



MILPITAS CITY COUNCIL, REDEVELOPMENT AGENCY,
AND ECONOMIC DEVELOPMENT CORPORATION
MEETING AGENDA
TUESDAY, JANUARY 3, 2012

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 SESSIONS OF CITY COUNCIL**
 - 1) **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**
Pursuant to CA Government Code §54957. Position: City Attorney Mike Ogaz
 - 2) **CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**
Pursuant to CA Government Code §54957.6 City Negotiators: Bill Marion and Tom Williams
Employee Group: Mid-Management/Confidential Group
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 Polanski)
- VI. **APPROVAL OF COUNCIL MEETING MINUTES** – December 6, 2011
- VII. **SCHEDULE OF MEETINGS – COUNCIL CALENDAR** for January 2012
- VIII. **PRESENTATION** – Proclamation in support of *1,000 Hearts for 1,000 Minds*
- 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. UNFINISHED BUSINESS

- 1. Approve First Amendment to the City Manager's Employment Agreement (Contacts: Tom Williams, 586-3050, and Councilmember Giordano, 586-3032)**
- 2. Request of Councilmember Gomez for Discussion of the International Association of Fire Fighters Local 1699 Dental Fund (Contact: Councilmember Gomez, 586-3031)**
- 3. Review of Parks Master Plan Implementation (Staff Contact: Bonnie Greiner, 586-3227)**
- 4. Receive Report from City Attorney on Security Records as Disclosable Public Records (Staff Contact: Mike Ogaz, 586-3040)**
- * 5. Reject the Apparent Lowest Bid from Best Contracting Services Inc., Waive Minor Bid Irregularity, Award the Construction Contract Including Three Add Alternate Items to AJF/BHM A Joint Venture, and Authorize Staff to Execute Contract Change Orders for the Alviso Adobe Renovation Project Phase IV, Project No. 5055 (Staff Contact: Greg Armendariz, 586-3317)**
- * 6. Receive the December 2011 Odor Control Report (Staff Contact: Kathleen Phalen, 586-3345)**
- 7. Consider Mayor's Recommendations for Appointments and Re-appointment to the Milpitas Planning Commission (Contact: Mayor Esteves, 586-3029)**

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1. Call to Order/Roll Call by the Mayor/Chair**
- RA2. Approval of Minutes – December 6, 2011**
- RA3. Approval of Agenda and Consent Calendar**
- RA4. Receive a Report on the California Supreme Court Decision in *California Redevelopment Association v. Matosantos* Ruling and Take Required Actions (Staff Contact: Diana Barnhart, 586-3059)**
- *RA5. Adopt a Resolution Granting Initial Acceptance of and Reducing Performance Bond of the Midtown East Parking Garage Screens, Project No. 8161 (Staff Contact: Steve Erickson, 586-3301)**
- RA6. Agency Adjournment**

XVI. JOINT ECONOMIC DEVELOPMENT CORPORATION AND CITY COUNCIL MEETING

- EDC1. Call to Order/Roll Call by the Mayor/Chair**
- EDC2. Approval of Agenda/Consent Calendar**
- *EDC3. Approve Plans and Specifications, Make Findings Approving the Specification of Particular Equipment Brands, and Authorize the Advertisement for Bid Proposals for Milpitas City Hall Audio Visual System Upgrade, Project No. 9001 (Staff Contact: Steve Erickson, 586-3301)**
- EDC4. Corporation Adjournment**

XVII. REPORTS OF OFFICERS AND COMMISSIONS

- * 8. Consider Mayor's Recommendation for Re-appointments to Two Milpitas Commissions (Contact: Mayor Esteves, 586-3029)
- 9. Receive a Report on Amount Spent in Local Newspaper for Legal and Other Ads per Request of Councilmember (Contact: Councilmember Giordano, 586-3032)
- 10. Request by Councilmember Giordano to have Mayor Esteves Provide the City Attorney his Response to the Inquiry by the Chinese Immigration Fraud Unit's Request and/or Report to Council (Contact: Councilmember Giordano, 586-3032)
- * 11. Amend the Bylaws of the Recycling and Source Reduction Advisory Commission (Staff Contact: Kathleen Phalen, 586-3345)

