



**MILPITAS CITY COUNCIL AGENDA
TUESDAY, NOVEMBER 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 LABOR NEGOTIATORS - COLLECTIVE BARGAINING**
Pursuant to California Government Code Section 54957.6. City Negotiator: Tom Williams
Employee Groups: International Association of Fire Fighters (IAFF)
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
 - 2. CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9(a)
County of Santa Clara, et al., v. Milpitas Economic Development Corporation, et al., Sacramento County Superior Court case no. 34-2013-80001436, and
Successor Agency to the Milpitas Redevelopment Agency, et al. v. John Chiang, et al., Sacramento County Superior Court case no. 34-2013-80001508
 - 3. CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9(a)
City of Milpitas v. City of San Jose, Santa Clara County Superior Court case no. 112CV233069
 - 4. PUBLIC EMPLOYEE PERFORMANCE EVALUATION**
Pursuant to California Government Code Section 54957
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 Giordano)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – October 15, 2013**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR – November 2013**
- VIII. PRESENTATIONS**
 - Proclaim October 24, 2013 as “*World Polio Day*”
 - 2013 Neighborhood Beautification Awards to Milpitas Residential and other Property Owners (brief reception in lobby will follow Awards presentation)
- 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 AND CAMPAIGN CONTRIBUTIONS
- 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. **Public Hearing on KB Homes' Request to Convert Industrial Land to Residential for the Construction of 213 Residential Units (Preston Properties Residential Project) and Consider Staff Recommendation to Adopt a Resolution Denying the Project (Staff Contact: Sheldon Ah Sing, 408-586-3278)**
- 2. **Public Hearing to Consider a Resolution Adopting the Mitigated Negative Declaration for the 2013 Storm Drain Master Plan and Mitigation & Monitoring Reporting Program and Approving the 2013 Storm Drain Master Plan (Staff Contact: Jeff Moneda, 408-586-3345)**
- 3. **Public Hearing to Consider Establishment of Community Facilities District No. 2013-1 (Piper Montague) for Reimbursement of City Costs Associated with Construction of Shared Public Infrastructure Improvements, Adopting Two Resolutions and Introducing Ordinance No. 286 (Staff Contact: Emma Karlen, 408-586-3145)**

XV. UNFINISHED BUSINESS

- * 4. **Receive the October 2013 Odor Control Report (Staff Contact: Jeff Moneda, 408-586-3345)**
- * 5. **Consider the Recommended Design Concept for the Milpitas Sports Center Facility Improvements, Project No. 3408 and Direct Staff to Proceed (Staff Contact: Jeff Moneda, 408-586-3345)**

XVI. REPORTS OF OFFICERS & COMMISSION

- * 6. **Consider Mayor's Recommendation of Appointment to Community Advisory Commission (Contact: Mayor Esteves, 408-586-3029)**
- * 7. **Approve Request of Councilmember Giordano to Cancel the Regular City Council Meeting of December 17, 2013 (Staff Contact: Mary Lavelle, 408-586-3001)**
- 8. **Discussion of Possible Skate Park (Contact: Councilmember Montano, 408-586-3023)**
- 8.5 **Consider Request of Councilmember Gomez to Review Wages and Compaction Issues Associated with Unrepresented Employees (Contact: Councilmember Gomez, 408-586-3031)**

Arts Commission

- * 9. Consider and Approve Arts Commission Recommendation to Award Four Milpitas Art and Culture In-Kind Grants for FY 2013-14 (Staff Contact: Renee Lorentzen, 408-586-3409)

XVII. NEW BUSINESS

- 10. Receive City of Milpitas Preliminary Financial Status Report for the Fiscal Year Ended June 30, 2013 (Staff Contact: Emma Karlen, 408-586-3145)
- 11. Receive Financial Status Report for the Three Months Ended September 30, 2013 (Staff Contact: Emma Karlen, 408-586-3145)
- * 12. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended September 30, 2013 (Staff Contact: Emma Karlen, 408-586-3145)

