



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

**TUESDAY, NOVEMBER 16, 2010**

**7:00 P.M.**

**455 E. CALAVERAS BOULEVARD**

**SUMMARY OF CONTENTS**

- I. CALL TO ORDER by the Mayor**
- II. ROLL CALL by the City Clerk**
- III. PLEDGE OF ALLEGIANCE**
- IV. INVOCATION (Mayor Livengood)**
- V. APPROVAL OF COUNCIL MEETING MINUTES – November 2, 2010**
- VI. SCHEDULE OF MEETINGS – Council Calendars for November and December 2010**
- VII. PRESENTATIONS**

- Northern California Solar Energy Association Recognition of City of Milpitas
- 2010 Neighborhood Beautification Awards and Reception

**VIII. 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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- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XI. APPROVAL OF AGENDA**
- XII. 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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**XIII. PUBLIC HEARINGS**

- 1. Hold a Public Hearing and Accept the City of Milpitas 2010 Public Health Goals Report for the Public Water System (Staff Contact: Kathleen Phalen, 586-3345)**
- 2. Hold a Public Hearing to Hear Appeal of the Planning Commission's Approval of the Bintang Badminton Academy Project (Staff Contact: Cindy Hom, 586-3284)**

3. **Hold a Public Hearing to Consider Approval of the Community Development Block Grant Two-Year Funding Priorities for Fiscal Years 2011-13 (Staff Contacts: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)**
4. **Hold a Public Hearing, Adopt a Resolution Approving the Milpitas Square Master Plan Project and Certifying the Environmental Impact Report, and Introduce Ordinance No. 38.794 for a Zoning Amendment and to Approve the Development Agreement (Staff Contact: Sheldon AhSing, 586-3278)**
5. **Hold a Public Hearing and Adopt a Resolution Incorporating Technical Updates to the General Plan and Midtown Specific Plan (Staff Contact: Cindy Hom, 586-3284)**

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

- RA1. Call to Order/Roll Call by the Mayor/Chair**
- RA2. Approval of Minutes – November 2, 2010**
- RA3. Approval of Agenda and Consent Calendar (Items with asterisk\*)**
- RA4. Accept the City’s Comprehensive Annual Financial Report, Component Unit Financial Statements, and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2010 (Staff Contact: Emma Karlen, 586-3145)**
- RA5. Receive the Financial Status Report for the Three Months Ended September 30, 2010 (Staff Contact: Emma Karlen, 586-3145)**
- \*RA6. Accept the Milpitas Redevelopment Agency Fiscal Year 2009-10 Annual Report (Staff Contact: Emma Karlen, 586-3145)**
- \*RA7. Adopt a Resolution Approving an Amendment to the Owner Participation Agreement and Regulatory Agreement with Western Pacific Housing for the Paragon Residential Project (Staff Contact: Felix Reliford, 586-3071)**
- \*RA8. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for the New Senior Center, and Approve Amendment No. 5 to the Agreement with Noll & Tam Architects, Project No. 8176 (Staff Contact: Steve Erickson, 586-3301)**
- \*RA9. Award Service Contract and Authorize the Agency Executive Director to Execute a Contract with Environmental Systems Inc. for HVAC Repairs at the Milpitas Public Library, Project No. 8162 (Staff Contact: Steve Erickson, 586-3301)**
- \*RA10. Authorize the Agency Executive Director to Execute a Contract Change Order with Median Mulch & Street Tree Maintenance for Great Mall Parkway, Project No. 2001 (Staff Contact: Steve Erickson, 586-3301)**
- RA11. Adjournment**

**XV. REPORT OF MAYOR**

- \* 6. Consider Mayor’s Recommendation for Re-appointment to the Youth Advisory Commission (Contact: Mayor Livengood, 586-3051)**

**XVI. NEW BUSINESS**

7. **Receive the Monthly Economic Development Report (Staff Contact: Diana Barnhart, 586-3059)**
8. **Receive Report from the Chair of the Citizens Budget Task Force (Contact: Chair Joseph Weinstein, 586-3051)**
- \* 9. **Receive Staff Report on Pavement Undulator Policy (Staff Contact: Steve Chan, 586-3324)**

#### **XVII. ORDINANCES**

- \* 10. **Waive the Second Reading and Adopt Ordinance No. 113.22, Adopting the 2010 Edition of the California Fire Code and Specified Local Amendments (Staff Contact: Albert Zamora, 586-3371)**
- \* 11. **Waive the Second Reading and Adopt Ordinance No. 65.140 Revising Provisions for Building Regulations (Staff Contact: Keyvan Irannejad, 586-3244)**

#### **XVIII. RESOLUTIONS**

- \* 12. **Adopt a Resolution Authorizing the Filing of an Application for Congestion Mitigation and Air Quality Improvement Funding and Committing the Necessary Non-Federal Match and Stating Assurance to Complete the Abel Street Transit Connection Project (Staff Contact: Steve Chan, 586-3324)**
- \* 13. **Adopt a Resolution Making Findings for Unexpended Development Fees, and Review and Accept the Annual Developer Fee Disclosure Information (Staff Contact: Emma Karlen, 586-3145)**
- \* 14. **Adopt a Resolution Authorizing the City Manager to Execute a Contract for the Citywide Purchase of Office Supplies with Office Max for the Annual Not-to-Exceed Amount of \$95,000 (Staff Contact: Chris Schroeder, 586-3161)**

#### **XIX. BIDS AND CONTRACTS**

- \* 15. **Award a Construction Contract, Including One Add Alternate Item, to Fermin Sierra Construction, Inc. for Phase 6 of the Sewer Deficiency and Structural Correction Program, Project No. 6073 (Staff Contact: Steve Erickson 586-3301)**
- \* 16. **Approve a Budget Appropriation from the General and Solid Waste Reduction Funds and Authorize the City Manager to Execute an Agreement with Cascadia Consulting Group for a Study on a Ban on Polystyrene Food Containers and Single-Use Grocery Bags (Staff Contact: Kathleen Phalen, 586-3345)**