XVIII. NEW BUSINESS

- 12. Receive a Report from City Clerk on Referendum Petition on Ordinance No. 243.4 and Take Action (Staff Contact: Mary Lavelle, 586-3001)
- * 13. Receive a Report on the Milpitas Chamber of Commerce for 2nd Quarter Business Retention and Recruitment Services (Staff Contact: Diana Barnhart, 586-3059)
- * 14. Receive an Informational Status Report on the Newby Island Landfill Expansion Project (Staff Contact: Kathleen Phalen, 586-3345)

XIX. ORDINANCE

- 15. Introduce Ordinance No. 260.1, an Amendment to the Flag Ordinance Regarding Sister City Delegations and Civic Center Locations (Staff Contact: Michael Ogaz, 586-3041)

XX. RESOLUTIONS

- * 16. Adopt a Resolution Approving the Side Letter Agreement Regarding Retirement Formula Between the City of Milpitas and the Milpitas Police Officers Association (Staff Contact: Carmen Valdez, 586-3086)
- * 17. Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for February 7, 2012 to Hear Objections (Staff Contact: Albert Zamora, 586-3371)

XXI. BIDS AND CONTRACTS

- * 18. Authorize the City Manager to Execute a Five Year Contract with TW Telecom to be the City's Internet Service Provider for the Annual Not-to-Exceed Amount of \$18,732 (Staff Contact: Chris Schroeder, 586-3161)
- * 19. Approve a Contract with Outside Counsel for Defense of City in May v. City of Milpitas (Staff Contact: Michael Ogaz, 586-3040)
- * 20. Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Milpitas Sports Center Parking Lot Lighting Retrofit, Project No. 8198 (Staff Contact: Steve Erickson, 586-3301)

XXII. ADJOURNMENT

**NEXT CITY COUNCIL MEETING:
TUESDAY, JANUARY 17, 2012**

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 (alternate)

Emergency Preparedness Commission – 2 seats

Planning 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. UNFINISHED BUSINESS

1. **Approve First Amendment to the City Manager's Employment Agreement (Contacts: Tom Williams, 586-3050, and Councilmember Giordano, 586-3032)**

Background: On November 15, 2011, the City Council in closed session considered an amendment to the terms of the agreement for the City Manager's employment, as provided on the amendment document (copy included in the agenda packet).

Recommendation: Approve the first amendment to the employment agreement with the Milpitas City Manager Thomas C. Williams.

2. **Request of Councilmember Gomez for Discussion of the International Association of Fire Fighters Local 1699 Dental Fund (Contact: Councilmember Gomez, 586-3031)**

Background: In February of 2011, the City Manager ordered an audit of the Milpitas IAFF Local 1699 Managed Dental Fund. Most recommendations presented as a result of the audit have been implemented by the fire union dental fund committee. On November 15, 2011, Councilmember Gomez requested this item be placed on the Council agenda for discussion.

A copy of the audit report is included in the agenda packet.

Recommendation: Hear report of Councilmember Gomez.

3. **Review of Parks Master Plan Implementation (Staff Contact: Bonnie Greiner, 586-3227)**

Background: At the request of Councilmember Giordano this item has been placed on the agenda for review.

In April 2008, the Parks Master Plan was adopted by the City Council. The plan included an inventory and analysis of the 33 existing parks, needs assessment, action plan recommendations, funding strategies and maintenance recommendations. As a result of the approved Parks Master Plan, Phase 1 of the Cardoza Park renovation was completed and opened to the public in June 2010.

