



**JOINT MEETING OF THE  
MILPITAS CITY COUNCIL AND  
PUBLIC FINANCING AUTHORITY  
MEETING AGENDA**

**TUESDAY, JANUARY 17, 2017**

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**455 EAST CALAVERAS BOULEVARD, MILPITAS, CA  
5:00 P.M. CLOSED SESSION • 7:00 P.M. PUBLIC BUSINESS**

**SUMMARY OF CONTENTS**

- I. CALL TO ORDER** by the Mayor and **ROLL CALL** by City Clerk (5:00 p.m.)
- II. ADJOURN TO CLOSED SESSION**
- (a) **CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**  
Name of Case: American Arbitration Association Case No. 01-16-0000-4753
- (b) **CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION**  
Pursuant to Government Code Section 54956.9(d)(4) – City as Plaintiff
- III. CLOSED SESSION ANNOUNCEMENT:** 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 Tran)
- VI. SCHEDULE OF MEETINGS – COUNCIL CALENDARS** - January and February 2017
- VII. PRESENTATIONS**
- Proclaim *Martin Luther King Jr. Day* on January 16, 2017
  - Proclaim January 14 – 29, 2017 as *Hindu Swayamsevak Sangh Yogathon*
- VIII. PUBLIC FORUM**
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- Members of the audience are invited to address the Council on any subject not listed on this 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 item not listed on the agenda, 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 place the item on a future meeting agenda.
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- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**
- XI. APPROVAL OF AGENDA**

## **XII. CONSENT CALENDAR (Items with asterisks\*)**

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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.

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## **XIII. APPROVAL OF COUNCIL MEETING MINUTES – January 3, 2017**

## **XIV. UNFINISHED BUSINESS**

- 1. Receive Report and Update on the Santa Clara Countywide Study on Minimum Wage Increase (Staff Contact: Edesa Bitbadal, 408-586-3052 )**

## **XV. REPORTS OF OFFICERS AND COMMISSIONS**

- 2. Approve Mayor's Recommendations for Outside Committee Appointments of Councilmembers (Contact: Mayor Tran, 408-586-3029)**
- \* 3. Consider Mayor's Recommendation for One Appointment to the Sister Cities Commission (Contact: Mayor Tran, 408-586-3029)**
- \* 4. Per Request of Councilmember Nuñez, Consider Approving More than 4 Hours of Staff Time Related to Request for a Possible Collaboration with the Milpitas Unified School District's Student Olympic Games (Contacts: Councilmember Nuñez, 408-586-3023 and Renee Lorentzen, 408-586-3409)**
- 5. Consider and Agree on Discussion Topics for the Special Meeting of the City Scheduled for January 24, 2017 (Contacts: Councilmember Nuñez, 408-586-3023 and Tom Williams, 408-586-3050)**
- 6. Consider Additional Resident Appointments to the General Plan Advisory Committee and Citizens Task Force on Water Rates (Contact: Councilmember Nuñez, 408-586-3023)**
- 7. Per Request of Councilmember Phan, Receive Update from Police Department Concerning Stance on Reporting Undocumented Immigrants to Department of Homeland Security (Staff Contact: Tom Williams, 408-586-3050)**
- 8. Receive Presentation and Approve Youth Advisory Commission 2017 Work Plan (Staff Contact: Andrew Mendes, 408-586-3231)**
- 9. Receive Presentation and Approve Economic Development Commission 2017 Work Plan (Staff Contact: Edesa Bitbadal, 408-586-3052)**

## **XVI. NEW BUSINESS**

- 10. Consider and Approve Community Development Block Grant Policies and Funding Priorities (Staff Contact: Tim Wong, 408-586-3286)**
- \* 11. Authorize Out-of-State Travel for Police Department and Information Services Staff to Attend TriCon 2017 (Staff Contacts: Armando Corpuz, 408-586-2534 and Mike Luu, 408-586-2706)**

- \* 12. Approve a Request from the Sunnyhills Neighborhood Association to Waive City Fees for a Neighborhood Event Held on Saturday, October 29, 2016 at Augustine Park (Staff Contact: Tom Williams, 408-586-3050)

**XVII. ORDINANCE**

- 13. Adopt Interim Urgency Ordinance No. 291 Establishing a Temporary Moratorium on Marijuana Uses Pending the Enactment of an Update to the City's Municipal Code (Staff Contact: Christopher J. Diaz, 408-586-3040)

