



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

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 Tagalog, tumawag sa 408-586-3051

Para español, llame 408-586-3232

NOTE: the Mayor & Council will join the community at a flag raising ceremony to honor workers on May Day/International Labor Day at 5:30 PM at Cesar Chavez Plaza. All are welcome.

AGENDA

TUESDAY, MAY 1, 2018

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA

6:00 P.M. (CLOSED SESSION)

7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

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

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

(a) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING

Pursuant to California Government Code Section 54957.6

City Negotiator: Tina Murphy

Employee Group: International Association of Fire Fighters

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

(b) 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

(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

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

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

V. INVOCATION (Mayor Tran)

VI. PRESENTATIONS

- Proclaim May as *Mental Health Month*
- Proclaim May as *Building Safety Month*
- Proclaim May 8 - 13, 2018 as *Economic Development Week*

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 spoken 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 No. 1 through No. 15)

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a City Councilmember, member of the audience or staff requests the Council to remove an item from (or be added to) the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

1.	Accept Schedule of Meetings/City Council Calendar for May 2018
2.	Approve City Council Meeting Minutes of April 10 and 17, 2018 (Staff Contact: Mary Lavelle, 408-586-3001)
3.	Receive Financial Status Report for the Nine Months Ended March 31, 2018 (Staff Contact: Will Fuentes, 408-586-3111)
4.	Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended March 31, 2018 (Staff Contact: Will Fuentes, 408-586-3111)
5.	Accept Santa Clara County Emergency Medical Services Agency Funds of \$50,830.30 to Purchase Fire Department Hardware to Support Prehospital Policy 309 Implementation, Field Capture, and Video Laryngoscopes Benefiting the Santa Clara County EMS System and Approve a Budget Adjustment (Staff Contact: Brian Stelling, 408-586-2822)
6.	Consider Authorizing a Letter Signed by the City Manager to the Bay Area Air Quality Management District Supporting Silicon Valley Clean Energy's Proposal in Response to 2018 Climate Protection Grant Program (Staff Contact: Edesa Bitbadal, 408-586-3052)

7.	Adopt a Resolution Specifying the Capital Improvement Program 2018-19 Budget for the Street Resurfacing Project 2019 to Incorporate a List of Projects Funded by SB 1: The Road Repair and Accountability Act (Staff Contacts: Steve Erickson, 408-586-3301 and Steve Chan, 408-586-3324)
8.	Adopt a Resolution Implementing a Wage Theft Procurement Policy (Staff Contact: Edesa Bitbadal, 408-586-3052)
9.	Award a Bid to Nor-Cal Battery Company and Authorize the City Manager to Execute a Contract with NorCal to Provide UPS and Battery Maintenance and Replacement Services at Various City of Milpitas Locations with a Five-Year Contract in an Amount Not to Exceed \$80,350.10 (Staff Contacts: Chris Schroeder, 408-586-3161 and James Levers, 408-586-2648)
10.	Award a Bid to Lucity Inc. and Authorize the City Manager to Execute an Agreement for Purchase and Installation of a Computerized Maintenance Management System for Public Works for the Initial Purchase Price of \$155,150 and Total Five Year Amount Not-to-Exceed \$236,142.47 (Staff Contacts: Chris Schroeder, 408-586- 3161 and Tony Ndah, 408-712-7812)
11.	Approve and Authorize the City Manager to Execute an Agreement with Moore, Iacofano & Goltsman (“MIG”) for the Milpitas Midtown Specific Plan Update, Capital Improvement Project No. 3437 (Staff Contacts: Brad Misner, 408-586-3273 and Jessica Garner, 408-586-3284)
12.	Approve and Authorize the City Manager to Execute Amendment No. 1 to the Agreement with Biggs Cardosa Associates, Inc. to Increase Compensation in the Additional Amount of \$38,008 for the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 (Staff Contact: Steve Erickson, 408-586-3301)
13.	Approve and Authorize the City Manager to Execute Amendment No. 1 to the Agreement with IBI Group Architecture Planning to Extend the Term and Increase Compensation in the Additional Amount of \$163,057 for McCandless Park, Project No. 5102 (Staff Contact: Steve Erickson, 408-586-3301)
14.	Approve Professional Services Agreement with David J. Powers & Associates to Provide Environmental Clearance Documents for Compliance with the California Environmental Quality Act for the Well Upgrade - McCandless Well, Project No. 7076 and Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 (Staff Contact: Steve Erickson, 408-586-3301)
15.	Reject All Bids, Authorize Staff to Repackage, Re-advertise and Authorize the City Manager to Approve Amendment No. 3 to the Agreement with HMM, Inc. for the Midtown Street Light and Utility Underground 2017, Projects No. 3430 and No. 3425 (Staff Contact: Steve Erickson, 408-586-3301)

XII. PUBLIC HEARING The following items No. 16 - 21 scheduled for discussion

16. **Conduct a Public Hearing and Adopt a Resolution Approving a Site Development Permit, Conditional Use Permit, Planned Unit Development Amendment and Environmental Assessment for a 150-room Hotel Project at 1301 California Circle, Pursuant to CEQA Guideline 15074 (Staff Contact: Michael Fossati, 408-586-3274)**

XIII. UNFINISHED BUSINESS

17. Receive Update on the FY 2018-19 Proposed Operating Budget and 2018-2023 Proposed Capital Improvement Program (Staff Contact: Will Fuentes, 408-586-3111)

XIV. REPORT OF OFFICERS

18. Receive Report of City Council Subcommittee on Cannabis (Council Contacts: Councilmember Nuñez, 408-586-3023 and Councilmember Phan, 408-586-3032)

XV. NEW BUSINESS

19. Receive Report on Potential November 6, 2018 Ballot Measures (Staff Contacts: Will Fuentes, 408-586-3111 and Edesa Bitbadal, 408-586-3052)

XVI. ORDINANCE

20. Receive Report from Finance Director and Consider Introduction of Ordinance No. 289.2 Amending Chapters 2 and 4 of Title I of the Municipal Code to Relating to Purchasing and City Manager's Contract Authority (Staff Contact: Will Fuentes, 408-586-3111)

XVII. AGREEMENT

21. Approve and Authorize the City Manager to Execute Amendment No. 2 to the Agreement with West Yost Associates Extending the Term and Increasing Compensation by \$1,599,045 for the McCandless Well, Project No. 7076 (Staff Contact: Steve Erickson, 408-586-3301)

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

XIX. ADJOURNMENT

SPECIAL CITY COUNCIL MEETING
THURSDAY, MAY 10, 2018 – BUDGET PUBLIC HEARING

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, MAY 15, 2018

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

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

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

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

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

APPLY TO SERVE ON A CITY COMMISSION

Current vacancies on:

Arts 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
Veterans 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, please call the City Clerk at 408-586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the City Council Chambers for all meetings.

AGENDA REPORTS

XI. CONSENT CALENDAR

1.	Accept Schedule of Meetings/City Council Calendar for May 2018 <u>Recommendation:</u> Receive Council calendar of meetings for the month May. Note any changes or additions, if needed. <u>Attachment:</u> May 2018 Calendar
2.	Approve City Council Meeting Minutes of April 10 and 17, 2018 (Staff Contact: Mary Lavelle, 408-586-3001) <u>Recommendation:</u> Move to approve the meeting minutes April 10 and 17, 2018 City Council meetings. <u>Attachments:</u> Draft meeting minutes 04/10/2018 and 04/17/2018
3.	Receive Financial Status Report for the Nine Months Ended March 31, 2018 (Staff Contact: Will Fuentes, 408-586-3111) <u>Background:</u> This third quarter financial report places a focus on the City's major operating funds, including General, Water and Sewer. As of March 31, 2018, the General Fund received approximately \$62.2 million in total revenue. This amount is \$3.9 million less than the revenues received for the same period in FY 2016-17 primarily due to last year's \$7.2 million reimbursement for the purchase of the property sold to the Milpitas Unified School District. When this item is removed, General Fund revenues for FY 2017-18 are \$3.3 million higher than FY 2016-17 at the same point in the fiscal year. Other areas of decreases of \$1.3 million were in building and fire permits. Last year, developers wanted to pay their building and fire permit fees before the building code changed on December 31, 2016. Areas of increases include a \$3.0 million increase in property tax revenue, a \$1 million increase in sales tax revenue and another \$1.6 million in franchise fees, Transient Occupancy Tax (TOT), investment income and charges for current services. Staff anticipates that the overall General Fund revenue will be on track with the budget projection. City departments' expenditures in the first nine months (75%) of the fiscal year were also on track with their budgets. Overall expenditures were at about 67.64% of the operating budget. Expenditures for some departments exceeded 75% for the first nine months. The City Attorney's Office has an expenditure rate of 79.54% due to charges that are reimbursable and for special services not originally anticipated. The Fire Department has an expenditure rate of 77.22% due to overtime that will be reimbursed from the state and federal governments for mutual aid. Putting general revenues and expenditure projections together displays a balanced equation at the end of the year. With that said, cost and budgetary control remain key in maintaining a sound fiscal plan for this year and as the City moves forward. Water and Sewer funds remains within the expected patterns in terms of revenue. <u>Fiscal Impact:</u> None <u>Recommendation:</u> Receive financial status report for nine months ended March 31, 2018. <u>Attachment:</u> List of General Fund Revenues and Expenditures FY 2017-18

