



MILPITAS CITY COUNCIL, REDEVELOPMENT AGENCY
AND ECONOMIC DEVELOPMENT CORPORATION
MEETING AGENDA
TUESDAY, OCTOBER 18, 2011

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

SUMMARY OF CONTENTS

- I. **CALL TO ORDER/ROLL CALL by the Mayor (6:00 p.m.)**
- II. **ADJOURN TO CLOSED SESSION OF CITY COUNCIL**
 - 1) **CONFERENCE WITH LEGAL COUNSEL FOR EXISTING LITIGATION**
Pursuant to CA Government Code §54956.9 *City of Milpitas v. George Lund*
Santa Clara County Superior Court, Case No. 111CV209588
 - 2) **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
 - 3) **PUBLIC EMPLOYEES PERFORMANCE EVALUATIONS**
Pursuant to CA Government Code §54957
Positions: (1) City Manager Tom Williams and (2) City Attorney Mike Ogaz
- 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 Gomez)
- VI. **APPROVAL OF COUNCIL MEETING MINUTES** – October 4, 2011
- VII. **SCHEDULE OF MEETINGS** – Calendars for October and November 2011
- VIII. **PRESENTATION** – Proclaim October 2011 as *Filipino American History Month*
- IX. **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.

- X. **ANNOUNCEMENTS**
- XI. **ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XII. **APPROVAL OF AGENDA**

XIII. CONSENT CALENDAR

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.

XIV. PUBLIC HEARING

- 1. Hold a Public Hearing and Adopt a Resolution to Accept the 2011 Edward Byrne Justice Assistance Grant (JAG) (Staff Contact: Sandy Holliday, 586-2433)**

XV. UNFINISHED BUSINESS

- 2. Report and Recommendation to Adopt a Resolution Opposing the Move of Additional Inmates to Santa Clara County's Elmwood Jail in Milpitas (Contact: Mayor Esteves, 586-3029)**
- 3. Hear Report on Compliance with the Open Government Ordinance (Contact: Councilmember Polanski, 586-3024)**
- 4. Receive a Report on the Barbara Lee Senior Center Operating Hours Survey (Staff Contact: Bonnie Greiner, 586-3227)**

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1. Call to Order/Roll Call by the Mayor/Chair**
- RA2. Approval of Minutes – September 20, 2011**
- RA3. Approval of Agenda/Consent Calendar**
- *RA4. Adopt a Resolution Amending the Enforceable Obligation Payment Schedule (Staff Contact: Emma Karlen, 586-3145)**
- *RA5. Adopt a Resolution Granting Final Acceptance of the Carlo Street Ramp Conversion, Project No. 8195 (Staff Contact: Steve Erickson, 586-3301)**
- *RA6. Adopt a Resolution Granting Initial Acceptance of and Reducing Performance Bond for the North Main Street Parking Lot Resurfacing, Project No. 8162 (Staff Contact: Steve Chan, 586-3324)**
- *RA7. Approve Time Extension for the South Main Street Senior Lifestyle Disposition and Development Agreement for Two Years (Staff Contact: Diana Barnhart, 586-3059)**
- RA8. Agency Adjournment**

XVII. ECONOMIC DEVELOPMENT CORPORATION MEETING

- EDC1. Call to Order/Roll Call by the Mayor/Chair**
- EDC2. Approval of Agenda**

EDC3. Approve an Agreement with the Milpitas Chamber of Commerce for Business Retention and Recruitment Services for Amount Not to Exceed \$60,000 (Staff Contact: Diana Barnhart, 586-3059)

EDC4. Corporation Adjournment

XVIII. REPORTS OF MAYOR AND COMMISSIONS

- 5. Direct Staff in the Preparation of a Multi-Year Budget and Financial Plan (Contact: Mayor Esteves, 586-3029)**
- * 6. Consider Mayor's Recommendations for Appointments/Re-appointments to Milpitas Commissions (Contact: Mayor Esteves, 586-3029)**

Public Art Committee

- 7. Approve the Public Art Project for the Alviso Adobe Park (Staff Contact: Renee Lorentzen, 586-3409)**

Parks, Recreation, and Cultural Resources Commission

- * 8. Approve the Milpitas Art and Culture In-Kind Grants for FY 2011-12 (Staff Contact: Renee Lorentzen, 586-3409)**

XIX. NEW BUSINESS

- 9. Receive the Monthly Economic Development Report (Staff Contact: Diana Barnhart, 586-3059)**
- 10. Receive Staff Report on City's Pavement Maintenance Program (Staff Contact: Greg Armendariz, 586-3317)**
- * 11. Authorize the Acceptance of a Grant for the Parks and Recreation Rainbow Theatre and Recreation Assistance Programs from the Milpitas Parks and Recreation Foundation (Staff Contact: Renee Lorentzen, 586-3409)**
- * 12. Authorize a Temporary Contractual Building Inspector Position (Staff Contact: Keyvan Irannejad, 586-3244)**
- * 13. Approve a Fee Waiver for the Alcoholics Anonymous of Santa Clara County 17th Annual Unity Day at the Community Center on Sunday, August 19, 2012 (Staff Contact: Aaron Bueno, 586- 3226)**
- * 14. Consideration of the City Council Meeting Schedule in 2012 (Staff Contact: Mary Lavelle, 586-3001)**

