



**MILPITAS CITY COUNCIL
MEETING AGENDA
TUESDAY, APRIL 17, 2012**

5:30 - 6:00 p.m. Closed Session

6:00 - 7:00 p.m.

**Special Ceremonial Event to honor all City
Commissions for their Service in 2011
Milpitas City Hall Lobby Rotunda**

7:00 p.m. City Council Meeting

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL by the Mayor (5:30 p.m.)**
- II. ADJOURN TO CLOSED SESSION OF CITY COUNCIL**
 - 1) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**

Pursuant to CA Government Code §54957.6 City Negotiator: Carmen Valdez
Employee Groups: Milpitas Supervisors Association (MSA), Milpitas Employees Association (MEA), Mid-Management/Confidential group, Milpitas Professional and Technical Group (ProTech), Milpitas Police Officers Association (MPOA), International Association of Fire Fighters (IAFF)
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
 - 2) CONFERENCE WITH LEGAL COUNSEL**

Anticipated Litigation, pursuant to CA Government Code §54956.9, with City as Plaintiff or Defendant
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to CA Government Code §54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Mayor Esteves)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – April 3, 2012**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS for April and May 2012**
- VIII. PUBLIC FORUM**

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

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

XII. CONSENT CALENDAR (Items with 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.

XIII. PUBLIC HEARING

- 1. Hold a Public Hearing and Consider Approval of the Community Development Block Grant Funding Allocations for FY 2012-13, and Adopt the One-Year Action Plan (Staff Contacts: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)**

XIV. UNFINISHED BUSINESS

- 2. Receive a Report on the Single-use Carryout Bag Study, Direct Participation in an Environmental Impact Report, and Direct Preparation of an Ordinance to Restrict Distribution of Single-use Bags (Staff Contact: Kathleen Phalen, 586-3345)**
- 3. Receive a Report on the Expanded Polystyrene Food Service Take-out Containers Study, Approve Support Letter for Senate Bill 568, and Direct Participation in Regional Efforts to Ban Expanded Polystyrene Food Service Take-out Containers (Staff Contact: Kathleen Phalen, 586-3345)**
- 4. Receive Management Response to the Proposal by the Corporation Yard Task Force and Continue with Budget Discussions for FY 2012-13 and Take Action as Necessary (Staff Contact: Tom Williams, 586-3050)**

XV. REPORTS OF OFFICERS AND COMMITTEE

- * 5. Consider Mayor's Recommendation for Re-appointments to the Economic Development Commission (Contact: Mayor Esteves, 586-3029)**
- * 6. Request of Councilmember Giordano for a Report of Survey of Mall Policing in the Bay Area (Staff Contact: Dennis Graham, 586-2502)**
- * 7. Approve Updated By Laws of the Public Art Committee (Staff Contact: Renee Lorentzen, 586-3409)**
- * 8. Approve the Public Art Committee 2012-13 Master Plan (Staff Contact: Renee Lorentzen, 586-3409)**

XVI. NEW BUSINESS

- 9. Review Draft 2012-17 Capital Improvement Program (CIP) Report, and Provide Staff with Direction and Comments (Staff Contact: Greg Armendariz, 586-3317)**
- * 10. Approve Fee Waiver and In-Kind Donation of Equipment, Supplies, Facility Space and Staffing From Various City Departments for the 2012 Relay For Life Event at the Milpitas Sports Center, June 22-24, 2012 (Staff Contact: Jaime Chew, 586-3234)**
- * 11. Authorize the Acceptance of a Grant for After the Bell After School Program "2012 ATB Olympics" (Staff Contact: Renee Lorentzen, 586-3409)**

