



**MILPITAS CITY COUNCIL MEETING AGENDA
TUESDAY, AUGUST 7, 2012**

**455 EAST CALAVERAS BLVD, MILPITAS, CA
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**
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Pursuant to Government Code Section 54957
Continuation of performance 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 Gomez)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – June 19 and July 25, 2012**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR for August 2012**
- VIII. PRESENTATION – Proclaim World Breastfeeding Awareness Month – August 2012**
- 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 HEARINGS**
 - 1. Hold Public Hearing to Introduce Ordinance No. 38.805 for Zoning Amendment No. ZA12-0002; and Adopt Resolution Approving General Plan Amendment No. GP12-0001, Specific Plan Amendment No. ST12-0001, and Conditional Use Permit No. UP12-0013 and Adopting**

Negative Declaration (EA12-0002) for the South Bay Tech Center, located at 1603-1787 South Main Street (Staff Contact: Cindy Hom, 586-3284)

- 2. Hold Public Hearing and Adopt a Resolution Confirming Weed Abatement Assessments to be Entered on Tax Roll (Staff Contact: Albert C. Zamora, 586-3371)**

XV. UNFINISHED BUSINESS

- 3. Consider the Santa Clara Valley Water District's Request to Adopt a Resolution Supporting the Clean Water and Natural Flood Protection Plan and Supporting the Water District's Placement of the Plan and Special Tax on November 6, 2012 Ballot (Staff Contact: Kathleen Phalen, 586-3345)**
- * 4. Receive the June-July 2012 Odor Control Report (Staff Contact: Kathleen Phalen, 586-3345)**

XVI. REPORTS OF OFFICERS AND COMMISSION

- * 5. Consider Mayor's Recommendations for Appointments and Re-appointments to Six Milpitas Commissions and One Board (Contact: Mayor Esteves, 586-3029)**
- 6. Request of Councilmember Giordano for Update Report on the Fire and Police Departments' Request for Proposals Process (Staff Contact: Brian Sturdivant, 586-2811)**
- 7. Request of Councilmember Giordano to the Mayor to Form an Ad Hoc Task Force to Review the Sign Ordinance (Contact: Councilmember Giordano, 586-3032)**
- 8. Request for Council Consideration of Support for a Constitutional Amendment (Contact: Vice Mayor McHugh, 586-3023)**

Library Advisory Commission

- * 9. Move to Accept Donation to Milpitas Public Library and to Approve the Spending Plan from the Library Advisory Commission (Staff Contact: Sheldon Ah Sing, 586-3278)**

XVII. NEW BUSINESS

- * 10. Approve Request from the Milpitas Rotary Club for a Waiver of City Fees for Family Carnival (Staff Contact: Cindy Hom, 586-3284)**
- * 11. Authorize the Continued Contract for a Temporary Building Inspector (Staff Contact: Keyvan Irannejad, 586-3244)**
- * 12. Receive the City of Milpitas Investment Portfolio Status Report for the Quarter Ended June 30, 2012 (Staff Contact: Emma Karlen, 586-3145)**
- * 13. Approve Request for a Fee Waiver for Community Center Rental by the Milpitas Police Activities League for a Fundraising Event to Benefit Football and Cheer Programs (Staff Contact: Jaime Chew, 586-3234)**
- * 14. Receive Report on the Sale of Two 750 Horsepower Surplus Diesel Engines (Staff Contact: Chris Schroeder, 586-3161)**

XVIII. RESOLUTIONS

- * 15. **Adopt a Resolution Granting Initial Acceptance of, and Reducing Performance Bond for, Fire Station Improvements of Re-plumbing Fire Stations No. 2 and No. 3, Project No. 3403 (Staff Contact: Steve Erickson, 586-3301)**
- * 16. **Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond, Authorize the City Manager to Approve a Balancing Change Order, and Approve a Budget Appropriation for the South Milpitas Boulevard Water Line Replacement and Los Coches Valve Replacement, Project No. 7098 (Staff Contact: Steve Erickson, 586-3301)**
- * 17. **Adopt a Resolution of the City of Milpitas Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 586-3145)**

XIX. BIDS AND CONTRACTS

- * 18. **Authorize the City Manager to Execute a Three-Year Lease Agreement between Magnolia Charter Academy Public School and the City of Milpitas for use of the Sal Cracolice Building (Staff Contact: Felix Reliford, 586-3071)**
- * 19. **Authorize Execution of Permittee Agreement, a Stormwater Management Facilities Operation Maintenance Agreement, and Approve Improvement Plans No. 2-1148, Project No. 2555 (Staff Contact: Fernando Bravo, 586-3328)**
- * 20. **Approve a Budget Appropriation from the Solid Waste Fund Reserve and Authorize a Temporary Student Intern Position in the Department of Public Works, Utility Engineering Section (Staff Contact: Kathleen Phalen, 586-3345)**
- * 21. **Authorize the City Manager to Execute Amendment No. 3 to the Consultant Agreement with RMC Water and Environment to Support BART Project No. 4265 and Various City Capital Projects (Staff Contact: Kathleen Phalen, 586-3345)**
- * 22. **Authorize the City Manager to Execute Amendment No. 3 to the Consultant Agreement with Schaaf & Wheeler for the Storm Drain Documentation Review for BART Project No. 4265 (Staff Contact: Kathleen Phalen, 586-3345)**
- * 23. **Authorize the City Manager to Execute a Two Year Contract Extension with an Option for Two More for Telecommunications Engineering Associates for Maintenance and Support of the Public Safety Dispatch Center Telecommunications Center System in an Amount Not-To-Exceed \$77,598 Per Year (Staff Contact: Chris Schroeder, 586-3161)**
- * 24. **Authorize the City Manager to Execute Amendment No. 7 to the Agreement with ThyssenKrupp for the Elevator Platinum Maintenance and Repair for the Annual Not-To-Exceed Amount of \$31,088.84 (Staff Contact: Chris Schroeder, 586-3161)**
- * 25. **Authorize the City Engineer to Execute an Agreement for Receipt of 2010 Measure B Vehicle Registration Fee Local Road Improvement and Repair Program Funding (Staff Contact: Steve Chan, 586-3324)**
- * 26. **Authorize the City Manager to Execute a Contract for Uniform Rental and Laundry Service by Piggybacking on the City of San Jose Contract with G&K Services for the Annual Not-To-Exceed Amount of \$24,000, and Grant Yearly Increases Pursuant to the Contract (Staff Contact: Chris Schroeder, 586-3161)**