XX. ORDINANCE

- 15. Waive the Second Reading and Adopt Ordinance No. 243.4, Amending the Campaign Finance and Disclosure Requirements for City Elections (Staff Contact: Michael Ogaz, 586-3040)**

XXI. BIDS AND CONTRACTS

- * 16. Authorize the City Manager to Execute Amendment No. 1 to the Agreement with Camp, Dresser & McKee for Professional Engineering Services Supporting the Solid Waste Program (Staff Contact: Kathleen Phalen, 586-3345)**

- * 17. **Approve and Authorize the City Manager to Execute a Joint Use Agreement with the Santa Clara Valley Water District for Recreational Use of Coyote Creek Trail Reach 1 (Staff Contact: Fernando Bravo, 586-3328)**
- * 18. **Receive Staff Report on Emergency Repairs for the City Hall Heating, Ventilation and Air Conditioning by ACCO Engineered Systems and Authorize the City Manager to Execute the Contract (Staff Contact: Chris Schroeder, 586-3162)**

XXII. ADJOURNMENT

**NEXT CITY COUNCIL MEETING:
TUESDAY, NOVEMBER 1, 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 exist on the:

*Arts Commission
Emergency Preparedness 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

XIV. PUBLIC HEARING

1. **Hold a Public Hearing and Adopt a Resolution to Accept the 2011 Edward Byrne Justice Assistance Grant (JAG) (Staff Contact: Sandy Holliday, 586-2433)**

Background: The United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance coordinates the annual Edward Byrne Justice Assistance Grant (JAG) authorized by 42 US Code §3751(a). The JAG program supports a broad range of activities to prevent and combat crime.

42 US Code §3751 (a) (1) specifies that these funds must be used exclusively for front line law enforcement services, including technical assistance, training, personnel, equipment, supplies, contractual support, and information systems for criminal justice. The grant funds must supplement and not supplant existing funding for front line law enforcement services. 42 US Code §3752 (3) (A) specifies that the application be made public and 42 US Code §3752 (3) (B) requires a public hearing regarding the expenditure of the grant.

On July 20, 2011, the Milpitas Police Department submitted an application for the 2011 Edward Byrne Justice Assistance Grant in order to equip officers with portable radios that meet current technological needs. On August 19, 2011, the application was approved, and a grant was tentatively awarded (Award Number 2011-DJ-BX-3301) in the amount of \$13,913.00. There is no requirement for matching funds.

Fiscal Impact: None. The 2011 Edward Byrne Justice Assistance Grant in the amount of \$13,913.00 will cover the costs of the proposed purchases of portable radios for officers.

Attachments:

- A. Council Resolution
- B. Budget Change Form
- C. 2011 Edward Byrne Justice Assistance Grant Application

Recommendations:

1. Open the public hearing and, after public comment, move to close the public hearing.
2. Adopt a resolution to accept the 2011 Edward Byrne Justice Assistance Grant in the amount of \$13,913.00.
3. Approve an appropriation in the amount of \$13,913.00 into the Police Department's operating budget.

XV. UNFINISHED BUSINESS

2. **Report and Recommendation to Adopt a Resolution Opposing the Move of Additional Inmates to Santa Clara County's Elmwood Jail in Milpitas (Contact: Mayor Esteves, 586-3029)**

Background: The State Legislature has approved the Governor's Corrections Realignment Statute AB 109 in an effort to address prison overcrowding. This realignment legislation will lead to the statewide diversion of certain low level sentenced felons and parole violators (non-violent, non-serious, non-high risk sex offenders) to county jails instead of state prisons. Officials from the County have informed the City that pursuant to this realignment legislation, inmates that would have normally been transferred from the Elmwood Correctional Facility to state prisons will now be retained in the local county jail, starting in October 2011. This will increase Elmwood's total inmate population on a monthly basis, which would amount to an increase of approximately 400 to 800 inmates by the end of 2012. Santa Clara County houses

inmates within the Main Jail located in San Jose and at Elmwood in Milpitas. Elmwood houses more than half of all inmates in the County.

Fiscal Impact: None.

Recommendation: Per the recommendation of Mayor Esteves, adopt a resolution opposing the move of additional inmates to Santa Clara County's Elmwood Jail in Milpitas.

3. Hear Report on Compliance with the Open Government Ordinance (Contact: Councilmember Polanski, 586-3024)

Background: Councilmember Polanski requested to report to her colleagues on the topic of adherence to the calendar posting requirement of elected officials, as written in the Open Government ordinance.

Included in the agenda packet are copies of the Mayor and City Councilmembers' calendars from the City website for the past five months. Also included is a copy of Milpitas Municipal Code section I-310-3.170 Calendar of Officials defining this requirement.

Recommendation: Hear report of Councilmember Polanski.

4. Receive a Report on the Barbara Lee Senior Center Operating Hours Survey (Staff Contact: Bonnie Greiner, 586-3227)

Background: At the request of Mayor Esteves, an informational memo was prepared detailing the results from a comprehensive survey of seniors as to their interest in the increase of operating hours at the Barbara Lee Senior Center. A copy is included in the Council's agenda packet.

Currently, the Barbara Lee Senior Center is open Monday through Friday from 9:00 AM to 4:00 PM. During that time, seniors are offered drop-in recreation programs, fitness room, arts and dance classes, trips, informational seminars and lunch through the County Senior Nutrition Program. The Senior Center's current evening and weekend programs, and events, include evening Bingo on the first and second Tuesdays every month from 5:00 – 8:30 PM, special events and trips throughout the year on weekends including Holiday Dances (Christmas and Valentine's Day), Bingo Marathons, and theater trips.

