Joint Meeting of the Milpitas City Council, Public Financing Authority, and Successor Agency to the Former Redevelopment Agency

Meeting Agenda

Tuesday, February 3, 2015
455 East Calaveras Boulevard, Milpitas, CA
6:30 p.m. (Closed Session) • 7:00 p.m. (Public Business)

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
Pursuant to California Government Code Section 54956.9:

1) City of Milpitas' Appeal of City of San Jose's Approval of Planned Development Permit PD14-014, before City of San Jose Planning Commission

2) City of Milpitas' Opposition to Proposed Solid Waste Facility Permit for Newby Island, before the Department of Resources Recycling and Recovery (CalRecycle)

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

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

V. INVOCATION (Vice Mayor Montano)

VI. APPROVAL OF COUNCIL MEETING MINUTES – January 20, 2015

VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR – February 2015

VIII. PRESENTATIONS

- Certificates to the Performers at City's Dec. 1 Tree Lighting Ceremony
- Certificate to Health for Humanity Yogathon sponsored by Hindu Swayamsevak Sangh group

IX. 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.

X. ANNOUNCEMENTS

XI. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

XII. APPROVAL OF AGENDA

XIII. 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.

XIV. PUBLIC HEARINGS

1. **Conduct a Public Hearing and Adopt a Resolution repealing Paragraph Number 7 in Resolution No. 8220 Related to Exemption on Land Use Conversions while Continuing Exemption for Properties East of California Circle (Staff Contact: Adam Petersen, 408-586-3274)**

2. **Conduct a Public Hearing and Introduce Ordinance No. 38.820 for adoption of Zoning Amendment No. ZA14-0011 Adding the words "mixed use" Residential to the purpose and intent section of the Town Center Zoning description and Prohibiting New Ground Floor Residential in the Town Center Zone (Staff Contact: Adam Petersen, 408-586-3274)**

3. **Conduct a Public Hearing and Introduce Ordinance No. 38.819 to Approve a Development Agreement Vesting and Deferring the Transit Area Specific Plan Residential Impact Fees for the Citation I and Citation II Projects: Amalfi I, Amalfi II and the Edge (Staff Contact: Adam Petersen, 408-586-3274)**

XV. UNFINISHED BUSINESS

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

XVI. REPORTS OF MAYOR AND COMMISSION

* 5. **Consider Mayor's Recommendations for Various Appointments of Staff and City Council members to Commissions (Contact: Mayor Esteves, 408-586-3029)**

* 6. **Consider Mayor's New Appointments to City of Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

* 7. **Approve Youth Advisory Commission 2015 Work Plan (Staff Contact: Andrew Mendes, 408-586-3231)**

XVII. NEW BUSINESS

* 8. **Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended December 31, 2014 (Staff Contact: Emma Karlen, 408-586-3145)**

* 9. **Approve Mid-Year Budget Appropriations for FY 2014-15 Operating and Capital Improvement Program Budget (Staff Contact: Emma Karlen, 408-586-3145)**

10. **Receive Financial Status Report for the Six Months Ended December 31, 2014 (Staff Contact: Emma Karlen, 408-586-3145)**

XVIII. RESOLUTIONS

* 11. **Adopt a Resolution Approving Revisions to the Senior Advisory Commission Bylaws (Staff Contact: Stephanie Douglas, 408-586-3226)**

*** 12. Adopt a Resolution Approving Memorandum of Understanding with the Mid-Management and Confidential Unit (Staff Contact: Carmen Valdez, 408-586-3086)**

*** 13. Adopt a Resolution Approving Memorandum of Understanding with the Milpitas Professional and Technical Group (Staff Contact: Carmen Valdez, 408-586-3086)**

*** 14. Adopt a Resolution Approving Memorandum of Understanding with the Milpitas Employees Association (Staff Contact: Carmen Valdez, 408-586-3086)**

XIX. AGREEMENTS

*** 15. Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Community Center Auditorium Audio Visual Systems Upgrade Project No. 3406 (Staff Contact: Steve Erickson, 408-586-3301)**

*** 16. Approve First Phase Agreement with Burke, Williams & Sorensen, LLP for Legal Services Regarding Elimination of Odor (Staff Contact: Mike Ogaz, 408-586-3041)**

XX. JOINT MEETING OF THE SUCCESSOR AGENCY, PUBLIC FINANCING AUTHORITY and MILPITAS CITY COUNCIL

SA1. Call to Order/Roll by the Mayor/Chair

SA2. Approval of Agenda

SA3. Adopt a Joint Resolution of the City Council of the City of Milpitas, the Board of the Successor Agency to the Former Milpitas Redevelopment Agency and the Board of the Milpitas Public Financing Authority Approving the Adoption of Disclosure Policies and Procedures (Staff Contact: Emma Karlen, 408-586-3145)

