REGULAR MEETING OF THE MILPITAS CITY COUNCIL

For assistance in the following languages, you may call:
Đối với Việt Nam, gọi 408-586-3122

Para sa Tagalog, tumawag sa 408-586-3051 Para español, llame 408-586-3232

AGENDA

TUESDAY, OCTOBER 16, 2018
455 EAST CALAVERAS BOULEVARD, MILPITAS, CA
6:00 P.M. (CLOSED SESSION)
7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

I. CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk

II. ADJOURN TO CLOSED SESSION (6:00 PM)

(a) 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

(b) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to California Government Code Section 54956.9(d)(1)
First Amendment Coalition v. City of Milpitas, et al. - Santa Clara County Superior Court Case No. 17CV309235

(c) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Pursuant to Government Code Section 54956.9(d)(2) – City as Defendant

(d)CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Pursuant to Government Code Section 54956.9(d)(4) – City as Plaintiff/Amicus Curiae

III. CLOSED SESSION ANNOUNCEMENT: Report on action taken in Closed Session, if required per Government Code Section 54957.1, including the vote or abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. INVOCATION (Councilmember Phan)

VI. PRESENTATION

- Proclaim October 2018 as *Filipino American History Month*

VII. 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 and limit spoken remarks to 3 minutes. As an item not listed on the agenda, no response is required from City staff nor Council and no action can be taken. Council may instruct the City Manager to place the item on a future meeting agenda.

VIII. ANNOUNCEMENTS

IX. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items No. 1 through No. 9)

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 City Councilmember, 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 Schedules of Meetings/City Council Calendars – October and November 2018 (Staff Contact: Mary Lavelle, 408-586-3001)**

2. **Approve City Council Meeting Minutes of October 2, 2018 (Staff Contact: Mary Lavelle, 408-586-3001)**

3. **Accept Recommendations from the City Council Ad Hoc Handbook Subcommittee to Adopt Chapter V of the City Council Handbook (Staff Contact: Ashwini Kantak, 408-586-3053)**

4. **Approve City Council Meeting Schedule for 2019 (Staff Contact: Mary Lavelle, 408-586-3001)**

5. **Adopt the Side Letter between the City of Milpitas and the Milpitas Police Officers Association (MPOA) regarding MPOA Retiree Dependent Health Care Fund and Police Command Staff Retiree Dependent Health Care Fund (Staff Contact: Liz Brown, 408-586-3086)**

6. **Adopt a Resolution Approving a New Memorandum of Understanding Between the City of Milpitas and the International Association of Firefighters Local 1699 for July 1, 2018 to June 30, 2022 (Staff Contact: Liz Brown, 408-586-3086)**

7. **Adopt a Resolution to Accept Funds From the 2016 State Homeland Security Grant Program, Authorize the City Manager or Designee to Execute the Related Agreement with the County of Santa Clara, and Approve a Budget Amendment (Staff Contact: Kevin Moscuzza, 408-586-2412)**

8. **Approve and Authorize City Manager to Execute a Design Services Agreement with Gates and Associates for the Sandalwood Park Renovation, Project No. 5110 (Staff Contact: Steve Erickson, 408-586-3301)**

9. **Award the Bid to Holiday Lights LLC and Authorize the City Manager to Execute an Agreement for Holiday Tree Lights Installation and Removal at the City Hall Complex for an Amount Annually Not to Exceed $60,000 and the Five-Year Contract Maximum of $300,000 (Staff Contacts: Chris Schroeder, 408-586-3161 and Tony Ndah, 408-586-2602)**

XII. PUBLIC HEARINGS The following items No. 10 – 16 scheduled for discussion

10. CONTINUED FROM OCTOBER 2:
Continue the Public Hearing and Adopt a Resolution Approving Amendments to the General Plan and Transit Area Specific Plan, Approving Findings to Amend the Zoning Code, and Approving a Site Development Permit, Conditional Use Permit, Density Bonus Permit, and Lot Merger for Future Development of a 7-story Multi-family 220-Unit Residential Project including 10 Affordable Units; and Introduce Ordinance No. 38.831 to Rezone a 2.14 Acre Site at 1380 and 1400 South Main Street with CEQA Finding of Consistency with the Transit Area Specific Plan Final Program Environmental Impact Report, as Amended (Staff Contact: Michael Fossati, 408-586-3274)

11. Conduct a Public Hearing and Consider Adopting a Resolution to Uphold the Planning Director's Appeal and Reverse the Planning Commission Decision and Making Findings that the Nonconforming Industrial Use at 1831-1841 Tarob Court had been discontinued for a continuous period of more than one year and, in accordance with Milpitas Municipal Code Section XI-10-56.03(A), cannot be replaced with a different nonconforming industrial use (Staff Contact: Adrienne Smith, 408-586-3287)

XIII. UNFINISHED BUSINESS

12. Following Public Comments, Authorize the City Manager to Approve the Site Development Permit Application by Outfront Allvision, LLC to Construct a 70-Foot Electronic Off-Site Advertising Display (Billboard) on State Highway 237 at the Northern Terminus of the Barber Court Cul-de-Sac (Staff Contact: Michael Fossati, 408-586-3274)

13. Receive a Status Update on Staff Efforts Related to Odor Issues (Staff Contact: Steve Erickson, 408-586-3301)

XIV. REPORTS

14. Approve the Milpitas Arts Commission FY 2018-19 Work Plan; and, Approve a Dixon Landing Park Public Art Installation Project Piece (Staff Contact: Rosana Cacao, 408-586-3207)

15. Approve Youth Advisory Commission FY 2018-19 Work Plan (Staff Contact: Andrew Mendes, 408-586-3231)

XV. ORDINANCE

16. Waive the First Reading and Introduce Ordinance No. 41.12 to Amend Section I-500-1.14 of the Milpitas Municipal Code, Authorizing an Increase in Compensation to Planning Commissioners, as Directed (Staff Contacts: Christopher Diaz, 408-586-3044 and Ned Thomas, 408-586-3273)

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

XVII. ADJOURNMENT

NEXT SPECIAL CITY COUNCIL MEETING
TUESDAY, OCTOBER 23, 2018

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, NOVEMBER 6, 2018

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 / Phone: 408-586-3040

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

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website. All City Council agendas and related materials can be viewed online here: www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3003 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the City Council Chambers for all meetings.

AGENDA REPORTS

XI. CONSENT CALENDAR

1. **Accept Schedules of Meetings/City Council Calendars – October and November 2018 (Staff Contact: Mary Lavelle, 408-586-3001)**

Recommendation: Receive and accept City Council calendars of meetings for October and November 2018. Note any changes or additions, if needed.

Attachment: October and November 2018 Calendar

2. **Approve City Council Meeting Minutes of October 2, 2018 (Staff Contact: Mary Lavelle, 408-586-3001)**

Recommendation: Move to approve the October 2, 2018 City Council meeting minutes.

Attachment: Draft meeting minutes October 2, 2018

3. **Accept Recommendation from the City Council Ad Hoc Handbook Subcommittee to Adopt Chapter V of the City Council Handbook (Staff Contact: Ashwini Kantak, 408-586-3053)**

Background: The City Council Handbook (Handbook) provides guidance to the Council in conducting all City business. The Handbook is designed to be periodically updated in order to reflect either changes in the law or in City Council procedure or policy. On September 18, 2018, staff brought forward proposed changes to the Handbook as well as to the agenda management process.