#### **XX. ADJOURNMENT**

**NEXT REGULAR MEETING: TUESDAY, DECEMBER 7, 2010**

**December 7 will be the last City Council meeting in 2010.**

**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/Public Art Committee (alternate)*

*Bicycle Pedestrian Advisory Commission (alternate)*

*Emergency Preparedness Commission*

*Mobile Home Park Rental Review Board*

*Parks, Recreation & Cultural Resources Commission (alternates)*

*Recycling & Source Reduction Advisory Commission (alternate)*

*Senior Advisory Commission*

*Sister Cities Commission (alternate)*

*Youth Advisory Commission (alternate)*

Applications are available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or at the City Hall Information Desk.

Contact the City Clerk's office (586-3003) for more information.

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

## AGENDA REPORTS

### XIII. PUBLIC HEARINGS

#### 1. Hold a Public Hearing and Accept the City of Milpitas 2010 Public Health Goals Report for the Public Water System (Staff Contact: Kathleen Phalen, 586-3345)

**Background:** As required by the California Department of Public Health, staff completed the “City of Milpitas 2010 Report on Public Health Goals for the Public Water System,” included in the Council agenda packet. This is a compilation of the City’s drinking water quality data that exceeded a public health goal during calendar years 2007, 2008 and 2009. The City is required to hold a public hearing to receive comment on this report and to notify the State when this requirement is completed.

Public health goals are not regulatory standards, but are numerical goals established by the federal and state governments to inform the public about potential health effects of contaminants in drinking water. As reported in the City’s annual consumer confidence reports, Milpitas has good quality municipal water that continuously attains all regulatory standards for water quality. However, testing did occasionally detect contaminants at concentrations below drinking water standards, but above public health goals. From 2007 through 2009, water testing detected a single positive coliform bacteria result in the municipal supply and detected several incidences of lead that had leached from customer plumbing into their home supply.

Coliform bacteria are widely prevalent in nature and are generally considered to be benign, but serve as an indicator of potential water contamination. The single positive result was obtained out of 3,925 samples collected on a weekly basis throughout the distribution system and was not confirmed by repeat testing. This anomalous result is not indicative of a potential water quality problem.

Since 1991, federal law requires testing for lead and copper every three years from a small sample of water from older home and business plumbing to assess if the municipal water chemistry should be adjusted to make it less corrosive. Soft, acidic waters more readily dissolve lead and other metals from home plumbing pipes and solder than harder, more alkaline waters. Plumbing installed after 1986 used low-lead solder which reduces the potential to leach metals into the water. Since the lead and copper rule was first instituted by the U.S. Environmental Protection Agency, the City’s wholesale water suppliers have done much work to reduce the corrosivity of their waters. The State has concurred that the wholesalers have optimized corrosion controls and no further adjustment is advisable. However, the City needs to continue triennial sampling to comply with federal law.

In 2007, the City accepted water samples from 37 volunteers owning homes or business in Milpitas constructed before 1986 and found no samples with lead concentration above the drinking water standard of 15 parts per million. Twenty-three samples did exceed the public health goal of 0.2 parts per billion. Although the purpose of this testing is to assess the municipal water chemistry rather than to identify homes with leachable lead plumbing, all volunteers providing samples were given their results and were given information about how to reduce their potential exposure to lead and copper in home plumbing. These recommendations are to not drink or cook with hot water or with cold water which has been sitting more than six hours in home plumbing. Flushing a home tap for 15 to 30 seconds, or until the cold water temperature drops, removes standing water from home plumbing.

**Fiscal Impact:** None.

**Recommendations:**

1. Hold the Public Hearing to receive public comment, and move to close the public hearing.
2. Accept the City of Milpitas 2010 Public Health Goals report and direct staff to notify the California Department of Public Health of the public hearing.

**2. Hold a Public Hearing to Hear Appeal of the Planning Commission’s Approval of the Bintang Badminton Academy Project (Staff Contact: Cindy Hom, 586-3284)**

**Background:** On August 25, 2010, the Planning Commission approved a conditional use permit (UPI0-0006) and environmental assessment (EA10-0002) to allow for the operations of a 35,930 square foot indoor badminton facility within an existing multi-tenant industrial building. A more detailed project description is contained within the Planning Commission staff report, provided in the Council’s agenda packet.

On September 2, 2010, Bay Area Badminton Center filed an appeal of the Planning Commission’s actions. The specific relief the appellant is seeking is to either sustain, reverse, or modify the Planning Commission’s decision to include additional conditions imposed by the City Council to address safety and parking concerns. The appellant claims in its letter dated August 31, 2010, that the Planning Commission lacked sufficient information during the review of the project to render an approval of the project.

**Fiscal Impact:** None.

**Attachments:**

- A. Resolutions (for approval or denial of project)
- B. Bay Badminton Center's Appeal Form and Supplemental Documents
- C. Bintang Badminton Academy Letter and Supplemental Documents
- D. Planning Commission's Approved Minutes of 08/25/2010
- E. Planning Commission's Staff Report of 08/25/2010

**Recommendations:**

- 1. Open the public hearing.
- 2. Move to close the public hearing after hearing public testimony.
- 3. Adopt a resolution upholding the Planning Commission’s actions to approve the Bintang Badminton Academy project.

