



**MILPITAS CITY COUNCIL MEETING AGENDA
TUESDAY, JUNE 5, 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 SESSION**
 - 1) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**
Pursuant to CA Government Code Section 54956.9(c)
Two cases: (1) City of Milpitas as Plaintiff or Defendant; (2) City as Plaintiff
 - 2) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
Pursuant to CA Government Code Section 54956.9(a), City of Milpitas as Defendant
MEA v. City of Milpitas, PERB Charge Numbers SF-CE-956M and SF-CE-958M
 - 3) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
Pursuant to CA Government Code Section 54956.9(a), City of Milpitas as Defendant
Santa Clara VTA v. Montague Parkway Associates, LP, et al.; Santa Clara County Superior Court, Case No. 112CV220334
 - 4) PUBLIC EMPLOYEE PERFORMANCE EVALUTION**
Pursuant to Government Code Section 54957.
Continuation of review of City Attorney Michael Ogaz
- 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 – May 7, 8 and 15, 2012**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR for June 2012**
- VIII. PRESENTATION – Recognition of *Volunteer Income Tax Assistance* program volunteers**
- IX. PUBLIC FORUM**

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

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

XIII. CONSENT CALENDAR (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 HEARING

- 1. Hold a Public Hearing on the City of Milpitas Draft 5-Year Consolidated Plan for the Community Development Block Grant Program (Staff Contact: Felix Reliford, 586-3071)**

XV. UNFINISHED BUSINESS

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

XVI. REPORTS OF OFFICERS

- 3. Consider Mayor's Recommendations for the Appointment of Alternates to Milpitas Representatives on the Milpitas Oversight Board (Contact: Mayor Esteves, 586-3029)**
- * 4. Consider Mayor's Recommendations for Re-Appointments to Two Milpitas Commissions (Contact: Mayor Esteves, 586-3029)**
- * 5. Receive the Terrace Gardens, Inc. Annual Financial Report for Fiscal Years 2010-2011 (Contact: Councilmember Giordano, 586-3032)**

XVII. NEW BUSINESS

- 6. Receive an Update on Santa Clara County Express Lane Program (Staff Contact: Steve Chan, 586-3324)**
- 7. Review Proposal from Magnolia Charter Academy Public School to Lease the City's Sal Cracolice Building (Staff Contact: Felix Reliford, 586-3071)**
- 8. Receive Financial Status Report for the Nine Months Ended March 31, 2012 (Staff Contact: Emma Karlen, 586-3145)**
- * 9. Authorize the City Manager to Enter into an Agreement with California Environmental Protection Agency to Receive a State Grant for the Milpitas Fire Department to Implement the Electronic Reporting Requirements of Hazardous Materials Business Plans for all Regulated Businesses as Required by Assembly Bill 2286 (Staff Contact: Albert Zamora, 586-3371)**

XVIII. ORDINANCES

- * 10. Waive the Second Reading and Adopt Ordinance No. 197.12 Amending the Milpitas Municipal Code to Transfer the Parks Division to the Public Works Department and the Recreation Division to the Human Resources Department (Staff Contact: Carmen Valdez, 586-3086)**
- * 11. Waive the Second Readings and Adopt Amended Sewer Ordinance No. 208.48, and Amended Stormwater and Urban Runoff Ordinance, No. 239.7 to Reflect Updated State and Federal Regulations (Staff Contact: Kathleen Phalen 586-3345)**

XIX. RESOLUTIONS

- * 12. **Adopt a Resolution Calling for the General Municipal Election on November 6, 2012 (Staff Contact: Mary Lavelle, 586-3001)**
- * 13. **Adopt a Resolution of Intention to Levy Assessment for Fiscal Year 2012-2013, Approving the Preliminary Annual Engineer's Report, and Providing for Notice of Public Hearing for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch (Staff Contact: Fernando Bravo, 586-3328)**
- * 14. **Adopt a Resolution of Intention to Levy Assessment for Fiscal Year 2012-2013, Approving the Preliminary Annual Engineer's Report, and Providing for Notice of Public Hearing for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon (Staff Contact: Fernando Bravo, 586-3328)**
- * 15. **Adopt a Resolution to Release Unclaimed Checks (Staff Contact: Dante Ong, 586-3132)**
- * 16. **Adopt a Resolution Adopting the Appropriations Limit for Fiscal Year 2012-13 (Staff Contact: Emma Karlen, 586-3145)**

