



**MILPITAS CITY COUNCIL AND  
MILPITAS PUBLIC FINANCING AUTHORITY  
JOINT MEETING AGENDA  
TUESDAY, JANUARY 15, 2013**

**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**
  - 1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Pursuant to California Government Code §54956.9(b), (c)  
City of Milpitas as Plaintiff or Defendant
  - 2. CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**

Pursuant to California Government Code §54957.6, City Negotiator: Carmen Valdez  
Employee Groups: Milpitas Employees Association (MEA), Mid-Management/Confidential (UPEC), Milpitas Professional and Technical Group (ProTech), Milpitas Police Officers Association (MPOA), International Association of Fire Fighters (IAFF)  
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- 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 (Mayor Esteves)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – December 18, 2012**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS –January and February 2013**
- VIII. PRESENTATIONS**
  - *Commending Four Milpitas 2012 Santa Clara County Emergency Volunteers of the Year*
  - *2012 Neighborhood Beautification Awards to Property Owners*
- 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 a Public Hearing and Adopt a Resolution Directing the 2013 Weed Abatement Program (Staff Contact: Albert Zamora, 408-586-3371)**
2. **Hold a Public Hearing and Adopt a Resolution and Mitigated Negative Declaration with Monitoring Program Approving the Los Coches Residential Project (Staff Contact: Tiffany Brown, 408-586-3283)**
3. **Hold a Public Hearing and Adopt a Resolution Approving General Plan Amendments to the Land Use and Circulation Elements (Staff Contact: Sheldon Ah Sing, 408-586-3278)**
4. **Hold a Public Hearing and Adopt an Urgency Resolution Updating the Transit Area Development Impact Fee (Staff Contact: Steve McHarris, 408-586-3273)**

**XV. JOINT PUBLIC FINANCING AUTHORITY AND CITY COUNCIL MEETING**

**PFA1. Call to Order/Roll Call by the Mayor/Chair**

**PFA2. Adopt Two Resolutions of the City of Milpitas and Milpitas Public Financing Authority Authorizing Investment of Monies in the Local Agency Investment Fund (Staff Contact: Emma Karlen, 408-586-3145)**

**PFA3. Authority Adjournment**

**XVI. REPORTS OF MAYOR AND FINANCE SUBCOMMITTEE**

- \* 5. **Consider Mayor's Recommendation to Appoint Councilmember to Two Committees (Contact: Mayor Esteves, 408-586-3029)**
- \* 6. **Consider Mayor's Recommendations for Appointments to Six Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

**Finance Subcommittee:**

- \* 7. **Consider Allocation from Council Unallocated Community Promotion Budget to Curtner Elementary School for the Walk-A-Thon Fundraiser (Staff Contact: Emma Karlen, 408-586-3145)**

**XVII. NEW BUSINESS**

8. **Consider Fire Department Temporary Reduction in Force (Staff Contact: Brian Sturdivant, 408-586-2811)**
9. **Accept the City's Comprehensive Annual Financial Report, Component Unit Financial Statements, and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2012 (Staff Contact: Emma Karlen, 408-586-3145)**

- \* 10. **Approve Recommendation for the 2013 Annual Commissioners' Recognition Event (Staff Contact: Dale Flunoy, 408-586-3228)**
- \* 11. **Approve Fee Waiver and In-Kind Donation of Equipment, Supplies, Facility Space and Staffing from Various City Departments for the 2013 Relay For Life Event at the Milpitas Sports Center, June 21-23, 2013 (Staff Contact: Jaime Chew, 408-586-3234)**
- \* 12. **Receive Report of Sale of a Lift All Bucket Truck to Heritage Motors for \$6,999 (Staff Contact: Chris Schroeder, 408-586-3161)**

**XVIII. BID AND CONTRACTS**

- \* 13. **Approve Sixth Amendment to the Contract with the Law Firm of Hopkins & Carley for Legal Services (Staff Contact: Michael Ogaz, 408-586-3041)**
- \* 14. **Authorize the City Manager to Execute a Contract for Annual Tree Maintenance Service by Piggybacking the City of Sunnyvale Contract with West Coast Arborist, Inc. and Allow the City Manager to Approve Annual Increases (Staff Contact: Chris Schroeder, 408-586-3161)**
- \* 15. **Approve an Assured Maintenance Agreement with McQuay International for Maintenance of Police/Public Works Building Chillers and Allow the City Manager to Approve Annual Increases (Staff Contact: Chris Schroeder, 408-586-3161)**
- \* 16. **Authorize the Purchase of Sixteen Mobile Computers and Eight Modems through a Cooperative Procurement Contract (Staff Contact: Chris Schroeder, 408-586-3161)**

