



JOINT MEETING OF THE MILPITAS CITY COUNCIL, HOUSING AUTHORITY, AND SUCCESSOR AGENCY

AGENDA

TUESDAY, DECEMBER 6, 2022

CITY COUNCIL CHAMBERS, 455 E CALAVERAS BLVD, MILPITAS, CA
7:00 PM (PUBLIC BUSINESS)

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-2400

Para sa Tagalog, tumawag sa 408-586-3051

Para español, llame 408-586-3072

The City Council meeting is held in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas and via teleconference/Zoom webinar.

You may watch the Council meeting without providing public comment by accessing it via links here.

Meeting shall be livestreamed - Go to:

Facebook: <https://www.facebook.com/CityofMilpitas/>

YouTube: <https://www.milpitas.gov/youtube>

Web Streaming: <https://www.milpitas.gov/webstreaming>

PUBLIC COMMENT INSTRUCTIONS

Oral public comments may be provided live during the City Council meeting in person or by registering for the zoom meeting in advance. To register you will need to provide an email address (not disclosed) and a name. To minimize technical difficulties, please make sure that you have the latest version of the Zoom Application. Below is the link to register for this meeting only:

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_32mb8VCLThqzajXO_9lhKw

After you register a link will be sent to you to join the City Council meeting in order to give your comments. All registered meeting attendees who wish to speak must click on the "raise hand" icon when the Mayor calls for public comments. If participating by calling in on your phone, dial *9 to use the "raise hand" feature, and when you are called upon, hit *6 to unmute your phone. Your phone number will be displayed in the live meeting. The Mayor will call the speakers to begin.

All comments provided shall be limited to three minutes or less as determined by the Mayor. All members of the public will be limited to one comment per agenda item, and one comment for non-agenda items.

MILPITAS CITY COUNCIL CODE OF CONDUCT

- Be respectful and courteous (words, tone, and body language).
- Model civility.
- Avoid surprises.
- Praise publicly and criticize privately.
- Focus on the issue, not the person.
- Refrain from using electronic devices while on the Council dais.
- Disclose conflicts of interest and affiliations related to agenda items.
- Separate governing from campaigning.
- The Council speaks with one voice after making policy on issues.
- Respect the line between policy and administration.
- Council will hold one another accountable to comply with this Code of Conduct.

CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk (7:00 PM)

PLEDGE OF ALLEGIANCE

INVOCATION (Vice Mayor Montano)

PUBLIC FORUM (7:05 PM)

Those in the audience and via Zoom are invited to address City Council on any subject not on tonight's agenda. In-person speakers wishing to address the Council are requested, but not required to complete a Speaker Card and submit it to the Mayor. In-person speakers will then be asked to come up to the podium and state their name for the record. Those interested in speaking via Zoom may do so by following the instructions on page one (1) of the agenda. Comments may be limited to three (3) minutes or less at the Mayor's discretion. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. The City Council may instruct the City Manager to place the item on a future meeting agenda.

NOTE: If a member of the public wishes to share any presentation materials for Council consideration, they must be submitted to the Clerk's Office by email to CityClerk@milpitas.gov by 12:00 p.m. on the day of the meeting. No presentations will be accepted in person in the Council Chambers.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS (7:10 PM)

Members of the City Council or City Manager may make brief announcements at this time. Members of the City Council may also suggest future agenda items at this time. For future agenda items, the City Council shall not debate the topic or engage in discussion but shall simply state a "yes" or "no" as to whether to direct the City Manager to place the item on a future meeting agenda. If a majority of the City Council agrees to place an item on a future meeting agenda, the City Manager shall place the item on a future agenda for City Council discussion.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

READING OF THE CITY COUNCIL CODE OF CONDUCT

APPROVAL OF AGENDA

CONSENT CALENDAR (7:15 PM)

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

C1. Receive City Council Calendar of Meetings for December 2022 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive City Council Calendar of Meetings for December 2022.

C2. Approve City Council Regular Meeting Minutes of November 15, 2022 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Approve City Council Regular Meeting minutes of November 15, 2022.

C3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Receive the list of anticipated agenda items for the next regular City Council meeting.

C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Recommendation: Review the list of items that have been requested by City Councilmembers and provide direction to staff as necessary. No substantive discussion about any specific item shall occur and the City Council shall hold all debate about the item until it is scheduled as a full agenda item.

C5. Consider the Recommendation from Mayor Tran for Appointments to City Commissions and Declare an Unscheduled Vacancy (Contact: Mayor Tran, 408-586-3029)

Recommendation: (1) Receive the recommendation from Mayor Tran and approve appointments to City Commissions; and (2) Declare an unscheduled vacancy on the Economic Development and Trade Commission and direct the City Clerk to post the notice of unscheduled vacancy.

C6. Reconfirm Findings and Determinations Under Resolution No. 9165 and Assembly Bill 361 for the Continuation of Virtual Meetings of the City Council and Legislative Bodies (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)

Recommendation: Move to reconfirm findings and determinations under Resolution No. 9165 and Assembly Bill 361 for the continuation of virtual meetings of the City Council and Legislative Bodies.

C7. Authorize City Manager's Response Letter to the October 7, 2022 Santa Clara County Civil Grand Jury Final Report "If You Only Read the Ballot, You're Being Duped" (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Michael Mutalipassi, City Attorney 408-586-3040)

Recommendation: Authorize the City Manager to send a letter in response to the October 7, 2022 Santa Clara County Civil Grand Jury Final Report "If You Only Read the Ballot, You're Being Duped" pursuant to Penal Code section 933.

C8. Receive an Update on the American Rescue Plan Act and Provide Direction to Staff (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Lauren Lai, Director of Finance, 408-586-3111)

Recommendation: Receive an update on the American Rescue Plan Act (ARPA) programs and provide direction to staff.

C9. Accept the City's Annual Comprehensive Financial Report and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2022 (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)

Recommendation: Accept the City's Annual Comprehensive Financial Report (ACFR) and other related annual audited reports for the Fiscal Year ended June 30, 2022 and find a CEQA exemption.

C10. Authorize the City Manager to Execute a Master Encroachment Agreement for Bandwidth IG, LLC, a Delaware Limited Liability Company for Installation of Network Facilities Within Public Right-of-Way (Staff Contact: Steve Erickson, Engineering Director / City Engineer, 408-586-3301; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)

Recommendation: Authorize the City Manager to execute a master encroachment agreement for Bandwidth IG, LLC, a Delaware Limited Liability Company for installation of network facilities within public right-of-way and find a CEQA exemption.

C11. Adopt a Resolution Authorizing the City Manager to Execute the Purchase of Two 2023 Ford Super Duty F-250 SRW (W2B) XLT 4WD Crew Cabs for the Fire Department from Through a Sourcewell Cooperative Contract with National Auto Fleet Group in the Amount of \$154,270.06 (Staff Contact: Brian Stelling, Interim Fire Chief, 408-586-2827)

Recommendation: Adopt a resolution authorizing the City Manager to execute the purchase of two 2023 Ford Super Duty F-250 SRW (W2B) XLT 4WD Crew Cabs for the Fire Department through a Sourcewell Cooperative Contract with National Auto Fleet Group in the amount of \$154,270.06 and find a CEQA exemption.

C12. Housing Authority/Successor Agency: Sale of the residential unit located at 600 S. Abel Street Unit #208 (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046 and Michelle Silva, Administrative Analyst II, 408-586-3244)

Recommendation: (1) Adopt the resolution authorizing the Executive Director of the Milpitas Housing Authority to execute documents for the sale of the residential property located at 600 S. Abel Street Unit #208 in the amount of \$314,973.00; and (2) Approve related budget amendments due to the sale of the property located at 600 S. Abel Street Unit #208 in the amount of \$314,973.00.

C13. Adopt a Resolution Appointing Roger Lee as Interim Public Works Director (Liz Brown, Interim Human Resources Director, 408-586-3086)

Recommendation: Adopt a resolution appointing Roger Lee as Interim Public Works Director in accordance with California Government Code Sections 7522.56 and 21221(h) and approve, and authorize the City Manager to execute, an employment agreement with Roger Lee.

C14. Waive the Second Reading and Adopt Ordinance No. 38.849 Amending the Zoning Map of the City of Milpitas in Accordance with the Provisions of Section 3.03 of Chapter 10 of Title XI of the Milpitas Municipal Code to Change the Zoning Classification of Certain Parcels (APNs 086-38-021, -022, and -037), Located on the East Side of South Hillview Drive and Extending Approximately 1,200 Feet Southerly From Los Coches Street, From the M2 Heavy Industrial Zoning District to the M1 Light Industrial Zoning District (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)

Recommendation: Move to waive the second reading and adopt Ordinance 38.849 amending the Zoning map of the City of Milpitas in accordance with the provisions of Section 3.03 of Chapter 10 of Title XI (Zoning Ordinance) of the Milpitas Municipal Code to change the Zoning Classification of Certain Parcels (APNs 086-38-021, -022, and -037), located on the east side of South Hillview Drive and extending approximately 1200 feet southerly from Los Coches Street, from the M2 Heavy Industrial Zoning District to the M1 Light Industrial Zoning District.

C15. Waive the Second Reading and Adopt Ordinance No. 38.850 Amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code Relating to Outdoor Dining (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)

Recommendation: Move to waive the Second Reading and Adopt Ordinance No. 38.850, amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code and adding a new Subsection 13.19 Relating to Outdoor Dining and find a CEQA exemption under sections 15183 and 15061(b)(3).

C16. Report on Bids and Award Construction Contract to G&G Builders Inc. in the Amount of \$872,029.00 for Rehabilitation of Up to Eleven City Parks Project (Staff Contact: Roger Lee, Interim Public Works Director, 408-586-2602)

Recommendation: (1) Receive report on bids and award a construction contract to the lowest responsible and responsive bidder, G&G Builders Inc., in the amount of \$872,059.00 for the Rehabilitation of Up to Eleven City Parks project; and (2) Authorize the City Manager to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$468,514.00 subject to appropriation of funds and find a CEQA exemption as modifications to existing facilities.

PUBLIC HEARINGS (7:20 PM)

Members of the public may be allotted up to three (3) minutes or less at the Mayor's discretion, to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of ten (10) minutes for opening statements and up to a total of five (5) minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.

17. Conduct a Public Hearing and Adopt Ordinance No. 65.152 for Adoption by Reference the 2022 California Building Codes and Amendments (Staff Contact: Bill Tott, Building Official, 408-586-3263)

Recommendation: (1) Open the Public Hearing; hear testimony, then move to close the public hearing. (2) Waive the second reading and adopt Ordinance No. 65.152 amending Chapters 3, 3.5, 4, 5, 6, 7, 10, 14, 150, and 170 of Title II of the Milpitas Municipal Code adopting by reference the 2022 California Building Code, 2022 California Residential Code, 2021 International Property Maintenance Code, 2022 California Mechanical Code, 2022 California Electrical Code, 2022 California Plumbing Code, 2021 International Swimming Pool and Spa Code, 2022 California Existing Building Code, and 2022 California Historical Building Code, with amendments.

18. Conduct a Public Hearing and Adopt Ordinance No. 65.153 Adopting by Reference the 2022 California Energy Code; and Adopt Ordinance No. 65.154 Adopting by Reference the 2022 California Green Building Standards Code with Amendments (Staff Contact: Bill Tott, Building Official, 408-586-3263)

Recommendation: (1) Open the public hearing, hear testimony, then move to close the public hearing; (2) Waive the second reading and adopt Ordinance No. 65.153 amending Chapter 11 of Title II of the Milpitas Municipal Code adopting by reference the 2022 California Energy Code; and (3) Waive the second reading and adopt Ordinance No. 65.154 amending Chapter 19 of Title II of the Milpitas Municipal Code adopting by reference the 2022 California Green Building Standards Code with amendments and find a CEQA exemption.

19. Conduct a Public Hearing, Waive the Second Reading and Adopt Ordinance No. 133.26, Adopting by Reference with Certain Local Amendments the 2022 Edition of the California Fire Code (Staff Contact: Arthur Belton, Deputy Fire Chief/Fire Marshal, 408-586-3384)

Recommendation: (1) Following the City Attorney reading aloud the title, waive the second reading beyond the title of Ordinance No. 113.26; (2) Open the public hearing and move to close following comments; and (3) Adopt Ordinance No. 113.26 adopting by reference with certain local amendments the 2022 edition of the California Fire Code, enacted as Chapter 300, Title V of the Milpitas Municipal Code.

