

ORDINANCE NO. 04637
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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**ORDINANCE ADDING CHAPTER 4.114 (REUSABLE BAGS) OF TITLE 4
(SANITATION AND HEALTH) OF THE SAN MATEO COUNTY ORDINANCE
CODE RELATING TO REUSABLE BAGS**

The Board of Supervisors of the County of San Mateo, State of California,
ORDAINS as follows

SECTION 1. Chapter 4.114 "Reusable Bags," consisting of Sections 4.114.010 through 4.114.080, of Title 4 of the San Mateo County Ordinance Code is hereby added as follows:

4.114.010 Findings and purpose

The Board of Supervisors finds and determines that:

- (a) The use of single-use carryout bags by consumers at retail establishments is detrimental to the environment, public health and welfare.
- (b) The manufacture and distribution of single-use carryout bags requires utilization of natural resources and results in the generation of greenhouse gas emissions.
- (c) Single-use carryout bags contribute to environmental problems, including litter in stormdrains, creeks, the bay and the ocean.
- (d) Single-use carryout bags provided by retail establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance.

This Board does, accordingly, find and declare that it should restrict the single use carry-out bags

4.114.020 Definitions

- A. "Customer" means any person obtaining goods from a retail establishment.
- B. "Garment Bag" means a travel bag made of pliable, durable material with or

without a handle, designed to hang straight or fold double and used to carry suits, dresses, coats, or the like without crushing or wrinkling the same.

C. "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than fifty percent of its revenues from the handling and sale of those donated goods or materials.

D. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.

E. "Prepared food" means foods or beverages which are prepared on the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed. "Prepared food" does not include any raw, uncooked meat product or fruits or vegetables which are chopped, squeezed, or mixed.

F. "Public eating establishment" means a restaurant, take-out food establishment, or any other business that receives ninety percent or more of its revenue from the sale of prepared food to be eaten on or off its premises.

G. "Recycled paper bag" means a paper bag provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment that contains no old growth fiber and a minimum of forty percent post-consumer recycled content; is one hundred percent recyclable; and has printed in a highly visible manner on the outside of the bag the words "Reusable" and "Recyclable," the name and location of the manufacturer, and the percentage of post-consumer recycled content.

H. "Retail establishment" means any commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to the customer; and is located within or doing business within the geographical limits of the County of San Mateo. "Retail establishment" does not include public eating establishments or nonprofit charitable reusers.

I. "Reusable bag" means either a bag made of cloth or other machine washable fabric that has handles, or a durable plastic bag with handles that is at least 2.25 mil thick and is specifically designed and manufactured for multiple reuse. A garment bag may meet the above criteria regardless of whether it has handles or not.

J. "Single-use carry-out bag" means a bag other than a reusable bag provided at the check stand, cash register, point of sale or other point of departure, including departments within a store, for the purpose of transporting food or merchandise out of the establishment. "Single-use carry-out bags" do not include bags without handles provided to the customer: (1) to transport prepared food, produce, bulk food or meat from a department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; or (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a reusable

bag or recycled paper bag

4.114.030 Implementation Date

This Chapter shall not be implemented until April 22, 2013.

4.114.040 Single-use carry-out bag

A. No retail establishment shall provide a single-use carry-out bag to a customer, at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this section.

B. On or before December 31, 2014 a retail establishment may only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum of ten cents.

C. On or after January 1, 2015 a retail establishment may only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum of twenty-five cents.

D. Notwithstanding this section, no retail establishment may make available for sale a recycled paper bag or a reusable bag unless the amount of the sale of such bag is separately itemized on the sale receipt.

E. A retail establishment may provide one or more recycled paper bags at no cost to any of the following individuals: a customer participating in the California Special Supplement Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code; a customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code; and a customer participating in CalFresh pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code.

4.114.050 Recordkeeping and Inspection

Every retail establishment shall keep complete and accurate record or documents of the purchase and sale of any recycled paper bag or reusable bag by the retail establishment, for a minimum period of three years from the date of purchase and sale, which record shall be available for inspection at no cost to the County during regular business hours by any County employee authorized to enforce this part. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the retail establishment address. The provision of false information including incomplete records or documents to the County shall be a violation of this Chapter.

4.114.060 Administrative fine

(a) Grounds for Fine. A fine may be imposed upon findings made by the Director of the Environmental Health Division, or his or her designee, that any retail establishment has provided a single-use carry-out bag to a customer in violation of this Chapter.

(b) Amount of Fine. Upon findings made under subsection (a), the retail establishment shall be subject to an administrative fine as follows:

- (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation;
- (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation;
- (3) A fine not exceeding five hundred dollars (\$500) for the third and subsequent violations;
- (4) Each day that a retail establishment has provided single-use carry-out bags to a customer constitutes a separate violation.

(c) Fine Procedures. Notice of the fine shall be served on the retail establishment. The notice shall contain an advisement of the right to request a hearing before the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine. The grounds for the contest shall be that the retail establishment did not provide a single-use carry-out bag to any customer. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the Director of the Environmental Health Division shall be based upon a finding that the above listed ground for a contest has been met and shall be a final administrative order, with no administrative right of appeal.

(d) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the Director of the Environmental Health Division or his or her designee after the hearing, the fine shall be referred to a collection agency.

4.114.070 Severability

If any provision of this Chapter or the application of such provision to any person or in any circumstances shall be held invalid, the remainder of this Chapter, or the application of such provision to person or in circumstances other than those as to which it is held invalid, shall not be affected thereby.

4.114.080 Enforcement

The Environmental Health Division is hereby directed to enforce this Chapter within an incorporated area of the County of San Mateo if the governing body of that incorporated area does each of the following:

- (a) Adopts, and makes part of its municipal code:
 - (1) Chapter 4.114 of Title 4 in its entirety by reference; or
 - (2) An ordinance that contains each of the provisions of this Chapter; and
- (b) Authorizes, by ordinance or resolution, the Environmental Health Division to enforce

the provision of the municipal code adopted pursuant to subsection (a) of this section, such authorization to include, without limitation, the authority to hold hearings and issue administrative fines within the affected incorporated area of the public entity.

SECTION 2. SEVERABILITY. If any provision(s) of this ordinance is declared invalid by a court of competent jurisdiction, it is the intent of the Board of Supervisors that such invalid provision(s) be severed from the remaining provisions of the ordinance and that those remaining provisions continue in effect.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days from the passage date thereof.

Regularly passed and adopted this 6th day of November, 2012.

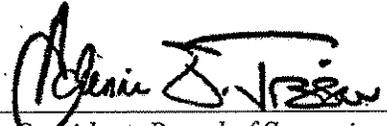
AYES and in favor of said ordinance:

Supervisors: DAVE PINE
CAROLE GROOM
DON HORSLEY
ROSE JACOBS GIBSON
ADRIENNE J. TISSIER

NOES and against said ordinance:

Supervisors: NONE

Absent Supervisors: NONE


Dennis J. Tress
President, Board of Supervisors
County of San Mateo
State of California

Certificate of Delivery

I certify that a copy of the original ordinance filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.


