



JOINT MEETING OF THE MILPITAS CITY COUNCIL & MILPITAS HOUSING AUTHORITY

AGENDA

TUESDAY, JANUARY 16, 2018

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA

6:00 P.M. (CLOSED SESSION)

7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

- I. CALL JOINT MEETING TO ORDER by Mayor and ROLL CALL by City Clerk**
- II. ADJOURN TO CLOSED SESSION (6:00 PM)**
 - (a) PUBLIC EMPLOYEE APPOINTMENT/HIRING**
Pursuant to California Government Code Section 54957
Title of position to be filled: City Manager/Interim City Manager
 - (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. - Santa Clara County Superior Court Case No. 17CV309235
 - (c) 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
 - (d) 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
 - (e) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**
Pursuant to California Government Code Section 54956.9(d)4. City as Plaintiff
 - (f) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**
Pursuant to California Government Code Section 54956.9(d)2. City as Defendant.
Senior Housing Development Project
- III. CLOSED SESSION ANNOUNCEMENT:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Vice Mayor Grilli)**
- VI. PRESENTATIONS**
 - Proclaim Martin Luther King Jr. Birthday - January 15, 2018
 - Proclaim January 13–18, 2018 as Surya Namaskar Yajna–Sun Salutation Yogathon 2018 Health for Humanity

- Recognize Pyeongchang Winter Olympics 2018 – National Unification Advisory Council San Francisco Chapter

VII. PUBLIC FORUM

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

VIII. ANNOUNCEMENTS

IX. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR

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

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

1. **Accept Schedule of Meetings/City Council Calendar for January 2018**
2. **Approve City Council Meeting Minutes of December 19, 2017 (Staff Contact: Mary Lavelle, 408-586-3001)**

XII. PUBLIC HEARINGS

3. **Conduct a Public Hearing and Consider Adopting a Resolution for Fire Department Fee Adjustments Effective July 1, 2018 (Staff Contact: Albert Zamora, 408-586-3371)**
4. **Conduct Public Hearing and Adopt Ordinance No. 240.7, Lifting Water Shortage Emergency and Easing Supplemental Water Use Restrictions (Staff Contact: Tony Ndah, 408-586-2602)**

XIII. UNFINISHED BUSINESS

5. **Receive Update on the Milpitas Climate Action Plan (Staff Contact: Edesa Bitbadal, 408-586-3052)**
6. **Discuss and Vote to Approve Mayor's Recommendation for Appointment of a Member and One Alternate from the Council to Serve on the City of San Jose Ad Hoc Committee on South Flow Arrivals (Contact: Mayor Tran, 408-586-3029)**
7. **Per Request of Councilmember Barbadillo, Consider Approving More than 4 Hours of Staff Time to Direct Staff to Conduct a Study on Retail and Commercial Spaces in the MidTown and Transit Area Specific Plan areas (Contact: Councilmember Barbadillo, 408-586-3024)**
8. **Per Request of Councilmember Nuñez, Consider Approving More than 4 Hours of Staff Time to Develop a Proposal to Re-establish Teen Programming for the City of Milpitas (Contact: Councilmember Nuñez, 408-586-3023)**

9. **Reconsider and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement, Public Street Maintenance Agreement and Fee Reimbursement Agreement for the Senior Assisted Living Residential Development by Milpitas Phase I, LP (Staff Contact: Steve Erickson, 408-586-3301)**
10. **Approve and Authorize the City Manager to Execute a Master Encroachment Agreement with MCI Metro Access Transmission Services Corp. doing business as Verizon Access Transmission Services for Installation of Network Facilities Within Public Right-of-Way (Staff Contact: Steve Erickson, 408-586-3301)**

XIV. REPORT OF OFFICER

11. **Consider Appointing One Councilmember to Santa Clara Valley Transportation Authority's Policy Advisory Committee and Possibly One Alternate Member (Contact: Mayor Tran, 408-586-3029)**

XV. NEW BUSINESS

12. **Receive a Presentation from Milpitas Sanitation, Inc. Following the First One Month of Service in the City of Milpitas (Staff Contact: Steve Erickson, 408-586-3301)**
13. **Consider Request from Milpitas Executive Lions Club to Co-Sponsor "Celebrating Differences" Event in 2018 (Staff Contact: Renee Lorentzen, 408-586-3409)**
14. **Consider Authorizing a Letter Opposing California Public Utilities Commission Draft Resolution E-4907 (Staff Contact: Edesa Bitbadal, 408-586-3052)**

XVI. RESOLUTIONS

15. **Adopt a Resolution Approving Sole Source Purchase of Open Town Hall Software Service from OpenGov, Inc. Through November 10, 2021 for the Amount of \$41,690.96 and Authorizing the City Manager to Execute Amendment No. 1 to the OpenGov, Inc. Software Services Agreement (Staff Contacts: Will Fuentes, 408-586-3111 and Chris Schroeder, 408-586-3161)**
16. **Adopt a Resolution Authorizing the Purchase of a 2018 Road Rescue Ultramedic MD 170 Ambulance from the Emergency Vehicle Group, Inc. in the Amount of \$541,797.65 Through a Cooperative Contract with Houston-Galveston Area Council (Staff Contacts: Geoff Maloon, 408-586-2400 and Chris Schroeder, 408-586-3161)**
17. **Adopt a Resolution Approving Memorandum of Understanding with the Milpitas Employees Association (Staff Contact: Tina Murphy, 408-586-3086)**
18. **Adopt a Resolution for Exception to the 180-Day Wait Period Certifying the Appointment of Keyvan Irannejad to Serve as Building and Safety Director Pursuant to the California Public Employees Reform Act (PEPRA) of 2013 (Staff Contact: Tina Murphy, 408-586-3086)**
19. **Adopt a Resolution Certifying Election Results and Adding Tract No. 10447 to Community Facilities District 2008-1 (Annexation No. 13); Approve Final Map Tract No. 10447; and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement for a Mixed-Use Development at 1415-1475 McCandless Drive (Staff Contact: Steve Erickson, 408-586-3301)**

20. **Adopt a Resolution Authorizing the City of Milpitas to Participate in the Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA) (Staff Contact: Will Fuentes, 408-586-3111)**
21. **Adopt Resolution Appointing Stephen Healy as Interim Fire Chief Pursuant to Government Code Sections 7522.56 and 21221(h) (Staff Contact: Tina Murphy, 408-586-3086)**
22. **Adopt a Resolution Directing Staff to Fly Black History Month Commemorative Flag at Cesar Chavez Plaza During February 6-28, 2018 (Staff Contact: Renee Lorentzen, 408-586-3409)**
23. **Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for February 20, 2018 to Hear Objections (Staff Contact: Albert Zamora, 408-586-3371)**
24. **MILPITAS HOUSING AUTHORITY
Consider Adopting a Housing Authority Resolution Authorizing the Executive Officer (City Manager) to Purchase the Property Located at 1101 S. Main St. #112 (Staff Contact: Tim Wong, 408-586-3286)**

