



**MILPITAS CITY COUNCIL MEETING AGENDA
TUESDAY, MARCH 5, 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: Tom Williams
Employee Groups: Milpitas Employees Association (MEA), Milpitas Police Officers Association (MPOA), and 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 (Councilmember Gomez)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – February 19, 2013**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR - March 2013**
- VIII. PRESENTATION to City of Milpitas by County's Menthol & Flavored Tobacco Prevention Project**
- IX. PUBLIC FORUM**

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

- X. ANNOUNCEMENTS**
- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XII. APPROVAL OF AGENDA**
- XIII. CONSENT CALENDAR (Items with asterisks*)**

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a member of the City Council, member of the audience, or staff requests the Council to remove an item from or be added to the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

XIV. PUBLIC HEARING

- 1. Hold a Public Hearing to Consider Request to Fly Flags in Honor of Black History Month (Staff Contacts: Michael Ogaz, 408-586-3041 and Mary Lavelle, 408-586-3001)**

XV. UNFINISHED BUSINESS

- * 2. Receive the February 2013 Odor Control Report (Staff Contact: Kathleen Phalen, 408-586-3345)**

XVI. REPORTS OF MAYOR AND COMMISSION

- 3. Consider Proposed Resolution Regarding Visits from the Socialist Republic of Vietnam (Contact: Mayor Esteves, 408-586-3029)**
- 4. Consider the Criteria for Establishing a Donation and Fee Waiver Policy (Staff Contacts: Tom Williams, 408-586-3051 and Emma Karlen, 408-586-3145)**
- 5. Consider Mayor's Recommendations for Councilmember Appointments to Three Outside Government Entities (Contact: Mayor Esteves, 408-586-3029)**
- * 6. Consider Mayor's Recommendation for One Appointment to the Community Advisory Commission (Contact: Mayor Esteves, 408-586-3029)**

Bicycle Pedestrian Advisory Commission:

- * 7. Approve and Authorize Amendment to the Bicycle Pedestrian Advisory Commission By-Laws to Reflect Change to the Meeting Dates (Staff Contact: Cindy Hom, 408-586-3284)**

XVII. NEW BUSINESS

- * 8. Accept the 2013 Citizen Options for Public Safety (COPS) Grant (Staff Contact: Charlotte Pang, 408-586-2432)**

XVIII. ORDINANCE

- 9. Consider Introduction of Proposed Ordinance No. 284 Requiring Council Disclosure of Developer Contributions (Staff Contact: Michael Ogaz, 408-586-3040)**

XIX. RESOLUTION

- * 10. Adopt a Resolution Approving Amendment No. 1 to the Water Supply Agreement with the City and County of San Francisco (Staff Contact: Kathleen Phalen, 408-586-3345)**

XX. CONTRACTS

- * 11. Authorize the Chief of Police to Execute the Service Agreement with the County of Santa Clara Public Health Department for the 2013 San Jose Bike Party Grant Program (Staff Contact: Henry Kwong, 586-2419)**
- * 12. Authorize the City Manager to Execute an Agreement with DR Horton for Fee Credit Reimbursement for Public Facilities and Improvements within the Transit Area Specific Plan (Staff Contacts: Steve McHarris, 408-586-3273 and Felix Reliford, 408-586-3071)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 19, 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 / 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:

*Arts Commission (alternate member)
Public Art Committee (Alliance for the Arts member)
Economic Development Commission (alternate members)
Library Advisory Commission (alternate member)*

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

XIV. PUBLIC HEARING

1. **Hold a Public Hearing to Consider Request to Fly Flags in Honor of Black History Month (Staff Contacts: Michael Ogaz, 408-586-3041 and Mary Lavelle, 408-586-3001)**

Background: On February 19, the City Clerk received an application from Ms. Demetress Morris on behalf of Flamekeepers organization to fly flags at Milpitas City Hall, to recognize and celebrate Black History Month which occurs for the month of February each year. The City Council established procedures for approving flag flying ceremonies at Higuera Adobe Park in Milpitas, and under specific conditions, flying the flags of another country at Milpitas City Hall.

A public hearing is required before the City Council in order to consider approval of the current application.

Fiscal Impact: None.

Attachments:

1. Copy of Flag Ceremony Request Form
2. Milpitas Municipal Code Title 1 Chapter 600 "Display of Flags"

Recommendations:

1. Hold public hearing to receive any comments, and then move to close the hearing.
2. Move to approve request to fly flag of South Africa at Milpitas City Hall Lobby, as requested by Demetress Morris and Flamekeepers.