XVII. ORDINANCES

- * 12. **Waive the Second Reading and Adopt Ordinance No. 38.803 Amending the Zoning Ordinance (Staff Contact: Sheldon Ah Sing, 586-3278)**
- * 13. **Waive the Second Readings and Adopt Ordinances No. 192.25 and No. 192.26 Repealing the 6th Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project, and the 13th Amendment to the Redevelopment Plan for Milpitas Redevelopment Project Area No. 1 (Staff Contact: Bryan Otake, 586-3040)**
- * 14. **Waive the Second Reading and Adopt Ordinance No. 54.25 Updating Animal Regulations (Staff Contact: Felix Reliford, 586-3071)**

XVIII. RESOLUTIONS

- * 15. **Adopt a Resolution Granting Initial Acceptance of and Reducing Performance Bond for City Facilities Improvement Community Center Heating, Ventilation, and Air Conditioning (HVAC) Replacement, Project No. 8182/3406 (Staff Contact: Steve Erickson, 586-3301)**

XIX. BIDS AND CONTRACTS

- * 16. **Authorize the City Manager to Award a Construction Contract for Escuela Parkway Pedestrian and Bicycle Enhancement Project, Project No. 4259, Federal Project No. RPSTPLE (009) (Staff Contact: Steve Erickson 586-3301)**
- * 17. **Authorize the City Manager to Execute Agreements with Santa Clara County for Collection of AB939 Implementation Fees and Administration of the Countywide Household Hazardous Waste Collection Program (Staff Contact: Kathleen Phalen, 586-3345)**
- *18. **Approve a Contract Extension with PMC for the Development of a Qualified Climate Action Plan (Staff Contact: Sheldon Ah Sing, 586-3278)**

XX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 1, 2012 AT 7:00 P.M.**

**COUNCIL BUDGET HEARING SPECIAL MEETING
TUESDAY, MAY 8, 2012 AT 6:00 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 after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, online, 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)
Public Art Committee (one general member + one Alliance for the Arts member)
Community Advisory Commission (alternate)
Telecommunications Commission*

Applications are available online at www.ci.milpitas.ca.gov or at the City Clerk's office.
Contact the City Clerk's office (586-3003) for more information.

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

AGENDA REPORTS

XIII. PUBLIC HEARING

- 1. Hold a Public Hearing and Consider Approval of the Community Development Block Grant Funding Allocations for FY 2012-13, and Adopt the One-Year Action Plan (Staff Contacts: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)**

Background: The U.S. Department of Housing and Urban Development (HUD) provides annual grants through the Community Development Block Grant (CDBG) Program to Local Governments to assist in providing decent housing, a suitable living environment, and expand economic opportunities for the low to moderate-income persons. The purpose of this public hearing is to set funding allocations for the CDBG funds provided to the City for FY 2012-13 and to adopt the One-Year Action Plan.

During the month of January 2012, the City advertised the 30-day time period by which to submit CDBG funding applications and sent out notices to past service providers. The Community Advisory Commission (CAC) held a public hearing on March 7, 2012, to review the 21 application received and provide funding recommendations to the City Council. CAC funding recommendations (included with the Council agenda packet) are based on the confirmed allocation of \$390,716 (a 27% reduction from current year funds of \$532,770). CAC recommendations follow the City Council’s adopted priorities for funding allocations for the categories as follows:

Public Services

1. Senior Services
2. Youth/Teen Services
3. Homeless Sheltering/Services
4. Child Care
5. Battered Women Sheltering/Services
6. Code Enforcement

25% of total Public Service allocation to be reserved for City of Milpitas Programs (Milpitas RAP and Milpitas Family Literacy Programs fall under this policy)

Non-Public Services (improvements)

1. Home Repair/Rehabilitation
2. Affordable Housing
3. Rental Apartment Rehabilitation
4. Historic Preservation

- A minimum funding level of \$5,000 shall be allocated for public and non-public services; and
- \$10,000 from CDBG Program Administration for Fair Housing services.

Public Services –	\$58,607	15%
Non-Public Services –	\$259,318	65% (\$253,966 plus \$5,352 prior yr. funds)
Program Administration –	\$78,143	20%

Meeting minutes of the March 7, 2012 CAC meeting and funding recommendations are included in the Council’s agenda packet.