XX. DEMAND

- * 27. **Authorize Payment of the Annual Cayenta Software Support and Maintenance Services Agreement for the Financial and Utility Billing System for the Not-To-Exceed Amount of \$123,462.75 (Staff Contact: Chris Schroeder, 586-3161)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 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, 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, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website.

All City Council agendas and related materials can be viewed online here:
www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO BECOME A CITY COMMISSIONER!

Current vacancies exist on the:

*Public Art Committee (Alliance for the Arts member)
Community Advisory Commission
Economic Development Commission (hotel representative)
Youth Advisory Commission*

Commission application forms 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 HEARINGS

1. **Hold Public Hearing to Introduce Ordinance No. 38.805 for Zoning Amendment No. ZA12-0002; and Adopt Resolution approving General Plan Amendment No. GP12-0001, Specific Plan Amendment No. ST12-0001, and Conditional Use Permit No. UP12-0013 and Adopting Negative Declaration (EA12-0002) for the South Bay Tech Center, located at 1603-1787 South Main Street (Staff Contact: Cindy Hom, 586-3284)**

Background: On June 27 2012, the Planning Commission recommended that the Council approve a land use designation change from Industrial Park to General Commercial on an 11.17 acre site with developed light industrial office buildings. The project proposal also included a conditional use permit to allow for the operations of existing industrial uses within the commercial district. A copy of the Planning Commission staff report, attachments, and meeting minutes are all included in the Council's agenda packet materials.

The purpose of the land use designation change is to provide the property owner's flexibility in filling vacancies within the center that would not be possible under the current Industrial Park zoning. The proposed General Commercial zoning would allow for the existing industrial uses to continue but also allow commercial services and retail that would complement the existing tenants and are neighborhood serving with the surrounding community.

The proposed land use change from Industrial Park to General Commercial is consistent with the goals and objectives of the Milpitas General Plan and Midtown Specific Plan in that it provides a mixed-use community that includes residential, service-oriented commercial, and industrial.

Fiscal Impact: None.

Attachments:

- A. Ordinance No. 38.805 with Exhibit 1
- B. City Council Resolution with Exhibits 1 – 3
- C. 06/27/2012 Planning Commission Staff Report
- D. 06/27/2012 Planning Commission Approved Minutes
- E. Environmental Assessment Report No. EA12-0002
- F. Project Plans

Recommendations:

1. Close the public hearing following public testimony.
2. Waive the first reading beyond the title of Ordinance No. 38.805.
3. Move to introduce Ordinance No. 38.805 to amend the zoning map.
4. Adopt a resolution approving General Plan Amendment No. GP12-0001, Specific Plan Amendment No. ST12-0001, and Conditional Use Permit No. UP12-0013 and adopting the Negative Declaration (EA12-0002).

2. **Hold Public Hearing and Adopt a Resolution Confirming Weed Abatement Assessments to be Entered on Tax Roll (Staff Contact: Albert C. Zamora, 586-3371)**

Background: On February 7, 2012, City Council adopted Resolution No. 8154 declaring noxious or dangerous weeds growing upon certain described property to be a public nuisance that must be abated by the removal of the weeds. If the public nuisance was not removed from the properties by the owner, the City contracted with the County Department of Agriculture and Environmental Management to remove the weeds and abate the nuisance. In accordance with Title V, Chapter 202, Weed Abatement, of the Milpitas Municipal Code, the County Department of Agriculture and Environmental Management filed with the City Clerk a report and assessment

list on weeds abated within the City as nuisances. The report and notice of the public hearing was posted at City Hall pursuant to Milpitas Municipal Code section V-202-9.00.

The City's ordinance provides that the City Council "shall hear the report together with any objections of the property owner liable to be assessed and make such modifications on the proposed assessment as it deems necessary."

After adoption by the City Council, the resolution will be recorded and charges thereon become a lien on the land involved to be collected in the same manner as property taxes. A copy of the assessment list and the proposed resolution confirming the weed abatement report are included in the Council's agenda packet.

Fiscal Impact: None.

Attachment: Resolution including 2012 Weed Abatement Assessment Report.

Recommendations:

1. Open the public hearing, and move to close the public hearing after any testimony.
2. Adopt a resolution confirming assessments on tax bills for weed abatement in 2012.

XV. UNFINISHED BUSINESS

- 3. Consider the Santa Clara Valley Water District's Request to Adopt a Resolution Supporting the Clean Water and Natural Flood Protection Plan and Supporting the Water District's Placement of the Plan and Special Tax on November 6, 2012 Ballot (Staff Contact: Kathleen Phalen, 586-3345)**

Background: At the request of the Santa Clara Valley Water District, Council continued this item from the June 19 meeting to this date to allow the Santa Clara Valley Water District to present its position on this proposal, including the current and future benefits to City residents.

