REGULAR MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

TUESDAY, DECEMBER 19, 2017

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA

6:00 P.M. (CLOSED SESSION)

7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

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

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

(a) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING
Pursuant to California Government Code Section 54957.6
City Negotiator: Tina Murphy
Employee Groups: (1) Milpitas Employees Association, (2) International Association of Fire Fighters, and (3) unrepresented employees
Under Negotiation: Wages, Hours, Benefits, and Working Conditions

(b) PUBLIC EMPLOYEE APPOINTMENT/HIRING
Pursuant to California Government Code Section 54957
Title of position to be filled: City Manager

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

(d) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to California Government Code Section 54956.9(d)(1)
First Amendment Coalition v. City of Milpitas – Santa Clara County Superior Court Case No. 17CV310994

(e) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to California Government Code Section 54956.9(d)(1)
Tom Williams v. City of Milpitas, et al. - American Arbitration Case No. 01-17-0003-5823

(f) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to California Government Code Section 54956.9(d)(1)
City of Milpitas v. CalRecycle, et al. -San Francisco Co. Superior Court Case CPF-16-514952

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

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

V. INVOCATION (Mayor Tran)

VI. PRESENTATION – if any

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's record, and limit their remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. 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 with asterisks*)

Consent Calendar items are considered to be routine and will be considered for adoption by one motion of the City Council. The City Manager will indicate any matters not eligible for consent. City Councilmembers shall either (a) state the agenda items they want placed on the Consent list, or (b) declare that they do not have any items for consent. From the dais, Council will then vote to approve all items going onto Consent Calendar and move to approve the listed items in one motion.

Any items not placed on Consent Calendar will be discussed in the order in which they appears on the agenda.

1. **Accept Schedules of Meetings/City Council Calendars for December 2017 and January 2018**

2. **Approve City Council Meeting Minutes of December 5, 2017 (Staff Contact: Mary Lavelle, 408-586-3001)**

XII. PUBLIC HEARING

3. **Conduct a Public Hearing and Consider Adopting a Resolution to Deny Appeal of Planning Commission Decision to Approve Conditional Use Permit No. UP17-0002 to Allow a Cultural Center Use in an Industrial Zone and Shared Parking for 691 S. Milpitas Boulevard (Staff Contact: Brad Misner, 408-586-3273)**

XIII. UNFINISHED BUSINESS

4. **Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement, the Public Street Maintenance Agreement and the Fee Reimbursement Agreement for a 199-unit Senior Assisted Living Residential Development Located at 1504-1620 South Main Street by Milpitas Phase I, LP (Staff Contact: Steve Erickson, 408-586-3301)**

5. **Consider a Resolution Updating the City's Fiscal Policies as they Relate to Reserves and Approving Transfer of $10,185,208 from General Fund Unassigned Fund Balance to Community Benefit Fund in the Amount of $1,081,809, to City Council Discretionary Reserve Account in the Amount of $2,000,000, and to General Government CIP Fund in the Amount of $7,103,399 (Staff Contact: Will Fuentes, 408-586-3111)**

6. **Adopt a Resolution Making Findings for Unexpended Development Fees and Review and Accept the Annual Developer Fee Disclosure Information Pursuant to the Mitigation Fee Act (Staff Contact: Will Fuentes, 408-586-3111)**

7. **Receive Update on the Milpitas Climate Action Plan (Staff Contact: Edesa Bitbadal, 408-586-3052)**

8. **Appoint Two City Councilmembers to Serve on New Council Subcommittee on Commission Appointments (Contacts: Mayor and Councilmembers, 408-586-3000)**

9. **Approve Appropriation of $250,000 in Fiscal Year 2017-18 from the Community Benefit Fund to Planning and Neighborhood Services for the Purchase of Affordability Covenants for the Sunnyhills Apartments at 1724 Sunnyhills Drive (Staff Contact: Will Fuentes, 408-586-3111)**

XIV. REPORTS

10. **Discuss and Vote to Approve Mayor's Recommendation for Appointment of a Member and One Alternate from the Council to Serve on the City of San Jose Ad Hoc Committee on South Flow Arrivals (Contact: Mayor Tran, 408-586-3029)**

11. **Per Request of Councilmember Barbadillo, Hear Proposal to Make Main Street Zoned Commercial-Only (Contact: Councilmember Barbadillo, 408-586-3024)**

12. **Per Request of Councilmember Barbadillo, Consider Approving More than 4 Hours of Staff Time to Direct Staff to Conduct a Study on Retail and Commercial Spaces in the MidTown and Transit Area Specific Plan areas (Contact: Councilmember Barbadillo, 408-586-3024)**

13. **Per Request of Councilmember Nuñez, Consider Approving More than 4 Hours of Staff Time to Develop a Proposal to Re-establish Teen Programming for the City of Milpitas (Contact: Councilmember Nuñez, 408-586-3023)**

XV. NEW BUSINESS

14. **Accept the 2017 Bulletproof Vest Partnership Grant and Appropriate Funds into the Police Department's Operating Budget (Staff Contact: Daryl Sequeira, 408-586-2434)**

15. **Accept the City's Comprehensive Annual Financial Report and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2017 (Staff Contact: Will Fuentes, 408-586-3111)**

16. **Appoint One Councilmember as a Regular Director and One as an Alternate Director to the Silicon Valley Clean Energy Authority Board of Directors, and Select One Electricity Option, Following a Presentation (Staff Contact: Edesa Bitbadal, 408-586-3052)**

17. **Consider Request from Milpitas Executive Lions Club to Co-Sponsor "Celebrating Differences" Event in 2018 (Staff Contact: Renee Lorentzen, 408-586-3409)**