XX. BIDS AND CONTRACTS

- * 17. **Approve and Authorize the City Manager to Execute an Agreement with Carollo Engineers for Well Upgrade Project for Curtis Well Pump Station, Project No. 7076 (Staff Contact: Steve Erickson, 586-3301)**
- * 18. **Approve Amendment No. 2 to the Contract with Renne Sloan for Legal Services (Staff Contact: Michael Ogaz, 586-3040)**
- * 19. **Award the Bid for City of Milpitas Parks Maintenance Service to Terracare Associates for the Annual Not-to-Exceed Amount of \$1,326,155 for the First Two Years, and the Annual Not-to-Exceed Amount of \$1,369,638 for Years Three Through Five, and Authorize the City Manager to Grant Yearly Increases Pursuant to the Contract (Staff Contact: Chris Schroeder, 586-3161)**
- * 20. **Award the Bid for Streetscape Landscape Maintenance and Repair Services to Terracare Associates for the Annual Not-to-Exceed Amount of \$125,218, and Authorize the City Manager to Grant Yearly Increases Pursuant to the Contract (Staff Contact: Chris Schroeder, 586-3161)**
- * 21. **Authorize the City Manager to Execute Amendment No. 3 to the Master Agreement with the Santa Clara Valley Transportation Authority Relating to the Silicon Valley Rapid Transit Program Berryessa Extension Project (Project GT 1063) (Staff Contact: Kathleen Phalen, 586-3345)**
- * 22. **Authorize the City Manager to Execute Amendment No. 3 to the Agreement with Muni Services LLC for Financial Consultant Services (Staff Contact: Emma Karlen, 586-3145)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JUNE 19, 2012 AT 7:00 P.M.**

NO COUNCIL MEETINGS IN JULY

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, 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, on website, and at 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 and one Alliance for the Arts member)*
- Community Advisory Commission (alternate)*
- Emergency Preparedness Commission*
- Telecommunications Commission (alternate)*

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

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

AGENDA REPORTS

XIV. PUBLIC HEARING

1. Hold a Public Hearing on the City of Milpitas Draft 5-Year Consolidated Plan for the Community Development Block Grant Program (Staff Contact: Felix Reliford, 586-3071)

Background: The Department of Housing and Urban Development (HUD) requires that each Community Development Block Grant (CDBG) entitlement city and county prepares a 5-Year Consolidated Plan which provides a general assessment and strategic plan on how CDBG funds will be spent over the next five years. Eligible activities includes housing, public services, community development/neighborhood projects, support services and programs, for the homeless population, senior citizens, disabled persons, persons effected with HIV/AIDS, single parent households, persons seeking emergency shelter and transitional housing and fair housing activities.

The preparation of the Milpitas 5-Year Consolidated Plan also provides an analysis and financial resources to address the housing and non-housing community services of those residents that require assistance in housing and a variety of public services to fit their specific needs. The Consolidated Plan links the identified needs in the community to the federal, state and local resources available to address those needs.

The Consolidated Plan was prepared with the cooperation and consultation from numerous agencies, organizations, social service providers, housing providers, non-profit groups and members of the general public. Over 50+ different entities were contacted to provide, statistical data, research, special studies/reports, ethnicity/race/population/ income/employment, information for special needs groups, housing, homelessness, and other social and economic characteristics in preparation of the plan.

Over 40 different agencies, organizations, social service providers, housing providers non-profits groups, and members of the general public were contacted to participate in three (3) public consultation meetings to receive input and feedback on the preparation of the Five-Year Consolidated Plan. Notices were provided in the Milpitas Post local newspaper, City's Cable TV and Website to inform the general public and maximize citizen participation in the process.

The 5-Year Consolidated Plan was published in the Milpitas Post for the required 30-day review and comment period from May 4- June 4, 2012. Several copies of the document were made available in the Milpitas Public Library, Milpitas City Hall and City's Web-site for public review and comments. Public Services and Housing Providers have been contacted and provide access to the Consolidated Plan on the website and have been notified in regards to the public hearing. The public hearing before the Council this evening was also published in the Milpitas Post.

Milpitas 5-Year Consolidated Plan Community Needs

The Milpitas 5-Year Consolidated Plan identifies the following Community Needs:

1. Services to address the needs of the frail elderly or persons with disabilities
2. Legal services for low income people and seniors
3. Continue to support battered women shelters and programs
4. Information and counseling on landlord tenant issues and fair housing activities
5. Counseling, shelter services, employment training and general assistance to extremely low income or homeless population
6. Services to address youths at-risk, youth counseling, crisis and gang intervention, and case management.
7. Services to prevent and treat substance abuse
8. Recreation assistance for low income youths and seniors
9. Provide emergency food for very low families and households

10. Continue to provide services, programs, and activities to a variety of minority groups and people or low and moderate incomes.
11. Continue to provide support housing services to extremely low, very low and low income households and families.
12. Continue to provide funding to assist person with HIV/AIDS
13. Continue to support programs and activities to prevent and address homelessness.