XVII. AGREEMENTS

25. **Approve Amendment No. 5 to the Agreement with ACCO Engineered Systems Inc. to Increase Compensation by \$15,996 for Additional Equipment Services and Increased Staff Costs for an Amount Not to Exceed \$208,398.70 in Year 3 of Agreement (Staff Contacts: Tony Ndah, 408-586-2602 and Chris Schroeder, 408-586-3161)**
26. **Approve Amendment No. 1 to the Agreement with HdL Software LLC and Authorize the City Manager to Execute the Amendment for Business License Software for an Amount Not to Exceed \$30,155.44 (Staff Contact: Chris Schroeder, 408-586-3161)**
27. **Approve and Authorize the City Manager to Execute an Agreement with Bellinger Foster Steinmetz Landscape Architecture for Creighton Park, Project No. 5109, and Approved a Budget Appropriation of \$900,000 into Creighton Park Renovation Project No. 5109 (Staff Contact: Steve Erickson, 408-586-3301)**
28. **Approve and Authorize the City Manager to Execute an Amendment No. 8 to the Consulting Services Agreement with Vali Cooper & Associates, Inc. to Extend the Term to June 30, 2018 for the Silicon Valley Rapid Transit Program Berryessa Extension and Montague Expressway Widening, Projects No. 4265 and No. 4179 (Staff Contact: Steve Erickson, 408-586-3301)**

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

XIX. ADJOURN JOINT MEETING

UPCOMING SPECIAL CITY COUNCIL MEETINGS

WEDNESDAY, JANUARY 31, 2018

SATURDAY, FEBRUARY 3, 2018

NEXT REGULAR CITY COUNCIL MEETING

TUESDAY, FEBRUARY 6, 2018

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

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

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

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

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

APPLY TO SERVE ON A CITY COMMISSION

Current vacancies on:

Arts Commission, Library Commission
Bicycle Pedestrian Advisory Commission
Community Advisory Commission
Economic Development Commission
Emergency Preparedness Commission
Parks, Recreation & Cultural Resources Commission
Recycling & Source Reduction Advisory Commission
Sister Cities Commission
Telecommunications Commission
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.

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122

对中国人来说，请用 408-586-3263

Para sa mga Tagalog, tawagan 408-586-3051

Para español, llame 408-586-3232

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

AGENDA REPORTS

XI. CONSENT CALENDAR

1. **Accept Schedule of Meetings/City Council Calendar for January 2018**

Recommendation: Accept Council calendar of meetings for month of January.

Attachment: January calendar

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

Recommendation: move to approve meeting minutes of the 12/19/17 Council meeting.

Attachment: draft meeting minutes

XII. PUBLIC HEARINGS

3. **Conduct a Public Hearing and Consider Adopting a Resolution for Fire Department Fee Adjustments Effective July 1, 2018 (Staff Contact: Albert Zamora, 408-586-3371)**

Background: Fees for service are periodically adjusted to stay current with costs for service. Most fire agencies adjust their fees on either a cyclical or annual basis. The Milpitas Fire Department's most recent adjustment occurred back in 2013. Based on the Finance Department's revised hourly rate, fire staff will use this hourly rate in calculating the proposed fee adjustment which is at mid-range with respect to the compared jurisdictions.

Fiscal Impact: With the adoption of the revised fee schedule, there will be an increase in revenue proportional to the cost recovery for the Fire Prevention services provided.

Recommendations:

1. Open the public hearing for comments, and move to close the public hearing.
2. Adopt a resolution for Fire Department Fee Adjustments effective July 1, 2018.

Attachment: Resolution + Memorandum from Deputy Fire Chief/Fire Marshal + Fees

4. **Conduct Public Hearing and Adopt Ordinance No. 240.7, Lifting Water Shortage Emergency and Easing Supplemental Water Use Restrictions (Staff Contact: Tony Ndah, 408-586-2602)**

Background: On January 17, 2014, Governor Brown issued a proclamation declaring a State of Emergency in the State of California due to severe drought conditions. Subsequent to the January 14, 2014 proclamation, the State issued five Executive Orders that remained in full force and effect in response to the California drought. The Orders directed the State Water Board to adopt, by resolution, revised regulations to allow individual suppliers to self-certify and implement a "stress test" ensuring there would be no supply shortfall, assuming three additional dry years. The City of Milpitas through diligent drought conservation practices has met and exceeded the "stress test."

On April 7, 2017, Governor Brown issued Executive Order B-40-17, terminating the January 17, 2014 drought State of Emergency for most counties in California. The Order also directed the State Water Board to rescind the water supply "stress test" for urban water suppliers, as well any remaining mandatory conservation standards. The Order did, however, direct the Water Board to continue "Making Water Conversation a California Way of Life" and kept certain restrictions until November 25, 2017 to prohibit wasteful practices.

On June 20, 2017, the Milpitas Council adopted and enacted Ordinance No. 240.6, thereby terminating the City Water Shortage Contingency Plan Stage 2 and declaring a modified Water Shortage Stage 1. The Ordinance included a four-day watering schedule, voluntary 10% conservation and state-mandated restrictions per Executive Order B-40-17.

Per the directive of Executive Order B-40-17 and the recommendation of the Citizens Task Force on Water Rates on October 18, 2017, staff prepared Ordinance No. 240.7 to amend Chapter 6 of Title VIII of the Milpitas Municipal Code by lifting the 2015 Milpitas Urban Water Management Plan's Water Shortage Stage 1 voluntary 10% conservation and declaring Stage 0 with a voluntary 0% conservation. The ordinance will keep the restrictions mandated by the State Water Board and remove the following Water Shortage Contingency Plan restrictions on potable water use, not mandated by the state:

- Use of potable water for watering or irrigation of any plants, lawn, grass, landscaping or turf areas except between the hours of 6:00 p.m. through 9:00 a.m. and for no more than four days during any seven-day period. Days of watering shall be:
Address Ending in Odd Number: Monday, Tuesday, Thursday, and Saturday;
Address Ending in Even Number: Tuesday, Thursday, Friday, and Sunday;
No address: Monday, Tuesday, Thursday, and Sunday.
- The following activities are exempt from day and time restrictions on watering or irrigation:
 - (a) Use of Potable Water for short periods during timer adjustment and repair of irrigation system are exempt from the time and day restriction set forth above.
 - (b) Watering by hand.
 - (c) Watering plants slated for sale in nursery/garden centers.
 - (d) Watering using drip irrigation systems.

California Environmental Quality Act: The action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment. Furthermore, the Governor suspended the California Environmental Quality Act's application to the State Water Board's adoption of emergency regulations, pursuant to Water Code Section 1058.5, promoting water conservation and water recycling.

Fiscal Impact: None.

Recommendations:

- 1) Open the public hearing to receive comments.
- 2) Move to close the public hearing following any comments.
- 3) Following the City Attorney's reading aloud the title of Ordinance No. 240.7, move to waive the reading beyond the title and adopt the ordinance.