**3. Hold a Public Hearing to Consider Approval of the Community Development Block Grant Two-Year Funding Priorities for Fiscal Years 2011-13 (Staff Contacts: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)**

**Background:** The City Council establishes funding priorities every two years to guide the disbursement of Community Development Block Grant (CDBG) funds. CDBG funds are separated into three categories: 1) **Public Services** (non-profit organizations offering public services) - 15% of the grant allocation; 2) **Non-Public Services** (housing activities and community improvements) - 65% of grant allocation; and 3) **Program Administration** - the balance (20%) of the grant allocation. The City’s existing adopted funding priorities are as follows:

| <b>Public Services</b>   | <b>Non-Public Services</b> | <b>Program Administration</b>                |
|--|----------------------------|--|
| 25% allocated to City public service programs (e.g. Recreation Assistance Program) | Home Rehabilitation        | \$10,000 allocated for Fair Housing Services |
| Senior Services  | Affordable Housing         |  |
| Youth/Teen Services  | Apartment Rehabilitation   |  |
| Homeless Services/ Sheltering  |                            |  |
| Battered Women Services/ Sheltering  |                            |  |
| Child Care   |                            |  |
| \$5,000 minimum funding for each applicant   |                            |  |

On October 6, 2010, the Community Advisory Commission held a public hearing on the funding priorities and recommended maintaining the existing priorities for FYs 2011-13. Included in the Council's agenda packet is a letter from Department of Housing and Urban Development from its monitoring visit in June of 2010, a summary of CBDG eligible activities and a letter from Senior Adults Legal Assistance.

**Fiscal Impact:** None.

**Attachments:**

- A. Housing and Urban Development Letter
- B. Summary of CBDG Eligible Activities
- C. Community Advisory Commission's Approved Minutes of 10/06/2010
- D. Senior Adults Legal Assistance Letter

**Recommendations:**

- 1. Open the Public Hearing for public comments.
  - 2. Move to close the Public Hearing after hearing any public testimony.
  - 3. Approve the CBDG funding priorities and policies for Fiscal Years 2011-2013.
4. **Hold a Public Hearing, Adopt a Resolution Approving the Milpitas Square Master Plan Project and Certifying the Environmental Impact Report, and Introduce Ordinance No. 38.794 for a Zoning Amendment and to Approve the Development Agreement (Staff Contact: Sheldon Ah Sing, 586-3278)**

**Background:** The proposed Milpitas Square Master Plan would accommodate phased future development of the existing 162,000 square foot commercial center on Barber Lane to include six buildings, up to 900 new dwellings and up to 175,000 square feet of commercial space over a 25 year period. The project includes a General Plan and Zoning Amendment to consider a change in the underlying site land use designation from commercial to mixed use; a Site Development Permit to consider the site layout, phasing plan and design guidelines; a Conditional Use Permit to consider shared parking, height above 12 stories, deviations from setbacks; and a development agreement to address project phasing timing and obligations by the developer.

The Council's Transportation & Land Use Subcommittee reviewed the project on September 13. The Milpitas Planning Commission reviewed the project at its meeting on October 27 and recommended to the Council approval of the project.

**Fiscal Impact:** None.

**Attachments:**

- A. Resolution (GPA, EIR, and Project Approvals)
- B. Ordinance No. 38.794 (Zone Change and Development Agreement)
- C. Planning Commission's Staff Report dated 10/27/10
- D. Planning Commission's Draft Minutes of 10/27/10
- E. City Council Transportation and Land Use Subcommittee Draft Minutes of 9/13/10
- F. Demographic Study
- G. Parking Study

**Recommendations:**

- 1. Open the public hearing to hear any public comments.
- 2. Move to close the public hearing after taking public testimony.
- 3. Adopt a Resolution approving the project and certifying the Environmental Impact Report.
- 4. Waive the first reading of Ordinance No. 38.794.
- 5. Move to introduce Ordinance No. 38.794, a zoning amendment and development agreement for the Milpitas Square Master Plan Project.

**5. Hold a Public Hearing and Adopt a Resolution Incorporating Technical Updates to the General Plan and Midtown Specific Plan (Staff Contact: Cindy Hom, 586-3284)**

**Background:** On October 27, 2010 the Planning Commission recommended the City Council approve technical updates to the General Plan (GP10-0003) and the Midtown Specific Plan (ST10-0001). These updates consist of changes to integrate the City's Park and Recreation Master Plan and Bikeway Master Plan as well as other updates to exhibits reflecting current population and job estimates from the Association of Bay Area Government Projections 2009. See Attachment B for strikethrough (deletions) and underline (additions) changes. These amendments provide a set of fully integrated and updated planning documents.

**Fiscal Impact:** None.

**Attachments:**

- A. Council Resolution
- B. Strikethrough/Underline General Plan
- C. Strikethrough/Underline MidTown Specific Plan
- D. Planning Commission's Staff Report of 10/27/2010
- E. Planning Commission's Resolution No. 10-022
- F. Planning Commission's Draft Minutes of 10/27/2010

**Recommendations:**

- 1. Open the Public Hearing
- 2. Close the Public Hearing after hearing public testimony
- 3. Adopt a Resolution approving the updates to the General Plan and Midtown Specific Plan.

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

**RA4. Accept the City's Comprehensive Annual Financial Report, Component Unit Financial Statements, and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2010 (Staff Contact: Emma Karlen, 586-3145)**

**Background:** Transmitted are the Comprehensive Annual Financial Report (CAFR) of the City of Milpitas, Milpitas Redevelopment Agency Component Unit Financial Statements, Single Audit Report, Bicycle/Pedestrian Projects Financial Statements, Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment and the Memorandum on Internal Control and Required Communications for the fiscal year ended June 30, 2010.