Milpitas 5-Year Consolidated Plan for Housing Needs

The Milpitas 5-Year Consolidated Plan identified the following for Housing Needs:

1. Continue involvement with the rehabilitation program, including CDBG loans for the Single-Family Rehabilitation Loan Program for home repairs and improvements to low income households.
2. Continue to fund a program, which utilizes CDBG Non-Public Service funds to assist elderly and disabled individuals retrofit their homes to render them more accessible and suitable for their special needs.
3. Continue to provide non-CDBG funds to provide a variety of housing opportunities for Milpitas residents.
4. Continue its enforcement of the Neighborhood Beautification Ordinance and periodically review existing codes, ordinances, and use permit conditions to determine their current applicability to neighborhood and community preservation issues. Milpitas will continue its concentrated rehabilitation and code compliance program for residential planning areas.
5. Continue to work towards implementation of the Midtown Specific Plan, which will provide a range for the potential of 3,000-5,000 units (at maximum built-out), which will include a wide variety and types of housing units that will be affordable to various segments of the population.
6. Continue to work towards the implementation of the Transit Area Specific Plan with a potential range of 6,000-8,000 (at maximum built-out) units along with general plan and zoning changes to accommodate high- density residential and mixed-use developments, open space, and pedestrian-friendly design guidelines and amenities built into future residential projects.
7. Identify vacant or underutilized land to attempt to meet ABAG's Regional Fair- Share Housing Allocation of 2,487 units for all income levels.
8. Continue to identify, encourage, and publicize private activities and programs, which will create affordable housing opportunities, including rental and home ownership, and continue to work with non-profit community groups to create affordable housing.
9. Continue to support private participation in rental subsidy programs such as the existing Housing Authority County of Santa Clara Section 8 and Supportive Programs.
10. Continue to support creative programs such as the Santa Clara County Housing Trust Fund to provide a variety of affordable housing to first-time homebuyers, large family households and homeless population.
11. Continue to implement the Milpitas General Plan Housing Element in which policies include 20% affordable housing in all residential developments.
12. Consider future General Plan Amendments, Disposition/Development Agreements and Policies to provide financial support for affordable housing.

The Draft 5-Year Consolidated Plan document was distributed to the Council at the time 30-day review and comment period. Upon completion of the public review period and public hearing this evening, staff will incorporate any changes or revisions, requested by the public and council into the document and forward it to HUD for review and approval.

Fiscal Impact: Funding for the programs, services and housing activities will be provided with CDBG, Private Development Agreements, Santa Clara Co. Housing Trust, Milpitas Housing Authority and Federal and State Grants.

Recommendations:

1. Open the public hearing for public comments; then, move to close the public hearing.
2. Adopt the Milpitas 5-Year Consolidated Plan for CDBG, subject to any revisions, changes or modifications as directed by City Council.

XV. UNFINISHED BUSINESS

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

Background: From April 16 through May 20, 2012, the Bay Area Air Quality Management District (BAAQMD) received seventeen odor complaints originating in Milpitas. Eight complaints identified a garbage-related odor, two identified a sewage-related odor and seven did not identify an odor source. As of the last Council update, the City's odor reporting website has received thirteen 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, as are the best management practices being implemented by Allied Waste at the Newby Island facility.

Fiscal Impact: None.

Recommendation: Receive the May 2012 odor report.

XVI. REPORTS OF OFFICERS

- 3. Consider Mayor's Recommendations for Appointments of Alternates to Milpitas Representatives on the Milpitas Oversight Board (Contact: Mayor Esteves, 586-3029)**

Background: AB1X 26 requires the appointment of representatives to the oversight board overseeing the wind down of the former Milpitas Redevelopment Agency.

Mayor Esteves recommends that additional alternates be appointed to current Milpitas representatives on the Milpitas Oversight Board. Currently, Jane Corpus Takahashi is the alternate for Oversight Board Member Emma Karlen. There is currently no alternate appointed for Oversight Board Member Armando Gomez.

It is recommended that Milpitas staff member Felix Reliford be appointed as an additional alternate for Emma Karlen and to also appoint Mr. Reliford or, if desired a Councilmember, as the alternate to Board Member Gomez.

Recommendation: Consider the recommendation from Mayor Esteves, and move to approve staff Felix Reliford, or any other Councilmember, as alternate to the Milpitas Oversight Board.

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

Background: Mayor Esteves recommends Commissioners for reappointment, as follows:

Community Advisory Commission: reappoint Jenifer Lind to a term to expire in January 2016.

Emergency Preparedness Commission: reappoint Arlyn Swiger to a term to expire in June 2015.

Recommendation: Consider the recommendations from Mayor Esteves, and move to approve re-appointment of Jenifer Lind to CAC and Arlyn Swiger to EPC.