**XVIII. RESOLUTIONS**

- \* 14. Adopt a Resolution Approving a New Memorandum of Understanding Between the City of Milpitas and the International Association of Firefighters Local 1699 for January 1, 2017 to June 30, 2018 (Staff Contact: Tina Murphy, 408-586-3086)
- \* 15. Adopt Two Resolutions - of the Milpitas City Council and Milpitas Public Financing Authority Board - Authorizing Investment of Monies in the Local Agency Investment Fund and Updating Officers' Information (Staff Contact: Jane Corpus, 408-586-3125)
- \* 16. Adopt a Resolution Authorizing the Purchase and Delivery of an Emergency Back-Up Generator for the Milpitas Sports Center from Peterson Power Systems, Inc. for the Not-To-Exceed Amount of \$115,011 Through a Cooperative Procurement Contract (Staff Contacts: Chris Schroeder, 408-586-3161 and Nina Hawk, 408-586-2603)
- 17. Adopt a Resolution Appointing Steve Pangelinan as Interim Chief of Police and Approving Employment Contract Pursuant to Government Code Sections 7522.56 and 21221(h) (Staff Contact: Tina Murphy, 408-586-3086)
- 18. Adopt a Resolution Appointing an Elected Official to the Boards of the Bay Area Water Supply & Conservation Agency and Related San Francisco Bay Area Regional Water System Finance Authority (Contact: Mayor Tran, 408-586-3029)

**XIX. AGREEMENTS**

- \* 19. Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement for a Residential Development Located at 31 South Milpitas Boulevard by DR Horton Bay, Inc. (Staff Contact: Judy Chu, 408-586-3325)

**XX. ADJOURN JOINT MEETING**

**NEXT SPECIAL CITY COUNCIL MEETING  
TUESDAY, JANUARY 24, 2017**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, FEBRUARY 7, 2017**

**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. 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. 408-586-3000

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 SERVE ON A CITY COMMISSION**

Current Vacancies on:

Economic Development Commission (MUSD and hotel reps.),  
Emergency Preparedness 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 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](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 City Council Chambers for all meetings in that facility.*

**AGENDA REPORTS**

**XIV. UNFINISHED BUSINESS**

**1. Receive Report and Update on the Santa Clara Countywide Study on Minimum Wage Increase (Staff Contact: Edesa Bitbadal, 408-586-3052 )**

**Background:** The City of San Jose lead the effort to analyze and study a Countywide minimum wage increase. Several cities in Santa Clara County, including City of Milpitas, agreed to assist and participate in the study of increasing the minimum wage in September of 2015. Center on Wage and Employment Dynamics was hired to conduct an economic analysis for San Jose and Countywide, and BW Research was hired to survey businesses in San Jose and Santa Clara County. Both of the consultants were hired without any input or recommendation from the City of Milpitas. Because the consultants did not study the impacts of the minimum wage increase based on individual cities, the City of San Jose paid for the survey and consultant’s services.

While the consultants were studying the impacts of the minimum wage, the State raised the minimum wage for small and large businesses in California. On January 1, 2016, state law required the minimum wage to increase to \$10.00 per hour. All City positions and contracted agencies and organizations are compliant with this minimum wage increase.

On April 4, 2016, Governor Brown signed into law Senate Bill (SB) 3. SB 3 (Leno) requires a new statewide minimum wage schedule with annual increases commencing January 1, 2017 through January 1, 2023. The schedule is for those with 26 or more employees and for businesses with 25 or fewer is as follows:

<b>Schedule of California Minimum Wage Increases</b>		
	<b>26 or More Employees</b>	<b>25 or Fewer Employees</b>
<b>2017</b>	\$ 10.50	\$ 10.00
<b>2018</b>	\$ 11.00	\$ 10.50
<b>2019</b>	\$ 12.00	\$ 11.00
<b>2020</b>	\$ 13.00	\$ 12.00
<b>2021</b>	\$ 14.00	\$ 13.00
<b>2022</b>	\$ 15.00	\$ 14.00
<b>2023</b>	\$ 15.00	\$ 15.00

On June 9, 2016, the Cities Association of Santa Clara County, through individual city representatives, voted to approve a Countywide minimum wage increase without any exemptions. Of 15 cities represented, 13 votes yes, City of Gilroy voted no, and City of Milpitas abstained. Since then, the minimum wage increase of \$15 by 2019 has been approved by cities of San Jose, Cupertino, Los Altos, and Palo Alto. Cities of Sunnyvale and Mountain View had already adopted a more aggressive schedule of \$15 by 2018. Five cities have voted to not adopt the Countywide minimum wage increase and stay with the state level. Those cities are Gilroy, Morgan Hill, Los Gatos, and Los Altos Hills. City of Campbell adopted it for a more moderate increase but the City Council has since decided to rescind the second reading of the ordinance. Since the Cities Association’s meeting in June of 2016, Countywide effort to increase the minimum wage to \$15 by 2019 is not a uniform policy. Cities are implementing minimum wage to meet their respective community’s economic and social needs.

**Analysis:**

The Countywide survey conducted by BW Research did not state Milpitas businesses’ perspective as it was all combined with businesses in fifteen cities. Therefore, Economic

Development staff in collaboration with Milpitas Chamber of Commerce held three meetings on May 13, May 16 and June 6, 2016 with local business owners to review the newly increased state mandated minimum wage increase, the Countywide study, and a hybrid of the State minimum wage increase with incremental increases linked to the state CPI. Economic Development staff also mailed a survey to 1,579 businesses that have two or more employees.