XVIII. ORDINANCES

- 13. First Reading and Introduction of Ordinance No. 65.142 Adopting by Reference with Certain Amendments of the 2013 Editions of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of the International Existing Building Code Appendix Chapters A2, A3, A4 and A5 (Staff Contact: Keyvan Irannejad, 408-586-3244)
- 14. First Reading and Introduction of Ordinance No. 113.23, Adopting by Reference to the 2013 Edition of the California Fire Code with Certain Local Amendments (Staff Contact: Albert Zamora, 408-586-3371)

XIX. AGREEMENT

- * 15. Approve Five Master Service Agreements with Environmental Consultants for On-Call Environmental Services (Staff Contact: Scott Ruhland, 408-586-3274)

XX. ADJOURNMENT

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 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:
Emergency Preparedness Commission
Public Art Committee (Alliance for the Arts member)

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall.
Contact the City Clerk's office at 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 HEARINGS

1. Public Hearing on KB Homes' Request to Convert Industrial Land to Residential for the Construction of 213 Residential Units (Preston Properties Residential Project) and Consider Staff Recommendation to Adopt a Resolution Denying the Project (Staff Contact: Sheldon Ah Sing, 408-586-3278)

Background: On October 17, 2011, a pre-application was submitted by KB Home to replace 15 acres of industrial developed property adjacent to the Union Pacific Rail Yard with a residential development. At that time, city staff communicated no basis for support for the project, based on General Plan and Zoning inconsistencies and land use incompatibilities. On May 18, 2012, KB Home submitted a formal application to change the land use designation of the Heavy Industrial property to High Density Multi-family Residential and Parks and Open Space on 16.6 acres to include 213 dwelling units. The project site presently includes an office/warehouse building and a contractor's yard. To the north is the Calaveras Boulevard/State Route 237 overpass. To the west is the Union Pacific Railroad line. To the east is the 40-acre Union Pacific Rail Yard. To the south are Heavy Industrial zoned properties with a church and single family residence and the 58-acre Union Pacific Freight Processing Yard.

Since the initial application was submitted, staff consistently communicated lack of City support of the proposed project, due to both significant General Plan and Mid-Town Specific Plan inconsistencies, and numerous land use incompatibility issues. However, the applicant requested the proposed project be processed as a General Plan Amendment, Zoning Amendment, environmental review, and associated entitlements. Processing of the proposed project confirmed these project deficiencies, consistent with staff's initial communications to the applicant. In the interest of time and resources of both the City and the applicant, the proposed project was forwarded to the Planning Commission in April, as requested by the applicant, for consideration. Planning Commission staff report and meeting minutes are included in the Council packet containing additional project information and analysis.

On April 10, 2013, the Planning Commission held a public hearing, received presentations from staff and the applicant, as well as public testimony in opposition to the project. Comments focused on concerns regarding incompatible land use, General Plan and Zoning inconsistencies, and placing future Milpitas residents within a site location surrounded and in close proximity to multiple incompatible uses. As a result, the Planning Commission recommended that the City Council deny the KB Home/Preston Properties project, based on the following:

1. Union Pacific Railroad operations authority supersedes City authority over land use and community disturbance;
2. The adjacency of the project site to the Union Pacific Railroad **Rail** Yard and the potential negative impacts the 24-hour yard operations has on adjacent properties and that potential nuisances as a result of operations at the rail facility are pre-empted by federal law;
3. The adjacency of the project site to the Union Pacific Railroad **Freight Processing** Yard and the potential negative impacts the 24-hour yard operations has on adjacent properties and that potential nuisances as a result of operations are pre-empted by federal law;
4. The lack of connectivity of the proposed residential project with the greater Milpitas community, and specifically with Main Street as required by the Mid-Town Specific Plan; and

5. The inability to make required findings for the various entitlements necessary to approve the project; that is, inconsistency with the Milpitas General Plan, Zoning Ordinance, Midtown Specific Plan, and the collective incompatibilities of introducing a residential land use onto a site surrounded on all sides by 24-hour industrial, freight, and transportation-related land uses and activities.

Fiscal Impact: None, if denied. Potential impacts to General Fund, if approved.

