



**MILPITAS CITY COUNCIL AND
ECONOMIC DEVELOPMENT CORPORATION
MEETING AGENDA
TUESDAY, FEBRUARY 7, 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 AND THE ECONOMIC DEVELOPMENT CORPORATION**
- 1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
Pursuant to CA Government Code Section 54956.8
Property: Real Property located at 1452-1466 South Main St. and 1474 South Main St. (Assessor Parcel Nos. 86-22-029 and -030), Milpitas, CA
EDC Negotiator: President Tom Williams. Negotiating Party: 1452 South Main Street LLC
Under Negotiation: Purchase of interest in real property
- 2) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to CA Government Code Section 54956.9(a)
Giordano v. City of Milpitas Court Case No.111CV215832
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Giordano)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – January 12, 17, and 23, 2012**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR for February 2012**
- VIII. PRESENTATIONS**
- Proclamations
- Dr. Martin Luther King, Jr. Day – January 16, 2012
 - Black History Month – February 2012
- IX. PUBLIC FORUM**
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- Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.
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- X. ANNOUNCEMENTS**
- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XII. APPROVAL OF AGENDA**

XIII. CONSENT CALENDAR (Items with asterisks*)

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 HEARINGS

- 1. Hold a Public Hearing on Weed Abatement and Adopt a Resolution Directing Abatement Program (Staff Contact: Albert Zamora, 586-3371)**
- 2. Hold a Public Hearing to Consider Adopting an Interim Urgency Ordinance No. 38.801 Establishing a Moratorium on Conversions of Certain Industrial and/or Commercial Zones to Residential Zones, and Introduce Ordinance No. 38.802 for a Non-Urgency Ordinance Doing the Same (Staff Contact: Diana Barnhart, 586-3059)**

XV. UNFINISHED BUSINESS

- * 3. Receive the January 2012 Odor Control Report (Staff Contact: Kathleen Phalen, 586-3345)**

XVI. JOINT ECONOMIC DEVELOPMENT CORPORATION AND CITY COUNCIL MEETING

EDC1. Call to Order by the Mayor/Chair

EDC2. Roll Call

EDC3. Approval of Agenda and Consent Calendar

EDC4. Authorize the Corporation President to Execute a Contract to Purchase 1452-1466 South Main Street and 1474 South Main Street, Milpitas (Assessor Parcel Nos. 86-22-029 and -030) totaling 1.65 Acres for \$4.2 Million (Staff Contact: Diana Barnhart, 586-3059)

***EDC5. Authorize Corporation President to Execute a Contract Not to Exceed \$65,000 for Consulting Services to Perform Public Opinion Survey of Registered Voters and Funding Options Strategy (Staff Contact: Tom Williams, 586-3050)**

EDC6. Corporation Adjournment

XVII. REPORT OF MAYOR

- * 4. Consider Approving Mayor's Request to Change Subcommittee Assignment of the Capital Improvement Program from the Neighborhood Services and Education to the Finance Subcommittee (Contacts: Jose Esteves, 586-3029, and Greg Armendariz, 586-3317)**
- * 5. Consider Mayor's Recommendations for Appointments to Two Milpitas Commissions (Contact: Mayor Esteves, 586-3051)**
- 6. Consider Mayor's Recommendation for Appointments to the Oversight Board for the Wind Down of the Former Milpitas Redevelopment Agency (Contact: Mayor Esteves, 586-3029)**

XVIII. NEW BUSINESS

- 7. **Receive the Financial Status Report for the Six Months Ended December 31, 2011 (Staff Contact: Emma Karlen, 586-3145)**
- 8. **Receive a Report on the Impact of the Redevelopment Agency Dissolution and Act on Current Fiscal Year 2011-12 Budget Reduction Strategy (Staff Contact: Tom Williams, 586-3051)**
- * 9. **Approve FY 2011-12 Mid-Year Budget Appropriations for Operating Budget and Capital Improvement Project Budget (Staff Contact: Emma Karlen, 586-3145)**
- * 10. **Receive the City of Milpitas Investment Portfolio Status Report for the Quarter Ended December 31, 2011 (Staff Contact: Emma Karlen, 586-3145)**

XIX. ORDINANCES

- 11. **Adopt a Resolution of Intention and Introduce Ordinance No. 101.22 Amending the City's Contract with the Board of Administration, California Public Employees Retirement System (Staff Contact: Carmen Valdez, 586-3086)**
- * 12. **Waive the Second Reading and Adopt Ordinance No. 243.6 Regarding Regulation of Campaign Contributions (Staff Contact: Mike Ogaz, 586-3041)**

XX. RESOLUTIONS

- * 13. **Adopt a Resolution of the City of Milpitas as a Successor Agency of the Milpitas Redevelopment Agency Authorizing Investment of Monies in the Local Agency Investment Fund (Staff Contact: Emma Karlen, 586-3145)**
- * 14. **Adopt a Resolution Approving the Memorandum of Understanding with the Mid-Management Confidential Unit (Staff Contact: Carmen Valdez, 586-3086)**
- * 15. **Adopt a Resolution Granting Final Acceptance of the Soundwall Renovation, Project No. 8196 (Staff Contact: Steve Erickson, 586-3301)**
- * 16. **Adopt a Resolution Granting Final Acceptance of the Department of Energy Grant Program, Project No. 8198 (Staff Contact: Steve Erickson, 586-3301)**

