



REGULAR MEETING OF THE MILPITAS CITY COUNCIL AGENDA

TUESDAY, FEBRUARY 2, 2016
455 EAST CALAVERAS BOULEVARD
MILPITAS, CA
6:30 P.M.

SUMMARY OF CONTENTS

I. CALL TO ORDER by the Mayor (6:30 p.m.)

II. ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION

Name of Case: EEOC Charge No. 846-2015-39802

III. CLOSED SESSION ANNOUNCEMENTS: 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 (Councilmember Giordano)

VI. APPROVAL OF COUNCIL MEETING MINUTES – January 19, 2016

VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR – February 2016

VIII. PUBLIC FORUM

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

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

XI. APPROVAL OF AGENDA

XII. CONSENT CALENDAR (Items with asterisks*)

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

XIII. UNFINISHED BUSINESS

- * 1. Receive the Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)**

XIV. REPORT OF MAYOR

- * 2. Consider Mayor's Recommendations for Re-appointments and Appointments to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)

XV. NEW BUSINESS

- 3. Receive Report on Wholesale Water Supply Outlook (Staff Contact: Steven Machida, 408-586-3355)
- 4. Receive Financial Status Report for the Six Months Ended December 31, 2015 (Staff Contact: Russell Morreale, 408-586-3111)
- 5. Approve Mid-Year Budget Appropriations and Changes for the FY 2015-16 Operating and Capital Improvement Program Budget (Staff Contact: Russell Morreale, 408-586-3111)
- * 6. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended December 31, 2015 (Staff Contact: Russell Morreale, 408-586-3111)

XVI. ORDINANCE

- 7. Adopt Interim Urgency Ordinance No. 270.3, Prohibiting Cannabis Dispensaries, Manufacturing, Cultivation, or Delivery of Cannabis in Milpitas (Staff Contact: Christopher Diaz, 408-586-3041)

XVII. RESOLUTION

- * 8. Per the Request from the Santa Clara County Housing Tasking Force, Adopt a Resolution Finding that the Problem of Homelessness Constitutes a Crisis and to Consider Policy Options for Funding Affordable Housing to House the Homeless (Staff Contact: Tim Wong, 408-586-3286)

XVIII. AGREEMENTS

- * 9. Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Disadvantaged Community Americans with Disabilities Act Curb Ramps, Project No. 4282 (Staff Contact: Steve Chan, 408-586-3324)
- *10. Approve the First Amendment to the Purchase and Sale Agreement with Lyon Communities for a Portion of Capitol Avenue Adjacent to The District 1 Development (Staff Contact: Bill Ekern, 408-586-3273)

XIX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, FEBRUARY 19, 2016**

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

Seeking Applications for:

Parks, Recreation, and Cultural Resources Commission
Recycling and Source Reduction Advisory Commission
Telecommunications Commission
Veterans 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 in that facility.

AGENDA REPORTS

XIII. UNFINISHED BUSINESS

- * 1. **Receive the Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)**

Background: From December 7, 2015 through January 6, 2016, the Bay Area Air Quality Management District (BAAQMD) forwarded 117 complaints originating in Milpitas. 62 complaints identified a garbage odor, five complaints identified a sewage odor, 49 complaints did not identify an odor source, and one identified multiple sources. As of the last Council update, the City's odor reporting website has received nine reported complaints.

Recommendation: Receive the update of the odor control report.

XIV. REPORT OF MAYOR

- * 2. **Consider Mayor's Recommendations for Re-appointments and Appointments to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends the following:

Bicycle Pedestrian Advisory Commission:

Appoint current Alternate No. 2 Philip Tuet as Alternate No. 1 to a term that expires in August 2016.

Newly appoint Mrs. Bernel Hallera as Alternate No. 2 to a term that expires in August 2017.

Recycling and Source Reduction Advisory Commission:

Re-appoint Brian Shreve as the representative from the Milpitas Unified School District to a term that will expire in October 2018.

Senior Advisory Commission:

Re-appoint Patrick Yung to a term that will expire in December 2017.

Telecommunications Commission:

Re-appoint Dinesh Gupta, Niranjana Gupta and Hai Tran to terms that will expire in January 2018.

Veterans Commission:

Re-appoint Ed Ackerman, Art Ebright and Allen Thomas to terms that will expire in February 2019.

Copy of Commission application is included in the agenda packet for new appointment.

Recommendation: Receive Mayor's recommendations and approve re-appointments and new appointment to City of Milpitas Commissions.