**Comprehensive Annual Financial Report (CAFR) of the City of Milpitas**

The CAFR presents the operations and financial activity of all the City's various funds, including the General Fund. It includes an unqualified audit opinion from Maze & Associates, the City's external auditors, that the financial statements present fairly the results of operations for the year ended June 30, 2010, in conformance with Generally Accepted Accounting Principles (GAAP).

**Milpitas Redevelopment Agency Component Unit Financial Statements**

The Milpitas Redevelopment Agency is a component unit of the City of Milpitas. The accompanying component unit financial statements present the operations and financial activity of the Milpitas Redevelopment Agency including the Agency's redevelopment project fund and housing reserve fund. The Agency's Component Unit Financial Statements include an unqualified audit opinion from Maze & Associates, the Agency's external auditors, that the financial statements present fairly the results of operations for the year ended June 30, 2010, in conformance with GAAP. The report from Maze & Associates also includes a Compliance Report indicating that the Agency complied, in all material respects, with provisions of laws and regulations contained in the Guidelines for Compliance Audits of California Redevelopment Agencies issued by the State Controller's Office.

### **Single Audit Report**

The Single Audit is required by the Office of Management and Budget Circular A-133 for state and local governments and non-profit organizations that receive Federal Awards. The report did not disclose any material weaknesses or significant deficiencies on the internal control over the major federal award programs. However, the reports identified instances of noncompliance with the federal award program requirements. They are as follows:

- 1) The City did not communicate the Catalog of Federal Domestic Assistance number (“CFDA”) to the subrecipients of the Community Development Block Grants.
- 2) The City did not monitor whether the subrecipients with active awards under the Community Development Block Grant American Recovery and Reinvestment Act (“ARRA”) Entitlement Grants maintain current registrations in the Central Contractor Registration.
- 3) The City did not have complete understanding of the Department of Energy ARRA Energy Efficiency and Conservation Block Grant Program requirements to monitor expenditures and document changes in accordance with the grant limitations.

It should be noted these instances of non-compliance did not result in any denied reimbursements and corrective actions have been taken.

### **Bicycle/Pedestrian Projects Financial Statements**

The Bicycle/Pedestrian Projects Financial Statements includes Bicycle/Pedestrian Projects that were developed using Transportation Development Act (TDA) grants. The auditor issued an unqualified opinion on these statements.

### **Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment**

This report shows the auditor applied specific procedures to validate the City’s Appropriations Limit calculations.

### **Memorandum on Internal Control and Required Communications**

Under generally accepted auditing standards, our auditors are encouraged to report certain matters regarding the City’s internal control structure. The City’s auditors have provided such a report in their Memorandum on Internal Control and Required Communications (“Management Letter”) for the Year Ended June 30, 2010. This report includes management response to the auditor’s recommendations on Information Technology best practices. It should be noted that the auditors do not view any of their comments as material weaknesses or significant deficiencies on the City’s internal control structure.

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

**Recommendation:** Accept the City’s Comprehensive Annual Financial Report, the Redevelopment Agency Component Unit Financial Statements, and other related Annual Audited Reports (refer to above) for the fiscal year ended June 30, 2010, all of which are included in the Agency/Council’s agenda packet.

### **RA5. Receive the Financial Status Report for the Three Months Ended September 30, 2010 (Staff Contact: Emma Karlen, 586-3145)**

**Background:** As of September 30, 2010, the General Fund received approximately \$6.37 million in total revenue. This amount is \$1.33 million more than the revenues received for the same period in FY 2009-10 primarily due to receipt of approximately \$900,000 building inspection and permit fees from the Fairfield development early this year. Sales tax revenue increased by about \$260,000 or 12.8% compared to the first quarter in FY 2010. Sales generated from apparel stores, automobiles, and service stations were higher than one year ago.

Transient Occupancy Tax revenues (“TOT”) were up about \$89,000 or 13.9%, compared to the same period last year. Building permits and inspection fees increased by about \$863,000 from the first quarter in FY 2010 due to fees received from the Fairfield development as mentioned

above. Customer service charges increased from last year by about \$49,000 due to increase in private job activities compared to the same period last year.

Based on the revenues received to date and other information, staff revised the total General Fund revenue projection for the entire year to be about \$225,000 more than budget. The detail of each major revenue projection will be presented to the City Council at the meeting.

City departments' expenditures were on track with their budget. Overall expenditures were at about 25% of the operating budget which is very similar to last year. It should be noted the expenditures for several departments exceeded 25% for the first three months. However, these spending patterns are typical due to various invoices that need to be paid at the beginning of the fiscal year instead of being able to spread out throughout the year. Examples of such expenditures include worker comp insurance premium which was paid from the Human Resources budget, software license maintenance fees which were paid from the Information Services Department budget and contribution to the Chamber of Commerce which was paid from the City Council budget. Non-departmental expenditures also exceeded 25% of the budget due to the timing difference for reimbursements from the CalPERS California Employers' Retiree Benefit Trust Fund for retiree medical benefit payments.

**Fiscal Impact:** None.

**Recommendation:** Receive financial status report for the three months ended September 30, 2010.

**\*RA6. Accept the Milpitas Redevelopment Agency Fiscal Year 2009-10 Annual Report (Staff Contact: Emma Karlen, 586-3145)**

**Background:** Pursuant to the reporting requirements of the Community Redevelopment Law and the Agency's bylaws, the Agency must prepare a report annually to its legislative body within six months of its fiscal year end. Staff prepared the Fiscal Year 2009-10 Annual Report to provide Agency board members with an overview of the redevelopment activities and accomplishments for the two project areas. An independent financial audit report will be presented for the Agency's acceptance on a separate agenda item on this date.