Fiscal Impact: None.

Recommendation: Consider the Santa Clara Valley Water District's request to adopt a resolution supporting the District's Clean Water and Natural Flood Protection Plan and the District's placement of the plan and special tax on the November 6, 2012 ballot.

- * 4. Receive the June-July 2012 Odor Control Report (Staff Contact: Kathleen Phalen, 586-3345)**

Background: From May 21 through July 22, 2012, the Bay Area Air Quality Management District (BAAQMD) received thirty-four odor complaints originating in Milpitas. Seventeen complains identified a garbage-related odor, two identified a sewage-related odor and fifteen did not identify an odor source. As of the last Council update, the City's odor reporting website has received thirty-seven reported complaints.

Recommendation: Receive the June - July 2012 odor report.

XVI. REPORTS OF OFFICERS AND COMMISSION

- * 5. Consider Mayor's Recommendations for Appointments and Re-appointments to Six Milpitas Commissions and One Board (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends the following residents be appointed or re-appointed to Milpitas Commissions and one Board, as follows:

Bicycle Pedestrian Advisory Commission:

Re-appoint Christine Sanchez as Alternate No. 1 to a term that expires in August 2014.

Community Advisory Commission:

Appoint Thelma Batilo (current Alternate No. 2) as Alternate No. 1 to a term that expires in January 2013.

Appoint Mayvid Maclay (current Alternate No. 3) as Alternate No. 2 to a term that expires in January 2013.

Appoint Eva Ferguson (current Alternate No. 4) as Alternate No. 3 to a term that expires in January 2014.

Newly appoint Eusebio Espitia as Alternate No. 4 to a term that expires in January 2014.

Emergency Preparedness Commission:

Appoint Charlotte Torres Ronquillo (current Alternate No. 1) to a term as a voting Commissioner to a term that expires in June 2013.

Appoint Betty Jo Reutter (current Alternate No. 2) as Alternate No. 1 to a term that expires in June 2013.

Newly appoint Phong Nguyen as Alternate No. 2 to a term that expires in June 2013.

Library Advisory Commission:

Re-appoint Trinidad Aoalin to a term that will expire in June 2014.

Mobile Home Park Rental Review Board:

Re-appoint Mila Garcia to a new full term that expires in June 2015.

Re-appoint Arthur Sana as the Alternate Member to a new term that expires in June 2015.

Parks, Recreation and Cultural Resources Commission:

Re-appoint George Baltazar to a term that expires in June 2015.

Re-appoint Evelyn Ramirez as Alternate No. 1 to a term that expires in June 2014.

Telecommunications Commission:

Newly appoint Hien Nguyen as Alternate No. 2 to a term that expires in January 2014.

Recommendation: Receive Mayor's recommendations and move to approve fourteen Milpitas residents for Commission and Board appointments and re-appointments to six Commissions and one Board.

6. Request of Councilmember Giordano for Update Report on the Fire and Police Departments' Request for Proposals Process (Staff Contact: Brian Sturdivant, 586-2811)

Background: In March 2011, the City Council directed staff to continue to study outsourcing cost and develop a Request for Proposals (RFP) for Fire and Police Services.

The Milpitas Fire Department conducted preliminary inquiries regarding fire outsourcing in March of 2011. A "Letter of Solicitation" was issued March 14, 2011 to CalFire (State) and the Santa Clara County Fire District. This letter was issued to ascertain levels of interest within these organizations related to the submittal of a proposal for fire services in Milpitas. The Request for Proposal #2004 *Delivery of Fire, Emergency Medical First Response, and Related Emergency Services* was issued April 2, 2012 with an initial bid deadline date of June 1, 2012. A mandatory pre-proposal conference was held at Milpitas City Hall on May 11, 2012. Representatives from San Jose Fire and the Santa Clara County Fire District attended. Previously, on May 9, 2012, CalFire submitted a letter to the Milpitas Fire Chief that outlined why that agency would not be submitting a proposal, nor would its staff attend the pre-proposal conference on May 11. At the pre-proposal conference, it was agreed to extend the deadline submittal date by two weeks to June 15, 2012. That deadline arrived with zero Fire service proposals submitted.

Milpitas Police Department staff continues work on a Request for Proposals (RFP) for law enforcement services. The RFP will call for agencies submitting proposals to submit plans and

cost to provide comparable services currently provided by the Milpitas Police Department. The RFP is nearly complete and will be forwarded to Purchasing for review by August 17, 2012.

Fiscal Impact: None.

Recommendation: Receive the updated report on the status of requests for proposals for public safety services.

7. Request of Councilmember Giordano to the Mayor to Form an Ad Hoc Task Force to Review the Sign Ordinance (Contact: Councilmember Giordano, 586-3032)

Background: At the July 30, 2012, City Council Rules Subcommittee meeting, Councilmember Giordano made a request for the Mayor to consider forming an ad hoc task force to review the City's current municipal code (sign ordinance) regarding regulations for signs.

Recommendation: Hear report from Councilmember Giordano and direct staff accordingly.

8. Request for Council Consideration of Support for Constitutional Amendment (Contact: Vice Mayor McHugh, 586-3023)

Background: At the May 15, 2012 City Council meeting, a citizen addressed the City Council regarding the issue of support for a proposed constitutional amendment. He had requested the Council to consider supporting or adopting a possible resolution that Corporations are Not People and Money is Not Speech, in response to issues surrounding elections, campaigns, and money donations. Vice Mayor McHugh requested to place the issue on this meeting's agenda. A staff report from the City of Oakland and a draft Resolution for Council consideration are included in the agenda packet.

