



# REGULAR MEETING OF THE MILPITAS CITY COUNCIL

## AGENDA

**TUESDAY, SEPTEMBER 19, 2017**

**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 Mayor and ROLL CALL by City Clerk**

#### **(a) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**

Pursuant to California Government Code Section 54957.6

City Negotiator: Tina Murphy

Employee Group: Milpitas Employees Association

Under Negotiation: Wages, Hours, Benefits, and Working Conditions

#### **(b) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Pursuant to California Government Code Section 54956.9(d)(4) - City as Plaintiff

#### **(c) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Pursuant to California Government Code Section 54956.9(d)(1)

Tom Williams v. City of Milpitas, et al. - Santa Clara County Superior Court Case No. 17CV309235

#### **(d) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Pursuant to California Government Code Section 54956.9(d)(1)

First Amendment Coalition v. City of Milpitas – Santa Clara County Superior Court Case No. 17CV310994

#### **(e) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Pursuant to California Government Code Section 54956.9(d)(1)

Tom Williams v. City of Milpitas, et al. - American Arbitration Case No. 01-17-0003-5823

#### **(f) PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to California Government Code Section 54957. Position: City Manager

#### **(g) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**

Pursuant to California Government Code Section 54957

Number of employee(s) affected: 1

### **II. 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

### **III. PLEDGE OF ALLEGIANCE (7:00 p.m.)**

### **IV. INVOCATION (Councilmember Barbadillo)**

### **V. PRESENTATION**

- Recognize visitors from City of Dagupan, Philippines – Milpitas Sister City

**VI. PUBLIC FORUM**

---

Those in the audience are invited to address City 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 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.

---

**VII. ANNOUNCEMENTS**

**VIII. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

**IX. APPROVAL OF AGENDA**

**X. 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.

---

- \*1. Accept City Council Calendars for October and September 2017**
- \*2. Approve City Council Meeting Minutes of September 5 and 11, 2017**
- \*3. Approve Request from the Sunnyhills Neighborhood Association to Waive City Fees for a Neighborhood Halloween Event on Saturday, October 28, 2017 at Augustine Park (Staff Contact: Mary Lavelle, 408-586-3001)**
- \*4. Approve Request from Korean Language and Culture Foundation for a Donation of \$500 Toward Korean Alphabet Day Celebration on October 7, 2017 (Staff Contact: Mary Lavelle, 408-586-3001)**
- \*5. Approve and Authorize the City Manager to Execute an Agreement with UniFirst Corporation to Provide Uniform, Floor Mat, Towel and Other Linen and Laundry Services Annually Not-to-Exceed \$62,579.40 and a Total Not-to-Exceed Amount of \$312,897 (Staff Contact: Chris Schroeder, 408-586-3161)**
- \*6. Authorize the City Manager to Execute a Storm Water Management Facilities Operation and Maintenance Agreement for McCarthy Creekside by The McCarthy Ranch, LP (Staff Contact: Judy Chu, 408-586-3325)**
- \*7. Approve Amendment No. 4 to the Agreement with West Yost Associates, Inc. for Staff Augmentation Services Extending the Term of the Agreement from September 30, 2017 to December 31, 2017 (Staff Contact: Steve Pangelinan, 408-586-3051)**
- \*8. Approve Amendment No. 3 to the Cost Sharing Agreement with West Valley Sanitation District, Cupertino Sanitary, County Sanitation District No. 2-3, and Burbank Sanitary District in the Amount of \$980,000 with a Total Contract Amount Not to Exceed \$1,400,000, and Direct the City Manager to Execute the Amendment in a Form Approved by the City Attorney (Staff Contact: Nina Hawk, 408-586-2603)**

**XI. PUBLIC HEARING**

- 9. Conduct a Public Hearing and Take All Necessary Actions for Approval including Adoption of Addendum to Transit Area Specific Plan, Amendments to the General Plan, Transit Area Specific Plan, and Zoning Map for 551 Lundy Place, 1992 Tarob Court, 2001 Tarob Court and 675 Trade Zone Boulevard, and Approval of Vesting**

**Tentative Map, Site Development Permit, and Conditional Use Permit for 1992 Tarob Court (Staff Contact: Sarah Fleming, 408-586-3278)**

**XII. UNFINISHED BUSINESS**

- 10. Consider Adopting a Resolution Approving a Censure Policy for the City Council (Staff Contact: Christopher Diaz, 408-586-3040)**

**XIII. NEW BUSINESS**

- 11. Adopt the FY 2016-2017 Community Development Block Grant (CDBG)'s Consolidated Annual Performance Evaluation Report (CAPER) (Staff Contact: Brad Misner, 408-586-3273)**
- 12. Receive Presentation on the "silicon valley IDEA" Program from Representatives of the Silicon Valley Organization (SVO) and Consider a Partnership with the SVO (Contact: Councilmember Phan, 408-586-3032)**
- 13. Accept Report and Provide Direction to Staff on Property Assessed Clean Energy Programs (Staff Contact: Edesa Bitbadal, 408-586-3052)**
- 14. Accept Report and Provide Direction to Staff on Community Choice Energy Programs (Staff Contact: Edesa Bitbadal, 408-586-3052)**
- 15. Receive Staff Report on City Budget Process (Staff Contact: Will Fuentes, 408-586-3111)**
- 16. Review List for City Council of Items Due Back for Response from City Staff (Staff Contacts: Steve Pangelinan, 408-586-3051 and Mary Lavelle, 408-586-3001)**

**XIV. ORDINANCE**

- 17. Receive Report and Consider Introduction of Ordinance No. 289.1 Amending Chapter 2 and Chapter 4 of Title I of the Municipal Code to Relating to Purchasing and Contract Authority (Staff Contact: Will Fuentes, 408-586-3111)**

**XV. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies**

**XVI. ADJOURNMENT**

**NEXT REGULAR CITY COUNCIL MEETING**  
**TUESDAY, OCTBER 3, 2017**

**SPECIAL CITY COUNCIL MEETINGS:**  
**MONDAY, OCTOBER 2, 2017**  
**WEDNESDAY, OCTOBER 18, 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  
e-mail: [cdiaz@ci.milpitas.ca.gov](mailto:cdiaz@ci.milpitas.ca.gov) / Phone: 408-586-3040

*The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) by selecting the Milpitas Municipal Code link.*

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3<sup>rd</sup> floor 455 E. Calaveras Blvd., Milpitas and on the City website.

All City Council agendas and related materials can be viewed online here:  
[www.ci.milpitas.ca.gov/government/council/agenda\\_minutes.asp](http://www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp) (select meeting date)

**APPLY TO SERVE ON A CITY COMMISSION**

Current vacancies on: Arts Commission  
Bicycle Pedestrian Advisory Commission  
Community Advisory Commission  
Economic Development Commission  
Emergency Preparedness Commission  
Library Commission  
Parks, Recreation & Cultural Resources Commission  
Recycling & Source Reduction Advisory Commission  
Sister Cities Commission  
Telecommunications Commission  
Youth Advisory 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.