Councilmembers expressed the need for more involvement in the Handbook update and to that end, staff was directed by the Council to work on the Handbook with an Ad Hoc Council Subcommittee. Councilmembers Nuñez and Barbadillo were selected by the Council to serve on this Ad Hoc Subcommittee.

Analysis

The first Subcommittee meeting was held on September 26, 2018. Chapter V of the Handbook is directly connected to the proposed changes to the Agenda Management system and process discussed with the Council on September 18. In order to enable the improvements to the Agenda Management process to move forward in an expeditious manner, the Subcommittee focused their review and discussion of the Handbook on Chapter V. The key changes made to the proposed Handbook were in the following sections:

A. Agenda Order:
   1. Combining the Announcements and Reports section
   2. Adding an Agenda section to review a tentative agenda for the subsequent regular City Council meeting
B. Agenda Item Submission:
   1. Clarifying the process for requests from any member of the Council to add items to the Agenda

The updated Chapter V of the proposed Handbook is attached for Council's consideration and recommended adoption. The Ad Hoc Subcommittee will review the remaining chapters of the Handbook in subsequent meetings; staff will bring forward the remaining chapters of the Handbook for Council consideration once the review of the entire Handbook has been completed.

Fiscal Impact: None

Recommendation: Accept recommendation from Council Handbook Subcommittee and adopt the updated Chapter V of the proposed City Council Handbook.

Attachment: Chapter V of City Council Handbook

4. Approve City Council Meeting Schedule for 2019 (Staff Contact: Mary Lavelle, 408-586-3001)

Background: The Milpitas Mayor and City Council are requested to consider and adopt their meeting schedule for 2019. Regarding the City Council's summer time meeting dates, it has been tradition to cancel both of the July regular Milpitas City Council meeting dates.

In 2019, staff recommends nine dates for Council study sessions, with five dates set aside for as yet unnamed topics. When needed, the City Manager will request the Council meet on a specified subject and one of those established dates may be then scheduled for a Special meeting. Four dates on the list are for study sessions on the CIP and city budget.

City staff has begun to prepare year-long calendars for next year and have inquired of the City Council as to what schedule will be followed in 2019. Staff requests that the Council act on a confirmed schedule for 2019 for its regular bi-monthly Tuesday business meetings and study sessions. The proposed 2019 schedule is included in the Council agenda packet.

Recommendation: Move to approve the 2019 Milpitas City Council meeting schedule, with any changes, if requested at the City Council meeting.

Attachment: 2019 City Council Meeting Dates list

5. Adopt the Side Letter between the City of Milpitas and the Milpitas Police Officers Association (MPOA) regarding MPOA Retiree Dependent Health Care Fund and Police Command Staff Retiree Dependent Health Care Fund (Staff Contact: Liz Brown, 408-586-3086)

Background: A side letter was agreed to in December of 2003 between the City of Milpitas and the Milpitas Police Officers Association (MPOA) recognizing that the MPOA and Police Command Staff have two separate Retiree Dependent Health Care Funds. The MPOA and the City agreed in the side letter to a sharing arrangement between the two funds that when the balance in either the MPOA's Fund or the Police Command Staff's Fund becomes too low, that either party will make the agreed upon premium contributions for either group. A section within the side letter agreement states "In the event the City's contribution to the Police Command Staff Retiree Dependent Health Care Fund at some point in the future by the authority of a future City Council resolution differs from the City's percentage contribution to the MPOA Retiree Dependent Health Care Fund, this side letter will become inoperable and the sharing of funds arrangement set forth in this side letter shall cease." A new MOU between the City of Milpitas and the MPOA was approved effective January 1, 2017 where an enhanced benefit was agreed upon allowing an additional 1% of MPOA payroll (salary only) to the current benefit of 1% of payroll and benefits (which both MPOA and Police Command Staff equitably had received).

MPOA has submitted a side letter to the City recognizing that the contributions differ by 1% between the MPOA and the Police Command Staff. The side letter submitted by the MPOA generally states the following: In the event the City's contribution to the Police

Command Staff Retiree Dependent Health Care Fund does not increase to the same percentage contribution as the MPOA contributes to the Retiree Dependent Health Care Fund, this side letter will become inoperable and the sharing of funds arrangement set forth in this side letter shall cease at the end of the Fiscal Year 2018-19.

The Side Letter was available for public review for the 10 day period, as required per the City's Open Government ordinance.

Fiscal Impact: There is no additional cost to the City for this action.

Recommendation: Adopt the Side Letter between the City of Milpitas and the Milpitas Police Officers Association regarding MPOA Retiree Dependent Health Care Fund and Police Command Staff Retiree Dependent Health Care Fund.

Attachment: Signed Side Letter Between City and MPOA

6. Adopt a Resolution Approving a New Memorandum of Understanding Between the City of Milpitas and the International Association of Firefighters Local 1699 for July 1, 2018 to June 30, 2022 (Staff Contact: Liz Brown, 408-586-3086)

Background: The most recent Memorandum of Understanding (MOU) with the International Association of Firefighters (IAFF) Local 1699 was scheduled to expire on June 20, 2018. City representatives and representatives from the IAFF Local met and conferred in good faith to negotiate a new contract. Agreement has been reached for a new successor Memorandum of Understanding with effective dates of July 1, 2018 through June 30, 2022, and a copy of which is included in the City Council agenda packet. The draft IAFF 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 four-year cost of the MOU is approximately $5,915,340.

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 July 1, 2018 through June 30, 2022.

Attachment: Resolution with Memorandum of Understanding

7. Adopt a Resolution to Accept Funds From the 2016 State Homeland Security Grant Program, Authorize the City Manager or Designee to Execute the Related Agreement with the County of Santa Clara, and Approve a Budget Amendment (Staff Contact: Kevin Moscuzza, 408-586-2412)

Background: On August 11, 2018, the Milpitas Police Department participated in a federally funded regional training exercise. The exercise included complex tactical rescue scenarios that may be encountered in the case of an active shooter incident or act of terrorism incident at the Milpitas BART station. The 2016 State Homeland Security Grant Program, which is administered by the County of Santa Clara, will reimburse personnel costs associated with this training. The grant funding will offset the overtime expenditures the City incurred for the training. Acceptance of the grant funds requires execution of a Grant Agreement with the County.

Fiscal Impact: This grant will reimburse the City for the incurred overtime expenditure. There is no cost matching for this grant and the total reimbursement amount will be $13,115.

Recommendations:

1. Adopt a resolution accepting funds from the 2016 State Homeland Security Grant Program.
2. Authorize the City Manager or designee to execute the related agreement with the County of Santa Clara.
3. Approve a budget amendment to appropriate $13,115 to the Police Department's FY 2018-19 operating budget.

Attachments:
a) Resolution + Grant MOU
b) Budget Change Form

8. Approve and Authorize City Manager to Execute a Design Services Agreement with Gates and Associates for the Sandalwood Park Renovation, Project No. 5110 (Staff Contact: Steve Erickson, 408-586-3301)

Background: The design and construction for the renovation of Sandalwood Park, Project No. 5110, is in the approved 2018-2023 Capital Improvement Program. Sandalwood Park is located at the corner of Escuela Parkway and Sandalwood Court. This 3.9 acre park was constructed in 1978 and expanded in 1988 and is a popular neighborhood park.