XVI. RESOLUTION

18. **Adopt a Resolution Granting Initial Acceptance of Public Improvements and Approve a Reduction of Improvement Security for the Faithful Performance for the Traverse Subdivision at 569 - 625 Trade Zone Boulevard by Traverse Partners, LLC, Tract No. 10224, Project No. 2874, and Granting Authorization to the City Engineer to Release the Performance Bond after the One-year Warranty Period (Staff Contact: Steve Erickson, 408-586-3301)**

XVII. AGREEMENTS

19. Authorize the City Manager to Execute a Master Encroachment Agreement with MCI Metro Access Transmission Services Corp. doing business as Verizon Access Transmission Services for Installation of Network Facilities within Public Right-of-Way (Staff Contact: Steve Erickson, 408-586-3301)

20. Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement for KB Home South Bay, Inc. for Development at 1256 Piper Drive (Staff Contact: Steve Erickson, 408-586-3301)

21. Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement for LMC Milpitas Holdings I, LLC and Lennar Homes of California, Inc. for Development at 450 Montague Expressway (Staff Contact: Steve Erickson, 408-586-3301)

22. Authorize the City Manager to Approve Amendment No. 2 to the Agreement with HMH, Inc. for the Midtown Street Light and Utility Underground 2017 Projects No. 3430 and No. 3425 (Staff Contact: Steve Erickson, 408-586-3301)

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

XIX. ADJOURNMENT

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035 e-mail: 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

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

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

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

AGENDA REPORTS

XI. CONSENT CALENDAR

1. Accept Schedules of Meetings/City Council Calendars for December 2017 and January 2018

Recommendation: Per direction given on December 5, 2017, move to formally cancel the regular City Council meeting of January 2, 2018 and adjourn to January 16, 2018.

Attachments: December and January calendars

2. Approve City Council Meeting Minutes of December 5, 2017 (Staff Contact: Mary Lavelle, 408-586-3001)

Recommendation: move to approve meeting minutes of the 12/05/17 Council meeting.

Attachment: draft meeting minutes

XII. PUBLIC HEARING

3. Conduct a Public Hearing and Consider Adopting a Resolution to Deny Appeal of Planning Commission Decision to Approve Conditional Use Permit No. UP17-0002 to Allow a Cultural Center Use in an Industrial Zone and Shared Parking for 691 S. Milpitas Boulevard (Staff Contact: Brad Misner, 408-586-3273)

Background: On April 19, 2017, His Highness, the Aga Khan Shia of Imami Ismaili Council for the Western USA, submitted an application to the City of Milpitas seeking approval of the use of 9,667 square feet in a vacant space within an existing 104,000 square foot industrial building for a religious, educational, and cultural center, referred to as Jamatkhana. Located in a Heavy Industrial Zoning District, the building was constructed in 1998 and is a 2-level office development, with existing tenants, including Quantros Inc., Sagent Management Corporation and Esgyn Corporation. The Milpitas Ismaili Jamatkhana currently meets in a tenant space at the Center Pointe Business Park located at 224 Great Mall Parkway, which is slated for redevelopment.

Planning staff determined the application was consistent with General Plan Guiding Principles and Implementing Policies and the Municipal Zoning Ordinance, including both the Industrial Zone Development Standards and the additional Industrial Special Development and Performance Standards required by the ordinance. Staff recommended the Planning Commission approve Conditional Use Permit No. UP17-0010 and adopt Resolution No. 17-029 to allow the applicant's request to operate an assembly use in an industrial zone and shared parking.

On October 25, 2017, the Planning Commission approved Conditional Use Permit No. UP17-0010 and adopted Resolution No. 17-029 to allow the applicant's request to operate an assembly use in an industrial zone and shared parking. The votes were 6 ayes, 1 no and 1 absent.

On November 6, 2017, CTC Property LLC appealed the Planning Commission's decision on the basis that the applicant's proposed assembly use is an incompatible use and will impact the perception of the area of potential tenants and users and is an improper interpretation of the General Plan. CTC Property owns the vacant former Lifescan property adjacent to 691 S. Milpitas Boulevard.

Planning staff recommends denial of the appeal of the Planning Commission's decision to approve the Conditional Use Permit. Staff assessed the appeal and determined that the appellant has not brought forth any new considerations that would act to change staff's original recommendation for approval of the application (appeal and staff response in agenda packet). The requested Conditional Use Permit is consistent with the General Plan and meets all requirements of the Zoning Ordinance. While the site does not provide adequate parking for the proposed assembly use, the proposed shared parking arrangement is appropriate given the off-peak operating hours of the applicant as established by a parking study (see parking summary in PC staff report, page 7, Table 3).

Economic Impact: Although staff is recommending the Council uphold the Planning Commission's approval of the Conditional Use Permit, it is important to note that the appellant is concerned with certain uses locating in close proximity to that firm's property, the former Lifescan site at 1000 Gibraltar Drive. Specifically, staff wants Council to be aware that most companies would be concerned about locating adjacent to sensitive receptors and therefore may decide not to locate in the City. With incompatible uses, such as places of assembly, it makes it much more difficult for the City or property owners to recruit potential companies and headquarters to locate to industrial areas. In particular, this location is one of the most prime locations for employment uses due to its proximity to the Milpitas BART station, the regional transit hub. This will have a negative economic impact on the industrial area, potential job creation, and jobs/housing balance. Loss of employment uses to non-employment uses will have a long term negative effect to the City's General Fund due to loss of revenues and eventual negative ripple effect to other industries such as restaurants and retail. That is why all neighboring cities have taken safeguards to preserve their employment lands though General Plan and zoning codes.

Fiscal Impact: None.

Recommendations:
1. Conduct a public hearing and move to close it following comments.
2. Consider adopting a Resolution of the City Council to deny the appeal of the Planning Commission decision to approve Conditional Use Permit No. UP17-0002 to allow a cultural center use in an industrial zone and shared parking.