Attachments:

- a) Ordinance No. 240.7 (red-lined)
- b) Ordinance No. 240.7 (final version)

XIII. UNFINISHED BUSINESS

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

Background: On May 7, 2013, the City Council adopted the Milpitas Climate Action Plan (CAP). The CAP identified a strategy, reduction measures, and implementation strategies the City would use to achieve the State-recommended greenhouse gas (GHG) emissions reduction target of 15% below 2005 emissions levels by 2020. Staff is currently in the

process of prioritizing measures of reducing GHG emissions and timelines for the CAP. Prior to updating the CAP, staff wishes to presents the current CAP and receive input, comments, and further direction by the City Council.

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

Attachment: Climate Action Plan

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

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

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

Attachment: Information page on Ad Hoc Committee

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

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

Attachment: None

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

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

Attachment: None

9. Reconsider and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement, Public Street Maintenance Agreement and Fee Reimbursement Agreement for the Senior Assisted Living Residential Development by Milpitas Phase I, LP (Staff Contact: Steve Erickson, 408-586-3301)

Background: A parcel map and development permit for the Senior Assisted Living Residential Development by Milpitas Phase I, LP was approved by the Milpitas Planning

Commission on September 27, 2017. The first phase of the development will provide a 199 unit senior assisted residential development located at 1504-1620 South Main Street.

City Council approval of the projects Subdivision Improvement Agreement, Reimbursement Agreement, and the Maintenance Agreement are recommended as the next step to allow for the development to proceed. Public improvements to be constructed and dedicated to the City as part of this project include approximately 1,250 liner feet of new 12 inch sanitary sewer main; traffic signal facilities at the intersection of South Main and Cedar Way; and the construction of new public streets (Costa Street and the eastern extension of Cedar Way) including new utilities, curb, gutter, sidewalk, curb ramps, streetlight and street trees. The developer has executed a Subdivision Improvement Agreement and provided improvement securities to guarantee completion of all required public improvements.

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

Public Improvements plans and building plans have been submitted to the City for review, approval, and permitting.

On December 19, 2017, the City Council did not vote to approve the three agreements (motion failed on vote of 2–3), which prevents this project from moving forward. The developer, Milpitas Phase I, LP, has requested the City Council reconsider and to approve the three agreements allowing the project to start the construction phase.

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

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

Recommendation: Reconsider, and move to approve and authorize the City Manager to execute the Subdivision Improvement Agreement, the Public Street Maintenance Agreement and the Fee Reimbursement Agreement for the Senior Assisted Living Residential development by Milpitas Phase I, LP.

Attachments:

- a) Subdivision Improvement Agreement
- b) Public Street Maintenance Agreement
- c) Fee Reimbursement Agreement

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

Background: The City of Milpitas owns, manages, and regulates the use of public streets, easements, and public rights-of-way that have been dedicated to the City. Private companies and public utilities such as Pacific Gas & Electric, telephone company, and Comcast, etc.

have the authority under state law and California Public Utilities Commission (CPUC) decisions to install and maintain their facilities within public streets and rights-of-way subject to regulations imposed by the City.

MCI Metro Access Transmission Services Corp. doing business as Verizon Access Transmission Services is planning a fiber-optic upgrade project within the City of Milpitas and is requesting permission to install new fiber-optic lines/conduits within the City public right-of-way. The fiber-optic installation would include new installations and the replacement of existing copper wiring located on existing overhead utility poles and in underground conduits. The work would occur throughout the City, and the system upgrade will provide high-speed telecommunications services to existing Verizon Wireless cell towers and serve large and medium business enterprises. No new cell towers, antennas, or wireless facilities will be installed as part of this upgrade.

Staff recommends approval of a Master Encroachment Agreement to allow for the installation of facilities, and to outline the terms and conditions for the non-exclusive use of the public right-of-way. The Master Agreement provides the City with some control over what and how facilities are installed and maintained within the public right of way, and it requires MCI / Verizon to provide the City with updated maps annually with details of their facilities installed. The Master Agreement also specifies the City may order the removal or relocation of the fiber-optic facilities without cost to the City should the City determine there is a need. The Master Encroachment Agreement has been reviewed by the City Attorney as to form and by the Acting City Engineer as to content.

Fiscal Impact: MCI/Verizon Access will obtain individual City Encroachment Permits for installation of fiber optic lines within City Streets and will pay fees to cover the costs associated with City engineering review and construction inspection associated with the underground installation.

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

Attachment: Encroachment Agreement

XIV. REPORT

11. Consider Appointing One Councilmember to Santa Clara Valley Transportation Authority's Policy Advisory Committee and Possibly One Alternate Member (Contact: Mayor Tran, 408-586-3029)

Background: On December 21, 2017, Mayor Tran received a letter from Santa Clara VTA requesting that the City of Milpitas either re-affirm current member or appoint a new person to serve on its Policy Advisory Committee (PAC), for a term of two years. Last year, Councilmember Nuñez was appointed to serve as the City Council representative to the Santa Clara Valley Transportation Authority's Policy Advisory Committee, which meets occasionally. Presently, VTA requests that the City appoint (or re-affirm) its representative and an alternate member to the PAC. Councilmember Nuñez is no longer eligible to serve on the PAC, due to his current service on the VTA Board of Directors.

Recommendation: Consider appointing one Councilmember to serve as the City Council representative to the Santa Clara Valley Transportation Authority's Policy Advisory Committee, and possibly appoint another as alternate.

Attachments: a) 2018 PAC Appointment Request and b) PAC Appointment Guidelines

XV. NEW BUSINESS

12. Receive a Presentation from Milpitas Sanitation, Inc. Following the First One Month of Service in the City of Milpitas (Staff Contact: Steve Erickson, 408-586-3301)

Background: On December 1, 2017, Milpitas Sanitation, Inc. (MSI) started its new recycling and garbage program providing service to the City of Milpitas. Staff from MSI will provide a brief presentation about these services, the collection procedures and how residents and businesses participated during the first month, at the City Council meeting on January 16.

Recommendation: Receive a presentation from representative of Milpitas Sanitation, Inc.

Attachment: None

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

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

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

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

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

Attachment: Sponsorship Costs listing

14. Consider Authorizing a Letter Opposing California Public Utilities Commission Draft Resolution E-4907 (Staff Contact: Edesa Bitbadal, 408-586-3052)

Background: On December 8, 2017, the California Public Utilities Commission (CPUC) issued Draft Resolution E-4907 (Draft Resolution). The Draft Resolution changes the process by which new and expanding Community Choice Aggregations (CCAs) submit their implementation plans and have them certified by the CPUC. The changes are designed to align the CCA launch timeline more closely with annual deadlines for planning, and if implemented as proposed, it could delay Silicon Valley Clean Energy’s customer enrollment date for the City of Milpitas later than May 2018 and as far out as January 2019. The Draft Resolution does not impact Milpitas’ membership in the Silicon Valley Clean Energy Authority, and the CPUC will meet to discuss and vote on the Draft Resolution on February 8, 2018.