**Fiscal Impact:** None. There is no fiscal impact for the recommended action.

**Recommendation:** Accept the Milpitas Redevelopment Agency Fiscal Year 2009-10 Annual Report.

**\*RA7. Adopt a Resolution Approving an Amendment to the Owner Participation Agreement and Regulatory Agreement with Western Pacific Housing for the Paragon Residential Project (Staff Contact: Felix Reliford, 586-3071)**

**Background:** At its meeting on September 5, 2006, the Redevelopment Agency approved the Owner Participation Agreement (OPA) and associated documents with Western Pacific Housing, Inc. to provide 147 units within the Paragon Project located on South Main Street near Montague Expressway. 20% of the units within the project are affordable, nine to very-low income households and 20 to moderate income households. The OPA provided for \$133,000 in down payment assistance from the Agency's Housing Fund for each of the very-low income units for a total of \$1.2 million. The 20 moderate units would not receive any financial assistance from the Agency. All the very-low income units have been sold, but no qualified buyers have been found for the moderate income units. The Agency approved an equity sharing pilot program at Paragon through an amendment to the OPA to facilitate the sale of these moderate income units. However, new home buyers continue to prefer market rate units due to the affordable prices and the moderate rate units remain unsold.

Western Pacific Housing has agreed to construct certain public improvements in exchange for the ability to sell the 20 moderate income units at market prices. The public improvement would consist of a new landscaped median along South Main Street from Montague Expressway to approximately Cedar Way. This median is part of the long-term improvement plan for South Main Street and would be a significant visual improvement to the area and provide the desired traffic controls for this segment of the street. The estimated value of the design and construction of these improvements is \$670,000. The Agency will still meet its affordable housing obligations in the redevelopment area with the release of these 20 units.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution approving the amendment to the Owner Participation Agreement and Regulatory Agreement with Western Pacific Housing.

**\*RA8. Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond for the New Senior Center, and Approve Amendment No. 5 to the Agreement with Noll & Tam Architects, Project No. 8176 (Staff Contact: Steve Erickson, 586-3301)**

**Background:** The Agency awarded construction of the new Barbara Lee Senior Center to Swenson & Associates General Contractors on March 3, 2009. The project provides for the construction of a new Senior Center by renovation of the former Milpitas Library building located at 40 North Milpitas Boulevard. The project was completed on time and successfully opened to the public on Monday, August 16, 2010, and completed \$2 million under budget.

Staff recommends the Agency adopt a resolution granting initial acceptance of the project and authorize the reduction of the contractor's faithful performance bond to \$788,522, which is 10% of the final contract value.

The City entered into a consultant agreement with Noll & Tam Architects in the amount of \$968,175 for design services for the Senior Center project. Staff recommends the approval of Amendment No. 5 with Noll & Tam Architects for additional design, and construction administration services required for the successful completion of the project. Staff negotiated a fee for these services not to exceed \$43,462, which is reasonable for the work. Approval of this agreement amendment brings the total agreement amount to \$1,748,962, and there are sufficient funds available in the project for this expense.

**Fiscal Impact:** None.

**Recommendations:**

1. Adopt a resolution of the Redevelopment Agency and the City Council granting initial acceptance of the new Senior Center, Project No. 8176, subject to a one year warranty period and reduction of the faithful performance bond to \$788,522.
2. Approve Amendment No. 5 to the agreement with Noll & Tam Architects in the amount of \$43,462, Project No. 8176, subject to approval as to form by the Agency Counsel.

**\*RA9. Award Service Contract and Authorize the Agency Executive Director to Execute a Contract with Environmental Systems Inc. for HVAC Repairs at the Milpitas Public Library, Project No. 8162 (Staff Contact: Steve Erickson, 586-3301)**

**Background:** The Agency issued a Request for Proposals (RFP) for repair and modification services to the Heating and Ventilation Control (HVAC) system at the Milpitas Public Library. The work provides for the repairs and modifications to the: hot water generation system, hot water circulation system, climate controls, and chilling units. Additionally, the work will provide for updating climate controls logic and rebalancing of the HVAC system at the Library.

Work scope and price quotes for these repairs were received from Environmental Systems Inc. and ACCO Engineered Systems. Environmental Systems Inc. provided the most advantageous

balance between price and high quality service and know-how. Staff recommends that a not-to-exceed service contract for \$40,000 be entered into with Environmental Systems Inc, which is considered reasonable.

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

**Recommendation:** Award a service contract and authorize the Agency Executive Director to execute a service contract with Environmental Systems Inc. for HVAC repairs at the Milpitas Public Library, Project No. 8162, in the amount of \$40,000.

**\*RA10. Authorize the Agency Executive Director to Execute a Contract Change Order with Median Mulch & Street Tree Maintenance for Great Mall Parkway, Project No. 2001 (Staff Contact: Steve Erickson, 586-3301)**

**Background:** This project was awarded to Forster & Kroeger, Inc. on December 19, 2006. The project provided for a two year base agreement, with extension options, by contract amendment or change order to extend maintenance of the mulch within the median and the street trees along Great Mall Parkway from Interstate 880 east to the City limits. Work includes trash pick-up, weed removal, the replenishment of mulch and pruning and replacement of street trees as necessary.

Staff recommends this contract for maintenance responsibilities be extended for an additional six months until such time as the Great Mall Median Landscaping project begins. Construction of the landscape project is anticipated to start spring 2011. Staff negotiated a change order with the contractor for an amount not to exceed \$3,000 for this additional work, which is considered reasonable. Staff recommends the approval of this change order.

**Fiscal Impact:** None. Sufficient funds are available in the project budget for this change order.

**Recommendation:** Authorize the Agency Executive Director to execute a contract change order with Forster & Kroeger, Inc. in the amount not-to-exceed \$3,000, for maintenance on the Great Mall Parkway, Project No. 2001.

