



**MILPITAS CITY COUNCIL AND REDEVELOPMENT AGENCY
MEETING AGENDA
TUESDAY, SEPTEMBER 20, 2011**

6:30 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL by the Mayor (6:30 p.m.)**
- II. ADJOURN TO CLOSED SESSION OF CITY COUNCIL**

CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING
Pursuant to CA Government Code §54957.6 City Negotiators: Bill Marion and Tom Williams
Employee Groups: Mid-Management/Confidential Group, Milpitas Police Officers Association
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- III. CLOSED SESSION ANNOUNCEMENT:** Report on action taken in Closed Session if required, pursuant to CA Govt. Code §54957.1, including the vote on abstention of each member present
- IV. PLEDGE OF ALLEGIANCE**
- V. INVOCATION** (Councilmember Giordano)
- VI. APPROVAL OF COUNCIL MEETING MINUTES** – September 6, 2011
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS** for September and October 2011
- 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. PUBLIC HEARING**
 - 1. Hold a Public Hearing and Adopt the FY 2010-11 Community Development Block Grant (CDBG) Consolidated Annual Performance Evaluation Report (CAPER) (Staff Contacts: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)**

XIV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1. Call to Order/Roll Call by the Mayor/Chair**
- RA2. Approval of Minutes – September 6, 2011**
- RA3. Approval of Agenda/Consent Calendar (Items with asterisk*)**
- *RA4. Approve and Affirm the New Fund Balance Classifications in Accordance with GASB Statement 54 (Staff Contact: Emma Karlen, 586-3145)**
- *RA5. Reject Bids for Redevelopment Agency Area Pavement Reconstruction, Project No. 8204 (Staff Contact: Steve Erickson, 586-3301)**
- RA6. Agency Adjournment**

XV. REPORTS OF MAYOR AND COUNCIL

- * 2. Consider Mayor’s Recommendations for Appointments/Re-appointments to Three Milpitas Volunteer Bodies (Contact: Mayor Esteves, 586-3029)**
- 3. Hear Report from Councilmember Giordano on Issues Related to the Youth Advisory Commission (Contact: Councilmember Giordano, 586-3032)**
- 4. Hear Report from Campaign Finance Task Force Chair Councilmember Polanski and Consider Action on Draft Ordinance No. 243.4 to Amend the Campaign Finance and Disclosure Requirements for City Elections (Contact: Councilmember Polanski, 586-3024)**

XVI. NEW BUSINESS

- 5. Receive the Monthly Economic Development Report (Staff Contact: Diana Barnhart, 586-3059)**
- 6. Receive Health and Safety Report on Friendly Village Mobilehome Park (Staff Contact: Dorsey Wiseman, 586-3246)**
- 7. Receive a Report on Crime in the City of Milpitas (Staff Contact: Chief Dennis Graham, 586-2502)**
- 8. Receive Report from Staff on Santa Clara Valley Transportation Authority (VTA) Board Representation, Discuss and Appoint a Council Representative (Staff Contact: Greg Armendariz, 586-3317)**
- 9. Approve the Milpitas Response to the Santa Clara County Civil Grand Jury Report on Firefighters (Staff Contact: Chief Brian Sturdivant, 586-2811)**
- * 10. Approve Two Fee Waiver Requests From the Milpitas Rotary Club and St. John the Baptist Catholic Church (Staff Contact: Sheldon AhSing, 586-3278)**

XVII. RESOLUTIONS

- * 11. Adopt a Resolution Authorizing the Purchase of an Altec AT-37G Telescoping Lift Truck from Altec Industries, Inc. for the Not-to-Exceed Amount of \$97,860.17 through a Cooperative Procurement Contract (Staff Contact: Chris Schroeder, 586-3161)**

- * 12. **Adopt a Resolution Granting Initial Acceptance of and Reducing Performance Bond for Phase 6 of the Sewer Deficiency and Structural Correction Program, Project No. 6073 (Staff Contact: Steve Erickson, 586-3301)**
- * 13. **Adopt a Resolution Supporting the 2012 Regional Transportation Improvement Program Funding Application for Project No. 4259, the Escuela Parkway Pedestrian and Bicycle Enhancement Project (Staff Contact: Steve Chan, 586-3324)**

XVIII. BIDS AND CONTRACTS

- * 14. **Approve and Authorize the City Manager to Execute an Agreement with David J. Powers & Associates, Inc. for Minor Storm Drain Projects 2011-12, Project No. 3706 (Staff Contact: Steve Erickson, 586-3301)**
- * 15. **Award the Bid for Parks and Streetscape Maintenance Service to East Bay Construction Company, Inc. for the Annual Not-to-Exceed Amount of \$137,944, and Authorize the City Manager to Grant Yearly Increases Pursuant to the Contract (Staff Contact: Chris Schroeder, 586-3161)**
- * 16. **Approve a Budget Appropriation for a California Department of Recycling and Recovery Beverage Container Program in the Amount of \$18,962, and Authorize a Temporary Student Intern Position in Utility Engineering (Staff Contact: Kathleen Phalen, 586-3345)**
- * 17. **Waive Minor Bid Irregularity and Award a Construction Contract Including Two Add Alternate Bid Items to Pavex Construction for Street Resurfacing 2011 and 2012 “Ranch Drive,” Projects No. 4255, No. 4261 and No. 8202 (Staff Contact: Steve Erickson 586-3301)**
- * 18. **Award the Bid for Civic Center and Library Landscape Maintenance Service to Gachina Landscape Management for an Annual Not-to-Exceed Amount of \$30,620 and Authorize the City Manager to Grant Yearly Increases Pursuant to the Contract (Staff Contact: Chris Schroeder, 586-3161)**
- * 19. **Authorize the City Manager to Execute an Agreement between the Santa Clara Valley Transportation Authority and the City of Milpitas for Construction of the Milpitas Boulevard/Dixon Landing Road Intersection Improvements, Project No. 4262 (Staff Contact: Fernando Bravo, 586-3328)**