Fiscal Impact: None. There is no direct cost to the City to authorize a letter opposing California Public Utilities Commission Draft Resolution E-4907.

Recommendation: Motion to authorize letter opposing California Public Utilities Commission Draft Resolution E-4907.

Attachments:

- a) Draft CPUC Resolution
- b) City letter to CPUC

XVI. RESOLUTIONS

- 15. Adopt a Resolution Approving Sole Source Purchase of Open Town Hall Software Service from OpenGov, Inc. Through November 10, 2021 for the Amount of \$41,690.96 and Authorizing the City Manager to Execute Amendment No. 1 to the OpenGov, Inc. Software Services Agreement (Staff Contacts: Will Fuentes, 408-586-3111 and Chris Schroeder, 408-586-3161)**

Background: On November 11, 2016, the City entered into a five-year Software Agreement with OpenGov, Inc. to utilize its “Intelligence and Transparency” software which allows its customers to create and share internal operational reports, combining financial and non-financial data from numerous sources to help governments make better financial decisions and operate more efficiently. Annual cost for use of the OpenGov Intelligence and Transparency software is \$19,290.28 per year and the total amount of the five-year Agreement is \$99,151.40. This was approved within City Manager contract authority, which was previously \$100,000, and did not go before City Council.

To augment the existing services, staff now recommends the purchase of OpenGov’s Open Town Hall software service (previously offered by Peak Democracy, which was acquired by OpenGov in October of 2017) to better interact with residents, provide an online platform to receive input and civic participation from residents, and to offer additional avenues to provide input. This additional service will require amending the original agreement with OpenGov. The Open Town Hall service can be used for community engagement in areas such as the budget, General Plan Update, and utility rate discussions. The online platform helps strengthen participation from residents who have childcare, work schedule or mobility constraints and might otherwise not be able to participate in public hearings or attend City Council meetings.

The Open Town Hall service will not be used for the initial community survey relating to the Fiscal Year 2018-19 Operating Budget and 2018–2023 Capital Improvement Program since timing of implementation will be too late, but it is still a valuable tool and can be used for other budget engagement efforts in the current year as well other areas of interest noted above. By adding on the Open Town Hall service, the City benefits from reduced pricing that will not continue into the future. The useful, but limited tool, SurveyMonkey, will be used for the initial community survey relating to the upcoming Operating Budget and Capital Improvement Program.

Open Town Hall’s unique reconciliation process includes handling potentially problematic participation in ways that: (1) do not violate free speech rights; (2) coordinate with the City; and (3) diplomatically seeks a resolution with the author of the problematic participation. Open Town Hall is the only service that provides both registered and unregistered channels of participation. These two channels uniquely address both (1) government concerns about the credibility of the feedback, and (2) citizen concerns about privacy and free speech.

Open Town Hall is the only online public engagement vendor that offers comprehensive monitoring and reconciliation for potentially uncivil, disruptive user participation, which includes users who either: (a) post comments that have obscenities, personal attacks, off-topic content (such as advertising); or (b) who register with the intent to create multiple fraudulent users in order to post multiple times and thereby amplify their feedback to unduly influence

the forum. Thus, it is appropriate for a sole source purchase under the City's procurement policies.

Cost for this additional software service for the remainder of the current contract year and for the three further contract years remaining under the Agreement is a total of \$41,690.96. With Amendment No. 1, the cumulative total agreement amount, as amended, is \$140,842.36.

Fiscal Impact: Funding for the Open Town Hall software is available in the Finance Department's operating budget.

Recommendation: Adopt a resolution approving the sole source purchase of Open Town Hall software service from OpenGov, Inc. through November 10, 2021, for the amount of \$41,690.96 and authorizing the City Manager to execute Amendment No. 1 to the OpenGov, Inc. Software Services Agreement, subject to final approval by the City Attorney.

Attachments:

- a) Resolution
- b) Amendment No. 1 to Agreement with OpenGov Inc.

16. Adopt a Resolution Authorizing the Purchase of a 2018 Road Rescue Ultramedic MD170 Ambulance from the Emergency Vehicle Group, Inc. in the Amount of \$541,797.65 Through a Cooperative Contract with Houston-Galveston Area Council (Staff Contacts: Geoff Maloon, 408-586-2400 and Chris Schroeder, 408-586-3161)

Background: The current Emergency Medical Services (EMS) system in Santa Clara County is designed to provide service in a collaborative effort using a contract private provider for transport with most fire agencies acting as advanced life support first responders arriving on scene in fewer than seven minutes (Milpitas Fire averages less than five minutes). Fire based first responders provide care until the transport ambulance arrives for transport. Fire personnel often accompany the ambulance to the hospital with critical patients as the County ambulances only respond with two personnel.

Due to the geographic location and the design of the County EMS contract which incorporates fines for late responses, the private (for-profit) transport company uses algorithms to place ambulances in locations that best reduces the number of late responses. With the City of Milpitas being located in the far northeast corner of the County, the result is a relatively high rate of extended response times, which places the safety and well-being of Milpitas residents and visitors in jeopardy.

Milpitas Fire Department proposes to augment the delivery of emergency medical services to better serve its constituents by purchasing and staffing a transport capable rescue ambulance that will deploy on specific EMS incidents to provide advanced life support transport services to Milpitas residents and visitors, thus reducing City of Milpitas response times. It is anticipated that the new unit will transport approximately 350 patients annually (approximately 7% of all EMS calls in the City). It is anticipated that changes in the County EMS contract and growth in the City will result in 50-100 additional transports annually in the coming years. These transports are estimated to generate approximately \$600,000 in annual revenue, but more importantly the level of service provided to Milpitas residents will improve significantly with the shorter response times.

Extensive research was conducted by a committee of Fire Department personnel who determined that the unit recommended for purchase is the one best suited to meet the needs of the City of Milpitas. This research examined response data, service needs, County contract parameters, community demographics and similar units in service in surrounding communities (San Jose, Santa Clara, and Gilroy). The unit will offer advanced life support transport as well as light rescue capabilities including rope rescue, structure fire search and

rescue, and vehicle extrication. The specific configuration of compartments (both interior and exterior) is best suited to meet the needs of the Milpitas Fire Department.

Staff recommends a cooperative purchase through the Houston-Galveston Area Council (H-GAC) Cooperative. In Milpitas, Cooperative purchasing is specifically authorized pursuant to Municipal Code Section I-2-3.08 "Cooperative Procurement." Membership in H-GAC was approved by the City Council on September 5, 2017. All contracts available to members of H-GAC have been awarded by virtue of a nationally bid public competitive procurement process. The Purchasing Agent obtained a copy of the H-GAC Invitation for Bid #AM10-16 "Ambulances, EMS & Other Special Service Vehicles" and determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as those of the City of Milpitas and that the price for the vehicle is the same as that offered in the original contract. A purchase through H-GAC will allow for customization of the unit to fit the specific needs of the City of Milpitas while also allowing for volume based pricing for the purchase of a single unit. The total purchase price of the unit is \$541,797.65.