SA4. Adopt a Resolution of the Board of the Successor Agency to the Former Milpitas Redevelopment Agency Confirming Issuance of Tax Allocation Refunding Bonds Pursuant to an Indenture of Trust, Approving Preliminary and Final Official Statements, and Providing Other Matters Relating Thereto (Staff Contact: Emma Karlen, 408-586-3145)

SA5. Adjourn Joint Meeting

XXI. ADJOURNMENT

NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, FEBRUARY 17, 2015

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: mogaz@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:

Community Advisory 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

XIV. PUBLIC HEARINGS

1. Conduct a Public Hearing and Adopt a Resolution repealing Paragraph Number 7 in Resolution No. 8220 Related to Exemption on Land Use Conversions while Continuing Exemption for Properties East of California Circle (Staff Contact: Adam Petersen, 408-586-3274)

Background: On January 15, 2013, the City Council adopted Resolution No. 8220 approving amendments to the Land Use and Circulation elements of the Milpitas General Plan. This amendment addressed long term planning and fiscal sustainability for the City when evaluating development proposals. Specifically, the amendment added General Plan Policy 2.a-I-2 to the Land Use Element. This policy states the following:

2.a-I-2 -- Land use conversions from employment/sales tax generation properties to residential shall only be considered once there is 80% buildout in the Midtown and Transit Area Specific Plans.

The implementation of Policy 2.a-I-2 focuses residential development in the Midtown and Transit Area Specific Plans, where there is existing infrastructure and plans to accommodate the anticipated growth. However, Resolution No. 8220 included Paragraph Number 7, which exempted certain properties from the land use conversion policy. Specifically, Paragraph Number 7 states:

> *7. Implementing Policy 2.1-I-2 (sic) shall not apply to General Plan Amendment application for properties west of McCarthy Boulevard north of Highway 237 and for properties east side (sic) of California to Penitencia Creek.*

This exemption has recently resulted in consideration and conversion of industrial properties located east of California Circle and west of Penitencia Creek to residential subdivision. These two projects are:

- Waterstone – APNs 022-37-011; -012 approved by City Council on November 19, 2013; and
- iStar – APNs 022-37-017 approved by City Council on November 18, 2014.

The Planning Commission conducted a duly noticed public hearing and discussed the proposed exemption for both McCarthy Ranch and California Circle areas. The Commission adopted a resolution by a 7 to 0 vote recommending the City Council adopt a resolution repealing the exemption for the properties west of McCarthy Boulevard north of Highway 237, while continuing the exemption for the property east of California Circle and west of Penitencia Creek. The Planning Commission found continuing the exemption for the last California Circle property is consistent with the City of Milpitas General Plan and the Zoning Ordinance. The Planning Commission recommended that the Council adopt a resolution repealing Paragraph 7 from Resolution No. 8220, while continuing the exemption for those properties east of California Circle and west of Penitencia Creek to maintain continuity because two residential projects have already been approved in that location.

Conclusion Based on the analysis described above and within the Planning Commission staff report, the Planning Commission recommended the City Council adopt a resolution repealing Paragraph 7 from Resolution No. 8220 while continuing the exemption for the properties east of California Circle.

California Environmental Quality Act (CEQA): The proposed resolution amendment is exempt from the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15061(b)(3) states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The purpose of amending Resolution No. 8220 is to achieve greater consistency with the Milpitas General Plan. The amendment will not expand the range or intensity of uses permitted on the subject properties. Instead, it will facilitate the utilization of these properties as the General Plan intends. The amendment does not authorize any construction and will not result in any physical change in the environment. Therefore, the proposed amendment is exempt from CEQA review because it can be seen with certainty, there is no possibility it will have a significant adverse impact on the environment.

Fiscal Impact: None.

Attachments (part of the agenda packet):
A) Draft City Council Resolution
B) 01-14-15 Planning Commission Staff Report
C) 01-14-15 Planning Commission Meeting Minutes
D) Signed PC Resolution 15-002
E) Adopted Council Resolution No. 8220

Recommendations:
1. Open the public hearing for any comments, and move to close the public hearing.
2. Per Planning Commission recommendation, adopt a resolution repealing Paragraph 7 in Resolution No. 8220, while continuing the exemption for the properties east of California Circle to Penitencia Creek.

2. **Conduct a Public Hearing and Introduce Ordinance No. 38.820 for adoption of Zoning Amendment No. ZA14-0011 Adding the words "mixed use" Residential to the purpose and intent section of the Town Center Zoning description and Prohibiting New Ground Floor Residential in the Town Center Zone (Staff Contact: Adam Petersen, 408-586-3274)**

Background: The Town Center land use designation and zoning district applies to the central part of the City, generally focused along Calaveras Boulevard between Interstate 680 and the Union Pacific railroad corridor. The intent of the Town Center land use designation and zoning district is to support a wide range of administrative, business, entertainment, residential, dining and cultural activities in the geographic center of the City.