**XIX. DEMANDS**

- \* 17. **Authorize Payment of the Annual CRW Technical Support and Software Maintenance Services for the Not-To-Exceed Amount of \$20,000 (Staff Contact: Chris Schroeder, 408-586-3161)**
- \* 18. **Receive Report of Emergency Repair of the Dempsey Road Drive Water Main, Approve a Budget Appropriation from the Water Fund, and Authorize Staff to Pay Repair Work Invoices in an Amount not to Exceed \$55,000 (Staff Contact: Kathleen Phalen, 408-586-3345)**

**XX. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, FEBRUARY 5, 2013 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](mailto: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](http://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, 3<sup>rd</sup> 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](http://www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp) (select meeting date)

**APPLY TO BECOME A CITY COMMISSIONER!**

Current vacancies exist on the:

- Arts Commission (alternate member) / Public Art Committee (Alliance for the Arts member)*
- Bicycle Pedestrian Advisory Commission*
- 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](http://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](mailto: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.*

#### XIV. PUBLIC HEARINGS

**1. Hold a Public Hearing and Adopt a Resolution Directing the 2013 Weed Abatement Program (Staff Contact: Albert Zamora, 408-586-3371)**

**Background:** On December 4, 2012, the City Council adopted Resolution No. 8212 declaring weeds on certain described properties to be a public nuisance, and set this public hearing date on January 15, 2013, to hear any objections. A copy of the resolution was forwarded to the Santa Clara County Agricultural Commissioner. A legal Notice of Public Hearing was published in the local newspaper and property owners mailed a notice of the proposed abatement by the County. The purpose of the public hearing is for the owners who object to the removal of the weeds to state their objections before the weeds are removed and the costs made a lien upon the property. A list of properties to be abated is included in the City Council's agenda packet along with a resolution directing the County Agricultural Commissioner to abate the weeds.

**Fiscal Impact:** None.

**Attachments:**

- A. Resolution
- B. List of properties to be abated

**Recommendations:**

- 1. Open the public hearing, and following any comments, move to close the public hearing.
- 2. Adopt a Resolution directing the County Agricultural Commissioner to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code.

**2. Hold a Public Hearing and Adopt a Resolution and Mitigated Negative Declaration with Monitoring Program Approving the Los Coches Residential Project (Staff Contact: Tiffany Brown, 408-586-3283)**

**Background:** On September 21, 2010, the City Council approved a zone change from Industrial Park to Town Center for properties south of Calaveras Boulevard to Los Coches Street. Town Center allows for a variety of uses including business and medical offices, commercial retail, and residential. Residential is a conditionally permitted use, meaning that the City Council has the decision to approve or deny the application based on findings of fact contained in the Milpitas Municipal Code.

The project application, submitted by Andy Bye with Braddock & Logan on August 10, 2012, includes a Major Tentative Map (MT12-0003), Site Development Permit (SD12-0005), and a Conditional Use Permit (UP12-0020) and Environmental Impact Assessment (EA12-0004) for the request to demolish the existing non-conforming manufacturing buildings with associated parking lots and construct 80 new single family homes on 11.3 acres at 31 Los Coches (APN: 086-28-041, 086-38-003). A detailed description of the project can be found in the Planning Commission staff report included in the Council's agenda packet.

On December 12, 2012, the Planning Commission held a public hearing with considerable discussion on the appropriateness of introducing a new single-family residential project adjacent to the active Union Pacific railroad tracks and railroad switch yard facility, existing industrial, and commercial uses, as well as inconsistent application of General Plan land use policies related to these issues and impacts on the local school districts. The outcome of the discussion was a vote of three in favor and two opposed of the Planning Commission, which recommended that the City Council approve the project.