XV. NEW BUSINESS

- 3. **Receive Report on Wholesale Water Supply Outlook (Staff Contact: Steven Machida, 408-586-3355)**

Background: The City of Milpitas purchases potable water supply from San Francisco Public Utilities Commission (SFPUC) and Santa Clara Valley Water District (SCVWD). Both suppliers have been impacted by aging infrastructure and drought condition. A representative from the SCVWD will provide a verbal update to the Council regarding water supply outlook and

potential impact on wholesale water rates. A representative from the SFPUC will make a presentation at a future City Council meeting.

Recommendation: Receive an oral report on wholesale water supply outlook from staff of the Santa Clara Valley Water District at the City Council meeting.

4. Receive Financial Status Report for the Six Months Ended December 31, 2015 (Staff Contact: Russell Morreale, 408-586-3111)

Background: This mid-year financial report places a focus on the City's major operating funds, including General, Water & Sewer. As of December 31, 2015, the General Fund received approximately \$28.1 million in revenue, including internal service charge transfers in. This amount is \$2.3 million more than revenues received for the same period in FY 2014-15. Primary reasons for the increase include stronger Transient Occupancy Tax (TOT) bolstered by economic development and the upcoming Super Bowl, positive trends to Property Tax collections, and modest growth in interest income given the rise in federal rates. Building permit and plan check revenues increased as well. Based on trends and updated information, some of the major revenue category projections have been revised and are expected to come in at \$1.2 million, or 1.6%, above budget overall. Attachment 1 (in Council agenda packet) displays the revenue trends, both in numeric and graphic format. Major revenue discussions follow below.

TOT is expected to exceed budget by about \$1.2 million or 15% coming off of a prior year growth of 9% this same time of year. Property Tax revenue, including RDA redistributions, is expected to exceed budget by \$1.1 million with continued assessed values growth and new construction impact. Building permit activity, Franchise Fees, Service charges and interest income growth accounts for an additional \$800,000 while Fire permits seems to be trending \$200,000 under budget estimates.

Sales Tax presents an interesting circumstance this year. Estimated on a cash basis, Sales Tax is projected to experience a significant shortfall of \$1.6 million, or 7.5% below budget given unique timing differences. Whereas this time last year Sales Tax trended downward in recognition of slower business-to-business sales, the projected shortfall this year results from the timing of collections of a one-time State of California revenue true-up known as the "Triple Flip." In a nutshell, the original budget anticipated the collection of these funds before, or close to, June 30, 2016 but the state has deferred payments to the 4th quarter of calendar 2016 - well after the year-end period. When adjusting for this timing difference of \$2.8 million, original budget estimates would have been met. As it stands, the true-up revenue will be recognized in FY 2016-17.

The overall City departments' expenditures for the first six months were slightly below budget at about 48.5% in contrast to 47% in the prior year. At mid-year, personnel costs remain within budget overall.

Drilling down further on General Fund expenditures, some departments are moderately leaning over budget as indicated on Attachment 2 (in agenda packet). These include Legal, Fire and Information Systems. Citywide Non-departmental is also running over. These are concisely explained as follows:

- City Attorney (legal division) reflects a combination of both in-house and outside specialty service costs addressing existing litigation. These costs are expected to moderate in the second half of the year.
- Fire Department includes significant up-front leave cash out payment amount that will be mostly offset by non-departmental allocations at year-end. Overtime is also running higher than expected given staffing vacancies and regional mutual aid events that are subject to cost recovery.

- Information Services' budget includes large up front maintenance contracts and hardware purchases causing them to slightly exceed 50% at mid-year.
- Citywide Non-departmental (the division that controls shared cost items) reflects beginning of the year insurance premiums, initial year funding of retiree health costs and claims costs.

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.

The Water Fund is noteworthy as it reflects quite a drop in revenue as compared to budget. This trend was recently noted in the water rate study presented to City Council in late 2015 and has much to do with the impact of drought conditions, conservation and lower water usage. The timing of the water rate adjustment, a necessary deferral given the need to adjust the rate structure, also weighs into the lower revenue collection this year. Coincidentally, the expense side of the Water budget equation reflects a related higher cost of water. As such water revenues are expected to be under budget by \$3.8 million or nearly 17%. As noted in the mid-year budget report this same evening, in response to these trends, staff has proposed the reallocation and reassignment of Water Capital projects to fit these updated revenue patterns and preserve recommended reserve levels. This is being done in anticipation of future rate income streams, bond financing and identified infrastructure projects.