XIX. ADJOURNMENT

**NEXT REGULAR CITY COUNCIL MEETING:
TUESDAY, OCTOBER 4, 2011, AT 7:00 P.M**

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, and at the Milpitas Library during normal business hours.

APPLY TO BECOME A CITY COMMISSIONER!

Current vacancies exists on the:

*Emergency Preparedness Commission (large industry rep.)
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

XIII. PUBLIC HEARING

- 1. Hold a Public Hearing and Adopt the FY 2010-11 Community Development Block Grant (CDBG) Consolidated Annual Performance Evaluation Report (CAPER) (Staff Contacts: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)**

Background: The Consolidated Annual Performance Evaluation Report (CAPER) describes the City's one-year CDBG Programs and Activities undertaken during the past CDBG program year, 2010-11. CAPER also evaluates the City's overall progress in carrying out those priority projects that were identified in the approved Five-Year Consolidated Plan and One-Year Action Plan.

The report identifies the following major accomplishments:

- Approval of Integral Project which will include 199 additional affordable housing units,
- Use of CDBG funds to replace kitchen cabinets, countertops and fixtures for Terrace Gardens Senior Housing,
- Use of CDBG funds to investigate 79 cases involving housing discrimination,
- Funded 17 different public service agencies and housing providers, and
- Provided CDBG funds to assist more than 5,800 Milpitas residents

The CAPER was advertised for public review and comments for 15 days (August 26 - September 12, 2011). Copies of the CAPER were sent to all service and housing providers that received CDBG funds from the City, and with other interested parties. Copies were also made available at City Hall and the Milpitas Public Library. No comments were received from the public to date on the document. A copy is included in the Council's agenda packet.

Fiscal Impact: None.

Recommendations:

1. Open the open public hearing for testimony, and move to close the public hearing.
2. Adopt the FY 2010-11 Consolidated Annual Performance Evaluation Report (CAPER).

XIV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- *RA4. Approve and Affirm the New Fund Balance Classifications in Accordance with GASB Statement 54 (Staff Contact: Emma Karlen, 586-3145)**

Background: In February 2009, the Government Accounting Standards Board (GASB) issued statement No. 54, "Fund Balance Reporting and Governmental Fund Type Definitions" that will be applicable to the financial statements issued by governmental entities for the reporting period ended June 30, 2011. The objective of this Statement is to enhance the usefulness of fund balance information by providing clearer fund balance classifications that can be more consistently applied and by clarifying the existing governmental fund type definitions.

Before the new GASB statement, fund balances for the government funds were classified in three categories: reserved, unreserved designated and unreserved undesignated. Under GASB Statement No. 54, fund balances will be classified in five categories: Nonspendable, Restricted, Committed, Assigned and Unassigned based on a hierarchy of constraint. Nonspendable fund balance classification includes amounts that cannot be spent because they are either not in spendable form or legally or contractually required to be maintained intact. Examples include inventory, land held for resale or interfund advances. However, if proceeds realized from the sale or collection of nonspendable assets are restricted, committed or assigned, then Nonspendable amounts are required to be presented as a component of the applicable category. Restricted fund balance classification includes amounts that are restricted because they are externally imposed by creditors, grantors, or laws or regulations of other governments. Examples include unspent gas tax funds, land held for redevelopment funded by low and moderate housing fund and unspent

local matching portion of governmental grants. Committed fund balance classification includes amounts that can only be used for specific purposes pursuant to constraints imposed by the City Council/Agency Board. Those committed amounts cannot be used for any other purpose unless the government removes or changes the specified use by taking same type of action (e.g. legislation, resolution, ordinance) it employed to previously commit those amounts. Assigned fund balance classification includes amounts that are constrained by the government's intent to be used for specific purposes but are neither restricted nor committed. Unassigned fund balance represents amount that has not been restricted, committed, or assigned to specific purposes within the general fund.

Based on above definitions, the fund balances that were previously reserved for inventory, prepaid materials, loans and interfund advances will be classified as Nonspendable. The fund balances that were previously reserved for property held for resale and Low and moderate income housing will be classified as Restricted. The fund balance that was previously designated for PERS Rate Stabilization will be classified as Committed. The fund balances that were previously designated for Library and performing arts programs, uninsured claims payable, and capital projects funding will be classified as Assigned. The fund balance in the General Fund that was previously unreserved and undesignated will be classified as Unassigned.

Fiscal Impact: Not applicable.