4.	Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended March 31, 2018 (Staff Contact: Will Fuentes, 408-586-3111) <u>Background:</u> In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended March 31, 2018 is submitted for the Council's review and acceptance. The Portfolio Summary Report (included in the Council's agenda packet) provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of March 31, 2018. As of March 31, 2018, the principal cost (book value) and market value of the City's investment portfolio was \$276,747,300 and \$276,229,094 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal. The City's effective rate of return for the period ended March 31, 2018 was 1.46%. The comparative benchmarks for the same period were 1.52% for LAIF (Local Agency Investment Fund) and 1.81% for the 12-month average yield of the Three-year Treasury Note. The weighted average maturity of the portfolio was 436 days. This report and accompanying charts reflect the change from the 2-year Treasury benchmark to the 3-year Treasury benchmark that was approved by Council in the last revision to the City's Investment Policy in August 2017. As the City shifts towards a new weighted average maturity goal of 3 years, investment returns should increase as result of longer duration. However, this will take time to achieve and requires a dedicated and highly focused investment strategy. As Exhibit 1 shows though, the City is progressing towards its new benchmarks with an increasing weighted average maturity and a higher average yield compared to previous quarters. The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities. The market values of the securities were provided by BNY Mellon, the safekeeping bank of the City's securities. All the securities owned by the City are held in the trust department of BNY Mellon under the terms of a custody agreement. Four charts are included (in the agenda packet) showing investment by maturity levels, comparison of the City's portfolio yields to other benchmark yields as well as a trend of the type of securities in the City's portfolio, weighted average maturity and average yield. <u>Fiscal Impact:</u> None <u>Recommendation:</u> Receive the investment report for the quarter ended March 31, 2018. <u>Attachments:</u> Charts (14 pages)
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5.	Accept Santa Clara County Emergency Medical Services Agency Funds of \$50,830.30 to Purchase Fire Department Hardware to Support Prehospital Policy 309 Implementation, Field Capture, and Video Laryngoscopes Benefiting the Santa Clara County EMS System and Approve a Budget Adjustment (Staff Contact: Brian Stelling, 408-586-2822) <u>Background:</u> The Santa Clara Emergency Medical Service Agency has awarded funding through the EMS Trust Fund to the City of Milpitas for the purchase of Fire Department Hardware to Support Prehospital Policy 309 implementation, Fire Department Field Capture and Video Laryngoscopes. Funds may be used to reimburse EMS First Responders for hardware or services that will support the Santa Clara County Comprehensive EMS Patient Care Data System. Regarding field capture, funds may be used to reimburse EMS First Responders for costs associated with the purchase of devices and supporting hardware/software required to meet field capture requirements for patient care records, as set forth in Prehospital Policy 309. In regards to video laryngoscopes, funds may be used to reimburse EMS First Responders for the costs associated with the purchase of video laryngoscopes to be deployed on paramedic units operated by EMS First Responders. The funding provided is anticipated to cover approximately 50% of Providers permitted paramedic units. EMS First Responders may only purchase the EMS Agency approved KingVision Video Laryngoscope (Reusable Digital Display) and EMS First Responders must place into service and use the equipment on approximately 50% of Providers permitted paramedic units. This Data Project is a Santa Clara County mandatory requirement by all Emergency Medical Providers. There are no matching funds required by the City of Milpitas. Any hardware such as iPads requiring data plans will be paid for in the FY 2018-19 budget. <u>Fiscal Impact:</u> None. There is no net cost to the City as the purchase of the aforementioned hardware is fully offset by trust funds. <u>Recommendation:</u> Accept \$50,830.30 in funds from the Santa Clara County EMS Fund and approve a budget appropriation into the Fire Department's budget. <u>Attachments:</u> a) Agreement b) Budget Change Form
6.	Consider Authorizing a Letter Signed by City Manager to Bay Area Air Quality Management District Supporting Silicon Valley Clean Energy's Proposal in Response to the 2018 Climate Protection Grant Program (Staff Contact: Edesa Bitbadal, 408-586-3052) <u>Background:</u> The Bay Area Air Quality Management District (BAAQMD) is currently accepting applications for the 2018 Climate Protection Grant Program, a competitive grant program open only to public agencies located within BAAQMD's jurisdiction. The 2018 Climate Protection Grant Program prioritizes projects that reduce greenhouse gas emissions (GHGs) from existing buildings, and fosters innovative strategies with long-term impacts in reducing GHG emissions. Silicon Valley Clean Energy (SVCE) is proposing a holistic, large-scale program for strategic fuel switching, focused on electric heat pump water heaters in combination with electric service panel upgrades. Pending the actual award amount, if any, a full program design needs to be presented to the SVCE Board for approval. This program, if approved, will be conducted in partnership with SVCE's thirteen member agencies: Milpitas, Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, Mountain View, Saratoga, Sunnyvale and unincorporated Santa Clara County.

	<u>Fiscal Impact:</u> None. There is no direct cost to the City to authorize a letter supporting Silicon Valley Clean Energy's proposal in response to the 2018 Climate Protection Grant Program. <u>Recommendation:</u> Move to authorize a letter from the City Manager to Bay Area Air Quality Management District supporting Silicon Valley Clean Energy's proposal in response to the 2018 Climate Protection Grant Program. <u>Attachments:</u> a) BAAQMD Grant Support Letter b) SVCE Letter of Interest for BAAQMD 2018 Climate Protection Grant Program
7.	Adopt a Resolution Specifying the Capital Improvement Program 2018-19 Budget for the Street Resurfacing Project 2019 to Incorporate a List of Projects Funded by SB 1: The Road Repair and Accountability Act (Staff Contacts: Steve Erickson, 408-586-3301 and Steve Chan, 408-586-3324) <u>Background:</u> Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the state legislature and signed into law by the Governor in April 2017 in order to address significant multi-modal transportation funding shortfalls statewide. SB 1 is anticipated to generate approximately \$1.5 billion annually in Road Maintenance and Rehabilitation Account (RMRA) funding. The distribution of RMRA funds to local jurisdictions for road maintenance is based on population. The City of Milpitas is anticipated to receive an estimated \$450,000 of RMRA funding in fiscal year 2018-19. On April 18, 2017, the City Council adopted the 2017-2022 5-year Capital Improvement Program that includes the Street Resurfacing Project 2019. Staff recommends using the anticipated 2018-19 SB 1 (RMRA) funds for this project. To be eligible for the funding, the adoption of a resolution is required to specify that SB 1 (RMRA) funding will exclusively be used for the Street Resurfacing Project 2019 project. The Street Resurfacing 2019 project will provide roadway rehabilitation of McCarthy Boulevard from northern city limit to Tasman Drive, Murphy Ranch Road, Sandisk Drive and Technology Drive, and the estimated useful life of these improvements is between 10 to 15 years. Project construction is scheduled for the summer/fall of 2019. <u>California Environmental Quality Act:</u> The project is categorically exempt under Section 15301 of the California Environmental Quality Act guidelines for maintenance of existing facilities. <u>Alternative:</u> If this resolution is not adopted by City Council, the City would not be eligible for FY 2018-19 RMRA funds. <u>Fiscal Impact:</u> The Street Resurfacing 2018-19 Project has an estimated cost of \$4.6 million and the use of SB 1 funding received will offset other City funding sources for this project. <u>Recommendation:</u> Adopt a resolution specifying the Capital Improvement Program 2018-19 budget for the Street Resurfacing Project 2019 to incorporate a list of projects funded by SB1: The Road Repair and Accountability Act. <u>Attachment:</u> Resolution
8.	Adopt a Resolution Implementing a Wage Theft Procurement Policy (Staff Contact: Edesa Bitbadal, 408-586-3052)

Background: Wage theft is the denial of wages or employee benefits that are rightfully owed to an employee. Wage theft can be failure to pay overtime, minimum wage violations, employee misclassification, illegal deductions in pay, working off the clock, or not being paid at all. The proposed policy 1) requires potential contractors to disclose prior wage theft court orders or final administrative actions during the contract solicitation process; 2) requires City contractors to disclose wage theft court orders or final administrative actions during the term of the contract; 3) requires City contractors and subcontractors to comply with all wage and hour laws.