* **5. Receive Terrace Gardens, Inc. Annual Financial Report for Fiscal Years 2010-2011 (Contact: Councilmember Giordano, 586-3032)**

Background: The Annual Financial Report for Terrace Gardens, Inc. is submitted to the City Council for review (copy included in the agenda packet). The financial statements report the financial position and activities for Fiscal Years 2010-2011 ended on December 31, 2011. The independent auditor's report concludes that the financial statements fairly present the financial position of Terrace Gardens, Inc. in conformity with generally accepted accounting principles.

Fiscal Impact: None.

Recommendation: Note receipt of the financial report on Terrace Gardens, Inc. and direct the report be filed in the City Clerk's office.

XVII. NEW BUSINESS

6. Receive an Update on Santa Clara County Express Lane Program (Staff Contact: Steve Chan, 586-3324)

Background: The Silicon Valley Express Lanes Program was undertaken by the Santa Clara Valley Transportation Authority (VTA) to provide congestion relief through more effective use of existing roadways and to provide the VTA with a new funding stream for transportation improvements. SR237 Express Lanes, the first one solely in Santa Clara County, opened for toll operation on March 20, 2012. VTA staff has monitored the Express Lane facility operation since its opening and will present an update of the Express Lane Program at the Council meeting.

Fiscal Impact: None.

Recommendation: Receive an update from Santa Clara VTA staff on the status of the Santa Clara County Express Lane Program.

7. Review Proposal from Magnolia Charter Academy Public School to Lease the City's Sal Cracolice Building (Staff Contact: Felix Reliford, 586-3071)

Background: Staff reviewed a request from the Magnolia Charter Academy Public School to temporarily lease the City's Sal Cracolice Building and adjacent modulars, located at 540 So. Abel Street. The charter school specializes in teaching science, math and technology to 6th, 7th and 8th graders. There are currently eleven Magnolia Charter Schools in California, including one that recently opened in Santa Clara. The school administration noted that approximately 100 Milpitas parents have submitted applications for their children to attend the school, which is sought for an opening in August 2012. School officials indicated their desire to lease the building for 2-3 years until a permanent site in Milpitas can be found.

On May 22, the Council's Land Use and Transportation Subcommittee reviewed and approved the proposal, then directed staff to forward their recommendation to the full City Council. The Subcommittee also directed staff to conduct community outreach meetings with residents of Luna Terra, Terra Serena (homeowner associations south and across the street from Milpitas Post Office) and Starlite Pines Homeowners Association. Staff contacted all three homeowner associations and requested to be placed on their next homeowner association meeting agendas.

The charter school would be required to seek approval from Milpitas Unified School District (MUSD) to operate at the site. If the MUSD does not grant permission, then the school would not be under the school special district designation regulated by the state and would be subject to the City zoning and land use requirements. A conditional use permit would be required by the City's zoning ordinance.

Representatives from Magnolia Charter Academy School are scheduled to provide a presentation to the City Council and homeowner associations at their meetings and plan to answer questions regarding the school proposal.

The City is in the process of having an appraisal assessment of the property (lease and for-sale) to determine the appropriate costs, if the building is leased out. Included in the Council's agenda packet is a copy of the brochure of the school and additional background information.

Fiscal Impact: None. The leasing of the school would potentially provide revenue for the City, the exact amount of which would be determined upon completion of the appraisal.

Recommendations: Authorize the City Manager to execute a 3-year lease agreement for the use of the Sal Cracolice Building for the Magnolia Charter Academy Public School.

8. Receive Financial Status Report for the Nine Months Ended March 31, 2012 (Staff Contact: Emma Karlen, 586-3145)

Background: In FY 11-12, staff projected the total General Fund revenue to be \$51.4 million. Based on the revenues received to date, new information and revenue trend analysis, staff revised the General Fund revenue to be approximately \$2.4 million above budget projection. The total revised revenue is estimated to be \$53.8 million. The primary reasons for the increase are improved sales tax revenue, TOT revenue and building permits and inspection fees. Charges for services also exceed budget due to increased private job development fees. The only major revenue below budget is property tax revenue. Information provided by the County Tax Collector indicated City's property tax revenue continued to be impacted by the slow housing market and property tax appeals. Revised property tax revenue for FY 11-12 will be below budget by about \$920,000.

Sales tax revenue has been revised to \$18.6 million, approximately \$1.76 million above budget. The increase is due to increased sales tax revenue generated from the auto sales and retail economic segments. Transient occupancy tax revenue ("TOT") is projected to be \$602,000 above budget. The increase in TOT revenue indicates that local business activities have picked up, especially in the high tech industry.

Permit and inspection fees generated by the Building and Fire departments have been revised to \$3.08 million and \$967,000 respectively, and are projected to be \$449,000 and \$80,000 above budget. The primary reason for the increase is due to a renewed interest in residential developments. Both Building and Fire departments collected fees for plan check review and inspection services.