The renovation project will replace aging infrastructure and replace pedestrian access and equipment for compliance with new regulations including the Americans with Disabilities Act. Renovation improvements will include new picnic and playground areas, landscape and irrigation, accessible walkways, restroom building facility, basketball court, lighting, and parking improvements. The total project cost as shown in the Capital Improvement Program is $2.175 million, and the estimated construction cost for this project is $1.8 million. The design phase will require approximately 8 to 10 months to complete.

Through the City's consultant evaluation and selection process, staff recommends Gates and Associates to provide the design, bidding, and construction support services for the completion of the Project. Staff negotiated a scope and fee for these service not-to-exceed $214,350, which is considered reasonable for the work.

Alternative: Denial of the recommendation would result in not moving forward with the design services for this project.

Fiscal Impact: None. Sufficient funds are available in the project budget.

Recommendation: Approve and authorize the City Manager to execute a Design Services Agreement with Gates and Associates in the amount not to exceed $214,350 for the Sandalwood Park Renovation, Project No. 5110, subject to any changes deemed legally necessary by the City Attorney.

Attachment: Agreement with Gates & Associates

9. Award the Bid to Holiday Lights LLC and Authorize the City Manager to Execute an Agreement for Holiday Tree Lights Installation and Removal at the City Hall Complex for an Amount Annually Not to Exceed $60,000 and the Five-Year Contract Maximum of $300,000 (Staff Contacts: Chris Schroeder, 408-586-3161 and Tony Ndah, 408-586-2602)

Background: On September 21, 2018, the City of Milpitas issued an Invitation for Bid for Holiday Tree Lights Installation and Removal (IFB No. 2268). Services outlined in IFB No. 2268 included the installation of City-owned holiay tree lights in early November, the

removal of the lights by mid-January and the preperation for storage of the lights as well each contract year. In the past the City had contracted year-to-year on the services, this was the first time staff issued an IFB for recurring services.

The bid was publically advertised on the City's website and Public Purchase, the City's eProcurement website. 72 firms were notified of the issuance of the IFB and 10 vendors downloaded the solicitation and the City's bid document. The bid closed on October 5, 2018 and the City received one bid from the previous vendor, Holiday Lights, LLC. The annual cost increased $4000 from the previous contract amount of $59,600 in FY 2017-18 to $60,000 in response to IFB 2268. The contract is for five years, beginning in 2018. Subsequent years contain a compensation adjustment clause based on the Consumer Price Index (CPI) for All Urban Consumers, Not Seasonally Adjusted, All Items, San-Francisco-Oakland-Hayward or 5%, whichever is less. The five-year contract resulting from this solicitation is for the not-to-exceed amount of $300,000, excluding CPI compensation adjustments.

After posting the Notice of Intent to Award (Pending Bid Results), no protest was filed. Holiday Lights, LLC supplied the lowest-cost responsive and responsible bid and is recommended for the award of IFB No. 2268.

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

Recommendations:

1. Award the bid to Holiday Lights LLC and authorize the City Manager to execute an agreement for Holiday Tree Lights Installation and Removal services for the annual amount not-to-exceed $60,000 and the five-year contract maximum of $300,000.
2. Authorize the Purchasing Agent to increase the amount of the contract annually per the terms of the agreement and without further City Council action, except for appropriation of funds.

Attachment: Agreement with Holiday Lights LLC

XII. PUBLIC HEARINGS

The following items No. 10 – 16 are scheduled for discussion

10. CONTINUED FROM OCTOBER 2

Continue the Public Hearing and Adopt a Resolution Approving Amendments to the General Plan and Transit Area Specific Plan, Approving Findings to Amend the Zoning Code, and Approving a Site Development Permit, Conditional Use Permit, Density Bonus Permit, and Lot Merger for Future Development of a 7-story multi-family 220-Unit Residential Project including 10 Affordable Units; and Introduce Ordinance No. 38.831 to Rezone a 2.14 Acre Site at 1380 and 1400 South Main Street with CEQA Finding of Consistency with the Transit Area Specific Plan Final Program Environmental Impact Report, as Amended (Staff Contact: Michael Fossati, 408-586-3274)

Background: On August 22, 2018, the Milpitas Planning Commission reviewed various entitlements to allow the proposed development of a 220-unit multi-family residential building, approximately 85 feet in height, on a 2.14 gross-acre site located at 1380 and 1400 South Main Street.

Commissioners voted 4-0-1 to recommend that the City Council take the following actions:

1. Consider the Addendum with the Transit Area Specific Plan (TASP) Final Program Environmental Impact Report in accordance with the California Environmental Quality Act (CEQA).

2. Adopt a resolution approving:
   a. A General Plan (GP) Amendment to change the General Plan land use designation for the subject site from Multi-Family, Very High Density (VHD) to Urban Residential (URR) on an approximately 2.14-gross acre site located at 1380 and 1400 S. Main Street.

   b. A Specific Plan (SP) Amendment to remove the property located at 1400 S Main from the Milpitas Midtown Specific Plan area and annex this parcel into the Transit Area Specific Plan (TASP) area and to amend the SP designation from High Density Transit Oriented Development (R4-TOD) into Very High Density Transit Oriented Development (R5-TOD).

   c. A Site Development Permit to ensure high quality design of the site layout, architecture, massing, and the proposed design for the multi-family apartment building.

   d. A Conditional Use Permit (CUP) to allow an exception to the City's regulations for tandem parking and invoking a Transit-Oriented designation and density bonus for increased density.

   e. A Density Bonus, in conjunction with the CUP, to increase the overall density of the project by 20% of the maximum allowed, in exchange for providing ten (or 5% of the total number of units) residential units designated for very low income individuals or households, as determined by the U.S. Department of Housing and Urban Development (HUD) for individuals within Santa Clara County.

   f. A Lot Merger, merging parcels at 1380 S. Main (APN 086-36-006) and 1400 S. Main (APN 086-36-007) in order to create a new 2.14-acre parcel.

3. Introduce Ordinance No. 38.831 to rezone the subject 2.14-gross acre site from the R4-TOD High Density Transit Oriented Development Zoning District to the R5-TOD Urban Residential Zoning District.

The proposed development, known as "Main Street Milpitas," includes the construction of a 7-story, 350,000-square foot, 85-foot tall, 220-unit apartment complex on a 2.14-gross acre site. The proposed density would be approximately 102.8 dwelling units per acre. The first and second floors would be primarily reserved for parking, with the remaining five floors providing residential units and an amenity area for the residents. The residential unit mix would include studios, one-bedroom, and two-bedroom units ranging in size from 570 to 1,096 square feet, with ten of those units being designated for low income households. Complete details of the project, and associated discussion of the findings are found in the Planning Commission Staff Report, dated August 22, 2018 (copy in agenda packet).

The project was recommended for approval by the Planning Commission with a 4-0-1 vote (three Commissioners had excused absences) with a friendly amendment requiring the applicant to discuss details of the project with the Milpitas Unified School District (MUSD) prior to recommendation of approval to City Council. The applicant heeded the amendment and has come to an accord with the School District regarding potential impacts of the project.