Rebecca Romero
Rebecca Romero, Deputy
Clerk of the Board of Supervisors



**MILPITAS CITY COUNCIL
MEETING AGENDA
TUESDAY, APRIL 17, 2012**

5:30 - 6:00 p.m. Closed Session

6:00 - 7:00 p.m.

**Special Ceremonial Event to honor all City
Commissions for their Service in 2011
Milpitas City Hall Lobby Rotunda**

7:00 p.m. City Council Meeting

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL by the Mayor (5:30 p.m.)**
- II. ADJOURN TO CLOSED SESSION OF CITY COUNCIL**
 - 1) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**

Pursuant to CA Government Code §54957.6 City Negotiator: Carmen Valdez
Employee Groups: Milpitas Supervisors Association (MSA), Milpitas Employees Association (MEA), Mid-Management/Confidential group, Milpitas Professional and Technical Group (ProTech), Milpitas Police Officers Association (MPOA), International Association of Fire Fighters (IAFF)
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
 - 2) CONFERENCE WITH LEGAL COUNSEL**

Anticipated Litigation, pursuant to CA Government Code §54956.9, with City as Plaintiff or Defendant
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to CA Government Code §54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Mayor Esteves)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – April 3, 2012**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS for April and May 2012**
- VIII. PUBLIC FORUM**

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

- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XI. APPROVAL OF AGENDA**

XII. 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.

XIII. PUBLIC HEARING

- 1. Hold a Public Hearing and Consider Approval of the Community Development Block Grant Funding Allocations for FY 2012-13, and Adopt the One-Year Action Plan (Staff Contacts: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)**

XIV. UNFINISHED BUSINESS

- 2. Receive a Report on the Single-use Carryout Bag Study, Direct Participation in an Environmental Impact Report, and Direct Preparation of an Ordinance to Restrict Distribution of Single-use Bags (Staff Contact: Kathleen Phalen, 586-3345)**
- 3. Receive a Report on the Expanded Polystyrene Food Service Take-out Containers Study, Approve Support Letter for Senate Bill 568, and Direct Participation in Regional Efforts to Ban Expanded Polystyrene Food Service Take-out Containers (Staff Contact: Kathleen Phalen, 586-3345)**
- 4. Receive Management Response to the Proposal by the Corporation Yard Task Force and Continue with Budget Discussions for FY 2012-13 and Take Action as Necessary (Staff Contact: Tom Williams, 586-3050)**

XV. REPORTS OF OFFICERS AND COMMITTEE

- * 5. Consider Mayor's Recommendation for Re-appointments to the Economic Development Commission (Contact: Mayor Esteves, 586-3029)**
- * 6. Request of Councilmember Giordano for a Report of Survey of Mall Policing in the Bay Area (Staff Contact: Dennis Graham, 586-2502)**
- * 7. Approve Updated By Laws of the Public Art Committee (Staff Contact: Renee Lorentzen, 586-3409)**
- * 8. Approve the Public Art Committee 2012-13 Master Plan (Staff Contact: Renee Lorentzen, 586-3409)**

XVI. NEW BUSINESS

- 9. Review Draft 2012-17 Capital Improvement Program (CIP) Report, and Provide Staff with Direction and Comments (Staff Contact: Greg Armendariz, 586-3317)**
- * 10. Approve Fee Waiver and In-Kind Donation of Equipment, Supplies, Facility Space and Staffing From Various City Departments for the 2012 Relay For Life Event at the Milpitas Sports Center, June 22-24, 2012 (Staff Contact: Jaime Chew, 586-3234)**
- * 11. Authorize the Acceptance of a Grant for After the Bell After School Program "2012 ATB Olympics" (Staff Contact: Renee Lorentzen, 586-3409)**

XVII. ORDINANCES

- * 12. Waive the Second Reading and Adopt Ordinance No. 38.803 Amending the Zoning Ordinance (Staff Contact: Sheldon Ah Sing, 586-3278)
- * 13. Waive the Second Readings and Adopt Ordinances No. 192.25 and No. 192.26 Repealing the 6th Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project, and the 13th Amendment to the Redevelopment Plan for Milpitas Redevelopment Project Area No. 1 (Staff Contact: Bryan Otake, 586-3040)
- * 14. Waive the Second Reading and Adopt Ordinance No. 54.25 Updating Animal Regulations (Staff Contact: Felix Reliford, 586-3071)

XVIII. RESOLUTIONS

- * 15. Adopt a Resolution Granting Initial Acceptance of and Reducing Performance Bond for City Facilities Improvement Community Center Heating, Ventilation, and Air Conditioning (HVAC) Replacement, Project No. 8182/3406 (Staff Contact: Steve Erickson, 586-3301)

XIX. BIDS AND CONTRACTS

- * 16. Authorize the City Manager to Award a Construction Contract for Escuela Parkway Pedestrian and Bicycle Enhancement Project, Project No. 4259, Federal Project No. RPSTPLE (009) (Staff Contact: Steve Erickson 586-3301)
- * 17. Authorize the City Manager to Execute Agreements with Santa Clara County for Collection of AB939 Implementation Fees and Administration of the Countywide Household Hazardous Waste Collection Program (Staff Contact: Kathleen Phalen, 586-3345)
- *18. Approve a Contract Extension with PMC for the Development of a Qualified Climate Action Plan (Staff Contact: Sheldon Ah Sing, 586-3278)

XX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 1, 2012 AT 7:00 P.M.**

**COUNCIL BUDGET HEARING SPECIAL MEETING
TUESDAY, MAY 8, 2012 AT 6:00 P.M.**

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: mogaz@ci.milpitas.ca.gov / Fax: 408-586-3056 / Phone: 408-586-3040

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

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, online, and at the Milpitas Library during normal business hours.

APPLY TO BECOME A CITY COMMISSIONER!

Current vacancies exist on the:

*Arts Commission/Public Art Committee (alternate)
Public Art Committee (one general member + one Alliance for the Arts member)
Community Advisory Commission (alternate)
Telecommunications Commission*

Applications are available online at www.ci.milpitas.ca.gov or at the City Clerk's office.
Contact the City Clerk's office (586-3003) for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at 586-3001 or send an email to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the Council Chambers for all meetings. TDD phone number (408) 586-3013.

AGENDA REPORTS

XIII. PUBLIC HEARING

- 1. Hold a Public Hearing and Consider Approval of the Community Development Block Grant Funding Allocations for FY 2012-13, and Adopt the One-Year Action Plan (Staff Contacts: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)**

Background: The U.S. Department of Housing and Urban Development (HUD) provides annual grants through the Community Development Block Grant (CDBG) Program to Local Governments to assist in providing decent housing, a suitable living environment, and expand economic opportunities for the low to moderate-income persons. The purpose of this public hearing is to set funding allocations for the CDBG funds provided to the City for FY 2012-13 and to adopt the One-Year Action Plan.