The General Fund expenditures at the end of March were at 71.2% of the budget appropriations, and appear to be under budget. However, staff projected that savings, if any, will not be significant in FY 11-12 because of the Redevelopment Agency dissolution. The General Fund has to absorb the direct personnel costs, services and supplies, and other administrative and overhead costs (in the form of operating transfer) that were charged to the former Redevelopment Agency.

To close out Fiscal Year 11-12, staff projected the use of approximately \$4.7 million General Fund reserve would be required. The use of \$3 million undesignated General Fund reserve was authorized by the City Council in February 2012 to offset the loss of RDA funding and the use of not to exceed \$2 million PERS Rate Stabilization reserve was authorized as part of the FY 11-12 budget plan.

Both the water service charges and sewer service charges are on target with the budget and no revision is necessary. Water consumption is slightly above projection.

Fiscal Impact: None.

Recommendation: Receive financial status report for the nine months ended March 31, 2012.

- * 9. **Authorize the City Manager to Enter into an Agreement with California Environmental Protection Agency to Receive a State Grant for the Milpitas Fire Department to Implement the Electronic Reporting Requirements of Hazardous Materials Business Plans for all Regulated Businesses as Required by Assembly Bill 2286 (Staff Contact: Albert Zamora, 586-3371)**

Background: Per AB 2286 reporting requirements, all regulated businesses will be expected to submit Unified Program Consolidated Forms (UPCFs) information electronically via the California Environmental Reporting System (CERS) by January 1, 2013. Under AB 2286, the Milpitas Fire Department and the Certified Unified Program Agencies (CUPA) will exchange data, identified under Title 27 of the California Code of Regulations, with CERS. The monies received from the grant will support the required upgrades in computer software and hardware to be in compliance with AB 2286. The City of Milpitas will receive full reimbursement of funds from the California Environmental Protection Agency upon submission of all applicable invoices not to exceed \$20,000.

Fiscal Impact: Increase the budget in the Fire Department for \$20,000 for the California Environmental Protection Agency State Grant Funds.

Recommendations:

1. Authorize the City Manager (or his designated representative) to enter into an agreement with the California Environmental Protection Agency to receive a State Grant for the Milpitas Fire Department to implement electronic reporting requirements, as required by Assembly Bill 2286.
2. Approve a budget appropriation for \$20,000 to the Fire Department operating budget.

XVIII. ORDINANCES

- * 10. **Waive the Second Reading and Adopt Ordinance No. 197.12 Amending the Milpitas Municipal Code to Transfer the Parks Division to the Public Works Department and the Recreation Division to the Human Resources Department (Staff Contact: Carmen Valdez, 586-3086)**

Background: On May 8, 2012, the City Council introduced Ordinance No. 197.12 amending the municipal code to transfer the Parks Division to the Public Works Department and the Recreation Division to the Human Resources Department. The Ordinance is now ready for adoption.

Fiscal Impact: None.

Recommendation: Waive the second reading and adopt Ordinance No. 197.12.

- * 11. **Waive the Second Readings and Adopt Amended Sewer Ordinance No. 208.48, and Amended Stormwater and Urban Runoff Ordinance, No. 239.7 to Reflect Updated State and Federal Regulations (Staff Contact: Kathleen Phalen 586-3345)**

Background: On May 15, 2012, the City Council introduced Ordinances No. 208.48 and No. 239.7 to amend the sewer ordinance and the stormwater and urban runoff ordinance to reflect updated State and Federal regulations. Revisions to the sewer ordinance are limited to the sewer use section which regulates industrial discharges. Revisions to the stormwater ordinance remove

specific references to requirements of the previous State stormwater permit that are no longer in effect. Minor changes to correct grammar were made to the sewer ordinance since first reading.

Fiscal Impact: None.

Recommendations:

1. Waive the second reading and adopt Ordinance No. 208.48, amending the Sewer Ordinance.
2. Waive the second reading and adopt Ordinance No. 239.7, amending the Stormwater and Urban Runoff Ordinance.

XIX. RESOLUTIONS

- * 12. **Adopt a Resolution Calling for the General Municipal Election on November 6, 2012 (Staff Contact: Mary Lavelle, 586-3001)**

Background: Milpitas Municipal Code Title I, Chapter 200 Section 1.00 provides for the municipal election to be held on the same day as the statewide General Election. The statewide General Election (Gubernatorial Election) is scheduled this year on November 6. A Resolution was drafted calling for the municipal election on Tuesday, November 6, 2012 for the purpose of electing one Mayor and two members of the City Council. The resolution also requests consolidation of the Milpitas Municipal Election with the statewide General Election and requests provision of services from the Santa Clara County Registrar of Voters.