Attachments:

- A. draft Resolution to Deny Project
- B. Site Plans
- C. Final Environmental Impact Report (Draft with comments and errata)
- D. Opposition Letters
- E. The Local Regulation of Interstate Railroads
- F. Planning Commission Meeting Agenda Report (4-10-13)
- G. Off Site Improvement Plans
- H. Planning Commission Meeting Minutes (4-10-13)
- I. Final Preston Property Fiscal Impact Analysis

Recommendations:

1. Open the public hearing to receive comments.
 2. Move to close the public hearing.
 3. Consider staff recommendation for the KB Homes/Preston Pipelines development proposal and adopt a Resolution denying General Plan Amendment No. GP12-0002, Specific Plan Amendment No. ST12-0002, Zoning Amendment No. ZA12-0003, Planned Unit Development No. PD12-0002, Major Tentative Map No. MT12-0002, Site Development Permit No. SD12-0001 and Conditional Use Permit No. UP12-0010 and no action taken on the Final Environmental Impact Report.
2. **Public Hearing to Consider a Resolution Adopting the Mitigated Negative Declaration for the 2013 Storm Drain Master Plan and Mitigation & Monitoring Reporting Program and Approving the 2013 Storm Drain Master Plan (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: City staff, with the aid of the City's consultant Schaaf & Wheeler, has prepared the 2013 Storm Drain Master Plan and the associated Mitigated Negative Declaration document. The 2013 Storm Drain Master Plan addresses storm drain capacity/deficiencies as affected by land-use changes adopted by the Council, such as new development. In addition, a list of potential storm drain improvement projects are identified for future implementation related to the Capital Improvement Program.

Notice of the public hearing was published and circulated for the adoption of the proposed mitigated negative declaration as required by California Environmental Quality Act (CEQA). The review period of the circulated environmental documents (assessment-initial study) has ended. Staff reviewed written comments to date and prepared a mitigation monitoring and reporting program with the resolution proposed to adopt the Mitigated Negative Declaration.

Fiscal Impact: None.

Attachments:

- A. Resolution certifying Mitigated Negative Declaration & approving Storm Drain Master Plan
- B. Mitigated negative declaration (initial study)
- C. Storm Drain Master Plan 2013

Recommendations:

1. Open the public hearing and receive comments.
2. Move to close the public hearing.

3. Adopt a resolution adopting the Mitigated Negative Declaration and the Mitigation & Monitoring Reporting Program, per California Environmental Quality Act, and approving the 2013 Storm Drain Master Plan.

3. Public Hearing to Consider Establishment of Community Facilities District No. 2013-1 (Piper Montague) for Reimbursement of City Costs Associated with Construction of Shared Public Infrastructure Improvements, Adopting Two Resolutions and Introducing Ordinance No. 286 (Staff Contact: Emma Karlen, 408-586-3145)

Background: In 2009, the City Council approved a Cost Sharing and Reimbursement Agreement between the City and three developers for the Piper Montague Subdistrict (“Subdistrict”). The Subdistrict is one of the few areas within the Transit Area that requires a substantial investment in new public infrastructure to redevelop the properties. The proposed public infrastructure will mainly serve development in the Subdistrict; consequently, the costs for the improvement were not included in the overall Transit Area infrastructure program funded by the Transit Area Impact Fee.

The Cost Sharing and Reimbursement Agreement sets forth the method of cost sharing for the public infrastructure among the three property owners. The proposed public infrastructure includes new public streets, utilities, sidewalks, lighting, landscaping, and storm and sewer facilities totaling approximately \$5.6 million. Under the Cost Sharing and Reimbursement Agreement, the City agreed to assist in implementing the cost sharing program by providing a Transit Area Impact fee credit to the owner who constructs the Subdistrict public infrastructure that exceeds their agreed upon fair share contribution. The credit would later be reimbursed by the remaining owners of the Subdistrict to the City when they move forward with building permits for their respective developments. If however, the remaining owners do not develop their properties or insufficient units of housing were developed so that the City is unable to fully recover the fee credit within seven (7) years after the initial completion date of the public infrastructure, the City may levy assessments or collect Mello-Roo special taxes from the owners based on their share of the undeveloped housing units. The establishment of a Mello-Roos Community Facilities District (“CFD”) in the Piper Montague Subdistrict will create a land-secured funding mechanism to be used to reimburse the City for the fee credit.