During the month of January 2012, the City advertised the 30-day time period by which to submit CDBG funding applications and sent out notices to past service providers. The Community Advisory Commission (CAC) held a public hearing on March 7, 2012, to review the 21 application received and provide funding recommendations to the City Council. CAC funding recommendations (included with the Council agenda packet) are based on the confirmed allocation of \$390,716 (a 27% reduction from current year funds of \$532,770). CAC recommendations follow the City Council’s adopted priorities for funding allocations for the categories as follows:

Public Services

1. Senior Services
2. Youth/Teen Services
3. Homeless Sheltering/Services
4. Child Care
5. Battered Women Sheltering/Services
6. Code Enforcement

25% of total Public Service allocation to be reserved for City of Milpitas Programs (Milpitas RAP and Milpitas Family Literacy Programs fall under this policy)

Non-Public Services (improvements)

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

- A minimum funding level of \$5,000 shall be allocated for public and non-public services; and
- \$10,000 from CDBG Program Administration for Fair Housing services.

Public Services –	\$58,607	15%
Non-Public Services –	\$259,318	65% (\$253,966 plus \$5,352 prior yr. funds)
Program Administration –	\$78,143	20%

Meeting minutes of the March 7, 2012 CAC meeting and funding recommendations are included in the Council’s agenda packet.

One-Year Action Plan

The Action Plan describes anticipated CDBG activities and expenditures to be undertaken for fiscal year 2012-13 and how these activities relate to meeting objectives noted in the Five-Year Consolidated Plan.

The draft Action Plan was advertised for public review and comments for 30 days (from March 16 through April 16, 2012) and sent to twenty-one CDBG funded applicants and agencies. Public comments received will be incorporated in the Action Plan and forwarded to HUD by May 15, 2012. HUD reviews and approves the Action Plan prior to releasing CDBG funds.

Attachments:

- A. Community Advisory Commission Approved Minutes Excerpt from March 7, 2012 Meeting.
- B. Fiscal Year 2012-13 Draft Action Plan

Recommendations:

- 1. Open the public hearing, and after receiving comments, move to close the public hearing.
- 2. Approve the Community Development Block Grant funds for FY 2012-13.
- 3. Approve the One-Year Action Plan for FY 2012-13.

XIV. UNFINISHED BUSINESS

2. Receive a Report on the Single-use Carryout Bag Study, Direct Participation in an Environmental Impact Report, and Direct Preparation of an Ordinance to Restrict Distribution of Single-use Bags (Staff Contact: Kathleen Phalen, 586-3345)

Background: On September 21, 2010, the City Council referred an evaluation of restricting distribution of single-use carryout bags to the Recycling and Source Reduction Advisory Commission (RSRAC) and directed staff to seek consultant support to study the impact of a potential ban. At its April 26, 2011 meeting, RSRAC reviewed the study results and recommended that the City develop an ordinance to restrict the use of single-use carryout bags similar to an ordinance adopted by the City of San Jose.

The completed study is included in the Council agenda packet. It reviews the experiences of California cities that have restricted distribution of single-use bags, summarizes a statistically-reliable phone survey of 293 Milpitas residents, stakeholder interviews with managers of 25 Milpitas food and retail establishments, and representatives of special interest groups. The study concludes that it is feasible for the City to restrict distribution of single-use carryout bags, although there will be costs from, and opposition to, such action.

RSRAC reviewed the specific elements of the ordinance adopted by the City of San Jose, effective January 1, 2012, that bans distribution of single-use carryout plastic bags, except from restaurants, and limits paper bags to those with at least 40 percent recycled content. This ordinance allows merchants to charge a fee for each paper bag. RSRAC recommends that the City Council adopt an ordinance based on the San Jose ordinance to ban distribution of all plastic bags and all paper bags having less than 40% recycled content and allow merchants to charge customers 10 cents per paper bag, rising to 25 cents per paper bag in two years. San Jose's bag ban went into effect after a one year public outreach effort. Staff recommends that Milpitas allow a similar period for outreach to merchants and the community.

Staff previously prepared this item for Council consideration on October 4, 2011, but pulled it from the agenda due to the October 3, 2011 filing of *Schmeer, et al (Helix Poly) v. County of Los Angeles* in Los Angeles County Superior Court. The filing claimed that Los Angeles County's bag ordinance, which also allows merchants to charge fees for paper bags, created an unconstitutional tax under Proposition 26. On March 23, 2012, the Court upheld Los Angeles County's ordinance, finding that the fee is not a tax under Proposition 26 because the merchant retains the fee.

Alameda County adopted a single-use bag ordinance on January 25, 2012 that goes into effect January 1, 2013. This is the first countywide bag ordinance in the Bay Area and geographically places Milpitas between cities that restrict single-use bag distribution.

Restricting single-use bag distribution will help Milpitas meet its stormwater permit and litter control requirements at lower costs and reduce environmentally harmful trash in storm drains and creeks. Under a plan submitted to the State, adoption of a bag ban ordinance would provide the City a trash-load reduction credit of 12 percent, or nearly a third of the 40 percent reduction the State requires by 2014.

Recently, San Mateo County offered cities in San Mateo and Santa Clara County the opportunity to participate in an Environmental Impact Report (EIR) studying land use impacts of single-use bag ordinances at no direct cost. San Mateo County does ask that participating cities support outreach through hosting scoping meetings and consider adoption of an ordinance similar to that of San Jose. Milpitas is tentatively slated to host a scoping meeting on May 3, 2012. Other nearby cities considering participation include Campbell, Cupertino, Los Altos and Mountain View as well as nearly all cities in San Mateo County.

While the recommended action does not have fiscal impact, based on the experience of San Jose, Milpitas staff expects that after ordinance adoption, public outreach and coordination with stakeholders may take substantial staff resources.

Fiscal Impact: None.

Recommendations:

1. Receive single use bag report.
 2. Direct staff to participate in the Environmental Impact Report led by San Mateo County, including hosting a scoping meeting.
 3. Direct staff to draft an ordinance that:
 - a. Bans distribution of single-use, point-of-purchase plastic bags,
 - b. Bans distribution of single-use, point-of-purchase paper bags with less than 40% recycled content, and
 - c. Allows merchants to charge a fee for single use point of purchase paper bags.
- 3. Receive a Report on the Expanded Polystyrene Food Service Take-out Containers Study, Approve Support Letter for Senate Bill 568, and Direct Participation in Regional Efforts to Ban Expanded Polystyrene Food Service Take-out Containers (Staff Contact: Kathleen Phalen, 586-3345)**

Background: On September 21, 2010, the City Council referred an evaluation restricting distribution of expanded polystyrene (EPS, also known as Styrofoam™) food containers to the Recycling and Source Reduction Advisory Commission (RSRAC) and directed staff to seek consultant support to study the impact of a potential ban. At its April 26, 2011 meeting the Commission voted unanimously to recommend the Council's approval of a draft letter supporting Senate Bill 568 (Lowenthal) and to wait for action at the State level before considering a local ban on EPS food containers. Staff presented the letter to the Council on May 17, 2011 and received direction to first present the Expanded Polystyrene Food Service Take-out Container Study before consideration of the support letter would be reviewed.