XV. UNFINISHED BUSINESS

- * 2. **Receive the February 2013 Odor Control Report (Staff Contact: Kathleen Phalen, 408-586-3345)**

Background: From January 22 through February 18, 2013, the Bay Area Air Quality Management District (BAAQMD) received twenty odor complaints originating in Milpitas. Ten complaints identified a garbage-related odor, eight identified a sewage-related odor and two did not identify an odor source. As of the last Council update, the City's odor reporting website has received twenty-nine reported complaints.

Fiscal Impact: None.

Recommendation: Receive the February 2013 odor report.

XVI. REPORTS OF MAYOR AND COMMISSION

3. **Consider Proposed Resolution Regarding Visits from the Socialist Republic of Vietnam (Contact: Mayor Esteves, 408-586-3029)**

Background: The non-profit Vietnamese American Community of Northern California has contacted Mayor Esteves seeking Council approval of a resolution regarding unexpected visits from delegations from communist Vietnam. Citing examples of where visits from such delegations have in the past caused unrest in other communities resulting in increased expenditures for police services to those communities, the Vietnamese American Community of Northern California proposes passage of a resolution that addresses the excess police cost from these unexpected visits. A copy of a Petition to the Mayor and City Council requesting action is included in agenda packet material.

The proposal is to direct the Police Chief to create a policy seeking 14-day prior notice of proposed visits from the Socialist Republic of Vietnam. No sanction would occur if the proper notice is given, but if no notice of the visit is provided, the cost of police services attributed to the visit can be billed to the outside organizer of the visit.

Fiscal Impact: Minimal.

Recommendation: Consider adoption of resolution seeking reimbursement for unexpected visits from the Socialist Republic of Vietnam.

4. Consider the Criteria for Establishing a Donation and Fee Waiver Policy (Staff Contacts: Tom Williams, 408-586-3051 and Emma Karlen, 408-586-3145)

Background: At a Finance Subcommittee meeting in the past, Mayor Esteves requested City staff to make recommendations on a donation and fee waiver policy. Finance Department staff reviewed some policies received from various cities and determined that there are certain common criteria that should be considered before establishing such a policy.

Staff will present the criteria for establishing a donation and fee waiver policy at the meeting.

Recommendation: Provide direction to staff in order to prepare a final policy for Council approval, on donations and fee waivers approved by City Council.

5. Consider Mayor's Recommendations for Councilmember Appointments to Three Outside Government Entities (Contact: Mayor Esteves, 408-586-3029)

Background: On December 18, 2012, Mayor Esteves appointed Councilmember Montano as the City's representative to the Santa Clara County Library Joint Powers Authority Board of Directors. At this time, Mayor Esteves seeks a Councilmember to volunteer to serve as the Alternate to Ms. Montano.

Previously, Mayor Esteves was appointed to serve as the City's representative on the Cities Association of Santa Clara County, in all three aspects (Board, Cities Selection and Legislative committees). At this time, he recommends that Vice Mayor Polanski serve as his Alternate to the Association Board and on Cities Selection Committee. In December, Councilmember Montano was appointed as his Alternate on the Legislative Action Committee.

Finally, Mayor Esteves seeks to have the Council appoint the Councilmember-delegate and alternate for the annual ABAG General Assembly, which will meet on Thursday, April 18, 2013 at Jack London Square in Oakland.

Recommendations:

1. Seek one Council volunteer, and then move to appoint one Councilmember as the Alternate Member to the Santa Clara County Library Joint Powers Authority Board.
2. Move to appoint Vice Mayor Polanski to serve as the Alternate to Mayor Esteves on the Cities Association of Santa Clara County, both the Board and on the Cities Selection Committee.
3. Seek two Council volunteers, then move to appoint one Councilmember as the City's delegate and one as alternate to the General Assembly of the Association of Bay Area Governments.

*** 6. Consider Mayor's Recommendation for One Appointment to the Community Advisory Commission (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends the new appointment of Jacqueline Holland to the Community Advisory Commission as Alternate No. 4 to a term that will expire in January 2014.

Recommendation: Appoint Jacqueline Holland to the Community Advisory Commission as Alternate No. 4.