On September 17, 2013, the City Council adopted a Resolution of Intention to Establish Community Facilities District No. 2013-1 (Piper Montague) and set a public hearing for this date November 5 for questions and voting on the formation of the CFD.

The area included within CFD 2013-1, at formation, consists of eight parcels of real property owned by three developers located within the Transit Area.

Proceedings for the formation of CFD 2013-1 shall be as follows:

1. Staff will present a report on the proposed Community Facilities District, including a brief description of the shared infrastructure improvements and the estimated cost of the improvements.
2. Council shall hold a public hearing to receive comments from the public. The City Council will then move to close the public hearing, following the last speaker.
3. Upon closing the public hearing, the City Council may then consider adoption of a resolution to establish Community Facilities District No. 2013-1 (Piper Montague), and call for a Special Election for the purpose of submitting to the qualified electors in that community facilities district the levy of the special tax and issuance of debt and the establishment of an appropriations limit.
4. The City Council may then direct the City Clerk to officially open the ballots, announce the results of the election, and complete one copy of the Statement of Election results. The City Clerk has received a written waiver and consent from each

of the qualified electors agreeing to the shortening of election time requirements, waiving analysis and arguments, and waiving all notice requirements related to the conduction of an election. Therefore, the City Clerk may open ballots immediately after the adoption of a resolution calling for an election by the City Council under California law.

5. The City Council will then consider adoption of a resolution declaring the results of the Special Election. The Statement of Election Results shall be attached to the resolution.
6. The City Council may then introduce an Ordinance levying and apportioning the special tax in CFD 2013-1 (Piper Montague). Staff recommends that the City Council direct the City Attorney to read the title of Ordinance No. 286 and move to waive the first reading of the ordinance beyond the title.

Fiscal Impact: None at the time. Formation of CFD No. 2013-1 will enable the City to levy special tax in the Piper Montague Subdistrict to recover City costs associated with the construction of shared public infrastructure improvements.

Attachments:

- A. Two Resolutions
- B. Proposed Ordinance No. 286
- C. Hearing Report

Recommendations: Take the following actions individually:

1. Open the public hearing for comments on the proposed Community Facilities District formation.
2. Move to close the public hearing.
3. Adopt a resolution establishing CFD No. 2013-1 (Piper Montague) and taking other related actions.
4. Direct the City Clerk to canvass the results of the election.
5. Receive a verbal report on the election results from the City Clerk.
6. Adopt a resolution declaring the results of the special election held on November 5, 2013 for the CFD No. 2013-1 (Piper Montague).
7. Direct the City Attorney to read aloud the title of Ordinance No. 286.
8. Waive the first reading of Ordinance No. 286 beyond the title.
9. Introduce Ordinance No. 286, and direct staff to return on November 19, 2013 for Council adoption of the ordinance.

XV. UNFINISHED BUSINESS

- * **4. Receive the October 2013 Odor Control Report (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: From September 16 through October 20, 2013, the Bay Area Air Quality Management District (BAAQMD) received nineteen odor complaints originating in Milpitas. Ten complaints identified a garbage-related odor, three identified a sewage-related odor and six did not identify an odor source. As of the last Council update, the City's odor reporting website has received forty-two reported complaints.

Fiscal Impact: None.

Recommendation: Receive the October 2013 odor control report.

- * **5. Consider the Recommended Design Concept for the Milpitas Sports Center Facility Improvements, Project No. 3408 and Direct Staff to Proceed (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: The Milpitas Sports Center Facility Improvements, Project No. 3408, is included in the approved Capital Improvement Program. The work involves renovation of the men's and women's locker rooms including: repair of damage caused by leaking showers, reconstruction of the showers to provide for adequate drainage, update ventilation and lighting, repair sanitary sewer line, correct deficiencies to provide for compliance with Americans with Disabilities Act (ADA) requirements, and other code related upgrades.