Fiscal Impact: Funding for this purchase is from Capital Improvement Program Fire Apparatus Replacement Plan, CIP No. 3439.

Recommendation: Adopt a resolution authorizing the purchase of a 2018 Road Rescue Ultramedic MD170 Ambulance for the Fire Department from the Emergency Vehicle Group, Inc. in the amount of \$541,797.65 through a cooperative contract with the Houston-Galveston Area Council.

Attachments:

- a) Resolution
- b) Quote from Emergency Vehicle Group, Inc.

17. Adopt a Resolution Approving Memorandum of Understanding with the Milpitas Employees Association (Staff Contact: Tina Murphy, 408-586-3086)

Background: The most recent Memorandum of Understanding (MOU) between the City of Milpitas and the Milpitas Employees Association (MEA) expired on June 30, 2017. City representatives and representatives from the MEA have met and conferred in good faith to negotiate a new contract. Agreement was reached on a new successor Memorandum of Understanding with the retroactive effective date of July 1, 2017 and will remain in effect through June 30, 2020 (a copy of MOU is included in the Council's agenda packet). The draft MOU document was available for public review for the 10-days period required by the City's Open Government Ordinance.

Fiscal Impact: The first year of the proposed agreement will result in a salary and benefit increase of approximately \$377,000 and has already been accounted for in Fiscal Year 2017-18 budget. No further appropriations are necessary in FY 2017-18. The total three-year cost of the proposal is approximately \$1,921,000. Future year costs will be need to be appropriated in future year budgets.

Recommendation: Adopt a resolution approving the Memorandum of Understanding between the City of Milpitas and the Milpitas Employees Association covering the period July 1, 2017 through June 30, 2020.

Attachment:

Resolution + MOU document

18. Adopt a Resolution for Exception to the 180-Day Wait Period Certifying the Appointment of Keyvan Irannejad to Serve as Building and Safety Director Pursuant to the California Public Employees Reform Act (PEPRA) of 2013 (Staff Contact: Tina Murphy, 408-586-3086)

Background: The California Public Employees Reform Act of 2013 requires a 180-day “wait” period before a retiree can return to work for a public agency; however, the 180-day “wait” period can be waived if: 1) the employer certifies that the appointment is necessary to fill a critically needed position before 180 days have passed, and 2) the appointment has been approved by the governing body of the employer in a public meeting and not on a consent calendar.

Building and Safety Director Keyvan Irannejad served as the Chief Building Official, and Building and Safety Director, for the City of Milpitas for approximately thirteen years before his retirement on December 30, 2017. The City is currently recruiting to fill that vacancy and one of the Senior Building Inspectors has been temporarily appointed to serve as interim Building and Safety Director.

Staff recommends hiring Mr. Irannejad on a part-time basis to perform specific duties of the Building and Safety Director classification. Given the need for continuity and for highly trained professionals to answer questions from developers and homeowners, as well as assist in training for the Building Apprentice Program, staff recommends hiring Mr. Irannejad from January 17, 2018 through June 30, 2018 on a part-time basis (not to exceed 960 hours per fiscal year) to assist in consultation for the Building and Safety Department and training of new staff to maintain the high quality of service and workload that the Building and Safety Department staff regularly accomplishes.

Included in the Council’s agenda packet is the required resolution to rehire a retiree pursuant to the California Public Employees Reform Act (PEPRA) of 2013 and the employment agreement.

Fiscal Impact: None. The position will be funded by salary savings from the vacant Building and Safety Director position.

Recommendation: Adopt a resolution for exception to the 180-day wait period certifying the appointment of Keyvan Irannejad as Building and Safety Director, pursuant to the California Public Employees Reform Act of 2013, and approve and authorize the Interim City Manager to execute an employment agreement.

Attachment: Resolution + Employment Agreement

19. Adopt a Resolution Certifying Election Results and Adding Tract No. 10447 to Community Facilities District 2008-1 (Annexation No. 13); Approve Final Map Tract No. 10447; and Approve and Authorize the City Manager to Execute the Subdivision Improvement Agreement for a Mixed-Use Development at 1415–1475 McCandless Drive (Staff Contact: Steve Erickson, 408-586-3301)

Background: On March 20, 2012, a previous City Council approved a Major Tentative Map (MT11-0002), and on November 17, 2015 approved an amendment to the Site Development Permit (SD11-0001) and the Conditional Use Permit (UP11-0037) to allow for the construction of a mixed use development located at 1315-1600 McCandless Drive. The mixed use development will include 218 residential units and 3,480 square feet of commercial space on 2.55 acres (District 1), and 200 residential condominium units on 9.68 acres (District 2) including ancillary lots for private streets and public streets.

The final map for the development is complete and ready for approval by the City Council. The City Engineer has examined the final map for Tract No. 10447 and determined that the map is substantially the same as the previously approved Vesting Tentative Map, and finds that it conforms to all requirements of the State of California Subdivision Map Act, and Milpitas Municipal Code. The Developer has offered dedications to the City for public use, such as public service, utilities, and sidewalk, emergency vehicle access and multi-use trail and access, as shown on the final map. Staff recommends the City Council approve the final map and to accept the dedications subject to completion and acceptance of the public improvements.

The final map for Tract No. 10447 is subject to annexation to the Community Facilities District No. 2008-1 (CFD 2008-1). The City has on file a Certificate of Registrar of Voters from the County of Santa Clara certifying that there are no registered voters residing within the boundaries of the proposed CFD Annexation No. 13 for this development. The Developer, Milpitas-District 2 Associates, LLC is the sole property owner, and on January 12, 2018, the property owner unanimously agreed to Annexation No. 13.

The City Engineer has reviewed the public improvement plans (E-EN16-0127) and is recommending the City Council approve the Subdivision Improvement Agreement for the development to allow for the construction of public improvements that will be dedicated to the City upon completion. Public improvements to be constructed include curb; gutters; sidewalks; driveways and surface improvements; water main and utility services; and street trees as shown on the public improvement plans. Developer executed the Subdivision Improvement Agreement and provided improvement securities to guarantee completion of required public improvements.

California Environmental Quality Act: Approval of final subdivision map is a ministerial action exempt from the CEQA pursuant to CEQA Guidelines Section 15268(b)(3). Approval of the Subdivision Improvement Agreement implements the Project for which CEQA review has already been completed through the City Council's adoption of Resolution No. 8509 adopting an addendum to the previously certified Transit Area Specific Plan Environmental Impact Report.

Fiscal Impact: Adding Tract No. 10447 to the CFD No. 2008-1 would allow the City to levy special taxes to properties within Tract No. 10447, in order to fund public services within the Transit Area.

Recommendations:

1. Adopt a resolution certifying election results and adding Tract No. 10447 to Community Facilities District 2008-1 (Annexation No. 13).
2. Approve Final Map Tract No. 10447, including acceptance of all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements.
3. Approve and authorize the City Manager to execute the Subdivision Improvement Agreement between the City of Milpitas and Milpitas-District 2 Associates, LLC.