Wage Theft policies could have a significant impact on workers who are struggling to collect on owed wages and benefits. The state agency responsible for enforcing state labor laws is the Division of Labor Standards Enforcement lead by the Labor Commissioner. The most common recourse for employees who have suffered wage theft is to file a claim with the Labor Commissioner's Office. Even when an employee is awarded a judgment it can be very difficult for them to collect. The Santa Clara County Wage Theft Coalition reported only one third of owed wages were ever paid to workers from 2012 to 2013.

Milpitas City Council adopted wage theft ordinance for all employers in the City on March 20, 2018. The ordinance gives the City authority to revoke or suspend the business license of any employer who refuses to pay its workers when found by a local, state or federal agency in violations of wage or hour laws. Without a business license an employer would effectively not be able to operate in Milpitas.

City Council also directed staff to draft a wage theft procurement policy. The cities of San Jose, Morgan Hill and the County of Santa Clara have also all adopted procurement policies to ensure that they do not enter into agreements with companies that do not treat their employees fairly. By adopting the recommended resolution and procurement policy, the City of Milpitas would adopt a similar policy supporting workers' rights across Santa Clara County.

Outreach: Milpitas staff met with the Santa Clara County Wage Theft Coalition to discuss policy options for the City. Policies discussed with the Santa Clara County Wage Theft Coalition were a) the revocation of business licenses as penalty for any business found in violation of federal, state, and/or local wage and hour laws and b) a policy preventing the City from contracting with any business that has an outstanding unpaid wage judgment or final administrative order for procurement of goods and services.

The topic of wage theft, including the recommended ordinance and procurement policy, was presented to the City's Economic Development Commission. Commissioners voted 7 – 1 to recommend to the City Council to direct staff to draft a wage theft ordinance and procurement policy. Staff also presented both the ordinance and the procurement policy to the Milpitas Chamber of Commerce Board of Directors on Thursday, February 1, 2018.

Procurement Policy: Staff has drafted a resolution adopting a Wage Theft Procurement Policy. Similar policies have been adopted by the Cities of San Jose and Morgan Hill, and County of Santa Clara for all government contracts.

The policy has two parts, mandatory disclosure and potential action by the City in the case that a contractor, or subcontractor, has failed to disclose a final wage theft judgment. These policies were developed in collaboration with the City's Finance, Engineering and Public Works Departments.

Mandatory Disclosure: Potential contractors, subcontractors, consultants or businesses entering into an agreement with the City to provide goods or services are required to

	disclose prior wage theft court orders or final administrative actions for the past five years during the contract solicitation process. • The City shall disqualify a potential contractor based on the disclosed violation, if the potential contractor has one or more <u>unpaid</u> wage theft judgments. • Additionally, City contractors are required to disclose wage theft court orders or final administrative actions that occur during the term of the contract. • Failure to disclose a final judgement may also disqualify a businesses Grounds for Termination: If any business in contract with the City, or any subcontractor it employs, has been found in violation of any wage and hour law, the City has the discretion to terminate the agreement with the contractor. This must be a final unpaid wage theft judgement. Similar provisions are in the procurement policies adopted by the Cities of San Jose and Morgan Hill, and the County of Santa Clara. If the Wage Theft Procurement Policy is adopted by the City Council, wage theft prevention language would be added by the City Attorney to new agreements. Exemptions: These exemptions allow the City flexibility so that the everyday operations of the City are not disrupted and agreements don not conflict with other state regulations such as the Public Works Code. • Small purchases (\$5000 or less) which do not require a purchase order or other formal City contract • Piggyback or cooperative procurement where the pricing and terms have been previously established by another public agency, regardless of whether the City is a named party to the agreement • Anything that could cause the agreement to conflict with federal or state law including Public Contract Code is exempt Fiscal Impact: The primary fiscal impact is staff time to enforce the policy and conduct outreach. Recommendation: Adopt a resolution implementing a Wage Theft Procurement Policy for the City of Milpitas. Attachment: Resolution with Policy as Exhibit
9.	Award a Bid to Nor-Cal Battery Company and Authorize the City Manager to Execute a Contract with NorCal to Provide UPS and Battery Maintenance and Replacement Services at Various City of Milpitas Locations with a Five-Year Contract in an Amount Not to Exceed \$80,350.10 (Staff Contacts: Chris Schroeder, 408-586-3161 and James Levers, 408-586-2648) Background: On March 23, 2018, the City of Milpitas issued an Invitation to Bid (IFB) No. 2221 “UPS and Battery Maintenance and Replacement” for the City’s three UPS systems. A total of 206 companies received notification through Public Purchase, the City’s eProcurement website of the solicitation and 37 companies downloaded the bid documents. Two qualified bids were received to provide the specified services by the published closing date of April 19, 2018. Nor-Cal Battery Company (NCBC) was selected as the lowest cost, responsive and responsible bidder. NCBC will provide UPS Maintenance and Battery replacement services at various City of Milpitas locations beginning on June 1, 2018 when the current contract expires. The City’s agreement with NCBC is for five years. Maintenance services will cost \$7,965 in year one of the agreement and may increase based on the Bay Area Consumer Price Index (CPI). Assuming a three percent annual CPI increase, years two through five of the maintenance

	portion of the contract would be \$34,322.27. Additionally, replacement of all the batteries is expected to occur in year three of the agreement and is currently estimated to cost \$30,758.28. A 10% contingency amount of \$7,304.56 is also included to cover unforeseen repairs and unscheduled battery replacement. The total five-year cost of the contract is estimated to be \$80,350.10. <u>Fiscal Impact:</u> Up to \$80,350.10 for the five-year agreement. Funding for the services is available in the Public Works operating budget for FY 2017-18. <u>Recommendation:</u> Award the bid to NorCal Battery Company and authorize the City Manager to execute a contract with Nor-Cal to provide UPS and Battery Maintenance and Replacement services at various locations throughout the City. <u>Attachment:</u> Contract with NorCal Battery Co.
10.	Award a Bid to Lucity Inc. and Authorize the City Manager to Execute a Contract for Purchase and Installation of a Computerized Maintenance Management System for Public Works for the Initial Purchase Price of \$155,150 and Total Five Year Amount Not to Exceed \$236,142.47 (Staff Contacts: Chris Schroeder, 408-586- 3161 and Tony Ndah, 408-712-7812) <u>Background:</u> The City’s current Computerized Maintenance Management System with Maintenance Connection is outdated and not capable of meeting the current needs of the Public Works Department. On February 28, 2018, the City’s Purchasing Agent issued Request for Proposal (RFP) #2228 – Computerized Maintenance Management System and solicited proposals from prospective vendors on Public Purchase, the City’s electronic procurement website. 415 vendors were notified of the the RFP, 64 vendors downloaded the RFP documents and six vendors submitted proposals of which one was rejected for failure to meet the minimum RFP requirements. Five remaining proposals were evaluated by a team comprised of the Public Works Director, two Public Works Managers and one Information Services System Administrator. Of those five proposals, Lucity, Inc. submitted the highest scoring proposal and offered the most advantageous proposal after consideration of all evaluation criteria. The initial purchase and installation price of the Lucity, Inc. system is \$155,150 and Maintenance and Support costs for years two through five are as follows: Year 2: \$13,900. Year 3: \$14,247.50, Year 4: \$14,603.69, and Year 5: \$14,968.78. A 15% contingency for any unforeseen issues that may arise during installation has been added of \$23,272.50 for a total five year not-to-exceed amount of \$236,142.47. The agreement is for one year with four 1-year options to renew at the preset prices listed. The new maintenance management system will handle all aspects of Public Works Maintenance Management including, but not limited to: Fleet, Parks, Water, Sewer, Facilities, Storm Water, Streets, Pavement and Traffic assets. <u>Fiscal Impact:</u> None. Funds for this contract are available from the Public Works CIP No. 7134 (Water O&M Database Management) and the Public Works operating budget beginning in Fiscal Year 2017-18. <u>Recommendations:</u> 1. Award the bid to Lucity Inc. and authorize the City Manager to execute an contract with Lucity for purchase and installation of a computerized maintenance management system for Public Works for the initial purchase price of \$155,150 and a total five year amount not-to-exceed \$236,142.47.