*For assistance in the following languages, you may call:*

Đối với Việt Nam, gọi 408-586-3122

对中国人来说，请用 408-586-3263

Para sa mga Tagalog, tawagan 408-586-3051

Para español, llame 408-586-3232

*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.*

## AGENDA REPORTS

### X. CONSENT CALENDAR

- \*3. Approve Request from the Sunnyhills Neighborhood Association to Waive City Fees for a Neighborhood Halloween Event on Saturday, October 28, 2017 at Augustine Park (Staff Contact: Mary Lavelle, 408-586-3001)**

**Background:** The City Clerk received a “Donation or Fee Waiver/Reduction Request Application Form” from the Sunnyhills Neighborhood Association on September 7. The group has applied for a Special Event Permit through the Planning Department, and applied through Recreation Services to rent Augustine Park for this special event. Sunnyhills Association 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 28, 2017. Sunnyhills submitted its IRS non-profit determination letter.

**City Fees are:**

Park Rental fee – Recreation Services	\$180.00
Special Event permit application – Planning Dept.	\$250.00

**Fiscal Impact:** \$25,800 was approved and included in the FY 2017-18 City budget for City Council’s Unallocated Community Promotions. If the current fee waiver of \$430.00 is granted, then \$20,236.23 would be the remaining balance for the fiscal year.

**Recommendation:** Approve the request from Sunnyhills Neighborhood Association and direct staff to waive \$430 in city fees for Planning (\$250) and Recreation (\$180) fees for the Sunnyhills Halloween Neighborhood Watch Event scheduled on Saturday, October 28, 2017.

**Attachments:**

- a) Fee Waiver application + IRS Letter
- b) Event Flyer

- \*4. Approve Request from Korean Language and Culture Foundation for a Donation of \$500 Toward Korean Alphabet Day Celebration on October 7, 2017 (Staff Contact: Mary Lavelle, 408-586-3001)**

**Background:** On September 7, 2017, the City Clerk received a “Donation or Fee Waiver/Reduction Request Application Form” from the Korean Language and Culture Foundation, a non-profit organization in Milpitas. This group plans to hold its annual celebration of Hangeul, the Korean alphabet on October 7, 2017 at the Milpitas Library. The event allows participants to experience Korean culture including the Korean alphabet, Korean customs and printing system. The Foundation is seeking funds of \$500 for support from the City of Milpitas, and submitted its IRS non-profit determination letter.

**Fiscal Impact:** \$25,800 was approved and included in the FY 2017-18 City budget for City Council’s Unallocated Community Promotions. If the \$500 donation request is approved along with another request on this agenda, then \$19,736.23 would be the remaining balance.

**Recommendation:** Consider the request from the Korean Language and Culture Foundation and approve a donation in the amount of \$500 to the non-profit group for its Hangeul Day celebration on October 7, 2017.

**Attachments:**

- a) Donation request application + IRS Letter
- b) Event Flyer for Korean Alphabet Day
- c) City Council Unallocated Budget Line Item status

- \*5. Approve and Authorize the City Manager to Execute an Agreement with UniFirst Corporation to Provide Uniform, Floor Mat, Towel and Other Linen and Laundry Services Annually Not-to-Exceed \$62,579.40 and a Total Not-to-Exceed Amount of \$312,897 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** The City's current contract with G&K Services for uniform and floor mat service has expired after five years, and a new contract is required. Additionally, floor mat services were not consistent throughout the various city buildings with less than half routinely serviced.

On August 18, 2017, the City's Purchasing Agent issued Invitation for Bids No. 2209 – Citywide Uniform and Mat Services to solicit quotes from prospective vendors on Public Purchase which is the City's electronic procurement website. Six vendors downloaded the IFB No. 2009 bid packet and bid pricing form. Of those six prospective bidders, two vendors submitted qualifying bids by the September 5, 2017 deadline published in the solicitation. UniFirst Corporation supplied the lowest cost responsive bid and was awarded.

The new agreement with UniFirst Corporation will provide uniform and laundry services to the 52 Milpitas Employees Association employees as well as floor mats, towels, aprons, shop rags, bed linens and other items to various departments throughout the City. Staff is working with UniFirst to finalize a transition plan to have the necessary uniforms, mats, towels and other products in place before the formal start of the contract on November 8, 2017.

**Fiscal Impact:** None. Funds for this contract are available from the budgets of the various departments receiving services beginning in Fiscal Year 2017-18.

**Recommendations:**

1. Approve an agreement with UniFirst Corporation to provide Uniform, Floor Mat, Towel and Other Linen and Laundry Services for the City of Milpitas for the annual not to exceed amount of \$62,579.40 and a total agreement amount not to exceed \$312,897.
2. Allow the City Attorney to negotiate terms and conditions of the agreement.
3. Authorize the City Manager to execute the agreement.

**Attachment:** Agreement with UniFirst Corporation

- \*6. Authorize the City Manager to Execute a Storm Water Management Facilities Operation and Maintenance Agreement for McCarthy Creekside by The McCarthy Ranch, LP (Staff Contact: Judy Chu, 408-586-3325)**

**Background:** On May 11, 2016, the Milpitas Planning Commission conditionally approved a Site Development Permit, Conditional Use Permit and a Major Tentative Map for five Industrial Buildings and a restaurant at 625 North McCarthy Boulevard at Ranch Drive.

Project condition no. 36 requires the property owner to execute and record a Storm Water Management Operation and Maintenance Agreement with the City for the operation, maintenance and annual inspection of the storm water treatment facilities. The Agreement (copy in the agenda packet) was reviewed by the City Attorney as to form and by the City Engineer as to content.

**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 the Storm Management Facilities Operation and Maintenance Agreement for The McCarthy Ranch, LP (McCarthy Creekside).

**Attachment:** Storm Water Management Operation and Maintenance Agreement

- \*7. **Approve Amendment No. 4 to the Agreement with West Yost Associates, Inc. for Staff Augmentation Services Extending the Term of the Agreement from September 30, 2017 to December 31, 2017 (Staff Contact: Steve Pangelinan, 408-586-3051)**

**Background:** On October 3, 2016, the City entered into an agreement with West Yost Associates, in the amount of \$100,000, to provide staff augmentation for the City Engineer position to plan, organize, direct and oversee the activities and operations of the Engineering Department, which includes Land Development, Traffic, Design & Construction, Utilities, Solid Waste, Storm and Sewer, and Inspections. On February 7, 2017, the parties entered into **Amendment No. 1** to increase the compensation by \$75,000, for a new total amount of \$175,000, and to extend the terms of the agreement to April 30, 2017. On April 30, the parties agreed to enter into **Amendment No. 2** to extend the term of the agreement to September 30, 2017. On June 6, 2017 the parties entered into **Amendment No. 3** to increase compensation by \$50,000.