Recommendation: Approve and affirm the new fund balance classifications in accordance with GASB Statement 54.

***RA5. Reject Bids for Redevelopment Agency Area Pavement Reconstruction, Project No. 8204 (Staff Contact: Steve Erickson, 586-3301)**

Background: The project titled "RDA Area Pavement Reconstruction, Project No. 8204" is included in the approved Capital Improvement Program. The project will provide for the complete reconstruction and overlay of Sycamore Drive from McCarthy Boulevard to Barber Lane, overlay of Tasman Drive from McCarthy Boulevard to Alder lane, overlay of McCarthy Boulevard from Barber lane to Tasman Drive and patch repairs on Cottonwood Drive and Buckeye Drive. The engineer's estimate for the project is \$3,000,000.

The project was advertised and six sealed bid proposals were received on June 30, 2011. Bid proposals ranged from \$2,060,123 to \$2,701,801, and the apparent low bidder was Granite Construction Incorporated with a bid of \$2,060,123.

However, with the Governor's budget and resulting court ordered stay from the state Supreme Court, the Agency is unable to execute this contract at this time. Staff recommends rejection of all bids at this time, due to lack of available funds, and should the RDA be re-established early next year, staff will seek Agency authorization to re-advertise this project for bids.

Fiscal Impact: None.

Recommendation: Reject all bids submitted for the Redevelopment Agency Area Pavement Reconstruction, Project No. 8204.

XV. REPORTS OF MAYOR AND COUNCIL

*** 2. Consider Mayor's Recommendation for Appointments/Re-appointments to Three Milpitas Volunteer Bodies (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends Milpitas residents be appointed/re-appointed as follows:

Mobile Home Park Rental Review Board

Newly appoint Arthur Sana as the alternate member to a term that expires in June 2012.
Appoint Mila Garcia (current alternate member) as a regular member to a term that expires in June 2012.

Recycling and Source Reduction Advisory Commission

Re-appoint Ed Blake, Jr. to a term that expires in October 2014.
Re-appoint Christopher Salian to a term that expires in October 2014.
Re-appoint Echo Arthur to a term that expires in October 2013.

Youth Advisory Commission

Appoint Sahil Sandhu (current Alternate No. 2) as a regular member to a term that expires in September 2012.
Newly appoint Cindy S. Wang as Alternate No. 1 to term that expires in September 2012.

Copies of two Commission applications for new appointments are included in the Council agenda packets, along with additional applications from those not recommended at this time.

Recommendation: Consider the recommendations from Mayor Esteves, and move to approve appointments and re-appointments to two Milpitas Commissions and one Board.

3. Hear Report from Councilmember Giordano on Issues Related to the Youth Advisory Commission (Contact: Councilmember Giordano, 586-3032)

Background: Councilmember Giordano is the Council's liaison to the Milpitas Youth Advisory Commission. At the Rules Subcommittee meeting on September 12, she requested to make a report at the Council meeting on issues related to the Commission.

Recommendation: Hear report of Councilmember Giordano.

4. Hear Report from Campaign Finance Task Force Chair Councilmember Polanski and Consider Action on Draft Ordinance No. 243.4 to Amend the Campaign Finance and Disclosure Requirements for City Elections (Contact: Councilmember Polanski, 586-3024)

Background: At the direction of the City Council, the Campaign Finance Task Force, consisting of Councilmembers Polanski and Gomez, convened regular meetings starting in March 2011 to review and recommend possible revisions to the local campaign and election laws of the City of Milpitas.

The Task Force extensively reviewed existing City ordinances on the conduct and financing of local elections. It also reviewed the legal prohibitions and restrictions on campaign regulations imposed by state and federal constitutions. After careful consideration, the Task Force recommended changes in the following areas:

Contribution Amount. Since 1996 campaign contributions from any one person in support of or in opposition to any candidate for elected City office has been limited to \$350 per election. This amount, if adjusted into 2011 dollars to reflect changes in the Consumer Price Index, would equate to \$498.49 as determined by the Federal Bureau of Labor Statistics. The Task Force therefore recommends that the limitations amount be raised to \$500 per election to reflect the increased costs of inflation. (*See proposed changes to MMC I-210-3.10(a).*)

Aggregation. Current Milpitas campaign regulations limit the amount of money that any "person" may contribute to a candidate for elected office in Milpitas. The term "person" is not clearly defined in the current Municipal Code for purposes of election law. The Task Force recommends that the City define the term "person" as an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert. Furthermore, the Task Force recommends that any monies contributed by an individual

be “aggregated” or combined with any monies contributed by any corporation, committee, partnership, or other organization controlled by that individual. (See *proposed changes to MMC I-210-3.10(e)*.)

Independent Expenditure Committees. An “independent expenditure committee” is sometimes defined as any person or combination of persons that expends \$1,000 or more in a calendar year to independently support or oppose any candidate or ballot measure. Under state law, independent expenditure committees must file a Form 461. However, depending upon the nature of the expenditures, independent expenditure committees may not be required to inform local communities and city officials of their activities. This gap reduces transparency in the electoral process. The Task Force recommends that in addition to state law filing requirements, independent expenditure committees that spend \$100 or more in a Milpitas election should also be required to file a copy of their Form 461 with the City Clerk within 10 days of the advertisement for or against a local candidate or ballot measure. (See *proposed changes to MMC I-210-5.20*.)