**Fiscal Impact:** None.

**Attachments:**

- A. Resolution
- B. Mitigated Negative Declaration with Monitoring Program
- C. Site Plans
- D. Phase I and Phase II Environmental Impact Assessment(s)
- E. Sub-Slab Vapor and Groundwater Assessment
- F. Vapor Intrusion Risk Assessment
- G. Greenhouse Gas / Air Quality Technical Report
- H. Traffic Study
- I. Environmental Noise & Vibration Assessment
- J. Union Pacific Railroad Corporation (UPRC) Future Lighting Plans
- K. Planning Commission December 12, 2012 Meeting Minutes
- L. Planning Commission Staff Report, December 12, 2012
- M. Fiscal Analysis
- N. January 12, 2012 and April 18, 2012 Meeting Minutes of the City Council's Transportation and Land Use (TALU) Subcommittee

**Recommendations:**

- 1. Open the public hearing, and following any comments, move to close the public hearing.
- 2. Adopt a Resolution and Mitigated Negative Declaration with Monitoring Program approving the Los Coches residential project.

**3. Hold a Public Hearing and Adopt a Resolution Approving General Plan Amendments to the Land Use and Circulation Elements (Staff Contact: Sheldon Ah Sing, 408-586-3278)**

**Background:** In response to a significant interest among property owners and developers seeking the rezone of areas currently designated for industrial or commercial uses in the Milpitas Zoning Code to residential uses, the City enacted a temporary moratorium during 2012.

The moratorium allowed staff to assess and inventory infrastructure and utility supplies available in the event of continued rezoning, review the projected jobs to housing balance, fiscal and economic impacts, school impacts, and to also prepare, if necessary, amendments to the Zoning Code, the General Plan, and/or Specific Plans. Staff also evaluated unwarranted impacts upon public health and safety such as the placement of housing adjacent to potential exposure to vibration, noise, toxic and chemical releases associated with day to day operations of industrial uses; the potential to have inadequate emergency response access and access to basic commercial services. This study addressed the affects of a potentially weakened job to housing balance and its affects on attracting quality job generating companies to the City.

In August 2012, staff presented the results of the study, a work plan and recommendation to draft new general plan policies, a general plan update fee, and new policies regarding complete streets. The details of that report are provided in the Council's agenda packet.

The proposed Land Use Element policies provide a commitment to developing in areas planned for residential and seeks partnerships with the developers in providing community benefits with projects. In addition, the proposed Circulation Element policies are consistent with the Complete Streets Act of 2008 and enable the City to become eligible for grant money for transportation projects. Further details of the proposed amendments are included in the agenda packet.

On November 14, 2012, staff presented draft General Plan policies to interested stakeholders and the Planning Commission for comment. With comments integrated, on December 12, 2012, staff presented the draft General Plan policies to the Planning Commission, which recommended that the City Council adopt the amendments.

**Fiscal Impact:** None.

**Attachments:**

- A. Resolution
- B. Technical Memo

- C. Land Use Element Strikeout Exhibit
- D. Circulation Element Strikeout Exhibit
- E. Planning Commission 11-14-12 Meeting Minutes
- F. Planning Commission 12-12-12 Staff Report
- G. Planning Commission 12-12-12 Meeting Minutes

**Recommendations:**

- 1. Open the public hearing, and following any comments, move to close the public hearing.
- 2. Adopt a Resolution approving the General Plan Amendments, as recommended by the Milpitas Planning Commission.

**4. Hold a Public Hearing and Adopt an Urgency Resolution Updating the Transit Area Development Impact Fee (Staff Contact: Steve McHarris, 408-586-3273)**

**Background:** On December 18, 2012, the City Council adopted a resolution updating the Transit Area Development Impact Fee and an urgency resolution which allowed the impact fees to become effective immediately for a 30-day period. The Fee Update is in conformance with AB 1600 (the “Mitigation Fee Act”) which governs both the establishment of new fees and the increase of an existing fee by requirement of a noticed public hearing. As indicated in the December 18, 2012 City Council staff report, this item allowed the City to accommodate the development community’s timelines for project implementation, the associated infrastructure requirements necessary to support planned development, and the ability to immediately collect funding for such improvements. The proposed urgency measure is presented to the City Council to complete the Impact Fee Update process by extending the new fee schedule for an additional 30 days from December 19, 2012 to January 18, 2013, at which time the permanent resolution for the new fee schedule will become effective.

**Fiscal Impact:** None. The proposed Transit Area Development Impact Fee Schedule bears a reasonable relationship to the projected impacts of new development and is necessary to mitigate these impacts.