Overview: The applicant proposes to construct a seven-story (two floors of parking and five floors of multi-family dwelling units), 85-foot tall, 220-unit apartment complex with a mixture of studios, one-bedroom, and two bedroom units, a 10,145-square foot front public plaza, a 537-square foot micro-retail commercial space; and a 674-square foot

neighborhood community center. Ten of the 220 units would be dedicated to very-low income households, as defined by the State Department of Housing and Community Development.

As noted, the proposed development requires City Council approval of a General Plan Amendment, Specific Plan Amendment, Zoning Amendment, Site Development Permit, Conditional Use Permit, Density Bonus and Lot Combination. An Environmental Assessment to determine consistency with the Transit Area Specific Plan (TASP) Final Program Environmental Impact Report (EIR) for the proposed project is needed. Amendments to the General Plan and Zoning Ordinance require review by the Planning Commission prior to presentation to the City Council.

In the context of other new development projects currently under construction or planned in the area south of the subject site, staff recommends that the proposed driveway adjacent to the southern property line be developed as a public access easement granted to the City. This segment of new easement will eventually connect to the planned extension of Costa Street and provide greater vehicular access and circulation within the neighborhood and along South Main Street. Smaller block perimeters with landscaped sidewalks will create a very pleasant pedestrian environment to promote walking.

California Environmental Quality Act: An environmental assessment (EA17-0005) was conducted in accordance with the California Environmental Quality Act of 1970 (CEQA), as amended, and state and local guidelines implementing CEQA. This Project is included within the area and development parameters evaluated as part of the Transit Area Specific Plan (TASP) Final Program Environmental Impact Report (SCH#2006032091), which was certified by the City Council in June of 2008.

Upon completion of its environmental assessment, an independent environmental consultant (LSA) concluded that none of the circumstances necessitating preparation of a subsequent or supplemental EIR are associated with the project and that the project will result in no new environmental impacts beyond those already identified in the TASP EIR. Staff recommends considering the project in compliance with CEQA Guidelines Section 15164. An Addendum to the previously certified EIR has been prepared and can be found as an Exhibit to the resolution.

As a separate and independent basis, the project is exempt from further CEQA review pursuant to Section 15183 of the California Environmental Quality Act, which applies to projects which are consistent with the development density established by existing zoning, community plan, or General Plan policies for which an EIR was certified, shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. As a separate and independent basis, the project is also exempt from further CEQA review pursuant to CEQA Guidelines Section 15182, because the project is a residential project that is generally consistent with a Specific Plan. Lastly, the project is also exempt from further environmental review pursuant to CEQA Guidelines Section 15168, as the project is within the scope of the TASP program EIR. Moreover, while the project seeks relief from certain regulatory standards, with application of the density bonus requirements of the Code discussed in this report, the project complies with the City's existing zoning, specific plan, community plan, and General Plan. Therefore, no further environmental review is required.

Fiscal Impact: By approving the multiple entitlements, including annexation of 1400 South Main Street into the TASP area, the projected TASP fee revenue for the project is $7,211,820. Additional fees collected include a Community Facilities District (CFD) fee of approximately $143,000 collected annually.

Recommendations:

1. Conduct a public hearing, take public comments, and move to close the public hearing.
2. Consider the Addendum with the Transit Area Specific Plan Final Program Environmental Impact Report in accordance with the California Environmental Quality Act.
3. Adopt a resolution approving a General Plan Amendment, Specific Plan Amendment, Site Development Permit, Conditional Use Permit, Density Bonus, and Lot Combination, allowing construction of a 7-story, 85-foot tall, 220 unit apartment complex with 10 units designated for very low income individuals or households.
4. Following a reading of the title by the City Attorney, waive the first reading beyond the title and introduce Ordinance No. 38.381 to amend the zoning designation of 1380 and 1400 South Main Street from R4-TOD to R5-TOD.

Attachments:

a) Resolution with Exhibit CEQA TASP-FEIR Addendum
b) Ordinance No. 38.831 (draft for introduction)
c) Planning Commission Staff Report dated August 22, 2018
d) Planning Commission Meeting Minutes August 22, 2018
e) Staff Memo to City Council 10-02-2018
f) Comment Letter/e-mails
g) Project Plans for Main Street Development

11. Conduct a Public Hearing and Consider Adopting a Resolution to Uphold the Planning Director's Appeal and Reverse the Planning Commission Decision and Making Findings that the Nonconforming Industrial Use at 1831-1841 Tarob Court had been discontinued for a continuous period of more than one year and, in accordance with Milpitas Municipal Code Section XI-10-56.03(A), cannot be replaced with a different nonconforming industrial use (Staff Contact: Adrienne Smith, 408-586-3287)

Background: On July 19, 2018, applicant George L. Quinn Jr. contacted the Planning Department seeking approval to lease the subject property, which was formerly zoned for industrial use prior to the 2008 adoption of the Transit Area Specific Plan (TASP) to an electric car manufacturer. Along with the adoption of the TASP in 2008, the property was rezoned to Multi-Family Very High Density Residential (R4). A car manufacturer is not an allowable use per R4 zoning standards, and therefore, the Applicant sought to install the car manufacturing use pursuant to the Nonconforming Buildings and Uses Ordinance of the Milpitas Municipal Code Section XI-10-56.03(A) 2. Discontinuation of Nonconforming Use, which states that if a nonconforming use at the subject property has been discontinued for a period of less than one year, it may be replaced with a nonconforming use of the same use classification as a matter of right. Although more than one year had passed since the last legal nonconforming industrial tenant vacated on January 31, 2017, the Applicant asserted that the cessation of nonconforming use was interrupted by a short term lease with Stratford Schools, commencing on December 13, 2017, which purportedly established a warehousing/wholesale use of school record storage that ended the cessation of a period of industrial use onsite. Thereafter Stratford Schools applied for a Conditional Use Permit (CUP) to establish a school use and that application was later withdrawn. Apart from the Stratford Schools' uses, the Property has been vacant since January 2017.

On August 3, 2018, staff issued a letter of determination disagreeing with the Applicant's interpretation of the Municipal Code (copy in agenda packet). Staff determined that the Stratford Schools use of the premises for the storage of school records did not qualify as a warehousing use within the meaning provided in the Municipal Code and, therefore, was not considered a legal nonconforming use. Staff concluded that since the last known industrial use of the building was discontinued as of January 31, 2017 the prior

nonconforming use of the site was discontinued for a continuous period of one year or more and could only be replaced with a conforming use.

On August 14, 2018, the Applicant appealed the staff's August 3 letter of determination to the Planning Commission. The Applicant did not dispute staff's interpretation rejecting Stratford Schools' onsite storage as a continuation of legal conforming industrial uses. Instead, the Applicant argued that, despite the site's extended vacancy and the fact that no industrial tenant has used the site since January 2017, a series of deferred maintenance and tenant improvements undertaken while the Property was vacant during 2017 and 2018 constituted a "continued" industrial use of the property.