One-Year Action Plan

The Action Plan describes anticipated CDBG activities and expenditures to be undertaken for fiscal year 2012-13 and how these activities relate to meeting objectives noted in the Five-Year Consolidated Plan.

The draft Action Plan was advertised for public review and comments for 30 days (from March 16 through April 16, 2012) and sent to twenty-one CDBG funded applicants and agencies. Public

comments received will be incorporated in the Action Plan and forwarded to HUD by May 15, 2012. HUD reviews and approves the Action Plan prior to releasing CDBG funds.

Attachments:

- A. Community Advisory Commission Approved Minutes Excerpt from March 7, 2012 Meeting.
- B. Fiscal Year 2012-13 Draft Action Plan

Recommendations:

- 1. Open the public hearing, and after receiving comments, move to close the public hearing.
- 2. Approve the Community Development Block Grant funds for FY 2012-13.
- 3. Approve the One-Year Action Plan for FY 2012-13.

XIV. UNFINISHED BUSINESS

2. Receive a Report on the Single-use Carryout Bag Study, Direct Participation in an Environmental Impact Report, and Direct Preparation of an Ordinance to Restrict Distribution of Single-use Bags (Staff Contact: Kathleen Phalen, 586-3345)

Background: On September 21, 2010, the City Council referred an evaluation of restricting distribution of single-use carryout bags to the Recycling and Source Reduction Advisory Commission (RSRAC) and directed staff to seek consultant support to study the impact of a potential ban. At its April 26, 2011 meeting, RSRAC reviewed the study results and recommended that the City develop an ordinance to restrict the use of single-use carryout bags similar to an ordinance adopted by the City of San Jose.

The completed study is included in the Council agenda packet. It reviews the experiences of California cities that have restricted distribution of single-use bags, summarizes a statistically-reliable phone survey of 293 Milpitas residents, stakeholder interviews with managers of 25 Milpitas food and retail establishments, and representatives of special interest groups. The study concludes that it is feasible for the City to restrict distribution of single-use carryout bags, although there will be costs from, and opposition to, such action.

RSRAC reviewed the specific elements of the ordinance adopted by the City of San Jose, effective January 1, 2012, that bans distribution of single-use carryout plastic bags, except from restaurants, and limits paper bags to those with at least 40 percent recycled content. This ordinance allows merchants to charge a fee for each paper bag. RSRAC recommends that the City Council adopt an ordinance based on the San Jose ordinance to ban distribution of all plastic bags and all paper bags having less than 40% recycled content and allow merchants to charge customers 10 cents per paper bag, rising to 25 cents per paper bag in two years. San Jose's bag ban went into effect after a one year public outreach effort. Staff recommends that Milpitas allow a similar period for outreach to merchants and the community.

Staff previously prepared this item for Council consideration on October 4, 2011, but pulled it from the agenda due to the October 3, 2011 filing of *Schmeer, et al (Helix Poly) v. County of Los Angeles* in Los Angeles County Superior Court. The filing claimed that Los Angeles County's bag ordinance, which also allows merchants to charge fees for paper bags, created an unconstitutional tax under Proposition 26. On March 23, 2012, the Court upheld Los Angeles County's ordinance, finding that the fee is not a tax under Proposition 26 because the merchant retains the fee.

Alameda County adopted a single-use bag ordinance on January 25, 2012 that goes into effect January 1, 2013. This is the first countywide bag ordinance in the Bay Area and geographically places Milpitas between cities that restrict single-use bag distribution.

Restricting single-use bag distribution will help Milpitas meet its stormwater permit and litter control requirements at lower costs and reduce environmentally harmful trash in storm drains and creeks. Under a plan submitted to the State, adoption of a bag ban ordinance would provide the

City a trash-load reduction credit of 12 percent, or nearly a third of the 40 percent reduction the State requires by 2014.