On September 3, 2013, City Council approved the award of a design contract for the Milpitas Sports Center Locker Room Renovation Project. As part of that contract, a condition assessment was performed to determine the extent of the damage from leaking showers and sewer line blockage, and other necessary repairs to bring the locker rooms and related areas up to compliance with the current ADA and other required codes. The condition assessment found that there were additional deficiencies not previously identified. As a result, in addition to the repairs previously identified, replacement of the aging and badly deteriorated sewer line, and extensive upgrade of the shower, locker and restroom areas to meet current plumbing and health and building code requirements are necessary.

Staff reviewed three concept plans prepared by the architect:

1. **Concept one** would repair the leaking showers in the men's locker room and addresses plumbing and health code requirements in the shower area only and includes upgrades to the shower, locker, and restroom areas to meet ADA requirements. Concept one also includes necessary mechanical and lighting upgrades to meet code requirements. Showers would receive new finishes and fixtures. Locker and restroom areas would be repainted. Sewer line would be repaired at locations of blockages only.
2. **Concept two** provides for all items addressed in concept one and the installation of ADA compliant drinking fountains in both locker rooms, partial replacement of the sewer line, complete reconstruction of both the men's and women's shower areas only to meet Plumbing and Health Code requirements, and provides for parking lot and path of travel compliance with ADA and Building Code.
3. **Concept three** provides for a complete reconstruction of both the men's and women's locker rooms including new interior walls with concrete curbs as required by both the Plumbing and Health Codes, and complete replacement of the sewer line serving the locker rooms. In addition, new restrooms, lockers, benches, fixtures, shower stalls, drinking fountains, and finishes would be included in the scope of work. Mechanical and electrical systems serving the locker rooms would be upgraded to meet current code requirements. Concept three would also allow the locker rooms to be reconfigured to provide for better functionality, privacy, and safety for the patrons. As a result of conducting this work, the amount of additional costs during construction due to unforeseen conditions would be minimized. ADA and Health and Building Code requirements would be met both in the locker rooms and the parking lot.

Concepts one and two do not address the complete replacement of the aging sewer line, upgrades of the locker and restroom areas to meet current Health and Plumbing Code requirements, and the replacement of aging fixtures and finishes. It is anticipated that the entire sewer line will need to be addressed in the next five to ten years at an estimated cost of \$500,000.

After review of the three concepts, staff recommends proceeding with **concept three**. It is the only one that will address all deficiencies as well as ADA and code compliance issues within the locker rooms. In addition, it is anticipated that several items that would not be addressed in concepts one and two would need to be replaced within the next few years. In the long term, the City will ultimately save money by completing these improvements now time rather than in multiple phases. Concept three will require a budget appropriation in the amount of

approximately \$600,000 prior to award of the construction contract to fund these additional improvements.

Fiscal Impact: A budget appropriation in the amount of approximately \$600,000 will be required prior to award of the construction contract.

Recommendation: Consider options for the Milpitas Sports Center Facility Improvements, Project No. 3408, and direct staff to proceed with the recommended design concept three.

XVI. REPORTS OF OFFICERS & COMMISSION

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

Background: Mayor Esteves recommends appointing Dau Do as Alternate No. 4 to a term that will expire in January 2014.

Recommendation: Receive Mayor's recommendation; and move to appoint Dau Do to the Community Advisory Commission as Alternate No. 4.

- * **7. Approve Request of Councilmember Giordano to Cancel the Regular City Council Meeting of December 17, 2013 (Staff Contact: Mary Lavelle, 408-586-3001)**

Background: At the October 15, 2013 City Council meeting, Councilmember Giordano made a request to her colleagues to cancel the second regular meeting in the month of December. The date falls close to the holidays, and it has been the occasional practice by previous City Councils in Milpitas to cancel that one meeting date, at the end of the year.

Recommendation: Move to cancel the regularly scheduled December 17, 2013, City Council meeting.

- 8. Discussion of Possible Skate Park (Contact: Councilmember Montano, 408-586-3023)**

Background: Councilmember Montano would like to bring forward the discussion anew of a possible skate park in Milpitas for the benefit of the city's youth.

Recommendation: Hear report of Councilmember Montano.