On September 26, 2018, the Applicant's appeal was heard by the Planning Commission. It was undisputed that no industrial user has operated on the site since the last industrial tenant vacated the premises in January 2017; however, in his appeal before the Planning Commission, the Applicant asserted that above-referenced maintenance and tenant improvements, together with listing the Property for purposes of securing an industrial tenant, amounted to an ongoing "industrial use" of the vacant site, thereby preserving its legal nonconformity. There has been no dispute that industrial use of the Property is nonconforming and has been since the 2008 TASP adoption and associated rezoning, nor has the Applicant asserted that he lacked proper notice and knowledge of the Property's TASP designations and current zoning. At the conclusion of the public hearing, the Planning Commission voted to uphold the appeal and overturn staff's August 3, 2018 determination.

On September 27, 2018, the Planning Director filed this appeal (the "Council Appeal") of the Planning Commission's September 26 decision on the grounds that the Planning Commission improperly approved an expired nonconforming use contrary to the Milpitas Municipal Code Section 56 - Nonconforming Buildings and Uses. The Planning Commission's decision fails to enforce the City's adopted and established nonconforming use regulations, which, as stated in the Council Appeal, is contrary to the goals and policies of the TASP and prevents its timely implementation (see Attachment B).

Basis of the Council Appeal

The primary question before the City Council is whether staff appropriately determined that the Applicant's prior legal nonconforming industrial use of the Property was discontinued for a period of one year or more, as specified in Milpitas Municipal Code Section XI-10-56.03. Section XI-10-56.03 provides that "[a] legally established use that is no longer permitted in a particular zoning district because of a modification of [the Zoning Code] shall be allowed to continue indefinitely, *absent discontinuation of the use for a year or more."* (Emphasis added).

As outlined below, this Council Appeal addresses several issues relevant to the Council's determination regarding this primary question.

Issue #1: Nonconforming Buildings and Uses Ordinance

A legal nonconforming use refers to a use that was legal for a particular site at the time it was instituted, but which does not conform to subsequently enacted zoning or other regulations. Cities and counties commonly establish legal nonconforming use ordinances and regulations to establish parameters for the continuation of nonconforming uses while encouraging conversion to conforming uses. Consistent with these principles, the City's legal nonconforming use ordinance, per Milpitas Municipal Code Section XI-10-56, *et seq.* (the "Ordinance"), provides a set of guidelines to assist property owners in managing the eventual transition of their existing nonconforming uses to uses that conform to the current zoning classifications. Essentially, the Ordinance provides a narrowly tailored exception to ordinary rules governing permitted and conditionally permitted uses under the City's

Zoning Code. In that vein, the Ordinance clearly encourages *conforming* uses, while recognizing that until nonconforming buildings, structures and uses are converted, improvements to them which promote their compatibility with their neighborhoods, enhance the quality of development, and do not increase nonconformity should be encouraged and allowed." (See Milpitas Municipal Code Section XI-10-56.01).

Here, despite the absence of continuing industrial activities onsite, the Applicant has asserted that industrial uses did not cease for more than a year because building improvements and listing the Property for leasing during the course the site's vacancy amounts to an ongoing industrial use.

Staff does not agree with this interpretation of the Nonconforming Buildings and Uses Ordinance. Nothing in the Ordinance specifies nor contemplates the activities the Applicant describes as a demonstration of the continuation of legal nonconforming uses. Although the Ordinance allows routine maintenance and repairs of nonconforming buildings or structures, it does not suggest that merely undertaking such actions constitute continuation of the legal nonconformity. Regarding the Applicant's building and maintenance activities, the Ordinance allows such improvements only as a ***limitation*** on ongoing conforming uses, ***not*** evidence that an otherwise discontinued nonconforming use is ongoing. (See Milpitas Municipal Code Section XI-10-56.02). The Ordinance's intent and purpose is to enable existing nonconforming uses to continue without expansion or alterations that enhance their permanence. To that end, the Ordinance specifies that any repairs, maintenance or aesthetic improvements are allowed "provided that no structural alterations shall be made except those required by law or ordinance." (See Milpitas Municipal code Section XI-56.02.A).

Similarly, the Applicant has provided no support for his assertion that listing the Property for potential leasing with an industrial tenant amounts to a continued industrial use of the site. Neither the Ordinance nor the cases cited in the Applicant's Planning Commission appeal suggest that mere marketing efforts (nor those efforts coupled with the Applicant's maintenance and other improvements) constitute a continuation of legal nonconforming uses. Although the Applicant's attempts to obtain an industrial tenant may show his intermittent interest in continuing an industrial use if one could be secured, they do not constitute a continuation of the industrial use itself. The Applicant's evidence of a listing agreement with a commercial brokerage, the posting of a "for lease" sign for an industrial user at the Property, or a letter of intent with a prospective tenant that never proceeded to a signed lease agreement do not alter this conclusion. To the extent the Applicant's intentions might be relevant, the facts show his intent to abandon industrial uses when Stratford Schools leased the Property and commenced an application process to convert the site to nonindustrial school uses (see Issue #4 on the next page).

Under the Ordinance, where legal nonconforming uses cease, a property owner has a one year period to institute a new legal nonconforming use in order to continue its legal nonconforming status. If the owner fails to do so, the legal nonconforming status lapses and ordinary rules governing permitted and conditionally permitted uses apply. The Ordinance does not contemplate that routine maintenance or unsuccessful efforts to market the property amount to a continuation of the legal nonconforming use or extend the one year period for re-instituting a ceased use.

Issue #2: The meaning of "use" in the context of the Nonconforming Buildings and Uses Ordinance

At the September 26, 2018 Planning Commission meeting, the Applicant's attorney, Andrew L. Faber, asserted that the Applicant's above-described building and marketing activities constituted a continued industrial use under the Zoning Code's general definitions. Specifically, the Applicant asserted industrial use of the Property continued

because Milpitas Municipal Code XI-10-2.03, defines "use" as "the purpose for which land or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained." Because this definition does not "require" occupancy, the Applicant has asserted that mere "maintenance" amounts to continued industrial use.

Staff disagrees with the Applicant's interpretation. Although the Code's general definition does allow maintenance to occur within any "use" category, it does not suggest that mere maintenance constitutes continuation of a particular use. This provision merely recognizes that occupation or maintenance activities to support an underlying allowed use, such as industrial, commercial, residential, also are allowed. It does not mean that such activities alone perpetuate that use, particularly when the underlying use is nonconforming.

As described above, a legal nonconforming use is an exceptional category of uses, subject to very specialized restrictions that are designed to discourage permanency of the nonconformity. The Municipal Code's general definition of "use" does not, and is not intended to, address the peculiarities of legal nonconforming uses, which are specifically addressed in Section 56 - Nonconforming Buildings and Uses ordinance of the Milpitas Municipal Code.

Issue #3: City permitting process for building repairs and maintenance

In its appeal before the Planning Commission, the Applicant implied that Planning Department staff were aware of the repairs and maintenance that were made to the Property in 2017 and 2018. Apparently, the Applicant hoped this would lead to an inference that the City staff implicitly authorized or endorsed these alterations for purposes of prolonging the nonconforming use of the building. There is no factual support for this inference. Whether or not Planning staff are called upon for review depends on the nature of the changes being proposed by an applicant. In the interest of streamlining the permitting process, interior tenant improvements such as plumbing and electrical work or the replacement of a roof do not require discretionary Planning review nor a building permit plan check by Planning staff. Any City review of the permit requests would not likely have revealed any particular intent regarding the use of the Property, but even if it had, the fundamental facts underlying this Council Appeal are unchanged. The Applicant's pursuit of the improvements, permitted or not, did not constitute continuation of the industrial legal nonconforming use of the Property.