Recommendation: Hear report from Vice Mayor McHugh and direct staff accordingly.

Library Advisory Commission

*** 9. Move to Accept Donation to Milpitas Public Library and Approval of the Spending Plan from the Library Advisory Commission (Staff Contact: Sheldon Ah Sing, 586-3278)**

Background: In March 2012, Community Librarian Linda Arbaugh received a donation from David Hufton in the amount of \$5,000 to the Milpitas Public Library. Librarian Arbaugh accepted the donation on behalf of the Library Advisory Commission (LAC) and forwarded the matter for acceptance with a proposed spending plan to the Commission. The donor specified that the donation be used "where the need is greatest."

At its meeting on May 21, 2012, the LAC accepted the donation, approved the spending plan and directed staff to forward its recommendation to the City Council. Included in the Council's agenda packet are a copy of the LAC minutes and the proposed spending plan for upholstery expenses. Upon acceptance by the Council, the individual will be recognized by the LAC on the donor board at the Milpitas Public Library.

At the June 19, 2012, City Council meeting, there was a question regarding the obligations of the library with respect to donations. After reviewing the lease agreement with the library and the City's Library donation policy, staff concluded that the City Council can choose to accept or decline the donation and direct the library to use the donation other than where specified by the donor. Both the lease agreement with the library and the City's Library Donation Policy are included in the agenda packet for reference.

Fiscal Impact: None.

Recommendation: Accept the donation gift of \$5,000 to the Milpitas Public Library and the proposed spending plan as recommended by the Library Advisory Commission.

XVII. NEW BUSINESS

- * 10. **Approve Request from the Milpitas Rotary Club for a Waiver of City Fees for Family Carnival (Staff Contact: Cindy Hom, 586-3284)**

Background: Milpitas Rotary Club requested a waiver of \$878.77 in City fees related to the permitting of its Milpitas Rotary Family Carnival that was held on June 18 - 24, 2012 in the Walmart parking lot located at 301 Ranch Drive. The fee amount includes a \$250.00 Special Event Permit Fee, \$166.00 Electrical Permit fee and a \$460.77 Fire Prevention Inspection fee. The City Council has previously approved other waivers for special events sponsored by the Milpitas Rotary Club.

Fiscal Impact: Loss of \$878.77 in fee revenue.

Recommendation: Approve the waiver of City fees for the Milpitas Rotary Club Carnival previously held in June.

- * 11. **Authorize the Continued Contract for a Temporary Building Inspector (Staff Contact: Keyvan Irannejad, 586-3244)**

Background: Lyon Communities (developer) requested to extend the contract of a dedicated full time building inspector for Lyon Milpitas Apartments Project to provide continuous and uninterrupted inspection service for the remaining duration of construction. This service was provided to the developer since December 1, 2011, by the City of Milpitas and proved to be beneficial to both parties. It allows the City to continue to provide a high level of customer service by considerably reducing the number of re-inspections, streamlining and maintaining the construction schedule and minimizing the number of construction revisions. Existing workload does not allow the Building Department to provide a dedicated building inspector from the current staff to the project and necessitates extending the contract of a temporary inspector on an independent contractual basis at the annual cost of \$140,640. Previously, the developer paid the full cost of the inspection service for eight months, which included compensation for the dedicated building inspector and an administrative fee.

Fiscal Impact: None.

Recommendations:

1. Approve the developer's request to continue the contract for a dedicated building inspector for the Lyon Milpitas Apartments residential construction project.
 2. Approve a budget appropriation of \$70,320, less the administrative fee, into the Building and Safety Department's budget for six months.
- * 12. **Receive the City of Milpitas Investment Portfolio Status Report for the Quarter Ended June 30, 2012 (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 June 30, 2012, 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 June 30, 2012.

As of June 30, 2012, the principal cost and market value of the City's investment portfolio was \$172,571,144 and \$173,201,164 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 June 30, 2012 was 0.80%. The comparative benchmarks for the same period were 0.36% for LAIF (Local Agency Investment Fund) and 0.27% for the 12-month average yield of the 2 year Treasury Note. The weighted average maturity of the portfolio was 432 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.

The market values of the securities were provided by BNY Mellon, the safekeeping bank of the City's securities. All the securities owned by the City are held in the trust department of BNY Mellon 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 and accept investment report for the quarter ended June 30, 2012.

- * 13. **Approve Request for a Fee Waiver for Community Center Rental by the Milpitas Police Activities League for a Fundraising Event to Benefit Football and Cheer Programs (Staff Contact: Jaime Chew, 586-3234)**

Background: On Saturday, August 25, 2012, from 3 pm – 12 am, the Milpitas Knights Football and Cheer Programs plan to hold a fundraising event at the Milpitas Community Center. The intent of the fundraiser is to offset the cost of the end of the year tournament, which will be hosted by Milpitas Police Activities League (MPAL) Football. Several teams from out of the area will play in the tournament and MPAL will be responsible for providing referees, trophies and other amenities for the tournament. Cost of the referees for the tournament is estimated at approximately \$3,500. Trophies are expected to cost approximately \$800. The fundraiser will include dinner and dancing with no alcohol sales or consumption.

The fundraiser will benefit the MPAL Knights Football and Cheer. Additionally, the fundraiser will benefit the City of Milpitas in a number of ways. The football tournament is scheduled to last four days and will bring an estimated 300-500 or more players, families and friends to Milpitas from out of the area. Teams and their supporters will travel from as far as Sacramento and will almost certainly use local hotels, motels, restaurants and retail locations during their visit. This influx of visitors will aid local businesses and provide additional sales and hotel occupancy tax to the City.