**RA11. Adjournment**

**XV. REPORT OF MAYOR**

**\* 6. Consider Mayor's Recommendation for Appointment to the Youth Advisory Commission (Contact: Mayor Livengood, 586-3051)**

**Background:** Mayor Livengood recommends re-appointment of Milpitas student Patricia Do to the Youth Advisory Commission to a new term that expires in September 2011.

**Recommendation:** Consider the recommendation from Mayor Livengood, and move to re-appoint Patricia Do to the Youth Advisory Commission.

**XVI. NEW BUSINESS**

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

**Background:** New Auto Dealership: The County is prepared to issue a Request for Proposals for a third auto dealership on the remaining vacant parcel north of South Bay Honda on Thompson Court. Staff has worked with County staff in the development of the RFP so that once a proposal is accepted, estimated in the first quarter of 2011, the City is prepared to process permit applications without delay.

**Economic Development Commission:** The Commission joined with the Milpitas Chamber of Commerce and the Milpitas Rotary Club to host Joel Ayala, the Director of the Governor's Office of Economic Development (GoED) at a combined meeting on Monday, November 8. Mr. Ayala was represented by Louis Stewart, the Deputy Director of Innovation and Emerging Technologies, who advised the community business leaders attending of recent activities trying to retain businesses in California. Nearly 60 business and community representatives attended the event, which also included an expression of gratitude to Mayor Livengood from the Economic Development Commission.

**Flextronics Expansion:** Staff has been working closely with Flextronics on the expansion of the facility to meet the SunPower solar manufacturing needs. The manufacturing requirements are more than anticipated due to the size of the solar panels. Flextronics is also relocating another manufacturing site to the Milpitas campus from southern California to fill another vacated space in the Gibraltar Drive campus.

**McCarthy Ranch:** A large portion of the McCarthy Ranch Marketplace is being offered for sale by the owner, the Florida Retirement System. The area for sale includes the large box retail spaces from Borders Books to PetSmart, some of the attached pad spaces and the attached parking fields. Staff has spoken to the management company for the site and is working to arrange a meeting with them in the near future.

**Great Mall:** Coordination efforts have included responses to two long-term tenants' complaints regarding lease concerns and working with Great Mall management to facilitate closure on the issues. Public Safety staff has been working with the Great Mall management to plan for the Black Friday sales. One of the "good" challenges is the need to arrange queuing for the Coach Store during the Black Friday sales. The City is facilitating contacts with several off-site property owners and the Great Mall to assist with off-site employee parking for key times during the holiday sales period. Esprit opened to great success in the Mall and overall sales continue to be strong. The ownership is anticipating strong sales over the holidays.

**Chamber of Commerce:** Carol Kassab has been selected as the new Chamber Executive Director. Ms. Kassab's first day was November 8 and she had a great introduction to the business community at the community business meeting noted above. Ms. Kassab was most recently with the San Jose Chamber of Commerce and has extensive work experience with small business marketing and development.

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

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

**8. Receive Report from the Chair of the Citizens Budget Task Force (Contact: Chair Joseph Weinstein, 586-3051)**

**Background:** The Mayor and City Council appointed the Budget Task Force last spring, consisting of six resident or business representatives from the community, to discuss possible ideas for recommendation to the City Council on dealing with the continued budget deficits in Milpitas. The group has held a dozen regular meetings since forming, held three public meetings to receive input from the community, and so will report back to City Council on its status or with its recommendations.

**Recommendation:** Hear report of Task Force Chairman Joseph Weinstein.

**\* 9. Receive Staff Report on Pavement Undulator Policy (Staff Contact: Steve Chan, 586-3324)**

**Background:** On October 21, 1997, the City Council approved a policy for the installation of pavement undulator, a structural traffic calming device designed for use on local residential streets.

The current policy outlines six steps to be administered by staff after a petition request is received:

1. The resident identified street(s) have demonstrated speeding problems that persist after non-structural means - such as increased enforcement or use of radar speed feedback board - have been tried and at least one neighborhood meeting has been conducted.
2. The identified street(s) is a local residential street(s) with a 25 mph prima facie speed limit.
3. The identified street(s) slopes less than 6%.
4. The request is supported by a significant majority (greater than 70%) from the affected residential street(s). Neighborhood meetings would be held to help assess this support level.
5. The identified street(s) reflects traffic counts greater than 750 vehicles per day (vpd).
6. A staff report and recommendations are to be forwarded to the City Council for determination on a case-by-case basis.

A total of 56 pavement undulators have been installed citywide under the current policy since its adoption. Staff is currently considering revisions to the policy to better define and clarify the administrative procedures and may in the future bring these revisions to the City Council for consideration.

**Fiscal Impact:** None. There is no fiscal impact.

**Recommendation:** Receive the staff report on the City's Pavement Undulator policy.

## **XVII. ORDINANCES**

- \* 10. **Waive the Second Reading and Adopt Ordinance No. 113.22, Adopting the 2010 Edition of the California Fire Code and Specified Local Amendments (Staff Contact: Albert Zamora, 586-3371)**

**Background:** On November 2, 2010, the City Council introduced Ordinance No. 113.22, which would repeal Chapter 300 of Title V of the Milpitas Municipal Code and adopts by reference the 2010 California Fire Code, along with specified local amendments. No changes have been made to the ordinance since its first reading.

**Fiscal Impact:** None.

**Recommendations:**

1. Waive the second reading of Ordinance No. 113.22.
2. Adopt Ordinance No. 113.22, enacted as Chapter 300, Title V of Milpitas Municipal Code.