Voluntary Campaign Expenditures. Current law prohibits cities from setting mandatory limits on the amounts that a candidate may spend on a campaign. However, candidates are free to accept voluntary spending limits. The Task Force therefore recommends the adoption of a voluntary campaign expenditure ceiling of \$60,000, to be adjusted every two years to reflect changes in the Consumer Price Index. (See *proposed changes to MMC I-210-6*)

Campaign Consultants. “Campaign consultants” are persons who are paid to formulate campaign strategy or manage an effort to defeat, elect, or recall a candidate for elected City office. The Task Force recommends that such persons be required to register with the City Clerk and disclose business contact information and clients in order to increase transparency in the electoral process and ensure public confidence in elections. (See *proposed new chapter MMC I-220*)

City Council Meeting Disclosures. The Open Government Ordinance and state law do not classify campaign contributions to candidates for Mayor or City Council as “financial interests” that create conflicts of interest. The Task Force recommends that the Open Government Ordinance be revised so as to encourage elected officials to disclose the receipt of any campaign contributions in the preceding twelve months from persons or companies appearing before the City Council at the Council meeting in which the donor appears. Mandatory recusal or disqualification merely for receiving such campaign contributions is, however, prohibited by the federal and state constitutions. (See *proposed changes to MMC I-310-2.180*.)

Fiscal Impact: None.

Recommendations:

1. Hear report of Councilmember Polanski.
2. Following a reading of the title, move to waive the first reading beyond the title of Ordinance No. 243.4, amending the campaign finance and disclosure requirements for City elections.
3. Move to introduce Ordinance No. 243.4.

XVI. NEW BUSINESS

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

Background: In mid-August the State Employment Development Department’s Labor Market Information Division (LMID) website offered new short-term statewide industry and occupational projections. This information includes ranked lists such as occupations with the most openings can be found at www.labormarketinfo.edd.ca.gov/?pageid=145.

California highlights for the third quarter of 2010 to the third quarter of 2012 follow.

- The State's total employment (including self-employed, private household workers, farm, and nonfarm jobs) is projected to increase by 3.3 percent over the two-year period starting in the third quarter of 2010. Total nonfarm employment is projected to add more than 486,000 jobs by the third quarter of 2012.
- The data suggest that California is on the road to recovery, though progress has been slow.
- Professional and business services will lead the job growth, adding more than 152,000 of the jobs over the two years. Temporary and other employment services will account for close to a third of that increase, with consulting services and computer systems design gaining the next largest numbers of jobs.
- Private health care will add nearly 54,000 jobs between 2010 and 2012.
- All private-sector major industry groups are forecast to increase their jobs over the two-year period.
- Government is forecast to lose about 38,000 jobs over the two years. All levels of government are expected to lay off staff. The large drop in federal government is due to temporary Census workers that were hired in 2010 and not retained after Census data collection was completed.
- More openings will arise from replacements (retirements and permanent occupational changes) than from growth.
- Occupations with the most openings (including replacements) will be cashiers; retail salespersons; and waiters and waitresses.
- The occupation with the fastest growth rate short term in California will be network systems and data communications analysts.

The California Employment Development Department released the state employment figures for July and the unemployment rate for the San Jose-Sunnyvale-Santa Clara MSA (that includes NOVA) was 10.4%, unchanged from a revised 10.4% in June, and with an additional 1,100 jobs added to reach 884,500 jobs. However, the total non-farm jobs lost 800 professional and business services added 1,900 jobs compared to the previous month; construction added 1,600 seasonal jobs; leisure & hospitality added 800 jobs; trade, transportation & utilities added 700 jobs; information added 400 jobs; and government continued its decline losing 4,100 jobs.

Leasing Trends

Over the last few years, the City has experienced significant changes in commercial and R&D leasing trends, reflective of the unstable economic conditions not unique to Milpitas. Fortunately, leasing is up and vacancies are being filled. Below is a summary of the trends which will be discussed at the upcoming City Council meeting.

Retail: No surprises in this category, as the retail vacancy rate since end of the year 2007 has increased nearly 9.2%, from 4.7% to 13.9%. This vacancy growth reflects the increase in vacant space at McCarthy Ranch Marketplace. During the same time period, while vacancies increased at McCarthy Ranch, vacant spaces were filled at Great Mall with larger tenants. As a result, the City has seen a growth in anchor tenant space from 135,000 sf to 234,000 sf.

Research and Development (R&D): Despite the number of companies that have recently relocated to Milpitas, or opened a new office such as Zollner Electronics, the R&D space vacancy rate has only decreased slightly in the last few years. The City has not experienced any new R&D construction since 2002, when nearly 1.6M square feet of inventory was added to existing space. Milpitas now offers 14.8M square feet of R&D space and as of the second quarter of 2011, the vacancy rate is at 20.2%, down from 21.2% in 2007. Asking rates for this space has declined from an average of \$1.55psf in 2007 to \$0.84psf in 2011.

Third World Independent Film Festival (TWIFF): GTC Films has secured Century Theatres for the TWIFF Festival on September 23, 24 and 25, with a welcoming reception on the September 22. More than 60 films are registered for the event.