Outlined in the Capital Improvement Program (CIP 2011-16) are nine scheduled Park renovation projects. The next park scheduled to be renovated is Pinewood Park with a design budget scheduled in 2012-13 and the contractor's budget scheduled in 2013-14.

Recommendation: Review the Parks Master Plan and current Capital Improvement Program schedule.

4. **Receive Report from City Attorney on Security Records as Disclosable Public Records (Staff Contact: Mike Ogaz, 586-3040)**

Background: The City Council has requested clarification on whether certain security-related records, including security videos, are disclosable public records. The City Attorney prepared a memorandum on the subject, which is included in the agenda packet.

Recommendation: Receive a report from the City Attorney on security records as disclosable public records.

- * 5. **Reject the Apparent Lowest Bid from Best Contracting Services Inc., Waive Minor Bid Irregularity, Award the Construction Contract Including Three Add Alternate Items to AJF/BHM A Joint Venture, and Authorize Staff to Execute Contract Change Orders for the Alviso Adobe Renovation Project Phase IV, Project No. 5055 (Staff Contact: Greg Armendariz 586-3317)**

Background: This project, located at the City-owned Alviso Adobe near Calaveras Road, will construct a historic-themed public park and other improvements to replicate an early 1900's orchard and Mexican Rancho. The improvements include reconstruction of an existing water tower, garage, and cutting shed structures and installation of restroom, parking facilities, landscaping, benches, and picnic areas. Project completion of the park is anticipated by late 2012. Renovation of the Adobe's interior is not included in this project as its estimated \$1 million cost is not currently funded.

The project was advertised and four sealed bid proposals were received on November 8, 2011. Bid proposals ranged from \$2,140,250 to \$2,242,770, and the engineer's estimate for the base bid project work was \$2,400,000. Staff determined the apparent lowest bid, submitted by Best Contracting Services, Inc., included a significant bid irregularity as it did not meet the bid document requirement for self performing at least 50% of the contract work. Staff and the City Attorney have reviewed this bid irregularity and determined this is a significant and material bid deviation that cannot be waived under California law. In accordance with the requirements of the Public Contract Code and the City's bid documents, staff recommends the Council reject the bid submitted by Best Contracting Services Inc. and look to the apparent second low bidder.

The bid submitted by the second low bidder, AJF/BHM, a joint venture, in the amount of \$2,176,774.85 appears to be the lowest responsive bid. AJF/BHM's base bid contains a minor bid irregularity in that the extension of unit quantities for bid item 9 was incorrectly calculated, resulting in an error in the total amount of 15 cents. However, 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 proceed with the award of the contract. Project staff and the City Attorney's office reviewed this bid irregularity and confirmed that it is minor and not significant. City Council is recommended to waive the minor bid irregularity and award the construction contract to AJF/BHM.

The project bid package also included three add alternate bid items for consideration of submitted pricing and available project funding after bid opening. The add alternate bid items provide for the construction of new doors at the cutting shed and garage structures, and for the replacement of the redwood tank structure at the water tower. The Add Alternate pricing submitted for these additional items of work totals \$66,000, which is considered reasonable. Staff recommends awarding the construction contract with the three add alternate items for total construction contract not to exceed \$2,242,774.85, which is within the project's budget and no additional budget appropriation is required.

Staff recommends that Council approve a project specific change order policy, similar to that approved for the Library, Senior Center and recent large paving and utility projects with tight completion schedules. This policy authorizes staff to swiftly execute change orders in order to minimize construction time delays and limit potential claims or additional delay related costs to the City. Due to the complexity of work on historic buildings and historic sites and potential for encountering hazardous materials, unforeseen conditions are common and can not be known until construction is underway. Staff has done its due diligent to the practical extent possible to identify as many of the unforeseen items as possible. However, many unknowns cannot be addressed until they are exposed during the construction process. The construction contingency established for this project is \$350,000, or 15.6% of the bid amount award, and the staff change order authority would not exceed this amount, and would not require additional appropriation.