**Amendment No. 4** to the Agreement is proposed with West Yost Associates, Inc. to extend the term of the Agreement from September 30, 2017 to December 31, 2017 to continue services until the hiring process for the City Engineer is completed.

**California Environmental Quality Act:** Exempt from CEQA as there will be no physical change to the environment.

**Alternative:** Denial of this request could result in reduced level of service and added burden to Engineering section leads and possibly added burden to other Department Heads.

**Fiscal Impact:** None. This is non-cost change to the contract.

**Recommendation:** Approve Amendment No. 4 to the Agreement with West Yost Associates, Inc. to extend the term of the agreement from September 30, 2017 to December 31, 2017.

**Attachment:** Amendment No. 4 to the Agreement with West Yost Associates

- \*8. **Approve Amendment No. 3 to the Cost Sharing Agreement with West Valley Sanitation District, Cupertino Sanitary, County Sanitation District No. 2-3, and Burbank Sanitary District in the Amount of \$980,000 with a Total Contract Amount Not to Exceed \$1,400,000, and Direct the City Manager to Execute the Amendment in a Form Approved by the City Attorney (Staff Contact: Nina Hawk, 408-586-2603)**

**Background:** On August 25, 2015, the City of Milpitas formed a Common Interest Group with West Valley Sanitation District, Cupertino Sanitary District, County Sanitation District No. 2-3, and Burbank Sanitary District pursuant to a Common Interest, Privilege, and Confidentiality Agreement. This Common Interest Group (“CIG”) was established to advance the interests of the parties’ common interests in negotiating amendments to their respective Master Agreements for Wastewater Treatment with the Cities of San Jose and Santa Clara (Treatment Plant Owners).

A Cost Sharing Agreement executed on March 7, 2016 divides the costs for professional services rendered to the Common Interest Group parties in their negotiations with the Cities of San Jose and Santa Clara. Amendments No. 1 and No. 2 included professional work related to two Administrative Claims submitted by CIG to City of San Jose under the Master

Agreements. These administrative claims and requests to re-negotiate the master agreements had been advanced to mediation between Treatment Plant Owners and CIG. Mediation was not successful and the next step to advance this highly complex and technical matter is through court action. Amendment No. 3 is to cover the costs necessary to pursue court action on this matter to protect City of Milpitas wastewater rate payer interest. It is anticipated by staff the work covered under the Amendment No. 3 could last up to two years, therefore the agreement amendment cites an end date of December 31, 2019.

**Fiscal Impact:** There are sufficient funds in Capital Improvement Program Project No. 6118 San Jose /Santa Clara Regional Waste Water Facility.

**Recommendation:** Approve Amendment No. 3 with West Valley Sanitation District, Cupertino Sanitary District, County Sanitation District No. 2-3, and Burbank Sanitary District Cost Sharing Agreement for the Common Interest Group in an amount of \$980,000 for a total contract amount not-to-exceed \$1,400,000 and direct the City Manager to execute the amendment in a form approved by the City Attorney.

**Attachment:** None

## **XI. PUBLIC HEARING**

- 9. Conduct a Public Hearing and Take All Necessary Actions for Approval including Adoption of Addendum to Transit Area Specific Plan, Amendments to the General Plan, Transit Area Specific Plan, and Zoning Map for 551 Lundy Place, 1992 Tarob Court, 2001 Tarob Court and 675 Trade Zone Boulevard, and Approval of Vesting Tentative Map, Site Development Permit, and Conditional Use Permit for 1992 Tarob Court (Staff Contact: Sarah Fleming, 408-586-3278)**

**Background:** On June 3, 2008, the City Council adopted the Transit Area Specific Plan (TASP), which was predicated on the future development of mix of transit-oriented uses. The proposed project is within the Trade Zone/Montague Sub-District of the TASP.

As a part of the development of the TASP a comprehensive real estate analysis was conducted to analyze existing land uses and develop future land use projections over a 20-year timeframe. Very little future demand was anticipated for industrial/R&D space, resulting in the vast majority of the industrial land in the TASP area being rezoned for other uses (TASP Section 2.3, page 2-18). One exception to this change in TASP-area land uses is located along Lundy Place, along the City's border with San José. While the City's overall aim within the TASP is to "...transform an older industrial area into a vibrant, high-intensity, transit-oriented district" (TASP Section 1.1, page 1-1), the TASP called for preservation of four industrial parcels in this area, all with property lines adjacent to Lundy Place.

In the fall of 2015, The True Life Companies (TTLC) submitted a development application for the 1980 Tarob Court site, a 59-unit residential townhome project which was subsequently heard by Planning Commission on August 10, 2016 and approved by City Council on September 20, 2016. TTLC had an interest in purchasing the directly adjacent 1992 Tarob Court property for a similar type of townhome development, contingent on their ability to receive approval to rezone the site from an industrial to residential land use.

On November 18, 2015, the Planning Commission conducted a study session on this topic (Agenda Item X-I). The Commission discussed the various potential land use scenarios, and Commissioners were generally in favor of the possibility of a future land use modification for the site. Staff recommended that, should the land use designation for 1992 Tarob Court be converted to residential, the same action should also be taken for the remaining and nearby three industrial parcels of 551 Lundy Place, 2001 Tarob Court, and 675 Trade Zone Boulevard. Consistency among the four sites would reduce any future conflicts between

residential and industrial uses in this area of Milpitas.

In December 2016, The True Life Companies submitted an application for the above-referenced land use designation changes for these four parcels, as well as subsequent and related site development applications to develop the 1992 Tarob Court site with 53 townhome-style condominium units.

These applications were heard by the Planning Commission on August 9, 2017. Per attached resolution 17-026, the Commission voted 5-0 to recommend City Council approval of the above applications, contingent on relocation of three (3) guest parking spaces to the project site (originally proposed to be on Lundy Place), and the development of the Lundy Place frontage of 1992 Tarob Court as a 'Local Street' per TASP Figure 5-9. The plans before Council reflect these changes. The plans as proposed to the Planning Commission will also be available at the Council's public hearing.

**Fiscal Impact:** A Fiscal Impact Study was conducted to assess the impact of the requested land use designation changes and related development project within the Transit Area Specific Plan (TASP). The study acknowledged the elimination of 141,800 sq. ft. of prime industrial space by the transit area and the loss of 144 professional jobs across the four properties, resulting in a city-wide jobs/housing balance reduction. In 2007, an Environmental Impact Report (EIR) was prepared for the adoption of the TASP and was predicated on a maximum build-out scenario of 7,109 housing units and 993,843 of office/ industrial buildings. The demolition of the existing buildings and rezone will reduce 7.5 acres of land area for office space and the inventory of current industrial spaces in the TASP area. The study, however, states that there will be 1,200 temporary construction jobs created due to the construction of the housing project.