Attachments:

- a) Resolution
- b) Final Map – Tract No. 10447
- c) Subdivision Improvement Agreement

20. **Adopt a Resolution Authorizing the City of Milpitas to Participate in the Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA) (Staff Contact: Will Fuentes, 408-586-3111)**

Background: The Association of Bay Area Governments Pooled Liability Assurance Network (ABAG PLAN) was established in 1986 as a non-profit corporation in order to

establish a stable, cost-effective self-insurance, risk sharing and risk management program option for ABAG members. The City of Milpitas has participated in the ABAG PLAN for the past 22 years to obtain coverage and risk management services related to liability, property, automobile physical damage and other ancillary lines of coverage.

As a result of the merger of ABAG and MTC, ABAG PLAN is now administered by the Metropolitan Transportation Commission (MTC). Over the course of the last year, the Board of Directors of ABAG PLAN has been exploring various options to disengage from MTC. The Board of Directors of ABAG PLAN conducted an RFP during the past fiscal year which indicates significant savings to the pool members as a result of contracting pool administration services through another source. An independent consultant study revealed a savings in pool administrative costs of approximately \$3 million over the next five years for participating member agencies. The City of Milpitas would save approximately \$66,000 per year as a result of this change. ABAG PLAN Board of Directors, of which the Director of Financial Services for the City is one, voted unanimously at their annual board meeting in June to contract with Bickmore Risk Services. A transition plan has been developed by ABAG PLAN and Bickmore to transfer pool administrative services to the new pool administrator.

In order to complete the transition of pool administrative services from ABAG/MTC and achieve the significant savings in administrative cost to the existing program, both ABAG General Counsel and PLAN Counsel have recommended a separate Joint Powers Authority (JPA) be formed to exclusively manage the existing and future risk management and coverage needs of the members. The new JPA is required to act as fiscal agent and manage the transfer of all of the current assets and liabilities from the ABAG PLAN non-profit corporation to the new PLAN JPA. The new PLAN JPA will no longer be directly affiliated with MTC but will continue to provide a stable, cost-effective self-insurance, risk sharing and risk management program for the member participants.

This separate JPA model would align the City of Milpitas and other PLAN JPA members with pooling industry best practices, allow for program continuity and provide for a seamless transition to the new JPA post ABAG merger with MTC.

By approving the attached resolution, the City of Milpitas agrees to conditionally participate in the newly established PLAN JPA. Once all current ABAG PLAN members have approved and signed their respective resolutions, The PLAN JPA will officially become a going concern and all assets and liabilities will be transferred from the prior ABAG PLAN to the new PLAN JPA.

There is a potential adverse outcome in not adopting the proposed resolution. Any delay in joining the JPA could jeopardize City of Milpitas' participation in the PLAN program and would have an adverse impact on the PLAN members as it pertains to program costs. It would also be problematic for the City of Milpitas in terms of finding an alternative solution for insurance and risk management services.

Fiscal Impact: There would be no direct fiscal impact on the City of Milpitas related to the change to a new JPA. The City would however derive savings from the reduction in ABAG PLAN administrative costs over time and this savings is estimated at approximately \$66,000 per year initially; spread proportionally amongst the General Fund, Water Fund, and Sewer Fund. The action acknowledges the City of Milpitas wishes to continue participating in the PLAN JPA to obtain coverage and risk management services going forward.

Recommendation: Adopt a resolution authorizing the City of Milpitas to participate in the Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA).

Attachments:

a) Resolution

- b) Model Joint Powers Authority Agreement
- c) PLAN Board Resolution 2017-01

21. Adopt Resolution Appointing Stephen Healy as Interim Fire Chief Pursuant to Government Code Sections 7522.56 and 21221(h) (Staff Contact: Tina Murphy, 408-586-3086)

Background: The California Public Employees Reform Act of 2013 requires a 180-day “wait” period before a retiree can return to work for a public agency; however, the 180-day “wait” period is not applicable to the appointment of a safety member to a safety position as is the case here so long as the retiree did not retire with a retirement incentive such as the CalPERS golden parachute (i.e. 2 years additional service credit). In addition to the requirements of PEPRA, the appointment of a retiree to a vacant position must comply with Section 21221(h) of the Public Employees’ Retirement Law (“PERL”). In accordance with PERL, the appointment is permissible if it is made during the recruitment for a permanent appointment to the position and it is approved by the governing body of the employer in a public meeting and not on a consent calendar. Staff worked with the City Attorney to ensure that additional requirements, such as ones that relate to compensation and hours worked, will be met.

Chief Stephen Healy served as the Fire Chief at Moraga-Orinda Fire District for approximately four (4) years before his retirement on September 20, 2017. The City is currently recruiting to fill the Fire Chief vacancy and one of the Deputy Fire Chiefs was temporarily appointed to serve as Acting Fire Chief. Staff recommends hiring Chief Healy to serve as the Interim Fire Chief pending conclusion of the Fire Chief recruitment process.

Included in the Council’s agenda packet is the required resolution to rehire a retiree pursuant to the California Public Employees Reform Act (PEPRA) of 2013, Government Code Sections 7522.56 and 21224 and the employment agreement.

Fiscal Impact: None. The position will be funded by salary savings from the vacant Fire Chief position.

Recommendation: Adopt a resolution appointing Stephen Healy as Interim Fire Chief in accordance with the California Government Code Sections 7522.56 and 21221(h) and approve and authorize the Interim City Manager to execute an employment agreement.

Attachment: Resolution + Employment Agreement

22. Adopt a Resolution Directing Staff to Fly Black History Month Commemorative Flag at Cesar Chavez Plaza During February 6-28, 2018 (Staff Contact: Renee Lorentzen, 408-586-3409)

Background: Per Milpitas Municipal Code Section I-600-2.30(3), the City Council may, by resolution, direct City staff to display Commemorative Flags as an expression of the City’s official sentiments by any of the following means: (i) display in lieu of the MIA/POW flag on one of the four City Hall Display Flag Poles located at the rear of City Hall adjacent to the pond, (ii) display in lieu of the flag of the State of California on one of the three flag poles located at Cesar Chavez Plaza, or (iii) display through ground level ceremonies at any of the following locations at the Civic Center complex or the City of Milpitas Community Center:

- (1) City Hall Rotunda
- (2) Area adjacent to pond at City Hall
- (3) Cesar Chavez Plaza
- (4) City Council Chambers

The City Council is requested to adopt a resolution directing staff to fly the Black History Month Commemorative Flag from February 6–28, 2018 in the Cesar Chavez Plaza. In accordance with the Municipal Code, the commemorative flags shall be displayed for a period of time that is reasonable or customary for the subject that is to be commemorated, but no longer than 30 continuous days.

The flying of the Black History Month flag will be part of planned Black History Month events planned by the City of Milpitas Recreation and Community Services Department.

Fiscal Impact: None.

Recommendation: Adopt a resolution directing staff to fly the Black History Month Commemorative Flag from February 6–28, 2018 in the Cesar Chavez Plaza.

