



**MILPITAS CITY COUNCIL MEETING AGENDA
TUESDAY, DECEMBER 4, 2012**

**455 EAST CALAVERAS BLVD, MILPITAS, CA 95035
7:00 P.M.**

SWEARING-IN OF NEWLY ELECTED OFFICIALS

- I. CALL TO ORDER/ROLL CALL** *by Mayor Esteves*
- II. PRESENTATION OF COLORS and PLEDGE OF ALLEGIANCE** – *Boy Scouts Troop No. 92*
- III. INVOCATION** – *Senior Pastor Mark Tunney, Christ Community Church of Milpitas*
- IV. REPORT OF ELECTION RESULTS AND CERTIFYING RESOLUTION**
 - 1. Report of Municipal Election Results of November 6, 2012 and Adopt Resolution to Certify Final Results (Staff Contact: Mary Lavelle, 408-586-3001)**
 - 2. Presentation to Vice Mayor McHugh by Mayor Esteves**
- V. SWEARING-IN OF MAYOR JOSE ESTEVES**
 - *Oath administered by Honorable Dave Cortese, Santa Clara County Board of Supervisors*
- VI. SWEARING-IN OF CITY COUNCILMEMBERS**

City Councilmember Debbie Giordano, followed by remarks

 - *Oath administered by Mary Lavelle, Milpitas City Clerk*

City Councilmember Carmen Montano, followed by remarks

 - *Oath administered by Honorable Jesús Valencia, Superior Court Judge of Santa Clara County*
- VII. REMARKS FROM THE MAYOR**
- VIII. BREAK FOR RECEPTION AND REFRESHMENTS IN CITY HALL LOBBY ROTUNDA**

BUSINESS MEETING OF THE CITY COUNCIL

- IX. ROLL CALL** *of the new City Council by the City Clerk*
- X. APPROVAL OF COUNCIL MEETING MINUTES** – November 20, 2012
- XI. SCHEDULE OF MEETINGS – COUNCIL CALENDAR** for December 2012
- XII. 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.

- XIII. ANNOUNCEMENTS**
- XIV. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XV. ELECTION OF VICE MAYOR**
- XVI. APPROVAL OF AGENDA**
- XVII. CONSENT CALENDAR (*Items with asterisk**)**

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.

XVIII. UNFINISHED BUSINESS

- * **3. Receive the November 2012 Odor Control Report (Staff Contact: Kathleen Phalen, 408-586-3345)**

XIX. NEW BUSINESS

- 4. Receive the City of Milpitas Unaudited Financial Status Report for the Fiscal Year Ended June 30, 2012 (Staff Contact: Emma Karlen, 408-586-3145)**
- 5. Receive a Financial Status Report for the Three Months Ended September 30, 2012 (Staff Contact: Emma Karlen, 408-586-3145)**
- * **6. Authorize Reclassification of the Fire Department Secretary Position (Staff Contact: Brian Sturdivant, 408-586-2811)**

XX. RESOLUTIONS

- * **7. Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for January 15, 2013 to Hear Objections (Staff Contact: Albert Zamora, 408-586-3371)**
- * **8. Adopt a Resolution Reviewing and Accepting the Annual Developer Fee Disclosure Information (Staff Contact: Emma Karlen, 408-586-3145)**

XXI. CONTRACT

- * **9. Authorize the City Manager to Execute an Agreement with Peckham & McKenney for Upper Management Recruitments (Staff Contact: Carmen Valdez, 408-586-3086)**

XXII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, DECEMBER 18, 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 & retail representative)
Library Advisory Commission
Sister Cities Commission*

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall. Contact the City Clerk's office (408-586-3003) 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 (408) 586-3001 or send an e-mail 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.

AGENDA REPORTS

XVIII. UNFINISHED BUSINESS

- * 3. **Receive the November 2012 Odor Control Report (Staff Contact: Kathleen Phalen, 408-586-3345)**

Background: From October 22 through November 18, 2012, the Bay Area Air Quality Management District (BAAQMD) received twelve odor complaints originating in Milpitas. Eleven complaints identified a garbage-related odor, none identified a sewage-related odor and one did not identify an odor source. As of the last Council update, the City's odor reporting website has received twelve reported complaints.

Fiscal Impact: None.

Recommendation: Receive the November 2012 odor report.

XIX. NEW BUSINESS

- 4. **Receive the City of Milpitas Unaudited Financial Status Report for the Fiscal Year Ended June 30, 2012 (Staff Contact: Emma Karlen, 408-586-3145)**

Background: The unaudited financial report indicates that total General Fund revenue was above budget by approximately \$5.1 million. The biggest contributor for the increase came from sales tax revenue which exceeded the budget by \$2.5 million. Building permit and plan check fees were above budget by about \$614,000 due to increased development activities. Charges for services were also above budget by \$772,000 due to increased private development activities for which the Engineering and Planning departments received reimbursements for staff charges. Transient Occupancy tax revenue was above budget by about \$838,000. The only revenue sources that were below budget are property tax revenue, investment income and fines. Staff anticipated property tax revenue to remain at the FY 2010-11 level when, in fact, it decreased by about \$626,000. The primary reasons for the decrease are due to the low assessed valuation as of January 2011 which formed the basis for the FY 2011-12 property tax revenues and resolutions of many property tax appeals from prior years. Investment income and fines were relatively minor revenues of the General Fund. Investment income was below budget by \$92,000, due to lower reinvestment yields and revenues generated from fines such as vehicle fines and court fines were below budget by \$41,000.