The study also analyzed the addition of TASP fees, property taxes, and Community Facilities District (CFD) fees that would result from the requested land use designation changes, finding that approval of the above applications would result in a net positive impact to the city of approximately \$300,000/year across the four sites. The proposed residential development at 1992 Tarob would contribute a net \$74,000 of this amount. Projects across the four sites would also be subject to one-time affordable housing fees, parkland fees and public art fees which are not included in this number and not previously anticipated in TASP. Across the four sites, a total of \$6.8M in one time fees paid to the above-referenced funds could be realized, as well as additional community benefit payments that might be negotiated as a part of each site's future development proposal requests.

This project is directly adjacent to townhome developments on Tarob Court and across the street from a City of San José industrial park on Lundy Place. This project is also located minutes away from the BART station. Conversion of these lands would result in an additional loss of industrial land and displacement of the existing businesses. It also further reduces the chance of recruiting new companies to the transit hub. For these reasons, should Council choose to approve the recommended actions, staff requests direction to conduct a city-wide analysis on the history of the impact from land conversions and zoning amendments in commercial and industrial areas on employment and related overall fiscal impacts to City.

**Recommendations:**

1. Open the public hearing for comments, and move to close the hearing following all speakers.
2. Adopt City Council Resolution adopting the Addendum to the Transit Area Specific Plan Environmental Impact Report.
3. Adopt City Council Resolution approving the General Plan Amendment and the Transit Area Specific Plan Amendment.
4. Direct staff to provide a study session on history of employment and land conversions and the fiscal impacts in Milpitas.

5. Following a reading of the title aloud by the City Attorney, move to waive the first reading beyond the title of Ordinance No. 38.830 for zoning map changes.
6. Move to introduce Ordinance No. 38.830.
7. Adopt City Council Resolution approving the Vesting Tentative Map, Site Development Permit, and Conditional Use Permit.

**Attachments:**

- a) Resolution approving addendum to EIR
- b) Resolution approving General Plan Amendment and Specific Plan Amendments
- c) Ordinance No. 38.830 for introduction (zone change)
- d) Resolution approving Tentative Map, Site Dev. Permit and Conditional Use Permit
- e) Project Plans
- f) Planning Commission staff report 08/09/2017
- g) Fiscal and Economic Impact Analysis of Tarob Court Master Plan
- h) Planning Commission Resolution 17-026
- i) Planning Commission Meeting Minutes 08/09/2017

**XII. UNFINISHED BUSINESS**

**10. Consider Adopting a Resolution Approving a Censure Policy for the City Council (Staff Contact: Christopher Diaz, 408-586-3040)**

**Background:** On August 1, 2017, City Council considered the proposed Resolution for a censure policy; however, no vote was taken, after the motion made received no second at that meeting. Councilmember Nuñez requests City Council to reconsider the proposed resolution for a vote at this meeting.

Censure is defined as the “formal resolution of a legislative, administrative or other body reprimanding a person, normally one of its own members, for specified conduct.” (Black’s Law Dictionary.) Public censure of a City Councilmember is generally done in the form of a resolution of reproach that is adopted by the City Council and then read to the members of the public in attendance at that City Council meeting. The resolution of reproach thus becomes a public record of the City.

Notice of an intent to censure and an opportunity for the Councilmember to respond is recommended to protect the reputational interests of the Councilmember. The City Council must make supported factual findings before censuring a Councilmember. (*Braun v. City of Taft* (1984) 154 Cal. App. 3d 332, 348.) In addition, the California Attorney General has issued a written opinion concluding that complaints against elected officials may not be discussed in closed session. (61 Ops. Cal. Atty. Gen. 10 (1978).) Therefore, if the City Council wishes to censure one of its members, the City Council should adopt a resolution containing findings as to why the City Council believes a censure is appropriate for consideration in open session.

It should also be noted that the Brown Act protects a member’s public criticism of policies, procedures, programs or services of the agency or acts or omissions of the legislative body. (See Gov. Code §54954.3(c).) Accordingly, a member cannot be reprimanded or censured for expressing his or her opinions regarding City policy or conduct.

In Milpitas, there are no rules or policies concerning the authority or procedures to follow when censuring members of the City Council. The policy in the proposed Resolution, if adopted by Council, would provide such a procedure while meeting the legal requirements described above.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution approving a censure policy for the Milpitas City Council.

**Attachment:** Resolution with censure policy as exhibit

### XIII. NEW BUSINESS

#### 11. **Adopt the FY 2016-2017 Community Development Block Grant (CDBG)'s Consolidated Annual Performance Evaluation Report (CAPER) (Staff Contact: Brad Misner, 408-586-3273)**

**Background:** In a typical CDBG funding cycle, all funds spend must be consistent with the Consolidated plan. The Consolidated Plan is the City's 5 year guiding CDBG document that prioritizes CDBG spending for community's needs and wants. The Consolidated Plan was prepared with a community-wide dialogue to establish the community's development priorities.

The Consolidated Plan is then carried out through the Annual Action Plan – which lays out the framework of how the jurisdiction will spend its annual CDBG allocation. The Annual Action Plan provides a concise summary of the funded federal and non-federal activities and programs that will be used in the upcoming year that addresses the goals identified in the Consolidated Plan. The Annual Action Plan is typically approved by Council in April or May.

At the end of the CDBG program year, the Consolidated Annual Performance Evaluation Report (CAPER) is the last report. The CAPER summarizes all the accomplishments of the past funding cycle and the progress towards the goals identified in the Consolidated Plan.

The 2016-2017 CAPER describes the City's activities for FY 2016-17 and accomplishments toward the goals from the 2012-2017 Consolidated Plan. Please note that this CAPER is the last progress report for the 2012-2017 Consolidated Plan. It does not report on the goals of the Consolidated Plan that was approved by the City Council at its May 8, 2017 meeting.

The following CAPER below describes the City's one-year CDBG programs and activities undertaken in the past program year (FY 2016-17).