Council-authorized change order policy amounts for some recent Capital Improvement Projects are tabulated below:

Project Name	Bid Amount	Authorized CCO amount at award	CCO % of bid amount at award	Actual CCO amount spent	CCO % of actual amount spent
Alviso Adobe PH III	\$498,732	\$125,000	25.1%	\$72,837	14.6%
Library	\$25,500,000	\$2,600,000	10.2%	\$1,785,865	7.0%
Parking Garage	\$9,008,119	\$800,000	8.9%	\$166,881	1.9%
Senior Center	\$6,579,000	\$1,750,000	26.6%	\$906,088	13.8%
Gibraltar Pump Station	\$5,728,700	\$900,000	15.7%	\$674,660	11.8%
Cardoza Park PH I	\$695,429	\$150,000	21.6%	\$76,881	11.1%

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

Recommendation: Adopt a resolution rejecting the bid from Best Contracting, award a contract for the Alviso Adobe Renovation Phase IV to AJF/BHM, and grant change order authority.

* **6. Receive December 2011 Odor Control Report (Staff Contact: Kathleen Phalen, 586-3345)**

Background: From December 1 through 11, 2011, the Bay Area Air Quality Management District (BAAQMD) received three garbage-related odor complaints originating in Milpitas. As of the last Council update, the City's odor reporting website has received two reported complaints. Staff activities to coordinate with the City of San Jose on Water Pollution Control Plant odor mitigation efforts are described in the report (included in agenda packet).

Fiscal Impact: None.

Recommendation: Receive the December 2011 odor report.

7. Consider Mayor's Recommendations for Appointments and Re-appointment to the Milpitas Planning Commission (Contact: Mayor Esteves, 586-3029)

Background: Mayor Esteves recommends the following four citizens be appointed and re-appointed to the Milpitas Planning Commission as follows:

Newly appoint Rajeev Madnawat (current member of the Community Advisory Commission) to a term that expires in December 2012.

Re-appoint Larry Ciardella to a term that expires in December 2014.

Appoint John Luk (current alternate) to a term that expires in December 2014.

Newly appoint Garry Barbadillo (current alternate member of the Parks, Recreation, & Cultural Resources Commission) as the alternate member to a term that expires in December 2012.

All members of the Planning Commission are required to be registered voters in the City of Milpitas. The City Clerk has verified that with the Registrar of Voters for all applicants.

Recommendation: Consider the recommendations from Mayor Esteves, and move to approve his three appointments and one re-appointment to the Milpitas Planning Commission.

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA4. Receive a Report on the California Supreme Court Decision in *California Redevelopment Association v. Matosantos* Ruling and Take Required Actions (Staff Contact: Diana Barnhart, 586-3059)

Background: Adoption of the state budget included redevelopment restructuring acts known as the Dissolution Act and the Voluntary Program Act. The Dissolution Act (ABx1-26) immediately suspends all new redevelopment activities and incurrence of indebtedness and dissolves all agencies effective October 1, 2011. The Voluntary Program Act (ABx1-27) allows agencies to avoid dissolution by opting into an “alternative voluntary redevelopment program” requiring substantial contributions of local school and special districts. On July 18th, the California Redevelopment Association, the League of California and several redevelopment agencies submitted a Petition for a Write of Mandate and an Application for a Temporary Stay with the California Supreme Court to overturn the legislative actions. Over the fall the Court received written arguments in support and in opposition to the law suit and on November 10th, heard oral testimony regarding the lawsuit.

The Court previously indicated that a decision would be rendered by January 15, 2012, when the first “alternative voluntary” payment to keep a local agency active is required to be made. If the Court issues its decision prior to the January 3 Council meeting, staff will present information on that decision to the Agency/Council.

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

Recommendation: Receive a report on the California Supreme Court decision and direct staff as appropriate.