20. Conduct a Public Hearing and Consider Adopting an Urgency Ordinance Amending Section 13 "Special Uses" of Chapter 10 "Zoning" of Title XI of the Milpitas Municipal Code Relating to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)

Recommendation: (1) Conduct a public hearing and move to close the hearing following comments; and (2) Adopt an Urgency Ordinance amending Section 13 "Special Uses" of Chapter 10 "Zoning" of Title XI of the Milpitas Municipal Code to comply with Government Code Section(s) 65852.2, 65852.22, 65852.23 and Section 17980.12 of the Health and Safety Code and making findings that the proposed zoning ordinance amendment is statutorily exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code section 21080.17, which exempts from CEQA any ordinance that is adopted to implement Government Code Section 65852.1 or 65852.2.

- 21. Conduct a Public Hearing and Introduce an Ordinance Amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code Relating to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)**

Recommendation: (1) Conduct a public hearing and move to close the hearing following comments; (2) City Attorney shall read aloud the title of the Ordinance; and (3) Move to waive the first reading beyond the title and introduce an Ordinance amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code relating to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) and making findings of CEQA exemption.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE (9:30 PM)

- 22. Receive Staff Report on Draft Water Rates Study, Direct Staff to Proceed with Community Engagement on Proposed Rates, Including Identifying a Date for the Public Hearing and Mailing a Notice of the Public Hearing for the Proposed Water Rates (Staff Contact: Roger Lee, Interim Public Works Director, 408-586-2602; and Lauren Lai, Finance Director, 408-586-3111)**

Recommendation: (1) Receive staff report on Draft Water Rates Study; and (2) Direct staff to proceed with community engagement on proposed rates, including identifying a date for the public hearing and mailing a notice of the public hearing not less than 45 days prior to the hearing and find a CEQA exemption.

- 23. Receive Staff Report on Draft Sewer Rates Study, Direct Staff to Proceed with Community Engagement on Proposed Rates, Including Identifying a Date for the Public Hearing and Mailing a Notice of the Public Hearing for the Proposed Sewer Rates (Staff Contact: Roger Lee, Interim Public Works Director, 408-586-2602; and Lauren Lai, Director of Finance, 408-586-3111)**

Recommendation: (1) Receive staff report on Draft Sewer Rates Study; and (2) Direct staff to proceed with community engagement on proposed rates, including identifying a date for the public hearing and mailing a notice of the public hearing not less than 45 days prior to the hearing and find a CEQA exemption.

LEADERSHIP AND SUPPORT SERVICES (10:30 PM)

- 24. Adopt a Resolution Appointing Brian Stelling as Interim Fire Chief (Staff Contact: Liz Brown, Interim Human Resources Director, 408-586-3086)**

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

ADJOURNMENT (10:45 PM)

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 City agencies exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and 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: mmutalipassi@milpitas.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.milpitas.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 City website. City Council agendas and related materials can be viewed online: www.milpitas.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at www.milpitas.gov or at Milpitas City Hall. Contact the City Clerk's Office at 408-586-3001 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to CityClerk@milpitas.gov prior to the meeting. You may request a larger font agenda.

November 2022						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Milpitas City Council Calendar

December 2022

January 2023						
S	M	T	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 5:30 PM-Milpitas Chamber of Commerce Board (EC) 4:00 PM-Santa Clara VTA Special Board of Directors (CM) 5:30 PM-Santa Clara VTA Board of Directors (CM) 7:00 PM-Tree Lighting Event	2	3
4	5 7:00 PM-Parks, Recreation & Cultural Resources Commission (CM)	6 7:00 PM-City Council	7 5:30 PM-Veterans Commission (RT) 7:00 PM-Community Advisory Commission (EC) 7:00 PM-CEDAW Task Force, Room 7/8 Community Center (KD)	8 4:00 PM-Treatment Plant Advisory Committee (CM) 4:00 PM-Santa Clara VTA Policy Advisory Committee (AP) 7:00 PM-Youth Advisory Commission (EC)	9	10
11	12	13 4:00 PM-HOPE Task Force Meeting	14 4:30 PM-Transportation Subcommittee (RT/CM) 7:00 PM-Silicon Valley Clean Energy Board of Directors (EC) (Cupertino) 7:00 PM-Planning Commission	15 10:00 AM-VTA Congestion Mgmt Program Planning Comm (CM) 5:30 PM-Measure F Oversight Committee	16	17
18	19 7:00 PM-Science, Technology, and Innovation Commission (RT)	20 6:00 PM-City Council Special Meeting – Swearing In Ceremony 7:00 PM-City Council	21 6:00 PM-Energy and Environmental Sustainability Commission (EC)	22	23 CITY Observed Holiday 	24
25	26 CITY Observed Holiday 	27 28 29 30  Happy Holidays City Hall and City Facilities Closed (Fire and Police are not affected)				31



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

MINUTES

TUESDAY, NOVEMBER 15, 2022

CITY COUNCIL CHAMBERS, 455 E CALAVERAS BLVD, MILPITAS, CA

7:00 PM (PUBLIC BUSINESS)

The City Council of the City of Milpitas convened on the regular City Council meeting day of November 15, 2022, in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas, and via teleconference/Zoom webinar.

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

Mayor Tran called the Regular City Council meeting to order at 7:00 PM. Roll Call was taken by City Clerk Guzzetta.

PRESENT: Mayor Tran, Vice Mayor Montano, Councilmembers Chua, Dominguez, and Phan (7:01 PM)

ABSENT: None

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Tran.

INVOCATION

Mayor Tran invited Voltaire Montemayor to present the invocation.

PUBLIC FORUM

The following people spoke under Public Forum:

1. Robin Reynolds, Bill Wilson Center
2. Voltaire Montemayor

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

City Manager McHarris advised of the upcoming City Hall closure for Thanksgiving, announced the Tree Lighting ceremony on December 1, 2022 at the Civic Center Plaza, the Veterans Appreciation Lunch on November 19, 2022, and the Build it Green Program from November 30 – December 8, 2022.

Mayor Tran thanked the community for attending the Veterans Day Ceremony. He requested the City Manager add an item regarding a food pantry to the Council request list in January.

Councilmember Phan congratulated Mayor Elect Montano.

Vice Mayor Montano offered thanks to Councilmember Phan and the community.

Councilmember Chua congratulated Mayor Elect Montano and commented on the challenges of running for office. She also offered congratulations to incoming Councilmembers Elect Barbadillo and Lien.

Councilmember Dominguez offered comments on attendance at the polls and the newly elected members of the Council.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Mutalipassi asked the Mayor and City Councilmembers if they had any personal conflicts of interest. By roll call, there were no conflicts of interest. City Attorney Mutalipassi asked the Mayor and City Councilmembers if they had any reportable campaign contributions. By roll call, there were no reportable campaign contributions.

READING OF THE CITY COUNCIL CODE OF CONDUCT

Mayor Tran read the Code of Conduct.

APPROVAL OF AGENDA

Motion: to approve the November 15, 2022 Regular Meeting Agenda, postponing item 22 to first regular meeting of January 2023.

Motion/Second: Mayor Tran / Vice Mayor Montano

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

CONSENT CALENDAR

Motion: to approve the consent calendar pulling C16 for discussion.

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

C1. Receive City Council Calendar of Meetings for November and December 2022 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Received the City Council Calendar of Meetings for November and December 2022.

C2. Approve City Council City Council Regular Meeting Minutes of November 1, 2022 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Approved the City Council Regular Meeting minutes of November 1, 2022.

C3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Received the list of anticipated agenda items for the next regular City Council meeting.

C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Reviewed the list of items that have been requested by City Councilmembers and provided direction to staff as necessary.

C5. Approve City Council Meeting Schedule for 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Approved the 2023 Milpitas City Council meeting schedule, with any changes requested at the City Council meeting.

C6. Consider the Recommendation from Mayor Tran for Appointments to City Commissions (Contact: Mayor Tran, 408-586-3029)

Received the recommendation from Mayor Tran and approved appointments to City Commissions.

Arts Commission

1. Reappoint Sandeep Umarani to a term ending October 2025

Public Safety and Emergency Preparedness Commission

1. Promote Andrew Luu to Alternate #1 with an unexpired term ending June 2025
2. Appoint Rosana Cacao as Alternate #2 with an unexpired term ending June 2023.

C7. Reconfirm Findings and Determinations Under Resolution No. 9165 and Assembly Bill 361 for the Continuation of Virtual Meetings of the City Council and Legislative Bodies (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)

Moved to reconfirm findings and determinations under Resolution No. 9165 and Assembly Bill 361 for the continuation of virtual meetings of the City Council and Legislative Bodies.

C8. Approve and Authorize the City Manager to Execute a Four-Year Agreement with CivicPlus for the CivicEngage Municipal Website Platform (Staff Contact: Daniel Nam, Information Technology Director, 408-586-2712)

Approved and authorized the City Manager to execute a four-year agreement with CivicPlus for the CivicEngage Government Website Platform for a total not to exceed contract amount of \$200,000.00, in final form to be approved by the City Attorney.

C9. Waive the Second Reading and Adopt Ordinance No. 38.848 Amending Sections of Chapter 10 (Zoning), Title XI of the Milpitas Municipal Code Relating to Definitions and Regulations for Personal and Commercial Service Land Uses (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)

Waived the second reading and adopted **Ordinance No. 38.848** amending sections of Chapter 10 (Zoning) of Title XI of the Milpitas Municipal Code relating to definitions and regulations for commercial service land uses

C10. Approve and Authorize the City Manager to Execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Toll West Coast, LLC for the Parkside Project at 1980 and 1992 Tarob Court and 551 Lundy Place (Staff Contact: Steve Erickson, Engineering Director / City Engineer, 408-586-3301; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)

Approved and authorized the City Manager to execute a Stormwater Management Facilities Operation and Maintenance Agreement between the City of Milpitas and Toll West Coast, LLC for the Parkside Project at 1980 and 1992 Tarob Court and 551 Lundy Place.

C11. Approve and Authorize the City Manager to Execute the Improvement Agreement with Satpreet Singh Thind and Jaspreet Kaur Thind, for Completion of Offsite Public Improvements Located at

250 Piedmont Road Associated with Site Development Permit (SD19-0004) (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)

Approved and authorized the City Manager to execute the improvement agreement with Satpreet Singh Thind and Jaspreet Kaur Thind, for completion of offsite public improvements located at 250 Piedmont Road associated with Site Development Permit (SD19-0004).

C12. Award and Approve a 5-Year Professional Services Contract with Fireworks and Stage Effects America, LLC for the Annual 4th of July and Annual Lunar New Year's Fireworks Shows for a Not-to-Exceed Amount of \$140,510.00 (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)

Awarded and authorized the City Manager to execute the five-year professional services agreement with Fireworks and Stage Effects America, LLC for Annual 4th of July and Annual Lunar New Year pyrotechnical services for the not-to-exceed amount of \$140,510.00.

C13. Review and Accept the 2022 Legislative Season Outcome Report (Staff Contact: Walter C. Rossmann, Deputy City Manager, 408-586-3012)

Reviewed and accepted the 2022 Legislative Season Outcome Report.

C14. Adopt a Resolution Appointing Roger Lee as Interim Public Works Director (Staff Contact: Jeannine Seher, Human Resources Director, 408-586-3086)

Adopted **Resolution No. 9199** appointing Roger Lee as Interim Public Works Director in accordance with California Government Code Sections 7522.56 and 21221(h) and approve, and authorize the City Manager to execute, an employment agreement with Roger Lee.

C15. Adopt a Resolution Appointing Liz Brown as Interim Human Resources Director (Jeannine Seher, Human Resources Director, 408-586-3086)

Adopted **Resolution No. 9200** appointing Liz Brown as Interim Human Resources Director in accordance with California Government Code Sections 7522.56 and 21221(h) and approve, and authorize the City Manager to execute, an employment agreement with Liz Brown.

C16. Appointment of City Council Ad Hoc Naming Subcommittee Members (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)

Pulled from the Consent Calendar.

C17. FY 2022-23 1st Quarter Financial Status Report for the Quarter Ended September 30, 2022 (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)

Reviewed the FY 2022-23 Quarterly Financial Status Report for the quarter ended September 30, 2022.