**The CAPER identifies some of the major accomplishments in 2016-17:**

- CDBG funds provided 34 children in the court-appointed, foster care system with long-term, steady, supportive volunteers throughout until adulthood.
- Sixty-three Milpitas youths and seniors benefited from CDBG funds to attend recreational program at 50% of the cost.
- A total of 55 Milpitas residents received emergency shelter and supportive services through homeless shelters and/or emergency shelters for victims of domestic violence.
- A total of 184 low income homeowners and renters benefitted from safety, energy efficiency, rehabilitation and home modifications help families to safely age in place by increase accessibility and mobility.
- CDBG funds helped continue services for the Milpitas Food Pantry, serving 1,735 extremely-low to very low-income residents.
- Provided funds to provide supportive services for 204 domestic violence victims (women and children) with supportive & residential services.
- CDBG funds helped with increasing awareness and investigating complaints of fair housing and landlord/tenant services to about 38 residents in Milpitas.
- CDBG funds served 45 Milpitas elderly citizens with free legal services.
- A total of 1,766 hot meals were delivered daily to 7 elderly, homebound Milpitas seniors.
- Funded 16 public and non-public service organizations with CDBG.

- **A total of 2,567 individuals benefited from CDBG funds for FY 2016-17.**

However, some of the awarded agencies did not meet their submitted annual goals for funding. The agencies that did not meet some of their stated goals included:

1. Child Advocates of Silicon Valley met 3 out of 4 of their goals: 1) recruited 518 potential CASA volunteers versus a goal of 400; 2) trained 240 new CASA volunteers versus a goal of 200; 3) Provided 13 continuing educator workshops from a goal of 12; and 4) served and connected 34 Milpitas foster children youth and children to CASAs versus their goal of 42. The last goal was unmet as there was a decrease in foster children in the City. In addition the foster children not placed with a CASA were because they are too young.
2. Next Door Solutions to Domestic Violence met 1 of their 3 goals: 1) met their goal of providing 4 Milpitas residents with emergency shelter and provided 4 Milpitas residents with emergency shelter for over 118 nights; 2) provided 58 walk-in with supportive services that include risk assessment, legal advocacy, and other crisis counseling from their goal of 61; and 3) answered 78 emergency calls from their 24/7 crisis hotline versus their goal of 100. The Agency's not meeting their last two goals were due to the decrease of calls from residents seeking services which can be attributed to successful outreach and prevention with continued relationship with the Milpitas Police Department. The Milpitas Police Department continues to work with victims of domestic violence and provide referrals and in some cases rides to the shelter.
3. Project Sentinel has two programs that serve Milpitas residents, fair housing and tenant-landlord counseling. The fair housing program closed 7 cases versus their goal of 8 and held 8 outreach events versus their goal of 3. The fair housing program was shy of meeting the annual goal of 8 as it may be attributed to their successful fair housing outreach events informing both landlord and tenants of policies and rights. As for the tenant-landlord counseling, the program served over 31 cases for Milpitas residents versus a goal of 25 and held 4 outreach events exceeded their goal of 3 events.
4. Rebuilding Together met 2 of their 3 goals: 1) provided 209 repairs for low income homeowners versus a goal of 100; 2) the repairs benefited 36 homeowners from a goal of 35; and 3) provided 25 critical safety, accessibility and mobility housing repairs for low-income households versus a goal of 30. The project fell short of the 30 projects as they did a few modification projects versus repairs which expended more of the funds, which decreased the number of households they were able to serve.
5. YWCA Silicon Valley exceeded 2 of their 3 goals: 1) provided over 146 residents with supportive services from their goal of 30; 2) answered 36 crisis calls via their 24-hour crisis line from a goal of 30; and 3) provided 12 individuals with emergency shelter and counseling, short of their goal of 13.

The CAPER was advertised for 15 days public review and comments for period of September 1 - 15, 2017. Copies of the CAPER were sent to all service providers that received CDBG funding and other interested parties. Copies were also made available at City Hall, on the City's website and at the Milpitas Public Library.

**Fiscal Impact:** None

**Recommendation:** Adopt the FY 2016-2017 Consolidated Annual Performance Evaluation Report related to Community Development Block Grant funds.

**Attachment:** Copy of draft CAPER

12. **Receive Presentation on the "silicon valley IDEA" Program from Representatives of the Silicon Valley Organization (SVO) and Consider a Partnership with the SVO (Contact: Councilmember Phan, 408-586-3032)**

**Background:** According to its website, the Silicon Valley Organization’s program, “**silicon valley IDEA** will convene regional Thought Leaders from business, government and non-profits to identify innovative solutions to address the pressure points business is facing within the areas of “Quality of Life,” “Business Velocity” and “Regional Branding.” ”

**Fiscal Impact:** Uncertain.

**Recommendation:** Per request of Councilmember Phan, receive a presentation at the City Council meeting on the Silicon Valley Organization’s IDEA program from SVO staff and consider forming a partnership with that organization.

**Attachment:** None

**13. Accept Report and Provide Direction to Staff on Property Assessed Clean Energy Programs (Staff Contact: Edesa Bitbadal, 408-586-3052)**

**Background:** During the month of July 2017, city staff were approached by two Property Assessed Clean Energy (PACE) providers expressing interest in operating in Milpitas.

PACE programs provide property owners with a financing option to underwrite energy efficiency retrofits and renewable energy installations. PACE programs allow for the financing of these types of improvements without requiring a down payment or payment of the upfront capital cost of the improvement. The property owner repays the cost of the improvement “PACE loan” through their property tax bills over time for up to 20 years. In California, PACE programs are enabled through two different laws, Assembly Bill 811 (AB 811, 2008) and Senate Bill 555 (SB 555, 2011), with additional laws clarifying and expanding program parameters.

The City has no direct role in PACE program implementation or in the assessment transactions. Instead, the PACE provider arranges capital, administers programs, partners with a pre-approved contractor, and places special tax assessments in coordination with county tax collectors. To date, the only PACE provider authorized to operate in Milpitas is the California Statewide Communities Development Authority (CSCDA) sponsored CaliforniaFIRST program. This was enabled through a resolution adopted by the City Council on January 5, 2010.

Should the City Council decide to add additional PACE programs to Milpitas, the Council must take actions to adopt a resolution to sponsor the program and join the associated Joint Powers Authority, per the requirements of AB 811 and SB 555. The following are benefits in allowing more than one PACE provider to serve property owners from Milpitas:

- Ability for the City to achieve climate action plan goals through reductions in greenhouse gas emissions.
- PACE program is 100% voluntary; property owners utilize this source of financing only if they choose.
- Creates competition in the marketplace and allows property owners to have a choice in their PACE provider.
- Each PACE provider has different interest rates and terms allowing property owners to have more choices.
- Each PACE provider covers a different range of energy, water and seismic upgrades, so more options means more types of projects can be eligible to the property owner.