Senior Center staff has continuous and open dialogue with Senior Center members to verbally poll their satisfaction with the hours the Center is open and the events and programs offered at the Center. Staff has implemented class and trip suggestions in the past year from members that would be well received by the majority such as bridge classes, holiday cooking class, the Lighthouse at Pacific Grove trip and a Disney Museum trip to San Francisco.

In response to Council direction, staff distributed a formal survey to local seniors requesting their opinion on when they would like to see the Barbara Lee Senior Center open and what activities they'd like to see offered during possible extended operating hours.

The formal survey was made available to seniors from February 2011 to April 2011. Staff distributed the survey to the following locations, receiving 83 responses in return.

- Milpitas Senior, Sports and Community Centers
- Pioneer Mobile Lodge
- Friendly Village Mobile Home Park
- Milpitas Mobilodge
- Terrace Gardens senior housing apts.
- DeVries Place senior housing
- City website
- Kaiser Wellness Center

The survey was organized into three major categories: 1) Current Operating Hours feedback, 2) Evening Hours of Interest, and 3) Weekend Hours of Interest.

Results reported were as follows, per each category.

Current Operating Hours Results

56% of the surveys reported being in favor of current opening weekday hours.

Evening Hours of Interest Results

36% of surveys reported an interest in having extended evening hours anytime from 5:00 PM – 9:00 PM.

Weekend Hours of Interest Results

24% of surveys reported an interest in having weekend hours on Saturdays from 10:00 AM – 4:00 PM.

Activities listed that were of interest in the survey, during the current and possible extended operating hours, were consistent with the City’s current programming: classes, local trips, dances, fitness room hours, games, etc. Staff continues to seek out seniors’ input on innovative programming and events of interest for Center members that can be offered during both regular and non-regular operating hours.

Currently, senior special events, trips and programs offered in addition to regular open hours are incorporated into the staffs’ work schedule. Should additional operating hours and programming be requested, additional staff, contractor and supply monies would be required.

Recommendation: In conjunction with the survey results and the continued dialogue with Senior Center members, staff recommends maintaining the current Barbara Lee Senior Center operating hours: Monday through Friday, from 9:00 AM to 4:00 PM, and open on evenings and weekends for special events and special programs such as, but not limited to, dances, bingo, special interest classes, board/card game tournaments, movies and televised sporting events.

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

***RA4. Adopt a Resolution Amending the Enforceable Obligation Payment Schedule (Staff Contact: Emma Karlen, 586-3145)**

Background: On August 23, 2011, the City Council and the Agency Board jointly adopted a resolution approving an Enforceable Obligation Payment Schedule to enable the Redevelopment Agency to make payments on pre-existing obligations while it awaits a final decision in the California Redevelopment Association’s lawsuit. The California Supreme Court issued a temporary order that prohibits redevelopment agencies opting into the voluntary program or entering into any new debt or financial obligations until the Court reaches its final decision.

Due to new clarification issued on the AB1X 26 bill, staff recommends amending the Enforceable Obligation Payment Schedule to include additional pre-existing obligations. These obligations include estimated employee costs and administrative expenses of operating the Milpitas Redevelopment Agency until the end of the Redevelopment Plan, the housing set-aside requirement until the end of the Plan, the “voluntary alternative redevelopment program” payments until the end of the Plan and the cost of public works construction, pursuant to the Second Amended and Restated Public Works Agreement.

Fiscal Impact: None.

Recommendation: Adopt a resolution amending the Enforceable Obligation Payment Schedule.

***RA5. Adopt a Resolution Granting Final Acceptance of the Carlo Street Ramp Conversion, Project No. 8195 (Staff Contact: Steve Erickson, 586-3301)**

Background: This project was initially accepted on April 20, 2010 and has passed the one-year warranty period. A final inspection of the installed public improvements has been made, and they were found to be satisfactory. The project provided for the construction of the existing Carlo Street/State Route 237 on-ramp to an eastbound Calaveras Boulevard (SR237) off-ramp.

Staff recommends the Redevelopment Agency grant final project acceptance of the Carlo Street Ramp Conversion, Project No. 8195, and release of the contractor's bond.

Fiscal Impact: None.

Recommendation: Adopt a joint resolution of the Redevelopment Agency and City Council granting final acceptance of the Carlo Street Ramp Conversion, Project No. 8195, and release of the contractor's bond.

***RA6. Adopt a Resolution Granting Initial Acceptance of and Reducing Performance Bond for North Main Street Parking Lot Resurfacing, Project No. 8162 (Staff Contact: Steve Chan, 586-3324)**

Background: The Agency awarded the North Main Street Parking Lot Resurfacing to DRT Paving and Grading Incorporated on June 21, 2011. Accordingly, this project predates the halt on all redevelopment activities caused by the passage of ABX1 26 and constitutes an "enforceable obligation" that is not subject to the California Supreme Court stay on most Agency activities. The project provides for repairs to failed pavement, asphalt overlay, and new painted striping. Under the contract documents, the Agency is legally required to initially accept the street improvements upon the construction and delivery of facilities that meet the contract specifications. The project was successfully completed on time and under budget, and 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 \$6,222, which is 10% of the final contract value.

Fiscal Impact: None.