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

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

6. Receive Health and Safety Report on Friendly Village Mobilehome Park (Staff Contact: Dorsey Wiseman, 586-3246)

Background: At the August 16 City Council meeting, a number of residents of the Friendly Village Mobilehome Park advised the City Council of their concerns with health and safety issues. Councilmember Gomez requested a report to the City Council to address the health and safety issues brought up by the Friendly Village residents and to take appropriate action with regard to the concerns expressed by the residents.

Building and Safety Department staff visited the park common area on Wednesday, August 17, and met with the Park Manager. On Monday, August 22, door hanger notices were distributed to all residents informing them of the option to either call or e-mail Building Department staff to schedule an inspection, if they desired, on either August 25 or 26.

Fiscal Impact: None.

Recommendation: Receive the presentation by Building staff on its review of Friendly Village Mobile Home Park.

7. Receive a Report on Crime in the City of Milpitas (Staff Contact: Chief Dennis Graham, 586-2502)

Background: At the special City Council meeting of August 23, 2011, Mayor Esteves requested a report on crime from the Chief of Police.

Recommendation: Receive a report regarding crime in Milpitas, at the City Council meeting, from Chief Graham.

8. Receive Report from Staff on Santa Clara Valley Transportation Authority (VTA) Board Representation, Discuss and Appoint a Council Representative (Staff Contact: Greg Armendariz, 586-3317)

Background: In April 2010, the VTA Board of Directors approved a new grouping of smaller cities within Santa Clara County for representation on the VTA Board. This new representation will become effective on January 1, 2012. The City of Milpitas is now grouped with the cities of Sunnyvale and Santa Clara. This group is called the Northeast group, and it will have two seats on the VTA Board with one alternate seat. Each of the other small city groups (North County, South County, and West Valley) will have only one Board seat. San Jose will continue to have five seats and the County of Santa Clara will continue to have two seats.

The City received a letter from VTA, dated August 8, 2011, addressed to the Mayor, requesting the various new city groups to select a Board representative and alternate by November 1, 2011 (a copy is included in the Council agenda packet.) Ahead of the new city groups' selecting their representatives, each city within the group must select its city representative to that group, or re-affirm the current city representative from the old group to the new group.

The City of Milpitas has held a VTA board alternate position since 2005, and the City of Santa Clara has held a board alternate seat since 2009. The City of Sunnyvale currently has a VTA board seat and has held this seat for the last six years. With the current construction of the Bay Area Rapid Transit (BART) project, it is very important for the City of Milpitas to acquire a VTA Board seat in January of 2012. Staff therefore recommends the Mayor and Council to designate a representative, who should then work with representatives from cities of Sunnyvale and Santa

Clara over the next few weeks to timely select the two VTA board representatives from this new Northeast group

Fiscal Impact: None.

Recommendations:

1. Receive report from staff.
2. Move to appoint a representative from the Milpitas City Council to the new VTA Northeast group.
3. Provide direction to the new representative.

9. Approve the Milpitas Response to the Santa Clara County Civil Grand Jury Report on Firefighters (Staff Contact: Chief Brian Sturdivant, 586-2811)

Background: During the 2010–2011 session, the Santa Clara County Civil Grand Jury conducted an inquiry on exploring change in fire departments located within Santa Clara County. This report discussed how shifting resources, combining skill sets and adopting other reforms can improve services, reduce cost and increase fire service/EMS efficiencies. The City of Milpitas is responding to the Grand Jury’s Final Report per authority section 933 (c) of the California Penal Code. The California Penal Code requires each agency to respond in agreement or disagreement with each applicable finding; and state whether or not each recommendation has been implemented, will be implemented, or will not be implemented.

Fiscal Impact: None.

Recommendation: Approve the response from the Milpitas City Manager and Fire Chief on the Santa Clara County Civil Grand Jury Final Report on Firefighting.

*** 10. Approve Two Fee Waiver Requests From the Milpitas Rotary Club and St. John the Baptist Catholic Church (Staff Contact: Sheldon AhSing, 586-3278)**

Background: The Milpitas Rotary Club has requested a fee waiver totaling \$876.82 for fees related to the review and permitting of its annual pumpkin patch in October. St. John the Baptist Catholic Church has requested a fee waiver totaling \$1,425.77 for fees related to the review and permitting for its annual Autumn Festival held this month. The City Council has approved fee waivers for both of these events in prior years.

Fiscal Impact: Loss of \$2,302.59 in fee revenue.

Recommendation: Move to approve the two fee waiver requests from the Rotary Club and St. John’s Church.

XVII. RESOLUTIONS

*** 11. Adopt a Resolution Authorizing the Purchase of an Altec AT-37G Telescoping Lift Truck from Altec Industries, Inc. for the Not-to-Exceed Amount of \$97,860.17 through a Cooperative Procurement Contract (Staff Contact: Chris Schroeder, 586-3161)**

Background: Public Works’ fiscal year 2011-12 budget includes the purchase of a telescoping lift truck for street light and traffic signal maintenance to replace the equipment that has reached the end of its useful life. This is a cooperative purchase through the National Joint Powers Alliance (NJPA). Cooperative purchasing through NJPA is specifically authorized pursuant to Municipal Code Section I-2-3.08 “Cooperative Procurement.”