	2. Authorize the Purchasing Agent to extend the term of the contract annually for each of the four option years with price increases per the terms of the contract and without further City Council action, except for appropriation of funds. 3. Allow the City Attorney to negotiate, as necessary, final terms and conditions of the agreement. Attachment: Contract with Lucity, Inc.
11.	Approve and Authorize the City Manager to Execute an Agreement with Moore, Iacofano & Goltsman (“MIG”) for the Milpitas Midtown Specific Plan Update, Capital Improvement Project No. 3437 (Staff Contacts: Brad Misner, 408-586-3273 and Jessica Garner, 408-586-3284) Background: The project to update the Midtown Specific Plan, Project No. 3437 is in the approved 2018-2023 Capital Improvement Program. Located in the center of the City, Midtown is approximately 589 acres with commercial, residential, institutional uses and parks and open spaces. The original Specific Plan was adopted in 2002 with a subsequent update in 2010. The update of the Plan will re-engage the public in the discussion as to the goals and values of the area to the overall development of the City, provide clearer and more modern planning rules to assist in the development of private property, and provide a tool for economic development in the City. The plan development for this project is currently funded at \$260,000 as shown in the 2018-2023 Capital Improvement Program. Through the City’s consultant selection process, Moore, Iacofano & Goltsman (MIG) is recommended to provide the Plan design and development support services for completion of this project. Staff negotiated a scope and fee for these services not to exceed \$250,000 which is considered reasonable for the work. Fiscal Impact: Funding for the Midtown Specific Plan update has been approved in the FY 2018-2023 Capital Improvement Program. Recommendation: Approve and authorize the City Manager to execute an agreement with Moore, Iacofano & Goltsman known as MIG in the amount of \$250,000 for the MidTown Specific Plan Update, Project No. 3437, subject to approval as to form by the City Attorney and Director of Finance. Attachment: Agreement with MIG
12.	Approve and Authorize the City Manager to Execute Amendment No. 1 to the Agreement with Biggs Cardosa Associates, Inc. to Increase Compensation in the Additional Amount of \$38,008 for the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 (Staff Contact: Steve Erickson, 408-586-3301) Background: The Lower Penitencia Creek Pedestrian Bridge, Project No. 2005, is included in the FY 2017-2022 Capital Improvement Program. This project provides for design and construction of a pedestrian bridge over the Penitencia Creek East Channel near McCandless Drive. The new pedestrian bridge will connect the Harmony residential housing project and a multi-use levee trail along Penitencia Creek. The bridge will also provide access to McCandless Park and Mabel Mattos School which is under construction. On June 20, 2017, the City entered into a design services agreement with Biggs Cardosa and Associates in the amount of \$249,650 to prepare design plans and specifications for the project and to assist City staff during the project bid and construction phases. The scope of the original project has now expanded due to complexity with adjacent projects and to provide coordination between the McCandless Park, Well Project, PG&E and the Santa

	Clara Valley Water District (SCVWD). Additional design concept plans are required to assist in SCVWD permitting and for coordination with the other projects. Staff has negotiated a scope of work and fee for the additional design and project coordination services not to exceed \$38,008, which is considered reasonable for the work involved. Staff recommends the City Council approve Amendment No. 1 to the Agreement with Biggs Cardosa Associates to perform these additional services. Approval of this amendment brings the total agreement amount to \$287,658. <u>Alternate:</u> Not proceeding with this work will result in a delay to the park design development because of the improvements needed to accommodate the pedestrian bridge landing at the northeast corner of the park site. <u>California Environmental Quality Act:</u> An Initial Study to support an Addendum to the Transit Area Specific Plan Environmental Impact Report will be prepared for the Penitencia Creek Pedestrian Bridge Project. <u>Fiscal Impact:</u> None. Sufficient funds are available in the project budget for this amendment. <u>Recommendation:</u> Approve and authorize the City Manager to execute Amendment No. 1 to the Agreement with Biggs Cardosa Associates, Inc. for Project No. 2005, and increase the amount of the agreement by \$38,008. <u>Attachment:</u> Amendment No. 1 to Agreement with Biggs Cardosa
13.	Approve and Authorize the City Manager to Execute Amendment No. 1 to the Agreement with IBI Group Architecture Planning to Extend the Term and Increase Compensation in the Additional Amount of \$163,057 for McCandless Park, Project No. 5102 (Staff Contact: Steve Erickson, 408-586-3301) <u>Background:</u> Design and construction of McCandless Park, Project No. 5102 is in the approved 2017-2022 Capital Improvement Program. This project provides for a new City owned public park adjacent to the new Mabel Mattos Elementary School under construction adjacent on McCandless Drive. The 4-acre park will include joint-use areas benefitting the elementary school and will include a sports field, picnic area, play structure, walking trail, restrooms, and a pedestrian bridge over Penitencia Creek connecting the park to the Harmony residential project. On February 21, 2017, the City entered into a design services agreement with IBI Group Architecture Planning in the amount of \$544,994 to prepare plans and specifications for the design and construction of the park including providing assistance to City staff during the project bid and construction phases. The complexity and coordination of the park project has exceeded the original scope of work for the architect due to the inclusion of the pedestrian bridge and municipal well within the park. The School-city joint-use park areas are also required to be reviewed and approved by the Division of the State Architect. The added complexity requires additional project coordination and design services with the well and bridge projects. Staff negotiated a scope of work and fee for the additional design services not to exceed \$163,057, which is considered reasonable for the work involved. Staff recommends the City Council approve Amendment No. 1 to the Agreement with IBI Group Architecture Planning to perform these additional services. Approval of this amendment brings the total agreement amount to \$708,051. The term of the agreement is extended to December 31, 2020 to provide additional time to complete these services.

	<u>Alternate:</u> Not proceeding with this work will result in not moving forward with the design and construction of the project. <u>California Environmental Quality Act:</u> The project is a mitigation measure to reduce impacts from the Milpitas Transit Area Specific Plan and is noted in the Plan's Environmental Impact Report prepared for the City as the lead agency and in accordance with California Environment Quality Act. <u>Fiscal Impact:</u> None. Sufficient funds are available in the project budget for this amendment. <u>Recommendation:</u> Approve and authorize the City Manager to execute Amendment No. 1 to the agreement with IBI Group Architecture Planning for McCandless Park, Project No. 5102, extending the term and increasing the amount of the agreement by \$163,057. <u>Attachment:</u> Amendment No. 1 to Agreement with IBI
14.	Approve Professional Services Agreement with David J. Powers & Associates to Provide Environmental Clearance Documents for Compliance with the California Environmental Quality Act for the Well Upgrade - McCandless Well, Project No. 7076 and Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 (Staff Contact: Steve Erickson, 408-586-3301) <u>Background:</u> The Well Upgrade, Project No. 7076 (McCandless Well) and the Lower Penitencia Creek Pedestrian Bridge Project, Project No. 2005 are in the approved 2017-2022 Capital Improvement Program. The McCandless Well project provides for the design and construction of a new potable water well within McCandless Park to provide an everyday source of water supply serving the Transit Area Specific Plan (TASP) area. The Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 provides for the design and installation of a pedestrian bridge structure spanning the creek. The bridge will provide a connection from the Harmony residential subdivision into the McCandless Park. The California Environmental Quality Act (CEQA) requires that an environmental review of a project's impact to the environment be completed during the design of the project. Through the City's consultant selection process, David J. Powers & Associates has been selected to provide the project CEQA review and clearance services for the McCandless Well and the pedestrian bridge projects. Staff has negotiated a scope and fee for these services not to exceed \$68,843, which is considered reasonable for the work. <u>Alternate:</u> Not proceeding with this work will result in not moving forward with the construction of the McCandless Well and pedestrian bridge projects. <u>California Environmental Quality Act:</u> An Initial Study to support an Addendum to the Transit Area Specific Plan Environmental Impact Report (TASP EIR) will be prepared through the approval and authorization of this agreement. <u>Fiscal Impact:</u> None. Sufficient funds are available in the project budget. <u>Recommendation:</u> Approve and authorize the City Manager to execute an agreement with David J. Powers & Associate in the amount of \$68,843 for the Well Upgrade, Project No. 7076 (McCandless Well) and the Lower Penitencia Creek Pedestrian Bridge Project No. 2005. <u>Attachment:</u> Agreement with David J. Powers