Fiscal Impact: Loss of up to \$950 in fees to the general fund: \$500 deposit and \$450 room rental (9 hours x \$50 per hour room rental rate).

Recommendation: Approve the fee waiver requested by Milpitas Police Activities League for Community Center rental for a fundraising event to benefit its Football and Cheer programs.

- * 14. **Receive Report on the Sale of Two 750 Horsepower Surplus Diesel Engines (Staff Contact: Chris Schroeder, 586-3161)**

Background: On July 24, 2012, the City sold at auction two 750 horsepower surplus diesel engines leftover from the refit of the Bellew Storm Pump Station. The engines were installed in 1986 and do not meet the air quality standards to be sold in California and must therefore be sold out of state. Preliminary estimates of the fair market value of the engines were approximately \$1,500 to \$3,000 and they sold at auction to Independent Rebuild Specialist, LLC in Brighton, Colorado for \$19,200 and \$19,600 respectively. Total proceeds from the sale amount to \$38,800. This report is made in compliance with Municipal Ordinance I-2-8.03 Disposal of More Than \$5,000.

Fiscal Impact: \$38,800 will be returned to the General Fund.

Recommendation: Receive report of the sale of diesel engines from a pump station.

XVIII. RESOLUTIONS

- * 15. **Adopt a Resolution Granting Initial Acceptance of, and Reducing Performance Bond for, Fire Station Improvements of Re-plumbing Fire Stations No. 2 and No. 3, Project No. 3403 (Staff Contact: Steve Erickson, 586-3301)**

Background: City Council awarded the Fire Station Improvements Project to Environmental Systems, Inc. on February 7, 2012. The project provides for replacement of the old galvanized pipe water system with a new copper water system within Fire Stations No. 2 and No. 3. The project was successfully completed on time and under budget, so staff recommends that the City Council adopt a resolution granting initial acceptance of the project and authorize reduction of the contractor's faithful performance bond to \$11,125, which is 10% of the final contract value.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of the Fire Station Improvements, Project No. 3403, subject to a one year warranty period and reduction of the faithful performance bond to \$11,125.

- * 16. **Adopt a Resolution Granting Initial Acceptance of, and Reducing the Performance Bond, Authorize the City Manager to Approve a Balancing Change Order, and Approve a Budget Appropriation for the South Milpitas Boulevard Water Line Replacement and Los Coches Valve Replacement, Project No. 7098 (Staff Contact: Steve Erickson, 586-3301)**

Background: On May 17, 2011, the City Council authorized the City Manager to award and execute a construction contract to Preston Pipelines for construction of the South Milpitas Boulevard Water Line Replacement and Los Coches Valve Replacement, Project No. 7098. The project provided for the replacement and seismic enhancement of over 4,000 linear feet of aging and fragile water line. The replacement work was completed at night within South Milpitas Boulevard from East Calaveras Boulevard to Yosemite Drive, and included work along the Los Coches loop.

Construction of this project was extremely difficult due to the depth of the trench work and the number of unknown buried utilities, concrete obstructions, and poor soil conditions encountered. These conditions required several alignment changes and adjustment which affected the contractor's progress, and required additional materials and equipment to complete the work. Now that construction has been completed, staff recommends the approval of a balancing change order to compensate the contractor for the additional work required to complete the project. Staff negotiated a not to exceed amount for the final change order of \$110,000. The approval of a budget appropriation from the Water Fund in the amount of \$125,000 is required to cover the cost of this balancing change order and to close out the project.

Staff also 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 \$267,294.64, which is 10% of the final contract value.

Fiscal Impact: Approve a \$125,000 budget appropriation from the Water Fund into the project.

Recommendations:

1. Authorize the City Manager to approve a balancing change order for South Milpitas Boulevard Water Line Replacement and Los Coches Valve Replacement, Project No. 7098.
2. Approve a budget appropriation of \$125,000 from the Water Fund into Project No. 7098.
3. Adopt a resolution granting initial acceptance of the South Milpitas Boulevard Water Line Replacement and Los Coches Valve Replacement, Project No. 7098, subject to a one year warranty period and reduction of the faithful performance bond to \$267,294.64.

*** 17. Adopt a Resolution of the City of Milpitas Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 586-3145)**

Background: The investment laws require all local agencies to develop an annual investment policy that must be considered by the legislative body of the local agency at a public meeting. The Annual Investment Policy (the Policy) for the City of Milpitas is submitted for Council's review and approval. Finance staff continues to monitor the changes to the California Government Code in regards to investment parameters and allowable investments that may impact the City's investment policy. There are no proposed changes to the Annual Investment Policy this year. The Policy is in compliance with the provisions of California Government Code, Sections 16429.1-16429.4 and 53600-53610, the authority governing investments for municipal governments.

Fiscal Impact: None.

Recommendation: Adopt a resolution approving the Annual Investment Policy.

XIX. BIDS AND CONTRACTS

*** 18. Authorize the City Manager to Execute a Three-Year Lease Agreement between Magnolia Charter Academy Public School and the City of Milpitas for use of the Sal Cracolice Building (Staff Contact: Felix Reliford, 586-3071)**

Background: At its meeting on June 5, 2012, the City Council considered a request from Magnolia Charter Academy Public School to lease the City's Sal Cracolice facility for a period of three years for the purpose of operating a new charter school. At that time, Council supported the proposal, and directed staff to conduct several community outreach meetings with three homeowner associations in close proximity to the proposed school site, to receive community feedback. This was to be completed prior to authorizing the City Manager to execute any lease agreement.