***RA5. Adopt a Resolution Granting Initial Acceptance of and Reducing Performance Bond of the Midtown East Parking Garage Screens, Project No. 8161 (Staff Contact: Steve Erickson, 586-3301)**

Background: The Redevelopment Agency and City Council awarded a project to Green Earth Engineering & Construction Inc. on February 1, 2011 for the installation of metal screens on the City’s Midtown East Parking Garage. This project predates the halt on all redevelopment activities caused by the passage of AB X1 26 and constitutes an “enforceable obligation” that is not subject to the California Supreme Court stay on most Agency activities. Under the contract documents, the Agency is required to initially accept the improvements upon the construction and delivery of facilities that meet the contract specifications.

The screens were installed along the east face of the 2nd, 3rd, and 4th floors of the garage to help protect vehicles from thrown rocks and debris from the rail road right of way. The project was successfully completed on time and on 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 \$23,149.70, which is 10% of the final contract value.

Fiscal Impact: None.

Recommendation: Adopt a joint Agency/Council resolution granting initial acceptance of the Midtown East Parking Garage Screens, Project No. 8161, subject to a one year warranty period and a reduction of the faithful performance bond to \$23,149.70.

RA6. Agency Adjournment

XVI. JOINT ECONOMIC DEVELOPMENT CORPORATION AND CITY COUNCIL MEETING

***EDC3. Approve Plans and Specifications, Make Findings Approving the Specification of Particular Equipment Brands, and Authorize the Advertisement for Bid Proposals for Milpitas City Hall Audio Visual System Upgrade, Project No. 9001 (Staff Contact: Steve Erickson, 586-3301)**

Background: Staff completed the plans and specifications for the City Hall Audio Visual System Upgrade, Project No. 9001. This project provides for the replacement and upgrade of aging and faulty audio and video equipment within the Council Chambers, control room, and conference rooms at City Hall. The Engineers Estimate for the project is \$1,250,000. A copy of the plan title sheet is included in the agenda packet and the complete set of plans and specifications are available for review in the office of the City Engineer.

Staff recommends that the Economic Development Corporation make specific brand findings for some of the equipment designated as required in the project plans and specifications for this project. The particular brand and models of equipment specified have been confirmed to be compatible with the City’s existing propriety Crestron control equipment, and are the physical dimensions required to fit within existing enclosures. A list of the specific brand equipment is included in the agenda packet.

Fiscal Impact: None. Sufficient funds are available in the project budget for this work.

Recommendations:

1. Approve plans and specifications for Project No. 9001.
2. Make findings approving the specification of particular equipment brands.
3. Authorize advertisement for bid proposals for the City Hall audio visual system upgrade.

EDC4. Corporation Adjournment

XVII. REPORTS OF OFFICERS AND COMMISSIONS

*** 8. Consider Mayor’s Recommendation for Re-appointments to Two Milpitas Commissions (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends the following citizens be re-appointed to two Milpitas Commissions as follows:

Senior Advisory Commission

- Re-appoint Bernice Wrinkle to a term that expires in December 2013.
- Re-appoint Mary Banick to a term that expires in December 2013.
- Re-appoint Estrella Gilana to a term that expires in December 2013.

Telecommunications Commission

- Re-appoint Hai Tran to a term that expires in January 2014.
- Re-appoint Sukhi Singh as Alternate No. 2 to a term that expires in January 2014.

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

9. Receive a Report on Amount Spent in Local Newspaper for Legal and Other Ads per Request of Councilmember (Contact: Councilmember Giordano, 586-3032)

Background: On December 6, Councilmember Giordano requested a report from City staff on the amount of money spent on legal and other advertising by the City of Milpitas in the Milpitas Post newspaper. Research revealed the following amounts, by fiscal year:

FY 2007	\$124,567.37
FY 2008	\$105,015.65
FY 2009	\$104,210.52
FY 2010	\$ 70,936.82
FY 2011	\$ 60,265.82

For information, in FY 2012, to date \$24,561.80 has been spent.