The Sewer fund remains within expected patterns in terms of revenue. That said, future infrastructure costs relative to the regional treatment plant remain a challenge for this enterprise.

Fiscal Impact: None.

Recommendation: Receive financial status report from the Finance Director for the six months that ended on December 31, 2015.

5. **Approve Mid-Year Budget Appropriations and Changes for the FY 2015-16 Operating and Capital Improvement Program Budget (Staff Contact: Russell Morreale, 408-586-3111)**

Background: The City's budget policy requires that any additional appropriations to a department, capital improvement project's budget or re-appropriation of monies from one fund to another must be approved by the City Council. These requests are summarized below and quantified in a prepared schedule (included in the agenda packet).

The requested budget adjustments deemed to be necessary at mid-year include the following budget changes and authorizations which fall into the categories of operations, personnel and capital projects:

Operations:

- 1) Increase budget appropriation in the amount of **\$22,800 within the General Fund Human Resources Department training budget**. This funding will cover the costs of additional training classes to be offered to City employees as coordinated by human resources in the effort to promote staff development. The City currently has employs 358 authorized permanent positions.
- 2) Increase budget appropriation in the amount of **\$100,000 within the Transit Area Specific Plan (TASP) Fund** for payments per the Fifth Amendment to the Master Agreement between the City and Silicon Valley Transit Authority (SCVTA) relating to the Silicon Valley Rapid Transit Program Extension Project, approved by City Council on April 13, 2013. With this budget adjustment, the City will provide \$100,000 toward the final engineering and environmental documentation costs to serve as the required local match under the rules of the One Bay Area Government (OBAG) program. Total grant funds received are estimated at \$840,000. By way of background, the Silicon Valley Rapid Transit

Program Extension Project recommended approach to Curtis Park Mitigation and Acquisition Pedestrian Bridge over the Montague Expressway.

- 3) Increase budget appropriation in the amount of **\$134,400 within the General Fund Public Works Department's Facilities Maintenance Contractual Services budget** to augment the ACCO (ACCO) Engineered Systems contract through FY 2015-16. ACCO performed a survey and inventory of all City facilities heating, ventilation, and air conditioning (HVAC) systems and determined that essential repairs and rehabilitation of HVAC systems are needed. This required repair work was unanticipated during the adoption of the FY 2015-16 budget and is not included in the operations and maintenance element of the ACCO contracted services. This funding will allow Public Works to direct ACCO to begin critical repair and rehabilitation of HVAC systems during FY2015-16. Continued assessment of the HVAC systems by ACCO is anticipated to increase the amount of necessary repairs to be addressed in FY 2016-17.
- 4) Increase budget appropriation in the amount of **\$75,000 (Including contingency) from the Sewer Fund to the Utility Engineering Section** for a sewer rate study. The study is needed to evaluate multiple financing options for Milpitas's share of improvements at the regional wastewater treatment facility. Originally, staff expected to participate in short-term and long-term financing offered by the City of San Jose. That option may not be available and staff recommends evaluating multiple financing options and their impacts on sewer rates. On a related note, **another \$15,000 in fees for financial advisory services** is being requested from the General Fund to begin planning future financing strategies (these dollars may be subject to future bond financing reimbursement).

Personnel/Staffing Authorizations:

- 5) Authorize a Junior Planner position (an existing classification) in the Planning and Neighborhood Services department. No additional funding is needed for the FY 2015-16 operating budget given salary savings from a vacant Senior Planner position. As entry level staffing position, the Junior Planner will support the ongoing and expected future demand for current planning, support the public counter as well as telephone response services. Making this position available at mid-year enables the department to stabilize its permanent staffing immediately and begin a quicker withdrawal of consulting services. Use of a Junior Planner as designated counter staff will improve customer service by having a professional planner available to answer code questions and make numerous determinations as to completeness and appropriateness of projects. For future reference, the total annual salary and benefits of this position is \$140,000.
- 6) Reclassify a Recreation Assistant II position to Recreation Assistant III (an existing classification) in the Recreation department and authorize for funding. This position will handle higher level administrative duties, increased staffing responsibilities and to help ensure the high quality service for rentals and logistical services within Recreation Services. No additional funding is needed for the FY 2015-16 operating budget. The total annual salary and benefits for the Recreation Assistant III position is \$88,000 as compared to \$79,550 for a Recreation Assistant II.
- 7) Reclassify a vacant Assistant Civil Engineer Position to an Associate Civil Engineer in the Utility Engineering Section. Both are existing positions and classifications. The position will provide much needed engineering experience to insure necessary training and continuity to meet interim peak workloads due to the increased number of programs for which the section is responsible. In addition, regulatory requirements for these programs become more stringent every year and require increasing levels of staff attention. This position is fully funded by the Water and Sewer Funds and no additional funding is needed for the FY 2015-16 operating budget due to salary savings from vacant positions. The total annual salary and benefits for the Associate Civil Engineer position is \$184,000 as compared to \$163,000 for an Assistant Civil Engineer.