XXI. BIDS AND CONTRACTS

- * 17. **Approve an Agreement with Accurate Cleaning Systems for Collection, Transportation, and Recycling of Non-Exclusive Solid Waste (Staff Contact: Kathleen Phalen, 586-3345)**
- * 18. **Approve Educational Agreements with Grand Canyon University and National University for Employees (Staff Contact: Brian Sturdivant, 586-2811)**
- * 19. **Reject All Bids and Award a Contract to Environmental Systems Inc. for Fire Station Improvements "Re-plumbing Fire Station No. 3" Project No. 3403, Bid No. 2012, for the Not-to-Exceed amount of \$78,417 (Staff Contact: Chris Schroeder, 586-3161)**
- * 20. **Approve a Budget Appropriation and Authorize the City Manager to Execute Amendment No. 1 to the Consultant Agreement with Schaaf & Wheeler for Storm Drain Documentation Review for the Silicon Valley Rapid Transit Program Berryessa Extension, Project No. 4265 (Staff Contact: Fernando Bravo, 586-3328)**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, FEBRUARY 21, 2012 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/Public Art Committee (alternate)
Community Advisory Commission (alternate)
Economic Development Commission (alternate)*

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 HEARINGS

1. **Hold a Public Hearing on Weed Abatement and Adopt a Resolution Directing Abatement Program (Staff Contact: Albert Zamora, 586-3371)**

Background: At its meeting of January 3, 2012, the City Council adopted Resolution No. 8150 declaring weeds on certain described properties to be a public nuisance, and set a public hearing for February 7, 2012 to hear objections. A copy of the resolution was forwarded to the Santa Clara County Agricultural Commissioner. A notice for the public hearing was published and property owners mailed a notice of the proposed abatement by the County. The purpose of the public hearing is for the owners, who object to the removal of the weeds, to state their objections before the weeds are removed and the costs made a lien upon the property. A list of properties to be abated is included in the Council's agenda packet along with a resolution directing the County Agricultural Commissioner to abate the weeds.

Fiscal Impact: None.

Recommendations:

1. Open the Public Hearing for public comment; then, move to close the Public Hearing.
 2. Adopt a resolution directing the County Agricultural Commissioner to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code.
- #### 2. **Hold a Public Hearing to Consider Adopting an Interim Urgency Ordinance No. 38.801 Establishing a Moratorium on Conversions of Certain Industrial and/or Commercial Zones to Residential Zones, and Introduce Ordinance No. 38.802 for a Non-Urgency Ordinance Doing the Same (Staff Contact: Diana Barnhart, 586-3059)**

Background: The City has recently seen a significant interest increase among property owners and developers seeking the rezone of areas currently designated for industrial or commercial uses in the Milpitas Zoning Code to residential uses. Such interest comes after several significant conversions that have already been approved by the City Council such as Fairfield residential project on Murphy Ranch Road, the Landmark Towers project at the former Billings Chevrolet site, and the Los Coches Avenue Rezone on the north side of Los Coches from Sinclair Frontage Road to Topaz Street.

While the already-approved rezones fall within the overall planning and infrastructure plans of the City, additional rezones beyond those currently being considered would threaten the maintenance and development of long-term, high paying jobs. Ad hoc rezones would also adversely impact the City's ability to promote rational development and might expose new residential developments to harmful noise, air, and other public health impacts.

Staff reviewed this proposal with the Council Transportation and Land Use Subcommittee at its meeting on January 24. The Subcommittee discussed the proposal, took testimony from those attending and supported the staff recommendation for a six months' moratorium. It is recommended that the City Council impose a temporary moratorium on the acceptance, processing or approval of new applications to rezone certain areas currently zoned for industrial and/or commercial uses to residential uses for an initial 45-day period. This would allow staff to begin assessing and inventorying infrastructure and utility supplies available in the event of continued rezoning, review the projected jobs to housing balance, and to also prepare, if necessary, amendments to the Zoning Code, the General Plan, and/or Specific Plans. The moratorium would apply only to those areas set forth in the ordinance exhibit and for which applications have not already been submitted to the City. Once the initial 45 day period is up,

staff would seek another four and a half months (i.e. 135 days or 6 months) to complete the analysis.

In the City Council materials are two substantively identical interim ordinances that have been prepared and reviewed by the City Attorney. Both ordinances accomplish the same result of imposing an initial 45-day moratorium. The interim ordinances differ in terms of effective date and approval requirements. The first ordinance is an “urgency” ordinance that would take effect immediately upon adoption and requires a four-fifths (4/5) vote of the Council. The “non-urgency” ordinance requires the normal first and second reading process and would take effect 30 days following its adoption by a majority of the Council. Approval of both ordinances is recommended to ensure that the City may enforce the moratorium.

If the ordinances are adopted, the moratorium would run for an initial 45-day period, which may be extended an additional period of time thereafter pursuant to Government Code Section 65858.

Fiscal Impact: None. There is no immediate fiscal impact at this time.

Recommendations:

1. Open the Public Hearing for public comment; then, move to close the Public Hearing.
2. Waive the reading beyond the title and adopt interim urgency Ordinance No. 38.801 to establish a moratorium on conversions of certain industrial and/or commercial zones to residential zones.
3. Following a reading of the ordinance title by the City Attorney, move to waive the first reading beyond the title of Ordinance No. 38.802.
4. Move to introduce Ordinance No. 38.802, which would establish a moratorium on the conversion of certain industrial and/or commercial zones to residential zones.

XV. UNFINISHED BUSINESS

- * **3. Receive the January 2012 Odor Control Report (Staff Contact: Kathleen Phalen, 586-3345)**

Background: From December 12, 2011 through January 16, 2012, the Bay Area Air Quality Management District (BAAQMD) received eighteen odor complaints originating in Milpitas. Eleven identified a garbage-related odor, two identified a sewage-related odor and five did not identify a source. As of the last Council update, the City’s odor reporting website has received twenty 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 the Council agenda packet.