- \* 11. **Waive the Second Reading and Adopt Ordinance No. 65.140 Revising Provisions for Building Regulations (Staff Contact: Keyvan Irannejad, 586-3244)**

**Background:** On November 2, 2010, the City Council introduced Ordinance Number 65.140 which repealed the adoption by reference of the 2007 State Building Codes and adopted by reference the 2010 Editions of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code; Adopt by Reference the 2009 Edition of the International Existing Building Code Appendix Chapters A2, A3, A4 and A5 along with specified local amendments. No changes have been made to the ordinance since its first reading.

**Fiscal Impact:** None. There is no fiscal impact from the recommended action.

**Recommendations:**

1. Waive the second reading of Ordinance No. 65.140 enacted as Chapter 1, Chapter 3, Chapter 3.5, Chapter 5, Chapter 6, Chapter 7, Chapter 11, Chapter 12, Chapter 13, Chapter 14, Chapter 15, Chapter 19, Chapter 90, and Chapter 150 of Title II of the Milpitas Municipal Code revising provisions for Building Regulations.
2. Adopt Ordinance No. 65.140.

**XVIII. RESOLUTIONS**

- \* **12. Adopt a Resolution Authorizing the Filing of an Application for Congestion Mitigation and Air Quality Improvement Funding and Committing the Necessary Non-Federal Match and Stating Assurance to Complete the Abel Street Transit Connection Project (Staff Contact: Steve Chan, 586-3324)**

**Background:** Staff recently submitted a Community Design and Transportation (CDT) Program grant proposal to the Santa Clara Valley Transportation Authority (VTA) for the Abel Street Transit Connection Project.

The project scope includes installation of raised landscaped median, island, sidewalk, streetscape, and lighting enhancement on Abel Street from Great Mall Parkway to Main Street. The estimated cost for these improvements is \$890,000. The City is requesting \$787,600 with a City local match of \$102,400. A resolution authorizing the filing of an application, committing to the future appropriation of \$102,400 is required to further consideration of the project application. Staff proposes the local share amounting to \$102,400 be funded through the Redevelopment Agency Fund account.

The Abel Street Transit Connection project is consistent with the goals of the Midtown Specific Plan.

**Fiscal Impact:** None.

**Recommendation:** Adopt a Resolution authorizing the filing of an application for Congestion Mitigation and Air Quality (CMAQ) Improvement funding and committing the necessary non-federal match and stating the assurance to complete the Abel Street Transit Connection Project.

- \* **13. Adopt a Resolution Making Findings for Unexpended Development Fees, and Review and Accept the Annual Developer Fee Disclosure Information (Staff Contact: Emma Karlen, 586-3145)**

**Background:** Government Code Section 66000 et seq. requires local agencies to provide an accounting of fees charged for development projects. The City has two basic accounting and reporting responsibilities under the Government Code. Section 66001(d) requires that, five years after collecting a development fee subject to this code section and every five years thereafter, the local agency shall make findings with respect to any portion of the fee remaining unexpended, whether committed or uncommitted. If the required findings are not made, the unexpended funds shall be refunded.

Findings must:

1. Identify the purpose of the fee;
2. Demonstrate a reasonable relationship between the fee and the purpose for which it was charged;
3. Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements; and

4. Designate the approximate dates on which these funding sources can be expected to be deposited into the appropriate account or fund.

When sufficient funds have been collected to complete financing on incomplete public improvements, the local agency has 180 days to identify an approximate date by which the construction of the public improvement will begin or else is required to refund the unexpended fees, including accrued interest, to the current owner of lots or units of the development project.

The second requirement set forth under Government Code Section 66006 provided that the City shall establish separate capital improvement accounts or funds for each improvement funded by project development fees. Any interest income earned by funds in such an account shall be deposited in such account. Each local agency is required, with 180 days after fiscal year end, for each separate account, to make available to the public the following information:

1. Brief description of the type of fee in the account;
2. The amount of the fee;
3. The account's beginning and ending balance;
4. The amount of fees collected and the interest earned;
5. A description of the improvements on which the funds were expended and the amount expended on each improvement including the percentage of the improvement funded with development fees;
6. An approximate date by which the construction of a public improvement will begin if the local agency determines that sufficient funds have been collected to complete financing on the incomplete improvement;
7. A description of each inter-fund transfer or loan made from the account; and
8. The amount of any refunds made pursuant to Code Section 66001.

The City utilizes Traffic Impact Fee Fund and Storm Drain Development Fund to track these development related fees. Interest income is allocated to the Traffic Impact Fee Fund and Storm Drain Development Fund based on their respective monthly cash balances. Expenditures from these funds were in the form of capital improvement projects to either renovate existing facilities or maintain the existing level of service, consistent with the General Plan due to increased demand related to the development project.

Status reports (included in the agenda packet) contain a ten-year history from fiscal years 2000-01 through 2009-10 for the Traffic Impact Fee Fund and a seven-year history for the Storm Drain Development Fund. The City began to collect Storm Drain fees in FY 03-04; consequently, there is only a seven-year history. Reports showed the amount of fees collected each year, interest income, a brief description of the projects funded, the percentage of the projects funded by the developer fees, and the beginning and ending balance of the funds. Reports indicated that at the end of June 30, 2010, the City had approximately \$4.58 million in the Traffic Impact Fee Fund and \$302,000 in the Storm Drain Development Fee Fund. Inter-fund transfers were made to capital projects that are related to the collection of the fees. There have not been any loans made from the accounts. As of June 30, 2010, the City has not refunded any of the developers' fees.

Staff identified fees totaling \$75,185, which were collected in FY 2004-05 from a development project, for traffic impact mitigation on Montague Expressway. These funds will be appropriated into an existing capital improvement project (Montague Expressway Widening, Project No. 4179) which will be done in cooperation with the Santa Clara County and the Valley Transportation Authority. Design for these improvements are expected to be completed by 2013, and constructed by 2016. The City's share for project cost is approximately \$5.9 million (City has collected approximately \$2 million of these traffic impact fees) of the total project cost of approximately \$15 million.