Recently, San Mateo County offered cities in San Mateo and Santa Clara County the opportunity to participate in an Environmental Impact Report (EIR) studying land use impacts of single-use bag ordinances at no direct cost. San Mateo County does ask that participating cities support outreach through hosting scoping meetings and consider adoption of an ordinance similar to that of San Jose. Milpitas is tentatively slated to host a scoping meeting on May 3, 2012. Other nearby cities considering participation include Campbell, Cupertino, Los Altos and Mountain View as well as nearly all cities in San Mateo County.

While the recommended action does not have fiscal impact, based on the experience of San Jose, Milpitas staff expects that after ordinance adoption, public outreach and coordination with stakeholders may take substantial staff resources.

Fiscal Impact: None.

Recommendations:

1. Receive single use bag report.
 2. Direct staff to participate in the Environmental Impact Report led by San Mateo County, including hosting a scoping meeting.
 3. Direct staff to draft an ordinance that:
 - a. Bans distribution of single-use, point-of-purchase plastic bags,
 - b. Bans distribution of single-use, point-of-purchase paper bags with less than 40% recycled content, and
 - c. Allows merchants to charge a fee for single use point of purchase paper bags.
- 3. Receive a Report on the Expanded Polystyrene Food Service Take-out Containers Study, Approve Support Letter for Senate Bill 568, and Direct Participation in Regional Efforts to Ban Expanded Polystyrene Food Service Take-out Containers (Staff Contact: Kathleen Phalen, 586-3345)**

Background: On September 21, 2010, the City Council referred an evaluation restricting distribution of expanded polystyrene (EPS, also known as Styrofoam™) food containers to the Recycling and Source Reduction Advisory Commission (RSRAC) and directed staff to seek consultant support to study the impact of a potential ban. At its April 26, 2011 meeting the Commission voted unanimously to recommend the Council's approval of a draft letter supporting Senate Bill 568 (Lowenthal) and to wait for action at the State level before considering a local ban on EPS food containers. Staff presented the letter to the Council on May 17, 2011 and received direction to first present the Expanded Polystyrene Food Service Take-out Container Study before consideration of the support letter would be reviewed.

SB 568 would prohibit a food vendor, on and after January 1, 2016, from dispensing prepared food to a customer in EPS food containers and defines related terms. On September 12, 2011, the bill was placed on inactive status, but remains on the Assembly Floor and remains eligible to be voted upon this year.

Locally, the Cities of Fremont (as of January 1, 2011) and Palo Alto (as of April 22, 2010) restrict distribution of EPS food containers. On January 24, 2012, the San Jose City Council accepted a staff report recommending potential action to restrict distribution of EPS food containers. Rather than approve individual action, San Jose staff was directed to seek involvement of other agencies for efforts to restrict distribution of EPS food containers and to return to San Jose's Transportation and Environment Committee with a report in fall 2012. Regional activities could include developing environmental studies and model ordinances.

Fiscal Impact: None.

Recommendations:

1. Receive EPS food container study report.
 2. Approve a letter of support for Senate Bill 568 to Senators Lowenthal, Corbett and Alquist for the statewide restriction of EPS food containers.
 3. Advise staff to participate in regional efforts to develop a model ordinance restricting distribution of EPS food containers.
- 4. Receive Management Response to the Proposal by the Corporation Yard Task Force and Continue with Budget Discussions for FY 2012-13 and Take Action as Necessary (Staff Contact: Tom Williams, 586-3050)**

Background: This update will provide the City Council with a response to questions and direction received at the previous City Council meeting of April 3, 2012, regarding the proposal by the MEA and MSA bargaining groups. The MEA and MSA proposal provided input to decrease costs by approximately \$1.2 million. Their budget proposal included a majority of cost savings through possible retirements and maintenance worker employee transfers. Staff is currently underway with a thorough review of these various cost savings proposals and will provide its findings at the Council meeting.