Fiscal Impact: None.

Recommendation: Receive the January 2012 odor report.

XVII. JOINT ECONOMIC DEVELOPMENT CORPORATION AND CITY COUNCIL MEETING

- EDC4. Authorize the Corporation President to Execute a Contract to Purchase 1452-1466 South Main Street and 1474 South Main Street, Milpitas (Assessor Parcel Nos. 86-22-029 and - 030) totaling 1.65 Acres for \$4.2 Million (Staff Contact: Diana Barnhart, 586-3059)**

Background: On October 18, 2011, a two year extension to the Disposition and Development Agreement (DDA) with South Main Senior Lifestyles LLC (SMSL) was approved. SMSL has approached staff with a more extensive high density residential development proposal that combines two additional privately held properties and the publicly-owned property at 1440 South Main Street with the SMSL development site. The SMSL development site previously housed the Ooh La La Lodge and the Johnsville Mobile Home Park. The proposal will create a more

significant entryway into the City and more effectively implements policies of the Midtown Specific Plan.

SMSL has negotiated a purchase price of \$4.2 million for the property with the current property owner, South Main Street LLC. Two independent appraisals have concluded that the market value of the property, at its highest and best use, is \$4.2 million. With these additional properties, it is likely that the development will provide a total of 550 residential units in the Midtown.

If the Corporation Board approves the recommendation to acquire the property, staff will execute the purchase agreement and close escrow expeditiously. The next step will be to negotiate an assignment of the property to SMSL for development of the site. This assignment and amended DDA will be presented to the Corporation for further action along with a schedule for development approval.

Fiscal Impact: None. The Milpitas Economic Development Corporation has sufficient funds to cover the cost of the property purchase.

Recommendation: Authorize the Corporation President to execute a contract to purchase property located at 1452-1466 and 1474 South Main Street, Assessor Parcel Numbers 86-22-029 and -030, totaling 1.65 acres for \$4.2 million.

***EDC5. Authorize Corporation President to Execute a Contract Not to Exceed \$65,000 for Consulting Services to Perform Public Opinion Survey of Registered Voters and Funding Options Strategy (Staff Contact: Tom Williams, 586-3050)**

Background: The City of Milpitas issued a Request for Proposals (“RFP”) for experienced and qualified consulting services to conduct a public opinion survey that evaluates the probability of voter approval of a tax or other revenue measure(s). The survey results will provide data necessary to determine and predict public opinion, and will provide guidance on strategies for placing a tax measure on the June 5, 2012 ballot. The proposal also called for assistance with a public information effort to increase citizen awareness of the need for the special tax measure(s). The deadline to submit a ballot initiative for the June 5, 2012 election to Santa Clara County Registrar is Friday, March 9, 2012. If the City Council desires to move forward, time is of the essence. Also, if the deadline for the June ballot is not reasonable, another option would be the November 6, 2012 election date.

The City of Milpitas activated its Milpitas Redevelopment Agency in 1958. The Agency adopted its original Project Plan in 1976 and has become one of the top RDAs in the state. The Agency provided funding for the Library, Senior Center, Sports Center, affordable housing, job creation, major infrastructure and capital improvement projects within the City. The recent decision by the Supreme Court of California on the *California Redevelopment Association et al v. Matosantos et al* case resulted in the dissolution of all redevelopment agencies in California. The loss of RDA tax increment revenue to the City totals \$39 million annually. With this loss, the City must reduce services and eliminate funding for capital improvement projects and services enjoyed by the community unless there is some form of funding to back fill this loss.

Scope of Work: The City is seeking a firm with research, analysis and communication skills to assist in public opinion research survey, data to support a marketing strategy, and the probability of a successful ballot measure for funding services.

The following is included in the Scope of Work:

Phase 1:

- Interview community leaders and local stakeholders who could offer helpful insights.
- Assist in the development of survey instrument for voter opinion poll and methodology to be employed for a sampling of the registered voters. The sampling should reflect the cultural,

social and economic demographics of the community.

- Conduct and interpret the public opinion poll data/results – the consultant will be responsible for identifying and surveying voters voting in the past three elections and representing a uniform sample for the population for the entire City.
- Consultant will meet with staff to review the results of the survey, answer questions regarding the implications of the responses, and discuss related issues.
- Provide a written report summarizing the results and presenting the results to the City Council. The report should include the tabulation of all calls or contacts made during the course of the surveys. In addition, the report should include key findings, conclusions and recommendations. Specifically, the recommendations should include the type of tax measures to pursue, the amount, and strategic advice for a successful campaign.

Phase 2:

- If the ballot measure is authorized by the City Council, assist the City in organizing and directing a successful campaign. This phase of the project will include a public information effort to increase voter awareness of the need for the funding measures.

Fiscal Impact: Not to exceed \$65,000 from the Economic Development Corporation to conduct the survey.

Recommendation: Authorize the EDC President to execute a contract not to exceed \$65,000 for consulting services to perform a public opinion survey of City of Milpitas registered voters and funding options strategy for a potential June 5, 2012 ballot measure. A resolution to call for any measure on the June 5 ballot must be adopted by the City Council and submitted to Santa Clara County no later than Friday, March 9, 2012.