Report of Bicycle Pedestrian Advisory Commission:

- * 7. **Approve and Authorize Amendment to the Bicycle Pedestrian Advisory Commission By-Laws to Reflect Change to the Meeting Dates (Staff Contact: Cindy Hom, 408-586-3284)**

Background: Bicycle Pedestrian Advisory Commissioners request to amend their By-Laws to reflect a change in the regular meeting dates. Several current members express scheduling conflicts with the Monday meeting date. At the January 13, 2013, BPAC regular meeting, Commissioners were polled and it is proposed to add flexibility in which the Commission meets every two months on undesignated days selected and agreed upon by current Commissioners. The proposed amended By-Laws are included in the Council agenda packet.

Fiscal Impact: None.

Recommendation: Authorize and approve an amendment to Bicycle Pedestrian Advisory Commission By-Laws to change meeting dates as recommended by BPAC Commissioners.

XVII. NEW BUSINESS

- * 8. **Accept the 2013 Citizen Options for Public Safety (COPS) Grant (Staff Contact: Charlotte Pang, 408-586-2432)**

Background: The California State Legislature awarded \$107,684 to the City of Milpitas through the Citizen Options for Public Safety (COPS) Grant, authorized by Government Code sections 30061-30063. No City matching funds are required. Government Code section 30062 specifies that these funds must be used exclusively for front line law enforcement services. These funds shall be appropriated pursuant to a written request from the Chief of Police.

Milpitas Police Department recommends the following list of front line municipal police services, or equivalent, to be purchased with the 2013 COPS Grant monies for fiscal year 2013:

1. Collision Investigation Equipment
2. Crime Analysis Software
3. Firearms and Accessories
4. Critical Incident Response Equipment
5. Surveillance Equipment
6. Police Canine and Training

Fiscal Impact: None. The 2013 Citizen Options for Public Safety (COPS) Grant of \$107,684.00 will fully cover the cost for six frontline services listed.

Recommendations:

1. Accept the 2013 Citizen Options for Public Safety (COPS) grant in the amount of \$107,684.
2. Approve a budget appropriation in the amount of \$107,684 to the Police Department's operating budget.

XVIII. ORDINANCE

- 9. **Consider Introduction of Proposed Ordinance No. 284 Requiring Council Disclosure of Developer Contributions (Staff Contact: Michael Ogaz, 408-586-3040)**

Background: At the request of Mayor Esteves, the City Attorney prepared a draft ordinance which would require City Councilmembers to disclose whether a developer or employee of a developer has made a campaign contribution to the City Councilmember within the past 12 months. The disclosure would be required only for contributions aggregating \$100 or more during the period. Disclosure would be made when an agenda item considering a development project approval is before the Council. It would be made prior to the presentation of the staff report in response to a request for such information by the City Attorney.

Fiscal Impact: None. There is no fiscal impact to the proposed ordinance adoption.

Recommendations:

1. The City Attorney will read aloud the title of the proposed ordinance.
2. Move to waive the first reading beyond the title of Ordinance No. 284.
3. Move to introduce Ordinance No. 284 requiring the City's Mayor and City Council members' disclosure of developer contributions.

XIX. RESOLUTION

- * 10. **Adopt a Resolution Approving Amendment No. 1 to the Water Supply Agreement with the City and County of San Francisco (Staff Contact: Kathleen Phalen, 408-586-3345)**

Background: In 2012, the group *Restore Hetch Hetchy* placed an initiative before San Francisco voters that would have required the City and County of San Francisco to plan to drain Hetch Hetchy Reservoir, located in Yosemite National Park. San Francisco voters defeated the initiative last November, but *Restore Hetch Hetchy* stated it will continue pursuing this goal. The City of Milpitas purchases over 60% of its potable water from San Francisco under a 2009 Water Supply Agreement (WSA). San Francisco obtains 85% of this supply from the pristine Tuolumne Watershed and stores the water in several high-country reservoirs, including Hetch Hetchy, Cherry, and Eleanor. While this water storage system is owned by San Francisco, it was authorized by the 1913 Raker Act for the purpose of supplying the greater San Francisco Bay Area. Wholesale Customers of Santa Clara, San Mateo, and Alameda Counties are guaranteed two-thirds of the Tuolumne Watershed supply by the WSA.