<b>Schedule of California Minimum Wage Increases</b>		<b>Santa Clara County Cities Association Recommendation</b>	<b>California Minimum Wage with additional State CPI</b>
26 or More Employees	25 or Fewer Employees		
		<b>* Estimated</b>	<b>Estimated with no recession</b>
<b>2017</b>	\$ 10.50	\$ 12.00	\$ 10.75
<b>2018</b>	\$ 11.00	\$ 13.50	\$ 11.35
<b>2019</b>	\$ 12.00	\$ 15.00	\$ 12.35
<b>2020</b>	\$ 13.00	\$ 15.33*	\$ 13.35
<b>2021</b>	\$ 14.00	\$ 15.68*	\$ 14.35
<b>2022</b>	\$ 15.00	\$ 16.03*	\$ 15.35
<b>2023</b>	\$ 15.00	\$ 16.38*	TBD

The net results of the three meetings and the direct mail survey as of June 7, 2016, was the following:

- 40 responded to the survey:
  - 34 voted to keep the minimum wage as is.
  - 5 voted for the State Increase with additional CPI
  - 1 voted to increase it to \$15 by 2019

Also included is an Opt-out option if the minimum wage is increase to \$15 by 2019. The following are the results of the options:

- Small Businesses (less than 55 FT employees) 21
- Youth Exemption 11
- Total Compensation 6
- New Business: less than 5 years 2

Economic Development staff made a presentation on preliminary findings to the City Council on June 7, 2016. City Council directed staff to continue the outreach with Milpitas businesses to yield a larger net of businesses and numbers.

Because the City has a significant number of Asian-owned and Asian-based businesses, in particular Chinese-owned small businesses, staff translated the survey into Mandarin language. In addition, the survey was conducted by door-to-door canvassing, visiting numerous shopping centers and conducting phone surveys. The intensive in-person outreach to businesses, numerous shopping centers, and additional translation service yielded more than twice the number of results from direct mail and three community meetings.

As of December 31, 2016, the total results of the survey are:

- 81 voted to keep the minimum wage as is.
- 10 voted for the state's increase with additional CPI
- 9 voted to increase it to \$15 by 2019

Opt-out option if the minimum wage is increased to \$15 by 2019. The following are the results of the options:

- Small Businesses (less than 55 FT employees) 43
- Youth Exemption 27
- Total Compensation 12
- New Business: less than 5 years 18

Based on the overall outreach to Milpitas-based businesses, 81% would not want the City to increase the minimum wage to \$15 by 2019. The survey results show that only 9% of Milpitas business owners would support the Countywide effort. Verbal and written comments for opposition to the Countywide efforts were due to financial impacts and eventual closure of small businesses, lay off of employees or reduction in employees hours, low profit margin, fierce competition with neighboring communities such as Fremont. Additional hidden costs were also a factor in opposition to the increase in minimum wage. Those cost increases include workers compensation and payroll taxes, which in total increase expenses much higher than the hourly rate analysis.

**Fiscal Impact:** None.

**Attachments:**

- A) California Minimum Wage Increases and Options
- B) Questionnaire (English + Chinese versions) – for Milpitas businesses
- C) Written Comments from Questionnaire responses

**Recommendation:** To receive a report from staff and direct staff, as appropriate.

**XV. REPORTS OF OFFICERS AND COMMISSIONS**

**2. Approve Mayor’s Recommendations for Outside Committee Appointments of Councilmembers (Contact: Mayor Tran, 408-586-3029)**

**Recommendation:** Mayor Tran provided recommendations for Councilmember appointments to various outside agencies and committees for Councilmembers (see list included in the agenda packet), and Council is requested to move to confirm those appointments.

**\* 3. Consider Mayor’s Recommendation for One Appointment to the Sister Cities Commission (Contact: Mayor Tran, 408-586-3029)**

**Recommendation:** Mayor Tran recommends the appointment of Rhoda Shapiro to serve on the Sister Cities Commission as Alternate No. 2 to a currently vacant seat that will expire in September of 2017. Move to approve his recommendation.

**\* 4. Per Request of Councilmember Nuñez, Consider Approving More than 4 Hours of Staff Time Related to a Request for a Possible Collaboration with the Milpitas Unified School District’s Student Olympic Games (Contacts: Councilmember Nuñez, 408-586-3023 and Renee Lorentzen, 408-586-3409)**

**Background:** City Council policy states that any staff work not part of an approved work program or budgeted item requiring more than four hours of staff time obtain approval of a majority of the Council. Upon direction from Council majority, staff will begin to assess a partnership with the Milpitas Unified School District’s student Olympic Games.

If the Council so directs, the Recreation and Community Services Director and the Recreation Youth & Teen Coordinator will work with Milpitas Unified School District representatives to assess the scope of the event, what responsibilities the City of Milpitas would undertake as a partner and identify the City resources, i.e. additional staff time, facilities, that would be needed.

**Fiscal Impact:** If the Council directs work on this item, staff will return to a future meeting with the cost of the partnership to the City of Milpitas.

**Recommendation:** Approve Recreation Services staff to work on the research of a possible collaboration with the Milpitas Unified School District's student Olympic Games.