In 2010, the Town Center designation was amended and expanded to include a collection of parcels to the south of Calaveras Boulevard. The purpose of the amendment was to make the existing uses on these parcels (offices, cultural centers, religious institutions, medical offices, financial institutions, gasoline station, retail) conforming and allow for the flexibility of integrating other commercial and residential uses for future development. Since the rezoning of these parcels to Town Center, some land use conversion to single-family residential develoment has occurred. A map of the Town Center zone area is included as part of the Planning Commission Staff report (in the agenda packet).

On May 21, 2013, the City Council approved an amendment to the Zoning Code to allow live/ work units as a conditional use in the Town Center Zoning District.

On December 10, 2014, the City of Milpitas Planning and Neighborhood Services Department prepared an application pursuant to Section 57 of the Milpitas Zoning Ordinance for a Zoning Amendment. Here is a summary of the request:

- *Zoning Amendment:* To modify the Milpitas Zoning Code, add the words "mixed use" residential to the description of the Town Center zone, and prohibit ground floor residential in the Town Center zone.

The Planning Commission conducted a duly noticed public hearing on January 14, 2015 and adopted a resolution by a 7 to 0 vote recommending the City Council adopt the proposed zoning amendment to prohibit ground floor residential. The motion included two directions to staff: (i) review the live/work provisions in the Zoning Code for consistency with the proposed changes to prohibit ground floor retail and (ii) clarify the commercial uses authorized on the ground floor in the Town Center Zoning District. Accordingly, changes were incorporated into the proposed

Zoning Code to clarify the types of authorized uses on the ground floor and established a maximum ten percent (10%) live/work units that may be constructed in the Town Center Zoning District in any single project to emphasize the commercial and entertainment intent of this zoning district.

Conclusion Based on the analysis described above and within the Planning Commission staff report and resolution, the Planning Commission recommended that the City Council adopt an ordinance amending the Town Center Zone to prohibit ground floor residential uses; establish a maximum percentage live/work authorized in the Town Center, and specify the type of commercial uses authorized on the second floor.

California Environmental Quality Act (CEQA): Staff reviewed the project to determine the required level of review under CEQA. The proposed project is exempt from CEQA under CEQA Guidelines Section 15061(b)(3) of the State CEQA guidelines, which excludes projects that are covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

The proposed amendment does not directly authorize any individual project. Additionally there are no projects under review that would be affected by the proposed amendment. Subsequent activities require further analysis by the City in order to determine the potential impacts from development. Therefore, the proposed action qualifies for this exemption and no further environmental review is required.

Fiscal Impact: None

Attachments (part of the agenda packet):
A) Ordinance No. 38.820 for introduction
B) 01-14-15 Planning Commission Staff Report
C) 01-14-15 Planning Commission Meeting Minutes
D) Adopted Planning Commission Resolution 15-001

Recommendations:
1. Open the public hearing for any comments, and move to close the public hearing.
2. Following the City Attorney's reading of the title of Ordinance No. 38.820, move to waive the first reading of the ordinance beyond the title.
3. Per Planning Commission recommendation, move to introduce Ordinance No. 38.820 amending the Town Center Zone prohibiting ground floor residential in the Town Center zone and establishing a maximum percent of live/work units authorized in the Town Center, and specify the type of commercial uses authorized on the ground floor.

3. Conduct a Public Hearing and Introduce Ordinance No. 38.819 to Approve a Development Agreement Vesting and Deferring the Transit Area Specific Plan Residential Fees for the Citation I and Citation II Projects: Amalfi I, Amalfi II and the Edge (Staff Contact: Adam Petersen, 408-586-3274)

Background: The Milpitas City Council adopted Resolution No. 8132 on November 11, 2011 approving the Citation I project. The Citation I project consists of up to 732 dwelling units, public parks, streets and infrastructure improvements located at 1200 Piper Drive within the Transit Area Specific Plan. Of these 732 units, 638 were allocated to two wrap buildings, which comprise the Amalfi I and Amalfi II development. Amalfi I, consisting of 378 apartment units is currently under construction. Amalfi II consists of 260 apartments, but construction has not commenced for this project. Additionally, 94 townhomes are under construction as part of the Citation I project approvals, but the 94 townhomes will not be a part of the development agreement.

On June 17, 2014, the City Council adopted Resolution No. 8382 approving the Citation II project. That project consist of 381 apartments and 8,100 square feet of commercial and office space that fronts Montague Expressway.

The following table summarizes the approved development projects.