PUBLIC HEARINGS

18. Conduct a Public Hearing and Introduce an Ordinance Amending the Zoning Map of the City of Milpitas in Accordance with the Provisions of Section 3.03 of Chapter 10 of Title XI (Zoning) of the Milpitas Municipal Code to Change the Zoning Classification of Certain Parcels (APNs 086-38-021, -022, and -037), Located on the East Side of South Hillview Drive and Extending Approximately 1200 Feet Southerly From Los Coches Street, From the M2 Heavy Industrial Zoning District to the M1 Light Industrial Zoning District (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)

Planning Director Thomas introduced the item and Senior Planner Van Hua presented the report.

Mayor Tran opened the public hearing

There were the following speakers:

1. Voltaire Montemayor

Mayor Tran closed the public hearing.

Vice Mayor Montano questioned the effects of passing this ordinance. Planning Director Thomas responded that previous City Council action inadvertently affected the three parcels, and that the ordinance would have no effect on the surrounding properties. Vice Mayor Montano emphasized the importance of maintaining existing heavy industrial zoning.

City Attorney Mutalipassi read the title of the ordinance.

After discussion, motion: to waive the first reading beyond the title and introduce **Ordinance No. 38.849** amending the Zoning map of the City of Milpitas in accordance with the provisions of Section 3.03 of Chapter 10 of Title XI (Zoning Ordinance) of the Milpitas Municipal Code to change the Zoning Classification of Certain Parcels (APNs 086-38-021, -022, and -037), located on the east side of South Hillview Drive and extending approximately 1200 feet southerly from Los Coches Street, from the M2 Heavy Industrial Zoning District to the M1 Light Industrial Zoning District. In addition, determine that the zoning ordinance amendment is exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Sections 15183 (Projects Consistent with a General Plan and Zoning) and 15061(b)(3) (Common Sense Exemption).

Motion/Second: Mayor Tran / Councilmember Chua

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

19. Conduct a Public Hearing and Introduce an Ordinance Amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code Relating to Outdoor Dining (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)

Planning Director Thomas presented the report.

Mayor Tran opened the public hearing

There were the following speakers:

1. Voltaire Montemayor

Mayor Tran closed the public hearing.

Vice Mayor Montano asked if the ordinance would affect existing Main Street restaurants with outdoor dining and questioned if they will need to reapply for a permit or are they grandfathered in. Planning Director Thomas noted that all restaurants using converted parking stalls, sidewalks, or patio areas for outdoor dining will need to apply for a minor site development permit under the new ordinance. Restaurants that convert parking stalls into outdoor dining areas will be eligible for an overall parking reduction to ensure that the expanded seating doesn't trigger the need for additional parking and that converted spaces don't need to be replaced elsewhere on the same site..

City Attorney Mutalipassi read the title of the ordinance.

After discussion, motion: to waive the first reading beyond the title and introduce **Ordinance No. 38.850** adding Subsection 13.19 “Outdoor Dining” to Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code Relating to Outdoor Dining Areas and determine the Zoning Ordinance Text Amendment is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a General Plan) and 15061(b)(3) (Common Sense Exemption).

Motion/Second: Mayor Tran / Councilmember Dominguez

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

20. Conduct a Public Hearing and Adopt a Resolution Certifying Election Results and Adding the Property Located at 1724 Sunnyhills Drive – Parcel 2 into Community Facilities District No. 2005-1 (Annexation No. 22) (Staff Contact: Steve Erickson, Engineering Director / City Engineer, 408-586-3301; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)

Engineering Director / City Engineer Erickson introduced the item and Principal Civil Engineer Alonzo presented the report.

Mayor Tran opened the public hearing

There were the following speakers:

1. Voltaire Montemayor

Mayor Tran closed the public hearing.

City Clerk Guzzetta reported that one ballot was received and opened the sealed ballot. She then stated that there was one vote in favor of the proposition and it was approved.

Recommendation: to adopt **Resolution No. 9201** certifying election Results and adding the property located at 1724 Sunnyhills Drive – Parcel 2 into Community Facilities District No. 2005-1 (Annexation No. 22).

Motion/Second: Mayor Tran / Vice Mayor Montano

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

COMMUNITY DEVELOPMENT

21. Receive a Report on the Homekey Project at 1000 Hillview Court (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3056)

Assistant City Manager Kantak presented the report joined by Jamboree Chief Impact Officer George Searcy, Abode Services Vice President of Programs Katie Fantin, Abode Services Senior Director of Health and Wellness Brittney Kirkland, Chief of Police Hernandez, Police Captain Miller, Deputy Fire Chief Schoonover, Director Consuelo Hernandez from the Santa Clara County Office of Supportive Housing, and Hyder Regional Manager Paige Range.

There were the following speakers:

1. Voltaire Montemayor
2. Hillview Tenants Association
3. Lisa Reeve

Mayor Tran offered observations on public safety and increasing site security. He asked the working group to review adding a perimeter fence to the apartments and explore if crimes are being committed by people that aren't residents of the facility.

Councilmember Dominguez emphasized the importance of controlling access to the facility and voiced concerns with music volume, cannabis usage, resident safety issues, and cleanliness outside of the main floor. She offered compliments to Abode Services staff for their interactions with residents and availability on-site but noted Jamboree staff appeared to be unavailable. She suggested the tenant's association be represented in the working group.

Councilmember Chua questioned the availability of staffing throughout the day and asked the working group to investigate the timing of public safety occurrences and if they coincide with times staff are not on site and focus on the statistics in each category regarding calls for service and address them. She also asked the working group to look into any reason that the number of calls for service in September 2022 increased.

Santa Clara County Supervisor Otto Lee commented on his recent visit, discussed actions taken in response to the letter sent in August, and commended staff and council for their work.

Vice Mayor Montano asked for staff to provide the ratio of calls compared to Citywide calls for service. Chief of Police Hernandez responded that he would need to narrow the scope to compare it to similar apartment complexes due to factors based on the differing City dynamics. She requested the project team include a representative of the Hillview Tenants Association as part of the biweekly meetings. She suggested adding a third full time staff member to the facility management team.

No action taken.

LEADERSHIP AND SUPPORT SERVICES

- 22. Approve the Prioritization of Additional Workplan Items City Council Policy (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; Walter C. Rossmann, Deputy City Manager, 408-586-3012)**

Postponed to first meeting in January 2023.

ITEMS PULLED FROM CONSENT CALENDAR

- C16. Appointment of City Council Ad Hoc Naming Subcommittee Members (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

Motion: To defer the appointment of two Members of the City Council to January 2023 to be heard with appointments of Members of the City Council to commissions, boards, and subcommittees for the next legislative period.

Motion/Second: Vice Mayor Montano / Mayor Tran

Motion carried by the following:

AYES: Councilmembers Chua, Dominguez, Phan, Vice Mayor Montano, Mayor Tran

NOES: None

ADJOURNMENT

Mayor Tran adjourned the meeting at 9:30 PM.

Draft meeting minutes submitted by City Clerk, Suzanne Guzzetta

TENTATIVE CITY COUNCIL AGENDA ITEM LIST

Item # C3.

as of 12/1/2022

December 20, 2022 – 3rd Tuesday

CLOSED SESSION

INVOCATION (assigned to Vice Mayor Montano)

PRESENTATION

AGENDA ITEMS (Special Meeting)

1. Certification of Election Results (City Clerk)
2. Presentation to Outgoing Officials
3. Swear in Newly Elected Officials

Adjourn to Reception

4. Elect New Vice Mayor

CONSENT CALENDAR

5. Receive City Council calendar for December and January 2022 (City Clerk)
6. Approve City Council Regular Meeting Minutes of November 15, 2022 (City Clerk)
7. Preview list of items for January 3, 2022 (City Clerk)
8. Councilmember Request List (City Clerk)
9. Reconfirm Findings and Determinations Under Resolution No. 9156 and Set Forth in Assembly Bill 361 for the Continuation of Virtual Meetings of the City Council and Legislative Bodies (City Attorney)
10. AB1600 Annual Report on Impact Fees (Finance)
11. Smart Cover 5-yr Agreement Authorization (Public Works)
12. Approve and Authorize the City Manager to Execute an Encroachment and Maintenance Agreement with Milpitas – District 4 Owner, LLC, for the Perpetual Maintenance and Operation of Private Sidewalk Lighting Improvements within the City Right-of-Way Located at 150 Market Street (Engineering)
13. 2nd Reading – ADU Zoning Ordinance (Planning)

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

OPEN ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
1	Food pantry	Tran	11/15/2022	
2	Investigate labor policies related to Councilmember paternity/maternity leave, clarify if Councilmembers are employees and email to City Council prior to the next City Council meeting.	Dominguez	10/18/2022	Memo sent by City Attorney on 10/27
3	Review the City Council handbook to ensure that Councilmembers are guaranteed paternity/maternity leave and not made to give up their seat due to missing consecutive meetings.	Dominguez	10/18/2022	Memo sent by City Attorney on 10/27
4	Staff explore eliminating or waiving the fee for the gym at the Milpitas Senior Center	Chua	10/18/2022	Staff will evaluate this item consistent with the Recreation and Community Service Cost Recovery City Council Policy and bring it back to Council for consideration as part of approval of the FY 2023-24 Proposed Master Fee Schedule.
5	City Attorney or City Manager draft a written policy regarding foreign language spoken at the dais	Chua	9/20/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
6	City Manager to look into defining either a standalone teen center or updating information to indicate the Senior Center also functions as a Teen Center	Chua	9/20/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
7	Staff look into construction in the Sunnyhills area	Dominguez	9/20/2022	Staff is following up on this request and will send a status update to Council
8	Schedule an additional ADU workshop	Chua	9/6/2022	Staff is evaluating this request
9	City Manager to look into underutilized areas of parks or a portion of parks not being used and develop for use in the future.	Chua	8/16/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
10	Discuss converting vacant lot that was a basketball court into a community garden at Vasona and Adobe	Montano	8/16/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
11	City Manager look into implementing a workshop for small businesses on the bidding process for projects in the city	Chua	8/9/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
12	Memory bench at Sunny Hills Park for one of the founders, Dave Vohlberg, and to explore other historical plaques or benches to remember our history	Tran	8/9/2022	Item will be brought forward as part of the next City Council additional workplan items prioritization in December/January
13	Review of the Milpitas Chamber of Commerce previously approved request for funding including a financial report dating back 12 months and the workplan for the Art & Wine Festival	Tran	8/9/2022	Staff is working with the Chamber to obtain the requested documentation

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
14	Quarterly or Monthly crime statistics on Homekey Project	Chua	6/7/2022	PD will present quarterly reports starting on November 15, 2022.
15	Funding to hire a consultant for the Sunnyhills Historical Designation on a state level	Tran	6/7/2022	Request will be included with the Historic Resources Master Plan project approved as part of the 2023-2027 Capital Improvement Program.
16	Request for Crossing Guards at McCandless and Montague Expressway and review wages for Crossing Guards	Montano	4/5/2022	Staff is in the middle of a citywide traffic study, which includes school aged pedestrian counts around schools in the City including the McCandless and Montague Expressway intersection.
17	Host a Town Hall at City Hall in January, February, and March for the community to share comments about the issue of the unhoused.	Tran	11/2/2021	This item was postponed by Mayor Tran due to the Omicron variant and a rise in COVID-19 cases

ACTIVE ITEMS				
Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
18	Establish a SPAR fund modelled after the City of Mountain View - sets asides moneys for opportunities to buy real estate	Montano	6/7/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022
19	Memorial Plaque in honor of youth skateboarder that passed away	Montano	6/7/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022
20	Prepare Vision Zero Action Plan	Tran	6/7/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022; Item will be brought forward for funding for Council consideration as part of the FY 2023-24 budget process.
21	Explore the policy for locking mechanisms on shopping carts for large commercial businesses	Tran	4/19/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022
22	Explore an ordinance or policy to reduce thefts and increase security in the commercial retail parking areas	Chua	4/5/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward during Summer Quarterly City Council Workplan Items Prioritization Discussion on 9/06/2022