15.	Reject All Bids, Authorize Staff to Repackage, Re-advertise and Authorize the City Manager to Approve Amendment No. 3 to the Agreement with HMM, 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 February 6, 2018, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for the Midtown Street Light Project No. 3430. The Engineer's Estimate for the project is \$1,500,000. The project was advertised in The Milpitas Post newspaper and three sealed bids were received on March 15, 2018. All bids are significantly above the Engineer's Estimate and project budget. The bid pricing ranged from \$1,982,581.68 to \$2,745,977.50, approximately 32% to 83% above the Engineer's Estimate. The lowest responsible bid was submitted by Daleo, Inc. in the amount of \$1,982,581.68, and its bid contained a bid irregularity where the subtotal was incorrect. There was an arithmetical error in calculating the total amount of the bid and the result of the error changes Daleo's bid to \$1,982,581.54, but the error does not change the ranking. Staff recommends that the City Council reject all bids due to high bid prices and to authorize staff to modify, re-package, and re-advertise the project plans and specifications for new bids at a later date. Changes to the design based upon bidder input can help reduce future bid pricing. Additional contract services are recommended to allow HMM, Inc. to revise the project design, to assist staff with re-packaging and re-advertising of the project, and to include a \$10,000 time & materials based design contingency budget for unforeseen conditions during construction such as utility conflicts and, unstable subsurface conditions. Staff negotiated a scope and fee for these services not to exceed \$24,900, which is considered reasonable for the work. Approval of this agreement amendment brings the total agreement amount to \$369,700. Alternative: A denial of this request would result in not moving forward with this project. California Environmental Quality Act: The project is exempt under Section 15301 (Existing Facilities) of the CEQA Guidelines. Fiscal Impact: None. There are not sufficient funds available in the project budget. Recommendations: 1) Reject all bids, and authorize staff to repackage and re-advertise the project for Midtown Street Light Project No. 3430 bids. 2) Authorize the City Manager to approve Amendment No. 3 to the Consulting Services Agreement with HMM, Inc. in the amount of \$24,900.00, for the Midtown Street Light and Utility Underground 2017, Projects No. 3430 and No. 3425. Attachments: a) Amendment No. 3 to Agreement with HMM, Inc. b) Bid Proposals c) Plan Title Sheet
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XII. PUBLIC HEARING The following items No. 16 - 21 scheduled for discussion

- 16. Conduct a Public Hearing and Adopt a Resolution Approving a Site Development Permit, Conditional Use Permit, Planned Unit Development Amendment and**

**Environmental Assessment for a 150-room Hotel Project at 1301 California Circle,
Pursuant to CEQA Guideline 15074 (Staff Contact: Michael Fossati, 408-586-3274)**

Background: On July 15, 2016, the City received an application for a Site Development Permit, Conditional Use Permit, Planned Unit Development Amendment, and a Tentative Parcel Map for the following activities: the applicant proposes to subdivide a 6.34-acre site into two lots, a 3.35 acre (Parcel 1) and 2.99 acre (Parcel 2) lot and construct a 150-room, five-story hotel with various site improvements on Parcel 1, all within an Industrial Park zoning district and a Planned Unit Development area, known as PUD 31. The applicant has requested exceptions (via a Conditional Use Permit) from development standards for Floor Area Ratio (FAR), Height, and the ability to sell alcohol. In summary, the Conditional Use Permit would allow the applicant to operate a hotel facility, build a hotel with an FAR of 0.71 and a height of 67 feet, and allow the sale of packaged beer and wine from a small market within the hotel. Lastly, the applicant had requested a PUD amendment to remove the requirement that all buildings were to be constructed at either 45 feet in height and/or three stories in size. Due to the PUD amendment, the project requires review and approval from the City Council. Details of the project can be found in the Planning Commission Staff Report 4/11/18 (in agenda packet).

Staff determined the application is consistent with the General Plan policies and development standards within the City of Milpitas Zoning Ordinance, and recommended approval. On 4/11/2018, the Planning Commission (6-0-1) adopted Resolution 18-001, recommending the City Council approve the Site Development Permit (SD16-0003), Conditional Use Permit (UP16-0018), Planned Unit Development (PA18-0001), Tentative Parcel Map (TP16-0002), and Environmental Assessment (EA17-0004).

Planning staff recommends the City Council uphold the Planning Commission's recommendation to approve the Site Development Permit, Conditional Use Permit, Planned Unit Development Amendment, Tentative Parcel Map and Environmental Assessment. By amending the PUD, the underlying zoning district will dictate the allowable height and number of stories. Per the Industrial Park zoning district, any new building over 35 feet or three stories would require review and approval from the Planning Commission. If an entitlement associated with a new building requires City Council review, then it would be the City Council that would review and approve the new building height.

California Environmental Quality Act: An Initial Study and Mitigated Negative Declaration (IS/MND) was prepared per California Environmental Quality Act (CEQA). The IS/MND was available for public review from 1/29/18 through 2/27/2018. The IS/MND is available for public inspection at the City of Milpitas – Planning Department, 455 E. Calaveras Blvd., Milpitas, CA 95035 (and copy in Council's agenda packet).

Fiscal Impact: If approved, the Transient Occupancy Taxes generated from this project to be paid to the City range from \$700,000 to \$800,000 annually, per Economic Development statistics.

Recommendations:

1. Conduct a public hearing, take public comments, and move to close the public hearing.
2. Adopt a resolution approving the Site Development Permit (SD16-0003), Conditional Use Permit (UP16-0018), Planned Unit Development Amendment (PA18-0001), Tentative Parcel Map (TP16-0002), and Environmental Assessment (EA17-0004) approving the subdivision of a 6.34 acre site into two parcels, and the construction of a 150-room, 62' 5" tall hotel at 1301 California Circle.

Attachments:

- a) City Council Resolution
- b) Planning Commission Staff Report 4/11/2018

- c) Initial Study/Mitigated Negative Declaration for Hilton Home2Suites
- d) Project Plans

XIII. UNFINISHED BUSINESS

17. **Receive Update on the FY 2018-19 Proposed Operating Budget and 2018-2023 Proposed Capital Improvement Program (Staff Contact: Will Fuentes, 408-586-3111)**

Background: In a study session on April 10, 2018, the draft Fiscal Year 2018-19 Proposed Operating Budget was presented to the City Council. Staff also presented key changes to the 2018-2023 Proposed Capital Improvement Program (CIP) since first presented to Council at a March 7 meeting. Comments and further direction received on April 10 were very helpful in guiding staff towards the completion of the annual operating budget and CIP. As a result of direction received on April 10, staff made several changes to the Proposed Operating Budget and CIP. These changes are detailed below and staff requests Council confirmation of direction before finalizing both documents to be considered for adoption at the scheduled May 10 public hearing.

FY 2018-19 Proposed Operating Budget Changes

At the April 10 budget study session, staff presented Council with a projected FY 2018-19 General Fund operating surplus of \$681,000, which could be used to fund other requests, either from staff or the Council, or remain unallocated. Through a prioritization and voting exercise, Council identified seven additional proposals to fund which were not in the draft FY 2018-19 Proposed Operating Budget. These proposals are summarized here (and described in list included in the agenda packet):

Rank	Requested Change	FY 2018-19 Cost
1	ADD Teen Center Program*	\$92,000
2	ADD Community Outreach Administrator REMOVE Assistant to the City Manager	265,000 (265,000)
3	ADD Park Fee Subsidy	12,000
4	ADD Additional General Fund (GF) Reserves	0
5	ADD Classification and Compensation Study	472,000
T6	ADD Youth Job Program*	75,000
T6	ADD Senior Shuttle Service	30,000
TOTAL		\$681,000

In addition to the Council requested operating budget changes presented above, staff also heard Council's desire to increase frontline safety personnel serving the community. As such, staff is currently preparing an application to the Federal Emergency Management Agency (FEMA) for funding through the Staffing for Adequate Fire and Emergency Response (SAFER) program. This grant funding could be used to hire additional line (operational) firefighters. The City is applying for SAFER funding for four new firefighting positions to meet the needs as a result of anticipated development growth. The SAFER grant will pay for the salary and benefits for newly hired firefighters at a rate of 75% of actual costs in the first two years and 35% of actual costs in the third year. The City is responsible for 100% of the costs after the third year, but is not required to maintain the positions after the third year as a condition of receiving SAFER grant funding. The City's cost share would be approximately \$200,000 in the first and second years and \$550,000 in the third year and thereafter; subject to change after final cost analysis. City costs could be offset by a potential reduction in overtime expenses as well as partial funding of a new Fire Battalion Chief already being included in the FY 2018-19 Proposed Operating Budget.