On the expenditure side, the report shows that City departments achieved savings in the General Fund operating expenditures of 6.3% (approximately \$4.2 million), resulting in an operating surplus of \$0.7 million instead of the original estimated budget deficit of \$8.6 million. It should be noted in balancing the FY 2011-12 operating budget, the City Council approved the use of \$2 million General Fund reserve and \$3.6 million loan payment from the Redevelopment Agency (RDA). In March 2012, the City Council further authorized the use of \$3 million General Fund reserve due to the dissolution of the RDA. The undesignated General Fund reserve was at approximately \$15.8 million on June 30, 2012, which is equivalent to approximately 25.6% of the FY 12-13 budgeted expenditures. The budget policy requires the General Fund to maintain at least 15% of the budgeted expenditures.

As a result of the Redevelopment Agency (RDA) dissolution, the City was forced to lay off staff and outsource services. The City also lost its funding for capital improvement projects that ranged from \$3 million to \$6 million annually. The only positive part of the dissolution was the City, as one of the taxing entities in the Santa Clara County, received \$1.3 million tax increment distributions from the Redevelopment Property Tax Trust Fund (RPTTF). The City also received its final loan payment of \$3.6 million from the RDA which was approved by the Oversight Board and the State Department of Finance. Staff recommends assigning the tax increment distribution and loan payment totaling \$4,931,885 in FY 2011-12 for future capital improvement needs.

Future property tax distributions from the RPTTF should also be reserved for the same purpose. The accumulated reserve can be used to fund infrastructure improvement, technology equipment replacement and building improvement. The formal fiscal policy will be revised at the time of FY 2013-14 budget preparation.

Fiscal Impact: None.

Recommendation: Receive the unaudited financial status report for the Fiscal Year ended June 30, 2012 and provide direction to staff regarding the reserve of property tax distributions from the RPTTF and the last loan payment from the former RDA for capital improvement needs.

5. Receive a Financial Status Report for the Three Months Ended September 30, 2012 (Staff Contact: Emma Karlen, 408-586-3145)

Background: As of September 30, 2011, the General Fund received approximately \$8 million in total revenue. This amount is \$0.5 million more than revenue received for the same period in FY 2011-12 primarily due to increased sales tax revenue and increased permit and inspection fees.

Sales tax revenue increased by about \$320,000 from the same period last year due to increased sales generated from the apparel stores, automobiles, and office equipment economic segments. Building and Fire permits and inspection fees increased by about \$101,000 from the first quarter in FY 2012 due to increased development activities.

City departments' expenditures were generally on track with their budget. Overall expenditures were about 25.75% of the operating budget. It should be noted the expenditures for several departments exceeded 25% in the first three months. However, these spending patterns are typical due to various invoices that need to be paid at the beginning of the fiscal year instead of being spread out throughout the year. Examples of such expenditures include workers comp. insurance premium - paid from the Human Resources budget - and software license maintenance fees - paid from the Information Services Department budget. Non-departmental expenditures also exceeded 25% of the budget due to the timing difference for reimbursements from the CalPERS California Employers' Retiree Benefit Trust Fund for retiree medical benefit payments.

Fiscal Impact: None.

Recommendation: Receive a financial status report for the three months ended September 30, 2012.

*** 6. Authorize Reclassification of the Fire Department Secretary Position (Staff Contact: Brian Sturdivant, 408-586-2811)**

Background: Reclassifications of positions is periodically required to account for organizational changes, equitable workload distribution or different skill sets required to fulfill the department mission. There is currently an emerging increase in the administrative workload directed from the Fire Chief's office. This workload increase is coupled with the need for development of metrics and analytics that will allow the fire department to be more "data driven" with decision making.

Due to the pending retirement of the fire department Secretary, there is a need to reclassify the Secretary position to an Administrative Analyst I/II position. The reclassification would allow the department to address the increase in administrative workload, maintain secretarial support and provide the needed analytics that will increase efficiency within the department. This position is usually flexibly staffed to allow for professional growth and upward mobility and falls within the current personnel budget of the department.

Fiscal Impact: None. Funding is available within current fire personnel budget for FY 2012-13.

Recommendation: Approve the reclassification of the Secretary position in the Fire Department to an Administrative Analyst I/II.