Fiscal Impact: None. Sufficient funding has been allocated in the FY 2011-12 Equipment Replacement Fund for this purchase.

Recommendation: Adopt a resolution authorizing the purchase of an Altec AT-37G telescoping lift truck from Altec Industries, Inc. for the not-to-exceed amount of \$97,860.17 through a cooperative procurement contract.

- * 12. **Adopt a Resolution Granting Initial Acceptance of and Reducing Performance Bond for Phase 6 of the Sewer Deficiency and Structural Correction Program, Project No. 6073 (Staff Contact: Steve Erickson, 586-3301)**

Background: The City Council awarded Phase 6 of the Sewer Deficiency and Structural Correction Program, Project No. 6073 to Fremin Sierra Construction, Inc. on November 16, 2010. The project provides for the removal and replacement of sewer mains at six locations throughout the City. These mains were selected for replacement because they have reached the end of their service life and have sags or other structural deficiencies resulting in a high frequency of maintenance.

The project was successfully completed on time and under budget. Staff recommends the City Council adopt a resolution granting initial acceptance of the project and authorize the reduction of the contractor's faithful performance bond to \$72,810.00, which is 10% of the final contract value.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of Phase 6 of the Sewer Deficiency and Structural Correction Program, Project No. 6073, subject to a one year warranty period and reduction of the faithful performance bond to \$72,810.00.

- * 13. **Adopt a Resolution Supporting the 2012 Regional Transportation Improvement Program Funding Application for Project No. 4259, the Escuela Parkway Pedestrian and Bicycle Enhancement Project (Staff Contact: Steve Chan, 586-3324)**

Background: On March 1, 2011, City Council approved a resolution of local support for the Congestion Mitigation and Air Quality Improvement (CMAQ) funding application for the Escuela Parkway Pedestrian and Bicycle Enhancement project. Since the application submission to MTC, available funding for the project has shifted to the Regional Transportation Improvement Program (RTIP). MTC is requesting a resolution of support for the RTIP funding application filing be made for the Escuela Parkway Pedestrian and Bicycle Enhancement Project.

The project scope includes installation of 10-foot wide sidewalk and tree wells on the east side of Escuela Parkway between Washington Drive and Russell Lane and a construction of a bus pullout on the west side of Escuela Parkway in front of Milpitas High School. The City is requesting \$501,000 in RTIP funding.

Fiscal Impact: None.

Recommendation: Adopt a resolution supporting the 2012 Regional Transportation Improvement Program funding application for Project No. 4259, the Escuela Parkway Pedestrian and Bicycle Enhancement Project.

XVIII. BIDS AND CONTRACTS

- * 14. **Approve and Authorize the City Manager to Execute an Agreement with David J. Powers & Associates, Inc. for Minor Storm Drain Projects 2011-12, Project No. 3706 (Staff Contact: Steve Erickson, 586-3301)**

Background: Through the City's consultant selection process, David J. Powers & Associates, Inc. was selected to provide environmental services for Minor Storm Drain Projects 2011-12.

Staff negotiated a scope and fee for these services not to exceed \$25,000, which is considered reasonable for the work.

The Minor Storm Drain Projects 2011-12, Project No. 3706, is included in the approved Capital Improvement Program. The project provides for modifications and improvements to the existing storm drain system. This project provides for abandoning of a portion of the existing 15-inch storm drain line located on Capitol Avenue just east of the Crossings complex and the installation of a new 24-inch storm drain line from the east side of the Crossings complex, to a new manhole located on the west side of the Crossings complex to connect to a new 54-inch storm drain line to be installed by the Bay Area Rapid Transit (BART) extension project. Project No. 3706 will improve the storm drain system at this location and alleviate the flooding of Capitol Avenue near the Crossings complex. This project will be constructed in conjunction with the BART Project. In an effort to keep the project moving forward, the City of Milpitas is positioned to take the lead in obtaining the necessary environmental clearances in accordance with the California Environmental Quality Act (CEQA).

Fiscal Impact: None. Sufficient funds are available in the project budget for these services.

Recommendation: Approve and authorize the City Manager to execute an agreement with David J. Powers & Associates, Inc. in the amount of \$25,000 for Project No. 3706, subject to approval as to form by the City Attorney.

- * 15. **Award the Bid for Parks and Streetscape Maintenance Service to East Bay Construction Company, Inc. for the Annual Not-to-Exceed Amount of \$137,944, and Authorize the City Manager to Grant Yearly Increases Pursuant to the Contract (Staff Contact: Chris Schroeder, 586-3161)**

Background: On August 4, 2011, staff sent out a Request for Proposals (RFP) for landscape maintenance service for Tom Evatt Park, John McDermott Park, O'Toole Elms Park, and Park Metro (East, Central, & West) which were listed as an option, and streetscape maintenance service for Abel Street, Thompson Street, Thompson Court, and Machado Street. Purchasing worked closely with the Public Works Tree and Landscape and Parks Maintenance Sections to develop the specification and bid package for the RFP. It was advertised in the local newspaper, on the City website and on Public Purchase.