- 8.5 Consider Request of Councilmember Gomez to Review Wages and Compaction Issues Associated with Unrepresented Employees (Contact: Councilmember Gomez, 408-586-3031)**

Background: Salary compaction has long been an issue for the Battalion Chiefs, Police Commanders and other management personnel. It is necessary to review this issue to ensure retention and competitive attraction of employees at these levels.

Recommendation: Hear report of Councilmember Gomez and direct staff to prepare an analysis of the compaction issue, conduct a salary survey and return to Council with a recommendation.

Arts Commission

- * **9. Consider and Approve Arts Commission Recommendation to Award Four Milpitas Arts and Culture In-Kind Grants for FY 2013-14 (Staff Contact: Renee Lorentzen, 408-586-3409)**

Background: The Milpitas Arts and Culture Grant Program is a competitive grant program offering in-kind support to individuals and organizations hosting cultural or artistic events in the

City of Milpitas. In-kind support includes performance space (i.e. Community Center, Senior Center) and City staff support. All grant events are held in Milpitas and are open to the public at either little or no cost.

Four applicants submitted Milpitas Arts and Culture Grant Program (MACG) applications for the 2013-14 grant cycle. The Milpitas Arts Commission voted to recommend to the City Council all four grant proposals for approval.

The four grant proposals recommended for approval are:

- Bay Area Showcase Chorus (organization)
- Filipino American Association of Milpitas, Inc. - Fil-Am (organization)
- North American Guqin Association (organization)
- Sandhya Kalyanasundaram (individual artist)

The estimated value of each in-kind grant is between \$500 and \$2,200.

Fiscal Impact: None. Funds for the grants were approved in the Recreation budget for FY 2013-14. Maximum total value of \$8,800 would be awarded, if grants are approved.

Recommendation: Per recommendation of the Milpitas Arts Commission, move to approve four Milpitas Arts and Culture Grants for in-kind performance space and City staff support to three local organizations and one individual.

XVII. NEW BUSINESS

10. Receive City of Milpitas Preliminary Financial Status Report for the Fiscal Year Ended June 30, 2013 (Staff Contact: Emma Karlen, 408-586-3145)

Background: The preliminary financial report for last fiscal year indicates that total General Fund revenue was above budget by approximately \$4.8 million. The biggest contributor for the increase came from sales tax revenue which exceeded budget by \$1.7 million. Building permit and plan check fees were above budget by about \$935,000, due to increased development activities. Transient Occupancy Tax revenue was above budget by about \$768,000. Other revenues were mostly on track with budget projection, except fines and forfeitures which were below budget by \$192,000. Fines and forfeitures are not major revenue sources of the General Fund and are typically difficult to predict. Property tax revenue appeared to emerge from its lowest level due to improvement of the housing market.

On the expenditures side, the report shows that City departments achieved savings in the General Fund operating budget of 3.8% (approximately \$2.4 million). The combination of improved revenue and budget savings resulted in an operating surplus of \$3.2 million instead of the estimated budget deficit of \$3.6 million. It should be noted in balancing the FY 2012-13 operating budget, the City Council approved the use of \$1.3 million Equipment Fund reserve and \$1.5 million residual property tax distribution from the Redevelopment Property Tax Trust Fund (RPTTF). In the second half of fiscal year 2013, the City Council addressed the Fire Department overtime issue, but staff anticipated that approximately \$0.8 million of the General Fund reserve will be used. However, due to improved revenue and budget savings, none of the above mentioned reserves and RPTTF distributions were needed to balance the General Fund budget at year end.

In FY 2012-13, the City received distributions of \$2.4 million from the RPTTF. In addition, it also received one-time distribution of \$1 million related to remittance of uncommitted cash of the Housing Fund and \$0.6 million property tax administration fee settlement from the County of Santa Clara. The total amount of these distributions was approximately \$4 million and pursuant to City Council's policy direction, the distributions were allocated to the General Government Capital Improvement Fund to address capital improvement funding needs. In addition, \$2.8 million of the General Fund budget surplus was also allocated to the General Government Capital

Improvement Fund to address capital improvement funding needs. Despite dissolution of the Redevelopment Agency, staff can report that the City has made significant progress towards addressing the funding deficit for capital improvement projects.

Fiscal Impact: None.