Thus, staff will remove the new additional Fire Battalion Chief that was being requested in the FY 2018-19 Proposed Operating Budget since a large portion of it could be funded by the SAFER grant. Once grant determinations have been made, staff will present a request to modify the FY 2018-19 Operating Budget based on the results of those determinations and the City's required cost share. The grant application is due to FEMA by April 27, 2018 and awards are anticipated to be made between July and October 2018. If the City is not awarded a SAFER grant, staff would still recommend that City Council approve the new additional Fire Battalion Chief in FY 2018-19, but not until after grant determinations have been made.

Once confirmed by Council, changes detailed above will be incorporated into the FY 2018-19 Proposed Operating Budget to be considered for adoption at the May 10 public hearing.

2018-2023 Proposed Capital Improvement Program (CIP) Changes

At the April 10 study session, staff reviewed a summary of the Council directed CIP project changes for incorporation into the final document to be considered for adoption at the May 10 public hearing.

With regard to the new Sports Center Fields and Restroom/Snack Shack Renovation project, staff understands the urgency to move forward with the restroom building renovation. To that end, staff added the renovation of the restroom/snack shack building to the Skate Park project, currently under design. This will allow for renovation of the building to be concurrent with construction of the skate park and to be completed at approximately the same time.

The anticipated schedule for both the skate park and the restroom/snack shack building is:

- | | |
|---------------------------------------|-----------------------|
| • Design, CEQA, Permits, Dept. Health | Late 2018/Spring 2019 |
| • Construction Start | Summer 2019 |
| • Estimated Completion | Summer/Fall 2020 |

From the draft CIP, also eliminated was Project No. 5107 Mains Street/Library Park, while adding into the CIP the funding for new Carlo Street Park project as well as adding a new project, MidTown Parks. These changes are funded from Midtown Parks fund from the closed Project No. 5107.

Once confirmed, the CIP document to be presented to the City Council for consideration and approval on May 10 will include the changes discussed during the April 10 budget study session. In addition, the change to combine the restroom/snack shack building with the Sports Center Skate Park, Project No. 5111, will be included along with additional funding for the building in FY 2018-19. These changes can be funded by current resources.

Additional Staff Recommended General Fund Reserves

At the April 10 budget study session, staff recommended several additional General Fund reserves based on best practices and to increase long-term fiscal sustainability in Milpitas. Staff further recommended that these new reserves be established using the remaining Unassigned General Fund balance of \$10.4 million as of the end of June 30, 2017. Also note that staff is already proposing using \$2.65 million of the \$10.4 million Unassigned General Fund balance to support Council identified CIP projects; thereby leaving a balance of \$7.75 million. Of that \$7.75 million, staff recommends the following new General Fund reserve levels (detailed in Attachment in agenda packet). These are in addition to the 16.67% General Fund Contingency Reserve equaling approximately \$15.0 million as of June 30, 2017 and the CalPERS Stabilization Reserve equaling approximately \$19.0 million as of June 30, 2017.

Description	Recommended Reserve Level for FY 2018-19	Recommended Long-Term Target
Budget Stabilization	\$4,000,000	\$8,300,000
Facilities Replacement	\$2,000,000	\$10,000,000
Technology Replacement	\$1,000,000	\$5,000,000
Artificial Turf Replacement	\$750,000	\$2,000,000
TOTAL	\$7,750,000	\$25,300,000

Once confirmed by Council, reserves detailed above will be incorporated into the FY 2018-19 Proposed Operating Budget to be considered for adoption at the May 10 public hearing.

Updated Five-Year Forecast

Requested General Fund operating appropriations for FY 2018-19 can be fully supported by anticipated revenues in FY 2018-19. Nevertheless, as is standard practice, staff has prepared an updated Five-Year General Fund Forecast to identify potential future issues as a result of current actions. The updated Five-Year Forecast is provided to the City Council (copy in agenda packet).

As the updated Five-Year Forecast shows, the City could experience an approximately \$894,000 operating deficit in FY 2019-20; growing to approximately \$3.5 million at the end of the Five-Year Forecast in FY 2023-24. Such a deficit is to be expected as CalPERS retirement rates increase and other employee benefits such as healthcare outpace the growth in core City revenue sources. Nevertheless, to offset these potential deficits and provide a bridge to future development and/or additional revenue opportunities to be discussed in an accompanying staff report, staff recommends utilizing the City's already established CalPERS Stabilization Reserve and the potential new Budget Stabilization Reserve. Use of these two reserves could sustain City operations over the next five years should projected revenues and expenditures meet expectations. Nevertheless, it is important to note that future year forecasts are not a guarantee of actual results and are built on assumptions that can be positively or negatively impacted by factors outside the City's control.

Here are the assumptions included in the updated Five-Year General Fund Forecast:

- Continued economic growth in FY 2019-20 following by reduced growth in FY 2020-21 and FY 2021-22 due to potential economic downturn.
- Property Tax growth of 3.8% in FY 2019-20, 2.0% in FY 2020-21, 2.0% in FY 2020-21, 3.0% in FY 2022-23, and 3.0% in FY 2023-24.
- Sales Tax growth of 2.1% in FY 2019-20, 2.0% in FY 2020-21, 2.0% in FY 2020-21, 2.0% in FY 2022-23, and 2.0% in FY 2023-24.
- All other revenues, except where better information is known, growing at 3.0% in FY 2019-20, 2.0% in FY 2020-21, 2.0% in FY 2020-21, 2.5% in FY 2022-23, and 3.0% in FY 2023-24.
- One (1) new hotel coming online January 2019, one (1) new hotel coming online July 2019, one (1) new hotel coming online July 2020, and two (2) new hotels coming online July 2021. All hotels are planned and expected to be constructed.
- Average expenditure growth of 3.0% in FY 2019-20, 2.0% in FY 2020-21, 2.0% in FY 2020-21, 2.5% in FY 2022-23, and 3.0% in FY 2023-24.
- Salary growth of 3.0% in FY 2019-20, 3.0% in FY 2020-21, 3.0% in FY 2020-21, 3.0% in FY 2022-23, and 3.0% in FY 2023-24.
- CALPERS retirement cost growth of 11.2% in FY 2019-20, 8.1% in FY 2020-21, 6.8% in FY 2020-21, 0.1% in FY 2022-23, and 2.0% in FY 2023-24 based off CALPERS Actuarial Reports (July 2017).

- Healthcare premium growth of 8.0% in FY 2019-20, 8.0% in FY 2020-21, 8.0% in FY 2020-21, 8.0% in FY 2022-23, and 8.0% in FY 2023-24.

As more current information is received, future assumptions will need to be adjusted and this could again have a positive or negative impact on the City. One such factor that will likely change is retirement rates. CalPERS releases updated actuarial reports in July 2018 and these will further reflect its move to a 7.0% discount rate; requiring member agencies to contribute more in order to sustain the fund. Due to the already established General Fund CalPERS Stabilization Reserve as well as the staff recommend Budget Stabilization Reserve, the City should be well positioned to withstand CalPERS rate increases and an economic downturn. In regards to an economic downturn, staff and leading economists cannot accurately predict when one will occur, but after ten years of sustained growth, a downturn is likely in the near future due to the cyclical nature of the economy. As shown previously, the updated Five-Year Forecast assumes a two-year economic downturn in FY 2021-21 and 2022-22.

While not as accurate as a five-year forecast due to increasing uncertainty as the City ventures further into the future, staff also projected General Fund revenues and expenditures over a ten-year period. The results of this ten-year forecast show an increasing General Fund structural deficit which could equal appropriately \$7.3 million in FY 2028-29. Thus, it is imperative that the City continue to build its reserves when it experiences unexpected operating surpluses and explores other revenue opportunities to ensure long-term fiscal sustainability. Use of established and new reserves can help provide temporary bridge funding, but it is a stop gap measure in-lieu of more sustainable revenue sources necessary to provide expanded services to a growing community and build a strong financial foundation for the City.

Fiscal Impact: None. All fiscal impacts as a result of Council provided direction will be built into the FY 2018-19 Proposed Operating Budget and 2018-2023 Proposed Capital Improvement Program.