Summary Project Information

Use/Standards	Citation I	Citation II
	Amalfi I and Amalfi II	The Edge
Acres	7.0 acres	5.6 acres
Commercial / Retail s.f.	0	8,100 sq ft
Residential Units	638 apartments	381 apartments
Parking Required	1,207 spaces	634 spaces
Parking Provided	1,260	634 spaces
Residential Density	45 dwelling units per acre	68 dwelling units per acre
Commercial FAR	N/A	0.03

The Planning Commission conducted a duly noticed public hearing on January 14, 2015 and adopted a resolution by a 4 to 3 vote recommending the City Council approve the proposed Development Agreement between the City of Milpitas and SCS Development Co., Amalfi Milpitas, LLC., and DPD Investments, LLC. The proposed Development Agreement is for a five year term with the ability of the parties to mutually extend for another five years. The proposed Development Agreement would reduce and vest the Transit Area Specific Plan Development Impact Fees for each residential unit from the current amount of $32,781 to $29,012 per unit. Additionally, the Development Agreement will allow the developers to pay the fees at time of issuance of Certificate of Occupancy as opposed to issuance of building permits. The fees would be adjusted based on Consumer Price Index and park land value after five years if full payment is not received.

The Planning Commission found the proposed Project is consistent with the City of Milpitas General Plan, the TASP and the Zoning Ordinance and recommend approval of the Development Agreement with a 4-3 vote based on findings that the Development Agreement would result in a public benefit to the City of Milpitas because it would prioritize the development of retail and commercial uses that increase revenues to the City. The Commission discussed the responsibilities for public improvements, increases in TASP fees and timing of payments. Ultimately, the Development Agreement would benefit the City by installing infrastructure that would facilitate this development, including retail and commercial mixed-use developments.

Conclusion Based on the analysis described above and within the Planning Commission Staff report, the Planning Commission is recommending the City Council adopt an ordinance approving the Development Agreement between the City of Milpitas and SCS Development, Inc.

California Environmental Quality Act (CEQA): The proposed development agreement is exempt from the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15061(b)(3) states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The development agreement will not expand the range or intensity of uses permitted on the subject properties. The development agreement does not authorize any construction and will not result in any physical change in the environment. Therefore, it can be seen with certainty that the project will not have an effect on the environment.

The project is further exempt from environmental review pursuant to CEQA Section 15183(a). The development of Amalfi I, Amalfi II, and the Edge projects was previously analyzed in the Transit Area Specific Plan Environmental Impact Report (SCH 2006032091). The EIR analyzed all impacts associated with the development of these properties and anticipated the intensity of this development. The development agreement does not increase the intensity beyond that previously analyzed in the certified EIR. Further, the projects, as approved per Resolutions No. 8132 and No. 8382, were found to be consistent with the Transit Area Specific Plan. Therefore, the proposed agreement is exempt from CEQA review because it can be seen with certainty, there is no possibility it will have a significant adverse on the environment and the project is consistent with a specific plan for which an EIR was certified.

Fiscal Impact: The Development Agreement would result in a reduction in TASP fees of approximately $3.8 million. However, the Development Agreement would ensure that the Edge project is constructed prior to Amalfi II building. As a result, the Edge project would be completed to coincide with the opening of the Milpitas BART Station. The 8,100 square feet of commercial and retail uses in the Edge would provide commercial services to transit riders and increase revenues to the City.

Attachments (part of the agenda packet):
A) Development Agreement per Ordinance No. 38.819
B) Exhibit A to Development Agreement
C) Amalfi I – Legal Description and Plat
D) Amalfi II – Legal Description and Plat
E) The Edge – Legal Description and Plat
F) 01-14-15 Planning Commission Staff Report
G) 01-14-15 Planning Commission Meeting Minutes
H) Adopted Planning Commission Resolution 15-003

Recommendations:
1. Open the public hearing for any comments, and move to close the public hearing.
2. Following the City Attorney's reading of the title of Ordinance No. 38.819, move to waive the first reading of the ordinance beyond the title.
3. Per Planning Commission recommendation, move to introduce Ordinance No. 38.819 approving a development agreement between the City of Milpitas and SCS Development Co., Amalfi Milpitas, LLC and DPD Investments, LLC.

XV. UNFINISHED BUSINESS

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

Background: From December 9, 2014 through January 11, 2015, the Bay Area Air Quality Management District (BAAQMD) received three hundred and ten odor complaints originating in Milpitas. One hundred and five complaints identified a garbage odor, twenty-one complaints identified a sewage odor, one hundred and eighty complaints did not identify an odor source, and four complaints identified a mixed odor source. As of the last Council update, the City's odor reporting website has received 286 reported complaints. The Acting City Engineer will provide an oral update on the status of activities related to odor at the Council meeting.

Recommendation: Receive an oral update report on odor issues from the Acting City Engineer.