- 8) Reclassify two (2) Maintenance Custodian II positions within the Facilities Maintenance section due to increased operations and maintenance work at City facilities. The two Maintenance Custodian II positions would be reclassified to Maintenance Worker II and allow Facilities Maintenance to improve staff resources required to address the maintenance and repair needs at City facilities. Currently, Public Works Facilities Maintenance division has one individual receiving 10% Special Assignment compensation while employed at the Maintenance Custodian II classification. The Special Assignment duties are commensurate with the work performed by Maintenance Worker II. No Additional funding is needed for the FY 2015-16 operating budget due to savings from vacancies. The total annual salary and benefits for the Maintenance Custodian II position, without 10% Special Assignment, is \$105,400 as compared to \$113,700 for a Maintenance Worker II.
- 9) Increase budget appropriation in the amount of \$45,000 from the Water Fund for overtime in the Utility Maintenance section. The request for increased funding is due to a doubling of overtime workload to address water meter repairs and after-hour water leak repairs. There was a significant backlog of existing water meter service requests that required attention in order to ensure proper registering of water usage through the City water meters. Public Works staff has worked and will continue to work to repair water meters in order to capture accurate water sales/revenue for the City. This work fluctuates and averages approximately 10 additional repairs weekly in excess of regular planned workload. As a result, this work has been completed by Utility staff after hours and relies on overtime for funding.

Heightened community awareness of the drought and water conservation mandates has increased the need for the City to conduct additional water leak repairs throughout the City. Public Works typically responds to an approximate average of 40 leaks per year; through December of 2015, the department had already reached its annual approximation and projects that leak response will double for FY 2015-16.

Capital Improvement Program (CIP) Projects:

- 10) Staff is proposing several mid-year changes to the City's Capital Improvement Program (CIP), with a primary focus on water infrastructure. These adjustments are being proposed as staff refines capital plans in line with fund reserve needs and anticipated revenue-bond financing. It is key to note that current year water revenues are projected to be lower this year due to a nine-month delay in implementing FY 2015-16 water rate increase during which water rates were restructured. Furthermore, water conservation has caused higher wholesale prices as well as a drop in water sales. These budget adjustments allow the City to meet recommended reserve levels within the next two years after which higher revenue generated from the new water rates will maintain such levels. In doing so, staff added high-priority water supply augmentation projects while reprioritizing other planned water projects to later years. Lower-priority projects that do not require immediate funding are recommended for re-appropriation in later years. It is important to note that no health or safety concerns will be created due to the revision and extension of these projects. Changes to the various CIPs are summarized in the schedule (copy in the agenda packet).

Fiscal Impact: The impacts to the various requests noted above is as follows: General Fund is \$172,200; TASP Fund \$100,000; Park Fund \$300,000; General Government CIP Fund \$350,000; and Sewer Fund \$75,000. By reprioritizing the CIP projects, the Water Fund and Gas Tax Fund will increase by \$5.9 million and \$200,000 respectively in the early years, allowing the City to preserve its 30% recommended reserves levels in the Water Fund. There are sufficient fund balances in these various funds to accommodate the budget adjustment requests.

Recommendation: Approve the Fiscal Year 2015-16 mid-year budget appropriations, identified in this report and itemized on the Budget Change Form (included in the City Council agenda packet).

*** 6. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended December 31, 2015 (Staff Contact: Russell Morreale, 408-586-3111)**

Background: 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 December 31, 2015 is submitted for the Council's review and acceptance.

The Portfolio Summary Report included in the Council's 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. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of December 31, 2015.

As of December 31, 2015, the principal cost and market value of the City's investment portfolio was \$167,737,007 and \$167,579,204 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. This particular period reflects the impact of the 25 basis points increase in the Federal Reserve rate as announced on December 16, 2015. 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 December 31, 2015 was 0.81%. The comparative benchmarks for the same period were 0.40% for LAIF (Local Agency Investment Fund) and 0.70% for the 12-month average yield of the 2-year Treasury Note. The weighted average maturity of the portfolio was 473 days.

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.