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
23	Create a plan for future solar paneling at City facilities	Montano	3/1/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting; Discussed at the May 10 budget meeting and approved funding of \$25,000 in the 2022-23 budget
24	Evaluate reopening the childcare center with a non-profit organization running the center	Montano	2/1/2022	Approved during Spring Quarterly City Council Workplan Items Prioritization Discussion on 5/03/2022.
25	Requested an appropriation in an amount not to exceed \$250,000 to procure a contract to address the streetlights that are pending fieldwork.	Tran	2/1/2022	At this time, staff has sufficient Council approved resources to address the remaining streetlight outages; however, will bring relevant actions for Council consideration, if needed.
26	Explore a lease for the vacant land adjacent to the Library for City use	Tran	1/18/2022	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting;
27	Staff to look into mural Art on Great Mall Parkway on the VTA owned Light rail pillars	Montano	11/16/2021	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved at the 5/03/2022 meeting; discussed funding at the 5/10/2022 budget meeting and approved \$100,000 of funding for one site
28	Request for the City to make the temporary third-party food deliver fee caps permanent and add additional provisions for enforcement	Phan	11/16/2021	Discussed at Spring Quarterly City Council Workplan Items Prioritization Discussion; Approved to move forward at the 5/03/2022 meeting
29	Have a picture of Albert Vogel Sr. put up in the Senior Center	Montano	10/19/2021	Approved to move forward at the 1/11/2022 Council meeting; Staff engaged the artist of the existing mural regarding this Council approved item.
30	Requested the City extend the outdoor dining options through March of next year	Phan	9/21/2021	Planning Director to provide information on current outdoor dining extension
31	Include a bust of Maria Lemire on the Mural in front of the Senior Center	Montano	8/17/2021	Approved to move forward at the 1/11/2022 Council meeting; Staff engaged the artist of the existing mural regarding this Council approved item.
32	Look into opening up the Senior Center on Saturdays for half a day	Chua	8/5/2021	This three-month pilot was kicked off on Saturday Sept. 10. Per the Information Memorandum issued on Nov. 22, 2022, due to the success of the Saturday Day hours, the pilot will be extended for the remainder of the current Fiscal Year.
33	Look into bringing back a roller rink	Montano	8/5/2021	Approved to move forward at the 1/11/2022 Council meeting. Funding for the program will need to be prioritized through the FY 22-23 budget process; Discussed at 5/10/2022 budget meeting and approved \$100,000 funding for a two-day event in 2023
34	Staff to create a plan on how to increase the number of local businesses doing business with the City	Chua	4/6/2021	At 8/9/2021 Council meeting, Council voted that this item may have to come back for additional discussion because there may be some legal considerations.

**MILPITAS CITY COUNCIL
AGENDA ITEM REQUESTS**

Item # C4.

Request No.	Topic	Submitted by:	Date Requested	STATUS and/or DATE scheduled on City Council meeting agenda:
35	Staff to provide information on a landmark policy for the City of Milpitas	Tran	3/16/2021	8/09/2021 Council voted 5-0 to move this item forward; this item will be included for funding consideration in the development of the FY 2023-27 CIP for assessment of historical and cultural resources and development of landmark policy; The funding for the assessment of historical and cultural resources and development of a landmark policy will be included in the 2023-2027 Capital Improvement Program scheduled for adoption on May 3, 2022. This project will be scheduled to begin in FY 2022-23.
36	Amendment to the existing ordinance for third-party food delivery vendor services to prohibit regulatory response fees	Phan	2/16/2021	Agendized for discussion on 3/16/2021, deferred to 4/06/2021; CC direction for City Attorney to prepare a report; At the 11/12/2021 Transportation Subcommittee, the Subcommittee directed to bring back this request to Council as part of the FY 2022-23 budget process.
37	Requested that staff study the placement of a City sign for the Milpitas Police Department and explore the cost of a new sign	Dominguez	1/18/2021	Staff has been working on upgrading signage and landscaping around the Police Department and Public Works Building. Lit-up signs mounted on the building are scheduled to be installed by the end of December 2022
38	Ordinance to ban vaping in the City	Montano	12/15/2020	Ordinance regarding a ban on use in certain areas adopted by Council on 6/15/2021. Council received a follow-up presentation from staff on 6/21/22 and provided direction on establishing a local tobacco retail permitting program and regulating tobacco retail locations and the sale of flavored tobacco and electronic cigarette products in Milpitas. Staff is now coordinating with the Santa Clara County Department of Environmental Health (DEH) to set up the program, and those arrangement will be brought back to the Council in early 2023.
39	Consider Community Museum and Park on Main St.	Phan	8/20/2019	to Rules Subcommittee 8/23/2019. Moved to Specific Plan Community Conversation events.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Consider the Recommendation from Mayor Tran for Appointments to City Commissions and Declare an Unscheduled Vacancy (Contact: Mayor Tran, 408-586-3029)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/6/2022
	<u>Recommendation:</u> (1) Receive the recommendation from Mayor Tran and approve appointments to City Commissions; and (2) Declare an unscheduled vacancy on the Economic Development and Trade Commission and direct the City Clerk to post the notice of unscheduled vacancy.

Background:

The City of Milpitas has 13 Commissions (including the Measure F Oversight Committee), with members appointed by the Mayor and confirmed by the City Council. The Commissions advise the Milpitas elected officials on a variety of community interest and policy areas.

Any resident interested in serving on a City Commission must complete a Commission Application and submit the form to the City Clerk. Copies of the applications are provided to the Mayor for his consideration. Per Government Code 40605, in a general law city where the office of Mayor is an elective office, the Mayor with the approval of the City Council, shall make all appointments to boards, commissions, and committees unless otherwise specifically provided by statute.

Current Commissioners may seek to be reappointed upon the expiration of their current term, but reappointment to a new term is not automatic. Those Commissioners seeking reappointment must contact the City Clerk and the Mayor to convey their request. Re-appointment must be recommended by the Mayor and confirmed by the City Council.

Analysis:

Mayor Tran is making the following recommendations for appointment:

Arts Commission:

1. Appoint Helen Qiu as Alternate No. 2 with a term ending October 2025.

Community Advisory Commission:

1. Promote Monica Rodriguez to a full voting seat with an unexpired term ending January 2024.
2. Promote Kavita Sreedhar to Alternate No. 1 with an unexpired term ending January 2024.
3. Appoint Jose Geronimo as Alternate No. 2 with a term ending January 2026.

Energy and Environmental Sustainability Commission:

1. Reappoint Jeff Hogg to a term ending October 2025.
2. Reappoint Charles Lingle to a term ending October 2025.
3. Promote Felix Mbuga to a full voting seat with a term ending October 2025.
4. Promote Carmelo Coronel to Alternate No. 1 with a term ending October 2025.
5. Appoint Frank Bush as Alternate No. 2 with an unexpired term ending October 2024.

Library and Education Advisory Commission:

1. Promote Ann Anderson to a full voting seat with an unexpired term ending June 2023.
2. Appoint Trijohn Minh Tran as Alternate No. 2 with an unexpired term ending June 2024.

Parks, Recreation, and Cultural Resources Commission:

1. Appoint Yesenia Illescas to a term ending June 2025.

Planning Commission:

1. Reappoint Mercedes Albana to a term ending December 2025.
2. Reappoint Sonia Medina-Ashby to a term ending December 2025.

Senior Advisory Commission:

1. Reappoint Jenny Berryhill to a term ending December 2025.
2. Reappoint Willy Wong to a term ending December 2025.
3. Promote Nona Tolentino to a full voting seat with a term ending December 2025.
4. Promote Barbara Jo Navarro to Alternate No. 1 with an unexpired term ending December 2023.
5. Appoint Ha Phan as Alternate No. 2 with an unexpired term ending December 2024.

All recommended Commissioner appointments have been reviewed and confirmed by the City Clerk's office.

The Commissioner Handbook states that residents may only serve on one commission at a time. Previously, Ha Phan was appointed as an Alternate Commissioner to the Economic Development and Trade Commission. With the appointment to the Senior Advisory Commission, the position on the Economic Development and Trade Commission becomes available and a Notice of Unscheduled Vacancy must be posted to advertise the vacancy.

Fiscal Impact:

There is no fiscal impact associated with this item.

Recommendation:

(1) Receive the recommendation from Mayor Tran and approve appointments to City Commissions; and (2) Declare an unscheduled vacancy on the Economic Development and Trade Commission and direct the City Clerk to post the notice of unscheduled vacancy.

Attachments:

1. Applications for New Appointments

COMMISSION/COMMITTEE APPLYING FOR: Arts Commission

Name Helen Qiu

Address Type Business

Address

City Milpitas

Postal/Zip Code 95035

Mobile Number

E-Mail Address

Present Employer Rainbow Childhood Development Center

Business Address (Optional) Rainbow Childhood Development Center

City Milpitas

Postal / Zip code 95035

Occupation Owner/Director

Education: If Youth Advisory Commission applicant, indicate your grade/school: BA Degree

College, Professional, Vocational, or other schools attended Harbin University & De Anza College

Major Subject Education

Degree BA

List community organizations to which you belong or have belonged (additional information may be attached).

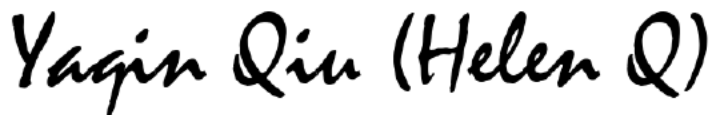
If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I have been working with children from younger ages to old ages over 30 years, And I like drawing and painting with children, and always enjoy watching Art Galleries at events; And I would like to explore more art works and learn more about artists at our community if I have the opportunity to serve as a volunteer commissioner! Thanks

Date Nov 13, 2022

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

COMMISSION/COMMITTEE APPLYING FOR: Public Safety and Emergency Preparedness Commission

Item # C5.

Name Jose Geronimo

Address Type Residence

Address

City Milpitas

Postal/Zip Code 95035

Mobile Number

E-Mail Address

Occupation Sales Analyst

Education: If Youth Advisory Commission applicant, indicate your grade/school: MBA Marketing, BS Accounting

College, Professional, Vocational, or other schools attended GGU, SJSU

List community organizations to which you belong or have belonged (additional information may be attached).

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

Lived in Milpitas since the 90s and have loved the city, loved it enough to call my recording studio I founded East 237 Recording Studio. Why? Because it took me home to Milpitas.

I am applying for Satety commission because my concerns for my family, and every Milpitas families. I want to be able to influence change, not just watch on the sidelines.

Thank you
Jose

Date Sep 22, 2022

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

COMMISSION/COMMITTEE APPLYING FOR: Energy and Environmental Sustainability Commission

Name Frank L Bush

Address

City Milpitas

Postal/Zip Code 95035

Mobile Number

E-Mail Address

City Clerk's Office

JUN 13 2022

RECEIVED

Present Employer Retired

Business Address (Optional)

City

Postal / Zip code

Occupation Systems Integrator

College, Professional, Vocational, or other schools attended US Army Signal Corps School

Major Subject Broadcast Engineering

Degree None

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization Sunnyhills Neighborhood Association

Member Alternate Board Member

Name of Organization Milpitas Involved Citizens

Member Asst. Director

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Branch of Military US Army

Officer E5

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

My career has been in industry leading technology companies where my role was systems design and integration. Managing multi-million dollar project budgets, working with vendors like facilities, building design, and service providers.

In my home I've used automation to reduce and track energy and water usage.

You can find my resume here: www.linkedin.com/in/frankbush/details/experience/

Date Jun 10, 2022

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Frank Bush

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

COMMISSION/COMMITTEE APPLYING FOR: Library and Education Commission

Name Trijohn Minh Tran

Address Type Residence

Address

City Milpitas

Postal/Zip Code 95035

Mobile Number

E-Mail Address

Present Employer Wish

Occupation Vendor Management Specialist

College, Professional, Vocational, or other schools attended Saint Mary's College of California

Major Subject Politics

Degree Bachelor's

List community organizations to which you belong or have belonged (additional information may be attached).

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I have a wide range of experience in the tech industry that would add value and be conducive to the operations of library services and facilities in Milpitas.

I have experience in project management and process improvement. I also have experience in working with cross functional partners to achieve shared goals and objectives. My experience has been garnered working with large teams across multiple global markets.

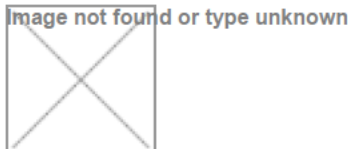
The result of one of my process improvements recently, resulted in an estimated \$9 million saved in annual cost reductions for my company.

I want to serve the community and make the Milpitas Library even better!

Upload a File

Date Aug 21, 2022

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

please deliver to the mayors in box. Thank you.

City Clerk's Office

CITY OF MILPITAS

Item # C5.

SEP 28 2022

COMMISSION/COMMITTEE APPLICATION

RECEIVED

PROVIDE COMPLETE INFORMATION (in black ink)

☐ Mr.

☒ Mrs./Ms.