Attachments:
a) Project Plans
b) Notice of Appeal
c) Planning Commission Staff Report 10/25/17
d) Adopted Planning Commission Resolution No. 17-029
e) Planning Commission Meeting Minutes 10/25/17
f) Draft City Council Resolution

XIII. UNFINISHED BUSINESS

4. Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement, the Public Street Maintenance Agreement and the Fee Reimbursement Agreement for a 199-unit Senior Assisted Living Residential Development Located at 1504-1620 South Main Street by Milpitas Phase I, LP (Staff Contact: Steve Erickson, 408-586-3301)

Background: On November 18, 2014, the City Council conditionally approved a Vesting Minor Tentative Map and a Site Development Permit for a 199-unit senior assisted living residential development at 1504-1620 South Main Street between Abel Street and Cedar Way by Milpitas Phase I, LP.

The Parcel Map for the vesting minor tentative map was approved by the Milpitas Planning Commission on September 27, 2017. The City Engineer reviewed and approved public improvement plans (E-EN16-0149 and E-PI16-0002) per Milpitas Municipal Code XI-1-7.09-2. Public improvements to be constructed as part of this development include approximately 1,250 liner feet of new 12 inch sanitary sewer main line; new traffic signal facilities at the intersection of South Main Street and the new eastern extension Cedar Way; and two new public streets Costa Street and the eastern extension of Cedar Way with new utilities, curb, gutter, sidewalk, curb ramps, streetlight and street trees.

The developer has executed a Subdivision Improvement Agreement and provided improvement securities (in the total amount of $2,742,000 for faithful performance and for labor and materials respectively) as required to guarantee completion of all required public improvements.

The developer has also executed a Public Street Maintenance Agreement as required by the project conditions for perpetual maintenance of the two new public streets. Additionally, Developer has executed a Fee Reimbursement Agreement as required by project condition for replacement of an existing sanitary sewer main line within South Main Street. The three aforementioned agreements have been approved by the City Attorney as to form and by the City Engineer as to substance.

California Environmental Quality Act: Consideration of these agreements would not be a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: The fee reimbursement for replacement of the sanitary sewer main would be partially funded by Transit Area Specific Plan (TASP) fees and the Sewer Fund. The actual amount of the reimbursement will be based upon the actual cost for construction of the sanitary sewer main. The estimated reimbursement amount is $1.3 million, and staff will return to the City Council for approval of a budget appropriation once installation of the sewer main has been completed and the final cost of construction has been determined.

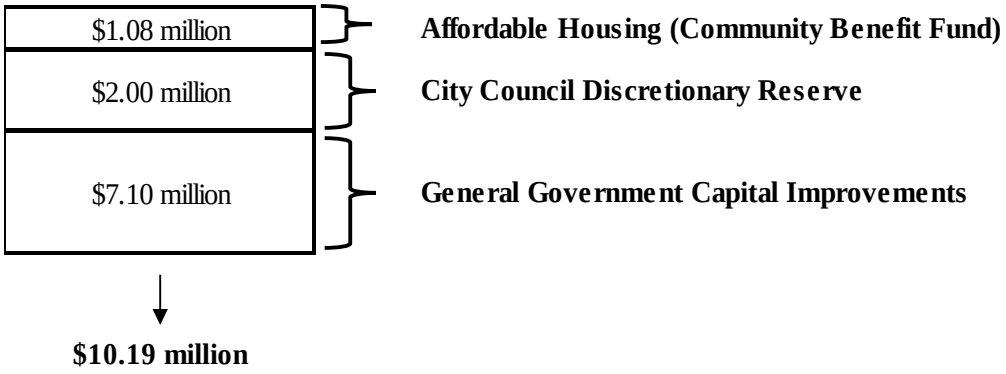
Recommendation: Approve and authorize the City Manager to execute the Subdivision Improvement Agreement, the Public Street Maintenance Agreement and the Fee Reimbursement Agreement for a 199-unit senior assisted living rental residential development by Milpitas Phase I, LP.

Attachments: 3 Agreements

5. Consider a Resolution Updating the City's Fiscal Policies as they Relate to Reserves and Approving Transfer of $10,185,208 from General Fund Unassigned Fund Balance to Community Benefit Fund in the Amount of $1,081,809, to City Council Discretionary Reserve Account in the Amount of $2,000,000, and to General Government CIP Fund in the Amount of $7,103,399 (Staff Contact: Will Fuentes, 408-586-3111)

Background: The General Fund Unassigned Fund Balance equals **$10.19 million** as of the end of Fiscal Year (FY) 2016-17. Council previously requested discussion to allocate these monies. Thus, in light of previous Council discussion in regards to priorities, staff presents the following potential uses detailed in both the chart and the text below. Council may wish to adopt these uses in their entirety or modify as they deem appropriate. Council may also wish to only discuss and gather a list of desired uses so as to return at a later date to finalize uses. Staff requests the City Council consider adopting the resolution (in agenda packet). The resolution or actions taken could change depending upon Council discussion and desire.

Chart 1 - Potential Uses of General Fund Unassigned Fund Balance



Affordable Housing (Community Benefit Fund) – Council has identified affordable housing as one of its primary priorities to address. Thus, staff proposes transferring 5% of the General Fund operating surplus ($1.08 million) to the Community Benefit Fund. The Community Benefit Fund is primarily funded by developer impact fees and has more flexibility than the Housing Authority Fund to address affordable housing concerns. If this use is agreeable to Council, staff recommends revising the City's Fiscal Policies as those relate to reserves and transferring 5% of any future General Fund operating surplus not needed to balance the budget or meet other reserve requirements to the Community Benefit Fund to address affordable housing concerns.