Three charts are included with the agenda packet that show 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.

Fiscal Impact: None.

Recommendation: Receive the investment report for the quarter ended December 31, 2015.

XVI. ORDINANCE

7. Adopt Interim Urgency Ordinance No. 270.3, Prohibiting Cannabis Dispensaries, Manufacturing, Cultivation, or Delivery of Cannabis in Milpitas (Staff Contact: Christopher Diaz, 408-586-3041)

Background: The City's Municipal Code currently bans medical marijuana dispensaries and delivery services, as defined in Section XI-5.100. Although these provisions are likely sufficient to ban those uses in the City, the current Milpitas Municipal Code does not address cultivation of marijuana, nor does it fully track new state legislation passed in October of 2015. As a result, staff recommends overhauling the current provisions to more closely mirror the legislation discussed below and to address cultivation issues in the City.

The California Legislature recently adopted legislation identified as the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643) (“MMRSA”) to comprehensively regulate medical marijuana (medical cannabis). The MMRSA recognizes and preserves local control to regulate or ban medical cannabis cultivation, manufacturing, transportation, and distribution. It also confirms and clarifies that, in addition to the complete land use control over retail dispensaries recognized in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, municipalities have the power to regulate or ban the cultivation and distribution of medical marijuana. *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.

Although the MMRSA allows municipalities to regulate or ban cannabis cultivation, manufacturing, transportation, and distribution of medical cannabis within their jurisdictions, it requires some local enabling legislation to accomplish some aspects of this. If a city chooses to regulate these activities comprehensively, it must adopt an overlay of local regulatory standards that are at least as strict as the state’s default regulations. Specifically, the MMRSA provides that if a City has not banned or regulated cannabis cultivation by March 1, 2016, then cultivation in that City will be subject only to state law on this issue. (It is possible that this deadline provision will be repealed or modified and allow cultivation regulation any time.)

Discussion: Cultivation, transportation, and distribution of marijuana can give rise to adverse community impacts relating to public health and safety, crime, water and air quality, and energy consumption. These potential impacts include, but are not limited to concerns such as:

- Marijuana uses can create nuisance activity such as loitering and criminal activity in business and residential districts. For example, on November 19, 2015, Santa Rosa police officers responded to reports of an attempted residential robbery that police believe was the result of the criminals’ mistaken belief that the home targeted hosted a marijuana growing operation. Such cultivation sites are susceptible to crime related to the product itself, as well as the substantial cash amounts that may be kept on-site. Federal banking provisions prohibit financial institutions dependent on the Federal Reserve System’s money transfer system from accepting money from marijuana sales, thus leading to the storage of cash outside of the banking system.
- Mobile delivery can create issues relating to responsibility and resources to monitor and enforce State law, questions of patient qualification, and risks relating to the high use of large sums of cash for mobile transactions.
- Cultivation can create air quality, energy, and water quality damage and impair building maintenance and safety. For example, the increased moisture necessary to grow indoors can create excessive mold growth and structural damage. Additionally, the equipment utilized to grow indoors can pose a risk of fire and electrical hazards due to dangerous electrical alterations and use. Further, inadequate ventilation combined with the use of pesticides and fertilizers in an enclosed space can lead to chemical contamination within structures. Outdoor cultivation can give rise to its own impacts, particularly concerning run-off that may carry pesticides or other chemicals.

Given these potential impacts, staff recommends the Council develop regulations or adopt a ban for marijuana cultivation.

At least one California city (Live Oak) has successfully defended its total ban on the cultivation of marijuana for any purpose within that City. Its regulations, which have withstood legal challenge, provide that “[m]arijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives, or dispensaries” is prohibited in all zones within the City. The MMRSA allows this approach.

Alternatively, some cities are allowing cultivation with regulations such as:

- Outdoor, residential cultivation so long as plants are enclosed, screened, and five feet from the property line;
- Indoor cultivation only with a permit;
- Property owner must approve of cultivation on the property;
- Limiting number of plants; and/or
- Some combination or iteration of these elements.

Should the City choose to leave cultivation unregulated, under the currently enacted version of the MMRSA, on March 1, 2016, only state law would control cultivation activities in Milpitas. Staff recommends that Council adopt a short-term urgency moratorium on all medical cannabis uses while the City develops regulations or a ban of these uses. This is especially important in light of the looming March 1, 2016 deadline to adopt cultivation regulations or a ban.