SB 568 would prohibit a food vendor, on and after January 1, 2016, from dispensing prepared food to a customer in EPS food containers and defines related terms. On September 12, 2011, the bill was placed on inactive status, but remains on the Assembly Floor and remains eligible to be voted upon this year.

Locally, the Cities of Fremont (as of January 1, 2011) and Palo Alto (as of April 22, 2010) restrict distribution of EPS food containers. On January 24, 2012, the San Jose City Council accepted a staff report recommending potential action to restrict distribution of EPS food containers. Rather than approve individual action, San Jose staff was directed to seek involvement of other agencies for efforts to restrict distribution of EPS food containers and to return to San Jose's Transportation and Environment Committee with a report in fall 2012. Regional activities could include developing environmental studies and model ordinances.

Fiscal Impact: None.

Recommendations:

1. Receive EPS food container study report.
 2. Approve a letter of support for Senate Bill 568 to Senators Lowenthal, Corbett and Alquist for the statewide restriction of EPS food containers.
 3. Advise staff to participate in regional efforts to develop a model ordinance restricting distribution of EPS food containers.
4. **Receive Management Response to the Proposal by the Corporation Yard Task Force and Continue with Budget Discussions for FY 2012-13 and Take Action as Necessary (Staff Contact: Tom Williams, 586-3050)**

Background: This update will provide the City Council with a response to questions and direction received at the previous City Council meeting of April 3, 2012, regarding the proposal by the MEA and MSA bargaining groups. The MEA and MSA proposal provided input to decrease costs by approximately \$1.2 million. Their budget proposal included a majority of cost savings through possible retirements and maintenance worker employee transfers. Staff is currently underway with a thorough review of these various cost savings proposals and will provide its findings at the Council meeting.

City staff will provide a detailed briefing to the City Council outlining the benefits and detriments of the proposal as well as alternatives for Council consideration.

Fiscal Impact: Potential savings of \$1.2 - \$2.1 million in General Fund cost reduction could be realized, with Council action.

Recommendation: Receive the management staff response to the Corporation Yard Task Force proposal and approve budget recommendations from the City Manager to reduce the anticipated FY 2012-13 budget deficit.

XV. REPORTS OF OFFICERS AND COMMITTEE

- * 5. **Consider Mayor's Recommendation for Re-appointments to the Economic Development Commission (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends the following citizens be re-appointed to Milpitas Economic Development Commission as follows:

Re-appoint Donald Peoples, representing business owners, to a new term that expires in April 2015 and re-appoint Warren Wettenstein, representing the Chamber of Commerce, to a term that expires in April 2015.

Recommendation: Consider the recommendation from the Mayor and move to approve two re-appointments to the Milpitas Economic Development Commission.

- * 6. **Request of Councilmember Giordano for a Report of Survey of Mall Policing in the Bay Area (Staff Contact: Dennis Graham, 586-2502)**

Background: At the Council Rules Subcommittee meeting of March 27, 2012, Councilmember Giordano requested that a Police Department survey concerning policing at large shopping malls in other cities be placed on this meeting agenda.

A "Comparison of Bay Area Malls" survey of 10 shopping malls is included in the agenda packet.

Recommendation: Receive the update report from the Chief of Police on mall security.

- * 7. **Approve Updated By Laws of the Public Art Committee (Staff Contact: Renee Lorentzen, 586-3409)**

Background: At the February 27, 2012 Public Art Committee meeting, the Committee members approved changes to their current By Laws, specific to the regular meeting schedule. The updated By Laws require the Committee to meet every other month with meetings to begin at 7:00 pm. Updated By Laws list the Public Art Committee's regularly scheduled meetings as January, March, May, July, September and November.

Fiscal Impact: None.

Recommendation: Approve the updated Public Art Committee By Laws.

- * 8. **Approve the Public Art Committee 2012-13 Master Plan (Staff Contact: Renee Lorentzen, 586-3409)**

Background: At the February 27, 2012 Public Art Committee meeting, the Committee approved its 2012-13 Master Plan, which outlines the Public Art Installation projects members would like to facilitate in Fiscal Year 2012-13. Projects listed are based on City projects, existing art pieces in need of maintenance and projects the Committee has an interest in pursuing in benefit of the community. All projects will return individually to City Council for budget and location approval.

Fiscal Impact: None. Sufficient funds are available in the Public Art Fund.

Recommendation: Approve the Public Art Committee Master Plan for 2012-13.

XVI. NEW BUSINESS

- 9. **Review Draft 2012-17 Capital Improvement Program (CIP) Report, and Provide Staff with Direction and Comments (Staff Contact: Greg Armendariz, 586-3317)**

Background: The Draft 2012-2017 Capital Improvement Program (CIP) document was prepared by staff and a copy was distributed along with the Council agenda. Projects are arranged into six main categories: Community Improvements, Parks, Streets, Water, Sewer, and Storm Drain. The document includes a summary by categories, and individual proposed project descriptions. Previously funded projects are also summarized.

On March 22, 2012, the Draft 2012-2017 CIP document was reviewed by the Finance Subcommittee. The Parks, Recreation and Cultural Resources Commission reviewed the Parks projects on April 2, 2012, and recommend them for approval by Council. On April 11, 2012, the Planning Commission reviewed the Draft 2012-2017 CIP document and found it in conformance with the General Plan.

A staff presentation of the draft CIP highlights will be provided at the Council meeting. Based upon Council direction, the Draft CIP will be revised and prepared as the Preliminary CIP document. The preliminary CIP will then be presented to Council at the May 8, 2012, budget hearing.

Fiscal Impact: None.

Recommendation: Review the Draft 2012-2017 Capital Improvement Program (CIP) and provide staff with direction and comments.

- * **10. Approve Fee Waiver and In-Kind Donation of Equipment, Supplies, Facility Space and Staffing From Various City Departments for the 2012 Relay For Life Event at the Milpitas Sports Center, June 22-24, 2012 (Staff Contact: Jaime Chew, 586-3234)**

Background: For the past twelve years, the American Cancer Society, with the volunteer support of numerous Milpitas community members and businesses, has hosted the annual Relay for Life fundraising event at the Milpitas Sports Center. The group is requesting to use the Sports Center field from June 22-24, 2012, for the event set-up (6/22), event (6/23-6/24), and take down (6/24). The City of Milpitas has a long history of supporting this annual event with services, staff support, facility space and equipment on varying levels.

Fiscal Impact: information on event finances is included in Council agenda packet, and reflects \$7,466.82 in fee waivers and in-kind donations.

Recommendation: Approve Milpitas Relay for Life request for fee waiver and in-kind donations of equipment, supplies, facility use and staffing totaling \$7,466.82 for the June 22-24, 2012 Relay for Life event at the Milpitas Sports Center.