To protect the interests of the Wholesale Customers, including the City of Milpitas, the Bay Area Water Supply & Conservation Agency (BAWSCA) and San Francisco have prepared an Amendment to the WSA that will ensure that the Hetch Hetchy Reservoir is maintained, unless the governing boards of the BAWSCA member agencies agree otherwise through further amendment. If the parties do not agree, San Francisco may not drain the Hetch Hetchy Reservoir. San Francisco Public Utilities Commission approved the Amendment on January 22, 2013 and authorized its General Manager to execute the Amendment, pending approval by two-thirds of the Wholesale Customers.

Fiscal Impact: None.

Recommendation: Adopt a resolution approving Amendment No. 1 to the Water Supply Agreement with the City and County of San Francisco.

XX. CONTRACTS

- * 11. **Authorize the Chief of Police to Execute the Service Agreement with the County of Santa Clara Public Health Department for the 2013 San Jose Bike Party Grant Program (Staff Contact: Henry Kwong, 408-586-2419)**

Background: The County of Santa Clara Public Health Department is administering the 2013 San Jose Bike Party grant program that offers grant funds from the California Office of Traffic Safety to reimburse law enforcement agencies for overtime expenditures in response to the

monthly San Jose Bike Party, which consists of up to 4,000 bicyclists traversing a route of up to 30 miles through different cities in the County on the third Friday night monthly. The goals of the program include ensuring the safety of and law compliance by bicyclists as well as affected motorists on the roadways. The City of Milpitas was approved for a grant of \$6,072.26 to coordinate responses to the San Jose Bike Party with other local law enforcement agencies in the County as needed.

Fiscal Impact: None. Overtime expenditures will be reimbursed by the grant.

Recommendations:

1. Authorize the Chief of Police to execute the service agreement with the County of Santa Clara Public Health Department for the 2013 San Jose Bike Party grant program.
2. Approve a budget appropriation in the amount of \$6,072.26 to the Police Department overtime budget, per 2013 San Jose Bike Party Grant.

*** 12. Authorize the City Manager to Execute an Agreement with DR Horton for Fee Credit Reimbursement for Public Facilities and Improvements within the Transit Area Specific Plan (Staff Contacts: Steve McHarris, 408-586-3273 and Felix Reliford, 408-586-3071))**

Background: Chapter 4 of Title VIII of the Milpitas Municipal Code (Fees for New Development) establishes the procedures for the collection of developer impact fees and funds as part of the infrastructure improvements. Section 66485-66487 of the Subdivision Map Act further authorizes the City to enter into reimbursement agreements to defray a developer's costs in "oversizing" facilities (i.e. constructing facilities of supplemental size, length or capacity over the needed for the impacts of the development, and when such construction is necessary to ensure efficient and timely construction of the facilities network).

On November 15, 2011, City Council adopted Resolution No. 8138 approving the DR Horton Harmony Project, which requires the developer to pay Transit Area Specific Plan (TASP) developer impact fees to defray all or a portion of the costs of sewer facilities and to mitigate other impacts of the project. Based on the Council's recent approval of the TASP Fee adjustment, DR Horton is required to pay \$8,007,312 (276 units x \$29,012/per unit) impact fee based on the developer's project. These impact fees includes park in-lieu, trail improvements, traffic signal, open space/landscaping, recycled water, McCandless Road-eastside, environmental work on pedestrian bridge, and construction of Sewer Lines 11A/11B).

Since the dissolution of redevelopment, the City no longer has the ability to finance large infrastructure projects such as Sewer Line 11A/11B, therefore the developers within TASP have agreed to construct the sewer lines and other required public facilities and improvements subject to future reimbursement from the TASP Fees collected by City. On November 20, 2012, Council approved DR Horton Acquisition and Reimbursement Agreement for the construction of Sewer Lines 11A/11B.

DR Horton is requesting reimbursement in the amount of \$7,316,605. The majority of the reimbursement costs are park fee credits (\$2,951,544) and construction of Sewer Lines 11A/11B (\$2,961,624). The developer will also construct sidewalk and improvements on the east side of McCandless Drive, which is City-owned property. The developer provided the documentation for staff's review to justify the costs of the reimbursement. After the deductions from the reimbursement fee credits, the developer will be required to pay the City \$690,707, the remaining balance due. Included in the Council's agenda packet is the exhibit itemizing costs of the reimbursement fee costs and credits and the contract agreement.

Fiscal Impact: None.

Recommendation: Authorize the City Manager to execute an Agreement with DR Horton for Fee Credit Reimbursement in the amount of \$7,316,605 for the Transit Area Specific Plan Public Facilities and Improvements.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 19, 2013 AT 7:00 P.M.**