impact associated with this action.

Recommendation: Receive the monthly economic development report from the Economic Development Manager.

- * 9. **Proposal to Make Public a Confidential Attorney Memo Regarding the Order of Council Agenda and Breadth of Conflict of Interest Disclosure (Staff Contact: Michael Ogaz, 586-3040)**

Background: During the City Council meeting of June 16, 2009, Vice Mayor McHugh asked the City Attorney to report back on two items. One was whether the Invocation should precede the Pledge of Allegiance at Council meetings and the second was whether the announcement of conflicts of interests which is made at all meetings should include disclosure by other public officials besides the members of the Council; specifically, all persons required to file FPPC Form 700/Statement of Economic Interests.

On June 18, 2009, the City Attorney delivered to the Council a memo addressing those issues. It was not publicly distributed. During the Council meeting of August 4, 2009, Councilmember Giordano requested that the Council consider whether to make the memo public; resulting in this agenda item. Since the memo is currently confidential, a copy will be provided only to the Mayor and City Council for their review.

The Office of the City Attorney has no objection to public disclosure of the memo. Such disclosure will not be adverse to the best interests of the City.

Fiscal Impact: None.

Recommendation: Move to make public a confidential memo from the City Attorney and place it with the City Clerk for citizen access.

- * 10. **Authorize the City Manger to Execute a Cost Sharing and Reimbursement Agreement for the Transit Area Plan's Piper Montague Subdistrict (Staff Contact: James Lindsay, 586-3273)**

Background: The Piper Montague Subdistrict is one of the few areas within the Transit Area that requires a substantial investment in new public infrastructure to redevelop the properties. This infrastructure would only serve this subdistrict, so the costs were not included in the overall Transit Area infrastructure program funded by the Transit Area Impact Fee. The property owners have agreed on a method of sharing these costs and have requested the City's assistance in implementing the cost sharing program.

The City's assistance would involve providing an impact fee credit to the owner that installs the subdistrict public infrastructure for the costs that exceed their established fair share. This credit would later be reimbursed by the remaining owners through a surcharge on their impact fees. If

the remaining owners do not develop their properties within seven years of the credit being issued, the City has the right to collect a Mello Roos special tax equal to the amount of impact fee credits owed.

Examples of how the program would work are provided in Exhibit H to the proposed agreement (in the Council's agenda packet). The cost sharing program would support the complete installation of the public infrastructure in the Piper Montague Subdistrict thereby facilitating redevelopment of these properties.

Fiscal Impact: Deferral of collection of a portion of developer impact fees owed to the City for up to seven years.

Recommendation: authorize the City Manager to execute a Cost Sharing and Reimbursement Agreement for the Transit Area Piper Montague Subdistrict, subject to approval as to form by the City Attorney.

* 11. **Approve and Certify the Sanitary Sewer Management Plan (Staff Contact: Kathleen Phalen, 586-3345)**

Background: On May 2, 2006, the California State Water Resources Control Board (SWRCB) adopted Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-0003 requiring owners of public sanitary sewer collection systems to prepare a Sanitary Sewer Management Plan (SSMP). The order also requires agencies to report sanitary sewer overflows (SSOs), consisting of all spills or discharges of sewage from public sewer lines to land and/or water.

The State has assembled all of the reported SSOs on an interactive Statewide map available to the public at http://www.waterboards.ca.gov/water_issues/programs/sso/sso_map/sso_pub.shtml. The State's concern is that, throughout the State, spills from poorly maintained sewer collection systems are polluting storm drains, creeks, rivers, and beaches with toxic and pathogenic waste. The State believes that requiring SSMPs and public reporting of SSOs will lead to better managed collection systems.

Staff has prepared the City's SSMP (included in the Council packet) in accordance with State guidance. It documents the City's allocated resources and staff assignments to ensure that the City's collection system is operated and maintained in a manner that minimizes sewer spills to the maximum extent feasible. The City sewer management practices have been effective as demonstrated by its excellent record of SSOs. On average, the City has three minor (less than 1,000 gallons) and no major (over 1,000 gallons or reaching surface water) SSOs per year. Given that the City has 175 miles of sewer pipe, this equates to an annual rate of 1.7 minor SSOs per 100 miles of sewer. The US Environmental Protection Agency generally considers up to two SSOs per 100 miles of sewer indicative of good sewer condition and performance.

The City can attribute its good performance to several of the City's high standards for sewer design and construction, its long-term commitment to monitoring system capacity and condition, and replacing or repairing defective components through the Capital Improvement Program, and the proactive preventative maintenance activities conducted by the Public Works maintenance crew.

Fiscal Impact: None.