Conclusion: The City has multiple options for the ban or regulation of medical cannabis. Because of the complexity of the legal and social issues surrounding medical cannabis, it is recommended the City Council adopt the attached Interim Urgency Ordinance banning cultivation and updating the language of the City's existing provisions banning dispensaries and delivery services.

Environmental: The Ordinance is not subject to environmental review under the California Environmental Quality Act pursuant to Sections 15060(c)(2) (the activities will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15060(c)(3) (the activities are not "projects" as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because they have no potential for resulting in physical change to the environment, directly or indirectly, and 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

Fiscal Impact: No financial impact is anticipated for the adoption of the proposed Ordinance.

Recommendations:

1. Following a reading of the title by the City Attorney, move to waive the reading beyond the title of Ordinance No. 270.3.
2. Adopt Interim Urgency Ordinance No. 270.3, prohibiting cannabis dispensaries, manufacturing, cultivation, or delivery of cannabis in Milpitas.

XVII. RESOLUTION

- * 8. **Per the Request from the Santa Clara County Housing Tasking Force, Adopt a Resolution Finding that the Problem of Homelessness Constitutes a Crisis and to Consider Policy Options for Funding Affordable Housing to House the Homeless (Staff Contact: Tim Wong, 408-586-3286)**

Background: In 2015, the County conducted a Point-In-Time Homeless Census and Survey that found there were 6,556 homeless persons living in the County including 122 persons from Milpitas, and 63% of those had been homeless for more than one year. This represents the fourth largest homeless population in the country. Another homeless census found that a large percentage of the County's homeless suffer from psychiatric or emotional problems, almost one-third has a physical disability and one quarter suffer from post traumatic stress disorder. Destination Home, a public-private partnership implementing collective impact strategies to end homelessness in Santa Clara County, calculated that the cost of providing services to homeless persons, including services in the healthcare and criminal justice systems averaged \$520 million per year in the County.

The County Housing Task Force declared the problem of homelessness constituted a crisis and the solution to the problem is to provide permanent housing for the homeless. They are requesting that jurisdictions in the County join the County in acknowledging the homeless crisis and consider adopting one or more strategy to create local affordable housing funding sources to reduce homelessness throughout the County.

Fiscal Impact: The Housing Authority Fund has a balance of over \$7 million if the Council chooses to allocate funds for the purpose of housing the homeless.

Recommendation: Per request from the Santa Clara County Housing Tasking Force, adopt a resolution finding that the problem of homelessness constitutes a crisis and consider policy options for funding affordable housing to house homeless persons.

XVIII. AGREEMENTS

- * 9. Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Disadvantaged Community Americans with Disabilities Act Curb Ramps, Project No. 4282 (Staff Contact: Steve Chan, 408-586-3324)**

Background: On May 18, 2015, the City Council allocated \$60,648 in FY 2015-16 Community Development Block Grant (CDBG) funds for public improvements that benefit low and moderate income persons. Staff completed plans and specifications for Disadvantaged Community Americans with Disabilities Act (ADA) Curb Ramps, Project No. 4282. The project will install new ADA compliant pedestrian curb ramps serving various low to moderate income neighborhoods within the City.

The Engineer's Estimate for the project is \$65,000. A copy of the title sheet of the project plans is included in the Council's agenda packet, and the complete set of plans and specifications are available for review in the office of the City Engineer

Fiscal Impact: None. Sufficient funds are available in the project budget for these services. The project will be funded with CDBG \$60,648 and the remainder from Gas Tax Fund.

Recommendation: Approve plans and specifications, and authorize advertisement for bid proposals for the Disadvantaged Community Americans with Disabilities Act Curb Ramps, Project No. 4282.

- *10. Approve the First Amendment to the Purchase and Sale Agreement with Lyon Communities for a Portion of Capitol Avenue Adjacent to The District 1 Development (Staff Contact: Bill Ekern, 408-586-3273)**

Background: On June 19, 2015, the City entered into a Purchase and Sale Agreement with Lyon Communities for a remnant portion of Capitol Avenue that was created with the development of Great Mall Parkway. The property abuts the new development known as District 1 and will provide additional space for parking in support of the planned grocery store and other retail development. An appraisal of the fair market value of the property has been completed and staff agrees with the appraised value of \$150,000.

Fiscal Impact: The sale of this remnant will provide \$150,000 for the City to use at its discretion. Staff recommends placing the revenue in the City's affordable housing fund.

Recommendation: Approve the First Amendment to the Purchase and Sale Agreement with Lyon Communities in the amount of \$150,000, and direct the placement of these funds into the City's affordable housing fund.

XIX. ADJOURNMENT