Recommendation: Adopt a resolution of the Redevelopment Agency and the City Council granting initial acceptance of the North Main Street Parking Lot Resurfacing Project No. 8162, subject to a one year warranty period and reduction of the faithful performance bond to \$6,222.

***RA7. Approve Time Extension for the South Main Street Senior Lifestyle Disposition and Development Agreement for Two Years (Staff Contact: Diana Barnhart, 586-3059)**

Background: The Disposition and Development Agreement (DDA) with South Main Senior Lifestyles, LLC (SMSL) was approved by the Agency in August 2009 and transferred the property to the City in March 2011. The DDA requires the development of a two-phased residential complex on South Main Street at the former location of the Ooh La La Lodge and the Johnsville Mobile Home Park. The first phase of the project will be the development of a 180-unit "continuum of care" senior housing rental complex and 63 affordable residential units for very low and low income households. The second phase consists of 207 units of family housing.

The Agency received a request from SMSL on September 23, 2011 for a two year extension to the DDA as a result of the economic conditions and conservative underwriting requirements. SMSL continues to believe that the demand for the senior assisted/congregate housing is underserved in Milpitas and will be a viable product as the lending environment "thaws." A copy of SMSL's request is included in the Council agenda packet.

The DDA constitutes a pre-existing “enforceable obligation” for purposes of ABX1 26 and 27. Pursuant to the DDA, the Agency is required to work in good faith with the developer and may grant time extensions when necessary in order to enable the developer to perform the obligations stated in the DDA. Furthermore, ABX1 26 requires the Agency to preserve Agency assets and the time extension requested would maintain the development potential for the site and protect land inventory within the redevelopment area. Accordingly, the Agency may grant the time extension if it wishes under the current Supreme Court stay limiting Agency activities.

Staff worked closely with SMSL on its financing efforts over the last year and believes that the developer is very capable of delivering the product proposed. Staff recommends that the Agency approve the extension to the Disposition and Development Agreement request to November 19, 2013 from November 19, 2011.

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

Recommendation: Approve the two year time extension request for the Disposition and Development Agreement with South Main Street Senior Lifestyles, LLC, and authorize the Executive Director to execute an amendment memorializing the extension.

XVII. ECONOMIC DEVELOPMENT CORPORATION MEETING

EDC3. Approve an Agreement with the Milpitas Chamber of Commerce for Business Retention and Recruitment Services for Amount Not to Exceed \$60,000 (Staff Contact: Diana Barnhart, 586-3059)

Background: In June 2011, the City Council approved an agreement with the Milpitas Chamber of Commerce to provide Business Retention in Milpitas (BRIM) services. The Chamber program was to focus its outreach to businesses with 49 to 99 employees, survey the needs, challenges and business development and expansion opportunities of the businesses and report those findings to the City.

The Chamber contacted 127 of the 281 businesses falling within the employee count. The Chamber acknowledges that “gearing up” for the outreach program took longer than anticipated in the coordination, formal training and ongoing resourcing for its BRIM Team members. However, the results and information gleaned from the business retention efforts are very valuable to both the Chamber and the City. For example, the Chamber found that businesses chose the Milpitas location for geographical location, easy freeway access and affordable lease terms and affordable housing for owners and employees. 63% of the businesses responding to the survey indicated overall favorable experience with the City. Those that felt otherwise cited dissatisfaction with occupancy permits, limited signage opportunities and regulatory requirements. The Chamber notes that they did not “drill down” for specific details or to discern if it was local, county, or state government regulations creating dissatisfaction.

85% of businesses surveyed indicated that their current facilities are sufficient for business needs, but 24% suggested a need for expansion or are considering a move outside the City. The Chamber is compiling a more detailed list on these businesses for the Chamber and City to conduct joint follow-up outreach. The Chamber reports that some of the businesses are very concerned about the impact of BART on them, especially those businesses near the BART Station area but some believe that the BART extension will be good for their business.

Outcomes: the Chamber’s performance measures projected quarterly outreach efforts would yield a total of 250 points (see attachment for Performance Measurements). The Chamber achieved 237 points in the first quarter and attributes this to how long it took to create the survey and actually make contact with the responsible business owner/manager. The Chamber discovered that much of what they were doing was business recruitment, as businesses owners

they met with would refer them to other businesses that might be interested in relocating to Milpitas. Finally, the Chamber realized that business retention and outreach efforts require more time than anticipated, as once they were able to reach the appropriate business contact, they were often very engaging and ready to talk more in depth than anticipated.

Staff believes that the Chamber, while not meeting the exact target of 250 points, exceeded the expectations of the contract and recommends that the contract be extended to allow the Chamber to continue its business retention efforts and to expand into business recruitment. Staff will recommend to the City Council Economic Development Subcommittee a new agreement not to exceed \$60,000 through June 30, 2011.

The Economic Development Subcommittee was scheduled to meet with Chamber of Commerce representatives on Monday, October 17 to review the performance of the Chamber and consider staff's recommendation. The Chamber will continue to report back to the City on a quarterly basis and funds would be distributed to the Chamber on a quarterly basis upon approval of their report to the City Council.

Fiscal Impact: None. Funds for the proposed contract in the amount of \$60,000 are available in the Economic Development Corporation budget.

Recommendation: Approve the agreement with the Milpitas Chamber of Commerce for \$60,000 through June 30, 2012.