COMMISSION APPLYING FOR ↑

Senior Advisory Commission applicants only: are you a member of Milpitas Senior Center? YES / NO

Name:

First

Middle

Last

Address:

Number

Street

Apt. #

Telephone Number(s)

Present Employer

Address

Education: If Youth Advisory Commission applicant, indicate your grade/school:

College, Professional, Vocational, or other schools attended

Major Subject

Date

Degree

List community organizations to which you belong or have belonged (additional information may be attached):

Date

Name of Organization

Officer / Member

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

URL's to documents are available for viewing at infoSci.Shutterfly.com. Resumes, Salary Requirements, Notes, and achievements. Emergency Contacts posted online at infoSci.Shutterfly.com. Legal pages for underage child. Mara Illas and family. Illas center \$300⁰⁰ hr for emergency care group, \$300⁰⁰ hr private insurance, \$135⁰⁰ per hour infoSci Radio, Illas Rep Sciences 1400⁰⁰ Fee

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

September twenty seven thousand twenty two

09/27/2022

Date

acted upon will expire after one year from the date submitted unless renewed by the applicant.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Mail or drop off your completed application to the City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035

COMMISSION/COMMITTEE APPLYING FOR: Senior Advisory Commission

Name Ha Phan

Address Type Residence

Address

City Milpitas

Postal/Zip Code 95035

Mobile Number

E-Mail Address

Occupation Retiree

College, Professional, Vocational, or other schools attended University of Phoenix - San Jose

Major Subject Business

Degree MBA

List community organizations to which you belong or have belonged (additional information may be attached).

Name of Organization Sunnyvale Host Lions International

Member Regular member

If application is for Veterans Commission, indicate branch and service in any U.S. military organization (retired or active duty).

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

1. I have lived in Milpitas since 1988
2. I have served in Library commission over ten years
3. I have a passion to serve my community

I am retired so I have time to devote.

Date Aug 24, 2022

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.



Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant. Once submitted, your application will be submitted to the City Clerk.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Reconfirm Findings and Determinations Under Resolution No. 9165 and Assembly Bill 361 for the Continuation of Virtual Meetings of the City Council and Legislative Bodies (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3040)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/6/2022
	<u>Recommendation:</u> Move to reconfirm findings and determinations under Resolution No. 9165 and Assembly Bill 361 for the continuation of virtual meetings of the City Council and Legislative Bodies.

Background:

On March 17, 2020, in the face of the COVID-19 pandemic, Governor Gavin Newsom issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings completely telephonically or by other electronic means.

The provisions in the Brown Act that were suspended by the Governor's Executive Order are contained at Government Code Section 54953(b)(3) and require that when teleconferencing is used, outside of a statewide emergency, that the following occur:

- An agenda is required to be posted at all locations, including any teleconference locations
- Each teleconference location must be identified on the actual agenda
- Each teleconference location shall be accessible to the public
- A quorum of the legislative body must be in the jurisdiction

With the Governor's Executive Order, the four above requirements were suspended, allowing Councilmembers to not have to post an agenda at their teleconference location, not have to identify their location on the meeting agenda, not have to ensure public accessibility at the teleconference location, and the legislative body did not need a quorum present in the jurisdiction. As the Council is well aware, this allowed all City Council meetings and other meetings of legislative bodies of the City to be conducted by Zoom with councilmembers, commission members, committee members, and staff all joining from remote virtual locations.

The suspension of certain provisions of the Brown Act was further extended by the Governor on June 11, 2021 by the issuance of Executive Order N-08-21 which continued to allow for complete virtual meetings until September 30, 2021.

With the expiration of the Governor's Executive Order and the uncertainty that surrounded the Governor's potential recall, the State Legislature also took the remote meeting issue into its own hands through the adoption of Assembly Bill 361, which is explained in more depth in the Analysis section below.

On May 17, 2022, the City Council adopted Resolution No. 9156, making findings that there is an existing State of Emergency and that state or local officials continue to recommend social distancing measures to prevent the spread of COVID-19. In particular, the resolution included reference to Cal-OSHA regulation 3205, which recommends physical distancing in the workplace. By motion and majority vote, the City Council may reconfirm the findings of Resolution No. 9156 and continue to hold virtual meetings pursuant to AB 361.

Analysis:

On September 16, 2021, the Governor signed AB 361, which allows legislative bodies to meet virtually provided there is a state of emergency declared by the Governor, and either (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees. The Governor by executive order signed on September 20, 2021, suspended the effective date of AB 361 to October 1, 2021. As a result, if the City desires to have virtual meetings on or after October 1, 2021, it must do so consistent with the requirements of AB 361.

AB 361 preserves many of the provisions of the earlier executive orders, including the suspension of the four teleconferencing requirements noted above, while also adding new requirements to the management of remote and teleconference public meetings in order to better achieve the levels of transparency that the Brown Act demands. Specifically, AB 361 imposes two new rules on remote public meetings:

1. Local governments and agencies hosting teleconference meetings in lieu of traditional in-person public meetings must permit direct public comment during the teleconference and must leave open the opportunity for public comment until the comment period for a given item is closed during the ordinary course of the meeting. The opportunity to make public comment must be of a sufficient duration so as to allow actual public participation.
2. Any action by the governing body during a public teleconference meeting must occur while the agency is actively and successfully broadcasting to members of the public through a call-in option or an internet-based service option. If a technical disruption within the agency's control prevents members of the public from either viewing the meeting of the public agency or prevents members of the public from offering public comment, the agency must cease all action on the meeting agenda until the disruption ends and the broadcast is restored. Action taken during an agency-caused disruption may be challenged as a violation of the Brown Act.

In order to continue to qualify for AB 361's waiver of in-person meeting requirements, the City Council must, within thirty (30) days of its first meeting under AB 361, and every thirty (30) days thereafter, make findings that (a) state or local officials continue to recommend measures to promote social distancing, or that (b) an in-person meeting would constitute an imminent risk to the safety of attendees.

The above conditions continue to exist at this time, and staff recommends that the City Council by motion reconfirm the findings made in Resolution No. 9156 so that the City Council and all other subordinate legislative bodies may continue to meet virtually.

Lastly, it is important to note that AB 361 is optional. If the City Council wishes, it may meet in person. In addition, hybrid meetings are permissible.

Policy Alternatives:

Alternative 1: Do not by motion reconfirm the findings made in the resolution making findings and determinations under Assembly Bill 361 for the continuation of virtual meetings.

Pros: None

Cons: Many of the existing Commission, Committee, and Task Force meetings will not be able to meet virtually or through a hybrid format forcing all staff, commission or committee members, and the public to attend meetings in person.

Reason not recommended: The COVID-19 pandemic continues to be a global health issue and by forcing commission, committee, and task force meetings to be in person, public health may be put at risk.

Fiscal Impact:

The City Council's reconfirmation of the findings made in the resolution to continue with virtual meetings will maintain the status quo and no financial impact is anticipated by the reconfirmation of the findings.

California Environmental Quality Act:

The City Council's reconfirmation of the findings made in the resolution is not a project under the California Environmental Quality Act (CEQA) Guideline 15378(b)(5) as it constitutes an organizational or administrative activity of the government that will not result in direct or indirect physical changes in the environment. Further, virtual meetings are likely to reduce certain impacts associated with vehicular travel related to in-person public meetings.

Recommendation:

Move to reconfirm findings and determinations under Resolution No. 9105 and Assembly Bill 361 for the continuation of virtual meetings of the City Council and Legislative Bodies.

Attachment

1. Resolution 9165

RESOLUTION 9165

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS MAKING FINDINGS AND DETERMINATIONS UNDER AB 361 FOR THE CONTINUATION OF VIRTUAL MEETINGS

WHEREAS, the Ralph M. Brown Act (Gov. Code § 54950 *et seq.*) generally requires local agencies meeting via teleconference, including through other virtual or electronic means, to, among other things, provide public access at each location in which members of the legislative body are teleconferencing; and

WHEREAS, the Legislature recently enacted Assembly Bill 361 (AB 361), which amended Government Code section 54953 to allow local agencies to meet fully virtually, without fully adhering to the rules otherwise applicable to teleconferencing, during a proclaimed state of emergency if state or local officials have imposed or recommended measures to promote social distancing; and

WHEREAS, the Governor issued a proclamation declaring a state of emergency on March 4, 2020 due to the COVID-19 pandemic, pursuant to section 8625 of the California Emergency Services Act, and this proclaimed state of emergency currently remains in effect; and

WHEREAS, the City Council of the City of Milpitas has considered the circumstances of the state of emergency; and

WHEREAS, state or local officials continue to recommend measures to promote social distancing to prevent the spread of COVID-19, in particular, Cal-OSHA regulation 3205 recommends physical distancing in the workplace generally and regulates a “close contact” defined as being within 6 feet of another under certain circumstances; and

WHEREAS, in order to continue to impose social distancing while holding in-person meetings there is a high likelihood that members of the public would not all be able to be present in the meetings spaces; and

WHEREAS, the continuation of virtual meetings will allow for full participation by members of the public until social distancing recommendations are no longer necessary; and

WHEREAS, the City Council of the City of Milpitas desires that all City legislative bodies continue to hold virtual meetings pursuant to AB 361 and Government Code section 54953(e).

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council and all other legislative bodies of the City of Milpitas who are required to hold public meetings, shall continue to meet virtually in accordance with Government Code section 54953(e) and without compliance with section 54953(b)(3) based upon the findings and determinations hereby made by the City Council.

PASSED AND ADOPTED this 7th day of June 2022, by the following vote:

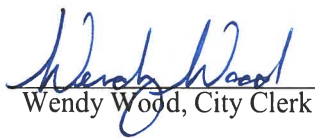
AYES: (5) Mayor Tran, Vice Mayor Montano, Councilmembers Chua, Dominguez, and Phan

NOES: (0) None

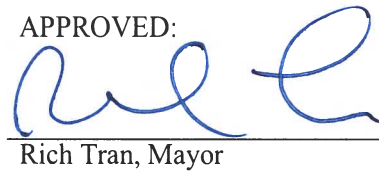
ABSENT: (0) None

ABSTAIN: (0) None

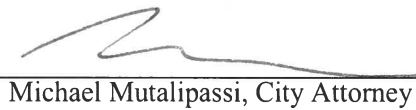
ATTEST:


Wendy Wood, City Clerk

APPROVED:


Rich Tran, Mayor

APPROVED AS TO FORM:


Michael Mutalipassi, City Attorney



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize City Manager’s Response Letter to the October 7, 2022 Santa Clara County Civil Grand Jury Final Report “If You Only Read the Ballot, You’re Being Duped” (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Michael Mutalipassi, City Attorney 408-586-3040)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/6/2022
	<u>Recommendation:</u> Authorize the City Manager to send a letter in response to the October 7, 2022 Santa Clara County Civil Grand Jury Final Report “If You Only Read the Ballot, You’re Being Duped” pursuant to Penal Code section 933.

Background:

On October 7, 2022, the City of Milpitas received the Santa Clara County Civil Grand Jury final report titled “If You Only Read the Ballot, You’re Being Duped”. The Grand Jury listed a finding and recommendations in regard to the wording of the ballot questions for initiatives and referenda presented to the voters within Santa Clara County.

Pursuant to California Penal Code 933(c), the City is required to provide a response to the Presiding Judge of the Superior Court no later than January 5, 2023.

Analysis:

The Civil Grand Jury investigation was apparently prompted by Santa Clara Valley Water District’s (“Valley Water”) 2022 Measure A. Measure A asked voters whether they wished to adopt an ordinance limiting Valley Water’s board members to four successive four-year terms, though failed to inform voters that the ordinance in place, establishing the *status quo*, limited Valley Water’s board members to three four-year terms. The use of the term “limiting” in a ballot measure that explicitly extended the number of terms Valley Water board members could serve was misleading.

The Civil Grand Jury conducted an Inquiry and inquiry found:

- In the current environment, which is unregulated at the local level, it is easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters.

The Civil Grand Jury made the following recommendations:

- Governing entities within Santa Clara County should voluntarily submit their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until a County Good Governance Commission can be created.
- Governing entities within Santa Clara County should, by March 31, 2023, adopt their own resolution or ordinance to require submission of their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters until a County Good Governance Commission can be created.
- Governing entities within Santa Clara County should submit their ballot questions for review by the County Good Governance in Ballots Commission once created.