Three homeowner associations and membership meetings were conducted by staff on the following dates:

- Luna at Terra Serena-Tuesday, June 21 at 7:00pm
- Starlite Pines-Monday, July 9 at 7:00pm
- Luna -Wednesday, August 1 at 6:00pm

In addition to the staff meetings with the homeowner associations and their membership, Magnolia Charter Academy Public School held two separate meetings at the Milpitas Public Library on:

- June 27 at 5:00pm-7:00pm
- June 30 at 10:00am-12:00pm.

In general, community feedback from the meetings was extremely positive in regards to the charter school locating at the site. The only significant issue raised was the potential for traffic generated from the project. Staff informed residents that approval for the project would require a conditional use permit from City of Milpitas Planning Commission and at that time, traffic impacts would have to be addressed. Residents would be notified of the public hearing date. Also, Magnolia Charter School agreed to reduce any potential traffic impacts by staggering the starting time for various classes during the morning hours.

Lease Agreement

Recently, the City was informed by Magnolia Charter School that, in order for the project to be feasible, the school would need to start with a minimum of 250 students (at this time, enrollment is approximately 125). Also, the school would not be able to make necessary tenant improvements to the Cracolice Building on time to start the coming school year in late August 2012. Therefore, the Charter School decided to open in August 2013, which would provide sufficient time to increase student enrollment and address the tenant improvements.

However, the charter school is still requesting the City Council approve a three-year lease agreement in order to obtain a time extension from the County Office of Education. General provisions of the lease agreement include the following:

- Lease Term-Thirty Six (36) Months
- Lease Commencement - August 1, 2013
- Base Monthly Rent: \$5,000 per month
- Escalation-Base Rental Rate shall increase two percent (2%) per year with first such increase occurring at the beginning of the thirteenth (13th) month of the term of the lease.
- Maintenance and Repair-Tenant shall be responsible for structural maintenance of the property and buildings, major mechanical system, roof, walls, playground and parking surfaces.
- Operating Expenses-Tenant at Tenant's sole cost and expense shall pay for all operating expenses, property tax and insurance.
- Utilities-Tenant at Tenant's sole cost and expense pay for all utilities.
- Renewal Option-Tenant shall have the right to renew the lease subject to agreement by both parties.
- Sublease and Assignment-Tenant shall not have the right to sublease without the Landlords consent.
- Signage-Tenant, at tenant's sole cost and expense shall be permitted to have signage, subject to applicable regulatory review and approval by the City.
- Tenant shall obtain a conditional use permit and any other applicable permits from the City prior to occupancy.
- Tenant shall meet the insurance requirements satisfactory to the City risk manager.
- Lease shall include indemnity and other standard provisions and shall be otherwise subject to approval as to form by the City Attorney.

Recommendation: Authorize the City Manager to execute a three-year lease agreement for the use of the Sal Cracolice facility for the Magnolia Charter Academy public school.

- * **19. Authorize Execution of Permittee Agreement and Stormwater Management Facilities Operation and Maintenance Agreement and Approve Improvement Plans No. 2-1148, Project No. 2555 (Staff Contact: Fernando Bravo, 586-3328)**

Background: On July 22, 2009, the City of Milpitas Planning Commission approved Resolution No. 09-036 to allow demolition and reconstruction of the existing 76 Gas Station located at 190 West Calaveras Boulevard. Applicant GAWFCO Enterprises, Inc., a California corporation,

requests to enter into a Permittee Improvement Agreement for the off-site improvements and seeks approval of the Stormwater Management Facilities Operation and Maintenance Agreement for the project. This is a condition of project approval for the on-site stormwater run-off treatment measures.

Permittee agrees that it will construct at its sole cost and expense all improvements in the improvement plans for 190 W. Calaveras Boulevard, Project No. 2555, and Improvement Plans No. 2-1148. These include removal and reconstruction of sidewalk, tree wells, ADA ramp, and damaged curb and gutter on W. Calaveras Boulevard and Serra Way frontages. Permittee agreement also allows GAWFCO to pay an in-lieu fee for the future Serra Way street improvements and undergrounding of the utilities fronting the property.

Fiscal Impact: None. All costs will be paid for by the permittee.

Recommendation:

1. Authorize execution of Permittee Agreement and a Stormwater Management Facilities Operation and Maintenance Agreement with GAWFCO Enterprises, Inc.
2. Approve Improvement Plans No. 2-1148.

*** 20. Approve a Budget Appropriation from the Solid Waste Fund Reserve and Authorize a Temporary Student Intern Position in the Department of Public Works, Utility Engineering Section (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The City of Milpitas was awarded \$18,367 from the California Department of Resources Recycling and Recovery (CalRecycle) Beverage Container Recycling Program. Staff applied for this funding as authorized by Council resolutions 7094 and 7351 to support recycling public outreach.

Staff recommends that Council appropriate this funding into the Fiscal Year 2012-13 operating budget and authorize a temporary student intern position in the Department of Public Works, Utility Engineering Section recycling program for the amount of \$13,000. The student intern will support recycling public outreach activities in accordance with the award guidelines. The remaining \$5,367 will fund recycling educational and promotional services and supplies.

Fiscal Impact: None. The proposed expenditure of \$18,367 from the Solid Waste Fund Reserve for a student intern and promotional services will be funded by appropriation of the CalRecycle award.

Recommendations:

1. Approve a budget appropriation from the Solid Waste Fund Reserve in the amount of \$18,367.
2. Authorize a temporary student intern position in the Department of Public Works, Utility Engineering Section.