XVI. REPORTS OF MAYOR AND COMMISSION

*** 5. Consider Mayor's Recommendations for Various Appointments of Staff and City Council members to Commissions (Contact: Mayor Esteves, 408-586-3029)**

Background: For administrative efficiency, the Santa Clara Valley Water District Water Commission requests the appointment of a City staff alternate for service on the Water Commission. Recently, Councilmember Garry Barbadillo was appointed by the Mayor and Council to serve as the elected official representative for Milpitas on that Commission. The staff alternate serves on the Water Commission only in the event of scheduling conflicts or other situations that would bar the elected official from serving at a particular meeting.

Currently, Acting City Engineer Steven Machida is the staff alternate. His term expired in December 2014 and now the City Council is asked to re-appointment Mr. Machida in the same capacity. He is available to attend periodic daytime meetings of the Water Commission at District offices in San Jose.

Mayor Esteves also recommends that Councilmember Marsha Grilli be appointed to serve as the Milpitas representative and Councilmember Giordano serve as Alternate to the Santa Clara County's Expressway Plan Policy Advisory Board.

Mayor Esteves recommends that Councilmember Garry Barbadillo serve as the Alternate to Vice Mayor Montano on the Santa Clara Valley Transportation Authority's Policy Advisory Committee.

Recommendation: Upon recommendation of Mayor Esteves, move to affirm the staff and Councilmember appointments recommended.

* **6. Consider Mayor's Recommendation of New Appointments to City of Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

Background: Mayor Esteves recommends the following new appointments:

Economic Development Commission: newly appoint Milpitas Unified School Board member Bob Nunez to fill the vacant seat for a school board member on the Economic Development Commission to a term that will expire in April of 2016.

Parks, Recreation and Cultural Resources Commission**:** newly appoint Samu Tiumalu to serve as Alternate No. 2 on the PRCRC to a term that will expire in June of 2015.

Recommendation: Approve the Mayor's recommendations and appoint two new City Commissioners.

* **7. Approve Youth Advisory Commission 2015 Work Plan (Staff Contact: Andrew Mendes, 408-586-3231)**

Background: At the January 8, 2015 Youth Advisory Commission meeting, the Commission reviewed and approved a draft 2015 Work Plan. The Commission's 2015 Work Plan identifies the Commission's goals, projects and on-going tasks they would like to accomplish for the year.

Recommendation: Approve the Youth Advisory Commission (YAC) Work Plan for 2015.

XVII. NEW BUSINESS

* **8. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended December 31, 2014 (Staff Contact: Emma Karlen, 408-586-3145)**

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, 2014 is submitted for Council 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, 2014.

As of December 31, 2014, the principal cost and market value of the City's investment portfolio was $152,924,177 and $152,935,989 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended December 31, 2014 was 0.66%. The comparative benchmarks for the same period were 0.27% for LAIF (Local Agency Investment Fund) and 0.46% for the 12-month average yield of the 2-year Treasury Note. The weighted average maturity of the portfolio was 517 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, 2014.

* **9. Approve Mid-Year Budget Appropriations for FY 2014-15 Operating and Capital Improvement Program Budget (Staff Contact: Emma Karlen, 408-586-3145)**

Background: To maintain conformity with the City's budget policy that any additional appropriations to a department or a capital improvement project's budget or re-appropriation of monies from one fund to another must be approved by the City Council, staff submits the budget change form and justification memoranda from the requesting departments for review and consideration by the City Council.

Necessary budget adjustments include the following:

1) Increase the budget appropriation to the General Fund and Transit Area Impact Fee Fund by $6 million to pay for the final installment payments to Mission West Properties related to the purchase of the McCandless property. The source of funding will be from the General Fund and Transit Area Impact Fund for $1.4 million and $4.6 million respectively. The installment payments were previously paid by the Economic Development Corporation and therefore not budgeted in the City's Funds. Due to settlement of the lawsuit with the State of California and the County of Santa Clara, the City has assumed the obligation to pay for the property.

2) Increase the budget appropriation for various Transit Area infrastructure projects by $7,838,901. The Transit Area Plan identified many public infrastructure improvements that are needed. In order to fund these projects, the City collects Transit Area Impact fee from new developments. The City has entered into various Credit Reimbursement Agreements with developers and required them to build the public infrastructure improvement. The reimbursements are either in the form of fee credit or actual reimbursement from the City. It is

necessary to increase the budget appropriations in the Transit Area Impact Fee fund in order to recognize the costs for constructing these infrastructure improvements.

3) Increase the budget appropriation for the 2014 Road Rehabilitation Project (CP4270) by $115,920 to include the rehabilitation work needed at Aspen Village on Main St. The funding source is from fees collected from developer. Staff also requests transfer of $23,100 from Gas Tax Fund to fund the 2015 Street Resurfacing Project (CP4275). Originally, $23,100 was to be funded from the Street Fund but due to insufficient fund balance in the Street Fund, the Gas Tax Fund will make up the difference. The total project budget for CP4275 will remain at $4,250,000 as originally programmed.