**5. Consider and Agree on Discussion Topics for the Special Meeting of the City Scheduled for January 24, 2017 (Contacts: Councilmember Nuñez, 408-586-3023 and Tom Williams, 408-586-3050)**

**Background:** The City Council agreed to schedule and conduct a special meeting on Tuesday, January 24, 2017 at 5:30 pm for the purpose of communicating and reaching consensus on vision, direction and operating protocols as elected officials. This process is important to achieve a well-managed and collaborative Council process charged with developing and guiding public policy for the citizens of Milpitas as well as participation in policy development for the greater Silicon Valley region.

Councilmember Nuñez requested this item be placed on this agenda to ensure topics of mutual interest are addressed and prioritized for an efficient and productive study session. Suggested topics include:

1. Mayor/Council communication and representation of Council/City's position on policies, issues and interest. Protocols regarding social media and representation of individual versus Councils position.
2. City Council Handbook
3. Housing issues including supply, affordability and relationship to schools
4. Economic Development, Job Creation and Marijuana Prohibitions
5. Social Media policies as elected officials.

**Recommendation:** Reach agreement of study session topics for the City Council special meeting on January 24, 2017.

**6. Consider Additional Resident Appointments to the General Plan Advisory Committee and Citizens Task Force on Water Rates (Contact: Councilmember Nuñez, 408-586-3023)**

**Background:** Two citizen panels have been appointed by the previous City Council in 2016.

The General Plan Advisory Committee (GPAC) is presently a 14-member group that was formed through City Council nominations on December 6, 2016. The GPAC will serve to help guide the formation of the General Plan by serving as an advisory committee that will discuss topical areas such as land use, circulation, housing, open space, safety, and education issues. The group is scheduled to meet approximately 15 times over the next year and a half and will help to formulate Policy statements, goals, and objectives.

Citizens Task Force on Water Rates was appointed by the previous City Council on September 20, 2016. This body has met once on November 17, 2016. Each City Councilmember nominated two residents while the Mayor recommended three members.

City Council shall consider additional members to each of these two bodies, one from each of the newly elected officials. The current list of members for each group is included in the Council's agenda packet.

**Recommendation:** Consider approval of additional appointments from the three newest members of the City Council to the two Council-appointed bodies: General Plan Advisory Committee and Citizens Task Force on Water Rates.

**7. Per Request of Councilmember Phan, Receive Update from Police Department Concerning Stance on Reporting Undocumented Immigrants to Department of Homeland Security (Staff Contact: Tom Williams, 408-586-3050)**

**Background:** During the January 3, 2017 City Council meeting, Councilmember Phan requested information concerning the Milpitas Police Department's stance on reporting undocumented immigrants to the Department of Homeland Security.

**Recommendation:** Hear oral report from City staff at the Council meeting.

**8. Receive Presentation and Approve Youth Advisory Commission 2017 Work Plan (Staff Contact: Andrew Mendes, 408-586-3231)**

**Background:** At the October 13, 2016 Youth Advisory Commission meeting, Commissioners created and approved a draft 2017 Work Plan. The Commission's Work Plan identifies the Commission's goals, projects and ongoing tasks the group would like to accomplish for the year.

**Recommendation:** Receive a report on the Commission's current activities and move to approve the Youth Advisory Commission 2017 Work Plan.

**9. Receive Presentation and Approve Economic Development Commission 2017 Work Plan (Staff Contact: Edesa Bitbadal, 408-586-3052)**

**Background:** Per Economic Development Commission (EDC) Bylaws, the EDC advises the City Council on business issues and implementation of a comprehensive economic development program for the City of Milpitas.

At the November 14, 2016 Commission meeting, Commissioners reviewed and unanimously voted to approve a draft 2017 Work Plan. The 2017 Work Plan outlines a set of five overarching goals for the 2017 calendar year, and articulates a set of measurable strategies and actions to facilitate economic growth and new opportunities in the City of Milpitas. Included in the Council's packet is the Commission's proposed 2017 Work Plan for Council review and consideration.

**Recommendation:** Receive a report and approve the Economic Development Commission 2017 Work Plan.

**XVI. NEW BUSINESS**

**10. Consider and Approve Community Development Block Grant Policies and Funding Priorities (Staff Contact: Tim Wong, 408-586-3286)**

**Background:** The Community Development Block Grant (CDBG) program is a Department of Housing and Urban Development (HUD) administered program that provides community development funds to the City on an annual basis. The City receives approximately \$400,000 each year from the CDBG program. The funds must be spent to meet one of three national objectives:

1. Benefiting low- and moderate-income persons,
2. Preventing or eliminating slums or blight, or

3. Meeting other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs.

Almost all of the City's CDBG funding, if not all, has been spent for low/moderate income households. HUD regulations allow up to 15% of the funds be allocated to public services, 65% to capital services and 20% to program administration. It has been a City Council directive to reevaluate CDBG funding priorities every two years.