EDC6. Corporation Adjournment

XVII. REPORT OF MAYOR

- * **4. Consider Approving Mayor's Request to Change Subcommittee Assignment of the Capital Improvement Program from the Neighborhood Services and Education to the Finance Subcommittee (Contacts: Jose Esteves, 586-3029, and Greg Armendariz, 586-3317)**

Background: On December 16, 2008, City Council approved a new structure for City Council Subcommittees, which reduced the total of number of subcommittees to five. At that time, the Capital Improvement Program (CIP) Subcommittee was dissolved and the review of the CIP was assigned to the Neighborhood Services and Education Subcommittee.

More recently, the Mayor suggested moving the review of the Capital Improvements Program from the Neighborhood Services and Education Subcommittee to the Finance Subcommittee.

Fiscal Impact: None.

Recommendation: Consider the Mayor's request and approve changing subcommittee assignment of the Capital Improvement Program from the Neighborhood Services and Education Subcommittee to the Finance Subcommittee.

- * **5. Consider Mayor's Recommendations for Appointments to Three Milpitas Commissions (Contact: Mayor Esteves, 586-3051)**

Background: Mayor Esteves recommends the following citizens be appointed to three Milpitas Commissions as follows:

Community Advisory Commission

Newly appoint Mayvid Maclay as Alternate No. 3 to a term that expires in January 2014.

Economic Development Commission

Appoint Chandru Bhambhra (current Alternate No. 1) as a regular member representing residential real estate to a term that expires in April 2012.

Appoint Preeti Suri (current Alternate No. 2) as a regular member representing retail to a term that expires in April 2012.

Appoint Sumeet Ahuja (current Telecommunications Commissioner) as Alternate No. 1 to a term that expires in April 2013.

Parks, Recreation and Cultural Resources Commission

Newly appoint Evelyn Ramirez as Alternate No. 1 to a term that expires in June 2012.

Newly appoint Gerome Guerrero as Alternate No. 2 to a term that expires in June 2013.

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

6. Consider Mayor's Recommendation for Appointments to the Oversight Board for the Wind Down of the Former Milpitas Redevelopment Agency (Contact: Mayor Esteves, 586-3029)

Background: Legislation in the state assembly last year and the subsequent decision by California Supreme Court in *California Redevelopment Association v. Matosantos* dissolved all state redevelopment agencies, including the Milpitas Redevelopment Agency, as of February 1, 2012. After this dissolution date, state law requires a wind down process in which organizations called "oversight boards" must oversee the work of "successor agencies" to settle the outstanding debts of the former redevelopment agencies and the distribution of remaining property tax revenues to other local public agencies.

Under Assembly Bill X1 26, the oversight board for the wind down of the former Milpitas Redevelopment Agency shall have seven members. Two of these members must be appointed by the Mayor of the City of Milpitas, and such appointments must be confirmed by the City Council per Government Code.

City staff recommends that one of the City positions be filled by Finance Director Emma Karlen, with Jane Corpus Takahashi serving as the alternate. City staff also recommends that a member of the City Council fill the second position. Mayor Esteves puts forward this recommendation to the City Council.

Fiscal Impact: None. There is no immediate fiscal impact at this time.

Recommendations: Consider the recommendation from Mayor Esteves, and move to appoint Emma Karlen, with Jane Corpus Takashi as staff alternate, to the Oversight Board for the wind down of the former Milpitas Redevelopment Agency. Consider appointment of one Councilmember to the Oversight Board as well.

XVIII. NEW BUSINESS

7. Receive the Financial Status Report for the Six Months Ended December 31, 2011 (Staff Contact: Emma Karlen, 586-3145)

Background: As of December 31, 2011, the General Fund received approximately \$25.8 million in total revenue. This amount is \$1.5 million more than the revenues received for the same period in FY 2010-11 primarily due to increased sales tax revenue, increased service revenue and increased Transient Occupancy Tax revenue (TOT).

Sales tax revenue increased by about \$994,000, or 12.7% from the same period last year, due to increased sales generated from the apparel stores, restaurants, and miscellaneous retail economic segments. Transient Occupancy Tax revenues (“TOT”) were up about \$397,000 or 21.5%, compared to the same period last year. After two years of decline, TOT has finally stabilized and is expected to continue its strong recovery. Customer service charges increased by \$469,000 primarily due to increased revenue from private development activities.

Revenues that experienced shortfalls compared to last year are property tax revenue, interest income and intergovernmental revenue. Property tax revenue received for the first six months of FY 2011-12 was \$8.5 million, approximately \$369,000 less than last year due to lower assessed values and property tax appeals that are still being resolved by the County. Interest income decreased by \$52,000 due to lower reinvestment yields on the City’s investment portfolio. Intergovernmental revenue also declined by \$60,000 due to the loss of motor vehicle license fee as a revenue source. Beginning in FY 2012, the State shifted the motor vehicle license fee from the General Fund to save state law enforcement grant programs.

Based on revenues received to date and other new information, staff revised the total General Fund revenue projection for the entire year to approximately \$2.06 million more than budgeted. The detail of each major revenue projection was scheduled to be presented to the City Council at the meeting.

City Departments’ expenditures for the first six months were under budget. Overall, expenditures were approximately 48% of the operating budget, similar to last year. Staff projected that there would be some cost savings when the fiscal year is closed.

Fiscal Impact: None.

Recommendation: Receive financial status report for the six months ended December 31, 2011.