City Council Discretionary Reserve – Over the course of a fiscal year, unforeseen needs or opportunities may arise. Thus, rather than appropriating all of the General Fund for specific purposes and limiting City Council flexibility, staff proposes adjusting the City's Fiscal Policies and establishing a City Council Discretionary Reserve of no more than $2 million per fiscal year. This reserve would be funded at the beginning of the fiscal year by any remaining General Fund annual operating surpluses of the prior fiscal year not required to balance the operating budget and to meet other General Fund reserve requirements. Use of the reserve could occur at any time and at multiple times over the fiscal year, but would require City Council majority approval.

One potential use of the Council Discretionary Reserve could be to fund a rate assistance program for low-income and senior customers that had demonstrated difficulty paying their water utility bills. However, staff recommends waiting until 2018 to see how the state implements AB 401 (Dodd. Low-Income Water Rate Assistance Program). The state program may be sufficient to fully or partially fund a rate assistance program within Milpitas and pre-funding such a program with Milpitas monies could jeopardize eligibility. In addition, staff does not recommend making General Fund transfers in to the Water Utility Fund to reduce rates for all water utility customers. Such an action would not be sustainable long-term and would be looked upon unfavorably by credit rating agencies and the bond market. The City tentatively plans to issue approximately $24 million in bonds to fund critical water infrastructure projects in the upcoming calendar year. In order to secure the best possible interest rates though, the City must demonstrate to credit rating agencies and the bond market that operating, maintenance, and capital needs can be supported by customer rates alone and that there are approved plans in place for annual rate adjustments. Absent these items, the City risks higher interest costs than necessary.

General Government Capital Improvements – Current City Fiscal Policies allow the City Council the discretion to direct any portion of the General Fund reserves that are not required to balance the operating budget or meet other reserve requirements to the General Government Capital Improvement Fund. The City has a $332.88 million Capital

Improvement Program over the next five years; $68.37 million of which is currently unfunded. Unfunded Capital Projects are summarized by category in Table 1.

Table 1 - Unfunded Capital Projects by Category

Community Improvements	**$19,850,000**
Park Improvements	**20,200,000**
Street Improvements	**950,000**
Water Improvements*	**2,440,000**
Storm Drain Improvements	**24,925,000**
TOTAL UNFUNDED	**$68,365,000**

**Remainder after potential issuance of a $23.91 million bond in 2018.*

Thus, staff proposes that $7.10 million be transferred from the General Fund to the General Government Capital Improvement Fund. Deferred maintenance and capital replacement costs grow at an exponential rate and the City risks paying much more in the future due to inflation and rising costs of maintenance.

In conclusion, actions recommended (presented above) meet best practices and allow the Council to both preserve future flexibility and to address identified community priorities. Again, Council may wish to adopt staff proposals in their entirety or modify as deemed appropriate. Council may also wish to discuss only and to gather a list of desired uses so as to return at a later date to finalize uses.

Fiscal Impact: Staff proposals would allocate the $10.19 million General Fund unassigned fund balance as of the end of Fiscal Year 2016-17.

Recommendation: Consider adopting a resolution updating the City's Fiscal Policies as those relate to reserves and approving transfer of $10,185,208 from the General Fund Unassigned Fund Balance to the Community Benefit Fund in the amount of $1,081,809, to the City Council Discretionary Reserve account in the amount of $2,000,000, and to the General Government CIP Fund in the amount of $7,103,399.

Attachments:
a) Resolution
b) Fiscal Policies (redlined)

6. Adopt a Resolution Making Findings for Unexpended Development Fees and Review and Accept the Annual Developer Fee Disclosure Information Pursuant to the Mitigation Fee Act (Staff Contact: Will Fuentes, 408-586-3111)

Background: California Government Code Section 66000 et seq. ("Mitigation Fee Act") requires local agencies to provide an accounting of fees charged for development projects. The City has two basic accounting and reporting responsibilities under the Government Code and these are detailed below:

Requirement 1 - Section 66001(d) requires that, five years after collecting a development fee subject to this Code section and every five years thereafter, the local agency shall make findings with respect to any portion of the fee remaining unexpended, whether committed or uncommitted. If the required findings are not made, the unexpended funds shall be refunded to the current property owners.

Findings must:

1. Identify the purpose of the fee;

2. Demonstrate a reasonable relationship between the fee and the purpose for which it was charged;
3. Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements; and
4. Designate the approximate dates on which these funding sources can be expected to be deposited into the appropriate account or fund.

When sufficient funds have been collected to complete financing on incomplete public improvements, the local agency has 180 days after fiscal year end to identify an approximate date by which the construction of the public improvement will begin or else is required to refund the unexpended fees, including accrued interest, to the current owner of lots or units of the development project.

Requirement 2 - Section 66006(b)(1) requires the City to establish separate capital improvement accounts or funds for each improvement funded by project development fees. Any interest income earned by funds in such an account shall be deposited in such account. Each local agency is required on an annual basis, within 180 days after fiscal year end, for each separate account, to make available to the public the following information:

1. Brief description of the type of fee in the account;
2. The amount of the fee;
3. The account's beginning and ending balance;
4. The amount of fees collected and the interest earned;
5. A description of the improvements on which the funds were expended and the amount expended on each improvement including the percentage of the improvement funded with development fees;
6. An approximate date by which the construction of a public improvement will begin if the local agency determines that sufficient funds have been collected to complete financing on the incomplete improvement;
7. A description of each inter-fund transfer or loan made from the account; and
8. The amount of any refunds made pursuant to Code Section 66001.

The City deposits mitigation fees subject to the above disclosure in the Traffic Impact Fee Fund, Transit Area Specific Plan (TASP) Impact Fee Fund, and Storm Drain Development Fund to track these development related fees. Interest income is allocated to the funds based on their respective monthly cash balances. Expenditures from these funds were in the form of capital improvement projects to either renovate existing facilities or maintain the existing level of service, consistent with the General Plan and approved Capital Improvement Plan due to increased demand related to the development projects.