Attachment: Resolution

23. Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for February 20, 2018 to Hear Objections (Staff Contact: Albert Zamora, 408-586-3371)

Background: The County of Santa Clara Department of Agriculture and Environmental Management has notified the City of Milpitas that it is commencing its Hazardous Vegetation Abatement (weed abatement) program for the forthcoming 2018 season. The County requested the City Council adopt a resolution declaring weeds to be a public nuisance and to schedule a public hearing to hear objections to the proposed destruction and/or removal of weeds. A resolution, declaring weeds on specific properties to be a public nuisance, is adopted by the Council each year. The City then holds a public hearing to give affected property owners an opportunity to appear before the Council to dispute the designation of their property as a public nuisance. The public hearing will be scheduled for the City Council meeting on Tuesday, February 20, 2018.

Recommendation: Adopt a resolution declaring weeds on specific properties to be public nuisances and set the public hearing date on February 20, 2018.

Attachment: Resolution + Weed Abatement List 2018

**24. MILPITAS HOUSING AUTHORITY
Consider Adopting a Housing Authority Resolution Authorizing the Executive Officer (City Manager) to Purchase the Property Located at 1101 S. Main St. #112 (Staff Contact: Tim Wong, 408-586-3286)**

Background: The Housing Authority received notification from the property owners of 1101 S. Main Street #112 that they intend to sell their moderate-income affordable housing unit. The affordable sales price for the unit is approximately \$454,309. They purchased the unit for \$362,000 in March 2008.

Each owner-occupied affordable housing unit that is governed by resale restrictions is required to meet certain obligations when the unit is sold. When an affordable unit is sold, the Resale Restriction Agreement provides three outcomes for the sale. The following are the three potential outcomes with a discussion regarding each outcome.

1. Purchase from a moderate income household.

Generally, staff is able to find a moderate income household to purchase the unit. However, in this case, the homeowners association, Centria Homeowners Association, is involved in litigation with the developer, Western Pacific Housing, for construction defects. Because of the litigation, coupled with the required and

recorded Resale Restrictions on the property, staff is not able to identify any banks that will extend a loan on the property because of risks.

Due to the housing crisis of 2008, lenders overall have been more risk adverse to lend and even more so on residences with litigation. When HOA files a lawsuit, there can be additional homeowner assessments. These potential assessments can be added to potential borrower's debt-to-income ratios, thus potentially making them a high risk borrower.

Staff has found lenders that will lend to units with ongoing litigation, but not units with resale restrictions. Coupled with the Housing Authority's resale restrictions on the unit, lenders have considered it too high risk. Therefore, the realtor has not been able to find any eligible buyers for the unit. There have been some all cash buyers interested, but they exceeded the City's moderate income household income levels, which is not consistent with the purpose and intent of the program.

2. The Housing Authority exercises its Purchase Option.

The Housing Authority may exercise its purchase option and purchase the unit at \$454,309.00 to preserve the affordability of the unit. However, there are potential risks involved in the preservation of the unit. Below is a summary of the advantages and disadvantages to the option if the Housing Authority were to purchase the unit.

OPTION	ADVANTAGE	DISADVANTAGE
1. Sell the moderate income unit to a low income household.	• Preserves affordability of the unit	• Because of State requirements governing the City housing fund, the Housing Authority would need to sell the unit to a low income household, therefore the Housing Authority could not fully recoup its investment because the unit would need to be sold at a lower price to meet the affordability levels of a low income household. The price difference is approximately \$125,000. • Same situation as current situation in which qualified buyers may not be able to find a loan because of HOA litigation.
2. Housing Authority purchases the unit and rents it to a low income household	• Preserves affordability of the unit	• Property management of Housing Authority owned residential properties can be legally complex (i.e. relocation requirements may apply if the tenant is removed)
3. Housing Authority purchases the unit and leaves it vacant for the duration of the litigation. The trial date is set for March 26, 2018.	• Preserves affordability of the unit	• Housing Authority would not generate any revenue from its investment in the unit while paying for HOA dues and utilities. • Uncertainty about the length of the legal proceedings.

If the Housing Authority wishes to exercise its Purchase Option, the Housing Authority will prepare a Notice to Exercise for the Milpitas Housing Authority to exercise its option to purchase the real property located at 1101 S. Main Street #112,

Milpitas. The option has been granted by the Authority pursuant to the Resale Restriction and Option to Purchase Agreement between the Owner and the Authority.

3. The Housing Authority releases the Resale restriction, the seller sells the unit at market rate and the Housing Authority and seller split the appreciation per the Resale Restriction formula.

The Housing Authority has the ability to release the property for the resale restrictions and it enables the seller to sell the unit at market rate and split the appreciation per the Resale Restriction formula. Section 13 of the Resale Restriction Agreement states:

13. ***Obligation of Owner After Option Abandonment.*** *If the Authority records a notice of abandonment of the Option, then the Property may be sold by Owner to a third party without restriction as to price; however, upon such sale, Owner shall pay to Authority an amount ("Authority's Share") equal to eighty-five percent (85%) of the difference between (a) the actual sales price net of reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price), and (b) the Adjusted Resale Price. The Authority's Share shall be paid to the Authority concurrently with close of escrow on the sale of the Property, or upon receipt by Owner of the sale price for the Property, whichever shall first occur.*

For example, this unit sells for \$685,650 on the open market. After assuming a 5% real estate commission and subtracting the 5% commission, the net sales price is \$653,000. Subtracting the Adjusted Resale Price of \$453,000, it leaves a difference of \$200,000. Therefore the Housing Authority would get \$170,000 and the seller would receive \$30,000. So, using this example, the seller would gain an additional \$30,000 over the below market price of \$453,000.

Based on the three options, in order to preserve the affordability of the unit, staff recommends that the Housing Authority consider these options and direct staff accordingly.

Fiscal Impact: Sufficient funds are available in the Housing Authority Fund if the Authority Board chooses to exercise its purchase option on the unit. There is approximately \$8 million in the Housing Authority Fund.

Recommendations:

1. Consider adopting a resolution authorizing the Executive Officer of the Housing Authority to exercise the purchase option to purchase the unit located at 1101 S. Main St. #112, Milpitas, CA for \$454,309.
2. Approve the budget appropriation of \$454,309 from the Housing Authority Fund to purchase the unit.

Attachments:

- a) Resolution
- b) Budget Change Form

XVII. AGREEMENTS

25. **Approve Amendment No. 5 to the Agreement with ACCO Engineered Systems Inc. to Increase Compensation by \$15,996 for Additional Equipment Services and Increased Staff Costs for an Amount Not to Exceed \$208,398.70 in Year 3 of Agreement (Staff Contacts: Tony Ndah, 408-586-2602 and Chris Schroeder, 408-586-3161)**

Background: On October 6, 2015, Council awarded the RFP 2098 bid to ACCO Engineered Systems, Inc. and authorized the City Manager to execute an agreement with ACCO for

citywide HVAC Maintenance and Repair Services for \$300,000 in Year One. The first contract option was exercised by the City on October 7, 2016 for \$187,527 with no price increase. The second contract option was exercised on September 28, 2017 with a 2.6% increase as requested by the contractor for \$193,402.70.