In 2014, the Council reviewed the CDBG funding priorities and approved the following priorities:

**Public Services**

1. Senior Services
2. Youth and Teen Services
3. Homeless Shelter/Services
4. Child Care
5. Domestic Violence Victims Supportive Services
6. Code Enforcement

**Capital Services**

1. Home Repair/Rehabilitation
2. Affordable Housing
3. Rental Apartment Rehabilitation
4. Historic Preservation

In addition, City Council has also adopted the following policies:

- A minimum of funding level of \$5,000 shall be allocated for all public and non-public services
- Twenty-five percent of all public services funds shall be allocated to City of Milpitas programs, and
- \$15,000 from the CDBG Program Administration be allocated for Fair Housing Services (Project Sentinel) with an additional \$10,000 from the Milpitas Housing Authority for a total of \$25,000.

These priorities are used to evaluate CDBG applications as part of the City's Notice of Funds Available (NOFA) process. This year's NOFA is from January 5, 2017 to February 6, 2017. This is the period where organizations have the opportunity to submit applications requesting CDBG funding. The applications will be reviewed by the Community Advisory Commission (CAC) in March. The CAC will make recommendations to the Council. Typically the Council reviews and approves the funding requests in April to submit the funding approvals to HUD in May.

Staff has also considered the following factors in reviewing CDBG applications and making recommendations to the Community Advisory Commission (CAC) which forwards its recommendations to the City Council:

- City Council two-year funding priorities;
- Total number of persons/households benefitting from the program/activity services;
- Total number and percentage of Milpitas persons/households benefitting from the program/activity services benefit;
- Funding requested and dollars spent/per Milpitas residents;
- Funding requested from the previous year(s); and
- Leveraging of CDBG funding with other funding sources.

Staff recommends that the Council continue evaluations using the existing priorities.

**Fiscal Impact:** None.

**Recommendation:** Approve the existing Public Service and Capital Services priorities for CDBG funding.

- \* 11. **Authorize Out-of-State Travel for Police Department and Information Services Staff to Attend TriCon 2017 (Staff Contacts: Armando Corpuz, 408-586-2534 and Mike Luu, 408-586-2706)**

**Background:** The Milpitas Police Department has a present need to send four employees to the TriTech Software Systems annual conference scheduled in Las Vegas, NV. Information Services Department request to send three employees to the training conference which begins on Sunday, February 26, 2017 and ends the evening of March 1, 2017.

The Milpitas Police Department currently uses TriTech Software Systems' computer-aided dispatching (CAD) software and is in the process of implementing TriTech's records management system (RMS) software. This conference offers valuable training in on-going use of the software and critical training in problem-solving unexpected challenges. Courses offered at the conference will highlight the benefits and best practices of modules the police department is considering for the new RMS. The evaluation of these modules will help in providing a cost-benefit analysis. Attendance at this conference will support the successful implementation of the new RMS and maintenance of the CAD.

Other benefits of TriCon 2017:

- Improved product knowledge and operational efficiencies through product training and problem resolution to maximize the investment in TriTech software.
- Overview and insight into TriTech's product roadmap and company strategy.
- Extensive networking with the larger TriTech client base to exchange ideas related to optimization of City's software investment and general public safety best practices.
- TriTech's customer service staff manage an on-site, fully-equipped, computer lab for additional training and technical support.

Seven City employees who would be attending this conference include those who manage the new RMS implementation, serving as RMS and CAD Administrators, and serving as subject matter experts. In accordance with the City's Travel and Expense Policy (SOP No. 6-1), employee travel outside California requires City Council approval.

**Fiscal Impact:** None. The Police Department's operating budget has sufficient funds to pay for this travel expense.

**Recommendation:** Approve out of state travel for Police and Information Services employees to go to Las Vegas, NV for the purpose of attending TriTech Software Systems annual conference.

- \* 12. **Approve a Request from the Sunnyhills Neighborhood Association to Waive City Fees for a Neighborhood Event Held on Saturday, October 29, 2016 at Augustine Park (Staff Contact: Tom Williams, 408-586-3050)**

**Background:** The City Clerk received a "Donation or Fee Waiver/Reduction Request Application Form" from the Sunnyhills Neighborhood Association last fall. Sunnyhills applied in September for a Special Event Permit through the Planning Department, and applied to rent Augustine Park for this special event. The group requested that the City Council waive all City fees charged for its Halloween Neighborhood Watch Event from 2:00 to 4:00 PM on Saturday, October 29, 2016.

Due to some questions raised regarding the organization's other activities, this request was set aside. Now those questions have been resolved and City staff requests that the City Council now address the request for a fee waiver, and issue a reimbursement since the fees were paid already at the time of the event held last October.

City Fees are:

Park Rental fee – Recreation Services \$ 60.00  
Special Event permit application – Planning Dept. \$250.00

**Fiscal Impact:** \$20,000 was approved and included in the FY 2016-17 City budget for City Council’s Unallocated Community Promotions. If the current fee waiver of \$310.00 is granted, then \$15,942.58 would be the remaining balance for the fiscal year.