Issue #4: Stratford Schools' efforts to pursue a nonindustrial use via Conditional Use Permit application

Throughout the course of the Applicant's appeal to the Planning Commission, the Applicant repeatedly asserted that pursuit of a new industrial tenant and improving the Property for continuation of nonconforming industrial use has been the Applicant's objective since the last industrial tenant vacated the site in January 2017. This argument apparently was advanced in an effort to show that the Applicant had not intended to abandon his industrial uses, even though he had not actually continued them. The evidence, however, shows that the Applicant did intend to abandon further industrial use of the Property and install Stratford Schools as a nonindustrial, conforming, conditionally permitted use in the R4 zoning designation. As noted above, the Applicant leased the Property to Stratford Schools on December 13, 2017 on a month-to-month term. Then, on February 8, 2018, Stratford Schools, applied for a Conditional Use Permit (CUP) to operate a school on the Property, a conditionally permitted use in the R4 zoning district. Ultimately, Stratford Schools withdrew their CUP application on June 29, 2018 after deciding not to undertake the California Environmental Quality Act (CEQA) study that would be required for the project. Nonetheless, the Applicant's support for Stratford Schools plans for the Property clearly demonstrate the Applicant's willingness and desire to abandon the previous industrial use.

Issue #5: Availability of economically viable conforming use of the Property consistent with the R4 zoning classification and the TASP

In his appeal to the Planning Commission, the Applicant asserted that staff's determination that the legal nonconforming industrial use had lapsed deprived the Property of all economically viable use. Staff sees no basis for this assertion. At this juncture, there is no reason to believe that the Property cannot be developed as prescribed by the TASP development standards for Multi-Family Very High Density Residential (R4). The Applicant asserts that the TASP-planned extension of Milpitas Boulevard which would bisect the Property precludes such development; however, staff is optimistic that a successful residential proposal could be developed. As of the writing of this report, the Planning Department has not received any residential development proposals from the Applicant nor have they been approached for any preliminary conversations. The City remains receptive to any proposal for conforming use development on the Property, as evidenced by adjacent properties to the site either entitled for R4 development or that are currently under development. These developments include 355 Sango Court, a 100-unit affordable housing project directly west of the property and 1980 and 1992 Tarob Court and 551 Lundy, where construction has already begun for approximately 200 townhomes.

In an attempt to ascertain whether understand if the multifamily residential development community would be interested in developing the Property, staff spoke with representatives from DR. Horton, True Life Companies and Summerhill Homes who all agreed that there was residential development potential on the site even after a portion of the Property was dedicated to roadway construction.

Issue #6: Implications of failing to enforce the legal Nonconforming Use Ordinance

In his September 26 appeal hearing, the Applicant successfully persuaded the Planning Commission that his maintenance and marketing activities demonstrated sufficient evidence of continued industrial use to allow such nonconforming uses to proceed into the future. In this Council Appeal, staff dissents from the Planning Commission decision and believes that the Planning Commission decision erred in failing to rigorously enforce the Nonconforming Buildings and Uses Ordinance despite significant evidence and legal support for staff's determination that the Property's legal nonconforming status had lapsed.

The potential adverse consequences of failing to rigorously enforce the Ordinance are worth noting. As discussed above, the Ordinance is intended to facilitate the transition of nonconforming uses to conforming uses. The importance of fulfilling this intention is particularly apparent in the TASP area, where the future of the surrounding neighborhood and the ultimate buildout of high density residential uses within walking distance of the BART station and ultimately, the realization of the goals of the greater TASP require the eventual conversion of nonconforming uses. The neighborhood surrounding the Property is rapidly transitioning from former industrial uses to residential uses as prescribed by the TASP. Fundamentally, the noise, odors, vibrations and traffic patterns of industrial uses are incompatible with the residential community already in use or under construction. To interpret the Ordinance in a manner that allows the Property's lapsed industrial nonconforming use to resume could establish a virtually permanent state of land use incompatibility in this important planning area.

Notwithstanding the TASP goals and the on-the-ground land use transition that is occurring in TASP area, if the Applicant demonstrated that legal nonconforming uses had not been discontinued for over a year, the industrial uses could proceed consistent with the Nonconforming Buildings and Uses Ordinance. But, as expressed in this Council Appeal, staff does not find that to be the case. As a result, in staff's view, it would be an error to

uphold the Planning Commission's lenient interpretation of the Nonconforming Buildings and Uses Ordinance and its application to the Property.

Conclusion: For the reasons described in this report and as demonstrated in the record before the Council, Planning staff recommends the City Council reverse the Planning Commission decision to approve the Applicant's appeal of the Planning Department determination that the nonconforming industrial use at the subject property had been discontinued for a continuous period of more than one year, and in accordance with city of Milpitas municipal code section XI-10-56.03(A), cannot be replaced with a different nonconforming industrial use at 1831-184 Tarob Court in the Transit Area Specific Plan. All of these properties were rezoned from industrial to residential with the adoption of the TASP.

Fiscal Impact: None.

Recommendations:
1. Conduct a public hearing and move to close it following any comments.
2. Consider adopting a resolution to uphold the appeal and uphold the Planning Department determination that the nonconforming industrial use at the subject property had been discontinued for a continuous period of more than one year located at 1831-1841 Tarob Court in the Transit Area Specific Plan area.

Attachments:
a) Resolution
b) Appeal Form
c) Planning Commission Staff Report 9/26/2018
d) Planning Commission Meeting Minutes 9/26/2018
e) Staff Letter of Determination 8/3/2018 and Applicant request for staff determination

XIII. UNFINISHED BUSINESS

12. Following Public Comments, Authorize the City Manager to Approve the Site Development Permit Application by Outfront Allvision, LLC to Construct a 70-Foot Electronic Off-Site Advertising Display (Billboard) on State Highway 237 at the Northern Terminus of the Barber Court Cul-de-Sac (Staff Contact: Michael Fossati, 408-586-3274)

Background: Outfront Allvision LLC, a joint venture between Allvision and Outfront Media, proposes to construct an electronic off-site advertising display (billboard), approximately 70 feet in height, within City-owned right-of-way, approximately 1,100 square feet in area, at a site south of State Route 237 at the northern terminus of the Barber Court cul-de-sac, all within the City of Milpitas. A map identifying the proposed location is included in the agenda packet. Pursuant to Milpitas Municipal Code (MMC) Section XI-10-24.02, development of the proposed electronic off-site advertising display (billboard) will require approval of a Site Development Permit by the City.

The applicant must demonstrate authorization from the property owner prior to submitting the application. In this case, the proposed location is owned by the City of Milpitas, and the City Manager, under direction by the City Council, may act on behalf of the City to provide such authorization. The following request is for City Council to receive background information and public comment on the proposed electronic off-site advertising display prior to authorizing an application.