- * **11. Authorize the Acceptance of a Grant for After the Bell After School Program “2012 ATB Olympics” (Staff Contact: Renee Lorentzen, 586-3409)**

Background: The Milpitas Recreation Services Division applied for a grant in the amount of \$3,800 from the Milpitas Parks and Recreation Foundation, a non-profit organization in the City of Milpitas. The Grant was written to fund the After the Bell “2012 ATB Olympics” program to be held Saturday, May 19, 2012 at the Milpitas Sports Center complex and fields. Through this program, Milpitas children participating in the after school recreation program will learn the value of positive sportsmanship, team camaraderie and also the importance of healthy, active lifestyles. The Grant was approved and awarded to Recreation Services in the amount of \$3,800.

Fiscal Impact: Approve a budget appropriation in the amount of \$3,800 from grant revenue to the After the Bell program.

Recommendation: Accept the Milpitas Parks and Recreation Foundation grant in the amount of \$3,800 to be incorporated into the Milpitas Recreation Division budget for After the Bell “2012 ATB Olympics.”

XVII. ORDINANCES

- * **12. Waive the Second Reading and Adopt Ordinance No. 38.803 Amending the Zoning Ordinance (Staff Contact: Sheldon Ah Sing, 586-3278)**

Background: On April 3, 2012, the City Council introduced Ordinance No. 38.803, streamlining the Zoning Ordinance by changing the process for certain uses requiring Conditional Use Permits by lessening the process; adding a Minor Conditional Use Permit; and other ancillary changes to support streamlining. Ordinance No. 38.803 is now ready for a second reading and adoption.

Fiscal Impact: None.

Recommendation: Waive the second reading and adopt Ordinance No. 38.803 for Zoning Amendment ZA12-0001, Conditional Use Permit Streamlining.

- * **13. Waive the Second Readings and Adopt Ordinances No. 192.25 and No. 192.26 Repealing the 6th Amendment to the Redevelopment Plan for the Great Mall Redevelopment Project, and the 13th Amendment to the Redevelopment Plan for Milpitas Redevelopment Project Area No. 1 (Staff Contact: Bryan Otake, 586-3040)**

Background: On April 3, 2012, the City Council introduced Ordinance No. 192.25 and Ordinance No. 192.26 to repeal the sixth amendment to the Redevelopment Plan for the Great Mall Redevelopment Project and the thirteenth amendment to the Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1. These two repeal ordinances are brought forth to effect the terms of the settlement agreement for the case of *County of Santa Clara v. All Persons Interested in the Matter of the Sixth Amendment to the Great Mall Redevelopment Project, et al.*, San Mateo County Superior Court No. 4999976. No changes have been made to the repeal ordinances since the first reading and the ordinances are now ready for adoption.

Fiscal Impact: None.

Recommendation: Waive the second readings and adopt Ordinance No. 192.25 and Ordinance No. 192.26 repealing the 6th Amendment to the Great Mall Redevelopment Project and the 13th Amendment to the Plan for Project Area No. 1 and findings related thereto.

- * 14. **Waive the Second Reading and Adopt Ordinance No. 54.25 to Update Animal Regulations (Staff Contact: Felix Reliford, 586-3071)**

Background: On April 3, 2012, the City Council introduced Ordinance No. 54.25 regarding an update to the Animal Regulation Ordinance. Ordinance No. 54.25 is now ready for a second reading and adoption.

Fiscal Impact: None.

Recommendation: Waive the second reading and adopt Ordinance No. 54.25.

XVIII. RESOLUTIONS

- * 15. **Adopt a Resolution Granting Initial Acceptance of and Reducing Performance Bond for City Facilities Improvement Community Center Heating, Ventilation, and Air Conditioning (HVAC) Replacement, Project No. 8182/3406 (Staff Contact: Steve Erickson, 586-3301)**

Background: The City Council awarded the City Facilities Improvement “Community Center Heating, Ventilation, and Air Conditioning (HVAC) Replacement” project to Hometown Construction, Inc. on May 17, 2011. The project provided for the installation of new heating, ventilation, and air condition units, related controls, duct work and minor roof modifications for the City’s Community Center building. The project was successfully completed under budget, and staff recommends the City Council adopt a resolution granting initial acceptance of the project, and authorize the reduction of the contractor’s faithful performance bond to \$41,416, which is 10% of the final contract value.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of the City Facilities Improvement “Community Center Heating, Ventilation, and Air Conditioning (HVAC) Replacement” Project No. 8182/3406, subject to a one year warranty period and reduction of the faithful performance bond to \$41,416.

XIX. BIDS AND CONTRACTS

- * 16. **Authorize the City Manager to Award a Construction Contract for Escuela Parkway Pedestrian and Bicycle Enhancement Project, Project No. 4259, Federal Project No. RPSTPLE (009) (Staff Contact: Steve Erickson 586-3301)**

Background: On April 3, 2012, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for Escuela Parkway Pedestrian and Bicycle Enhancement Project. The project provides for the widening of an existing sidewalk along the east side of Escuela Parkway between Russell Lane and Washington Drive, and the installation of a bus pullout on the west side of Escuela Parkway in front of Milpitas High School. The installation of street trees and irrigation systems is also included. In order to proceed with the project and meet the tight schedule for the Federal Grant funding requirements, staff recommends the City Council authorize the City Manager to award the construction contract the lowest responsible bidder after bid opening, if the bid is no higher than 10% above the Engineer's estimate as determined at the time prior to bid opening.

As was approved for the successful completion of the new Senior Center, Public Library, Parking Garage and recent projects with tight completion schedules, staff requests use of the same change order policy to allow for the timely completion of this project. This policy authorizes staff to execute change orders in order to address the need to respond swiftly to construction conditions so as to limit potential claims or risk to the City. The construction contingency established for this project is \$50,000, and the change order authority would not exceed this amount, and would not require additional appropriation.

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

Recommendations:

1. Authorize City Manager to award a construction contract for Escuela Parkway Pedestrian and Bicycle Enhancement Project, Project No. 4259, Federal Project No. RPSTPLE (009).
2. Authorize staff to execute change orders for Escuela Parkway Pedestrian and Bicycle Enhancement Project, Project No. 4259, Federal Project No. RPSTPLE (009) provided that the change orders do not exceed the established construction contingency amount for the project, and do not require additional appropriation.

- * 17. **Authorize the City Manager to Execute Agreements with Santa Clara County for Collection of AB939 Implementation Fees and Administration of the Countywide Household Hazardous Waste Collection Program (Staff Contact: Kathleen Phalen, 586-3345)**

Background: Since 1992, the cities of Santa Clara County have annually executed agreements authorizing the County to collect solid waste tipping fees and to provide waste diversion services on behalf of the cities. This cycle, the County proposes agreements with a three-year term, extending from July 1, 2012 to June 30, 2015. The County will collect \$4.10 per ton of waste disposed at landfills within the County. From this fee, the County will remit \$1.50 per ton to the city of waste origin for use in recycling programs. The County will use the remaining \$2.60 per ton to provide household hazardous waste collection services to residents throughout the County. The County will remit any funds in excess of those needed for the annual household hazardous waste program to the cities of waste origin the following year.