The findings and recommendations of the Grand Jury are inconsistent with the ballot measures that have been put to voters in the City of Milpitas. Measure F, which put forth a one quarter percent sales tax increase to the voters of Milpitas in 2020, is discussed in the Report. The language set forth in the Measure F ballot question mentioned local spending, an independent audit, and an oversight committee. Nonetheless, the ballot question was honest and straightforward. All of the funds appropriated under Measure F are in fact spent locally to fund local municipal programs. Measure F appropriations are in fact subject to an independent audit. Measure F appropriations are also subject to oversight from the seven-member Measure F Oversight Committee, which meets quarterly to review and discuss information about Measure F revenues as well as programs and services funded by Measure F. Though not discussed in the report, the City of Milpitas put forth Measure F in 2022 related to changing the term limits of elected officials. The ballot question for Measure F accurately described the measure as shortening term limits for councilmembers.

The recommendations of the grand jury are neither reasonable nor warranted. The Grand Jury is recommending that the City voluntarily cede its sovereign power granted under the California Constitution and Election Code in a manner that further erodes local control in order to address a problem that does not exist in the City.

Staff recommends authorizing the City Manager to send the enclosed letter of response pursuant to California Penal Code section 933 on or before January 5, 2022.

Policy Alternatives:

Alternative 1:

Not responding to the Santa Clara County Civil Grand Jury final report on “If You Only Read the Ballot, You’re Being Duped” as required by California Penal Code section 933.

Pros: None

Cons: Pursuant to Penal Code Section 933(c), the City is required to provide a response to the Presiding Judge of the Superior Court. Not responding as directed could result in legal consequences imposed upon the City.

Reason not recommended:

The City will be out of compliance with section 933 and may face legal consequences.

Fiscal Impact:

None

California Environmental Quality Act:

Approval of the recommendation is not an activity defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b) (3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

Recommendation:

Authorize the City Manager to send a letter in response to the October 7, 2022 Santa Clara County Civil Grand Jury Final Report “If You Only Read the Ballot, You’re Being Duped” pursuant to Penal Code section 933.

Attachments:

1. October 7, 2022 Santa Clara County Civil Grand Jury Final Report “If You Only Read the Ballot, You’re Being Duped”

2. City of Milpitas Response to October 7, 2022 Santa Clara County Civil Grand Jury Final Report "If You Only Read the Ballot, You're Being Duped"

IF YOU ONLY READ THE BALLOT,
YOU'RE BEING DUPED



2022 Santa Clara County
Civil Grand Jury

October 7, 2022

TABLE OF CONTENTS

GLOSSARY AND ABBREVIATIONS.....2

SUMMARY 4

BACKGROUND 5

METHODOLOGY 6

INVESTIGATION.....6

CONCLUSION.....16

FINDINGS AND RECOMMENDATIONS.....17

REQUIRED RESPONSES 19

REFERENCES 21

GLOSSARY AND ABBREVIATIONS

Attorney General	The chief law officer who represents a state in legal proceedings.
Ballot Card	The printed ballot, usually on high-grade paper, consisting of the ballot questions and names of individuals running for elected office.
Ballot Measure	Ballot measures are proposals, usually at a county or local level, to enact new laws or repeal existing laws, which are placed on the ballot for approval or rejection by the electorate.
Ballot Proposition	Ballot propositions are proposals, usually at the state level, to enact new laws or constitutional amendments or repeal existing laws or constitutional amendments, which are placed on the ballot for approval or rejection by the electorate.
Ballot Question or Ballot Label	For purposes of this report, Ballot Question or Ballot Label means the 75-word or less statement of a measure that precedes “Yes” or “No” on the ballot card.
Boards and Commissions	Boards and Commissions are made up of residents who volunteer their time and expertise to assist and advise governing bodies in the chosen capacity.
Caselaw	Law or legal precedent established by the outcome of court cases.
County Counsel or Office of the County Counsel	The County Counsel is the chief legal advisor and representative for the county, including the county board of supervisors and all county agencies and departments.
Elections Code	A collection of California laws related to public elections.

Governing Entity

A jurisdiction such as a city, county, school district, special district, or political subdivision.

Home Rule

The right of self-government that is granted by state constitution or statute to give autonomy to a local government. Home Rule implies that each level of government has a separate realm of authority.

Public Opinion Pollsters

Opinion polls are designed to represent the opinions of a population by conducting a series of questions and then extrapolating generalities in ratio or within confidence intervals. A person who conducts polls is referred to as a pollster.

Registrar of Voters

The department responsible for the operation, administration, and direction of the elections department, with primary responsibility for the registration of voters, the holding of elections, and all matters pertaining to elections.

Single Subject Rule

Per Article II, Section 8(d) of the California Constitution, "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect." Essentially, the rule stands for the notion that where an initiative embraces more than one subject, it can neither be submitted to, nor enacted by, the voters.

Term Limits

A specified number of terms (in years) that a person in office is allowed to serve.

Writ of Mandate

In California, writs of mandate are used by superior courts, courts of appeal, and the Supreme Court to command lower bodies, including both courts and government agencies, to do or not to do certain things.

SUMMARY

It is not uncommon for the public to be confronted daily with news and information through multiple sources—traditional television programming, 24/7 cable news, satellite radio, social media, and phone alerts. In the context of elections, voters' busy lives can be overwhelmed with many different voices. County and state voter information guides are required by law to be mailed to every registered voter, but voters today do not have a lot of time to read these resources. As a result, the ballot measure question printed on the ballot itself becomes a key factor in the outcome of an election.

There is an expectation in California law that ballot questions be drafted in a manner that is not false, misleading, or partial to one side.¹ But there are ways to work around it. Among the fifty or so jurisdictions in Santa Clara County that are eligible to put forth a ballot measure, the 2022 Santa Clara County Civil Grand Jury (Civil Grand Jury) has seen ballot question language that is confusing, advocacy-oriented, or simply dishonest. Yes, sometimes voters are being deceived. Many voters cannot comprehend the complicated language or the implications of that "yes" or "no" vote. In a perfect world, voters would have the luxury of time to research these issues. In reality, however, voters almost always rely on the language of the ballot measure question itself.

What can be done about this? The Civil Grand Jury proposes an oversight person or body, one who has taken an oath to act with integrity, is well versed in the requirements of the law, and is empowered to review and to reject ballot question wording that is false, misleading, or partial to one side. Santa Clara County should have a climate whereby governing entities in Santa Clara County are discouraged from using dishonest or deceitful wording in a ballot question, especially when they know it will be reviewed and could be rejected. In so doing, due process will be strengthened. With clearer writing, ballot measure questions will be more transparent and straightforward, which will lead to a better perception of government by the voters. It is time to remove impediments to good governance.

¹ California Elections Code section 10403 requires a ballot question to "conform to this code governing the wording of propositions submitted to the voters at a statewide election." The California Elections Code contains Section 9051, which provides that in a statewide election the ballot title and summary of an initiative or referendum must be a "true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure." (Elec. C. §9051(c); *see also*, *McDonough v. Superior Ct.* (2012) 204 Cal. App. 4th 1169, 1172.)

BACKGROUND

Ballot measures or ballot propositions are proposals to enact new laws or constitutional amendments or to repeal existing laws or constitutional amendments. They are placed on the ballot for approval or rejection by the voting public. The words “ballot *measures*” are often used by county, city, and local governing entities, whereas at the state level, the California State Legislature uses the term “ballot *propositions*” to refer to the same concept. The ballot measure question, which is the subject of this report, refers to the maximum 75-word text that precedes the “Yes” or “No” selection on the ballot card itself. Because most voters never read beyond what is printed on the ballot card, it is of critical importance that ballot measure questions be concise, accurate, and impartial.

Recently, two local newspaper articles highlighted the tactics that governing entities have used to manipulate voters:

- Borenstein, Daniel, *Tricks California Local Officials Use To Trick Voters*, Bay Area News Group, January 21, 2022.
- Mercury News and East Bay Times Editorial Boards, *Stop Deceiving Bay Area Voters on Local Tax Measure Costs*, June 26, 2020, updated September 5, 2020.

As part of its charge, the Civil Grand Jury is responsible for identifying areas within local government that lack good governance or practices. This Civil Grand Jury identified as a problem the choice of wording used in local ballot measure questions. Specifically, the Civil Grand Jury discovered that some local governing entities presenting measures for a public vote create ballot questions that are purposefully misleading so they may obtain their desired result. In particular, it was noted that the wording of a ballot question from the June 2022 election, although representing a relatively simple issue, created confusion among the public. When voters found out what the text of the measure actually meant, they felt deceived by the wording of the ballot question. Deception in ballot questions is worth the attention of the Civil Grand Jury. This problem must be remediated to reinstate good governance in the election process.

METHODOLOGY

The Civil Grand Jury used the following investigative methods:

- Interviews with ten individuals who are well versed in the intricacies of the election process and experts in political science and local governments
- Three published Civil Grand Jury reports: 2021-22 Alameda County, 2021-22 Santa Cruz County, 2021 Santa Clara County
- Editorials from local and regional newspapers: Mercury News, Los Angeles Times, San Francisco Chronicle
- Close reviews of ballot measures, past and upcoming, from the counties of San Mateo, Santa Clara, Santa Cruz, and the City and County of San Francisco
- Legal research of court challenges involving ballot questions

INVESTIGATION

Throughout this report, the Civil Grand Jury was interested only in the process of ballot measure question drafting, not the substance of the underlying ballot measure itself. In its research and analysis, the Civil Grand Jury does not examine the merits of the measure, but rather whether the question as drafted is truthful, impartial, and fair. Ballot questions must conform to statutory requirements and should provide voters with sufficient information and transparency to make informed decisions.

A straightforward ballot question can be summarized this way: A vote for “Yes” means yes and a vote for “No” means no. Unfortunately, it is common for ballot questions to be presented whereby a vote for “Yes” actually means no, and vice versa. This wording is arguably confusing. Inching farther away from confusing questions, the research performed by the Civil Grand Jury found ballot questions that are even worse—they are misleading.

Santa Clara Valley Water District’s Measure A

During the last election in June 2022, the question for Measure A put forth by the Santa Clara Valley Water District (Water District) employed such a tactic:

Shall the measure amending the Santa Clara Valley Water District Ordinance 11-01 to limit Board members to four successive four-year terms be adopted?

The Water District had term limits already in place for board members to serve three four-year terms, or 12 years at most. Measure A sought to increase term limits to four four-year terms, or 16 years at most. However, the ballot question hid the fact that a term limit was already in place; it

asked voters whether a term limit of four terms should be adopted, thereby couching the question as a measure to *adopt* term limits generally, which one political science expert described to the Civil Grand Jury as a concept widely favorable to the voting public. The ballot question did not reflect what the Water District wanted to do. The Water District wanted to extend term limits, but it wrote the ballot question without using the words “extend,” “change,” or “increase.” Instead, the Water District characterized the ballot measure as setting term limits, which is a mischaracterization of what Measure A was actually about.

Further, it is notable that in November 1998, the County of Santa Clara placed a substantially similar measure on the ballot using the same tactic. Measure E asked:

Shall the County of Santa Clara amend section 202 to limit the number of terms a member of the Board of Supervisors may serve to three terms, consisting of four years each?

Again, the ballot question failed to inform the reader that each member of the County of Santa Clara Board of Supervisors was already limited to two terms and that the ballot measure proposed to *extend* years served, not “*limit*” them. By not being transparent, this tactic of ballot question drafting is tantamount to a lie by omission; it borders on deceiving the public. From Measure E in 1998 to Measure A this year, 24 years later, the climate has not changed.

Regulations that Govern Ballot Questions

Sections 9100-9190 of the California Elections Code specifically address county-level elections. Other sections of the Elections Code, while they do not specifically address county-level elections, have import and therefore apply as well. The County of Santa Clara has not enacted local ordinance code provisions regarding ballot question language.

Under the Elections Code, the wording of a ballot measure must state the ballot question, or what the Elections Code calls the “label,” in 75 words or less (Elec. C. §9051(b), §10403, §13247). The ballot question must state “the nature” of the measure (Elec. C. §13120). The official who drafts the ballot question “shall give a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure” (Elec. C. §9051(c)). In other words, ballot measure questions shall not be false, misleading, or partial to one side.

Who is Responsible for Writing Ballot Questions?

Today, ballot questions are rarely written “from scratch.” Residing in the public domain are hundreds, if not thousands, of boilerplate questions spanning the universe of issues typically faced by government and public agencies. Putting a measure on the ballot usually starts with selecting

an existing template, preferably one that had been used successfully within a reasonable timeframe and geographic proximity to the one at hand. Tweaks are then made to the chosen template to fit the measure being proposed.