Overview: MMC Section XI-10-24.02 establishes a formal procedure for the review and approval of a permit application for off-site advertising displays adjacent to interstate highways and state routes, and provides specific development standards that an application

must follow. In addition to site plans and other documentation, submittal of the permit application for this type of development also requires authorization from the property owner.

At present, the applicant "Outfront Allvision" has only applied for a preliminary plan review, which allows internal departments, such as Planning, Building, Fire and Engineering Land Development, to comment on technical features associated with the project. This type of application is not for a permit and does not require property owner authorization. For informational purposes only, Attachment A (in the agenda packet) is a summary table of the proposed project's development standards in comparison with the required standards of the City Code, and Attachment B highlights how the proposed project would be in substantial conformance with the City of Milpitas development standards required for off-site advertising displays. Attachment C provides photo-simulations of the proposed project to help the public and the City Council visualize how the proposed off-site electronic advertising display would look in the proposed location on city-owned right-of-way.

California Environmental Quality Act: This permit is not a project. Receiving background information and public comment and directing the City Manager to provide a signature on behalf of the City are administrative activities of government and will not result in direct or indirect physical changes to the environment. A formal Site Development Permit for the proposed project, once submitted, will require environmental review under the California Environmental Quality Act.

Fiscal Impact: Receiving public comment and directing the City Manager to provide a signature on a Site Development Permit application on behalf of the City, as the property owner, will result in no fiscal impacts to the City. A lease agreement between the City of Milpitas and Outfront Allvision LLC may be presented to the City Council for consideration at a future date, and staff will provide an assessment of the fiscal impacts of that action at that time.

Recommendations:

1. Receive public comments on the proposed electronic billboard.
2. Authorize the City Manager to approve a Site Development Permit for electronic off-site advertising display (billboard) approximately 70 feet in height, within City right-of-way located on the south side of State Route 237 at the northern terminus of the Barber Court cul-de-sac and approximately 430 feet northeast of Crowne Plaza hotel.

Attachments:

a) Map of Proposed Location for Billboard
b) Off-site Advertising Display Development Standards (table)
c) Photo Simulations

13. Receive a Status Update on Staff Efforts Related to Odor Issues (Staff Contact: Steve Erickson, 408-586-3301)

Background: At the August 7, 2018 City Council meeting, staff was directed to bring forward a report on odor issues to the Council. Subsequent to that meeting, staff has provided interim updates through memorandums dated August 14 and August 30, 2018 (copies included in the agenda packet). This report provides an update on progress since August 30, 2018.

In addition to any odor complaints submitted through the MyMilpitas app and through direct phone calls and emails, monthly odor complaint reports are received from the Bay Area Air Quality Management District (BAAQMD). A total of 1,051 complaints have been

logged to date this year compared to 1,629 same time last year. As noted in the August 14 memo, although the overall trend in odor complaints received has been downward over the last three years, there was an increase in complaints for the months of July and August 2018 (Summary of odor complaints in agenda packet). Thus, odor issues continue to be a high priority for the community.

In order to address this, staff has been working on many fronts including speaking with the enforcement agencies to ensure compliance at odor generating facilities, exploring air monitoring stations, working with the South Bay Odor Group, and pursuing representation on the BAAQMD board.

Enforcement

City staff spoke with Bay Area Air Quality Management District (BAAQMD) staff on September 7, 2018, and met with the supervisor of the San Jose Local Enforcement Agency (LEA) on September 25 to discuss the surge in odor complaints and to determine the reasons for the increase as well as enforcement actions being taken. Both agencies shared that they have been working more closely together to enhance agency cooperation to investigate and identify odor complaints. BAAQMD staff mentioned several complaints investigated were tracked back to the Republic Services Newby Island Materials Recycling Facility (MRF) and the Green Waste Composting Facility. BAAQMD has odor jurisdiction and enforcement authority at the MRF. BAAQMD staff stated that recent odors traced to this facility in July have been resolved through the LEA and BAAQMD working together.

In July, BAAQMD had identified odors from trailers onsite containing waste that was scheduled to be hauled from the MRF to Zero Waste Energy Development Company (ZWED) for processing and disposal. Since then, Republic Services has worked with the LEA to move waste containers from the MRF to ZWED sooner.

The San Jose LEA has odor jurisdiction and enforcement authority at the Republic Services Green Waste Composting Facility. BAAQMD referred its recent odor inspection data to the LEA for follow-up and enforcement. The LEA is still investigating recent odor complaints, however it states that a number of violation notices have been recently issued to Republic Services.

Both agencies state there is an enforcement process in place for the investigation and resolution of odor problems. The process is progressive in that after a specified number of notices of violation are issued for a problem, the matter escalates to penalties such as listing on the state's webpage as a repeat violator and the implementation of fines. The LEA mentioned that notices of violation are taken seriously by companies because they do affect a company's credit rating and stock price.

At the end of July, BAAQMD had requested clarification from CalRecyle, the state agency which oversees the LEA, on the possibility of LEA using data from BAAQMD investigations to pursue enforcement on compost related odor complaints. CalRecycle has confirmed this is acceptable and the LEA and BAAQMD are now working together to enhance the enforcement referral process so that the LEA may utilize investigative data and referrals from BAAQMD for enforcement actions.

BAAQMD staff and Evan Boyd of Republic Services have confirmed that Republic Services has completed a number of structural improvements to the facility as a means of reducing odors including installation of additional gas extraction wells and a flaring facility at a cost of over $6 million, and installation of two and a half miles of odor neutralizing equipment. Last March, the installation of a $3 million improvement to the composting facility was completed. This improvement converted the windrow composting operation to a Covered, Aerated Static Pile (CASP) system to minimize odors. BAAQMD staff states that Republic has agreed to enclose and abate the MRF facility to reduce odor emissions. The

design for the MRF enclosure is underway, and BAAQMD anticipates being able to review the design by the end of this year.

In addition to a long list of structural improvements, Republic has conveyed they have implemented changes to their materials processing procedures and facility operations with the intent of reducing odors as much as possible. Several of these changes include on-site processing time limitations for inbound organic materials; closing sections of the landfill nearest receptors; modified hours of operation to shut down greenwaste grinding during times of unfavorable wind conditions; and initiating composting limits to ensure operations on the landfill surface are furthest away from odor receptors.

South Bay Odor Stakeholders Group (SBOSG) Quarterly Meetings
The next meeting of the SBOSG is scheduled for October 18. An outstanding issue to be discussed is the resolution of agency management of a contract for a Regional Odor Study that is to be funded by Republic Services. The study is a requirement of the City of San Jose Planned Development Permit (PD14-014) issued for the vertical expansion of the landfill.

A draft scope of work for the study was completed by staff from the Cities of Milpitas and Fremont. Unfortunately, the SBOSG is not a public entity and does not have the ability to enter into contracts, and the management of the odor contract would fall on a public agency, such as a city. The San Jose Planning Department was requested to manage the odor study contract, however, San Jose has expressed reluctance in accepting this responsibility due to staff shortages and a heavy workload. The City of Fremont does not wish to manage the odor study contract due to the limited number of odor complaints received in Fremont and because they are in a different County. City staff reached out to BAAQMD to gauge its interest and ability to manage the odor contract. However, that District does not wish to take this on because its staff view it as a conflict of interest with its authority and required enforcement role.