VIII. REPORTS OF MAYOR AND COMMISSIONS

5. **Direct Staff in the Preparation of a Multi-Year Budget and Financial Plan (Contact: Mayor Esteves, 586-3029)**

Background: The City Council currently adopts an annual operating budget that includes funding for the first year of a Five Year Capital Improvement Program. In addition, as part of the budget planning process, staff also prepares and presents a Five Year Forecast of the General Fund. The Five Year Forecast is a rolling forecast and is updated annually as the local economy changes. The Mayor requested an agenda item to discuss the possibility of a multi-year (3-5 years) budget and financial plan.

Recommendation: Hear report of Mayor Esteves, and provide direction to staff regarding a multi-year budget.

* 6. **Consider Mayor's Recommendations for Appointments/Re-appointments to Milpitas Commissions (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends the following residents be appointed and re-appointed, as follows:

Arts Commission/Public Art Committee

Re-appoint Becky Strauss to a term that expires in October 2014.

Public Art Committee (Alliance for the Arts seat):

Newly appoint Cyd Mathias to a term that expires in October 2014.

Parks, Recreation, and Cultural Resources Commission

Appoint Rohit Sharma (current Alternate No. 1) as a regular member to a term that expires in June 2012.

Appoint Mikaela Garcia (current Alternate No. 2) as Alternate No. 1 to a term that expires in June 2012.

Newly appoint Garry Barbadillo as Alternate No. 2 to a term that expires in June 2013.

Copies of applications for newly recommended Commissioners are included in the Council's agenda packet (along with those not recommended for appointment at this time – if any).

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

Public Art Committee

7. Approve the Public Art Project for the Alviso Adobe Park (Staff Contact: Renee Lorentzen, 586-3409)

Background: On June 22, 2011, the Alviso Adobe Public Art Installation Subcommittee, consisting of members of the Public Art Committee, the Milpitas Historical Society, and the Parks, Recreation and Cultural Resources Commission, reviewed submitted art proposals for the Alviso Adobe Public Art project.

The Subcommittee chose two finalist project art pieces: the “Water Tower” and the “Wagon Sculpture.” The Alviso Adobe Public Art project was approved at \$20,000.00 with the art piece scheduled to be contracted, completed and installed on a timeline parallel to the Alviso Adobe Park project opening.

Submitting artists were asked through the Public Art Committee's project Request for Proposals to submit proposals that featured a visually interesting, safe, three-dimensional public art piece that would enhance the Alviso Adobe Park and identify the historical significance of the Alviso Adobe. The RFP also stated that the Art piece should incorporate references to the Alviso Adobe and its historical significance.

On September 26, 2011, the Public Art Committee reviewed both finalist projects and confirmed their original recommendation for City Council approval of the art project proposal entitled “Water Tower.”

Fiscal Impact: None. Sufficient funds are available and allotted for this project in the Public Art budget.

Recommendation: Approve the Public Art Committee's recommended “Water Tower” for the Alviso Adobe Park art installation project.

Arts Commission

*** 8. Approve the Milpitas Art and Culture In-Kind Grants for FY 2011-12 (Staff Contact: Renee Lorentzen, 586-3409)**

Background: The Milpitas Arts and Culture Grant Program is a competitive grant program offering in-kind support to individuals and organizations hosting cultural or artistic events in the City of Milpitas. In-kind support includes performance space (i.e. Community Center, Senior Center) and City staff support. All grant events are held in Milpitas and are open to the public for either little or no cost.

Nine applicants submitted Milpitas Arts and Culture Grant Program (MACG) applications for the 2011-12 funding cycle. The Milpitas Arts Commission voted to recommend seven grant proposals and to deny two proposals.

The seven grant proposals recommended for approval are:

- Calaveras Repertory Theatre
- Fancy Dancers, Inc.
- Filipino American Association of Milpitas, Inc. (Fil-Am)
- Golden Hills Art Association

- Milpitas Alliance for the Arts
- Milpitas Camera Club
- San Jose Wind Symphony

The two grant proposals recommended for denial are:

- Clara Ines Thomas (suggested to apply for additional Phantom Art Gallery time)
- Swapnajit Mitra (did not meet grant guidelines)

Fiscal Impact: None.

Recommendation: Approve seven Milpitas Arts and Culture Grants for in-kind performance space and City staff support.

XIX. NEW BUSINESS

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

Background:

Economic Development Commission – Commissioners expressed concern about the condition of development sites and other commercial properties around the City at their September meeting. Of concern is the seeming lack of maintenance and care of properties that are either approved for redevelopment, but have not initiated work and those properties that may be active, but not well maintained. As a result, the Commission opted to tour the City to identify how widespread non-care of commercial property is throughout the City. At its October meeting, the Commission was scheduled to consider recommendations to the City Council on potential conditions or approval requirements that will result in better long-term maintenance.

Countywide Energy Rebate Program – a community meeting was held on September 20 to introduce the Countywide Energy Rebate program for home energy audits. Homeowners can apply at www.EnergyUpgradeCA.org for rebates up to \$800. The County of Santa Clara is offering the program and is available to single family, multi-family and commercial property owners. Milpitas was the first city to host the community meeting.

Food Truck Events – staff has been working with the Chamber of Commerce to host a weekly food truck event at the Serra Shopping Center. There also is an applicant interested in hosting a similar weekly activity at the Great Mall. These events require a Conditional Use Permit since they will be held on a consistent basis. Research shows that food truck events draw strong numbers and benefit the businesses at the area site if the site is in a commercial area.