8. Receive a Report on the Impact of the Redevelopment Agency Dissolution and Act on Current Fiscal Year 2011-12 Budget Reduction Strategy (Staff Contact: Tom Williams, 586-3051)

Background: On December 29, 2011, the State Supreme Court upheld ABx1 26 and ordered elimination of all redevelopment agencies (RDA) effective February 1, 2012. The dissolution of RDA significantly impacts the City’s General Fund budget and funding for various programs and infrastructure improvements within the City. Unfortunately, the actions by the Governor and the decision by the State Supreme Court have resulted in the most severe and worst possible scenario for cities. The State Supreme Court action is final and since this is a California State Constitution issue, the decision is not appealable to the U.S. Supreme Court. Local municipalities are now left with the cataclysmal and arduous task of balancing depleted budgets as a result of fiscal mismanagement by the State. Through the baneful actions and irresponsible legislation adopted by our State representatives, millions of local revenue dollars have been shifted away from local municipalities to the State. These actions by the State and the unintended consequences come at time when the City of Milpitas was on a positive road to closing its decade long structural budget deficit.

Since the dot-com bust in 2001, the City’s General Fund experienced significant decreases between FY 2002 and FY 2004. Meanwhile, expenditures continued to increase, thus creating a structural budget deficit situation. The recent economic recession in 2008 further exacerbated the gap between the General Fund revenues and expenditures especially as it related to covering large investment losses by PERS. To resolve the structural budget deficit situation, the City implemented strategies such as holding vacant positions unfilled, prioritizing services, cross-training of employees, layoffs, furloughs, reorganization, RDA loan payments, pension reform for new employees and use of the City’s PERS Stabilization Fund reserves.

In early 2011, Finance staff projected a General Fund budget gap of \$12 million. The City Manager recommended to the City Council a combination of several budget strategies to close the gap. The strategies included negotiation with employee groups to reduce payroll and benefit costs to save \$4.9 million, cost cutting on contractual services and supplies to save \$1 million, and restructuring of programs such as DARE, Rainbow Theatre and Pre-school to save \$0.5 million. To close the remaining gap of \$5.6 million, staff proposed using \$2 million from the PERS Rate Stabilization Reserve, and utilization of a \$3.6 million loan payment from RDA. These strategies were approved, implemented and met the targeted budget reduction goals.

During the last 12 months, negotiations with several employee groups to reduce total compensation cost by 10% were achieved and cost savings were realized as projected. In addition, in FY 2012, the management team continues to hold the line on expenditures and not fill vacant positions as more employees retire. As of December 2011, there were 358 full time employees in the City of Milpitas, the lowest number of employees in recent history. The additional vacant, unfilled positions saved the General Fund approximately \$400,000 in the first six months of FY 2012.

On the revenue side, there were encouraging signs of a moderate economic recovery. Sales tax revenue and TOT revenue both went up significantly, compared to previous year. The City also received more inquiries and applications from developers for residential development. As will be reported in the Mid-Year Financial Status report, the combination of cost savings and improved revenues narrow the budget gap to \$2.4 million, as compared to the original budget gap of \$12 million projected in early 2011.

The loss of funding from the RDA is devastating. Not only does the City lose \$7 million in annual operating costs reimbursement, it loses millions of capital improvement project funding included in the Five Year Capital Plan. Without major reorganization and re-prioritization of services, the City cannot continue to exist as it is.

Elimination of RDA General Fund Impact: In addition to the loss of funding for redevelopment and housing programs, the General Fund will lose the Agency's share of cost reimbursement for staffing, administration and overhead totaling approximately \$7 million annually. In addition, RDA contributes funding to various capital improvement projects that ranged from \$3 million to \$6 million each year. In recent years, the RDA also made loan payments to the City pursuant to the Purchase and Sale agreement to help close the General Fund's budget deficit gap. From FY 2004 through FY 2011, the RDA made loan payments to offset budget deficits that ranged from \$2 million to \$4.4 million in each of those years.

Since the allocation of revenue ceases as of February 1, 2012, the City must reduce its General Fund Budget in two phases. Phase 1 requires the City to immediately act to reduce the General Fund budget by \$3 million. This is the five month loss between February 1, 2012 and June 30, 2012 from the total annual revenue of \$7 million from RDA and requires action by the City Council at the meeting of February 7, 2012. Phase 2 requires elimination of an additional \$4 million to balance the General Fund Budget for Fiscal Year 2012-13 commencing July 1, 2012. Phase 2 will be completed through the upcoming normal budget process.

The impact to the City's General Fund directly attributable to personnel salaries is \$7 million in lost revenue. Approximately \$6.0 million will be lost annually to the City's Capital Improvement Program. This revenue will be diverted from the City commencing February 1, 2012. As a result, the City will lose \$39 million in revenue annually. It should be noted that the \$39 million was typically allocated as follows:

\$14 million - used to pay the annual debt service on the 2003 tax increment bonds
\$ 4 million - paid to County as a result of the 2004 Elmwood land acquisition deal
\$ 8 million - required by law for RDA housing program
\$ 7 million - General Fund staff salaries
\$ 6 million - Capital Improvement Program

\$ 39 million – Total RDA Loss (effective February 1, 2012)

Summary of Phase 1 General Fund Cost Reduction Actions and Recommendations: The City has no choice but to balance its budget. The loss of RDA funding in the amount of \$7 million allocated to just General Fund staffing cost is permanent with no indication from the State that it will be replaced. The City Manager has taken steps afforded administratively to commence with the reduction of Costs. This included a first phase reorganization of the Executive Management Team by eliminating the Parks and Recreation Director position, Economic Development Manager Position and the Information Services Director Position effective June, 2012. In addition, the Executive Secretary to the Police Chief, a Deputy City Attorney and a Buyer in the Finance Department either retired or resigned within the last several months. These positions will be eliminated resulting in a total initial savings of \$385,000 for the five month period (February 1- June 30, 2012). In an addition, a hiring freeze was implemented saving the General Fund and additional \$400,000 for the current five month period. Total savings thus far for Phase 1 cost reductions total \$785,000. This leaves a current budget deficit to the City's General fund of \$2.2 million as a result of the State's action for the remainder of this fiscal year.