Recommendation: Receive the preliminary financial status report for the Fiscal Year ended June 30, 2013.

11. Receive Financial Status Report for the Three Months Ended September 30, 2013 (Staff Contact: Emma Karlen, 408-586-3145)

Background: As of September 30, 2013, the General Fund received approximately \$7.6 million in total revenue. This amount is \$0.4 million less than the revenues received for the same period in FY 2012-13, primarily due to decreased sales tax revenue. Sales tax revenue was down by about \$502,000 from the same period last year, due to decreased sales generated from the office equipment and electronic equipment economic segments. However, it is too early to predict whether sales tax revenue will decrease below budget significantly or it was just a one-time slip for the quarter. Staff has not revised the General Fund revenue projection as all the other revenues were very much on track with the budget.

City departments' expenditures were also on track with their budgets. Overall expenditures were about 25% of the operating budget. It should be noted the expenditures for several departments exceeded 25% for the first three months. However, these spending patterns are typical due to various invoices that need to be paid at the beginning of each fiscal year instead of being able to spread out throughout the year. Examples of such expenditures include workers' compensation 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 timing difference for reimbursements from the CalPERS California Employers' Retiree Benefit Trust Fund for retiree medical benefit payments.

Fiscal Impact: None.

Recommendation: Receive the financial status report for the three months ended September 30, 2013.

*** 12. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended September 30, 2013 (Staff Contact: Emma Karlen, 408-586-3145)**

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 September 30, 2013 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 September 30, 2013.

As of September 30, 2013, the principal cost and market value of the City's investment portfolio was \$170,260,176 and \$170,293,115 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 September 30, 2013 was 0.67%. The comparative benchmarks for the same period were 0.26% for LAIF (Local Agency Investment Fund) and 0.29% for the 12-month average yield of the 2 year Treasury Note. The weighted average maturity of the portfolio was 575 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 the investment report for the quarter ended September 30, 2013.

XVIII. ORDINANCES

13. **First Reading and Introduction of Ordinance No. 65.142 Adopting by Reference with Certain Amendments of the 2013 Editions of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of the International Existing Building Code Appendix Chapters A2, A3, A4 and A5 (Staff Contact: Keyvan Irannejad, 408-586-3244)**

Background: Building Code Administration: Administration is an important part of the technical building codes and each code contains a separate administration section. Rather than adopting nine separate administration sections, the City of Milpitas consolidated the administrative provisions of all the codes into one document, modeled after the International Building Code as published by the International Code Council.

California Building, Residential, Mechanical, Electrical, Plumbing, Energy and Green Building Standards Code. State law requires each California City and County to adopt state model building codes and referenced standards as listed above. Local jurisdictions are permitted to make amendments to the model codes that are reasonably necessary due to local climatic, geological, or topographical conditions. The Building and Safety Department participated with most cities and counties in the East Bay, Peninsula and Monterey Chapters of the International Code Council (ICC) in the preparation of common code amendments. These proposed amendments are found in the Building Code, the Residential Code, the Plumbing Code, the Mechanical Code and the Electrical Code. The most significant amendments under proposal are found in Chapters 16, 18, 23 and 34 of the California Building Code and are related to the design of buildings and structures to resist earthquake and wind forces. The State Building Codes, along with proposed local amendments, provide minimum standards for the design, construction material testing and installation of fire protection, exiting, structural, plumbing, mechanical and electrical systems for residential and non-residential buildings and related structures.

California Existing Building Code and International Existing Building Code. The California Existing Building Code, 2013 Edition and International Existing Building Code, 2012 Edition Appendix Chapters A2, A3, A4 and A5 are model building codes that provide the technical means to encourage the continued use or reuse of legally existing buildings and structures by

establishing minimum standards for change of occupancy and alteration or repair of existing buildings and structures.

California Historical Building Code. The California Historical Building Code, 2013 Edition is a state model building code that provides regulations for preservation, restoration, rehabilitation or reconstruction of buildings or properties designated as qualified historical buildings or properties.

The proposed Ordinance is provided in its first reading as a redlined version to easily identify the changes to the Milpitas Municipal Code, Title II.

Fiscal Impact: None.