**Attachments:**

- A. Urgency Resolution Adjusting Existing Transit Area Development Impact Fee
- B. Transit Area Development Impact Fee Increase and Development Impact Fee Update (EPS report)

**Recommendations:**

- 1. Open the public hearing to receive testimony, and move to close the public hearing following any comments.
- 2. Adopt an urgency measure by resolution extending the revised fee schedule for the Transit Area Development Impact Fee (requires a 4/5 vote approval).

**XV. JOINT PUBLIC FINANCING AUTHORITY AND CITY COUNCIL MEETING**

**PFA1. Call to Order/Roll Call by the Mayor/Chair**

**PFA2. Adopt Two Resolutions of the City of Milpitas and Milpitas Public Financing Authority Authorizing Investment of Monies in the Local Agency Investment Fund (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** The City of Milpitas and the Milpitas Public Financing Authority have been participating in the State’s Local Agency Investment Fund (LAIF) since 1977. LAIF periodically requests participants to update their investment resolutions. Staff reviewed the existing resolutions of the two entities and determined that these resolutions need to be updated due to personnel changes.

**Fiscal Impact:** None.

**Recommendation:** Adopt two joint Resolutions authorizing the investment of monies in the Local Agency Investment Fund.

**PFA3. Authority Adjournment**

**XVI. REPORTS OF MAYOR AND FINANCE SUBCOMMITTEE**

- \* **5. Consider Mayor's Recommendation to Appoint Councilmember to Two Committees (Contact: Mayor Esteves, 408-586-3029)**

**Background:** On December 18, 2012, City Council appointed Mayor Esteves to serve as the Milpitas representative to the San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC). That body meets monthly at San Jose City Hall and provides a stipend of \$100 per meeting. At this time, Mayor Esteves recommends Councilmember Carmen Montano serve as the Alternate Member to TPAC, and attend meetings when he is not available to represent the City.

The Santa Clara Valley Water District board has established various Board Advisory Committees, two of which Milpitas has members appointed. The Board recently inquired of the Mayor who shall serve as the City representative to the Coyote Flood Protection and Watershed Advisory Committee. Councilmember Montano has served for a number of years (prior to her election to the City Council) as an at-large community member of the Committee. Now, Mayor Esteves recommends her for appointment as the City's representative and the Mayor as alternate member. The Committee meets four to six times per year on various weekdays, during the day.

**Recommendations:**

1. Receive the Mayor's recommendations for appointments.
2. Adopt a Resolution approving the appointment of Councilmember Montano as the alternate member from Milpitas to the San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC), which is retroactively effective on January 10, 2013.
3. Move to approve the appointment of Councilmember Montano as a regular member, and Mayor Esteves as alternate, to the Santa Clara Valley Water District's Coyote Flood Protection and Watershed Advisory Committee.

- \* **6. Consider Mayor's Recommendations for Appointments to Six Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

**Background:** Mayor Esteves recommends the following residents be re-appointed to Milpitas Commissions as follows:

**Bicycle Pedestrian Advisory Commission:**

Appoint Christine Sanchez (Alternate No. 1) to regular member to a term that will expire in August 2013.

Appoint Chris Lee (Alternate No. 2) as Alternate No. 1 to a term that will expire in August 2014.

Newly appoint Kristal Caidoy as Alternate No. 2 to a term that will expire in August 2013.

**Planning Commission:**

Reappoint Gurdev Sandhu as a regular member to a term that will expire in December 2015.

Reappoint Rajeev Madnawat as a regular member to a term that will expire in December 2015.

Appoint Garry Barbadillo from Alternate to regular member to a term that will expire in December 2015.

**Senior Advisory Commission:**

Reappoint Melba Holliday as a regular member to a term that will expire in December 2014.

Reappoint Moo Jin Choi as Alternate No. 2 to a term that will expire in December 2014.

Sister Cities Commission:

Reappoint Brenda Su as a student non-voting member to a term that will expire in Sept. 2014.

Telecommunications Commission:

Reappoint William Lam as a regular member to a term that will expire in January 2015.

Veterans Commission:

Reappoint Denny Weisgerber as a regular member to a term that will expire in February 2016.

Reappoint Dana Arbaugh as a regular member to a term that will expire in February 2016.

Reappoint Bruce Choy as a regular member to a term that will expire in February 2016.

Reappoint Arthur Ebright as a regular member to a term that will expire in February 2016.

Reappoint David Grundstrom as a regular member to a term that will expire in February 2016.