Staff identified four PACE programs already authorized to operate in several nearby local jurisdictions, with Ygrene California Energy Fund LLC (Ygrene) and California Home Energy Renovation Opportunity (HERO) by Renovate America already expressing interest in operating in Milpitas:

1. Ygrene  
Ygrene launched in 2010 for residential, commercial, industrial, and agricultural properties. It operates under SB 555, and is sponsored by the Golden State Finance Authority.
2. HERO  
HERO launched in December 2011 for residential properties and December 2012 for commercial properties. It operates under AB 811, and is sponsored by the Western Riverside Council of Governments.
3. Figtree Company, Inc. (Figtree)  
Figtree launched in 2010 for commercial, industrial, and multi-family properties. It operates under AB 811, and is sponsored by the California Enterprise Development Authority.
4. California Statewide Communities Development Authority Open PACE (Open PACE)  
Open PACE launched in 2015. It operates under AB 811, and is sponsored by the CSCDA. Open PACE was founded so that local governments only need to pass a single resolution to authorize multiple programs. Providers participating in Open PACE are: CaliforniaFIRST, PACE Funding Group, AllianceNRG, CleanFund, CounterpointeSRE, and Spruce.

While PACE programs do provide alternative financing options to property owners, there are elements to the program that may present challenges for consumers. Challenges include the following:

- The property owner could be considered in default of their existing mortgage if they did not get lender consent prior to agreeing to the PACE assessment.
- The property owner may be required to pay off their PACE loan at the time of resale or refinance.
- The property owner could be charged differential interest rates or penalties for early pay off of the PACE assessment.

The state legislature recently passed more transparent laws surrounding PACE Financing Programs. Still, these laws do not completely mitigate all potential risk surrounding PACE. That said, the City of Milpitas can take further steps to ensure a greater level of consumer protection for Milpitas homeowners and property owners. With City Council direction, staff can establish additional operating conditions for PACE providers aimed at ensuring a greater level of consumer protection different than current state laws.

Based on this report, here are two possible options for the City Council:

1. Direct staff to establish a greater level of consumer protection for PACE providers and establish these conditions as requirements for PACE Financing Programs in the City of Milpitas. The City shall only authorize those providers that have signed agreements. The City Council may adopt resolutions authorizing the operation of PACE Financing Programs within the City of Milpitas.
2. Take no action at this time in pursuit of additional PACE programs in Milpitas.

**Fiscal Impact:** None. There are no fiscal implications to accepting this report.

**Recommendation:** To accept staff's report, and provide guidance and direction on Property Assessed Clean Energy Programs.

**Attachment:** None

**14. Accept Report and Provide Direction to Staff on Community Choice Energy Programs (Staff Contact: Edesa Bitbadal, 408-586-3052)**

**Background:** On May 2, 2017, City Council directed staff to study the Community Choice Energy program and to report back to the Council on possible options for the City of Milpitas.

Community Choice Aggregation (CCA), also commonly referred to as Community Choice Energy (CCE), enables cities, counties, and joint powers authorities (comprised of municipalities) that do not operate municipally-owned electric utilities to pool the electricity demand within their jurisdictions in order to procure and/or generate electrical power supplies on behalf of its residents and businesses while maintaining the existing electricity provider, Pacific Gas and Electric Company (PG&E), for electricity billing, transmission and distribution services.

When a city, county, or combinations thereof, creates a CCE program, it becomes the default provider of electricity for all residents and businesses within its jurisdiction. Customers, however, are provided the ability to opt-out of service from the CCE program and return to the incumbent utility for generation service at any time.

Authorized by California law in 2002, California is currently one of seven states that allow the formation of a CCE program, and presently there is one operational CCE in Santa Clara County: Silicon Valley Clean Energy (SVCE) launched in April 2017. Additionally, both East Bay Clean Energy (EBCE) and San Jose Clean Energy (SJCE) anticipate serving customers in Spring of 2018, while several more CCEs throughout the state are currently being considered for development. To date, only SVCE has expressed an interest in having the City of Milpitas join.

CCE programs typically provide electricity options with a higher mix of renewable energy than available from the incumbent utility; the percentage of energy from renewable sources currently ranges from 35 percent to 100 percent. Thus, primary reasons for pursuing a CCE program include the ability to achieve climate action plan goals through reductions in greenhouse gas emissions (GHG), and offering customers an alternative energy choice and cost competitive electric services.

Currently, all governance models for operational CCEs are either a joint powers agency or single jurisdiction. An example of each is described:

1. **Joint Powers Authority (JPA) Model:** The JPA functions as an independent public agency, operating on behalf of its member jurisdictions with shared decision-making authority. This shared structure distributes the risks and liability across multiple jurisdictions, and minimizes risk to its member jurisdictions. Silicon Valley Clean Energy and East Bay Community Energy are examples of Bay Area CCEs using the JPA governance model.
2. **Single Jurisdiction Model:** A jurisdiction individually establishes and operates a CCE and therefore makes all policy decisions on revenues, power mix, and programs. Any risk and liability associated with the CCE fall solely on this single jurisdiction. In this model, it is recommended that the jurisdiction develop contractual language to minimize risk to the general fund, maintain adequate operating reserves, and proactively track regulatory activities and manage its energy portfolio. CleanPowerSF and San Jose Clean Energy are examples of Bay Area CCEs using the single jurisdiction governance models.

To date, all operational CCEs have conducted a feasibility report and/or a technical study prior to CCE program implementation, although this is not required under Public Utilities

Code Section 366.2. Such studies typically include information on CCE formation requirements; evaluate load requirements, risks, and energy procurement using jurisdiction specific load data; analyze CCE program operations under different power mixes and program sizes, rate impacts and environmental benefits; and estimate start-up and other financing costs.

Local governments must pass the required CCA ordinance to join or establish a CCE program, and the CCE agency must update or draft an Implementation Plan that is certified by the California Public Utilities Commission (CPUC). This is typically done after an initial technical study to determine the amount of electricity that will be required, how much clean power can be integrated, and the extent to which a CCE can be cost competitive over time. The Implementation Plan outlines how the CCE will function, how it will set rates, how it will procure electricity, and how it will carry out all other functions required under CPUC regulations.

Based on this report and other Bay Area technical studies, five possible options are provided for the City of Milpitas.