Governing entities are ultimately responsible for approving the final text of the ballot question, but the actual selection of words is often the calculated and carefully calibrated work product of hired election experts, consultants, and attorneys. These outside consultants often rely on public opinion pollsters to determine the type of proposal and wording to put before voters that would achieve the desired outcome. Often, this includes using “feel good” wording that is shown to resonate with voters: “reduce crime;” “funds spent locally;” “all money locally controlled;” and “with citizen oversight.” Results from public opinion polls often dictate the structure and selection of words used within the ballot question, which is then voted on and, if successful, adopted by the governing body such as a city council, a county board of supervisors, the board members of a school district, or any governing body of a government entity operating within the county. During the course of this investigation, the Civil Grand Jury learned that local measures on the ballot that governing entities choose wording likely to be most successful at the ballot box over clarity of language to the voter.

For purposes of this investigation, the Civil Grand Jury focused on ballot questions relating to local ballot measures, not state propositions, because according to the California Elections Code, the state attorney general is responsible for providing ballot questions for state propositions. In contrast, there is no similar requirement that a certain officer provide the ballot question for local elections, so it is instead drafted by the proponent of the measure at the local level.

Advocacy and Tactical Wordplay Result in Poorly Drafted Ballot Questions

It has been widely observed today that the 75-word ballot questions are being used as advocacy pieces, at the expense of fairness and impartiality. In an aptly titled [report](#) published in June of last year, the Alameda County Civil Grand Jury advocated for “*The Need for Accuracy and Impartiality of Ballot Measure Questions*.” The jury explained how and why the desire to achieve a certain outcome has tainted the process to produce ballot measure questions that are not accurate and impartial:

In general, we found ballot questions suffer from a “proponent’s bias” that is a natural outgrowth of the typical process through which questions are selected, drafted, and proposed. ... In general, we found that ballot questions too often fall short of what voters have a right to expect in terms of transparency and impartiality, even when satisfying minimum legal standards.

The jury in Alameda reviewed and provided an in-depth analysis of six ballot questions to reach their conclusion. In so doing, they exposed the “tricks of the trade”—wording chosen for the sole purpose of increasing the odds of success at the polls. Adopting the same methodology as the Alameda report, the Civil Grand Jury reviewed past and upcoming ballot measure questions from local jurisdictions within Santa Clara County. The Santa Clara County Civil Grand Jury observed the same tricks and tactics used by governing bodies to deceive voters:

- (1) Using “feel-good” words to garner voter approval. Measure F, November 2020, said “all funds spent locally,” which is meaningless when one pauses to think about it.
- (2) Adding favorable language even where it plainly does not apply. Measure F, November 2020, said “independent audits, citizens’ oversight” where the underlying ordinance implementing the measure makes no mention whatsoever of audit and oversight requirements.
- (3) Adding misleading words to lead voters astray. Measure S, November 2020, said “until ended by voters,” falsely implying that the measure itself provided for repeal or that voters would have an opportunity to repeal the tax when they did not; Measure L, November 2020, conveyed the same with “can be ended by voters.” Measure A, March 2017, said “[funds] cannot be taken away by the State,” falsely implying that the state may access local funds when it may not.
- (4) Manipulating words to divert voters from what is actually at issue. Upcoming Measure N, November 2022, which seeks authorization of \$572 million in school bonds costing approximately 3 cents per \$100 of assessed valuation, states “no increase in tax rates.”
- (5) Omitting relevant information necessary for voters to make informed decisions. Measure AA, November 2016, and Measure H, November 2014, made no mention of the tax increase that would be required to fund the school bonds that were at issue.
- (6) Putting multiple issues on a single measure, ostensibly violating the single subject rule. Measure H, November 2020, sought to increase card room tax and the number of card tables allowed in gambling facilities.

At the writing of this report, the following measures slated for the upcoming November 2022 election also rely on at least one of the tactics described:

E	“all funds spent locally with no money taken by the State and spent elsewhere” - see (1) and (3) above.
G, H, J, L	“until ended by voters” - see (3) above.
I	“Shall the City Charter be amended to add the City's ethics and elections commission (Board of Fair Campaign and Political Practices) to the Charter; remove requirements that members of the Planning, Civil Service, and Salary Setting Commissions be electors and/or citizens; remove gender-specific language; and require the City Council to adopt equity values, standards, and assessments in making certain decisions?” - see (6) above.
O	“all money staying local” - see (1) above.

Along the same lines, it is worth noting that in June 2022, the Santa Cruz County Civil Grand Jury released its [report](#), “*Words Matter: Did Measure G Deceive Voters?*” The question confronting the jury was whether the County of Santa Cruz was honoring the provisions in the ballot measure following its passage. The jury concluded that the ballot question behind the November 2018 Measure G was misleading after its investigation and research revealed no basis whatsoever for including the words “annual audits and independent citizens oversight” within the ballot question. Arguably, these words were used for no purpose other than to elicit good feelings in the voter.

The Elephant in the Room: Big Money

Elections cost money—lots of money. In an [article](#) published June 30, 2002, updated June 22, 2022, CalMatters put it succinctly: “*Ballot measures are big business.*” The Civil Grand Jury learned that cost is a major factor in the decision to get to the ballot. San Jose’s *Mercury News* reported that the Water District’s Measure A from the June 2022 election cost taxpayers \$3.2 million.

Once the decision is made by the government entity to spend the money to go to ballot, a lot of pressure is put on the entity to do whatever it takes to secure a win. For this reason, proponents of ballot measures stay focused on the result, hiring high-priced election consultants, attorneys, and opinion pollsters to carefully frame the ballot question to achieve the desired outcome. Successful elections will reward those that are behind them. It does not take much imagination to understand how this practice has evolved to become “high stakes.” For example, a school district superintendent who has successfully secured funding through school bond measures may parlay these wins to rally support for a more prestigious role or a position at a larger public institution.

On the other hand, if a measure fails, individuals’ livelihoods are at stake because someone will likely have to take the blame for it—usually either someone on staff or the board proponents of the governing body. This is why proponents advocate so strongly, often—as exemplified above—sacrificing context, clarity, truthfulness, and transparency in ballot question wording in favor of pure advocacy. The Civil Grand Jury learned from those in the ballot question business that it is understood that the drafter will make sure the statement is “lawful,” but it is also understood that it will not necessarily provide full disclosure.

Eroding the Public’s Trust

Many voters in Santa Clara County felt that they were tricked by the Water District based on how Measure A was worded. The Civil Grand Jury compiled the following descriptors of Measure A from local news sources and through its interviews: “deceitful,” “deceptive ballot language,” “designed to confuse voters,” “dishonest,” “false,” “hiding the ball,” “lacks integrity,” “lie by omission,” “misleading,” “not ethical,” “not transparent,” “not clear,” “violates the norm,”

“violates standards of good governance,” “board must be held accountable,” “board should resign,” “board violated its fiduciary duty,” “board violated the trust of the people,” “board wasting money,” “failure of character,” “failure to represent its constituents,” “fraudulent misappropriation of public funds,” “misled the public for political gain,” “self-serving hoodwinking of the electorate,” “self-serving dishonesty,” “unacceptable in a democracy.”

Public opinion made it clear that where a ballot question fails to provide voters with sufficient information to make an informed decision, it does so at the expense of public trust. Forming distrust between government and its citizenry hurts. What the Water District did through Measure A has severe ramifications because it creates distrust between the government agency and the people the agency is supposed to serve and protect. Going forward, Santa Clara County residents will likely question the integrity and ethical behavior of the Water District. Once the bonds of trust have been weakened, citizens are less inclined to trust the actions and decisions of this agency and more inclined to ask, “If the Water District cannot be trusted to be truthful on the ballot, how can we know them to be truthful in other matters?”

With the passage of Measure A, many residents lost confidence in the Water District. It may take a long time to regain trust from the community. While the Civil Grand Jury appreciates the desire of a government entity to advocate for itself when putting ballot measures up for a public vote, ballot questions cannot be false, misleading, or partial to one side. Based on Civil Grand Jury research and reports, too many local measures fail to meet this standard in favor of advocacy and “proponent’s bias.”

Lack of Oversight Results in Poorly Drafted Ballot Questions

Despite the number of hands that touch a proposal from inception to ballot card, the Civil Grand Jury was surprised to discover that there is no filter or oversight by an appropriate official prior to the adoption of ballot question wording. At the state level, the “Attorney General gives a true and impartial statement of the purpose of the measure in such language that the ballot title [e.g., the ballot question] and summary shall neither be an argument, nor likely to create prejudice, for or against the proposed measure” (Elec. C. §9051(c)). But the Attorney General does not have jurisdiction over *local* measures and thus does not provide the ballot question. When it comes to local measures, the Civil Grand Jury learned that there is not a similar role performed by an official, like the Attorney General, that can provide the wording for ballot questions. Rather, when the ballot question is submitted to the Santa Clara County Registrar of Voters, their review is narrowly limited to enforcement of the 75-word limit. Staff at the County Registrar of Voters manually count the number of words to ensure that the word cap has not been stretched. They do not monitor the content of the ballot question.

At the local level, the County of Santa Clara Office of the County Counsel performs legal services that are most analogous to the Attorney General's role at the state level with respect to elections. Further, County Counsel has expertise in election law and advises the County of Santa Clara Registrar of Voters. The County Counsel does not, however, have authority over cities and political subdivisions within the boundaries of the county. Therefore, when a city, school district, or special district places a local measure on the ballot, they are permitted under current law to draft the language themselves. They have every incentive to adopt wording proposed by their polling consultants, who will give weight to "feel good" words over simplicity, transparency, and impartiality. Fundamentally, the government entity's self-interest dictates the ballot question wording.

The Current Sole Remedy—Initiating a Court Challenge—Falls Short

Under current legislation, there is no realistically expedient method to challenge problematic ballot questions. When a measure is to be placed on the ballot for an upcoming election, it is subject to a 10-day public examination period during which any voter in the jurisdiction may file a lawsuit to amend the language of the measure. California Elections Code section 9295 sets forth the procedure:

During the 10-calendar-day public examination period provided by this section, any voter of the jurisdiction in which the election is being held, or the elections official, himself or herself, may seek a writ of mandate or an injunction requiring any or all of the materials to be amended or deleted. The writ of mandate or injunction request shall be filed no later than the end of the 10-calendar-day public examination period.

A peremptory writ of mandate or an injunction shall be issued only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of this chapter, and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law.

There are several reasons why the 10-calendar-day public examination period to object in a formal court setting does not work well:

- (1) The public tends not to hear about ballot measures until it is too late. This is due in part to a dearth of media coverage of local news, a result of the consolidation of local news outlets by media conglomerates. It is no secret that in today's news environment, local news coverage has been reduced significantly. Furthermore, ten days is a very short window to react, let alone mount a court challenge to remediate.

- (2) Ten days is much too short a time to locate an attorney well versed in the laws and processes of elections to file a lawsuit in this specialized field.
- (3) Even if an attorney can be available within the 10-day window, it is not within the means of the average person to afford the attorney fees necessary to pursue a remedy.
- (4) Voters challenging the wording in a ballot question face an uphill battle because the courts give deference and considerable latitude to the original author. Further, courts uphold the ballot measure question if it substantially complies with the requirement not to be “false, misleading, or partial to one side.” (See Bibliography, *Amador* and *McDonough* decisions.)
- (5) There is practically no recourse to fix non-conforming ballot questions after the 10-calendar day public examination period has passed. (See Bibliography, *Denny* decision.)
- (6) Even the single subject rule—a state constitutional doctrine—has been watered down by case law; hence it is no longer vigorously enforced. (See Bibliography, *Amador* and *Harbor* decisions.)

When confronted with challenges to ballot measures, the courts have stated:

- Relief under a writ of mandate may be granted "only upon clear and convincing evidence" that the challenged election material is "false or misleading or otherwise inconsistent with the provisions." (See Bibliography, *McDonough* decision.)
- The test is not whether the ballot question could be more complete. (See Bibliography, *Martinez* decision.)
- The ballot title need not be the “most accurate,” “most comprehensive,” or “fairest” that a skilled wordsmith might imagine. (See Bibliography, *Yes on 25, Citizens for an On-Time Budget* decision.)
- The courts are not free to change an accurate statement to reflect their interpretation of the common sense understanding of the language. (See Bibliography, *Yes on 25, Citizens for an On-Time Budget* decision.)
- The courts are not free to wordsmith the ballot question and change it just because they believe it could be better. (See Bibliography, *Martinez* decision.)
- The courts must give deference to the official who drafts the ballot question; “all legitimate presumptions should be indulged in favor of the propriety” of the drafter’s actions. (See Bibliography, *Becerra* decision.)