Recommendations:

1. Receive update on the FY 2018-19 budget process
2. Provide staff with direction on the FY 2018-19 Proposed Operating Budget
3. Provide staff with direction on the 2018-23 Capital Improvement Program
4. Provide staff with direction on additional General Fund Reserves

Attachments:

- a) Council requested Operating Budget changes
- b) Additional staff recommended reserves in the General Fund
- c) Updated 5-Year General Fund forecast

XIV. REPORT OF OFFICERS

- 18.. **Receive Report of City Council Subcommittee on Cannabis (Council Contacts: Councilmember Nuñez, 408-586-3023 and Councilmember Phan, 408-586-3032)**

Background: The City Council Subcommittee on Cannabis began meeting in February 2017 to review and recommend potential options for cannabis zoning, ordinances, and tax measures for City Council consideration. The subcommittee has reviewed current state laws and buffer zones, received presentations including information on other local jurisdictions that have implemented ordinances, measures, or moratoriums, and has developed comprehensive timelines for the potential implementation of a tax measure, and any zoning and regulatory ordinances.

The report from the Subcommittee will include the current work to date, community outreach plans and draft timelines overview.

Recommendation: Receive report of the Council Subcommittee on Cannabis.

Attachment: None

XV. NEW BUSINESS

19. Receive Report on Potential November 6, 2018 Ballot Measures (Staff Contacts: Will Fuentes, 408-586-3111 and Edesa Bitbadal, 408-586-3052)

Background: As is discussed in a related report regarding the FY 2018-19 Proposed Operating Budget and 2018-2023 Proposed Capital Improvement Program (CIP), the City could experience an approximately \$894,000 operating deficit in FY 2019-20.

Additionally, this structural deficit could grow to approximately \$3.5 million at the end of the Five-Year Forecast in FY 2023-24 and \$7.3 million at the end of the Ten-Year Forecast in FY 2028-29. Such a potential deficit can be mitigated in the short-term by the use of established and newly proposed General Fund reserves. Nevertheless, this is a temporary stop gap measure in-lieu of more sustainable revenue sources necessary to provide expanded services to a growing community and build a strong financial foundation for the City. Thus, staff recommends beginning discussions about several potential ballot measures, some financial and some non-financial, which could go before Milpitas voters at the November 6, 2018 election. These measures are described below and staff has contracted with the experienced firm of FM3 to perform public opinion polling (starting in May 2018) if the Council chooses to move forward with any or all measures discussed below or any other measures that the Council chooses to consider.

REVENUE GENERATING MEASURES

Potential Transient Occupancy Tax (TOT) Increase

The City of Milpitas Transient Occupancy Tax (TOT) rate is currently 10.0%. TOT is a common tax throughout California and the country and is assessed on guests who stay in hotels, motels, and other short-term lodgings, with exceptions for stays over 30 days and federal, state, and foreign government employees. TOT revenues earned by the City help to support critical services, such as police, fire, parks and streets. Although the City's current TOT rate is at 10%, only 8% of the TOT rate goes into the General Fund while the other 2% is earmarked to support street resurfacing, performing arts and extra library hours. The special 2% TOT funds were passed by the voters in 2001 through Measure I.

Currently there are 19 hotels with 2,692 rooms within the City. Staff is projecting for FY 2018-19, the City will receive approximately \$12.8 million in total TOT revenues, of which \$10.2 million is earmarked to the General Fund and approximately \$2.6 million is earmarked for Measure I Fund.

In addition, plans are currently in place to open six (6) new hotels within the next five years, of which one of the new hotels is the mega-brand and world-famous Virgin Hotel. By FY 2023-24, staff anticipates that the City's TOT revenue will increase by \$5.3 million, of which \$4.3 million would be earmarked for the General Fund and \$1.0 million would be earmarked for the Measure I Fund. Some of the increase is due to expected price growth for current hotels. However, the vast majority of it will be due to the addition of 1,000 new hotel rooms to the current inventory; thereby bringing the room total to 3,692 by FY 2023-24. Additional hotel rooms are a 37% increase for the City, which directly supports our high-tech and advanced manufacturing companies to serve their business travelers.

If the City chose to raise its TOT rate, revenues received in FY 2018-19 and in FY 2023-24 (the end of the City's Five-Year Forecast period) could be as follows. Note that unless specified in a potential ballot measure, the Measure I rate would stay at 2% and the General Fund would receive the full benefit of any TOT rate increase.

Projected Revenue (\$ in millions)

	Current 10%	12%	Additional Revenue	14%	Additional Revenue
FY 2018-19 TOTAL	\$12.8	\$15.4	\$2.6	\$17.9	\$5.1
General Fund	10.2	12.8	2.6	15.3	5.1
Measure I Fund	2.6	2.6	0.0	2.6	0.0
FY 2023-24 TOTAL	\$18.1	\$21.7	\$3.6	\$25.3	\$7.2
General Fund	14.5	18.1	3.6	21.7	7.2
Measure I Fund	3.6	3.6	0.0	3.6	0.0

As the table shows, TOT revenue in FY 2023-24 could equal approximately \$18.1 million when adding an additional 1,000 new hotel rooms at the current 10% TOT rate. While an increase of 12% for the same amount of new rooms could increase the City's revenues to \$21.7 million. However, an increase to a TOT rate of 14% could increase City revenues to \$25.3 million.

Transient occupancy tax rates in Santa Clara County cities all fall between 9.5% and 14%. Six of the 15 cities have higher TOT rates than the City of Milpitas. If Special District Taxes are included, the number jumps to 9 out of 15 cities, making Milpitas' rate of 10% one of the lowest in the County.

Raising TOT would allow the City to capture the potential increase in revenue from the current, planned, in design and under construction hotel rooms in Milpitas. Several other cities in the County are also considering raising their rates including Morgan Hill, Mountain View, Sunnyvale, Los Altos and Palo Alto. A comprehensive list of TOT rates for Cities in Santa Clara County is provided (in the Council's agenda packet) and includes the neighboring City of Fremont in Alameda County.

Since an increase to the Milpitas TOT rate could generate significant ongoing revenues to support expanded services necessary to serve a growing community, staff recommends that Council support at least a 12% TOT rate, with preference towards a 14% TOT rate; contingent on community support and polling data received from FM3. Based on staff's research, Milpitas would remain competitive with either option to increase the TOT rate.

Cannabis Use Tax

In response to the voters and state legislature's approval of Proposition 64, the Adult Use Marijuana Act (AUMA), and SB 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), the City Council formed the Ad Hoc Subcommittee on Cannabis to consider Milpitas' future as relates to cannabis use, sale and manufacture.

Additionally, on January 17, 2017, the City Council adopted Urgency Ordinance No. 291, pursuant to California Government Code Section 65858, establishing a 45 day moratorium on all marijuana uses to the extent allowed by law, in light of the passage of Proposition 64 by California voters. Subsequently, thereafter, Council extended the moratorium by adopting Urgency Ordinance No. 291.1 for 10 months and 15 days for a full year until January 17, 2018. Council then again extended the moratorium by adopting Urgency Ordinance No. 291.2 for 12 months until January 17, 2019. Council may now wish to consider establishing guidelines on cannabis uses and developing appropriate cost recovery

fees, tax structure, a zoning ordinance, and a regulatory ordinance should it decide to allow some or all uses.

As such, staff is currently developing a Request for Proposal (RFP) or a Request for Qualifications (RFQ) process to engage the services of a highly qualified professional firm to provide cannabis-related consulting services which would include drafting of a regulatory ordinance and tax ordinance, fiscal analysis, assisting City staff in its development of a land use ordinance, establishing an initial application cost recovery fee, and conducting public outreach meetings prior to voter and City Council consideration of a cannabis-related ballot measure, zoning ordinance, and regulatory ordinance by November 2018. If Milpitas voters and the City Council passed a cannabis-related ballot measure, zoning ordinance, and regulatory ordinance by the November 2018 election, the selected firm may also manage the application process for approved cannabis-related businesses types, review the applications in a merit based process (if Council preferred this type of process), conduct background investigations if applicable, assist staff in conducting interviews, and provide ongoing training and consultation to staff, as needed.

Once a qualified firm is selected, it will assist City staff in developing accurate cost and revenue projections based on its extensive experience with cannabis-related issues. Staff is not currently able to provide this type of analysis due to lack of knowledge in the appropriate factors that drive costs and revenues associated with regulating cannabis businesses. Additionally, staff and a future consultant cannot prepare accurate analysis until Council provides further direction on which cannabis uses it wishes to allow and how many businesses will be allowed to submit permits for those uses.