City staff will provide a detailed briefing to the City Council outlining the benefits and detriments of the proposal as well as alternatives for Council consideration.

Fiscal Impact: Potential savings of \$1.2 - \$2.1 million in General Fund cost reduction could be realized, with Council action.

Recommendation: Receive the management staff response to the Corporation Yard Task Force proposal and approve budget recommendations from the City Manager to reduce the anticipated FY 2012-13 budget deficit.

XV. REPORTS OF OFFICERS AND COMMITTEE

- * **5. Consider Mayor's Recommendation for Re-appointments to the Economic Development Commission (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends the following citizens be re-appointed to Milpitas Economic Development Commission as follows:

Re-appoint Donald Peoples, representing business owners, to a new term that expires in April 2015 and re-appoint Warren Wettenstein, representing the Chamber of Commerce, to a term that expires in April 2015.

Recommendation: Consider the recommendation from the Mayor and move to approve two re-appointments to the Milpitas Economic Development Commission.

- * **6. Request of Councilmember Giordano for a Report of Survey of Mall Policing in the Bay Area (Staff Contact: Dennis Graham, 586-2502)**

Background: At the Council Rules Subcommittee meeting of March 27, 2012, Councilmember Giordano requested that a Police Department survey concerning policing at large shopping malls in other cities be placed on this meeting agenda.

A "Comparison of Bay Area Malls" survey of 10 shopping malls is included in the agenda packet.

Recommendation: Receive the update report from the Chief of Police on mall security.

- * **7. Approve Updated By Laws of the Public Art Committee (Staff Contact: Renee Lorentzen, 586-3409)**

Background: At the February 27, 2012 Public Art Committee meeting, the Committee members approved changes to their current By Laws, specific to the regular meeting schedule. The updated By Laws require the Committee to meet every other month with meetings to begin at 7:00 pm. Updated By Laws list the Public Art Committee's regularly scheduled meetings as January, March, May, July, September and November.

Fiscal Impact: None.

Recommendation: Approve the updated Public Art Committee By Laws.

- * 8. **Approve the Public Art Committee 2012-13 Master Plan (Staff Contact: Renee Lorentzen, 586-3409)**

Background: At the February 27, 2012 Public Art Committee meeting, the Committee approved its 2012-13 Master Plan, which outlines the Public Art Installation projects members would like to facilitate in Fiscal Year 2012-13. Projects listed are based on City projects, existing art pieces in need of maintenance and projects the Committee has an interest in pursuing in benefit of the community. All projects will return individually to City Council for budget and location approval.

Fiscal Impact: None. Sufficient funds are available in the Public Art Fund.

Recommendation: Approve the Public Art Committee Master Plan for 2012-13.

XVI. NEW BUSINESS

9. **Review Draft 2012-17 Capital Improvement Program (CIP) Report, and Provide Staff with Direction and Comments (Staff Contact: Greg Armendariz, 586-3317)**

Background: The Draft 2012-2017 Capital Improvement Program (CIP) document was prepared by staff and a copy was distributed along with the Council agenda. Projects are arranged into six main categories: Community Improvements, Parks, Streets, Water, Sewer, and Storm Drain. The document includes a summary by categories, and individual proposed project descriptions. Previously funded projects are also summarized.

On March 22, 2012, the Draft 2012-2017 CIP document was reviewed by the Finance Subcommittee. The Parks, Recreation and Cultural Resources Commission reviewed the Parks projects on April 2, 2012, and recommend them for approval by Council. On April 11, 2012, the Planning Commission reviewed the Draft 2012-2017 CIP document and found it in conformance with the General Plan.

A staff presentation of the draft CIP highlights will be provided at the Council meeting. Based upon Council direction, the Draft CIP will be revised and prepared as the Preliminary CIP document. The preliminary CIP will then be presented to Council at the May 8, 2012, budget hearing.

Fiscal Impact: None.

Recommendation: Review the Draft 2012-2017 Capital Improvement Program (CIP) and provide staff with direction and comments.