Recommendations:

1. City Attorney shall read aloud the title of Ordinance No. 65.142.
2. Waive the first reading beyond the title of Ordinance No. 65.142.
3. Move to introduce Ordinance No. 65.142 enacted as Chapter 1, Chapter 2, Chapter 3, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 11, Chapter 12, Chapter 13, Chapter 14, Chapter 15, Chapter 19, Chapter 20, Chapter 150 and Chapter 170 of Title II of the Milpitas Municipal Code revising provisions for Building Regulations.
4. Set a public hearing at the next regularly scheduled Council meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 65.142 adopting by reference with certain amendments of the 2013 Editions of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of the International Existing Building Code Appendix Chapters A2, A3, A4 and A5.

14. First Reading and Introduction of Ordinance No. 113.23, Adopting by Reference to the 2013 Edition of the California Fire Code with Certain Local Amendments (Staff Contact: Albert Zamora, 408-586-3371)

Background: The California State Building Standards Commission adopted the 2012 International Fire Code with State Amendments, known as the 2013 Edition of the California Fire Code, which becomes effective by all local jurisdictions on January 1, 2014. In order for jurisdictions to maintain their current level of regulation without interruption, the code must be adopted with local amendments. As with past code adoptions, the Santa Clara County Fire Marshals Association collaborated to develop standardized amendments for use throughout the County that would maintain the existing level of regulation for the protection of public health and safety. A draft Ordinance was reformatted due to the fact that Chapters 11-47 in the 2010 Edition of the California Fire Code were reorganized and formatted to reflect new Chapters 11 - 80 of the 2013 Edition of the Code.

Chapters 1-10 in the 2013 Edition of the California Fire Code remain unchanged in terms of reorganization. Appendix A-J in the 2013 Edition of the California Fire Code remain unchanged in terms of reorganization.

A resolution making certain findings necessary to locally amend portions of the California Fire Code will be submitted at the public hearing at the next regularly scheduled Council meeting on November 19, 2013. Such findings shall be based on the following, but not limited to, Health and Safety Code Sections 17958.5 and 17958.7 relative to local climatic, geographical, or topographical conditions.

Fiscal Impact: None.

Recommendations:

1. City Attorney shall read aloud the title of Ordinance No. 113.23.

2. Waive the first reading beyond the title of Ordinance No. 113.23.
3. Move to introduce Ordinance No. 113.23, enacted as Chapter 300, Title V of the Milpitas Municipal Code.
4. Set a public hearing at the next regularly scheduled Council Meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 113.23, adopting by reference with certain local amendments the 2013 Edition of the California Fire Code.

XIX. AGREEMENT

- * 15. **Approve Five Master Service Agreements with Environmental Consultants for On-Call Environmental Services (Staff Contact: Scott Ruhland, 408-586-3274)**

Background: The Planning and Neighborhood Services Department issued a Request for Qualifications (RFQ) for selection of On-Call Environmental Consultants to provide environmental consulting services for the City's private development and City initiated projects. After review of the submitted qualifications, and interviews with selected consultants, the Department staff selected five (5) firms to provide consulting services whose qualifications demonstrate they are the most qualified, responsive and advantageous to the City. The City will enter into a Master Service Agreement with five firms: Amy Skewes-Cox; Environmental Science Associates; Lamphier-Gregory; LSA Associates; and, RBF Consulting. The Master Agreements have a term of five (5) years and maximum budgetary allocation of \$1,000,000 per consultant agreement.

The environmental consultants will be responsible for the preparation of Environmental Impact Reports (EIR), Negative Declarations, Mitigated Negative Declarations, technical studies and other California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA) documentation for proposed projects.

Fiscal Impact: Payment for all requested services will be the responsibility of the applicant, developer, property owner, or other authorized representative on behalf of the project sponsor. Payment for services related to a City-initiated project will be the responsibility of the City.

Recommendation: Approve five separate Master Environmental Consultant Agreements with Amy Skewes-Cox, Environmental Science Associates, Lamphier-Gregory, LSA Associates, and RBF Consulting in the amount of \$1,000,000 and for a period of five years.

XX. ADJOURNMENT

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