*** 21. Authorize the City Manager to Execute Amendment No. 3 to the Consultant Agreement with RMC Water and Environment to Support BART Project No. 4265, and Various City Capital Projects (Staff Contact: Kathleen Phalen, 586-3345)**

Background: On August 3, 2010, the City entered into a Master Agreement with the Santa Clara Valley Transportation Authority (VTA) for reimbursement of City work on the BART Silicon Valley Berryessa Extension project. The Master Agreement also allows reimbursement of consultant costs for design review services. On March 1, 2011, Council approved a Consultant Services Agreement with RMC Water and Environment (RMC) to work on either the BART project directly or work on other capital improvement projects, thereby freeing staff to work on the BART project. On August 16, 2011, Council approved Amendment No. 1 to the agreement with RMC for a total agreement amount not to exceed \$420,068 and extended the expiration date

of June 30, 2012. On May 10, 2012, staff administratively executed Amendment No. 2 to extend the expiration date to October 31, 2012.

Staff is currently reviewing 35% level conceptual plans for several BART subprojects. It is necessary to amend the RMC agreement to provide additional funding for consultant support. As the City's water and sewer master plan consultant, RMC is well qualified to provide utility installation and relocation design review and general project engineering support. Staff recommends both increasing the agreement in the amount of \$387,048 for the additional work and extending the expiration date to October 31, 2013. This will bring the total value of the agreement to \$807,116.

Fiscal Impact: None. The Master Agreement with VTA reimburses the City for engineering expenses including third party consultant reviews.

Recommendation: Authorize the City Manager to execute Amendment No. 3 with RMC Water and Environment for \$387,048, for a total agreement amount not to exceed \$807,116, and to extend the expiration date to October 31, 2013, for engineering support for BART Project No. 4265, and various city capital projects.

- * 22. **Authorize the City Manager to Execute Amendment No. 3 to the Consultant Agreement with Schaaf & Wheeler for Storm Drain Documentation Review for BART Project No. 4265 (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The 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 a floodplain. In addition, the work requires installation and/or relocation of several City storm drain pipes.

On January 26, 2012, the City entered into a Consultant Agreement with Schaaf & Wheeler for professional engineering services for the BART extension project. On February 7, 2012, Council approved Amendment No.1 to the agreement for a total amount not to exceed \$50,000 and extended the expiration date to June 30, 2012. On May 11, 2012, staff administratively executed Amendment No.2 to extend the expiration date to December 31, 2012.

Staff is currently reviewing 35% level conceptual plans for several BART subprojects. It is necessary to amend the Schaaf & Wheeler agreement to provide additional funding for consultant support. Schaaf & Wheeler is preparing the City's Storm Drain Master Plan Update and has extensive knowledge of regional flood plain issues. Staff recommends both increasing the agreement in the amount of \$20,000 for the additional work and extending the expiration date to October 31, 2013. This will bring the total value of the agreement to \$70,000.

Fiscal Impact: None. The Master Agreement with VTA reimburses the City for engineering expenses including third party consultant reviews.

Recommendation: Authorize the City Manager to execute Amendment No. 3 to the Consultant Agreement with Schaaf & Wheeler for storm drain documentation review for the BART Project No. 4265.

- * 23. **Authorize the City Manager to Execute a Two Year Contract Extension with an Option for Two More for Telecommunications Engineering Associates for Maintenance and Support of the Public Safety Dispatch Center Telecommunications Center System in an Amount Not-To-Exceed \$77,598 Per Year (Staff Contact: Chris Schroeder, 586-3161)**

Background: Telecommunications Engineering Associates (TEA) was the manufacturer's recommended designer and installer for all telephone and radio communication systems included in the Dispatch Center remodel. TEA also worked on the Enhanced Public Safety Capital Improvement Program (CIP 3389) to upgrade those same telephone and radio communication

systems in the Dispatch Center. In 2007, the City entered a five year contract with TEA, which designed, built, and maintained the systems. The City is involved with various county wide radio interoperability projects which are still under development. During the interim period, TEA's knowledge of the design and installation of the existing public safety communication system and ability to integrate any potential new equipment makes the company the most logical choice to continue to provide ongoing maintenance and repair of the system.

The existing maintenance agreement has a five year term, from November 13, 2007 to November 13, 2012, which would be extended two years to November 13, 2014, with an option for two additional years to November 13, 2016. TEA agreed to maintain current terms, conditions and pricing for the duration of any extension. The contract is automatically annually renewable at a fixed cost of \$77,598 per year. TEA will provide 24 hour, seven day per week, on call support for the Dispatch Center communications systems. In addition, TEA will provide preventive maintenance, periodic review of system components and any necessary training of City staff.

Fiscal Impact: None. Funding for this service is available in the Police Department's operational budget.

Recommendation: Authorize the City Manager to execute a two year contract extension, with an option for two more, for Telecommunications Engineering Associates for maintenance and support for the Public Safety Dispatch Center communications system in an amount not to exceed \$77,598.00 per year.

- * 24. **Authorize the City Manager to Execute Amendment No. 7 to the Agreement with ThyssenKrupp for the Elevator Platinum Maintenance and Repair for the Annual Not-To-Exceed Amount of \$31,088.84 (Staff Contact: Chris Schroeder, 586-3161)**

Background: City Hall elevators are ThyssenKrupp brand and those in the Police/Public Works building are Dover brand. Dover was bought out by ThyssenKrupp. Technology to maintain the elevators is proprietary, solely owned by ThyssenKrupp. In September 2011, City Council entered into an annual automatically renewing Platinum Maintenance Agreement with ThyssenKrupp pursuant to MCC Section I-2-3.09 "Sole Source Procurement" which good for five years. The contract allows for annual price adjustments. This amendment increases the annual rate by \$1,033.98 from \$20,054.86 to \$21,088.84 per the quotation dated June 8, 2012. The contract also includes \$10,000 for incidental repairs and services not otherwise covered in the contract. Therefore, the total annual contract amount comes to \$31,088.84

Fiscal Impact: None. This is a programmed expense approved in the FY 2012-13 budget for Facilities Maintenance.