In June 2006, the City Council adopted Resolution No. 7597 relating to Candidates' Statements of Qualification printed in the sample ballot for Municipal Elections. This resolution sets forth the total number of words permitted in a Candidate's Statement (200) and that the candidate is responsible for the cost of printing and mailing the statement as well as the translation into minority languages. Please note that the Federal Voting Rights Act requirements as applied to Santa Clara County mandate that election materials be made available in four minority languages - Chinese, Spanish, Tagalog and Vietnamese - in addition to English, since 2002.

Fiscal Impact: None. Funds are budgeted in the City Clerk's FY 2012-13 budget for the election. The County of Santa Clara will invoice the City after the election for all related costs.

Recommendation: Adopt a resolution calling a General Municipal Election on November 6, 2012, requesting consolidation with the statewide election and requesting election services from the Santa Clara County Registrar of Voters.

- * 13. **Adopt a Resolution of Intention to Levy Assessment for Fiscal Year 2012-13, Approving the Preliminary Annual Engineer's Report, and Providing for Notice of Public Hearing for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch (Staff Contact: Fernando Bravo, 586-3328)**

Background: Landscaping and Lighting Maintenance Assessment District (LLMD) No. 95-1 provides for servicing and maintaining the public landscaping and additional lighting along North McCarthy Boulevard and the Ranch Drive Gateway Improvements. On May 1, 2012, the City Council directed the City Engineer to prepare an annual engineer's report for LLMD 95-1. It is now necessary for the Council to preliminarily approve the Annual Report and set the date of June 19, 2012 for a public hearing. Upon conclusion of the public hearing, and subsequent Council approval of the Annual Engineer's Report, the assessment for the work will be added to the tax bills for those property owners included within the boundaries of LLMD No. 95-1.

Fiscal Impact: None.

Recommendation: Adopt a resolution preliminarily approving the Annual Engineer's Report and providing for the notice of public hearing on June 19, 2012 for the LLMD No. 95-1.

- * 14. **Adopt a Resolution of Intention to Levy Assessment for Fiscal Year 2012-13, Approving the Preliminary Annual Engineer's Report, and Providing for Notice of Public Hearing for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon (Staff Contact: Fernando Bravo, 586-3328)**

Background: Landscaping and Lighting Maintenance Assessment District (LLMD) No. 98-1, provides for servicing and maintaining the public landscaping along Sinclair Frontage Road, Los Coches Street and Berryessa Creeks abutting the Sinclair Horizon residential subdivision. On May 1, 2012, the City Council directed the City Engineer to prepare an annual engineer's report for LLMD 98-1. It is now necessary for the Council to preliminarily approve the Annual Report and set the date of June 19, 2012, for a public hearing. Upon conclusion of the public hearing, and subsequent Council approval of the Annual Engineer's Report, the assessment for the work will be added to the tax bills for those property owners included within the boundaries of LLMD No. 98-1.

Fiscal Impact: None.

Recommendation: Adopt a resolution preliminarily approving the Annual Engineer's Report and providing for the notice of public hearing on June 19, 2012 for the LLMD No. 98-1.

- * 15. **Adopt a Resolution to Release Unclaimed Checks (Staff Contact: Dante Ong, 586-3132)**

Background: According to City of Milpitas' Standard Operating Procedure No. 26-1, which conforms to California Government Code Section 50055, unclaimed checks of less than \$15, or any amount if the depositor's name is unknown, which remain unclaimed for more than one year may be transferred to the General Fund by authorization of the City Council. A list of unclaimed checks of less than \$15, which remain unclaimed for more than one year, is included in the Council's agenda packet.

Fiscal Impact: Increase the General Fund revenues by \$218.76.

Recommendation: Adopt a resolution to transfer a total of \$218.76 unclaimed checks, per the list of checks generated by the City's Finance Department to the General Fund, in accordance with Standard Operating Procedure No. 26-1.

- * 16. **Adopt a Resolution Adopting the Appropriations Limit for Fiscal Year 2012-13 (Staff Contact: Emma Karlen, 586-3145)**

Background: Article XIII B of the California State Constitution requires that any state and local governmental agencies that receive tax revenue to adopt by resolution, an Appropriations Limit (also known as "Gann Limit") for the following fiscal year. If an agency receives more tax revenue than the Appropriations Limit, the excess revenue must be returned to the taxpayers through a tax reduction or refund within the next two years. Alternatively, the agency can increase its Appropriations Limit through voters' approval. The annual Appropriations Limit shall not exceed the appropriations limit of the City for the prior year adjusted for change in the cost of living and population. The appropriations limit for Fiscal Year 2012-13 has been calculated as \$72,575,600 using the population growth of the County and the California Per Capita Personal Income change. The projected tax revenue for the City in FY 2012-13 is approximately \$48.2 million, well below the Appropriations Limit. The documentation used in determining the appropriations limit has been made available to the public for a period of more than 15 days prior to City Council consideration of this resolution.