Reappoint Mel Hinshaw as a regular member to a term that will expire in February 2016.

Reappoint Liliana Ramos as Alternate No. 1 to a term that will expire in February 2016.

**Recommendation:** Receive Mayor's recommendations and move to approve appointment and re-appointments to six City of Milpitas Commissions.

**Finance Subcommittee:**

- \* 7. **Consider Allocation from Council Unallocated Community Promotion Budget to Curtner Elementary School for the Walk-A-Thon Fundraiser (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** The City received a request for funding from the Curtner Elementary School in Milpitas for its annual Walk-A-Thon event. At its meeting on December 17, 2012, the Council's Finance Subcommittee recommended funding of \$250 from the City Council unallocated community promotion budget.

**Fiscal Impact:** The City Council has \$8,000 budgeted for unallocated community promotion in FY 2012-13. If the request is approved by the City Council, the budget will have \$4,889.23 remaining.

**Recommendation:** Approve an allocation of \$250 from the City Council unallocated community promotions budget as a donation to Curtner Elementary School for its annual Walk-A-Thon fundraiser.

**XVII. NEW BUSINESS**

- 8. **Consider Fire Department Temporary Reduction in Force (Staff Contact: Brian Sturdivant, 408-586-2811)**

**Background:** Milpitas Fire Department overtime allocation for Fiscal Year 2012-13 was approved by the Milpitas City Council in the amount of \$523,484. Since July 1, 2012, the Fire Department monthly overtime has averaged \$180,517 (as of November 30, 2012). Currently, there is an overtime deficit of \$379,105. This trend, if allowed to continue until end of the current fiscal year, would realize a total Fire Department overtime deficit greater than \$1.6 million. In an effort to ensure the Fire Department overtime comes in on budget for this fiscal year, staff is recommending a temporary reduction in force that would be reflected with a "brown-out" or down-staffing of a fire apparatus. Emergency service delivery to the community would be maintained with response apparatus continued in place at every Milpitas Fire Station. This recommendation should be considered a temporary strategy to address the current fiscal year overtime deficit in the Fire Department.

**Fiscal Impact:** None. The Milpitas Fire Department would recognize significant decrease in overtime usage and total salary/benefits savings would be approximately \$315,000.

**Recommendation:** Receive recommendation from staff and consider approval of the Fire Department temporary reduction in force.

9. **Accept the City's Comprehensive Annual Financial Report, Component Unit Financial Statements, and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2012 (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** The Comprehensive Annual Financial Report (CAFR) of the City of Milpitas, Single Audit Report, Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment and the Memorandum on Internal Control and Required Communications for the fiscal year ended June 30, 2012 are submitted to the City Council.

#### **Comprehensive Annual Financial Report (CAFR) of the City of Milpitas**

The CAFR presents the operations and financial activity of all the City's various funds, including the General Fund. It includes an unqualified audit opinion from Maze & Associates, the City's external auditors that the financial statements present fairly the results of operations for the year ended June 30, 2012, in conformance with Generally Accepted Accounting Principles (GAAP). It is also noted in the audit opinion that due to the dissolution of the Redevelopment Agency, the State has ordered the return of certain assets to the Successor Agency. The City has complied with certain aspects of the State's order and transferred applicable assets to the Housing Successor, but the City contends that the remaining transactions undertaken were legally placed with the Economic Development Corporation at the time of the transfer. The City's position on these matters is not a position of settled law and there is considerable legal uncertainty regarding these matters.

#### **Single Audit Report**

The Single Audit is required by the Office of Management and Budget Circular A-133 for state and local governments and non-profit organizations that receive Federal Awards. The report did not disclose any material weaknesses or significant deficiencies on the internal control over the major federal award programs.

#### **Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment**

This report shows the auditor applied specific procedures to validate the City's Appropriations Limit calculations.

#### **Memorandum on Internal Control and Required Communications**

Under generally accepted auditing standards, the auditors are encouraged to report certain matters regarding the City's internal control structure. The City's auditors have provided such a report in their Memorandum on Internal Control and Required Communications ("Management Letter") for the Year Ended June 30, 2012. This report includes management response to the auditor's recommendations on monitoring expenditures of the Economic Development Corporation and ensuring compliance with the dissolution laws, payroll personnel pay review, Sports Center cash collections, Council approval for contracts in excess of \$20,000, establish blanket purchase orders for frequently used vendors, reviewing payroll charges to federal grant programs, and implementing automatic session locks on computers. It should be noted that the auditors do not view any of their comments as material weaknesses or significant deficiencies on the City's internal control structure.