- * 10. **Approve Fee Waiver and In-Kind Donation of Equipment, Supplies, Facility Space and Staffing From Various City Departments for the 2012 Relay For Life Event at the Milpitas Sports Center, June 22-24, 2012 (Staff Contact: Jaime Chew, 586-3234)**

Background: For the past twelve years, the American Cancer Society, with the volunteer support of numerous Milpitas community members and businesses, has hosted the annual Relay

for Life fundraising event at the Milpitas Sports Center. The group is requesting to use the Sports Center field from June 22-24, 2012, for the event set-up (6/22), event (6/23-6/24), and take down (6/24). The City of Milpitas has a long history of supporting this annual event with services, staff support, facility space and equipment on varying levels.

Fiscal Impact: information on event finances is included in Council agenda packet, and reflects \$7,466.82 in fee waivers and in-kind donations.

Recommendation: Approve Milpitas Relay for Life request for fee waiver and in-kind donations of equipment, supplies, facility use and staffing totaling \$7,466.82 for the June 22-24, 2012 Relay for Life event at the Milpitas Sports Center.

* 11. **Authorize the Acceptance of a Grant for After the Bell After School Program “2012 ATB Olympics” (Staff Contact: Renee Lorentzen, 586-3409)**

Background: The Milpitas Recreation Services Division applied for a grant in the amount of \$3,800 from the Milpitas Parks and Recreation Foundation, a non-profit organization in the City of Milpitas. The Grant was written to fund the After the Bell “2012 ATB Olympics” program to be held Saturday, May 19, 2012 at the Milpitas Sports Center complex and fields. Through this program, Milpitas children participating in the after school recreation program will learn the value of positive sportsmanship, team camaraderie and also the importance of healthy, active lifestyles. The Grant was approved and awarded to Recreation Services in the amount of \$3,800.

Fiscal Impact: Approve a budget appropriation in the amount of \$3,800 from grant revenue to the After the Bell program.

Recommendation: Accept the Milpitas Parks and Recreation Foundation grant in the amount of \$3,800 to be incorporated into the Milpitas Recreation Division budget for After the Bell “2012 ATB Olympics.”

XVII. ORDINANCES

* 12. **Waive the Second Reading and Adopt Ordinance No. 38.803 Amending the Zoning Ordinance (Staff Contact: Sheldon Ah Sing, 586-3278)**

Background: On April 3, 2012, the City Council introduced Ordinance No. 38.803, streamlining the Zoning Ordinance by changing the process for certain uses requiring Conditional Use Permits by lessening the process; adding a Minor Conditional Use Permit; and other ancillary changes to support streamlining. Ordinance No. 38.803 is now ready for a second reading and adoption.

Fiscal Impact: None.

Recommendation: Waive the second reading and adopt Ordinance No. 38.803 for Zoning Amendment ZA12-0001, Conditional Use Permit Streamlining.

* 13. **Waive the Second Readings and Adopt Ordinances No. 192.25 and No. 192.26 Repealing the 6th Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project, and the 13th Amendment to the Redevelopment Plan for Milpitas Redevelopment Project Area No. 1 (Staff Contact: Bryan Otake, 586-3040)**

Background: On April 3, 2012, the City Council introduced Ordinance No. 192.25 and Ordinance No. 192.26 to repeal the sixth amendment to the Redevelopment Plan for the Great Mall Redevelopment Project and the thirteenth amendment to the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1. These two repeal ordinances are brought forth to effect the terms of the settlement agreement for the case of *County of Santa Clara v. All Persons Interested in the Matter of the Sixth Amendment to the Great Mall Redevelopment Project, et al.*,

San Mateo County Superior Court No. 4999976. No changes have been made to the repeal ordinances since the first reading and the ordinances are now ready for adoption.

Fiscal Impact: None.