Fiscal Impact: None.

Recommendation: Adopt a resolution adopting the appropriations limit for the Fiscal Year 2012-13.

XX. BIDS AND CONTRACTS

- * 17. **Approve and Authorize the City Manager to Execute an Agreement with Carollo Engineers for Well Upgrade Project for Curtis Well Pump Station, Project No. 7076 (Staff Contact: Steve Erickson, 586-3301)**

Background: The Well Upgrade Project No. 7076 is included in the adopted Capital Improvement Program. Curtis Well was installed in Curtis East Park in 2003. This next project phase completes design of the well pump building, well pump and controls, and an emergency power generation system for Curtis Well. This well is part of the City's municipal water system. A future project phase will connect the well to the distribution system so that it can supply potable water in the event of an emergency that disables the City's regular wholesale supply.

Carollo Engineers was selected through the City's consultant selection process to provide the design services for the project. Staff negotiated a scope and fee for the design services not to exceed \$130,437, which is considered reasonable for the work.

Fiscal Impact: None. There are sufficient funds in the project budget for the consultant agreement.

Recommendation: Approve and authorize the City Manager to execute an agreement with Carollo Engineers in the amount of \$130,437 for Curtis Well Pump Station, Project No. 7076.

- * 18. **Approve Amendment No. 2 to the Contract with Renne Sloan for Legal Services (Staff Contact: Michael Ogaz, 586-3040)**

Background: The City Attorney's office has consulted with the Renne Sloan law firm on personnel and labor matters for the past several years. The firm has provided superior advice during that period. It is requested that the firm's contract be increased by \$20,000 to continue these services and to represent the City in administrative proceedings.

Fiscal Impact: None. Funding is available in the City Manager's contingency reserve.

Recommendation: Approve Amendment No. 2 to the contract with the Renne Sloan law firm.

- * 19. **Award the Bid for City of Milpitas Parks Maintenance Service to Terracare Associates for the Annual Not-to-Exceed Amount of \$1,326,155 for the First Two Years, and the Annual Not-to-Exceed Amount of \$1,369,638 for Years Three Through Five, and Authorize the City Manager to Grant Yearly Increases Pursuant to the Contract (Staff Contact: Chris Schroeder, 586-3161)**

Background: On February 16, 2011, the City of Milpitas advertised a Request for Proposals (RFP) for Park Landscape Maintenance Services for twenty-four City parks and sports fields. Services include equipment and personnel to provide routine landscape maintenance services, pruning, trash pick-up, weed removal, turf care, plant replacements, irrigation system maintenance, and fixture and equipment repair services. Four proposals were received which were evaluated by engineering staff. Evaluation criteria included the company background, technical abilities, workforce to be used on the project, location of the workforce, its understanding of the specified work, references where similar work is currently being performed, and cost.

Staff recommends award of the parks maintenance contract to Terracare Associates because this firm's proposal offering is considered to be the most advantageous to the City. Terracare will provide an experienced maintenance staff of twelve for the park maintenance services, and will establish an office and maintenance yard within the City of Milpitas to allow for prompt service and attention to emergencies. Terracare has been in business for over 40 years, and currently

provides landscape management services for the Cities of Hercules, Brentwood, Oakley, and Roseville.

The annual base price for the contract is \$1,326,155.00 for the first two years and \$1,369,638.00 for years three through five. The proposal includes fair pricing for the sale of various pieces of City park maintenance equipment that will no longer be needed. By combining and reorganization of maintenance activities, this contract will provide the cost-savings in park maintenance services required by the adopted fiscal year 2012-13 city budget. The contract for these services is for one year with four one-year options for renewal. Renewal years contain a compensation adjustment clause based on the Consumer Price Index for the San Francisco-Oakland-San Jose, CA Census region. Staff recommends City Council authorize the City Manager to grant yearly increases pursuant to the contract. Copies of the entire contract to be awarded will be available for review at the City Clerk's office.

Fiscal Impact: None. Funds are available from the Public Works Operating Budget for this service for fiscal year 2012-13.

Recommendations:

1. Award the bid for City of Milpitas Parks Maintenance Service to Terracare Associates for the annual not-to-exceed amount of \$1,326,155 for the first two years, and the annual not-to-exceed amount of \$1,369,638 for years three through five.
2. Authorize the City Manager to grant yearly increases pursuant to the contract without further City Council action.