Recommendation: Receive report on advertisement costs.

10. **Request by Councilmember Giordano to have Mayor Esteves Provide the City Attorney his Response to the Inquiry by the Chinese Immigration Fraud Unit's Request and/or Report to Council (Contact: Councilmember Giordano, 586-3032)**

Recommendation: Hear report of Councilmember Giordano, and seek further review by the City Attorney.

- * 11. **Amend the Bylaws of the Recycling and Source Reduction Advisory Commission (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The Recycling and Source Reduction Advisory Commission (RSRAC) was established in 1991 to advise the City Council on actions to comply with AB939 which required attainment of a 50 percent solid waste diversion rate by the year 2000. At this time, RSRAC requests that the Council amend its bylaws to make its recycling and source reduction advisory role permanent, increase the meeting frequency from twice to four times per year, and change the meeting start time from 7:00 pm to 6:00 pm. The proposed Bylaw amendments are included in the Council's agenda packet.

Fiscal Impact: None.

Recommendation: Approve amendments to the Recycling and Source Reduction Advisory Commission bylaws regarding meeting time and frequency.

XIX. NEW BUSINESS

12. **Receive a Report from City Clerk on Referendum Petition on Ordinance No. 243.4 and Take Action (Staff Contact: Mary Lavelle, 586-3001)**

Background: Milpitas resident Ed Riffle filed a referendum petition with 4,110 voter signatures in the City Clerk's office on November 22. The Deputy City Clerk delivered the petition to the County Registrar of Voters on November 23 and requested signature verification service. On December 8, the Registrar provided the City Clerk with a Certificate declaring 3,190 signatures were found sufficient (copy in agenda packet). That number exceeds the quantity of registered voter signatures (2,406) required for the petition to be certified. All other requirements for the petition were met.

The referendum seeks to repeal the campaign finance ordinance adopted by the City Council on October 18, 2011. If the City Council votes to repeal the ordinance, then the matter does not go to the ballot. If the City Council adopts a resolution (draft in agenda packet) calling for a special election based on the voter petition, then Milpitas voters could vote to uphold the ordinance or to rescind it.

Technically, April 10 is a possible election date in 2012. However, that would represent a completely stand-alone special election, estimated to cost \$417,000. Therefore, it is not recommended.

Fiscal Impact: If the City Council calls for an election by resolution, the City of Milpitas will have to pay unbudgeted election costs between \$60,000 and \$100,000.

Recommendations:

1. Receive report and certification from the City Clerk.

2. Take one of the following actions, per California Elections Code §9237:
 - a) Vote to repeal Ordinance No. 243.4.
 - b) Adopt a Resolution calling for a Special Election for Milpitas voters to consider the referendum on Ordinance No. 243.4, on either Tuesday, June 5 (statewide primary election) or on Tuesday, November 6 (presidential and local municipal elections).

*** 13. Receive a Report on the Milpitas Chamber of Commerce for 2nd Quarter Business Retention and Recruitment Services (Staff Contact: Diana Barnhart, 586-3059)**

Background: In June 2011, the Council approved an agreement with the Chamber 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 business and report those findings to the City. The City Council approved a new agreement with the Chamber on October 18 to extend the BRIM services and provide business recruitment services. The new contract was for a total of \$60,000 to cover potential funding for the 2nd, 3rd and 4th quarters of FY 2011-12. A total of \$40,000 remains in the contract.

A recent letter from the Chamber (copy included in the agenda packet) indicates that its goal of 250 points was not met and for the 2nd quarter and additional funding for the 3rd quarter is not requested as a result. This quarter fell short of Chamber expectations as the Chamber realized that the 2nd quarter is one where most of their volunteers focus more on their business for the holiday season. Nevertheless, eighteen companies were contacted and three additional surveys were collected during the 2nd quarter. The Chamber also sent a letter for consideration of EB5 funding with a delegation returning to China and anticipates a response in the early part of 2012.