Business Development – staff continues to work with Zollner Electronics, Nanolabs and E2V on their business relocations to Milpitas. Most of the projects are working within the permit process and are on schedule. Zollner Electronics officials will be in Milpitas in mid October and have requested a meeting with the Mayor.

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

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

10. Receive Staff Report on City's Pavement Maintenance Program (Staff Contact: Greg Armendariz, 586-3317)

Background: Last spring, the Council directed staff to provide in the coming budget cycle, a City pavement program with an appropriate funding level to prevent further deterioration of the pavement condition of the City's street network. The Council adopted the 2011-16 Capital

Improvement Program and increased \$4.5 million in funding for the City pavement maintenance program. With subsequent approval of the state's 2011-12 budget, and more recent state Supreme Court ordered stay on redevelopment activity, the City's Redevelopment Agency has effectively been suspended, requiring the City to postpone to a date uncertain, the planned pavement reconstruction project of selected streets within the Redevelopment Agency area. With a shortage of funds, staff developed a strategy to extend the pavement life of city streets. Staff will provide a presentation of this strategy at the Council meeting for discussion.

Fiscal Impact: None.

Recommendation: Receive a staff report on City's Pavement Maintenance Program.

- * 11. **Authorize the Acceptance of a Grant for the Parks and Recreation Rainbow Theatre and Recreation Assistance Programs from the Milpitas Parks and Recreation Foundation (Staff Contact: Renee Lorentzen, 586-3409)**

Background: The Milpitas Parks and Recreation Department applied for two grants in the amount of \$3,200 from the Milpitas Parks and Recreation Foundation, a non-profit organization in the City of Milpitas. Grants were written to assist with production costs for Rainbow Theatre's Fall Production of "Annie, Jr." and for additional funds for the Recreation Assistance Program (RAP) which helps low income Milpitas residents to participate in Recreation programs. Grants were approved and awarded to Rainbow Theatre in the amount of \$1,900 and \$1,300 for RAP.

Fiscal Impact: None. Two line items in Recreations Services budget will be funded in the amounts of \$1,900 and \$1,300.

Recommendation: Accept the Milpitas Parks and Recreation Foundation grant in the amount of \$3,200 to be incorporated into the Milpitas Parks and Recreation Department budget for Rainbow Theatre and the Recreation Assistance Program (RAP).

- * 12. **Authorize a Temporary Contractual Building Inspector Position (Staff Contact: Keyvan Irannejad, 586-3244)**

Background: Developer Lyon Communities requested a dedicated, full-time building inspector for the Lyon Milpitas Apartments project to provide continuous and uninterrupted inspection service for the duration of construction. Such service was provided earlier by the City of Milpitas to other major projects and proved to be beneficial to both sides. It allows the City to provide a high level of customer service by considerably reducing the number of re-inspections, streamlining and maintaining construction schedule and minimizing the number of construction revisions. The existing workload does not allow City building officials to provide a dedicated building inspector from the current staff to the project. Therefore, it necessitates hiring a temporary inspector on a contractual basis at the annual cost of \$140,640. The developer will pay the full cost of the inspection service, which includes salary for the dedicated building inspector and an administrative fee.

Fiscal Impact: None. Developer will pay the full cost of the building inspector.

Recommendations:

1. Approve Lyon Communities' request for a dedicated building inspector.
2. Approve a budget appropriation of \$93,760, less the administrative fee, into the Building and Safety Department's budget for remaining eight months of FY 2011-12.

- * 13. **Approve a Fee Waiver for the Alcoholics Anonymous of Santa Clara County 17th Annual Unity Day at the Community Center on Sunday, August 19, 2012 (Staff Contact: Aaron Bueno, 586- 3226)**

Background: For over 17 years, Alcoholics Anonymous has hosted its annual *Unity Day* at the Milpitas Community Center. This event, scheduled on Sunday, August 19, 2012, is open to all and designed to inform members of the service opportunities in Alcoholics Anonymous, to encourage their participation and to focus attention on reaching and serving the still-suffering alcoholic. The organization, Intergroup Central Office of Santa Clara County, Inc. is a California non-profit corporation and is fully supported by financial contributions from their members. The group's primary focus and purpose is to maintain sobriety and help others find sobriety.

James Cheek, representing Alcoholics Anonymous, requests that City Council approve the waiver of facility rental fees for a total of \$891.50, which would reduce fee revenues collected by the City by that amount.

Fiscal Impact: Loss of \$891.50 in rental fee revenue collected.

Recommendation: Approve the Alcoholics Anonymous request for fee waiver totaling \$891.50 for the August 19, 2012 annual *Unity Day* event at the Milpitas Community Center.

* 14. **Consideration of the City Council Meeting Schedule in 2012 (Staff Contact: Mary Lavelle, 586-3001)**

Background: The Milpitas Mayor and City Council are requested to consider and adopt their meeting schedule for 2012. Regarding the City Council's summer time meeting dates, it has been recent tradition to cancel both of the July regular Milpitas City Council meetings.

City staff has begun to prepare year-long calendars for next year and have inquired of the City Council as to what schedule will be followed in 2012. Staff requests that the City Council act on an affirmative meeting schedule for 2012 for its regular business meetings.