Recommendation: Approve and certify the Sanitary Sewer Management Plan.

XVI. ORDINANCE

- * 12. **Waive the Second Reading and Adopt Ordinance No. 65.139 Amending the Milpitas Municipal Code by Providing for Additional Building Permit and Plan Review Extension Periods (Staff Contact: Keyvan Irannejad, 586-3244)**

Background: On August 4, 2009, the City Council introduced Ordinance No. 65.139, which amends existing City ordinances by authorizing the Chief Building Official to grant additional building permit and plan review extension periods upon written request. The Ordinance remains unchanged and is now ready for adoption.

Fiscal Impact: None.

Recommendations:

1. Waive the second reading of Ordinance No. 65.139.
2. Adopt Ordinance No. 65.139, amending the Milpitas Building Administration Code by providing for additional building permit and plan review extension periods.

XVII. RESOLUTIONS

- * 13. **Adopt a Resolution Certifying the Annexation of Cerano Apartments and Murphy Ranch Townhomes Project to Community Facilities District No. 2005-1, Project No. 3170 (Staff Contact: Fernando Bravo, 586-3328)**

Background: Fairfield Murphy Road LLL and Fairview Murphy Road LLC are the owners of real property commonly known as Cerano Apartments and Murphy Ranch Townhomes (APN 086-01-041 and 086-01-042). 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.

Fairfield Murphy Road LLC and Fairview Murphy Road LLC, by voluntary agreement memorialized in a condition of approval for its tentative map approved by the City Council on November 6, 2007, agreed to petition the City to annex its property into CFD 2005-1. Such an annexation would subject the Cerano Apartments and Murphy Ranch Townhomes properties to the collection of a special tax that would pay for the provision of certain public City services in the area.

Fairfield Murphy Road LLC’s and Fairview Murphy Road LLC’s written consent and approval and other legally required materials and documents are attached to the resolution and are included in the Council’s agenda packet.

Fiscal Impact: None.

Recommendation: Adopt a resolution certifying and annexing APN 086-01-041 to 086-01-042 (Cerano Apartments and Murphy Ranch Townhomes) into Community Facilities District No. 2005-1.

- * 14. **Adopt a Resolution Approving Public Improvements Plans, new Public Park Plans, Final Map, and Authorize City Manager to Approve a Subdivision Improvement Agreement (Tract 10019) for Cerano Apartments, Project Private Job No. 3170 (Staff Contact: Fernando Bravo, 586-3328)**

Background: On November 6, 2007, the City Council approved the Major Vesting Map (Resolution No. 7714) for the Fairfield Murphy Road LLC (Cerano Apartments). The Cerano Apartments and the new public park will be served by public utilities located within Murphy Ranch Road. A complete set of the public improvements plans, new public park plans, final

map, and subdivision improvement agreement are available for review in the office of the City Engineer. Staff is working on final design details for the Public Improvement Plans of the Bellew Pump Station to be completed prior to execution of this agreement.

Staff recommends that the City Council authorize the City Manager to execute the Subdivision Improvement Agreement after Public Improvement Plans are completed and approved by staff.

Fiscal Impact: None.

Recommendations:

1. Adopt a Resolution approving public improvements plans, new Public Park Plans, and Final Map for Cerano Apartments.
2. Authorize the City Manager to approve a Subdivision Improvement Agreement (Tract 10019) for Cerano Apartments, Project PJ (private job) No. 3170.2.

*** 15. Adopt a Resolution Granting Initial Acceptance of Minor Storm Drain at Country Club Drive, Project No. 3700 (Staff Contact: Steve Erickson, 586-3301)**

Background: City Council awarded the storm drain installation at Country Club Drive between Camarillo Court and Calaveras Ridge Drive to Preston Pipelines, Inc. on June 2, 2009. The project has been successfully completed, and staff recommends that the City Council adopt a resolution granting initial acceptance and authorize the reduction of the contractor's faithful performance bond to 10% of the contract amount or \$4,400.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of the Minor Storm Drain at Country Club Drive Project No. 3700, subject to the one-year warranty period and reduction of the faithful performance bond.

XIX. BIDS AND CONTRACTS

*** 16. Approve First Amendment to the Cooperative Agreement Between City of Milpitas and the Santa Clara Valley Transportation Authority (VTA) for the Route 237/I-880 Interchange and McCarthy Blvd. Median at I-880 Project No. 4170 (Staff Contact: Greg Armendariz, 586-3317)**

Background: On October 18, 2005, the City Council approved a funding concept to leverage two partially funded projects highway and light rail landscape projects. Currently, these two major transportation projects are in need of landscaping work. The first one is the landscape work under the light rail viaduct (LRT) in the median of Great Mall Parkway, from Abel Street to San Jose City limits (costs are being shared between the City of Milpitas and VTA). The second landscape project is the 237/I-880 Highway Interchange project. Both projects are important because one is in the MidTown Specific Plan area and the other is a major gateway into the City of Milpitas.