### **1. Proceed with the steps necessary to join SVCE**

#### Potential benefits of joining SVCE

- Eleven other Santa Clara County communities have already joined
- Program already launched
- Credit capacity and programs in development
- Easier transition/implementation
- Able to enroll customers sooner than EBCE/SJCE

#### Potential risks/downsides of joining SVCE

- Programs already in place; less/minimal input into their formation

### **2. Proceed with the steps necessary to join EBCE**

#### Potential benefits of joining EBCE

- Since it hasn't launched yet, more opportunity to influence policy direction and program development
- Working on a local development business plan with emphasis on local power production in the East Bay

#### Potential risks/downsides of forming EBCE

- Take longer to enroll since programs have yet to be launched
- Take longer for job-creating programs to get up and running
- May be a small fish among some very large fish (Oakland, Hayward)
- Union focused policies may be difficult for some (or preferable)

### **3. Proceed with the steps necessary to join SJCE**

#### Potential benefits of joining SJCE

- May have opportunity for potential revenue sharing

#### Potential risks/downsides of joining SJCE

- Commitment of City resources likely needed when joining
- Take longer to enroll since programs have yet to be launched
- May have small influence in decision-making due to customer load

### **4. Proceed with the steps necessary to establish a Milpitas CCE**

Potential benefits of forming Milpitas CCE

- More local control (voting shares not diluted)
- Greatest potential for local economic development (due largely to more local control)

Potential risks/downsides of forming Milpitas CCE

- Commitment of City resources to establish a new CCE agency
- Higher risks due to lack of experience, fewer partners
- Would need to establish programs, contractors, credit, etc.
- Longest time line to begin enrolling customers
- Given SVCE's presence in eleven Santa Clara County communities, potential customer confusion with multiple CCEs in the same county

**5. Take no action at this time in pursuit of CCE and remain with PG&E**

Potential benefits of remaining with PG&E

- Experienced provider
- State regulatory protection
- Continuity – same firm provides all services
- No action needed by City – status quo
- May be able to join a CCE at a later date (but perhaps at some cost)

Potential risks/downsides of remaining with PG&E

- Higher GHG emissions
- Less local renewable generation
- Higher electricity rates than CCE rates under most scenarios
- Less local control
- Less local input into policies and offerings
- Less local economic development

**Fiscal Impact:** None. There are no fiscal implications to accepting this report.

**Recommendation:** To accept staff's report, and provide guidance and direction on Community Choice Energy Programs.

**Attachment:** None

**15. Receive Staff Report on City Budget Process (Staff Contact: Will Fuentes, 408-586-3111)**

**Background:** On August 28, 2017, the City Council Finance Subcommittee met with City staff to discuss the budget process and ideas for increasing Council and public input in that process. A copy of the meeting agenda is provided in the Council's agenda packet. Proposed ideas for increasing Council and public input into the budget process will be presented by staff at the Council meeting. More detailed discussions regarding budget policy, such as use of potential annual operating surpluses, will occur in future reports. As a note, the City is still closing its accounting records for the prior fiscal year and staff tentatively plans to present the FY 2016-17 unaudited financial report on October 17, 2017. Since the exact amount of a potential General Fund operating surplus for last fiscal year would be known then, it will allow for a more meaningful policy discussion regarding use of current and future potential operating surpluses.

The focus of this report shifts back to the budget process. During the last budget preparation cycle for Fiscal Year (FY) 2017-18, City Council had limited input into the process until

April, May and June 2017, when a number of Capital Improvement Program (CIP) and Operating Budget community meetings, study sessions, and public hearings occurred. By this point, the budget was largely developed and significant changes were not possible; lest risk not adopting a budget by June 30. The City's fiscal year starts July 1 and a public agency may not spend funds without the legal authorization to do so. City Council adoption of the budget legally authorizes those funds.

Thus, staff is proposing several changes to the FY 2018-19 budget process which will increase Council and public input and allow staff to receive necessary direction prior to budget development. The first recommended change is to hold a facilitator led Strategic Planning session with the City Council and Senior Management in November or December 2017. Staff reached out to several potential facilitators recommended by other cities, but not all are available in November and December and some not at all due to current workload. Nevertheless, one facilitator is potentially available in November and staff likes the approach recommended by this facilitator. Therefore, the facilitator is now preparing a proposal which will provide a detailed description of approach and costs. If the proposal is completed by the time of this Council meeting, it will be submitted to City Council at the meeting.

City staff acknowledges the existing City of Milpitas Strategic Plan adopted in 2015. City Council may choose to review that plan, and/or build upon that plan. Alternately, Council may begin anew to create a new document.

As of this report date, the staff's desired facilitator is proposing a two-step process to develop a Strategic Plan. This Strategic Plan will be used to guide budget development and offer a number of topics to the public to consider and provide input on.

Note that the process for developing a Strategic Plan could be modified if the desired facilitator is ultimately not available and another facilitator is chosen. If another facilitator that uses a different methodology in preparing a Strategic Plan is chosen, staff will provide an update to City Council. Staff though will work to secure a facilitator that offers a similar methodology; unless Council directs staff otherwise.

The first step in the tentatively proposed Strategic Plan process will be to individually interview each member of the City Council and the Senior Management Team and determine the areas deemed most important to ensure the future success of the City. These interviews could occur over one day or over several days in November or before and will help the Council, staff, and facilitator in developing an agenda for the second step in the process. The second step in the tentatively proposed Strategic Plan process will be to hold an all-day facilitator led Strategic Planning session. During the last Council Finance subcommittee meeting, it was recommended that this Strategic Planning session occur on Saturday, November 4. Staff is still working towards that day, but cautions that it will be dependent on final availability of whatever facilitator is chosen and the timing of pre-Strategic Planning interviews. A majority of the facilitators that staff consulted recommend a similar two-step approach. Thus, staff asks Council to keep several dates open in November and December.

The second recommended change to the budget process is to increase public input through the use of both online tools and community meetings. In regards to online tools, there are several available externally and these tools can be used to poll a wide cross-section of Milpitas residents and businesses on targeted topics brought forth during the development of the Strategic Plan. For example, if one of the goals raised by the Strategic Plan is to "provide high-quality recreational facilities to all Milpitas' residents," a polling question could be, "what types of recreational facilities are most important to you and where would you want these facilities to be located?" This is just one example and there could be any number of polling questions based on the Strategic Plan developed. Obtaining online public input prior to the development of a Strategic Plan is an approach used in some other cities, but as the legislative body selected to represent the interests of the entire Milpitas community, staff

feels it is appropriate to seek this input after development of a Strategic Plan. This will make the discussion with the public much more focused and effective. Thus, staff recommends opening up an online poll in December or January before departments start preparing their budget requests. As mentioned previously, this polling tool can be provided by external vendors and staff will come back to Council at a later date to discuss costs and a recommended choice. An online poll could also be provided by internal City IS staff, but it will be dependent on current workload and the ability to provide demographic data, restrict polling to only Milpitas residents and businesses, and properly monitor submitted comments.

In regards to community meetings, the City held several in the past and they should still play a vital role in budget preparation. However, the community meetings garnered limited participation and were not held early enough in the last budget process to make a meaningful impact. Thus, staff recommends that the first community meetings be held in December or January concurrent to online polling discussed above. So as to ensure success and participation by all appropriate interest groups, staff not only suggests that the meetings be publicized in traditional print and electronic mediums, but also that individual invitations be sent to as many business, faith, school, and community leaders as possible. While the first community meetings could be held in December or January, staff recommends that other community meetings, study sessions, and public hearings continue to be held in April and May. This will allow staff and all departments time to develop the budget based upon Council and public input received prior and present a high quality draft CIP and Operating Budget for consideration and possible modification. The facilitator staff would like to use for the Strategic Planning session can also take the extra step of individually interviewing targeted focus groups such as all business, faith, school, and community leaders, but this is very time intensive and comes with significant cost. Thus, staff does not recommend this approach, but will explore it if Council wishes.