Recommendations to eliminate the remaining \$2.2 million for the five month period remaining in this fiscal year include: the reorganization of the City's Public Works Department saving \$837,000; the Information Services Department saving \$130,670; the Engineering Department saving \$180,000 and limiting additional library hours saving \$142,000. This recommendation totals \$1.28 million and combined with cuts already made total \$2.075 million. The remaining budget hurdle considering all of the above Phase 1 recommendations remains at \$925,000 for the remainder of the fiscal year. It is recommended that the use of General Fund Reserves be allocated to cover the remainder \$925,000 shortfall. There are sufficient City reserves for this strategy. The City Council policy of maintaining 15% General Fund Reserves will not be jeopardized.

Phase 1- Five Month General Fund Reduction Summary:

Executive Management Staff Reorganization:	\$385,000
Hiring Freeze:	\$400,000
Public Works Department:	\$837,000
Engineering:	\$180,000
Information Services:	\$131,000
Library Hours Reduced:	\$142,000
General Fund Reserves:	<u>\$925,000</u>
Total Reduction:	\$3,000,000

Summary of Phase 1 Capital Improvement Cost Reduction Actions and Recommendations:

Previously funded RDA projects total = \$ 8.8 million

Current Fiscal Year 2011-12 funded = \$4.0 million

Current 5 year CIP (4 out years) = \$19.0 million

Total lost RDA funding for Capital Improvement program = **\$31.8 million**

Future Redevelopment Agency projects (years 5 through 10) = \$136 million

Fiscal Impact: \$7 million reduction to the General Fund and \$39 million in total to all funds.

Recommendation: Adopt Phase 1 Budget Reduction Strategy Recommendations.

- * 9. **Approve FY 2011-12 Mid-Year Budget Appropriations for Operating Budget and Capital Improvement Project Budget (Staff Contact: Emma Karlen, 586-3145)**

Background: To maintain conformity with the City's budgeting policies that any additional appropriation to a department's budget or re-appropriation of monies from one fund to another must be approved by the City Council, staff submits the budget change forms and justification memoranda for the City Council's review and consideration.

Necessary budget adjustments include the following:

- 1) Increase Fire Prevention budget by \$15,000 in contractual services due to increased demand for plan review and inspection services. Fire Department has received additional revenue from developers and applicants for expedited plan reviews and inspection. The amount received as of 12/31/2011 for expedited plan reviews and inspection is \$29,029. There is no fiscal impact for this request.
- 2) Appropriate \$269,812.31 developer fees collected to various CIP projects listed in the agenda packet attachment. There is no fiscal impact for this request as the developer fees must be appropriated to projects to mitigate environmental impact.
- 3) Appropriate two grants totaling \$153,393 to the Alviso Adobe Renovation Project, CIP No. 5055. \$70,000 was provided by the Santa Clara Valley Water District Trail and Open Space Grant and \$83,393 was provided by the Milpitas Historical Society. There is no fiscal impact for this request.
- 4) Substitute \$750,000 of the funding from Congestion Relief Fund for the Street Resurfacing Project 2012, CIP No. 4261 with Gas Tax revenue. Effective FY 2012, the State discontinued the Congestion Relief program and replaced the amount of funding to local agencies under the Gas Tax program.
- 5) Appropriate \$30,000 from the Community Facilities District 2005-1 Fund to cover increased cost for added parks maintenance services pursuant to an existing contract approved by Council on September 21, 2011.
- 6) Substitute \$78,000 of the funding from the RDA Tax Allocations Bond proceeds for the Abel Street Transit Connection Project, CIP No. 4260 with Street Fund. The substitution is necessary due to dissolution of the RDA.

Fiscal Impact: Total budget adjustment is \$1,296,205.31. The fiscal impact is \$30,000 to the Community Facilities District 2005-1 Fund and \$78,000 to the Street Fund. The rest of the budget adjustments have no fiscal impact to the City's funds since funding will be provided by various outside sources.

Recommendation: Approve the Fiscal Year 2011-12 mid-year budget appropriations, as itemized on the budget change forms (included in the Council agenda packet).

*** 10. Receive the City of Milpitas Investment Portfolio Status Report for the Quarter Ended December 31, 2011 (Staff Contact: Emma Karlen, 586-3145)**

Background: In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended December 31, 2011 is submitted for review and acceptance.

The Portfolio Summary Report included in the Council's packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of December 31, 2011.

As of December 31, 2011, the principal cost and market value of the City's investment portfolio was \$159,744,101 and \$160,766,483 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended December 31, 2011 was 1.14%. The comparative benchmarks for the same period were 0.38% for LAIF (Local Agency Investment Fund) and 0.43% for the 12-month average yield of the two-year Treasury Note. The weighted average maturity of the portfolio was 294 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

Market values of the securities were provided by Union Bank, the safekeeping bank of the City's securities. All the securities owned by the City are held in the trust department of the Union Bank under the terms of a custody agreement.

Three charts are included with the agenda packet that show investment by maturity levels, comparison of the City's portfolio yields to other benchmark yields as well as a trend of the type of securities in the City's portfolio, weighted average maturity and average yield.

Fiscal Impact: None.

Recommendation: Receive the investment report for the quarter ended December 31, 2011.