Recommendation: Move to approve the 2012 regular City Council meeting schedule, including the cancellation of the July 2012 City Council meetings.

XX. ORDINANCE

15. **Waive the Second Reading and Adopt Ordinance No. 243.4, Amending the Campaign Finance and Disclosure Requirements for City Elections (Staff Contact: Michael Ogaz, 586-3040)**

Background: The Campaign Finance Reform Ordinance brought before the Council at its meeting of September 20, 2011, has been revised in order to implement the instructions of Council made at that meeting, which have been included in the version now proposed at this second reading of the Ordinance. In addition, a number of public comments were submitted via correspondence on the proposed Ordinance. While the first draft complied with all legal requirements, staff proposes certain language refinements to avoid any confusion that might have arisen as to the intent and application of the Ordinance. A discussion of each of the changes to the original ordinance follows.

Analysis: There were five major topic areas in the original proposed Ordinance. They are:

Contribution Amount. Originally this section increased the campaign contribution limit from \$350 to \$500. This provision remains unchanged from the original proposal of the Campaign Finance Reform Task Force.

Aggregation. This provision adds language defining "person" as that term is used in the contribution limits ordinance. It provides that for determining the contribution limit, the contributions of a person (which includes corporation, partnership, etc.) shall be aggregated with

any entity primarily controlled by that individual. To better match a similar provision within the State Political Reform Act, staff recommends in this second reading version to change the language to aggregate the contributions of those entities who are “directed and controlled” by that person. In addition, in order to eliminate any confusion that the campaign contribution limits of the City Ordinance were intended to apply to Independent Expenditure Committees (which do not make contributions directly to candidates), IECs have been specifically excluded in this latest version.

Independent Expenditure Committees. Upon the motion of Councilmember Gomez, the Council directed that the requirement to file disclosures with the City Clerk within 10 days of disseminating advocacy information to the public, be eliminated. This has been done in this second reading version. As such, there are no additional filing requirements for IECs in the proposal now before the Council.

If IECs actively participate in a Milpitas election by expending over \$100 in support or opposition to a candidate, the new proposed language requires only that they verbally notify the City Clerk at such time as they are otherwise required by law to file any campaign statement, such as FPPC Form 460 or 461. As this does not require IECs to file any additional or different documents than they are already required by State law, it is not inimical to provisions of the Political Reform Act that purport to be pre-emptive. It is not clear, however, whether the courts will agree. A court could conclude that Milpitas is not even allowed to require verbal notification with regard to IECs who must file their reports outside the City of Milpitas. Staff could find no court decision on this precise point. If the Council wishes to be more conservative, a notification provision applying only to IECs operating solely within the City of Milpitas may be substituted.

Voluntary Campaign Expenditures. This provision provides expenditure limits for Milpitas candidates that are voluntary. Court cases have held that mandatory limits on expenditures violate First Amendment rights. Criticism of the original draft Ordinance centered mainly on the lack of significant penalty for failure to comply and concerned whether the \$60,000 limit was the appropriate amount. The penalty for non-compliance is punishable as an infraction (a fine of \$100, \$200 or \$500). Any greater punishment would increase the risk that the Ordinance might be challenged. As such, this section has not been changed from the original version proposed.

Campaign Consultants. The original version of this provision required campaign consultants to register with the City Clerk when working on Milpitas campaigns and also to identify all their other clients. The Council, upon the motion of Councilmember Gomez, directed that the ordinance be modified to list only those clients involved in Milpitas projects or elections. In addition, Council directed that all consultant contacts with City staff regarding City policy be added to the disclosure requirements. Objections to the ordinance had been made upon claims that the ordinance was vague and overbroad.

While staff believes the changes directed by Council should ameliorate these concerns, it is concluded that identification of staff contacts regarding City policy is too broad a requirement and does not provide consultants with clear notification as to what must be reported. As such, it creates too great a risk of successful legal challenge and therefore, has not been included in this new version of the ordinance. The current version is sufficiently succinct to avoid claims of vagueness. In addition, restricting disclosure of clients to those involved in Milpitas projects or elections is sufficiently narrow to avoid the claim of overbreadth.

Another objection to this provision was that requiring client identification violated privacy rights guaranteed by the Constitution. Research indicates that there is no absolute barrier to requiring disclosure of this information. U.S. Supreme Court recently noted that disclosure requirements, unlike expenditure ceilings, do not prevent anyone from speaking and do not violate free speech rights. Only if it is reasonably probable that disclosure would expose others to threats,

harassment or reprisal, should it be limited. Disclosure requirements must be balanced against the very important right of the public to full and complete information regarding elections.

Finally, the Council directed that the definition of Campaign Consultant be amended to include not only those who receive \$200 or more in compensation, but also those who volunteered 10 or more hours to a campaign and received \$10,000 or more in any year from any source as a campaign consultant. Suitable language has been added to implement this direction.

City Council Meeting Disclosures. In the original version presented at the first reading of this Ordinance, language had been added to the Open Government announcement read by the City Attorney at all Council meetings regarding declaration of conflicts of interest on the agenda. The added language indicated encouragement to also disclose campaign contributions received from persons who had an interest in any agenda item different from that of the general public. At Council direction, language has been added to limit the disclosure. Staff recommends that disclosure be encouraged only on items that involve a public hearing or involve the making of a contract in excess of \$50,000.

Fiscal Impact: None.