Staff contacted the Santa Clara County Department of Environmental Health to request its assistance in leading the regional odor study. The County expressed that it also would not be interested in managing the study because of its role in the County as a Local Enforcement Agency (LEA). City of Milpitas staff will continue to discuss this issue with the City of San Jose Planning Department and will keep Council informed on progress.

Community Air Monitoring Program
Public Works staff is evaluating the development of an air monitoring network including the purchase and effectiveness of equipment. Staff continues to evaluate and research the effectiveness of air monitoring equipment. It is anticipated that hydrogen sulfide analyzers and nasal ranger field olfactometer equipment will likely be effective for deployment in areas around the City. BAAQMD has expressed interest in the City's air monitoring network plans and suggested the City contact the District's technical division for questions related to air monitoring equipment. However, BAAQMD suggested staff proceed with caution, given the many considerations and limitations of community air monitoring, especially to determine odor sources. In the coming months, staff will work with a consultant to explore and develop a viable monitoring program for the City, including the purchase and/or rent of equipment needed for the program.

BAAQMD Board Representation
Staff is proceeding with Council direction given on October 2 on this issue. The City shall move forward with the application process based upon Council's nomination of Council-member Nuñez for consideration of his appointment to the BAAQMD Board of Directors.

Next Steps
Staff will continue to work with both BAAQMD and the LEA to ensure they diligently investigate odor complaints and take enforcement actions for confirmed complaints. Staff

will keep the City Council advised of the negotiations with agencies with respect to management of the regional odor study contract.

Fiscal Impact: Any costs associated with a potential community air monitoring program will be brought forward as a separate action item to Council in the future.

Recommendation: Receive a status update on staff efforts related to odor issues.

Attachments:
a) Memo to City Council dated August 14, 2018
b) Memo to City Council dated August 30, 2018
c) Odor Complaint Summary – January 2015 to August 2018

XIV. REPORTS

14. Approve the Milpitas Arts Commission FY 2018-19 Work Plan; and, Approve a Dixon Landing Park Public Art Installation Project Piece (Staff Contact: Rosana Cacao, 408-586-3207)

Background: The Arts Commission was founded in October 17, 2000. The Commission serves as an advisory body to the City Council on matters pertaining to the arts, performance or visual, in the City of Milpitas. At the September 24, 2018 Arts Commission meeting, the Commissioners discussed and approved to recommend final City Council approval of their FY 2018-19 Work Plan. Included in the agenda packet is a copy of the proposed Work Plan.

On March 27, 2016, a two-year Public Art Master Plan was approved by the City Council which outlined public art installations and maintenance projects through 2018. The Dixon Landing Park Public Art Installation project was included in that Master Plan and is part of the Arts Commission proposed FY 2018-19 Work Plan.

Upon the completion of an artist Request For Proposal (RFP) process, artist team Joe Bologna and Patricia Vader were selected by the Arts Commission to provide two art proposals for the community to provide input on, to be installed in Dixon Landing Park. The two models that were created were "Milpitas Recreation Players" and "Butterfly." Those models were shown and voted on by the general public at various events and in public buildings between December 2017 and April 2018. On April 28, 2018, the models were brought to the Dixon Landing Park neighborhood for final voting.

On August 6, 2018, the project models were presented to the Parks, Recreation and Cultural Resources Commission due to the intended location of the art piece. Commissioners voted unanimously to recommend the Milpitas Recreation Players piece.

On August 13, 2018, the Arts Commission received the project voting results in which the "Milpitas Recreation Players" piece led the votes with both the community-at-large and the park neighborhood. The Arts Commission also received the recommendation from the Parks, Recreation and Cultural Resources Commission for "Milpitas Recreation Players." The Arts Commission voted to recommend "Milpitas Recreation Players" for final City Council approval. Included in the agenda packet are renderings of the project art models.

Fiscal Impact: None. Sufficient funds are available and allotted in the FY 2018-19 Public Art budget.

Recommendations:
1. Approve the Arts Commission 2018-19 Work Plan.

2. Approve the "Milpitas Recreation Players" art piece for the Dixon Landing Park Art Installation project.

Attachment: Arts Commission Work Plan

15. Approve Youth Advisory Commission FY 2018-19 Work Plan (Staff Contact: Andrew Mendes, 408-586-3231)

Background: At the September 13, 2018 Youth Advisory Commission meeting, the Commissioners created and approved a 2018-19 Work Plan proposal. The Commission's Work Plan identifies the Commission's goals, projects and on-going tasks they would like to accomplish for the year.

Fiscal Impact: None.

Recommendation: Approve the Youth Advisory Commission 2018-19 Work Plan.

Attachment: 2018-19 Youth Advisory Commission Work Plan

XV. ORDINANCE

16. Waive the First Reading and Introduce Ordinance No. 41.12 to Amend Section I-500-1.14 of the Milpitas Municipal Code, Authorizing an Increase in Compensation to Planning Commissioners, as Directed (Staff Contacts: Christopher Diaz, 408-586-3044 and Ned Thomas, 408-586-3273)

Background: Pursuant to Milpitas Municipal Code I-500-1.14, Compensation for Attending Meetings, the City of Milpitas Planning Commission receives a compensation in the amount of $25.00 for attending any regularly or specially scheduled Planning Commission meetings. A formal ordinance amending the municipal code must be adopted to increase the amount.

On May 17, 2016, the City Council received an initial presentation from staff and discussed increasing the compensation provided to members of the Planning Commission from $25 per meeting to $100 per meeting. This topic was discussed again on May 15, 2018, and Council directed staff to prepare an ordinance to increase the Planning Commissioner's compensation. A public hearing for the ordinance was scheduled on June 5, 2018.

At the June 5, 2018 meeting, the Council directed staff to gather additional comparative information on compensation and workload levels for Planning Commissions from other Santa Clara jurisdictions. Staff presented this information to the Council on October 2, 2018, and after receiving the presentation, the Council directed staff to return on October 16, 2018, with an ordinance to increase the compensation for members of the Planning Commission from $25 per meeting to $100 per meeting.

If the ordinance is introduced on October 16, Council could consider it for second reading and adoption on November 6, making the ordinance effective 30 days following adoption.

Fiscal Impact: As noted above, Milpitas Planning Commissioners currently receive compensation of $25 per meeting. The increase of $75 to a $100 rate per meeting is estimated to have a fiscal impact to the City budget of $7,350 for the projected 14 remaining meetings after the rate becomes effective on 12/06/18 (30 days after ordinance is adopted). The fiscal impact also reflects compensation estimates at the current total number of Commission seats (8) with the anticipated reduction of membership, per approved recommendation from the City Council Subcommittee on Commissions effective in 2019.

The anticipated increase in the Planning Commission budget was included in the FY 2018-19 Adopted Operating Budget. No additional appropriation is needed.

Recommendation: Waive the first reading beyond the title and introduce Ordinance No. 41.12 amending Milpitas Municipal Code I-500-1.14 to increase the compensation provided to Planning Commissioners for attending Commission meetings to $100.

Attachment: Ordinance No. 41.12

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

XVII. ADJOURNMENT

NEXT SPECIAL CITY COUNCIL MEETING
TUESDAY, OCTOBER 23, 2018

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, OCTOBER 16, 2018