Since that time, additional equipment not listed in the initial RFP has been discovered or installed necessitating the increase in funding by \$15,996 per year for the remainder of agreement, beginning in the current contract year three through the remaining term of the agreement.

Fiscal Impact: None. Funds are available in Facilities Maintenance Operating Budget for this amendment.

Recommendation: Approve Amendment No. 5 to the Agreement with ACCO Engineered Systems Inc. increasing compensation by \$15,996 for additional equipment and increased staff costs for an amount not to exceed \$208,398.70 in year 3 of the agreement and authorize City Manager to execute the amendment.

Attachment: Amendment to Agreement with ACCO

26. Approve Amendment No. 1 to the Agreement with HdL Software LLC and Authorize the City Manager to Execute the Amendment for Business License Software for an Amount Not to Exceed \$30,155.44 (Staff Contact: Chris Schroeder, 408-586-3161)

Background: On August 23, 2017, the City of Milpitas entered into an agreement with HdL Software LLC to provide upgraded business license software and services for the City of Milpitas. At the time, HdL was the current provider for business licenses software and changes to PCI requirements made upgrading the HdL's Prime software a requirement.

The City desires to amend the agreement by \$12,416.63, over the 5-year term of the agreement to fund two additional users for the Prime software and to provide funds to reimburse HdL for travel costs pertaining to October 4, 2017 training of City staff. The amendment increases the first year of the agreement for a not-to-exceed amount of \$30,155.44. Future years will also increase, but the exact dollar amount is not yet known as increases are tied to the Bay Area consumer-price index.

Fiscal Impact: None. Funds for this purchase are available the Finance Department Fiscal Year 2017-18 operating budget.

Recommendation: Approve Amendment No. 1 and authorize the City Manager to execute the amendment to the HdL Software LLC agreement for business license software for and amount not to exceed \$30,155.44.

Attachment: Amendment to Agreement with HdL

27. Approve and Authorize the City Manager to Execute an Agreement with Bellinger Foster Steinmetz Landscape Architecture for Creighton Park, Project No. 5109, and Approved a Budget Appropriation of \$900,000 into Creighton Park Renovation Project No. 5109 (Staff Contact: Steve Erickson, 408-586-3301)

Background: The project to renovate Creighton Park, Project No. 5109, is in the approved 2017-2022 Capital Improvement Program. Creighton Park is located along Olympic Drive and is approximately five acres with picnic areas, walking path turf area and play equipment. The park was originally constructed in 1968 with subsequent renovations completed in 1981 and 1991. The park is in need of renovation to replace aging infrastructure and update access and equipment for compliance with new regulations and law. The project provides for the

design and construction of new picnic areas; shade structure(s); play equipment and surface; vehicle and pedestrian pathway; Americans with Disabilities (ADA) accessibility improvements; security lighting; restroom structure and enhancements to landscaping; drainage; and park furniture, as recommended in the City's Parks & Recreation Master Plan.

The construction phase for this project is currently funded at \$1 million as shown in the 2017-2023 Capital Improvement Program. However, it is anticipated that additional funding will be required to construct the desired park improvements based upon the current construction market and recent bid pricing received on other projects. Staff recommends approval of a Budget Appropriation of \$900,000 from the Park Fund into the construction phase of the Creighton Park, Project No. 5109.

Through the City's consultant selection process, Bellinger Foster Steinmetz Landscape Architecture is recommended to provide the design, bidding, and construction support services for completion of this project. Staff negotiated a scope and fee for these services not to exceed \$217,788, which is considered reasonable for the work.

Fiscal Impact: Staff requests the approval of a budget appropriation of \$900,000 from the Park Fund into the construction phase of the Creighton Park Renovation Project No. 5109.

Recommendations:

1. Approve and authorize the City Manager to execute an agreement with Bellinger Foster Steinmetz Landscape Architecture, in the amount of \$217,788 for Project No. 5109, subject to approval as to form by the City Attorney and Director of Finance.
2. Approve budget appropriation of \$900,000 from the Park Fund into the construction phase of the Creighton Park Renovation Project.

Attachments:

- a) Agreement with Bellinger Foster
- b) Fee Proposal for Creighton Park
- c) Project Schedule
- d) Budget Change Form

28. **Approve and Authorize the City Manager to Execute an Amendment No. 8 to the Consulting Services Agreement with Vali Cooper & Associates, Inc. to Extend the Term to June 30, 2018 for the Silicon Valley Rapid Transit Program Berryessa Extension and Montague Expressway Widening, Projects No. 4265 and No. 4179 (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On August 3, 2010, the City entered into the Master Agreement with the Santa Clara Valley Transportation Authority (VTA) for the Silicon Valley Berryessa BART Extension (SVBX) project. The Master Agreement allows for reimbursement of City staff time and for the use of professional engineering consultants to support the SVBX (BART) extension project.

On November 20, 2013, the City entered into a consulting services agreement with Vali Cooper & Associates, Inc. in the amount of \$19,760 to provide support services for the SVBX (BART) project through June 30, 2014. There have been a total of seven amendments to the agreement with Vali Cooper & Associates totaling \$1,376,240, and the term of the agreement is set to expire January 30, 2018.

Several phases of the SVBX (BART) project continue with work in progress, including relocation of existing City utilities, installation of new utilities, track installation, parking garage construction, roadway and frontage improvements including BART station construction. City staff continue to support the project and to assist the VTA with the review, approval, and permitting of plans related to changes to City infrastructure. The services of

Vali Cooper & Associate Inc. will be required for at least another year until the BART SVBX project is completed to assist staff with project close-out and as-built records related to the project. The VTA will continue to reimburse the City for the cost of these services.

Staff recommends approval of Amendment No. 8 with Vali Cooper & Associates to extend the term of the agreement to June 30, 2018. Amendment No. 8 is for a time extension only and no additional compensation is proposed.

Fiscal Impact: Consultant expenses and City staff labor are reimbursable under the VTA Master Agreement. Work performed on the Silicon Valley Rapid Transit Program Berryessa Extension (SVBX) is charged to Project No. 4265. Sufficient funds are available in the project budgets for these services.

Recommendation: Approve and authorize the City Manager to execute Amendment No. 8 to the agreement with Vali Cooper & Associates extending the term to June 30, 2018 for the Silicon Valley Berryessa Extension (Project No. 4265) and Montague Expressway Widening (Project No. 4179) projects.

Attachment: Amendment No. 8 to the Agreement

- XVIII. **REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies**
- XIX. **ADJOURN JOINT MEETING**

UPCOMING SPECIAL CITY COUNCIL MEETINGS
WEDNESDAY, JANUARY 31, 2018
SATURDAY, FEBRUARY 3, 2018

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, FEBRUARY 6, 2018