Four proposals were received and evaluated by a committee of three, including the Tree and Landscape Maintenance Senior Supervisor, the Facilities Maintenance Senior Supervisor and the Parks Maintenance Supervisor, who scored the proposals based on eight criteria. The proposers' company backgrounds, technical abilities, and references were evaluated. The recommendation for award is based on the proposal considered to be the most advantageous to the City. Final pricing for the bid, including the Park Metro option, is \$127,944 per year. Staff added \$5,000 for incidentals for Parks and \$5,000 for incidentals for Streetscapes bringing the total annual amount of the award to \$137,944.

The contract for these services is for two years with three one year options for renewal. Renewal years contain a compensation adjustment clause based on the Employment Cost Index for the San Francisco-Oakland-San Jose, CA CSA Census region and metropolitan area or 2%, whichever is less. Staff recommends City Council authorize the City Manager to grant yearly increases pursuant to the contract.

Fiscal Impact: None. \$137,944 in funds are available for this service from the Public Works and the Parks and Recreation Services Operating Budgets.

Recommendations:

1. Award the bid for Parks and Streetscape Maintenance Services to East Bay Construction Company, Inc. for the annual not-to-exceed amount of \$137,944.

2. Authorize the City Manager to grant yearly increases pursuant to the contract without further City Council action.

* **16. Approve a Budget Appropriation for a California Department of Recycling and Recovery Beverage Container Program in the Amount of \$18,962, and Authorize a Temporary Student Intern Position in Utility Engineering (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The City of Milpitas received \$18,962 from the California Department of Resources Recycling and Recovery (CalRecycle) Beverage Container Recycling Program. Staff applied for this funding as authorized by Council resolutions 7094 and 7351 to support recycling public outreach.

Staff recommends that Council appropriate this funding onto the Fiscal Year 2011-12 operating budget and authorize a temporary student intern position in the Utility Engineering Section recycling program for the amount of \$10,000. The student intern will support recycling public outreach activities in accordance with the award guidelines. The remaining amount of \$8,962 will fund educational and promotional services and supplies.

Fiscal Impact: None. The proposed expenditure of \$10,000 for a student intern will be funded by appropriation of the CalRecycle award.

Recommendation: Approve the budget appropriation for the California Department of Recycling and Recovery Beverage Container Program in the amount of \$18,962 and authorize a temporary student intern position in the Utility Engineering Section.

* **17. Waive Minor Bid Irregularity and Award a Construction Contract Including Two Add Alternate Bid Items to Pavex Construction for Street Resurfacing 2011 and 2012 “Ranch Drive,” Projects No. 4255, No. 4261 and No. 8202 (Staff Contact: Steve Erickson 586-3301)**

Background: On August 2, 2011, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for Street Resurfacing 2011 and 2012 “Ranch Drive Pavement Overlay” Projects No. 4255 and No. 4261. The project provides for pavement repairs and asphalt overlay of Ranch Drive at McCarthy Boulevard, and pavement restoration and base repairs at South Main Street between East Curtis Avenue and Great Mall Parkway. This project also included two add alternate bid items for the repair of portions of the parking lots at Fire Station No. 1 and the Milpitas Sports Center. The engineer’s estimate for the base bid project work was \$1,200,000.00.

The project was advertised and eight sealed bid proposals were received on August 31, 2011. Bid proposals ranged from \$817,815 to \$1,078,330, and the lowest responsible base bid was submitted by Pavex Construction, in the amount of \$817,815.

The Pavex Construction bid contained a minor bid irregularity consisting of a mathematical error in unit price extension, bid item 25. The Public Contract Code and the City’s bid documents define this as a “minor bid irregularity”, and authorize the City to “waive” this irregularity and correct the mathematical error, which does not change the total bid submitted by Pavex Construction. Project staff and the City Attorney’s Office have reviewed this bid irregularity and determined that it is minor and not significant, and recommends the Council waive the minor bid irregularity and award the construction contract to Pavex Construction.

The bid package included two add alternate items. The add alternate items will provide for pavement repairs at the Fire Station No. 1 and the Milpitas Sports Center Parking Lot. The Engineers Estimate was \$122,500 for the two add alternate items. Pavex Construction submitted a bid total of \$52,580 for both add alternates (Fire Station - \$29,330 and MSC - \$23,250.) Staff recommends including these add alternates in the contract award. Because Redevelopment funds are currently unavailable for the Milpitas Sports Center Parking lot, and the bids received are

very reasonable, staff recommends appropriating funds from the Transient Occupancy Tax (TOT) for the Sports Center Parking Lot bid alternate for a total appropriation not to exceed \$30,000.

Staff recommends awarding the construction contract, including the two add alternate bid items, to Pavex Construction for a total amount of \$870,395.

Lastly, staff is recommending Council approval to allow staff to use of the same change order policy which was approved for the successful completion of the Senior Center, Library, Parking Garage, and other recently completed projects with tight completion schedules and budgets. This policy allows for the timely completion of the project by authorizing staff to execute contract change orders in order to respond swiftly to construction conditions in order to limit potential claims or risk to the City. The construction contingency established for this project is \$100,000, and the change order authority would not exceed this amount, and would not require an additional appropriation.

Fiscal Impact: A budget appropriation of \$30,000 from the Transient Occupancy Tax (TOT) funds is required for the work at the Milpitas Sports Center. Sufficient funds are available in the respective project budgets (No. 4255, No. 4261 and No. 8202) for all the other project work.