Recommendations:

1. Waive the second reading of Ordinance No. 243.4.
2. Adopt Ordinance No. 243.4, as revised since the first reading on September 20.

XXI. BIDS AND CONTRACTS

- * 16. **Authorize the City Manager to Execute Amendment No. 1 to the Agreement with Camp, Dresser & McKee for Professional Engineering Services Supporting the Solid Waste Program (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The City has Camp Dresser & McKee (CDM) under contract to review Allied Waste's annual reimbursement request to the City for extraordinary regulatory costs, which are costs not included in the base rate of its contract with the City. Subtitle D of the Federal Resource Conservation and Recovery Act, enacted after the contract base rate was established, requires landfill operators to monitor landfill safety, provide proper capture and treatment of wastewater leachate, and monitor wildlife control and facility design. Allied is ready to submit its 2009 regulatory costs for the Newby Island landfill, at which time staff will require CDM's technical expertise to review and verify the accuracy of the claims. The evaluation process includes a review of Allied's documentation, project meetings with City and Allied staff, and a report of findings. Validated extraordinary expenses will be incorporated into a future rate increase. Staff negotiated an agreement amendment with CDM in an amount not to exceed \$10,030, which is consistent with previous Subtitle D review work.

Fiscal Impact: None. Funds are available in the FY 2011-12 solid waste budget.

Recommendation: Authorize the City Manager to execute amendment No. 1 to the agreement with Camp, Dresser & McKee for Professional Engineering Services supporting the Solid Waste Program.

- * 17. **Approve and Authorize the City Manager to Execute a Joint Use Agreement with the Santa Clara Valley Water District for Recreational Use of Coyote Creek Trail Reach 1 (Staff Contact: Fernando Bravo, 586-3328)**

Background: Staff has negotiated a joint use agreement with the Santa Clara Valley Water District (District) to allow for the extension and maintenance of an existing hiking and bicycling public trail along the Coyote Creek levee in Milpitas. The development of this trail is set forth in the City's General Plan.

The new joint use agreement being presented by staff is intended to supersede the existing joint use agreement for the Coyote Creek hiking and bicycling trail. A new agreement is needed in order to cover the extension of the trail southwards from the existing trailhead at Ranch Drive toward Montague Expressway. The proposed improvements include a trail access point from the new Cerano Park. The City will need a District encroachment permit for construction, which is expected with the execution of this joint use agreement.

All phases of construction, operation and maintenance of the trail, including the one subject to the current joint use agreement, were considered in the adoption of a Mitigated Negative Declaration, Environmental Impact Analysis No. 753 (Coyote Creek Trail). This analysis determined that the development of the project would not result in the occurrence of any unmitigated significant environmental impacts. Pursuant to Section 15162 of the CEQA Guidelines, the existing Mitigated Negative Declaration may serve as the CEQA documentation for approval of the next phase of trail construction, maintenance and operation, and adoption of the new joint use agreement, since there are no proposed substantial changes to the project, substantial changes in project circumstances due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Furthermore, no new information of substantial importance has arisen as to the trail project.

Fiscal Impact: None.

Recommendations:

1. Determine that the proposed joint use agreement is exempt from CEQA pursuant to Section 15162 of the CEQA Guidelines.
2. Authorize the City Manager to execute a joint use agreement with the Santa Clara Valley Water District for recreational use of Coyote Creek Trail Reach 1.

*** 18. Receive Staff Report on Emergency Repairs for the City Hall Heating, Ventilation and Air Conditioning by ACCO Engineered Systems and Authorize the City Manager to Execute the Contract (Staff Contact: Chris Schroeder, 586-3162)**

Background: In accordance with the Municipal Code, Section I-2-3.10, "Emergency Authority of Purchasing Agent," the Purchasing Agent must submit a report to the City Council describing the circumstances of the emergency purchase and the price of the purchase. Accordingly, Purchasing staff prepared this report.

Due to the customized and proprietary nature of the software used in the heating, ventilation and air conditioning (HVAC) control system, on February 17, 2009, Council adopted Resolution No. 7838 approving ACCO Engineered Systems maintenance and repair service as a sole source purchase pursuant to Municipal Code section I-2-3.09 "Sole Source Procurement."

On July 21, 2011, air handler #2 which serves the west side of City Hall had a failure of a compressor unit. This unit provides cooling to 75% of the west side of City Hall. The west side of City Hall serves Fire Prevention, City Council, the City Manager's office, the City Attorney's Office, the Council Executive area and the 4th floor conference room. ACCO was called out to trouble shoot the unit and found a bad contactor and a leak in the coil of the compressor. The contactor was replaced and the leak was patched. On August 4, 2011 another compressor unit failure occurred and a second leak in the coil was discovered and patched. Last week, a third coil leak occurred. At this point, the recommendation is to replace the coil, which requires a five week lead time for fabrication and it was ordered. The cost estimate for the coil replacement including all labor and materials is \$39,708.32.

Fiscal Impact: None. Sufficient funding is available in the Capital Improvement Project No. 8182 City Building Improvements Project budget.

Recommendation: Receive a report on emergency repairs for the City Hall Heating, Ventilation and Air Conditioning (HVAC) work by ACCO Engineered Systems and authorize the City Manager to execute the contract with ACCO Engineered Systems.

XXII. ADJOURNMENT

**NEXT CITY COUNCIL MEETING:
TUESDAY, NOVEMBER 1, 2011 AT 7:00 P.M**