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

Recommendation: Receive the 2nd quarter report of the Milpitas Chamber of Commerce.

*** 14. Receive an Informational Status Report on the Newby Island Landfill Expansion Project (Staff Contact: Kathleen Phalen, 586-3345)**

Background: Mayor Esteves requested that the Council receive a status report on the proposed Newby Island landfill expansion project. Allied Waste owns and operates the 352 acre facility, including the landfill, composting area, and Recyclery located in the City of San Jose, just west of the Milpitas city limits off Dixon Landing Road. In December 2007, the City of San Jose issued a Notice of Preparation (NOP) of a draft environmental impact report (DEIR) for this proposed project which includes rezoning to allow increase of the final landfill height from 150 to 245 feet above mean sea level. This additional height will expand landfill capacity by 15.12 million cubic yards to allow Allied Waste Services sufficient capacity to fulfill its existing contract hauling obligations extending to 2025. Included in the Council packet is the NOP, which gives a comprehensive summary of the proposed project.

The City of Milpitas submitted a comment letter, included in the agenda packet, during the public comment period for the DEIR, which ended November 5, 2009. Allied Waste has stated that revisions to the DEIR and/or responses to comments are being prepared. However, a date to take the final EIR before the San Jose Planning Commission and City Council for certification has not yet been established.

Fiscal Impact: None.

Recommendation: Receive informational report on the Newby Island expansion project.

XIX. ORDINANCE

15. Introduce Ordinance No. 260.1, an Amendment to the Flag Ordinance Regarding Sister City Delegations and Civic Center Locations (Staff Contact: Michael Ogaz, 586-3041)

Background: Per the recommendation of the Sister Cities Commission and the Veterans Commission, the City Council at its meeting on December 6 instructed the City Attorney to return with an ordinance that allows the country and city flag of Sister City delegations to be flown at the Civic Center pond location while the delegation is in the City of Milpitas. In addition, the Council approved changes to the locations where particular flags are allowed within the Civic Center. The changes approved by Council have been incorporated into the amended ordinance presented for introduction.

Fiscal Impact: None.

Recommendations: After the City Attorney reads aloud the title of Ordinance No. 260.1, take the following actions: 1) move to waive the first reading beyond the title of the ordinance, and 2) move to introduce Ordinance No. 260.1.

XXI. RESOLUTIONS

*** 16. Adopt a Resolution Approving the Side Letter Agreement Regarding Retirement Formula Between the City of Milpitas and the Milpitas Police Officers Association (Staff Contact: Carmen Valdez, 586-3086)**

Background: At the December 6, 2011 City Council meeting, in closed session, the City Council tentatively accepted the Milpitas Police Officers Association's most recent side letter, which among other things agreed to amend the City's contract with CalPERS to offer the 3% at age 55 formula for retirement for all new safety hires. A copy of the recommended side letter agreement is included in the Council agenda packet.

Fiscal Impact: Savings to be achieved with future hires.

Recommendation: Adopt a resolution approving the side letter agreement between the City of Milpitas and the Milpitas Police Officers Association.

*** 17. Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for February 7, 2012 to Hear Objections (Staff Contact: Albert Zamora, 586-3371)**

Background: The County of Santa Clara Department of Agriculture and Environmental Management has notified the City of Milpitas that it is commencing its Hazardous Vegetation Abatement (weed abatement) program for the forthcoming 2012 season. The County requested the City Council to adopt a resolution declaring weeds to be a public nuisance and to schedule a public hearing to hear objections to the proposed destruction and/or removal of weeds. A resolution, declaring weeds on specific properties to be a public nuisance, is adopted by the Council each year. The City then holds a public hearing to give affected property owners an opportunity to appear before the Council to dispute the designation of their property as a public nuisance. The public hearing will be scheduled for February 7, 2012.