Status reports (included in the agenda packet) summarize the Fiscal Year 2016-17 fund activity for Traffic Impact Fee (Exhibit 1); Transit Area Specific Plan (TASP) Impact Fee (Exhibit 2); and Storm Drain Development Fee (Exhibit 3). The reports show the amount of fees collected in fiscal year 2016-2017, interest income, a brief description of the projects funded, the percentage of the projects funded by the development fees, and the beginning and ending balance of the funds.

Fund balances at the end of June 30, 2017 are as follows:

Fund	FY 16-17 Revenues Collected	FY 16-17 Expenditures	Ending Fund Balance
Traffic Impact Fee	$218,729	$0	$1,697,233
TASP Impact Fee	$22,096,642	$11,084,968	$27,747,795
Storm Drain Development Fee	$1,759,585	$699,838	$2,063,248

Traffic impact fees of $46,354 were identified, which were collected from development projects, for traffic impact mitigation on Calaveras Boulevard, which are more than five years old. These funds will be appropriated into existing and future capital improvement projects to fund widening improvement on Calaveras Boulevard within City limits. The Calaveras Boulevard Widening project's estimated cost is $85 million, and the City's minimum local match share is $11 million.

The City has agreed to reimburse VTA for improvements made on the new BART VTA station opening in Milpitas in 2018. These improvements will be paid from TASP Impact Fees. However, while the balance of TASP Impact Fees is $27.75 million as of June 30, 2017, these monies are also intended to fund other TASP projects including City parks. Use of these monies to fully and immediately reimburse VTA obligations would severely impact the timing and delivery of other critical City projects. The City though expects to reimburse VTA for said improvements in a timely manner once sufficient funds are available and is working with VTA to come to agreement on a payment schedule.

Fiscal Impact: None. There is no fiscal impact for the recommended action.

Recommendation: Adopt a resolution of the City of Milpitas making certain findings pursuant to the Mitigation Fee Act for fiscal year 2016-17 regarding continuing need for unexpended development fees and review and accept the annual developer fee disclosure information.

Attachment: Resolution

7. Receive Update on the Milpitas Climate Action Plan (Staff Contact: Edesa Bitbadal, 408-586-3052)

Background: On May 7, 2013, the City Council adopted the Milpitas Climate Action Plan (CAP). The CAP identified a strategy, reduction measures, and implementation strategies the City would use to achieve the State-recommended greenhouse gas (GHG) emissions reduction target of 15% below 2005 emissions levels by 2020. Staff is currently in the process of prioritizing measures of reducing GHG emissions and timelines for the CAP. Prior to updating the CAP, staff wishes to presents the current CAP and receive input, comments, and further direction by the City Council.

Recommendation: Accept update on the Milpitas Climate Action Plan, and receive comments and direction from the City Council.

Attachment: Climate Action Plan

8. Appoint Two City Councilmembers to Serve on New Council Subcommittee on Commission Appointments (Contacts: Mayor and Councilmembers, 408-586-3000)

Recommendation: move to appoint two City Councilmembers to serve on a new Council Subcommittee on Commission Appointments.

Attachment: None

9. Approve Appropriation of $250,000 in Fiscal Year 2017-18 from the Community Benefit Fund to Planning and Neighborhood Services for the Purchase of Affordability Covenants for the Sunnyhills Apartments at 1724 Sunnyhills Drive (Staff Contact: Will Fuentes, 408-586-3111)

Background: On October 26, 2017, City Council approved the purchase of affordability covenants for the Sunnyhills Apartment complex located at 1724 Sunnyhills Drive. These covenants require the ownership of the Sunnyhills Apartment Complex to renew their existing HUD contracts for a minimum of 5 years. In exchange for this 5 year commitment and to help with costs associated with capital improvements and repairs of the property, the City committed a total of $1.25 million dollars over the 5 year period. The money will be paid in $250,000 installments, annually. However, a procedural step was missed on October 26 and Council has not yet appropriated the necessary $250,000 for Fiscal Year 2017-18. The requested action for City Council on December 19 is to complete the approved action earlier this fall by appropriating the necessary $250,000 for FY 2017-18 from the Community Benefit Fund to the Planning and Neighborhood Services operating budget.

Fiscal Impact: Approving the affordable housing covenants required a payment of $250,000 paid annually over a five year period for a total of $1,250,000. For FY 2017-18, an appropriation of $250,000 is needed from the Community Benefit Fund to the Planning and Neighborhood Services operating budget to fulfill the terms of the agreement for the purchase of the Affordability Covenants. Future fiscal year payments would need to be appropriated annually from available allowable funds.

Recommendation: Approve appropriation of $250,000 in Fiscal Year 2017-18 from the Community Benefit Fund to the Planning and Neighborhood Services operating budget for agreement for the purchase of affordability covenants for the Sunnyhills Apartments complex at 1724 Sunnyhills Drive.

Attachments:
a) Council meeting minutes of October 26, 2017
b) Budget Change Form

XIV. REPORTS

10. Discuss and Vote to Approve Mayor's Recommendation for Appointment of a Member and One Alternate from the Council to Serve on the City of San Jose Ad Hoc Committee on South Flow Arrivals (Contact: Mayor Tran, 408-586-3029)

Background: Consider Mayor Tran's appointment of a committee delegate and alternate, and if desired, move to affirm the appointment. The City of San Jose Ad Hoc Committee was established to explore possible solutions to address the noise impacts on residents when weather conditions over the airfield require the Airport to operate in a "south flow" configuration (when aircraft land from the north of the Airport instead of the usual landing from the south). In recent years, there has been a significant increase in noise complaints from Santa Clara County cities, including Milpitas. All Santa Clara cities have been invited to participate on the committee.