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

**Recommendation:** Accept the City's Comprehensive Annual Financial Report (CAFR) and other related Annual Audited Reports for the fiscal year ended June 30, 2012.

- \* 10. **Approve Recommendation for the 2013 Annual Commissioners' Recognition Event (Staff Contact: Dale Flunoy, 408-586-3228)**

**Background:** The City of Milpitas recognizes its Commissioners in April at the annual Commissioners' Recognition Event. The event celebrates the volunteerism of City Commissioners and Committee Members and their accomplishments. Many positive comments were received from Commissioners for last year's recognition event, which was held April 17, 2012 at the City Council meeting. Commissioners were served light refreshments and presented a certificate.

Prior to last year, Commissioner Recognition Events have included a catered luncheon or brunch. At every Commissioners' Recognition Event, the Mayor and City Councilmembers have thanked Commissioners for their volunteer service and acknowledged their service with certificates and small tokens of appreciation (portfolios, business card holders, etc.). For the last four years, the gifts were foregone in lieu of making a contribution to the Food Pantry, the Veterans Memorial Sign and the Veterans Memorial Bench. In May of 2012 at a City Council meeting, a budget of \$8,000.00 was approved from the City Council's discretionary funds. Typically this event is paid for using those funds.

**Fiscal Impact:** Funds of \$8,000 are included in the City Council's budget used to fund the Commissioners' Recognition Event. The cost of the recommended 2013 Recognition would not exceed approved funds for the event, as determined by the City Council. A catered luncheon would cost approximately \$12-\$17 per person (inclusive of food, beverages, decorations and certificates). Luncheon would be held at the Milpitas Community Center, which seats 300 people and can accommodate Commissioners and their guests. Recognition at a City Council meeting would cost approximately \$5-\$7 per person (inclusive of light appetizers, beverages and certificates).

**Recommendation:** Approve the 2013 Commissioners' Recognition event as a catered luncheon to be held on Saturday, April 13, 2013 at the Milpitas Community Center.

- \* 11. **Approve Fee Waiver and In-Kind Donation of Equipment, Supplies, Facility Space and Staffing from Various City Departments for the 2013 Relay For Life Event at the Milpitas Sports Center, June 21-23, 2013 (Staff Contact: Jaime Chew, 408-586-3234)**

**Background:** For the past thirteen years, the American Cancer Society, with the volunteer support of numerous Milpitas community members and businesses, has hosted the annual Relay for Life fundraising event at the Milpitas Sports Center. The group is requesting to use the Sports Center field from June 21-23, 2013, for the event set-up (6/21), event (6/22-6/23), and take down (6/23). The City of Milpitas has a long history of supporting this annual event with services, staff support, facility space and equipment on varying levels.

**Fiscal Impact:** The amount of fee waiver and in-kind donation of equipment, supplies, facility space and staffing from various departments for this event totals \$6,903.20. This is inclusive of Recreation Services, Police, Fire, Public Works, Planning and Building departments.

**Recommendation:** Approve the request for fee waiver and in-kind donations of equipment, supplies, facility use and staffing totaling \$6,903.20 for the annual American Cancer Society's *Relay for Life* event at the Milpitas Sports Center held June 21-23, 2013.

- \* 12. **Receive Report of Sale of a Lift All Bucket Truck to Heritage Motors for \$6,999 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** On December 19, 2012, the City placed a 1990 Lift All Bucket Truck #Z416 for auction on Public Surplus. Due to the age of the vehicle and the fact that it is a diesel vehicle that cannot be sold in California, less than \$5,000 was expected to be received for the vehicle. The winning bid came in at \$6,999.00. According to Municipal Code Section I-2-8.03 "Disposal of More Than Five Thousand Dollars \$5,000," Council is required to receive a request for disposal prior to the sale. Due to staff's expectation of a lower sales price, the City Council did not receive such a request for disposal prior to the sale. Staff provides this report after the sale.