Recommendation: Authorize the City Manager to execute Amendment No. 7 to the Agreement with ThyssenKrupp for Elevator Platinum Maintenance and Repair for the annual not-to-exceed amount of \$31,088.84.

- * 25. **Authorize the City Engineer to Execute an Agreement for Receipt of 2010 Measure B Vehicle Registration Fee Local Road Improvement and Repair Program Funding (Staff Contact: Steve Chan, 586-3324)**

Background: On November 2, 2010, Santa Clara County voters enacted the \$10 vehicle registration fee (VRF) on motor vehicles registered within Santa Clara County to pay for programs and projects benefiting the owners of motor vehicles paying the fee. On an annual basis, the Santa Clara Valley Transportation Authority disburses these VRF funds to member agencies upon execution of a funding agreement and submittal of the initial report.

The initial FY 2012-13 VRF fund disbursement to the City is \$346,000. As required by the funding agreement, staff will certify that that City will make a Good Faith Effort to maintain its annual level of expenditures on VRF eligible activities equivalent to its FY 2010-11 base year

expenditures; i.e., certify that the City will use these funds to add to rather than replace its funding for local road improvements and repairs.

Fiscal Impact: None.

Recommendation: Authorize the City Engineer to execute the funding agreement for Vehicle Registration Fee Local Road Improvements and repairs.

- * 26. **Authorize the City Manager to Execute a Contract for Uniform Rental and Laundry Service by Piggybacking on the City of San Jose Contract with G&K Services for the Annual Not-To-Exceed Amount of \$24,000, and Grant Yearly Increases Pursuant to the Contract (Staff Contact: Chris Schroeder, 586-3161)**

Background: On March 5, 2012, the City of San Jose went out to bid for uniform rental and laundry service, and a contract was awarded to G&K Services. A comprehensive cost analysis was conducted comparing items and quantities ordered from the previous contractor AmeriPride and the new contractor G&K Services. Shirts and pants listed are representative examples of the possible savings by piggybacking the G&K contract.

<u>Per Week</u>	<u>AmeriPride</u>	vs.	<u>G&K Services, LLC</u>
396 Shirts Synthetic	\$.25 per shirt = \$99.00		\$.16 per shirt = \$63.36
22 Shirts Cotton	\$.33 per shirt = \$7.26		\$.18 per shirt = \$3.96
396 Shirts Synthetic	\$.25 per shirt = \$99.00		\$.16 per shirt = \$63.36
22 Shirts Cotton	\$.33 per shirt = \$7.26		\$.18 per shirt = \$3.96
396 Pants Synthetic	\$.26 per pant = \$102.96		\$.16 per pant = \$63.36
22 Pants Cotton	\$.42 per pant = \$9.24		\$.18 per pant = \$3.96
Total	\$218.46		\$134.64

Savings for all four types of garments is approximately 38.4% or \$4,359 per year. In addition, the City-wide cost of rental and maintenance of floor mats was also analyzed. Five of the most popular floor mats were selected for price comparison; the results were similar, with an average savings of 47%.

A comparison of the rental and laundry costs for towels indicated similar cost savings of 24%. The City's annual cost for rental and laundry services with AmeriPride averages approximately \$26,270. The cost to the City by piggybacking on the City of San Jose contract is estimated to be \$23,210, an approximate annual savings of \$3,060.

The practice of, and requirements for, utilizing a contract bid by another agency, are defined and sanctioned under Municipal Code Section I-2-3.07 "Piggyback Procurement". The recommendation to the City Council is to piggyback on the City of San Jose contract with G&K Services, which is in full compliance with those requirements.

The contract contains an increase clause for four option years, if applicable, subject to the increase in the CPI rate defined by the Department of Labor Statistics index for the San Francisco, Oakland, and San Jose region. Requests for increase must be fully documented by the contractor and will be considered by the City if the contractor demonstrates to the satisfaction of the City that the price increase is justified. Any increase shall not exceed 3% annually.

Fiscal Impact: None. Costs for this service is included in the department's Fiscal Year 2012-13 operating budgets.

Recommendations:

1. Authorize the City Manager to enter into a separate contract with G&K Services and incorporate by reference the original solicitation, terms, conditions, and pricing for the annual not to exceed amount of \$24,000 for one year with an option for four additional years.
2. Authorize the City Manager to grant yearly increases pursuant to the contract without further City Council approval.

XX. DEMAND

- * 27. **Authorize Payment of the Annual Cayenta Software Support and Maintenance Services Agreement for the Financial and Utility Billing System for the Not-To-Exceed Amount of \$123,462.75 (Staff Contact: Chris Schroeder, 586-3161)**

Background: In 1997, the City of Milpitas entered into an agreement with Cayenta to provide a financial and utility billing system for the City of Milpitas. Cayenta is the developer of the software and there is no other source for support and maintenance of this application. In 2011, the City Council designated Cayenta as the sole source provider for Cayenta software support and maintenance, per Milpitas Municipal Code Section I-2-3.09 - Sole Source Procurement.

Fiscal Impact: None. Funds for this purchase are available in Information Services Fiscal Year 2012-13 operating budget and Finance Department Fiscal Year 2012-13 operating budget.

Recommendation: Authorize payment to Cayenta, per software support and maintenance agreement with the City, for the financial and utility billing system for the not-to-exceed amount of \$123,462.75.

XXI. ADJOURNMENT

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