**Recommendation:** Approve the request from Sunnyhills Neighborhood Association and direct staff to issue a reimbursement as a fee waiver for the city Planning and Recreation fees totaling \$310.00 for its Halloween Neighborhood Watch event held on Saturday, October 29, 2016.

## XVII. ORDINANCE

### 13. **Adopt Interim Urgency Ordinance No. 291 Establishing a Temporary Moratorium on Marijuana Uses Pending the Enactment of an Update to the City’s Municipal Code (Staff Contact: Christopher J. Diaz, 408-586-3040)**

**Background:** On March 15, 2016, the City Council adopted an interim urgency ordinance in response to changes in state law known as the “Medical Marijuana Regulation and Safety Act” (“MMRSA”) which took effect January 1, 2016. These regulations introduced new terminology and provisions for cultivation and other types of marijuana uses. In adopting the urgency ordinance, the City Council temporarily imposed a prohibition on all marijuana uses in the City. The previously adopted ordinance is scheduled to expire on January 30, 2017, leaving the City with no local regulations regarding marijuana uses in the City limits.

In anticipation of the expiration of the prior interim urgency ordinance, and the recent passage of the Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”), it is staff’s strong recommendation that the City Council adopt the new proposed interim urgency ordinance to have some regulations in effect until such time that the City Council can more fully study the issue and determine the appropriate regulation of marijuana uses in the City.

Some of the AUMA provisions took effect on November 9, 2016. The AUMA immediately legalized possession, transport, purchase, use, and transfer of recreational marijuana for individuals 21 years of age or older. Under AUMA, adults can possess up to 28.5 grams of marijuana, up to 8 grams of marijuana in the form of concentrated cannabis, which may be present in marijuana products such as edibles, and up to six living marijuana plants, and any marijuana produced by those plants. It also legalized the cultivation of marijuana, marijuana delivery services, and recreational marijuana retail services, pending the State’s issuance of licenses for such purposes anticipated to be granted beginning in 2018.

AUMA does explicitly allow for local control of marijuana uses. It allows local governments to:

- Ban all marijuana-related businesses outright, including marijuana dispensaries, delivery services, and any recreational marijuana retail services.
- Ban outdoor cultivation of marijuana, unless the California Attorney General determines marijuana is no longer illegal under federal law (if marijuana is federally legalized, outdoor cultivation could be regulated, but not prohibited).
- Reasonably regulate indoor cultivation in private residences, but not ban it outright. AUMA would allow individuals to grow up to six marijuana plants in their home, and to possess all of the marijuana those plants provide.

Staff recommends that the City Council adopt an interim ordinance regulating personal, medical, and commercial use of marijuana. This interim urgency ordinance is recommended in an effort to maintain status quo in the City. This interim urgency ordinance will only be in effect for 45 days

as required by State law, but can be extended up to a full year at a subsequent City Council meeting. The goal with the interim urgency ordinance is to maintain status quo until such time that the City Council provides full direction on how marijuana uses should be regulated in the City of Milpitas. If the City Council fails to adopt this interim urgency ordinance, the City will have no regulations in place regarding marijuana uses after January 30, 2017.

### **Analysis**

The AUMA allows for the development of many new marijuana-related businesses, including recreational dispensaries, recreational retail services, and recreational delivery. However, AUMA also gives local governments the authority to regulate these uses. While AUMA indicates a local government cannot prevent transportation of marijuana or marijuana products on public roads, AUMA authorizes cities to “reasonably regulate” indoor cultivation of marijuana in private residences, ban outdoor cultivation of marijuana entirely unless it is federally legalized, and prohibit any marijuana-related business entirely.

Now that the AUMA has become law, recreational use of marijuana is legalized, along with recreational possession of marijuana and some level of indoor cultivation. The cultivation, transportation, and distribution of marijuana can create problems relating to public health and safety, crime, water and air quality, and energy consumption. Marijuana uses can create nuisance activity such as loitering and criminal activity in business and residential districts. Specifically, mobile delivery can create issues relating to responsibility and resources to monitor and enforce State law, questions of patient qualification, and risks relating to the high use of large sums of cash for mobile transactions. Cultivation can create air quality, energy, and water quality damage and impair building maintenance and safety. For example, the increased moisture necessary to grow indoors can create excessive mold growth and structural damage. Additionally, the equipment utilized to grow indoors can pose a risk of fire and electrical hazards due to dangerous electrical alterations and use. Further, inadequate ventilation combined with the use of pesticides and fertilizers in an enclosed space can lead to chemical contamination within structures.

#### *1) Regulation of Personal Marijuana Uses*

As indicated above, passage of AUMA legalized the recreational use of marijuana. However, the Ordinance staff recommends includes a provision banning personal recreational use of marijuana to the extent such use is illegal under California law. This would include personal outdoor cultivation.

At future City Council hearings on this issue, the City Council could choose to allow for some personal recreational marijuana uses, including outdoor cultivation. Some cities are allowing outdoor cultivation with regulations such as:

- Outdoor, residential cultivation so long as plants are enclosed
- Property owner must approve of cultivation on the property; and
- Limiting the number of plants.