**Fiscal Impact:** \$6,999 will be returned to the Equipment Replacement Fund.

**Recommendation:** Receive staff report on the sale of a Lift All Bucket Truck.

## **XVIII. BID AND CONTRACTS**

- \* 13. **Approve Sixth Amendment to the Contract with the Law Firm of Hopkins & Carley for Legal Services (Staff Contact: Michael Ogaz, 408-586-3041)**

**Background:** The City has had a contract with Hopkins & Carley since 2008 for general legal services, primarily focused in the personnel area. It is necessary to extend the contract period and add funds in the amount of \$45,000 to the contract to have this firm represent and defend the City in a lawsuit brought by individuals claiming age discrimination in hiring by the City. The City expects to prevail in the suit, but nonetheless anticipates it will incur approximately \$50,000 in legal expenses defending it.

**Fiscal Impact:** None. Sufficient funds exist in contingency reserve.

**Recommendation:** Approve the Sixth Amendment to the contract for legal services between the City of Milpitas and the law firm of Hopkins & Carley, and approve transfer of contract amount from contingency reserve to City Attorney budget.

- \* 14. **Authorize the City Manager to Execute a Contract for Annual Tree Maintenance Service by Piggybacking the City of Sunnyvale Contract with West Coast Arborist, Inc. and Allow the City Manager to Approve Annual Increases (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** On November 13 2012, the City of Sunnyvale issued an Invitation for Bid for Street Tree Maintenance Service. The bid was publicly advertised and received responses from five bidders, including West Coast Arborists, The Professional Tree Care Company, Valley Crest Tree Service, Bay Area Tree Specialists and New Image Landscape Company. These companies represent a diverse cross section of the tree care industry regionally and are in fact some of the same companies Milpitas talked with and would have solicited proposals from. After conducting a review of the Invitation for Bid and the final bid tabulation in Sunnyvale, the City's Purchasing Agent determined that it is in the best interest of the City of Milpitas to enter into a piggyback agreement with the low bidder, West Coast Arborists, Inc.

The contract with West Coast Arborists, Inc. is based on an urban forest of 37,000 trees. However, the City of Milpitas only has an urban forest of 13,627 trees. By piggybacking the Sunnyvale contract, Milpitas will receive the benefits of volume pricing which is nearly three times larger than the City could command if bidding this service individually. The Contract is for an initial two-and-a-half year period with the option for three additional, one-year renewals.

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." Staff's recommendation to piggyback on the City of Sunnyvale's contract with West Coast Arborists, Inc. is in full compliance with those requirements.

**Fiscal Impact:** None. Funding for this service is available from the Public Works departments operating budget.

**Recommendation:**

1. Authorize the City Manager to execute a contract for Annual Tree Maintenance Service by piggybacking the City of Sunnyvale contract with West Coast Arborist, Inc. for the annual not-to-exceed amount of \$170,000.

2. Authorize the City Manager to approve annual increases per the contract terms without further action by City Council.

**\* 15. Approve an Assured Maintenance Agreement with McQuay International for Maintenance of Police/Public Works Building Chillers and Allow the City Manager to Approve Annual Increases (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** On July 7, 2010, Public Works installed two new McQuay chillers in the City's Police/ Public Works Building at 1275 North Milpitas Blvd. The two previous chillers were more than 20 years old and had reached the end of their useful lives. Chillers require periodic upgrades to the codes and proprietary software which operates the control system to ensure proper operation of the equipment. The warranty requires that only McQuay factory authorized and trained personnel can work on the unit. Staff therefore recommends that McQuay be designated the sole source provider for maintenance of its chillers pursuant to Municipal Code section I-2-3.09 Sole Source Procurement. Staff requests an additional \$5,000 per year be added to the service contract for components and services that are not covered by the extended maintenance agreement. The total annual contract amount is \$10,952 with a five-year contract value of \$54,760.

**Fiscal Impact:** None. Funds for this service are available in the Facilities Maintenance Operating Budget.

**Recommendations:**

1. Approve an Assured Maintenance Agreement with McQuay International for maintenance of the chillers in the Police/Public Works building for the annual not-to-exceed amount of \$10,952.
2. Allow the City Manager to approve annual increases per the terms of the agreement without further action by City Council.

**\* 16. Authorize the Purchase of Sixteen Mobile Computers and Eight Modems through a Cooperative Procurement Contract (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** The Fire Department submitted Assistance to Firefighters Grant application in September 2011 requesting funding for new mobile computers, and the implementation of a New Wellness and Fitness Program for the Fire Department. The grant was awarded.