Recommendations:

1. Adopt a resolution declaring weeds on specific properties to be public nuisances.
2. Set a public hearing date for February 7, 2012.

XXI. BIDS AND CONTRACTS

- * 18. **Authorize the City Manager to Execute a Five Year Contract with TW Telecom to be the City's Internet Service Provider for the Annual Not-to-Exceed Amount of \$18,732 (Staff Contact: Chris Schroeder, 586-3161)**

Background: On October 21, 2011, the City of Milpitas made a Request for Proposals (RFP) for an Internet Service Provider to replace the current provider, AT&T. Purchasing worked closely with Information Services and the City Attorney's office 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. Six proposals were received and evaluated by a committee of three, including the Information Services Director, the Telecommunications Manager and a Systems Administrator. The committee scored the proposals based on five criteria, including the proposers' company backgrounds, technical abilities, and references.

The recommendation for award is based on the proposal considered to be the most advantageous to the City. TW Telecom received the highest score and is recommended by staff to be the new service provider.

The old AT&T contract cost \$3,115 per month and delivered speeds of 20/20 megabytes per second. The new service with TW Telecom costs \$1,561 per month and delivers speeds of 100/100 megabytes per second. The new service will be five times faster and cost 50% less. The new contract will save about \$18,656 per year. The proposed contract is for five years for an annual not-to-exceed amount of \$18,732. The total cost is \$93,660 for the full five years.

Fiscal Impact: Savings of \$18,656 per year.

Recommendation: Authorize the City Manager to execute a five year contract with TW Telecom as the City's Internet Service Provider for the annual not-to-exceed amount of \$18,732.

- * 19. **Approve a Contract with Outside Counsel for Defense of City in May v. City of Milpitas (Staff Contact: Michael Ogaz, 586-3040)**

Background: On December 7, 2011, an individual named Michael May and the Carpenters Local Union No. 405 filed a lawsuit against the City of Milpitas for its recent approval of the Citation Residential Project. The resolution approving the Citation Residential Project required the developer, as a condition of approval, to defend and indemnify the City in the event it was sued on the project. Based on those provisions, Citation has agreed to pay for outside attorneys to defend the City in this matter.

A contract with the proposed firm will be provided to the City Council separately. Citation proposes to have a joint defense (i.e. sharing of the same law firm) to achieve cost savings and other efficiencies.

Fiscal Impact: None. The cost of litigation shall be paid by Citation.

Recommendation: Approve a contract for attorney services for defense of the City in the May v. City of Milpitas lawsuit and authorize execution of the contract and other related documents by the City Attorney.

- * 20. **Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Milpitas Sports Center Parking Lot Lighting Retrofit, Project No. 8198 (Staff Contact: Steve Erickson, 586-3301)**

Background: Staff completed plans and specifications for Milpitas Sports Center Parking Lot Lighting Retrofit, Project No.8198. This project provides for the replacement of eight existing incandescent parking lot lights at the Milpitas Sport Center Parking Lot with LED technology.

The LED lighting system proposed is 70% more efficient and requires less energy than the existing High Pressure Sodium system which will equate to a savings to the City. A grant of approximately \$50,000 from the Department of Energy will fund a portion of this project. The Engineer's Estimate for the project is \$65,000. An additional budget appropriation of approximately \$15,000 will be required at time of the award.

A copy of the title sheet of the project plans is included in the agenda packet and the complete set of plans and specifications are available for review in the office of the City Engineer.

Fiscal Impact: None at this time. An additional budget appropriation of approximately \$15,000 will be required at time of the award.

Recommendation: Approve plans and specifications, and authorize the advertisement for bid proposals for Project No. 8198, parking lot lights at the Milpitas Sport Center Parking Lot, LED technology.

XXII. ADJOURNMENT

**NEXT CITY COUNCIL MEETING:
TUESDAY, JANUARY 17, 2012**