*** 20. Award the Bid for Streetscape Landscape Maintenance and Repair Services to Terracare Associates for the Annual Not-to-Exceed Amount of \$125,218, and Authorize the City Manager to Grant Yearly Increases Pursuant to the Contract (Staff Contact: Chris Schroeder, 586-3161)**

Background: On May 3, 2012, staff advertised a Request for Proposals (RFP) for Streetscape Landscape Maintenance and Repair Services, including providing all aspects of landscape and irrigation system maintenance for the City's landscaped streetscapes and medians, and rights of way. Work includes providing related repair services; weed control; tree, shrub, and groundcover pruning; fertilizing and spraying; turf care; and plant replacement. Four proposals were submitted to the City and were evaluated by engineering staff. Evaluation criteria included the company background, technical abilities and workforce, their understanding of the specified work, references where similar work is currently being performed, and cost.

The recommendation for award to Terracare is based on the evaluators' determination that Terracare's offering is the most advantageous to the City. The annual base price for the proposal is not to exceed \$125,218. This contract will provide the cost savings in streetscape landscape maintenance services required by the adopted fiscal year 2012-13 budget.

The contract for these services is for two years with three one-year options for renewal. Renewal years contain a compensation adjustment clause based on the Consumer Price Index for the San Francisco-Oakland-San Jose, CA Census region. Staff recommends City Council authorize the City Manager to grant yearly increases pursuant to the contract. Copies of the entire contract to be awarded will be available for review at the City Clerk's office.

Fiscal Impact: None. Funds are available from the Public Works Operating Budget for this service for fiscal year 2012-13.

Recommendations:

1. Award the bid for Streetscape Landscape Maintenance and repair Services to Terracare Associates for the annual not-to-exceed amount of \$125,218.
2. Authorize the City Manager to grant yearly increases pursuant to the contract without further City Council action.

- * 21. **Authorize the City Manager to Execute Amendment No. 3 to the Master Agreement with the Santa Clara Valley Transportation Authority Relating to the Silicon Valley Rapid Transit Program Berryessa Extension Project (Project GT 1063) (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The Santa Clara Valley Transportation Authority's (VTA) BART extension, known as the Silicon Valley Berryessa Extension (SVBX) Project, affects several City streets and underground utilities. On September 10, 2010, VTA and the City entered into a Master Agreement to create a framework for design and construction, and address reimbursement for coordination-related support provided by the City. Amendment No. 1 included a work plan which described the City support efforts and estimated costs through June 30, 2012. City expenses are charged against the two funding deposits of \$700,000 and \$790,000 already provided by VTA. The Project continues to require City coordination as the first utility relocations are underway and more are being designed.

The proposed Amendment No.3 is a no-cost extension of the term of the work plan efforts for three months. In August, VTA and City staff will recommend extending the agreement work plan for a one-year period, but need additional time to identify the level of effort to be provided to VTA by the City. Staff reviewed the City charges to date, estimated the charges through June 30, and has determined that the remaining available funds deposited by VTA are sufficient to cover three additional months of City staff support. Amendment No.3 will serve as a bridging amendment to cover the period between June 30 and the August approval.

Fiscal Impact: None. Costs are reimbursable by the VTA in accordance with the Master Agreement.

Recommendation: Authorize the City Manager to execute Amendment No.3 to the Master Agreement with the Santa Clara Valley Transportation Authority Relating to the Silicon Valley Rapid Transit Program Berryessa Extension Project.

- * 22. **Authorize the City Manager to Execute Amendment No. 3 to the Agreement with Muni Services LLC for Financial Consultant Services (Staff Contact: Emma Karlen, 586-3145)**

Background: The City entered into an agreement with MuniServices LLC (formerly MBIA MuniServices Company) for financial consultant services in June 2003. The current contract was renewed twice, once in June 2006 and again in June 2009, and is due to expire on June 30, 2012. MuniServices LLC proposes to continue providing the same services, which include quarterly sales tax analysis and reporting, sales tax audits, and property tax audits by extending the contract. All the other contract terms will remain unchanged. The fee structure is that the City will pay for the quarterly sales tax analysis and reporting at \$1,370.39 per quarter. Payments will be adjusted annually at the rate of 4% increase or the Consumer Price Index, whichever is higher. All other audit services are compensated from a percentage of the revenues recovered.

In addition to extending the contract for three years, staff recommends amending the scope of services to delete any references to Redevelopment Agency tax increment audit or any other related activities pertaining to the former Redevelopment Agency. The Agency has been dissolved pursuant to AB 26, any new contract or contract amendment will most likely not be approved by the Oversight Board. MuniServices LLC has provided valuable services and information to the City in sales tax analysis and reporting. The firm's sales tax audits has assisted the City to recover more than \$2 million to date since 2003. Staff recommends approval of the contract amendment.

Fiscal Impact: None. Service fees will be funded by the revenues recovered through audit.

Recommendation: Authorize the City Manager to execute Amendment No. 3 to the agreement with MuniServices LLC for financial consultant services.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JUNE 19, 2012 AT 7:00 P.M.**

NO COUNCIL MEETINGS IN JULY