4) Increase the budget appropriation for the Engineering Department by $13,750 to cover expenses associated with the contract with NBS Government Finance Group for the required annual administration of the City's Lighting Landscape Maintenance Districts (LLMD). The source of funding will be from the LLMD Funds.

5) Increase the budget appropriation for the Fire Department by $1,500 for the food purchased for the residents sheltered at the Sport Center during the December 11, 2014 storm. The source of funding will be from the General Fund.

Fiscal Impact: The total budget adjustment request is $13,993,171. The impacts to the General Fund and the LLMD Funds are $1,401,500 and $13,750 respectively. The remaining budget requests are primarily funded by Transit Area impact fees and developer fees. There are sufficient fund balances in these various funds to accommodate the budget adjustment requests. A Budget Change Form with the requested items is included in the City Council agenda packet

Recommendations: Approve the identified five Fiscal Year 2014-15 mid-year budget appropriations as itemized on the budget change form.

10. Receive Financial Status Report for the Six Months Ended December 31, 2014 (Staff Contact: Emma Karlen, 408-586-3145)

Background: As of December 31, 2014, the General Fund received approximately $23.5 million in total revenue. This amount is $0.8 million more than the revenues received for the same period in FY 13-14 primarily due to increased transient occupancy tax revenue, increased building permit and plan check revenues, and increased property tax revenue. Based on trend analysis and updated information received to date, some of the major revenue categories have been revised to exceed budget. Overall, staff expected the General Fund revenues to be about $1.7 million above budget.

Transient Occupancy Tax revenue ("TOT") is expected to exceed budget by about $670,000 or 9%. Building and Fire permit and plan check fees combined are expected to exceed budget by $280,000 due to increased building activities. Property tax revenue is expected to exceed budget by $700,000 due to increased assessed values of real properties from new construction and housing market recovery.

Sales tax revenue is the only revenue that experienced shortfall compared to the budget. Although the retail and restaurants economic segments are doing very well in Milpitas, sales tax revenue generated from the business to business economic category tends to be very volatile. Since this category generates more than 20% of the sales tax revenue, any major increases or decreases from the high-tech industry impact the City's sales tax revenue significantly. Based on trends as well as reports from the sales tax consultant, sales tax revenue is revised to be below budget by $640,000.

Overall City departments' expenditures for the first six months were slightly below budget at about 46.8%. At mid-year, both personnel costs and non-personnel costs were under budget by about 3%.

Fiscal Impact: None.

Recommendation: Receive financial status report for the six months ended December 31, 2014.

XVIII. RESOLUTIONS

*** 11. Adopt a Resolution Approving Revisions to the Senior Advisory Commission Bylaws (Staff Contact: Stephanie Douglas, 408-586-3226)**

Background: Pursuant to the Senior Advisory Commission (SAC) Bylaws, the Senior Advisory Commission serves as an advisory body to the City Council on matters pertaining to recreation, leisure, and nutrition services for the Senior Citizens of Milpitas.

At the August 26, 2014 Senior Advisory Commission meeting, Commissioners reviewed and approved certain amendments to the current Bylaws for Council consideration. Revisions include clarification on volunteer hours expected from Commissioners of 36 hours per year, elimimation of a Treasurer's role and duties (which are currently handled by staff or Vice Chair and had not been appointed in more than five years) and general language corrections and updates. The Bylaws have not been revised since 2009.

Recommendation: Adopt a resolution approving revisions to the Senior Advisory Commission Bylaws.

*** 12. Adopt a Resolution Approving Memorandum of Understanding with the Mid-Management and Confidential Unit (Staff Contact: Carmen Valdez, 408-586-3086)**

Background: The most recent Memorandum of Understanding (MOU) with the Mid-Management and Confidential Unit (MidCon) expired on December 31, 2013. City representatives and representatives from MidCon met and conferred in good faith to negotiate a new contract. Agreement has been reached with a new successor Memorandum of Understanding with effective dates of February 4, 2015 through June 30, 2016, which is included in the City Council's agenda packet. The draft MOU document was available for public review for the 10 day period required.

Fiscal Impact: Total cost for the contract over current cost is approximately $295,231.

Recommendation: Adopt a resolution approving the Memorandum of Understanding with the Mid-Management and Confidential Unit covering the period of February 4, 2015 through June 30, 2016.

*** 13. Adopt a Resolution Approving Memorandum of Understanding with the Milpitas Professional and Technical Group (Staff Contact: Carmen Valdez, 408-586-3086)**

Background: The most recent Memorandum of Understanding (MOU) with the Milpitas Professional and Technical Group (Protech) expired on December 31, 2013. City representatives and representatives from Protech met and conferred in good faith to negotiate a new contract. Agreement has been reached with a new successor Memorandum of Understanding with effective dates of February 4, 2015 through June 30, 2016, which is included in the City Council's agenda packet. The draft MOU document was available for public review for the 10 day period required.