Recommendation: Move to appoint one member and one alternate from the City Council to serve on the City of San Jose Ad Hoc Committee on South Flow Arrivals, related to airplane traffic and noise impacts.

Attachment: Information page on Ad Hoc Committee

11. Per Request of Councilmember Barbadillo, Hear Proposal to Make Main Street Zoned Commercial-Only (Contact: Councilmember Barbadillo, 408-586-3024)

Recommendation: Hear request from Councilmember Barbadillo for his proposal to keep Main Street zoned for commercial uses.

Attachment: None

12. Per Request of Councilmember Barbadillo, Consider Approving More than 4 Hours of Staff Time to Direct Staff to Conduct a Study on Retail and Commercial Spaces in the MidTown and Transit Area Specific Plan areas (Contact: Councilmember Barbadillo, 408-586-3024)

Recommendation: Hear request from Councilmember Barbadillo for staff to conduct a study on retail and commercial space in the MidTown and Transit Area Specific Plan areas, and approve staff spending more than four hours of time to complete the study.

Attachment: None

13. Per Request of Councilmember Nuñez, Consider Approving More than 4 Hours of Staff Time to Develop a Proposal to Re-establish Teen Programming for the City of Milpitas (Contact: Councilmember Nuñez, 408-586-3023)

Recommendation: Consider Councilmember Nuñez's request and if desired, approve more than four hours of time to have staff develop a proposal to re-establish teen programming in Milpitas that will include types of programs, locations and budget.

Attachment: None

XV. NEW BUSINESS

14. Accept the 2017 Bulletproof Vest Partnership Grant and Appropriate Funds into the Police Department's Operating Budget (Staff Contact: Daryl Sequeira, 408-586-2434)

Background: The United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance has allocated a Bulletproof Vest Partnership (BVP) grant in the amount of $5,630.70 to the Milpitas Police Department towards the purchase of ballistic vests. The grant will reimburse the City of Milpitas fifty percent (50%) of the cost for each ballistic vest purchased by the Milpitas Police Department after October 25, 2017. The grant funds must be utilized by August 31, 2019. The Milpitas Police Department has been participating in the BVP Grant Program consecutively since 2008.

Fiscal Impact: None. The City's matching funds are already budgeted in the police department's annual supply account. This grant will help offset the total costs of future ballistic vest purchases during the time period.

Recommendation: Accept the 2017 Bulletproof Vest Partnership (BVP) grant and approve an appropriation in the amount of $5,630.70 into the Police Department's operating budget.

Attachments:
a) Police Department staff memo
b) Budget Change Form

15. Accept the City's Comprehensive Annual Financial Report and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2017 (Staff Contact: Will Fuentes, 408-586-3111)

Background: The Comprehensive Annual Financial Report (CAFR) of the City of Milpitas, Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment and the Memorandum on Internal Control and Required Communications for the fiscal year ended June 30, 2017 are presented to the City Council for review.

Comprehensive Annual Financial Report (CAFR) of the City of Milpitas - The CAFR presents the operations and financial activity of all the City's various funds, including the General Fund. It includes an unqualified ("clean") audit opinion from Maze & Associates, the City's external auditors, that the financial statements present fairly the results of operations for the year ended June 30, 2017, in conformance with Generally Accepted Accounting Principles (GAAP).

Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment - This report shows that the auditor applied specific procedures to validate the City's Appropriations Limit calculations.

Memorandum on Internal Control and Required Communications – Under generally accepted auditing standards, the auditors are encouraged to report certain matters regarding the City's internal control structure. The City's auditors have provided such a report in their Memorandum on Internal Control and Required Communications ("Management Letter") for the year ended June 30, 2017. This report includes management's response to the auditor's Recommendations on:

- Compliance with Cal-Card Manual and Procedures over Review and Approval of Monthly Statements;
- Compliance with Other Purchasing Policies;
- Retiree Premiums Compliance with MOUs;
- Developing procedures to review fee calculation for permit fees charged to customers;
- Developing Uniform Guidance Procurement Standards; and
- Developing procedures to implement Senate Bill 1029 on California Debt and Investment Advisory Accountability Reports.

The auditors do not view any of their comments as material weaknesses on the City's internal control structure.

Fiscal Impact: None.

Recommendation: Accept the City's Comprehensive Annual Financial Report and other related Annual Audited Reports for the fiscal year ended June 30, 2017.

Attachments:
a) Comprehensive Annual Financial Report FY 2016-17
b) Agreed Upon Procedures report on Compliance with the Appropriations Limit Increment
c) Memorandum on Internal Control and Required Communications for FY 2016-17

16. Appoint One Councilmember as a Regular Director and One as an Alternate Director to the Silicon Valley Clean Energy Authority Board of Directors, and Select One Electricity Option, Following a Presentation (Staff Contact: Edesa Bitbadal, 408-586-3052)

Background: On October 17, 2017, the City Council voted to proceed with the steps required to join the Silicon Valley Clean Energy Authority (generally known as Silicon Valley Clean Energy or SVCE). On November 7, 2017, the City Council directed staff to return to Council for appointment of a regular Director and an alternate to the Authority's Board of Directors. The regular director must be from the governing body of each community. The alternate is appointed by the respective governing body, but can be a member of the body itself, city staff or the public. The Board of Directors meetings are held on the second Wednesday of each month at 7:00 pm at the Cupertino Community Hall, 10350 Torre Ave. in Cupertino.