Communications Component: This purchase will allow for increased compliance with the overall communications infrastructure and end-user implement interoperability plan formulated by the Bay Area Super Urban Area Security Initiative (SUASI). Requirements identified for a next generation radio system include:

- Replacement of obsolete equipment and compliance with the FCC narrow- banding requirement. Also, compliance with a national standard ("Project 25" or "P 25") for performance and interoperability of public safety radio equipment.
- Enhanced channel capacity.
- Improved interoperability among County agencies and with outside agencies.
- Improved coverage in specified areas.
- Improved reliability and connectivity

The purchase will include sixteen mobile computers at a cost of \$5,374.25 per unit and eight modems at a cost of \$900.50 for a total cost of \$93,191.97, including installation and software. The purchase will be made cooperatively through the U.S. Communities Government Purchasing Alliance, of which the City of Milpitas is a registered member. Cooperative purchasing is specifically authorized pursuant to Municipal Code Section I-2-3.08 "Cooperative Procurement."

**Fiscal Impact:** The 2010 Assistance to Firefighters Grant is an 80/20 grant with a total project cost of \$93,191.97 with the local cost match of \$18,638.39. Matching funds are available for this purchase in the Information Services Operating Budget.

**Recommendation:** Authorize the purchase of 16 mobile computers and eight modems through the use of a Cooperative Procurement Contract, for use by the Milpitas Fire Department.

## **XIX. DEMANDS**

- \* 17. **Authorize Payment of the Annual CRW Technical Support and Software Maintenance Services for the Not-To-Exceed Amount of \$20,000 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** In 2007, the City of Milpitas entered into a contract with CRW for the implementation of a software system to issue and track building permits. The software requires annual maintenance and technical support. CRW is the proprietor of the software and there is no other source for support and maintenance of this application.

**Fiscal Impact:** None. Funds for this service are available from the Information Services Operating Budget.

**Recommendation:** Authorize payment of the annual CRW Systems, Inc. technical support and software maintenance services for the not-to-exceed amount of \$20,000.

- \* 18. **Receive Report of Emergency Repair of the Dempsey Road Drive Water Main, Approve a Budget Appropriation from the Water Fund, and Authorize Staff to Pay Repair Work Invoices in an Amount not to Exceed \$55,000 (Staff Contact: Kathleen Phalen, 408-586-3345)**

**Background:** Pursuant to state public contracting law and Council Resolution No. 7779, the Director of Public Works must report all emergency public works repairs to the City Council. At about 3:00 PM on December 24, the Dempsey Road twelve-inch diameter cast iron water transmission main ruptured near Shirley Drive causing a significant system water pressure drop and outages in the area bounded by Calaveras Blvd. to the north, I-680 to the west, Landess Ave. to the south, and Piedmont Rd. to the east. The Public Works stand-by crew responded and isolated the failed pipe section to restore system pressure except for the isolation zone at the break (between 123 and 500 Dempsey Road). The pipe blow-out caused street flooding and damaged the service lateral serving 300 Dempsey, street pavement, curb, gutter, and sidewalk.

Due to the size of the repair and the urgent need to restore water supply to the neighborhood, the Director of Public Works authorized Preston Pipeline to make emergency repairs. Preston mobilized a crew by 7:00 PM and worked through the night with the City crew to restore water service by 9:00 AM the following morning. Preston completed the remaining work including replacing a shutoff valve, service lateral repair, and pavement and sidewalk restoration during the second week of January. Preston has not yet submitted invoices for this work, but based on its known deployment of workers and equipment, the cost is not expected to exceed \$55,000.

The Dempsey Road cast iron water main was installed in 1955 and is reaching the end of its design life. A section located a few hundred feet south failed in October 2012. Engineering will recommend prioritizing replacement of this water main in the Capital Improvement Program.

**Fiscal Impact:** An appropriation from the Water Fund in the amount of \$55,000 is needed because there are not sufficient funds in Public Works operating budget for this emergency work.

**Recommendations:**

1. Receive this report of Dempsey Road water main emergency repair work from the Public Works Director.

2. Approve a budget appropriation from the Water Fund in the amount of \$55,000.
3. Authorize staff to pay Preston Pipeline for the emergency repair of the Dempsey Road water main in an amount not to exceed \$55,000.

**XX. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, FEBRUARY 5, 2013 AT 7:00 P.M.**