Now that the AUMA has passed, the City cannot ban indoor cultivation of marijuana in private residences outright, but it may “reasonably regulate” such cultivation.

The Ordinance that staff recommends limits indoor cultivation consistent with a local agency’s authority under the AUMA. In particular, the proposed Ordinance would limit indoor cultivation of marijuana to residential districts and would limit the number of plants to six (6) plants per private residence, and solely for the personal use of a resident of the residence who is 21 years of age or older.

#### *2) Regulation of Medical Marijuana Uses*

The proposed Ordinance would impose the same regulations on medical marijuana as on recreational marijuana and would ban all dispensaries, delivery services, etc. It should be noted that such medical uses have been prohibited in the City for some time based on the City Council's adoption of prior ordinances.

At future City Council hearings, the City Council could:

- Create looser regulations for those who have a verified medical need to cultivate marijuana indoors or outdoors;
- Allow dispensaries but limit the number allowed in the jurisdiction;
- Allow dispensaries but impose separation requirements from parks, schools, churches, and other dispensaries;
- Limit dispensaries to a specified zoning designation; and/or
- Impose security requirements including limiting the hours of operation of any dispensaries and prohibiting loitering.

### *3) Regulation of Commercial Marijuana Uses*

With the AUMA becoming law, it will likely lead to the creation of a variety of new commercial marijuana ventures, including recreational retail services. The Ordinance that staff recommends bans all commercial marijuana activity, including commercial delivery, commercial cultivation, commercial manufacturing, commercial testing, and any commercial dispensaries or recreational retailers.

At future City Council hearings, the City Council could allow some or all of these uses, with whatever regulations the City sees fit. Some future options include:

- Allowing commercial cultivation with a local tax imposed on growth;
- Allowing some retailers with zoning limitations on location or number; and
- Allowing delivery to originate or terminate in the City.

Overall, staff recommends that Council adopt the proposed interim urgency ordinance to ensure the current status quo of marijuana regulation is maintained in the City until such time that the City Council can more fully explore its options on regulating recreational marijuana uses in the City.

**Environmental:** This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act Guidelines because it has no potential for resulting in physical change in the environment, directly or indirectly.

**Fiscal Impact:** No financial impact is anticipated for the adoption of the proposed Ordinance.

**Recommendation:** Following City Attorney's reading of the title, move to adopt interim urgency Ordinance No. 291 establishing a temporary moratorium on marijuana uses pending the enactment of an update to the Milpitas Municipal Code.

## **XVIII. RESOLUTIONS**

- \* 14. Adopt a Resolution Approving a New Memorandum of Understanding Between the City of Milpitas and the International Association of Firefighters Local 1699 for January 1, 2017 to June 30, 2018 (Staff Contact: Tina Murphy, 408-586-3086)**

**Background:** The most recent Memorandum of Understanding (MOU) between the City of Milpitas and the International Association of Firefighters (IAFF) Local 1699 expired on December 31, 2016. City representatives and representatives from the IAFF Local met and conferred in good faith to negotiate a new contract. Agreement was reached for a new successor Memorandum of Understanding with effective dates of January 1, 2017 through June 30, 2018,

and a copy of which is included in the City Council agenda packet. The MOU document was available for public review for the 10 day period, as required per the City's Open Government ordinance.

**Fiscal Impact:** The total one-year cost of the MOU is approximately \$346,300.

**Recommendation:** Adopt a resolution approving the Memorandum of Understanding between the City of Milpitas and the International Association of Firefighters Local 1699 covering the period of January 1, 2017 through June 30, 2018.

**\* 15. Adopt Two Resolutions - of the Milpitas City Council and Milpitas Public Financing Authority Board - Authorizing Investment of Monies in the Local Agency Investment Fund and Updating Officers' Information (Staff Contact: Jane Corpus, 408-586-3125)**

**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 administration and personnel changes (change in staff and new elected officials).

**Fiscal Impact:** None.

**Recommendation:** Adopt resolutions of the City Council and Public Financing Authority Board authorizing investment of monies in the Local Agency Investment Fund and updating officers' information.

**\* 16. Adopt a Resolution Authorizing the Purchase and Delivery of an Emergency Back-Up Generator for the Milpitas Sports Center from Peterson Power Systems, Inc. for the Not-To-Exceed Amount of \$115,011 Through a Cooperative Procurement Contract (Staff Contacts: Chris Schroeder, 408-586-3161 and Nina Hawk, 408-586-2603)**

**Background:** Public Works Fiscal Year 2016-17 budget includes purchase of an emergency back-up generator for the Milpitas Sports Center. This is a cooperative purchase through the National Joint Powers Alliance (NJPA). Cooperative purchasing through NJPA is specifically authorized pursuant to Municipal Code Section I-2-3.08 "Cooperative Procurement." Purchasing reviewed all of the documentation from the National Joint Powers Alliance Request for Proposal (RFP) #080613 entitled "Electrical Energy Equipment with Related Accessories, Services, and Supplies" and has determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as the City of Milpitas. The price for the Caterpillar C13 350kW for 277/480 volts Genset Diesel Generator is the same as that offered in the original agreement. The total contract price includes a 10% contingency to cover installation, training, or additional work. Purchasing the Generator through NJPA represents a savings of \$54,031 off the regular list price.