XIX. ORDINANCES

11. Adopt a Resolution of Intention and Introduce Ordinance No. 101.22 Amending the City's Contract with the Board of Administration, California Public Employees Retirement System (Staff Contact: Carmen Valdez, 586-3086)

Background: The statewide Public Employees Retirement Systems (PERS) has historically offered various retirement benefit formulas that participating agencies can implement as local circumstances warrant. City Council, management staff and the affected employee unions met and conferred to amend the City's contract with the Public Employees Retirement System (PERS) to provide the 3% at 55 retirement benefits formula for new hired safety members.

There will be no immediate employer contribution rate impact from this amendment. Ultimately the employer normal rate cost will decrease by approximately 2.1% over time when the safety members who retire are replaced by the new hires. The employer rate reduction will occur gradually beginning July 1, 2014.

Fiscal Impact: There is no immediate fiscal impact at this time. Savings will be achieved with all new hires.

Recommendations:

1. Adopt a Resolution of Intention to approve a contract amendment with the Public Employees Retirement System (PERS) to include Section 20475 (Different Level of Benefits Provided for new employees); Section 21363.1(3% at 55 Full Formula) for safety members who are entering membership as a new hire with the City of Milpitas after the effective date of this amendment to the contract.

2. Following a reading of the title by the City Attorney, move to waive the first reading beyond the title of Ordinance No. 101.22.
3. Move to introduce Ordinance No. 101.22, authorizing an amendment to the contract between the City Council of the City of Milpitas and the Board of Administration of the California Public Employees Retirement System.

*** 12. Waive the Second Reading and Adopt Ordinance No. 243.6 Regarding Regulation of Campaign Contributions (Staff Contact: Mike Ogaz, 586-3041)**

Background: On January 17, 2012, the City Council introduced Ordinance No. 243.6 regarding regulation of campaign contributions. Ordinance No. 243.6 essentially reduces the campaign contribution limit to \$250 and provides for aggregation of campaign contributions in accord with State law which governs candidates for State offices.

Fiscal Impact: None.

Recommendation: Waive the second reading and adopt Ordinance No. 243.6 regulating campaign contributions.

XX. RESOLUTIONS

*** 13. Adopt a Resolution of the City of Milpitas as a Successor Agency of the Milpitas Redevelopment Agency Authorizing Investment of Monies in the Local Agency Investment Fund (Staff Contact: Emma Karlen, 586-3145)**

Background: Based on the recent State Supreme Court's decision, redevelopment agencies no longer exist effective February 1, 2012. On January 4, 2012, the City of Milpitas adopted a resolution designating the City to be the successor agency of the former Milpitas Redevelopment Agency. The Agency maintains a Local Agency Investment Fund (LAIF) account, managed by the State Treasurer's office. In accordance with the State Treasurer's policies, in order to process transactions in the former RDA LAIF account, the City as a successor agency of the Milpitas Redevelopment Agency must adopt a LAIF account resolution and complete an investment authorization form.

Fiscal Impact: None.

Recommendation: Adopt a resolution of the City of Milpitas as a successor agency of the Milpitas Redevelopment Agency authorizing investment of monies in the Local Agency Investment Fund.

*** 14. Adopt a Resolution Approving the Memorandum of Understanding with the Mid-Management Confidential Unit (Staff Contact: Carmen Valdez, 586-3086)**

Background: The most recent Memorandum of Understanding with the Mid-Management Confidential Unit (Mid-Con) expired on December 31, 2011. City representatives and representatives from the employee group met and conferred in good faith to negotiate a new contract. Agreement was reached with a new successor Memorandum of Understanding with effective dates of January 1, 2012 to December 31, 2012. A copy of the MOU document is included in the Council's agenda packet.

Fiscal Impact: This will result in an annual salary savings of approximately \$554,000.

Recommendation: Adopt a resolution approving the Memorandum of Understanding between the City of Milpitas and the Mid-Management Confidential Unit of employees, for the period of January 1, 2012 through December 31, 2012.

- * 15. **Adopt a Resolution Granting Final Acceptance of the Soundwall Renovation, Project No. 8196 (Staff Contact: Steve Erickson, 586-3301)**

Background: This project was initially accepted on January 4, 2011 and passed the one-year warranty period. A final inspection of the installed public improvements has been made, and the work was found to be satisfactory. The project provided for the patching and painting of existing soundwalls along the east side of Escuela Parkway from Milpitas Boulevard to Tramway Drive.

Staff recommends the Council grant final project acceptance of the Soundwall Renovation, Project No. 8196, and release of the contractor's bond.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting final acceptance of the Soundwall Renovation, Project No. 8196 and release the contractor's bond.

- * 16. **Adopt a Resolution Granting Final Acceptance of the Department of Energy Grant Program, Project No. 8198 (Staff Contact: Steve Erickson, 586-3301)**

Background: This project was initially accepted on January 4, 2011 and passed the one-year warranty period. A final inspection of the installed public improvements has been made, and the work was found to be satisfactory. The project provided for the replacement of the existing air conditioning chiller and compressor units including controls, at the Public Works/Police Department building.

Staff recommends the Council grant final project acceptance of the Department of Energy Grant Program, Project No. 8198, and release of the contractor's bond.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting final acceptance of the Department of Energy Grant Program, Project No. 8198 and release the contractor's bond.

XXI. BIDS AND CONTRACTS

- * 17. **Approve an Agreement with Accurate Cleaning Systems for Collection, Transportation, and Recycling of Non-Exclusive Solid Waste (Staff Contact: Kathleen Phalen, 586-3345)**

Background: In accordance with Title V, Chapter 200 of the Milpitas Municipal Code and the City's solid waste franchise agreement with Allied Waste Services, solid waste collectors may enter into non-exclusive agreements with the City to collect and dispose of certain non-organic solid waste and/or construction and demolition debris from Milpitas customers. Such collectors agree to pay the City 12% of their total gross revenues earned within the City.