Recommendations:

1. Waive minor bid irregularity.
2. Award a construction contract, including two Add Alternate bid items, to Pavex Construction for Street Resurfacing 2011 and 2012 "Ranch Drive" Projects No. 4255, No. 4261 and No. 8202, for a the total amount of \$870,395.
3. Approve a budget appropriation of \$30,000 from Transient Occupancy Tax funds.
4. Authorize staff to execute change orders for Street Resurfacing 2011 and 2012, provided that the change orders do not exceed the established construction contingency amount for the projects, and do not require additional appropriation.

- * **18. Award the Bid for Civic Center and Library Landscape Maintenance Service to Gachina Landscape Management for an Annual Not-to-Exceed Amount of \$30,620 and Authorize the City Manager to Grant Yearly Increases Pursuant to the Contract (Staff Contact: Chris Schroeder, 586-3161)**

Background: On August 12, 2011, staff sent out a Request for Proposals (RFP) for landscape maintenance service for the Civic Center and the Library. Purchasing worked closely with the Public Works Facilities Maintenance Section to develop the specification and bid package for the RFP. The RFP was advertised in the local newspaper, on the City website and on Public Purchase. Eight proposals were received and evaluated by a committee of three, including the Tree and Landscape Maintenance Senior Supervisor, the Facilities Maintenance Senior Supervisor and the Parks Maintenance Supervisor, who scored the proposals based on eight criteria. The proposers' company backgrounds, technical abilities, and references were evaluated.

The recommendation for award is based on the offering considered to be the most advantageous to the City. The annual base price for the bid is \$22,620. Staff requested a one time clean-up of the area before beginning regular service. The cost for this service is \$1,100. \$8,000 was added per year for incidentals, bringing the total annual amount of the award for the first year of the contract to \$31,720. The second and consecutive years of the contract will drop back down to \$30,620.

The contract for these services is for two years with three, one-year options for renewal. Renewal years contain a compensation adjustment clause based on the Employment Cost Index for the San Francisco-Oakland-San Jose, CA CSA Census region and metropolitan area, or 2%, whichever is less. Staff recommends City Council authorize the City Manager to grant yearly increases pursuant to the contract.

Fiscal Impact: None. \$30,620 in funds is available in the Public Works Operating Budget for this service.

Recommendations:

1. Award the bid for Civic Center and Milpitas Library landscape maintenance service to Gachina Landscape Management for the annual not-to-exceed amount of \$30,620.
2. Authorize the City Manager to grant yearly increases pursuant to the contract without further City Council action.

- * 19. **Authorize City Manager to Execute an Agreement between the Santa Clara Valley Transportation Authority and the City of Milpitas for Construction of the Milpitas Boulevard/Dixon Landing Road Intersection Improvements, Project No. 4262 (Staff Contact: Fernando Bravo, 586-3328)**

Background: As part of the BART extension project, the Santa Clara Valley Transportation Authority (VTA) will construct a grade separation at Kato Road in Fremont, just north of Dixon Landing Road in Milpitas. To facilitate traffic flow during construction, VTA requested approval to make temporary modifications to the Milpitas Boulevard/Dixon Landing Road intersection. Staff reviewed the requested temporary modifications and find they will benefit the City and should be upgraded to permanent improvements. Staff also identified additional minor improvements that can be cost-effectively added to the project. Permanent improvements include adding a northbound left-turn lane on Milpitas Boulevard at Dixon Landing Road, relocating and improving the median islands, removing and reinstalling permanent striping/ marking, installing a new traffic signal pole, and installing vehicle detection equipment.

This agreement in this packet authorizes VTA to do this work as part of the Kato Road project. VTA awarded the Kato Road project to Gordon N. Ball and obtained a bid alternate price for the Milpitas improvements that it will award upon the City's approval. Gordon Ball's bid for those improvements is \$150,000, which is below the engineer's estimate of \$168,000. The Milpitas improvements will be funded from Traffic Signal Modifications 2012 project, CIP No. 4262.

The agreement allows VTA to authorize change orders for the Milpitas improvements upon the City's approval. Staff recommends use of the change order policy approved for the successful completion of the Senior Center, Milpitas Library and other recently completed projects with tight completion schedules. This policy allows for the timely completion of the project while addressing the need to respond swiftly to construction conditions in order to limit potential claims, delays, and risk to the City. The construction contingency for change orders established for this project is \$20,000 and the requested staff change order authority will not exceed this amount.

Fiscal Impact: None. Sufficient funding is available in Project No. 4262 for this agreement.

Recommendations:

1. Authorize the City Manager to execute an agreement between the Santa Clara Valley Transportation Authority and the City of Milpitas for construction of the Milpitas Boulevard/Dixon Landing Road Intersection Improvements.
2. Authorize staff to approve VTA's execution of change orders for the Milpitas Boulevard/Dixon Landing Road intersection improvements, provided that the change orders do not exceed the established construction contingency amount for the project (\$20,000).

XIX. ADJOURNMENT

**NEXT REGULAR CITY COUNCIL MEETING:
TUESDAY, OCTOBER 4, 2011, AT 7:00 P.M**