Fiscal Impact: Total cost for the contract over current cost is approximately $417,798.

Recommendation: Adopt a resolution approving the Memorandum of Understanding with the Milpitas Professional and Technical Group covering the period of February 4, 2015 through June 30, 2016.

*** 14. Adopt a Resolution Approving Memorandum of Understanding with the Milpitas Employees Association (Staff Contact: Carmen Valdez, 408-586-3086)**

<u>Background</u>: The most recent Memorandum of Understanding with the Milpitas Employees Association (MEA) expired on December 31, 2013. City representatives and representatives from MEA met and conferred in good faith to negotiate a new contract. In addition, the Union filed a charge with PERB challenging several management decisions affecting the MEA Union.

This proposal, confirmed by an affirmative vote of the MEA Union membership, provides for a new MOU that will be in effect through the end of June 30, 2016 unless extended and also provides for dismissal of the administrative challenge filed with PERB. The proposed MOU is provided the Council's agenda packet. The draft MOU document was available for public review for the 10 day period required.

<u>Fiscal Impact</u>: Total cost for the contract if expires in June 2016 over current cost is approximately $416,696, if extended cost would be approximately $541,704.

<u>Recommendation</u>: Adopt a resolution approving the Memorandum of Understanding with the Milpitas Association (MEA) covering the period of February 4, 2015 through June 30, 2016 unless extended, upon condition that MEA dismiss the Public Employees Relations Board (PERB) charge.

XIX. AGREEMENTS

*** 15. Approve Plans and Specifications and Authorize Advertisement for Bid Proposals for Community Center Auditorium Audio Visual Systems Upgrade Project No. 3406 (Staff Contact: Steve Erickson, 408-586-3301)**

<u>Background</u>: Staff completed plans and specifications for Community Center Auditorium Audio Visual Systems Upgrade, Project No. 3406. The project provides for the installation of replacement audio equipment, and if budget allows, the replacement of video equipment.

The Engineers Estimate for the project is $175,000. 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.

<u>Fiscal Impact</u>: None. Sufficient funds are available in the project budget for these services.

<u>Recommendation</u>: Approve plans and specifications for Project No. 3406, and authorize advertisement for Bid Proposals for Community Center Auditorium Audio Visual Systems upgrade.

*** 16. Approve First Phase Agreement with Burke, Williams & Sorensen, LLP for Legal Services Regarding Elimination of Odor (Staff Contact: Mike Ogaz, 408-586-3041)**

<u>Background:</u> Since 2011, the City has been engaged in litigation opposing the expansion of the Newby Island landfill. A suit based on environmental objections is currently pending before the local appellate court. However, at Council direction the City Attorney's Office has conducted a nation-wide search to find an attorney firm to advise on any other potential means by which to eliminate the offensive odors plaguing the community. Panel interviews conducted this month resulted in several well-qualified firms making presentations. The unanimous panel decision was to associate the firm of Burke, Williams & Sorensen to advise and represent the City regarding the odor problem.

This agreement is for a first phase assessment of the problem, including the review of the legal framework, potential administrative or court action to be taken and the potential for success of these alternatives in addressing the odor problem. Depending on the results of the first phase, a second and third phase is contemplated to implement an appropriate action plan.

Fiscal Impact: There are sufficient funds in the City Attorney "Services" budget to fund this agreement in a not-to-exceed amount of $50,000.

Recommendations: Approve the First Phase Agreement with the law firm of Burke Williams & Sorensen, LLP for legal services regarding the elimination of odors in the City of Milpitas.

XX. JOINT MEETING OF THE SUCCESSOR AGENCY, PUBLIC FINANCING AUTHORITY and MILPITAS CITY COUNCIL

SA1. Call to Order/Roll by the Mayor/Chair

SA2. Approval of Agenda

SA3. Adopt a Joint Resolution of the City Council of the City of Milpitas, the Board of the Successor Agency to the Former Milpitas Redevelopment Agency and the Board of the Milpitas Public Financing Authority Approving the Adoption of Disclosure Policies and Procedures (Staff Contact: Emma Karlen, 408-586-3145)

Background: To ensure compliance with all applicable federal and state securities laws, the Securities and Exchange Commission (the "SEC") recommends that issuers of municipal bonds adopt policies and procedures to govern compliance and implement training with respect to their initial disclosure and continuing disclosure requirements.