**Fiscal Impact:** None. There is no fiscal impact for the recommended actions.

**Recommendation:** Adopt a resolution making findings for unexpended development fees and review, and accept the annual developer fee disclosure information.

- \* 14. **Adopt a Resolution Authorizing the City Manager to Execute a Contract for the Citywide Purchase of Office Supplies with Office Max for the Annual Not-to-Exceed Amount of \$95,000 (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** The original contract with Office Max for purchase of office supplies expired on October 14, 2010. After conducting a review of the contract and the “Piggyback Procurement” upon which it was based, the Purchasing Agent determined that it is in the best interest of the city to enter into a new agreement with Office Max. The review shows that annual expenditures for office supplies with Office Max are estimated to be \$95,000 for 2011, which is about \$30,000 less than original estimate.

The Office Max contract is based on a solicitation conducted by Oakland County, Michigan under the Public Sourcing Solutions/Office Max - America Saves program. The City of San Jose negotiated additional discounts of up to 70% on a list of 3,000 core products from the America Saves program. By piggybacking the City of San Jose’s Office Max contract, Milpitas will receive the benefits of a nationally bid contract with volume pricing, exceeding what the city could command as an individual city.

The practice of, and requirements for, utilizing a contract bid by another agency are defined and sanctioned under Municipal Code Section I-2-3.07 “Piggyback Procurement.” Staff’s recommendation to piggyback on the City of San Jose’s contract with Office Max is in full compliance with those requirements.

The new contract with Office Max is for one year, with two one-year renewal options.

**Fiscal Impact:** None. Funding for this purchase is available from each department’s operating budget.

**Recommendation:** Adopt a resolution authorizing the City Manager to execute a contract with Office Max for the annual not-to-exceed amount of \$95,000, and incorporate by reference the original solicitation, terms, conditions, and pricing of the City of San Jose’s contract.

## **XIX. BIDS AND CONTRACTS**

- \* 15. **Award a Construction Contract, Including One Add Alternate Item, to Fermin Sierra Construction, Inc. for Phase 6 of the Sewer Deficiency and Structural Correction Program, Project No. 6073 (Staff Contact: Steve Erickson 586-3301)**

**Background:** On June 15, 2010, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for Phase 6 of the Sewer Deficiency and Structural Correction Program, Project No. 6073. The project provides for the removal and replacement of sewer mains at eight locations throughout the City that have reached the end of their service life and have sags or other structural failures resulting in a high frequency of maintenance. The Engineer’s Estimate for the base bid project work was \$800,000.00.

The project was advertised and seven sealed bid proposals were received on November 9, 2010. Bid proposals ranged from \$715,900 to \$997,790, and the lowest responsible base bid was submitted by Fermin Sierra Construction, Inc. in the amount of \$715,900.

The bid package included three add alternate items for consideration after bid opening. Staff recommends awarding add alternative package C, for a not to exceed amount of \$27,000, which was below the Engineer’s Estimate of \$32,000, for this add alternate item. The project base bid with the recommended alternate item brings the total construction contract award amount to

\$742,900, which is within the project's cost plan and budget and no additional budget appropriation is required.

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

**Recommendation:** Award a construction contract to Fermin Sierra Construction, Inc. for Phase 6 of the Sewer Deficiency and Structural Correction Program, Project No. 6073, in the total amount of \$742,900, including add alternate Package C.

- \* **16. Approve a Budget Appropriation from the General and Solid Waste Reduction Funds and Authorize the City Manager to Execute an Agreement with Cascadia Consulting Group for a Study on a Ban on Polystyrene Food Containers and Single-Use Grocery Bags (Staff Contact: Kathleen Phalen, 586-3345)**

**Background:** On September 21, 2010, the City Council directed staff to seek consultant proposals for a study of a polystyrene disposable food container ban. Staff included single-use grocery bags in the scope of the proposal to follow through on previous Council direction. For both commodities, the proposed consultant scope of work includes identifying stakeholders impacted by product bans, evaluating the economic impact to these stakeholders, evaluating preferred alternative materials for polystyrene food containers and single-use bags, recommending the types of specific containers and products to including the types of organizations/businesses, potential as well as alternatives to product bans.

This combined study includes interviews with stakeholder groups, a statistically reliable phone survey of Milpitas residents, and support for work products presented at City Council and Commission meetings.

Staff recommends award of the consultant study and public outreach work contract to Cascadia Consulting Group, based on the relevant knowledge and experience of its Principal, Richard Gertmann, who will serve as project manager. Mr. Gertman underwent a competitive solicitation and request for Statements of Qualification in compliance with Municipal Code requirements. Staff recommends entering into an agreement with Cascadia Consulting Group for an amount not to exceed \$38,270, which is considered reasonable for this level of work. Staff considers this work to equally benefit the City's urban runoff compliance program and its solid waste reduction goals, and therefore recommends that it be funded by equal appropriations from the general and solid waste reduction funds. Appropriation of funds is needed because this activity is not included in the fiscal year 2010-11 budget.

**Fiscal Impact:** The proposed expenditure of \$38,270 for the consultant study and public outreach will be funded by equal appropriations from General and Solid Waste reduction funds.

**Recommendation:** Approve a budget appropriation drawn equally from the General Fund and Solid Waste Reduction fund for a total amount of \$38,270, and authorize the City Manager to execute an agreement with Cascadia Consulting Group for a study on a ban on polystyrene food containers and single-use plastic bags.

## **XX. ADJOURNMENT**

**NEXT REGULAR MEETING: TUESDAY, DECEMBER 7, 2010**

**December 7 will be the last City Council meeting in 2010.**