SVCE sources clean and renewable electricity on behalf of its customers. All electricity products are carbon free, but each has a different percentage of renewable energy. GreenStart, the standard product is at least 50% renewable, and is 100% carbon free. All customers are automatically enrolled in SVCE's carbon free GreenStart service. By comparison, PG&E's current electric service is approximately 30% renewable and 60% carbon-free. The estimated cost for GreenStart service will be approximately $0.001/kWh less expensive than PG&E service. As such, SVCE will provide cleaner, greener electricity at a cost lower than PG&E. SVCE will also provide a 100% renewable, carbon free service called GreenPrime. SVCE customers will have the option to upgrade to GreenPrime service, at a premium of $0.008/kWh to PG&E's current service.

City staff reviewed the City's PG&E expenses in FY 2016-17. The accounts include all of the City's operational facilities and infrastructure utilizing electrical service, including City Hall and other buildings, traffic signals, and streetlights within the City's jurisdiction. In FY 2016-17, the City's cost for electricity was $1,790,206, and overall usage was 10,447,603 kWh. The table summarizes financial calculations and relative financial impacts to the City, based on each electricity option estimated for 2018:

	SCENARIOS		
	A PG&E Service 30% Renewable 60% Carbon Free	**B** SVCE GreenStart 50% Renewable 100% Carbon Free	**C** SVCE GreenPrime 100% Renewable 100% Carbon Free
Cost relative to PG&E	-	Savings of $0.001/kWh	Premium of $0.008/kWh
Projected Annual City Operations Electricity Expense [from FY 2016-17]	$1,790,206	$8,973.51 less (annual kWh usage * $0.001)	$71,788.10 more (annual kWh usage * $0.008)
Projected Incremental Impact to Annual Budget	0	Savings of ($8,973.51)	Premium of $71,788.10

Fiscal Impact: Based on each of the electricity options estimated for 2018, the City can anticipate yearly savings of approximately $8,973.50 when automatically enrolling in GreenStart or an additional yearly cost of $71,788.10 when upgrading to GreenPrime for municipal electric service.

Recommendations:
1. Consider and appoint a regular Director and an alternate to the Silicon Valley Clean Energy Authority Board of Directors.
2. Provide direction to staff to enroll in SVCE GreenStart or GreenPrime for municipal electric service beginning May of 2018.

Attachments:
a) SVCE 2018 Board of Directors Meetings Schedule
b) Selected Electricity Options By Member Jurisdictions for SVCE

17. Consider Request from Milpitas Executive Lions Club to Co-Sponsor "Celebrating Differences" Event in 2018 (Staff Contact: Renee Lorentzen, 408-586-3409)

Background: Nelly Cabuslay, on behalf of the Milpitas Executive Lions Club, requested a co-sponsorship of the 4th Annual "Celebrating Differences" event at the December 19, 2017 City Council meeting. The event is planned to include fun games, crafts and activities focused on empowering persons with differing abilities.

The event would be held in the Milpitas Community Center Auditorium on Saturday March 17, 2018 from 10:00 AM– 2:00 PM. A co-sponsorship of this event would include use of the Milpitas Community Center, its amenities and required staffing (Recreation building attendants, Recreation Coordinator) including: Auditorium, Dance Studio and Conference Rooms 7 & 8. Co-sponsorship of this event would also include the use of: City Hall Digital Marquee. City Social Media and use of City Logo on event marketing materials

Fiscal Impact: $3,147.90 in facility revenue and staff administration costs.

Recommendation: Approve the City of Milpitas co-sponsoring the Milpitas Executive Lions Club's "Celebrating Differences" day on March 17, 2018 for a value of $3,147.90 including facility fees and City of Milpitas staff support.

Attachment: None

XVI. RESOLUTION

18. Adopt a Resolution Granting Initial Acceptance of Public Improvements and Approve a Reduction of Improvement Security for the Faithful Performance for the Traverse Subdivision at 569 - 625 Trade Zone Boulevard by Traverse Partners, LLC, Tract No. 10224, Project No. 2874, and Granting Authorization to the City Engineer to Release the Performance Bond after the One-year Warranty Period (Staff Contact: Steve Erickson, 408-586-3301)

Background: On October 21, 2014, a previous City Council approved the Final Map for Tract No. 10224, the public improvement plans, and the Subdivision Improvement Agreement the Traverse residential development located at 569 - 625 Trade Zone Boulevard by Traverse Partners, LLC.

Public improvements installed included new public streets, the widening of Trade Zone Boulevard, and construction of new curb, gutter, sidewalk, utility systems, street lights, street trees, storm water treatment planters, Public Park, and other miscellaneous items of work.

The Developer has completed all public improvements in accordance with the approved public improvement plans, and they are now ready for initial acceptance and commencement of the 1-year warranty period. Staff recommends the City Council adopt a resolution approving initial acceptance of the public improvements, and to authorize the reduction of the performance bond to $310,500, which is 10% of its original value. Staff also recommends the City Council grant authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided all warranty work is completed to the satisfaction of the City Engineer.

California Environmental Quality Act: Granting initial acceptance of public improvements and approving reduction of improvement security for faithful performance are not considered projects under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: None

Recommendation: Adopt a resolution granting initial acceptance of public improvements for the Traverse project, Tract No. 10224, Project No. 2874 and approve a reduction in the performance bond, subject to a one-year warranty period and reduction of the faithful performance security to $310,500 which shall be in effect for the duration of the warranty period; and granting authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided all warranty work is completed to the satisfaction of the City Engineer.

Attachment: Resolution

XVII. AGREEMENTS

19. Authorize the City Manager to Execute a Master Encroachment Agreement with MCI Metro Access Transmission Services Corp. doing business as Verizon Access Transmission Services for Installation of Network Facilities within Public Right-of-Way (Staff Contact: Steve Erickson, 408-586-3301)

Background: MCI Metro Access Transmission Services Corp. doing business as Verizon Access Transmission Services is requesting permission to install private underground fiber optic lines within public right-of-way for its communication network to upgrade connections to Verizon Wireless cell sites and to serve new small and medium business customers.