In the upcoming year, the County projects that countywide landfill disposal will be 1,053,580 tons. The \$4.10 per ton tipping fee will generate \$4,319,678, of which \$1,580,370 will be remitted to the cities for recycling programs and \$2,739,308 will be remitted for the countywide household hazardous waste program. The City of Milpitas is expected to generate 49,472 tons of waste, or 4.7% of the total, and so expects to receive \$74,208 for its recycling programs. Based upon past experience, staff anticipates the County will also remit about \$50,000 of unused household hazardous waste fees to the City. This revenue is programmed into the City's FY2012-13 solid waste operating budget to be used for activities supporting the City's compliance with State recycling and waste diversion requirements.

Fiscal Impact: The recommended action will provide \$74,208 in revenue for the City's solid waste fund.

Recommendation: Authorize the City Manager to execute agreements with Santa Clara County for collection of AB 939 Implementation Fees and administration of the Countywide Household Hazardous Waste Collection Program.

***18. Approve a Contract Extension with PMC for the Development of a Qualified Climate Action Plan (Staff Contact: Sheldon Ah Sing, 586-3278)**

Background: In 2006, the State of California legislature adopted Assembly Bill 32, the Global Warming Solutions Act of 2006 (AB32). The legislation committed the state to reducing greenhouse gas emissions to a level equivalent to 1990 emissions by 2020. The legislation also requires municipalities creating new General Plans to evaluate and mitigate for greenhouse gas emissions in its planning areas to a level consistent with AB32. Furthermore, Senate Bill 375 (SB375) places requirements on municipalities regarding the reduction of greenhouse gas emissions through land use patterns, enhanced transit services and the reduction of vehicle miles traveled (VMT).

In order to comply with AB32 and SB375, the Bay Area Air Quality Management District adopted new thresholds regarding development projects and greenhouse gas emissions to coincide with the environmental review of a project. The development of strategies to reduce greenhouse emissions through a formal document such as a Climate Action Plan (CAP) can streamline the planning process for projects, while demonstrating overall compliance with State law. CAPs generally contain:

- Adoption of state-accepted protocol software to model greenhouse gas emissions in the project area. The most widely accepted protocol has been prepared by the International Council for Local Environmental Initiatives (ICLEI);
- An inventory of greenhouse gas emissions from all community and municipal sources;
- A public outreach component to receive input from the community and stakeholders;
- A greenhouse gas mitigation plan composed of strategies to reduce greenhouse gas emissions to a level consistent with the requirements of AB32 and SB375 throughout the project area; and
- A monitoring program for greenhouse gas emissions into the future.

The City of Milpitas contracted with PMC to complete a qualified Climate Action Plan, however, the contract expired in December 2011. To date, the City developed the necessary inventories to establish the reduction target and had chosen reduction measures. The remaining tasks would quantify the reduction and draft the Climate Action Plan and the necessary supporting documents.

The City received a grant from Santa Clara Valley Transportation Authority (VTA) to offset 58% of the total project cost. Any work associated with the extension of this contract is fully reimbursable pursuant, per the grant. The balance of the contract is \$29,020 and this is within the original \$85,000 budget amount for the project. Project completion is expected this year.

Fiscal Impact: There are sufficient funds budgeted for this contract.

Recommendation: Authorize the City Manager to execute a contract with PMC for the development of a Climate Action Plan, for an amount not to exceed \$29,020.

XX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 1, 2012 AT 7:00 P.M.**

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, April 17, 2012
Time: 5:30 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Esteves called the meeting to order at 5:30 PM. City Clerk Lavelle noted the roll.

PRESENT: Mayor Esteves, Vice Mayor McHugh, Councilmembers Giordano, and Polanski

ABSENT: Councilmember Gomez was absent at Roll Call, and arrived to attend the Closed Session of the Council.

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations regarding six employee organizations, and one anticipated case of litigation.

**RECEPTION FOR
COMMISSIONERS**

At 6:06 PM, the City Council departed the Chambers to the City Hall rotunda lobby for the recognition event for all City of Milpitas Commissions, Board and Committee members. Certificates were distributed, accomplishments acknowledged, and a reception with cake was enjoyed by all.

City Council then convened in Open Session at 7:14 PM.

ANNOUNCEMENT

None

PLEDGE

Boy Scouts Troop No. 92 presented the colors and led the pledge of allegiance.

INVOCATION

Mayor Esteves introduced Father Justin Le of St. Elizabeth Church in Milpitas, who then offered the invocation prayer to start the meeting.

MINUTES

Motion: to approve the City Council meeting minutes of April 3, 2012, as submitted

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Motion: to approve the Council Calendars/Schedule of Meetings for April and May 2012, as amended

City Manager Tom Williams noted that the April 16 Economic Development Subcommittee meeting was canceled.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

PUBLIC FORUM

Michaela Parish, age 9, Rainbow Theater participant, and wanted support for continuing the program. She gave books to the City Council entitled "Secrets of the Millionaire Mind."

Madison, Milpitas resident and young actress, supported Rainbow Theater after participating for the last three years.

Lisa Murano, Milpitas resident and mother of Rainbow Theater actress, spoke in favor of the continued program.

Kenneth Tan, of Union City and “Project 51” a real estate program with donations to non-profit groups, he gave some literature to the City Clerk for the Council.

Martha Brown Lamdin, sent e-mail to City Council earlier, read aloud a letter from another parent Kristy Bradford of Rainbow Theater and sang a song of support.

Aneshka, Fremont 9-year-old girl, participated and supported Rainbow Theater.

Robert Marini, Milpitas resident, spoke of maintaining services and levels of service. He complained of a calculation that was not done related to water meter reading fees.

Gita, a Fremont resident and mother of Rainbow Theater actress, spoke in favor of the program.

Mayor Esteves reported he got more than 200 emails in support of Rainbow Theater.

Sarah Lamdin, a student in the Rainbow Theater program, felt kids would have nothing to do if the Theater program ended.

ANNOUNCEMENTS

Councilmember Giordano announced the *Milpitas Got Talent* show, with auditions this Saturday, April 21 at 1:00 PM at the Teen Center, and the show scheduled May 4.

Councilmember Polanski attended the Rainbow Theater’s performance of *Stuart Little* last weekend, and she enjoyed the play. Knights of Columbus held its annual awards banquet last Saturday, and she announced the winners. She also reported that the “Every 15 Minutes” event would occur at Milpitas High School over the next two days April 18-19.

Vice Mayor McHugh said he got 320 emails in support of Rainbow Theater. Last Thursday, he represented the City at the BART groundbreaking ceremony in San Jose and complimented voters in Santa Clara County. The VTA Silicon Valley BART Working Group held its first meeting on April 9, and he was appointed the Vice Chair.

Mayor Esteves congratulated one local church for its family program.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None.