Once those factors are known and once an experienced cannabis consultant is secured, a detailed cost and revenue analysis will be provide to Council. In the meantime though, staff requests Council direction in regards to acceptable cannabis uses and whether it would like a cannabis tax placed on the November 2018 ballot. Even if Council decides to delay the decision on acceptable cannabis uses, staff recommends placing a cannabis tax measure on the November 2018 ballot to ensure that the City has taken the necessary steps to implement taxes which would offset the impacts of any potential future allowed uses. If Council wishes to move forward, it must introduce a proposed cannabis tax ordinance by June 19, 2018 and adopt a cannabis tax resolution by August 7, 2018 to comply with ballot measure regulations. Thus, time is very limited and staff requests further Council direction as soon as possible.

Business License Tax Modernization

Similar to other local municipalities in California and throughout the country, the City of Milpitas charges a tax to business wishing to operate within Milpitas. This is called a business license tax and it is for revenue generating purposes only to support crucial City services, with no regulatory component attached. Currently, the City receives a very low amount of approximately \$300,000 annually in business license tax revenue due to two factors: 1) insufficient staffing resources necessary to provide for full business license tax compliance, discovery, and audit, and 2) an antiquated business license tax structured that is too low in rate and hasn't been adjusted since 1976 via Ordinance No. 76.15. The FY 2018-19 Proposed Operating Budget works to address the staffing issue by adding one (1) Customer Services Supervisor to the Finance Department Revenue (Fiscal Services) division. This position will not directly impact business license tax revenue, but will allow other staff the opportunity to better address business license tax compliance, discovery, and audit. Due to an antiquated rate structure though, staff recommends a business license modernization that would fairly charge local businesses and be more competitive with similar sized San Francisco Bay Area cities that receive much more in business license tax annually than Milpitas.

A comparison of business license tax revenue and rate structures for those cities with a population between 50,000 and 100,000 in Santa Clara, San Mateo and San Mateo counties as well is included with the Council's agenda packet. Provided also is a comparison of business license tax models for Santa Clara County cities and City of Fremont. Based on these comparison as well as direct staff experience in other agencies, staff projects that the City could receive up to an additional \$1.3 to \$2.3 million in annual revenue as a result of a business license tax modernization. While staff recommends that Council move forward with a business license tax modernization, that recommendation is contingent on community support and polling data received from FM3. At this time, the City's business license tax rate remains much lower than similar competing cities.

NON-REVENUE GENERATING MEASURES

Mayor's Term of Office and Term Limits (as requested by the Mayor)

Milpitas Municipal Code I-400 Term Limits states: A person may serve a maximum of three consecutive elective terms as either a City Councilmember or as the Mayor. However, if a Councilmember is elected Mayor or the Mayor is elected Councilmember, that person may serve a combined total of no more than four consecutive elective terms. At any municipal election after the expiration of two years following said consecutive elective terms, such former Councilmember or Mayor may again seek election to City Council or as Mayor.

In 1976, the voters in Milpitas approved a ballot measure establishing a directly elected Mayor and imposing a two-year elective term. Pursuant to Government Code Section 34900, at any general municipal election, or at a special election, the City Council may submit to the electors the question of whether the mayor shall serve a two-year or four-year term of office.

Fiscal Impact: None.

If the City Council chooses to move forward with any or all ballot measures, there will be associated costs for consultants and costs payable to Santa Clara County Registrar of Voters to place the measures on the November 6, 2018 ballot. If necessary, staff will return to Council at a later date with a budget amendment to fund these items. Associated costs will be funded within current appropriations, where possible, including in the City Clerk's election line item in the FY 2018-19 budget for ballot measure expense.

Recommendation: Receive a staff report on potential ballot measures and direct staff regarding polling for selected measures consider for the November 6, 2018 election.

Attachments:

- a) Transient Occupancy Tax comparison
- b) Comparison of Business License Tax and rate structures
- c) Comparison of Business License Tax in Santa Clara County + City of Fremont

XVI. ORDINANCE

- 20. Receive Report from Finance Director and Consider Introduction of Ordinance No. 289.2 Amending Chapters 2 and 4 of Title I of the Municipal Code to Relating to Purchasing and City Manager's Contract Authority (Staff Contact: Will Fuentes, 408-586-3111)**

Background: Ordinance No. 289.1, which lowered the City Manager's contract signing authority from \$100,000 to \$50,000, was adopted on November 7, 2017 and became effective December 7, 2017. Previous transparency and internal control concerns that necessitated this change have since been addressed by: 1) monthly reporting of contracts approved under City Manager Contract Authority to the City Council Finance

Subcommittee, and 2) review and approval (if appropriate) of all City contracts by the Director of Financial Services and the City Attorney. Thus, staff recommends returning the City Manager's contract authority back to its previous \$100,000 level to increase operational efficiency and effectiveness. This change is supported by the Director of Financial Services. Monthly reporting to the Council's Finance Subcommittee along with review and approval by the Director of Financial Services and the City Attorney will continue. For reference, listed is a summary of a survey of all cities in the neighboring counties of Santa Clara, San Mateo and Alameda, performed by the City Finance staff in October 2017:

- Average City Manager Contract Authority of \$59,000 or \$1.23 per capita in San Francisco Bay Area
- Average City Manager Contract Authority of \$63,000 or \$1.21 per capita in Santa Clara County
- Cities of Gilroy, Santa Clara, Sunnyvale, Burlingame, San Mateo, Fremont and Livermore have City Manager Contract Authority level of \$100,000 total
- Cupertino is the highest at \$175,000
- If Milpitas' population of 75,410 is multiplied by average per capita of \$1.23, it would equal a City Manager Contract Authority of \$93,000.

Thus, given the corrective measures implemented to address previous concerns and comparison with other San Francisco Bay Area cities, staff again recommends returning City Manager contract authority level to \$100,000 and revising all applicable sections of the City's Municipal Code to be consistent with this level of authority. Passage of attached Ordinance 298.2 amending Chapter 2 and Chapter 4 of Title I of the Municipal Code relating to Purchasing and Contract Authority would address this recommended change. Any approved change would be effective 30 days after adoption of the ordinance.

Fiscal Impact: None.

Recommendation: Following the reading of the title aloud by the City Attorney of Ordinance No. 298.2, if desired, move to waive first reading beyond the title and introduce Ordinance No. 289.2, which would amend the level of the City Manager Contract Authority to be modified as directed by Council.

Attachment: draft Ordinance No. 289.2 for first reading

XVII. AGREEMENT

- 21. Approve and Authorize the City Manager to Execute Amendment No. 2 to the Agreement with West Yost Associates Extending the Term and Increasing Compensation by \$1,599,045 for the McCandless Well, Project No. 7076 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: The Well Upgrade, Project No. 7076 (McCandless Well project) is in the approved 2017-2022 Capital Improvement Program. The project will provide for the design and construction of a new municipal potable water well located within McCandless Park. The new well will provide an everyday source of supply to the City's potable water system within the Milpitas Transit Area.

On March 7, 2017, the City entered into a consulting services agreement with West Yost Associates to design and install a test well to assess groundwater conditions at the McCandless Well site. Installation of the test well was completed last January. The completed test well confirmed the McCandless Park well site can provide a sufficient source of water, and staff recommends proceeding with the design and construction of the permeant well and water distribution facilities. The permeant well facility will include a pump building, electrical controls, power generation, water treatment, and underground

distribution pipelines to connect the well to the City water system. The design and construction of the project will be coordinated with the design and construction of McCandless Park.

Staff recommends amending the agreement with West Yost Associates to provide for the design of the permanent well facilities including assisting staff during the project bidding and construction phases. Staff negotiated a scope of work and fee for the additional design and project coordination services not to exceed \$1,599,045, which is considered reasonable for the work involved. Approval of Amendment No. 2 brings the total agreement amount to \$2,327,100.

Alternate: Failure to approve the Agreement Amendment and thus not proceeding with this work would result in not moving forward with design and construction of the Well Upgrade - McCandless Well Project.

California Environmental Quality Act: An Initial Study to support an Addendum to the Transit Area Specific Plan Environmental Impact Report (TASP EIR) will be prepared for the project.

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

Recommendation: Approve and authorize the City Manager to execute Amendment No. 2 to the Agreement with West Yost Associates for Project No. 7076, extending the term and increasing the amount of the cost of the agreement by \$1,599,045.

Attachment: Amendment No. 2

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

XIX. ADJOURNMENT

SPECIAL CITY COUNCIL MEETING
THURSDAY, MAY 10, 2018 – BUDGET PUBLIC HEARING

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, MAY 15, 2018