The third and final recommended change to the budget process is for the Director of Financial Services to provide monthly updates to the City Council during the internal development stage of the budget, which normally occur January through April. These monthly updates will focus on new projects and programs being proposed by departments, potential changes in base revenue and expenditure projections, and any other items which impact the budget. This will allow the Council and public to provide continuous input during budget development and for staff to adjust course more quickly based upon that input. Thus, by the time the CIP and Operating Budget are scheduled to be adopted in May, they will encapsulate and represent as much Council and public input as possible.

In conclusion, staff requests further feedback from the Council on the changes presented. At a future meeting in the near future, staff will provide City Council with a detailed budget calendar for approval, based upon both feedback and direction received and final availability and selection of a Strategic Plan facilitator.

**Fiscal Impact:** None

**Recommendation:** Per request of Council, receive staff report on the City's budget process and provide further feedback and recommendations.

**Attachment:** Council Finance Subcommittee agenda

**16. Review List for City Council of Items Due Back for Response from City Staff (Staff Contacts: Steve Pangelinan, 408-586-3051 and Mary Lavelle, 408-586-3001)**

**Recommendation:** review list (in agenda packet) and provide additional input on the draft document, prepared by City Clerk for the Council.

**Attachment:** List of Items Requested by City Council

## XIV. ORDINANCE

### 17. Receive Report and Consider Introduction of Ordinance No. 289.1 Amending Chapter 2 and Chapter 4 of Title I of the Municipal Code to Relating to Purchasing and Contract Authority (Staff Contact: Will Fuentes, 408-586-3111)

**Background:** At the August 1 City Council meeting, staff presented a report concerning City Manager Contract Authority. Findings of that staff report and presentation are summarized:

- Current City Manager Contract Authority is set at \$100,000 maximum per Chapter 4 (Contract Authority) of Title I of the Milpitas Municipal Code.
- To improve operational efficiency, limit was changed from \$20,000 on June 2, 2015 (Ordinance No. 289).
- Regular reporting was scheduled to occur after change, but has not occurred yet.
- 174 contracts, totaling \$5.6 million and averaging \$32,000 each, were approved last 3 Fiscal Years under City Manager authority.
- 72 of 174 or 41% of contracts were above prior \$20,000 limit.
- A survey of all cities in Santa Clara, San Mateo, and Alameda County was performed.
  - Average City Manager Contract Authority of \$59,000 or \$1.23 per capita in San Francisco Bay Area.
  - Average City Manager Contract Authority of \$63,000 or \$1.21 per capita in San Santa Clara County.
  - Gilroy, Santa Clara, Sunnyvale, Burlingame, San Mateo, Fremont, and Livermore are all similar to Milpitas at \$100,000 total.
  - Cupertino is highest at \$175,000.
  - If Milpitas' population of 75,410 is multiplied by average per capita of \$1.23, it would equal a City Manager Contract Authority of \$93,000.

Additional considerations not discussed during the August 1 presentation:

- 140 contracts, totaling \$4.4 million and averaging \$31,000 have been approved since City Manager Contract Authority was increased to \$100,000 June 2, 2015.
- Reporting was not mandated by Ordinance No. 289. Nevertheless, it was planned and discussed during Ordinance adoption.

As a result of the August 1 presentation, Council requested several options for regular reporting on City Manager approved contracts and potentially modifying the level of City Manager Contract Authority.

#### *Reporting*

In regards to reporting, Councilmember Nuñez requested that contracts be brought forth to Council for ratification in the next regularly scheduled Council meeting immediately following City Manager approval. Staff does not recommend this approach since it would effectively be lowering City Manager Contract Authority to \$0. The purpose of Council delegating a level of Contract Authority to the City Manager is so that the City Manager, in his or her assigned role of Chief Executive Officer for the organization, can use his or her managerial judgement to execute and legally enter into contracts without the need for additional approval or delay. This is standard practice in both the public and private sector to insure operational efficiency, with the only deviation being level of authority.

Nevertheless, transparency is very important and staff recommends regular monthly reporting to the Finance Sub-Committee of all contracts approved under City Manager Contract Authority during the prior month. This would be for review purposes only and to ask questions of staff on particular contracts of interest. Contracts that warranted additional

review would be sent to the full body of the City Council at the next available meeting. Contracts could then be terminated by Council after additional review and inquiry, but only if the contracts in question a) violated federal, state, or local statutes or codes, b) presented a conflict of interest for City staff requesting contract and/or City Manager approving contract, or c) were to engage a vendor that has previously been found guilty of violating federal, state, or local statutes or codes as it relates to public or private sector procurement. These new requirements shall be detailed and added to Title 1 of the Milpitas Municipal Code as Section 5 (Reporting on Contract Authority of the City Manager) by Ordinance No 289.1 (attached).

*Level of City Manager Contract Authority*

On a per capita basis, Milpitas is very similar to other public agencies in terms of City Manager Contract Authority. Again, if Milpitas' population of 75,410 were multiplied by the average Bay Area City Manager Contract Authority of \$1.23 per capita, it would equal a City Manager Contract Authority of \$93,000. At \$100,000, the current level of City Manager Contract Authority is within an acceptable level of deviation and staff does not recommend lowering it at this time since operational efficiency would be diminished.

Nevertheless, if it is the desire of Council to modify the level of City Manager Contract Authority, Ordinance No. 289.1 (attached) will be revised to reflect whatever level is chosen. Whether the level of City Manager Contract Authority is kept the same or modified by Council, the City should also revise other sections of its Municipal Code which are out of alignment with Chapter 4 (Contract Authority) of Title I or don't reflect current practices as it relates to eProcurement and Cooperative Purchasing Agreements. These sections are detailed in the redlined version of Ordinance No. 289.1.

**Fiscal Impact:** None

**Recommendations:**

1. Receive staff report on City Manager Contract Authority.
2. If desired, direct the City Attorney to read the title of Ordinance No. 298.1.
3. Move to waive first reading beyond the title and introduce Ordinance No. 289.1 with level of City Manager Contract Authority to remain the same or modified as directed by Council.

**Attachment:** Draft Ordinance No. 289.1

**XV. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies**

**XVI. ADJOURNMENT**

**NEXT REGULAR CITY COUNCIL MEETING**  
**TUESDAY, OCTOBER 3, 2017**

**SPECIAL CITY COUNCIL MEETINGS:**  
**MONDAY, OCTOBER 2, 2017**  
**WEDNESDAY, OCTOBER 18, 2017**