APPROVAL OF AGENDA

Motion: to approve the agenda, as presented

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as submitted

Motion/Second: Councilmember Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

* 5. Commission appointments Re-appointed Donald Peoples, representing business owners, to a new term that expires in April 2015 and re-appointed Warren Wettenstein, representing the Chamber of Commerce, to a term that expires in April 2015.

* 6. Survey on Mall Policing Received the update report from the Chief of Police on mall security.

- * 7. Public Art Committee By Laws Approved the updated Public Art Committee By Laws changing meetings times to alternate months, six times per year.
- * 8. PAC Master Plan Approved the Public Art Committee Master Plan for 2012-13.
- *10. Fee Waiver for Relay for Life event Approved the Milpitas Relay for Life request for fee waiver and in-kind donations of equipment, supplies, facility use and staffing totaling \$7,466.82 for the June 22-24, 2012 American Cancer Society *Relay for Life* event at the Milpitas Sports Center.
- *11. Accept Grant for After the Bell program Accepted the Milpitas Parks and Recreation Foundation grant in the amount of \$3,800 to be incorporated into the Milpitas Recreation Division budget for 2012 After the Bell program Olympics.
- *12. Ordinance. No. 38.803 Waived the second reading and adopted Ordinance No. 38.803 for Zoning Amendment ZA12-0001, Conditional Use Permit Streamlining.
- *13. Ordinances No. 192.25 and No. 192.26 Waived the second readings and adopted Ordinance No. 192.25 and Ordinance No. 192.26 repealing the 6th Amendment to the Great Mall Redevelopment Project and the 13th Amendment to the Plan for Project Area No. 1 and the related findings.
- *14. Ordinance No. 54.25 Waived the second reading and adopted Ordinance No. 54.25.
- *15. Resolution Accepting Project No. 8182 Adopted Resolution No. 8173 granting initial acceptance of the City Facilities Improvement “Community Center Heating, Ventilation, and Air Conditioning (HVAC) Replacement” Project No. 8182/3406, subject to a one year warranty period and reduction of the faithful performance bond to \$41,416.
- *16. Contract for Project No. 4259 Authorized the City Manager to award a construction contract for Escuela Parkway Pedestrian and Bicycle Enhancement Project, Project No. 4259, Federal Project No. RPSTPLE (009). Authorized staff to execute change orders for Project No. 4259, provided the change orders do not exceed established construction contingency amount for the project and do not require additional appropriation.
- *17. Agreements with Santa Clara County Authorized the City Manager to execute agreements with Santa Clara County for collection of AB 939 Implementation Fees and administration of the Countywide Household Hazardous Waste Collection Program.
- *18. Contract Extension with PMC for a CAP Authorized the City Manager to execute a contract with PMC for the development of a Climate Action Plan, for an amount not to exceed \$29,020.

PUBLIC HEARING

- 1. CDBG allocations for FY 2012-13 Acting Planning Director Felix Reliford reviewed recommendations for the reduced amount of federal Community Development Block Grant funds. \$390,716 in total was a 27% reduction from the last fiscal year. On March 2, the Community Advisory Commission met and developed the recommendations for funding to meet community needs. Also, the One Year Action Plan was required to state how funds were allocated.

Councilmembers provided feedback to staff on the priorities for this money, the reduced amount of the grants, and the overall needs in Milpitas.

Next, the Mayor opened the public hearing.

Karen Kolander, Milpitas Food Pantry, thanked the City Council for its funding to date, and the needed funds for the new Fiscal Year. Food Pantry had served more than 3,000.

Michele Schroeder, from SALA, said her agency offered legal services to seniors and thanked the City Council for its support over 17 years. The seniors received legal help

from SALA lawyers at the Milpitas Senior Center.

Wanda Hale, the Long-term Care Ombudsman program manager, hoped for continued support as given over many years. It helped support seniors in nursing care homes.

Ann Marcourt, of Project Sentinel, thanked the City Council for many years of City support through the CDBG funds. She hoped to bring in federal funds for services.

Beverly Jackson of Rebuilding Together Silicon Valley, thanked the Council and said they would do more with less for low-income homeowners with repair work.

Emily Hennessy of Santa Clara Health Foundation, for the Healthy Kids program, requested funding as provided in the past, and asked to reconsider funding at \$5000 – a minimal amount that could fund five of the 144 Milpitas children in need of health care. Mayor Esteves wanted to fund \$5000 for this program and take it out of the two parks.

Anna Jones, a Live Oak Adult Day services program manager, helped seniors in Milpitas and those who could not go to Milpitas Senior Center. One center in San Jose was able to accept clients from Milpitas, with the average age of 80. She thanked the Council for its continued support.

Ben Kong, of EHC Lifebuilders, provided shelter and supportive services for homeless persons. Last year, his program helped 21 homeless Milpitas people through the Emergency Housing Consortium.

Paul Lerner, the property manager at Terrace Gardens, thanked Council for its ongoing fiscal support. 182 senior residents lived there, and funding would provide new stoves in the apartments and make them more energy efficient.

Linda Lambert, with Milpitas Family Literacy Program, helped 3, 4, and 5 year olds and their parents teaching them to get ready for reading and school.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Gomez/Vice Mayor McHugh

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to authorize the Community Development Block Grants to Milpitas community organizations via funding, as recommended by the Community Advisory Commission, and in addition to ask the CAC to review the Council adopted priorities for next year, and to approve the one-year Action Plan for FY 2012-13

Motion/Second: Councilmember Gomez/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 1 (McHugh)

Vice Mayor McHugh would register a “no” vote, and it had nothing to do with the 15 items recommended by CAC. He disagreed with the non-public services allocation proposed, and noted some facts in the draft Capital Improvement Program booklet.

UNFINISHED BUSINESS

2. Carry Out Plastic Bags

Assistant City Engineer Kathleen Phalen explained the request for City of Milpitas to join with other cities to participate in an Environmental Impact Report spearheaded by San Mateo County, to consider a future ban on plastic carry-out single use bags. According to a survey done in 2011, 54% of Milpitas residents supported a plastic bag ban.

Councilmember Gomez inquired about Milpitas businesses and acceptance of a ban by those, since he had received several letters of opposition.

Councilmember Polanski asked about cross-contamination. She referred to a lack of reduction of litter in San Francisco, one city with a current plastic bag ban.

Vice Mayor McHugh responded on contamination, that people could use plastic bags for fresh produce and meat products (as an exemption). He felt the Council could modify the staff recommendation for a potential ordinance to ban the bags, by first simply monitoring San Mateo County's progress after adoption of any ordinance.

Mayor Esteves asked about the ten cents charge per plastic bag, as recommended, and the basis for it. He felt the cost should be borne by the business, not the customer.

Councilmember Gomez wanted information about a statewide ban on these issues. Staff explained that the bills failed to get support in the state legislature. He asked if plastic bags were recyclable, and Ms. Phalen replied that they were hard to capture, and difficult to recycle.

Mayor Esteves asked how much time it would take for outreach and education on a ban. Staff responded, one year.