**Fiscal Impact:** None. Sufficient funding is in the FY 2016-17 Capital Program Fund for this purchase.

**Recommendation:** Adopt a resolution authorizing the purchase of an emergency back-up generator for the Milpitas Sports Center from Peterson Power Systems, Inc. for the not-to-exceed amount of \$115,011 through a cooperative procurement contract, per Milpitas Municipal Code Section I-2-3.08 Cooperative Purchasing.

**17. Adopt a Resolution Appointing Steve Pangelinan as Interim Chief of Police and Approving Employment Contract Pursuant to Government Code Sections 7522.56 and 21221(h) (Staff Contact: Tina Murphy, 408-586-3086)**

**Background:** For the past four years, Steve Pangelinan has served as the Chief of Police for the City of Milpitas. Mr. Pangelinan retired from the City effective December 30, 2016. The City of Milpitas is currently recruiting to hire a new Chief of Police for the Milpitas Police Department.

Staff recommends hiring Mr. Pangelinan on a part-time, interim basis to perform specific duties of the Chief of Police position. Given the need for continuity and a highly trained professional to lead the Milpitas Police Department, staff recommends hiring Steve Pangelinan on a part-time, interim basis from January 18, 2017 through December 31, 2017 or until a new Chief of Police is hired. His work hours will not exceed 960 hours per fiscal year.

**California Public Employees Reform Act 2013 and the Public Employees' Retirement Law**  
The California Public Employees Reform Act of 2013 (PEPRA) requires a 180-day "wait" period before a retiree can return to work for a public agency; however, the 180-day "wait" period is not applicable to the appointment of a safety member to a safety position as is the case here so long as the retiree did not retire with a retirement incentive such as the CalPERS golden parachute (i.e. 2 years additional service credit). In addition to the requirements of PEPRA, the appointment of a retiree to a vacant position must comply with Section 21221(h) of the Public Employees' Retirement Law (PERL). In accordance with PERL, the appointment is permissible if it is made during the recruitment for a permanent appointment to the position and it is approved by the governing body of the employer in a public meeting and not on a consent calendar. Staff worked with the City Attorney to ensure that additional requirements, such as ones that relate to compensation and hours worked, will be met.

Included in the Council's agenda packet is the required resolution to appoint a retiree pursuant to PEPRA and PERL and the employment agreement.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution appointing Steve Pangelinan to serve as Interim Chief of Police and approve the employment agreement with Mr. Pangelinan pursuant to California Government Code Sections 7522.56 and 21221(h).

**18. Adopt a Resolution Appointing an Elected Official to the Boards of the Bay Area Water Supply & Conservation Agency and Related San Francisco Bay Area Regional Water System Finance Authority (Contact: Mayor Tran, 408-586-3029)**

**Background:** City Council was requested to make an appointment of one elected official to serve on the Boards of Directors of both BAWSCA and its Finance Authority. The recommendation was provided by Mayor Tran on earlier agenda item. Action by Resolution is required to make this appointment effective, and to permit the appointed member to fill the remaining term of former Mayor Esteves on this agency's Boards.

**Recommendation:** Adopt a resolution appointing one specific member of the City Council to serve as Milpitas' representative on BAWSCA and its finance authority.

**XIX. AGREEMENTS**

**\* 19. Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement for a Residential Development Located at 31 South Milpitas Boulevard by DR Horton Bay, Inc. (Staff Contact: Judy Chu, 408-586-3325)**

**Background:** On January 15, 2013, the City Council approved the Major Tentative Map, Environmental Impact Assessment, Site Development Permit, and Conditional Use Permit for an 80 single family home project located at 31 S. Milpitas Boulevard between Calaveras Boulevard and Los Coches Street.

Project condition requires the property owner to execute and record a Stormwater Management Facilities Operation and Maintenance Agreement (the “Agreement”) for the operation, maintenance and annual inspection of the storm water treatment facilities by the Home Owner’s Association, prior to final building occupancy. The subject Agreement is needed to comply with the Municipal Regional Stormwater National Pollutants Discharge Elimination System (NPDES) Permit and Milpitas Municipal Code Title XI, Chapter 16 *Stormwater and Urban Runoff Pollution Control*.

The agreement was reviewed by the City Attorney as to form and by the Director of Engineering as to content. A copy of the agreement is included in the Council agenda packet.

**California Environmental Quality Act:** Execution of the Agreement is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

**Fiscal Impact:** None.

**Recommendation:** Authorize the City Manager to execute a Storm Water Management Operation and Maintenance Agreement for DR Horton Bay, Inc.

**XX. ADJOURN JOINT MEETING**

**NEXT SPECIAL CITY COUNCIL MEETING  
TUESDAY, JANUARY 24, 2017**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, FEBRUARY 7, 2017**