Pursuant to Public Utilities Code Section 7901 and a Certificate of Public Convenience and Necessity (CPCN) issued by the Public Utilities Commission of the State of California, a telephone corporation may construct telephone lines and any other necessary fixtures for their lines along and upon any public road or highway so as long as it does not inconvenience the public use of the road or highway.

A Master Encroachment Agreement has been prepared to allow for the installation and maintenance of facilities, and to outline the terms and conditions for the non-exclusive use of the public right-of-way. The Encroachment Agreement was reviewed by the City Attorney as to form and by the Acting City Engineer as to content.

Fiscal Impact: None.

Recommendation: Authorize the City Manager to execute a Master Encroachment Agreement with MCI Metro Access Transmission Services Corp. doing business as Verizon Access Transmission Services for installation of network facilities within public right-of-way.

Attachment: Encroachment Agreement with Verizon

20. Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement for KB Home South Bay, Inc. for Development at 1256 Piper Drive (Staff Contact: Steve Erickson, 408-586-3301)

Background: On April 5, 2016, the City Council conditionally approved a Major Vesting Tentative Map for construction of a 308-unit residential condominium development located at 1256 Piper Drive, which is within the TASP area between Garden Street and Montague Expressway.

Project condition No. 63c requires the developer to execute a Stormwater Management Facilities Operation and Maintenance Agreement with the City for the operation, maintenance and annual inspection of storm water treatment facilities for the development. This Agreement covers 98 residential condominium units under ownership of KB Home South Bay, Inc., the remaining units are under different ownership and will be covered with a separate operations and maintenance agreement. The Agreement has been reviewed by the City Attorney as to form and by the City Engineer as to content.

California Environmental Quality Act: This project is included within the area evaluated as part of the Transit Area Specific Plan Environmental Impact Report, SCH#2006032091, which was certified by the City Council on June 3, 2008. On April 5, 2016, the City Council found that the project is categorically exempt from further environmental review pursuant to Section 15168(c)(2) of CEQA. Additionally, execution of the Agreement is not considered a

project under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: None.

Recommendation: Authorize the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement for KB Home South Bay, Inc. for its new residential development at 1256 Piper Drive.

Attachment: Storm Water Management Operation and Maintenance Agreement

21. Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement for LMC Milpitas Holdings I, LLC and Lennar Homes of California, Inc. for Development at 450 Montague Expressway (Staff Contact: Steve Erickson, 408-586-3301)

Background: On May 5, 2015, the City Council approved the Vesting Tentative Map (MT14-0004), Site Development Permit (SD14-0017), Conditional Use Permit (UP14-0024), and Exception to Water Conservation Ordinance No. 240.2 for a 489 condominium unit project located within the Transit Area Specific Plan area at 450 Montague Expressway known as "450 Montague."

Project condition No. 66d requires the developer to execute and record a Storm Water Management Operation and Maintenance Agreement with the City for the operation, maintenance and annual inspection of storm water treatment facilities for the development prior to final building occupancy. The Agreement has been reviewed by the City Attorney as to form and by the City Engineer as to content.

California Environmental Quality Act: This project is included within the area evaluated as part of the Transit Area Specific Plan Environmental Impact Report, SCH#2006032091, which was certified by the City Council on June 3, 2008. On May 5, 2015, the City Council found that the project is categorically exempt from further environmental review pursuant to Section 15168(c)(2) of CEQA. Additionally, execution of the Agreement is not considered a project under CEQA as there will be no direct or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: None.

Recommendation: Authorize the City Manager to execute the Stormwater Management Facilities Operation and Maintenance Agreement for LMC Milpitas Holdings I, LLC and Lennar Homes of California, Inc. for its new residential development at 450 Montague Expressway.

Attachment: Storm Water Management Operation and Maintenance Agreement

22. Authorize the City Manager to Approve Amendment No. 2 to the Agreement with HMH, Inc. for the Midtown Street Light and Utility Underground 2017 Projects No. 3430 and No. 3425 (Staff Contact: Steve Erickson, 408-586-3301)

Background: On August 16, 2016, the City entered into a consultant agreement with HMH, Inc. in the amount of $325,100 to provide engineering design and construction support services for the installation of Midtown Standard decorative street lights on South Main Street from Carlo Street to Corning Avenue.

During recent storm events over the last year, staff identified a need for additional storm drain inlets near Sinnott Lane to better convey storm runoff and prevent water ponding at the

pedestrian curbs ramp at Sinnott Lane and Main Street. Main Street was constructed in the early 1900's as the Oakland Highway running between San Jose and Oakland. At that time, storm drainage was convey for long distances in gutters rather than underground storm drainage systems of today. To correct the drainage problems, staff recommends the installation of 600 feet of storm drain including inlets and replacement gutters on east side of S. Main Street from Serra Way to Sinnott Lane.

Staff recommends amending the agreement with HMH, Inc. to provide the additional engineering design services for the installation of the storm drain and related improvements. A fee was negotiated for these services not to exceed $19,700, which is considered reasonable for the scope of services. Approval of Amendment No. 2 brings the total agreement amount to $344,800.

Fiscal Impact: None. Sufficient funds are available in the project budget for these design services.

Recommendation: Authorize the City Manager to approve Amendment No. 2 to the Consulting Services Agreement with HMH, Inc. in the amount of $19,700, for the Midtown Street Light and Utility Underground 2017, Projects No. 3430 and No. 3425.

Attachment: Amendment No. 2 to the Agreement with HMH Inc.

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

XIX. ADJOURNMENT

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, JANUARY 16, 2018

NO CITY COUNCIL MEETING JANUARY 2, 2018

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi *408-586-3122*

对中国人来说，请用 *408-586-3263*

Para sa mga Tagalog, tawagan 408-586-3051

Para español, llame 408-586-3232