The Mayor next invited speakers from the audience.

Preeti Suri, owner of Subway franchises in Milpitas, validated Mr. Gomez's concerns about businesses being affected by such a ban, and perhaps sending customers to nearby shopping in other cities, such as Pacific Commons in Fremont.

Jamie McLeod, Santa Clara City Councilmember and Chair of County Recycling and Waste Reduction Commission, wanted to speak on both this item and the next one, so the Council allowed that. Noted some environmental concerns including impacts and runoff of plastic bags. There could be tiered and do-able approaches. On the polystyrene issue, it was suggested for food/beverage only. Her city discussed contracts with its solid waste contractor. She sought support for the staff recommendations on both issues.

Bill Ferguson, Rivera St. resident, supported the plastic bag ban and quoted several statistics. He mentioned litter and danger of the bags to animals.

Dean Peterson, Environmental Health Director for San Mateo County, spoke on behalf of the Board of Supervisors and thanked Milpitas for considering joining his county in the EIR. He urged they go as regional as possible, which would aid citizens and businesses.

Javier Gonzalez, Director of Local Government Affairs for the California Restaurant Association, sent a letter to Council previously. He discussed cleanliness of use of plastic bags and that a ban would be difficulty during down economic time and hurt business.

Rob Means, 1421 Yellowstone resident, spoke in favor of the plastic bag ban. He referred the Council to a video "The Story of Stuff about material that goes to landfill.

Carol Kassab, Milpitas Chamber of Commerce, represented more than 200 local businesses and opposed the proposed plastic bag ban. She urged recycling of plastic bags, not banning the bags outright. She viewed it as punishment of businesses.

Ajay Tallam, a Milpitas resident, was excited this issue was brought back to City Council. It seemed like an easy thing to do, to be part of the EIR and a proposed ordinance, then go ahead. He commented that bag bans would be effective all surrounding Milpitas, once Fremont/Alameda County goes into effect on January 1, as was already in San Jose.

Councilmember Giordano stated she opposed moving forward with anything of this nature, due to opposition of California Restaurant Association, opposition from Chamber and to keep Milpitas as business friendly. She was an advocate of less government, and that would then have to monitor if restrictions were put in effect. It would be more staff work to keep track of this.

Vice Mayor McHugh felt that single use bags were a real problem. He supported the staff recommendation but to change the third one to monitor the San Mateo County ordinance. A regional approach was a good idea, to reduce the waste strain and impacts of bags.

Mayor Esteves said this was a serious environmental issue, with a good opportunity to join San Mateo County on its EIR. He did not support the third item in the staff's recommendation and was ok with monitoring it. He wished to make sure any ban would be cost neutral and not to add costs for local small businesses.

Motion: 1) to receive the single use bag report, 2) to direct staff to participate in the Environmental Impact Report led by San Mateo County, including hosting a scoping meeting on May 3, and 3) to monitor and evaluate model ordinance by San Mateo County

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano, Gomez)

Mayor Esteves announced the City Council would take a break at 9:51 PM and then they reconvened at 10:04 PM.

Mayor Esteves asked to move agenda Item No. 9 (Draft CIP review) to the next meeting and the Council concurred with his request.

3. Polystyrene Container

Assistant City Engineer Kathleen Phalen referred to work done by the City's Recycling and Source Reduction Advisory Commission and staff to bring the study on these food containers to the City Council. There was now a request for support for legislation in the state Senate on a proposed ban on "clam-shell" polystyrene containers for to-go food.

Mayor Esteves and City Councilmembers asked variety of questions to staff on the recommendation.

Carol Kassab, CEO Milpitas Chamber of Commerce, stated the Chamber was opposed to SB 568, especially for its restaurant members.

Javier Gonzalez, of the California Restaurant Association, handed out a chart of price comparisons for the cost of alternative (non-polystyrene) containers for take-out food. He and his agency opposed SB 568.

Rob Means, 1421 Yellowstone resident, felt it was noteworthy that 70% of residents supported a ban on these containers, and he wanted them to be leaders on doing something about this issue. He urged no more use of EPS containers at City of Milpitas.

Ajay Tallum, Milpitas resident, said this was simple and straightforward. He supported the idea to ask the City to ban EPS containers at the City government. Fremont Chamber did issue support for this legislation. A statewide ban makes it simpler for all.

Ryan Kenny, American Chemistry Council, agreed with all that litter was a problem. If banning one type of litter, it would just create litter of another type. It should be one standard for a variety of food service containers. Cities had not done studies to prove that a ban on polystyrene would reduce litter. San Jose, Morgan Hill, and Santa Clara did not ban this type of container recently.

Councilmember Polanski asked questions to staff about survey results, as did the Mayor.

Vice Mayor McHugh moved the staff recommendation as presented in the written report, however, no second was offered and the motion failed. So an alternate motion was made.

Motion: to receive the EPS food container study report, to note receipt and file it

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 3
NOES: 2 (McHugh, Polanski)

4. Budget Response

Director of Public Works Greg Armendariz addressed the Council, with his remarks in response to a presentation given at the last City Council meeting. He had a proposed draft budget of \$12.0 million for public works maintenance. He stated the City had 10% contracted services at this time. Item by item, he provided financial response to the Public Works staff's previous presentation.

Mr. Armendariz continued explaining the calculation of 805 work hours per year for each employee would need to be added, if eliminating ten maintenance workers and contracted work. He credited the Public Works staff with dedication and hard working crews. However, it would not be right to burn out the staff, which would surely happen. There was a need for a new service delivery model, to focus on core services of Public Works. Engineers needed to work ever more closely with maintenance crews who knew the details of city infrastructure.

Councilmember Giordano said to look at a different formula, to offer \$1.2 million savings, and other discussions to date. She asked the Public Works Director of the impact to remaining areas he managed.

Vice Mayor McHugh asked City Manager Tom Williams if he concurred with Mr. Armendariz, and the City Manager said yes.

Mayor Esteves was appreciative of the numbers provided in the staff presentation. He wanted concessions from the City employees and he felt that he was not being understood. He rejected the Public Works task force recommendation and complimented the City Manager and Public Works Director.

The Mayor invited speakers from the audience.

Paul Mullett, Public Works supervisor, referred to comments given seriously from the last City Council meeting. He would like to meet with staff to go over the proposal after last time. He too definitely did not want to burn out the staff.

City Manager Williams noted for the record that he did have a telephone conversation with Mr. Mullett and Mr. Armendariz yesterday afternoon.

Councilmember Giordano moved to accept the City Manager's recommendation and to prepare the budget accordingly with those cost reductions, so that Council could prepare the other departments and make their proposals, and to balance this budget. She also added to the motion, with regard to two main issues in need with the community, to direct staff to fund 50% of the fireworks program (after complimenting two Councilmembers for fundraising efforts) and after donations were received, fund 50% only if it was needed, and, that the City also fund 50% of the Rainbow Theater program and the parents pick up the other part to allow it go forward.

No second was offered, so the motion died.