Recommendation: Waive the second readings and adopt Ordinance No. 192.25 and Ordinance No. 192.26 repealing the 6th Amendment to the Great Mall Redevelopment Project and the 13th Amendment to the Plan for Project Area No. 1 and findings related thereto.

- * 14. **Waive the Second Reading and Adopt Ordinance No. 54.25 to Update Animal Regulations (Staff Contact: Felix Reliford, 586-3071)**

Background: On April 3, 2012, the City Council introduced Ordinance No. 54.25 regarding an update to the Animal Regulation Ordinance. Ordinance No. 54.25 is now ready for a second reading and adoption.

Fiscal Impact: None.

Recommendation: Waive the second reading and adopt Ordinance No. 54.25.

XVIII. RESOLUTIONS

- * 15. **Adopt a Resolution Granting Initial Acceptance of and Reducing Performance Bond for City Facilities Improvement Community Center Heating, Ventilation, and Air Conditioning (HVAC) Replacement, Project No. 8182/3406 (Staff Contact: Steve Erickson, 586-3301)**

Background: The City Council awarded the City Facilities Improvement “Community Center Heating, Ventilation, and Air Conditioning (HVAC) Replacement” project to Hometown Construction, Inc. on May 17, 2011. The project provided for the installation of new heating, ventilation, and air condition units, related controls, duct work and minor roof modifications for the City’s Community Center building. The project was successfully completed under budget, and staff recommends the City Council adopt a resolution granting initial acceptance of the project, and authorize the reduction of the contractor’s faithful performance bond to \$41,416, which is 10% of the final contract value.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of the City Facilities Improvement “Community Center Heating, Ventilation, and Air Conditioning (HVAC) Replacement” Project No. 8182/3406, subject to a one year warranty period and reduction of the faithful performance bond to \$41,416.

XIX. BIDS AND CONTRACTS

- * 16. **Authorize the City Manager to Award a Construction Contract for Escuela Parkway Pedestrian and Bicycle Enhancement Project, Project No. 4259, Federal Project No. RPSTPLE (009) (Staff Contact: Steve Erickson 586-3301)**

Background: On April 3, 2012, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for Escuela Parkway Pedestrian and Bicycle Enhancement Project. The project provides for the widening of an existing sidewalk along the east side of Escuela Parkway between Russell Lane and Washington Drive, and the installation of a bus pullout on the west side of Escuela Parkway in front of Milpitas High School. The installation of street trees and irrigation systems is also included. In order to proceed with the project and meet the tight schedule for the Federal Grant funding requirements, staff recommends the City Council authorize the City Manager to award the construction contract the

lowest responsible bidder after bid opening, if the bid is no higher than 10% above the Engineer's estimate as determined at the time prior to bid opening.

As was approved for the successful completion of the new Senior Center, Public Library, Parking Garage and recent projects with tight completion schedules, staff requests use of the same change order policy to allow for the timely completion of this project. This policy authorizes staff to execute change orders in order to address the need to respond swiftly to construction conditions so as to limit potential claims or risk to the City. The construction contingency established for this project is \$50,000, and the change order authority would not exceed this amount, and would not require additional appropriation.

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

Recommendations:

1. Authorize City Manager to award a construction contract for Escuela Parkway Pedestrian and Bicycle Enhancement Project, Project No. 4259, Federal Project No. RPSTPLE (009).
2. Authorize staff to execute change orders for Escuela Parkway Pedestrian and Bicycle Enhancement Project, Project No. 4259, Federal Project No. RPSTPLE (009) provided that the change orders do not exceed the established construction contingency amount for the project, and do not require additional appropriation.