On January 16, 2007, City Council approved the Cooperative Agreement between VTA and the City of Milpitas (Agreement) defining the terms and funding obligations. A copy of the agreement is on file in the City Engineer's office for review.

More recently, VTA is working on the 2006 voter-approved Proposition 1B funded I-880 HOV Lane Widening Project (US 101 to State Route 237). This project will have an overlap with the 237/I-880 Interchange and McCarthy Boulevard Median Project. VTA has proposed to include portions of this work as part of the I-880 HOV Project.

These scope changes to the 237/I-880 Interchange project will require amending the January 16, 2007 Cooperative Agreement. This also will require VTA to re-scope the project and to add this new scope to the I-880 HOV Lane Widening Project. The First Amendment to the Cooperative Agreement (included in the agenda packet) outlines the modifications of the Agreement. The First Amendment to the Agreement includes Exhibit A, which provides a status of the project and an updated project schedule. In the schedule, the project start of construction has changed from November 2007 to February 2010. Exhibit B has also been modified and is attached to the First Amendment to the Agreement. This exhibit shows in more detail the cost changes for the various project phases. As shown in Exhibit B, the total project costs have been reduced from \$3,750,000 to \$3,285,000. The cost reduction by removing this landscape project area for this change is estimated at \$465,000. The \$465,000 will be used for the Caltrans right-of-way land transfer, staff support, and landscape maintenance.

If, at the end of the project, there is any cost savings, staff is recommending those funds go towards completing the omitted landscape area removed from the VTA Cooperative Agreement project area. Staff recommends that the First Amendment to the Agreement also requests a new advance in the amount of \$125,000 to complete the final/bid-ready plans, specifications and estimate.

The City's obligation to pay VTA the \$3,285,000 is contingent upon the City receiving the \$2,000,000 payment from Caltrans to maintain the landscape in the respective interchanges.

Fiscal Impact: None.

Recommendation: Approve the First Amendment to the Cooperative Agreement between the City of Milpitas and Santa Clara Valley Transportation Authority (VTA) for the Route 237/I-880 Interchange and McCarthy Blvd. Median at I-880, Project No. 4170.

* 17. **Approve a Non-Exclusive Collection, Transportation and Recycling of Non-Putrescible Debris Agreement with Ferma Corporation (Staff Contact: Kathleen Phalen, 586-3345)**

Background: In accordance with Title V, Chapter 200 of the Milpitas Municipal Code and the City's solid waste franchise agreement with Allied Waste Services, solid waste collectors may enter into non-exclusive agreements with the City to collect and dispose of certain non-organic solid waste and/or construction and demolition debris from Milpitas businesses that are not covered by the Allied Waste Services Commercial Recycling Program.

Staff reviewed the application from Ferma Corporation and found it in accordance with the City's requirements. Ferma intends to haul general debris box waste such as construction and demolition waste. In accordance with the Milpitas Municipal Code, staff is also asking for the authority to administratively review collections under the agreement and grant a maximum of two three-year extensions upon a finding of compliance with its terms.

Fiscal Impact: None.

Recommendation: Approve a Non-Exclusive Collection, Transportation and Recycling of Non-Putrescible Debris Agreement with Ferma Corporation.

* 18. **Approve Public Improvement Plans, and Permittee Dedication and Improvement Agreement with Washington Two Investment Group, LLC, for 1312 S. Main Street, Project Private Job No. 2537 (Staff Contact: Fernando Bravo, 586-3328)**

Background: On January 14, 2009, the Milpitas Planning Commission approved a request to allow for the demolition of an existing 1,490 square foot veterinary office, 1,210 square foot care taker's residence, and existing improvements within the Transit Area to accommodate the construction and operation of a new 5,002 square foot child care center and installation of related

improvements at 1312 S. Main Street. The public improvement plans and improvement agreement are for the street frontage improvements, including but not limited to construction of new curb, gutter, sidewalk, street trees and utility connection.

Fiscal Impact: None.

Recommendations:

1. Approve Public Improvement Plans (2-1116) for 1312 South Main Street.
2. Authorize the City Manager to execute the Permittee Dedication and Improvement Agreement with Washington Two Investment Group for Project Private Job No. 2537, subject to the approval of the City Attorney as to form.

XIX. ADJOURNMENT

NEXT REGULAR MEETING: TUESDAY, SEPTEMBER 1, 2009