XX. RESOLUTIONS

- * 7. **Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for January 15, 2013 to Hear Objections (Staff Contact: Albert Zamora, 408-586-3371)**

Background: The County of Santa Clara Department of Agriculture and Environmental Management has notified the City of Milpitas that it is commencing its Hazardous Vegetation Abatement (weed abatement) program for the forthcoming 2013 season. The County requested the City Council to adopt a resolution declaring weeds to be a public nuisance and to schedule a public hearing to hear objections to the proposed destruction and/or removal of weeds. A resolution, declaring weeds on specific properties to be a public nuisance, is adopted by the Council each year. The Council then holds a public hearing to give affected property owners an opportunity to appear before the City Council to dispute the designation of their property as a public nuisance. The public hearing will be scheduled for January 15, 2013.

Recommendations:

1. Adopt a resolution declaring weeds on specific properties to be public nuisances.
2. Set a public hearing for the scheduled City Council meeting on January 15, 2013.

- * 8. **Adopt a Resolution Reviewing and Accepting the Annual Developer Fee Disclosure Information (Staff Contact: Emma Karlen, 408-586-3145)**

Background: Government Code Section 66000 et seq. requires local agencies to provide an accounting of fees charged for development projects. The City has two basic accounting and reporting responsibilities under the Government Code. Section 66001(d) requires that, five years after collecting a development fee subject to this code section and every five years thereafter, the local agency shall make findings with respect to any portion of the fee remaining unexpended, whether committed or uncommitted. There are no funds triggering the five-year reporting requirement this year.

The second requirement set forth under Government Code Section 66006 provides that the City shall establish separate capital improvement accounts or funds for each improvement funded by project development fees. Any interest income earned by funds in such an account shall be deposited in such account. Each local agency is required on an annual basis, within 180 days after the end of the fiscal year, for each separate account, to make available to the public the following information:

1. Brief description of the type of fee in the account;
2. The amount of the fee;
3. The account's beginning and ending balance;
4. The amount of fees collected and the interest earned;
5. A description of the improvements on which the funds were expended and the amount expended on each improvement including the percentage of the improvement funded with development fees;
6. An approximate date by which the construction of a public improvement will begin if the local agency determines that sufficient funds have been collected to complete financing on the incomplete improvement;
7. A description of each inter-fund transfer or loan made from the account; and
8. The amount of any refunds made pursuant to Code Section 66001.

The City utilizes the Traffic Impact Fee Fund and the Storm Drain Development Fund to track these development related fees. Interest income is allocated to the Traffic Impact Fee Fund and Storm Drain Development Fund based on their respective monthly cash balances. Expenditures

from these funds were in the form of capital improvement projects to either renovate existing facilities or maintain the existing level of service, consistent with the General Plan due to increased demand related to the development project.

Status reports (included in the agenda packet) contain the FY 2011-12 report for the Traffic Impact Fee (Schedule 1) and the Storm Drain Connection Fee (Schedule 2). The reports show the amount of fees collected in FY 2011-12, interest income, a brief description of the projects funded, the percentage of the projects funded by the developer fees, and the beginning and ending balance of the funds. Reports indicated that at the end of June 30, 2012, the City had approximately \$3.3 million in the Traffic Impact Fee Fund and \$173,000 in the Storm Drain Development Fee Fund. Inter-fund transfers were made to capital projects that are related to the collection of the fees. There have not been any loans made from the accounts. As of June 30, 2012, the City has not refunded any of the developers' fees.

All impact fees collected in FY 2006-07 were expended. There is no need to make any findings for unexpended development fees.

Fiscal Impact: None. There is no fiscal impact for the recommended action.

Recommendation: Adopt a resolution reviewing and accepting the annual developer fee disclosure information.

XXI. CONTRACT

- * 9. **Authorize the City Manager to Execute an Agreement with Peckham & McKenney for Upper Management Recruitments (Staff Contact: Carmen Valdez, 408-586-3086)**

Background: The City of Milpitas will conduct two recruitments identified as key management hires. Recruitment efforts for these positions - including the Public Works Director/City Engineer and the Assistant City Attorney - must target the most qualified candidates to meet the City's need for continued management leadership.

Human Resources recommends the firm of Peckham & McKenney which has a national reputation for conducting quality searches and placing exceptional candidates. With many years of experience, the firm has conducted hundreds of searches for municipal and special district executives. Peckham & McKenney is familiar with Santa Clara County and the surrounding region and have been utilized extensively for executive recruitment and selection efforts throughout the Bay Area.

Fiscal Impact: The cost of the two recruitments and the selection process will not exceed \$43,000. The allocation of the budget includes \$23,500 for the City Engineer/Public Works Director recruitment and \$19,500 for the Assistant City Attorney recruitment. There are sufficient funds allocated in the Public Works operating budget and the City Attorney's operating budget due to salary savings from funded vacancies.

Recommendation: Authorize the City Manager to execute an agreement with Peckham & McKenney, subject to approval as to form by the City Attorney, in the amount not to exceed \$43,000 total for the administration and selection for the Public Works Director/City Engineer and the Assistant City Attorney.

XXII. ADJOURNMENT