*** 17. Authorize the City Manager to Execute Agreements with Santa Clara County for Collection of AB939 Implementation Fees and Administration of the Countywide Household Hazardous Waste Collection Program (Staff Contact: Kathleen Phalen, 586-3345)**

Background: Since 1992, the cities of Santa Clara County have annually executed agreements authorizing the County to collect solid waste tipping fees and to provide waste diversion services on behalf of the cities. This cycle, the County proposes agreements with a three-year term, extending from July 1, 2012 to June 30, 2015. The County will collect \$4.10 per ton of waste disposed at landfills within the County. From this fee, the County will remit \$1.50 per ton to the city of waste origin for use in recycling programs. The County will use the remaining \$2.60 per ton to provide household hazardous waste collection services to residents throughout the County. The County will remit any funds in excess of those needed for the annual household hazardous waste program to the cities of waste origin the following year.

In the upcoming year, the County projects that countywide landfill disposal will be 1,053,580 tons. The \$4.10 per ton tipping fee will generate \$4,319,678, of which \$1,580,370 will be remitted to the cities for recycling programs and \$2,739,308 will be remitted for the countywide household hazardous waste program. The City of Milpitas is expected to generate 49,472 tons of waste, or 4.7% of the total, and so expects to receive \$74,208 for its recycling programs. Based upon past experience, staff anticipates the County will also remit about \$50,000 of unused household hazardous waste fees to the City. This revenue is programmed into the City's FY2012-13 solid waste operating budget to be used for activities supporting the City's compliance with State recycling and waste diversion requirements.

Fiscal Impact: The recommended action will provide \$74,208 in revenue for the City's solid waste fund.

Recommendation: Authorize the City Manager to execute agreements with Santa Clara County for collection of AB 939 Implementation Fees and administration of the Countywide Household Hazardous Waste Collection Program.

***18. Approve a Contract Extension with PMC for the Development of a Qualified Climate Action Plan (Staff Contact: Sheldon Ah Sing, 586-3278)**

Background: In 2006, the State of California legislature adopted Assembly Bill 32, the Global Warming Solutions Act of 2006 (AB32). The legislation committed the state to reducing

greenhouse gas emissions to a level equivalent to 1990 emissions by 2020. The legislation also requires municipalities creating new General Plans to evaluate and mitigate for greenhouse gas emissions in its planning areas to a level consistent with AB32. Furthermore, Senate Bill 375 (SB375) places requirements on municipalities regarding the reduction of greenhouse gas emissions through land use patterns, enhanced transit services and the reduction of vehicle miles traveled (VMT).

In order to comply with AB32 and SB375, the Bay Area Air Quality Management District adopted new thresholds regarding development projects and greenhouse gas emissions to coincide with the environmental review of a project. The development of strategies to reduce greenhouse emissions through a formal document such as a Climate Action Plan (CAP) can streamline the planning process for projects, while demonstrating overall compliance with State law. CAPs generally contain:

- Adoption of state-accepted protocol software to model greenhouse gas emissions in the project area. The most widely accepted protocol has been prepared by the International Council for Local Environmental Initiatives (ICLEI);
- An inventory of greenhouse gas emissions from all community and municipal sources;
- A public outreach component to receive input from the community and stakeholders;
- A greenhouse gas mitigation plan composed of strategies to reduce greenhouse gas emissions to a level consistent with the requirements of AB32 and SB375 throughout the project area; and
- A monitoring program for greenhouse gas emissions into the future.

The City of Milpitas contracted with PMC to complete a qualified Climate Action Plan, however, the contract expired in December 2011. To date, the City developed the necessary inventories to establish the reduction target and had chosen reduction measures. The remaining tasks would quantify the reduction and draft the Climate Action Plan and the necessary supporting documents.

The City received a grant from Santa Clara Valley Transportation Authority (VTA) to offset 58% of the total project cost. Any work associated with the extension of this contract is fully reimbursable pursuant, per the grant. The balance of the contract is \$29,020 and this is within the original \$85,000 budget amount for the project. Project completion is expected this year.

Fiscal Impact: There are sufficient funds budgeted for this contract.

Recommendation: Authorize the City Manager to execute a contract with PMC for the development of a Climate Action Plan, for an amount not to exceed \$29,020.

XX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 1, 2012 AT 7:00 P.M.**