Staff reviewed an application from Accurate Cleaning Systems to enter into an agreement for collection, transport, and recycling of debris and find it in accordance with the City's requirements. Accurate Cleaning Systems intends to haul general debris box waste such as construction and demolition waste. In accordance with the Milpitas Municipal Code, staff is also asking for authority to administratively review collections under the agreement and grant a maximum of two, three-year agreement extensions upon a finding of compliance with the agreement terms.

Fiscal Impact: None.

Recommendation: Approve an agreement with Accurate Cleaning Systems for collection, transportation, and recycling or disposable of non-exclusive solid waste.

- * 18. **Approve Educational Agreements with Grand Canyon University and National University for Employees (Staff Contact: Brian Sturdivant, 586-2811)**

Background: The Fire Chief and IAFF Local 1699 met, conferred and agreed to increase the formal education component for fire promotions to Company Officer (Captain) and Chief Officer (Battalion Chief). The Fire Department formal education requirements are effective January 1, 2012 (Bachelors Degree, Battalion Chief) and January 1, 2013 (Associates Degree, Captain). The Educational Agreements with Grand Canyon University (effective date April 1, 2012) and National University (effective date April 1, 2012) offer incentives and discounts available to facilitate the increased Fire Department formal education requirements and will be accessible to all City of Milpitas employees (copies included in agenda packet).

Fiscal Impact: None. The utilization of City of Milpitas Tuition Reimbursement Program is an option to offset costs associated with pursuing formal education.

Recommendation: Approve two educational agreements with Grand Canyon University and National University both with effective dates of April 1, 2012, for City of Milpitas employees.

- * 19. **Reject All Bids and Award a Contract to Environmental Systems Inc. for Fire Station Improvements “Re-plumbing Fire Station No. 3” Project No. 3403, Bid No. 2012, for the Not-to-Exceed amount of \$78,417 (Staff Contact: Chris Schroeder, 586-3161)**

Background: Fire Station No. 3 was built in 1969. At that time, the plumbing standard was to use galvanized steel pipe, which is conducive to leaks and rusting. During the past year, multiple leaks have occurred and visible rust in the water has become a problem. In addition, the water heater is near the end of its useful life. Purchasing worked with Engineering to put together a bid package which was released on November 1, 2011. The bid was to completely re-plumb the station with copper piping and replace the water heater. The bid was advertised on the City website, on Public Purchase, in the Blue Book, and in the local newspaper.

Two bids were received: (1) Repipe Specialists and (2) JA Plumbing. However both bids were determined to be non-responsive. The bid from Repipe Specialists included a significant bid irregularity as it did not meet the bid document requirement for self performing at least 50% of the contract. The bid from JA Plumbing included significant irregularities as it did not include the required bid bond and was conditional in that it included additional costs for the removal of hazardous material if any. In accordance with the Municipal Code Section I-2-3.03 “Purchases of Twenty Thousand Dollars (\$20,000) or More” sub-section (e) “If no responsive bid is received after soliciting bids under this section, the Purchasing Agent may proceed to purchase the supplies, hire or have services performed in the open market.” Pricing was solicited by the Engineering Department from several plumbing contractors and Environmental Systems Inc. was selected to perform the re-plumbing work at Fire station No. 3.

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

Recommendations:

1. Reject all bids submitted for Project No. 3403.
2. Award a construction contract to Environmental Systems Inc. for Fire Station Improvements “Re-plumbing Fire Station 3,” Project No. 3403, in the amount of \$78,417.

- * 20. **Approve a Budget Appropriation and Authorize the City Manager to Execute Amendment No. 1 to the Consultant Agreement with Schaaf & Wheeler for Storm Drain Documentation Review for the Silicon Valley Rapid Transit Program Berryessa Extension, Project No. 4265 (Staff Contact: Fernando Bravo, 586-3328)**

Background: Santa Clara Valley Transportation Authority (VTA) continues to move forward on the design and construction of the Bay Area Rapid Transit (BART) extension project. The Milpitas BART station and parts of the BART alignment are within the Berryessa Creek

Floodplain. VTA submitted floodplain technical memoranda to the City for review and comment. The affected floodplain is governed by a regional FEMA study. The potential floodplain impacts of the BART project must be analyzed to assure there are no adverse effects. Flood mitigation improvements may be required. In order to achieve a timely review and meet expedited deadlines of this detailed technical analysis, the City Manager executed a consultant agreement with Schaaf & Wheeler for \$18,000 in January 2012. Schaaf & Wheeler is preparing the City's Storm Drain Master Plan Update and has extensive knowledge of regional floodplain issues.

VTA informed City of Milpitas staff that the next flood plain-related document will be submitted to the City for review shortly. Staff recommends that Schaaf & Wheeler's agreement be amended to include additional engineering services for flood plain-related issues in the amount of \$32,000.

Fiscal Impact: The Master Agreement with VTA reimburses the City for engineering expenses including third party consultant reviews. A total budget appropriation of \$50,000 from the VTA deposit account to Project No. 4265 is necessary for the Schaaf & Wheeler agreement and amendment. A budget appropriation form is included in the Council packet.

Recommendations:

1. Approve a budget appropriation for a total amount of \$50,000.
2. Authorize the City Manager to execute Amendment No. 1 to the Consultant Agreement with Schaaf & Wheeler for Storm Drain Documentation Review.

XXII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, FEBRUARY 21, 2012 AT 7:00 P.M.**