The Successor Agency Board recently approved the issuance and sale of the Successor Agency to the former Milpitas Redevelopment Agency 2015 Tax Allocation Refunding Bonds (Redevelopment Project Area No. 1) ("2015 Refunding Bonds") to refund the Successor Agency's outstanding 2003 Tax Allocation Bonds. In a separate agenda item tonight, the Successor Agency will be requested to approve the Preliminary Official Statement and other related documents for the 2015 Refunding Bonds. Staff believes that this will be an opportunistic time to present the Disclosure Policies and Procedures to the City Council, Successor Agency Board, and the Milpitas Public Financing Authority Board for consideration and adoption. Since all three entities have the capability to issue bonds, a joint resolution to adopt such a policy is appropriate.

The proposed Disclosure Polices and Procedures document is included in the Council agenda packet. Jones Hall, the law firm serving as the disclosure counsel to the Successor Agency in connection with the issuance and sale of the 2015 Refunding Bonds, will make a short presentation on the Disclosure Policies and Procedures at the meeting, primarily to ensure that staff members and the legislative body of the City, the Successor Agency and the Authority understand and are able to perform their respective responsibilities relating to bond issuance disclosure requirements and continuing disclosure requirements.

Recommendation: Following the presentation by Jones Hall, adopt a joint resolution of the City Council of the City of Milpitas, the Board of the Successor Agency to the former Milpitas Redevelopment Agency and the Board of the Milpitas Public Financing Authority approving the adoption of Disclosure Policies and Procedures.

SA4. Adopt a Resolution of the Board of the Successor Agency to the Former Milpitas Redevelopment Agency Confirming Issuance of Tax Allocation Refunding Bonds Pursuant to an Indenture of Trust, Approving Preliminary and Final Official Statements, and Providing Other Matters Relating Thereto (Staff Contact: Emma Karlen, 408-586-3145)

Background: On December 2, 2014, the Successor Agency Board adopted a resolution authorizing the issuance and sale of the Successor Agency to the Former Milpitas

Redevelopment Agency 2015 Tax Allocation Refunding Bonds (Redevelopment Project Area No. 1) (the "Refunding Bonds") to refund the outstanding 2003 Tax Allocation Refunding Bonds ("2003 TABs").

It is anticipated that the refunding will take approximately four months to complete. Key milestones to complete the refunding are identified below. Some of the key milestones have been expedited due to earlier approval of the refunding from the Department of Finance.

- Oversight Board and Successor Agency Board's approval to retain consultants to initiate the refunding of the 2003 TABs (Completed – November 3, 2014 and November 18, 2014)
- Successor Agency approving resolution to refund 2003 TABs and approving legal documents (Completed – December 2, 2014)
- Oversight Board's approval of Successor Agency action to issue the Refunding Bonds and make determination of savings (December 2, 2014)
- Submission of resolutions of both the Successor Agency and Oversight Board and all the related documents to the Department of Finance (Completed - December, 2014)
- Receive Department of Finance's Approval (Completed – January 13, 2015)
- Successor Agency Approval of the Preliminary Official Statement and remaining financing documents (Tonight's recommended action)
- Secure underlying credit ratings and potentially bond insurance and reserve fund surety (February, 2015)
- Negotiated sale of Bonds (February, 2015)
- Bond Closing and payoff of outstanding 2003 TABs (March, 2015)

The Successor Agency staff has worked with the disclosure counsel, Jones Hall, to prepare a draft Official Statement which is included in the Successor Agency Board's agenda packet. The Preliminary Official Statement contains information regarding the Refunding Bonds, the former Milpitas Redevelopment Agency and the Successor Agency. It will be used as a public offering statement for the issuance of the Refunding Bonds. Also included in the packet is a Depository Agreement between the Successor Agency and U.S. Bank National Association ("US Bank") to appoint U.S. Bank to hold certain bond proceeds of the Successor Agency.

Approval of the above-referenced Resolution will confirm the issuance of the 2015 Tax Allocation Refunding Bonds and approve the Preliminary Official Statement and the Depository Agreement. In addition, the Resolution further authorizes the "Authorized Officers" who are identified as the Chair, the Executive Director, or the Assistant Executive Director of the Successor Agency, each of whom may act alone to subsequently execute and deliver the final Official Statement and certain certificates to the Underwriters and take other official actions necessary for issuing the Refunding Bonds, on behalf of the Successor Agency.

Fiscal Impact: Based on current market conditions, the refinancing of the outstanding 2003 TABs is projected to generate net present value savings of approximately $18.0 million over the remaining life of the indebtedness. The average annual savings are projected to be approximately $1.3 million with the final maturity in September 2032. The term of the refunding bonds is the same as the original term of the currently outstanding indebtedness and will not be extended.

Recommendations: Adopt a resolution of the Board of the Successor Agency confirming the issuance of tax allocation refunding bonds pursuant to an indenture of trust, approving preliminary and final official statements and providing other matters relating thereof, including approving a depository agreement.

SA5. Adjourn Joint Meeting