Solutions

The Civil Grand Jury has learned that the sole legal remedy currently available to right a wrong when it comes to ballot measure questions is insurmountable for the average citizen. Nonetheless, the Civil Grand Jury notes that there could be two potential mechanisms to improve the current process.

1. Task an appropriate official to review ballot measure questions

Current law requires that the individual who drafts the ballot question do so in a way that is not false, misleading, or partial to one side. In order to meet this requirement, an objective, neutral third party is needed to speak on behalf of the voting public, ideally someone who is well versed in the law, has a fiduciary duty to uphold the law, and has taken an oath to act with integrity. The Civil Grand Jury recommends that County Counsel perform this task. Further, the Civil Grand Jury recommends that the County of Santa Clara Board of Supervisors should endorse the County Counsel to act in a role, like that of the Attorney General, to provide for ballot question wording for all local measures.

What this might look like: After the governing entity ratifies the concept behind the proposed measure, as is the practice today, the entity's lawyer, whether a city attorney, school district attorney, or special district attorney, would draft a ballot question that is impartial, unbiased, and non-argumentative. The proposed ballot question would then be submitted to the County Counsel, who would be charged with overseeing the narrow task of ensuring that the wording of the question is not false, misleading, or biased in favor of one view. Most importantly, County Counsel would also be authorized to reject non-conforming or deficient wording and to compel revisions. Only when the ballot question at issue conforms to statutory requirements would County Counsel approve it for use.

2. Create an independent oversight commission to review ballot questions

It is not unusual for jurisdictions to convene independent advisory commissions to assist in county governance. The County of Santa Clara alone boasts over 75 boards and commissions, ranging from an Advisory Commission on Consumer Affairs to a Youth Task Force.

For purposes of overseeing conformity of ballot measure questions, the Civil Grand Jury recommends that the County form a Good Governance in Ballots Commission (Good Governance Commission). This advisory commission should act quickly to review and comment on ballot questions or provide recommendations to remediate questions that are false, misleading, or partial to one side. The composition of the Good Governance Commission should, at a minimum, include an attorney member of the California State Bar, either to participate as a full member or act as an ex officio member without voting privileges. Because County Counsel is the attorney to most Santa Clara County advisory boards and commissions, it could therefore be tasked to help members of this commission navigate the intricacies of California's statutory requirements.

Apart from the obvious benefits—non-partisanship and public representation—another advantage of having a single commission perform the task of reviewing ballot questions would be to maintain consistency across all governing entities. Regardless of whether a city, county, school district, or

other jurisdiction puts forth the measure, the output from a neutral, uninterested third party would probably help eliminate the rhetoric and advocacy inherent in the current practice.

To be successful, the Good Governance Commission should ideally have the ability to review and to reject language that is biased and partial. The power of rejection is crucial because it would also likely have the effect of encouraging the governing entity to self-police. It must not be merely optional for governing entities to submit their ballot questions for review. If the commission were granted mere advisory powers, then it would have very limited impact; it is reasonable to surmise that most, if not all, governing entities would choose to decline to submit their ballot questions for consideration in the interest of the time required to add a layer of review.

Unfortunately, adoption of a Good Governance Commission that has the power to reject language would require passage of a state law that would enable the County of Santa Clara to have an express grant of power to impose a requirement on other entities. This is because “[t]he board of supervisors has no inherent powers; the counties are legal subdivisions of the state, and the county board of supervisors can exercise only those powers expressly granted it by Constitution or statutes and those necessarily implied therefrom” (*Hicks v. Board of Supervisors* (1977) 69 Cal. App. 3d 228, 242). In general, absent other express authorization, one governmental entity cannot regulate another.

Put another way, charter cities operate under home rule, which means that they do not answer to the county the city is located in. For example, the County of Santa Clara Board of Supervisors does not have jurisdiction to compel the City of Gilroy, a charter city, to abide by a county ordinance. Absent some legislative authorization, the County of Santa Clara cannot impose a mandatory review process for ballot questions on other entities. For this reason, the Civil Grand Jury urges the County to pursue legislative solutions to facilitate a process by which the County Counsel would be required to review and approve local measure ballot questions before they are voted on.

Formation of a Good Governance in Ballots Commission

The Civil Grand Jury believes that having an independent oversight commission with advisory powers will improve the local electoral process. It puts pressure on governing bodies, sending the message that their ballot questions are being monitored for clarity, truthfulness, fairness, and impartiality.

The Alameda Civil Grand Jury report provides detailed instructions around the formation, structure, and operation of an oversight committee. This can be found in Appendix B of their June 2021 report. Last, but not least, another possibility is to lean on an existing Santa Clara County advisory body, the [Citizens’ Advisory Commission on Elections](#), to create a subcommittee focused

on ballot question integrity and good governance. Because time is of the essence when it comes to the elections process, the subcommittee must act within the short turnaround timeframe established by state statutes and county ordinances.

There do not appear to be any advocates for transparent and neutral language. Action must be taken. Having the Office of the County Counsel review and approve ballot questions to ensure conformity to statutory requirements would be a good start. Convening a citizen-led, independent oversight Good Governance Commission is another solution.

CONCLUSION

Civil Grand Juries are charged to help government develop practical solutions to improve government operations. Poorly worded ballot questions may not be illegal, but if they withhold information to shield what is really at issue, they are unethical. There are insufficient workable checks and balances to prevent this ongoing issue from being curtailed. Not doing anything about this only adds to the distrust of government. The Civil Grand Jury recommends that elected officials be held accountable—ballot questions must be transparent and clear in order to enable today's voters to make informed decisions. The Civil Grand Jury wants governing entities to know that the public is paying attention and will not tolerate questions that are anything less than truthful, impartial, and fair. Further, ballot measure questions need to be straightforward, understandable, transparent, and honest.

FINDINGS AND RECOMMENDATIONS

Finding 1

The Civil Grand Jury finds that in the current environment, which is unregulated at the local level, it is easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters.

Recommendation 1a

The Board of Supervisors should ask the County Counsel to review all ballot questions submitted to it pursuant to Recommendation 1b.

Recommendation 1b

Governing entities² within Santa Clara County should voluntarily submit their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendation 1d is implemented.

Recommendation 1c

Governing entities³ within Santa Clara County should, by March 31, 2023, adopt their own resolution or ordinance to require submission of their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendations 1d and 1e are implemented.

Recommendation 1d

The County should create an independent, citizen-led oversight commission like the recommended Good Governance in Ballots Commission as described in the “Solutions” section of this report. The Commission should be implemented by August 1, 2024.

² There are approximately 50 governing entities within Santa Clara County. The Civil Grand Jury has elected to address these recommendations to the County, cities, and a select number of special districts and school districts that have historically the most measures on the ballot for response. The Civil Grand Jury encourages all governing entities to adopt these recommendations.

³ *Id.*

Recommendation 1e

Governing entities⁴ within Santa Clara County should submit their ballot questions for review by the Good Governance in Ballots Commission pursuant to Recommendation 1d.

Recommendation 1f

The County should, by March 31, 2023, take appropriate action to request that the state legislature consider amending current law to require the County Counsel to review and approve local ballot measure questions before they are voted on.

⁴ *Id.*

REQUIRED RESPONSES

Pursuant to California Penal Code § 933(b) et seq. and California Penal Code § 933.05, the County of Santa Clara 2022 Civil Grand Jury requests responses from the following governing bodies:

Responding Agency	Findings	Recommendations
County of Santa Clara Board of Supervisors	1	1a, 1b, 1d, 1f
City of Campbell	1	1b, 1c, 1e
City of Cupertino	1	1b, 1c, 1e
City of Gilroy	1	1b, 1c, 1e
City of Los Altos	1	1b, 1c, 1e
Town of Los Altos Hills	1	1b, 1c, 1e
Town of Los Gatos	1	1b, 1c, 1e
City of Milpitas	1	1b, 1c, 1e
City of Monte Sereno	1	1b, 1c, 1e
City of Morgan Hill	1	1b, 1c, 1e
City of Mountain View	1	1b, 1c, 1e
City of Palo Alto	1	1b, 1c, 1e

Responding Agency	Findings	Recommendations
City of San Jose	1	1b, 1c, 1e
City of Santa Clara	1	1b, 1c, 1e
City of Saratoga	1	1b, 1c, 1e
City Sunnyvale	1	1b, 1c, 1e
Santa Clara Valley Water District	1	1b, 1c, 1e
Valley Transportation Authority	1	1b, 1c, 1e
El Camino Healthcare	1	1b, 1c, 1e
Foothill-DeAnza Community College District	1	1b, 1c, 1e
San Jose Unified School District	1	1b, 1c, 1e
East Side Union High School District	1	1b, 1c, 1e
Cupertino Union School District	1	1b, 1c, 1e

REFERENCES

Bibliography:

Alameda County 2020-2021 Grand Jury, *Final Report*, “The Need for Accuracy and Impartiality of Ballot Measure Questions,” June 2022.

Ballotpedia.org, https://ballotpedia.org/Santa_Clara_County,_California, Measure A (June 2022); Measures F, G, H, L, and S (November 2020); Measure AA (November 2016); Measure H (November 2014); Measure E (November 1998) (accessed September 22, 2022).

Borenstein, Daniel, “[Tricks California Local Officials Use To Trick Voters](https://www.mercurynews.com/2022/01/21/borenstein-tricks-california-local-officials-use-to-deceive-voters/),” *The Bay Area News Group*, <https://www.mercurynews.com/2022/01/21/borenstein-tricks-california-local-officials-use-to-deceive-voters/> January 21, 2022 (accessed August 23, 2022).

California Elections Code sections 303, 9051, 9100-9190, 9295, 13120, and 133247.

Christopher, Ben; Kamal, Sameea, “[California Ballot Measures: What You Need to Know](https://calmatters.org/explainers/california-ballot-measures-2022/),” <https://calmatters.org/explainers/california-ballot-measures-2022/> June 30, 2022, updated July 1, 2022 (accessed August 23, 2022).

City and County of San Francisco Department of Elections, <https://sfelections.sfgov.org/measures> (accessed August 2, 2022).

County of Santa Clara 2020-21 Grand Jury, *Final Report*, “Gavilan College Measure X Bond Program: Oversight Shortchanged.” June 2022.

County of Santa Clara, Office of the Clerk of the Board of Supervisors, List of Boards and Commissions, <https://stenttssaim2publicportal.blob.core.windows.net/bc-entcabodocs/MaddyReport.pdf> (accessed August 24, 2022).

County of Santa Clara Registrar of Voters, Ballot Measures proposed for the upcoming November 2022 election, <https://sccvote.sccgov.org/candidates-measures/november-8-2022-general-election-list-local-measures> (accessed Aug 20, 2022).

Editorial, Mercury News and East Bay Times, “[Stop Deceiving Bay Area Voters On Local Tax Measure Costs](https://www.mercurynews.com/2020/06/26/editorial-stop-deceiving-voters-on-local-tax-measure-costs/),” MercuryNews.com, <https://www.mercurynews.com/2020/06/26/editorial-stop-deceiving-voters-on-local-tax-measure-costs/> June 26, 2020 (accessed August 23, 2022).

Kumar, Rishi, “[Opinion: Why 4 Valley Water board members should resign](https://www.mercurynews.com/2022/05/11/opinion-why-4-valley-water-board-members-should-resign/),” MercuryNews.com, <https://www.mercurynews.com/2022/05/11/opinion-why-4-valley-water-board-members-should-resign/> May 11, 2022 (accessed August 23, 2022).

Rogers, Paul, "[Self-Serving Dishonesty: Liccardo Blasts Santa Clara Valley Water District Measure To Extend Term Limits, Even After Polling Shows Voters Oppose,](#)" *Mercury News*, March 30, 2022 (accessed August 23, 2022).

Santa Cruz County 2020-2021 Grand Jury, *Final Report*, "Words Matter: Did Measure G Deceive Voters?" June 2022.

Caselaw:

Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal.3d. 208 (1978).

Becerra v. Superior Court, 19 Cal.App.5th 967 (2017).

Denny v. Arntz, 55 Cal.App.5th 914 (2020).

Harbor v. Deukmejian, 43 Cal.3d 1078 (1987).

Hicks v. Bd. of Supervisors, 69 Cal. App. 3d 228 (1977).

Home Gardens Sanitary Dist. v. City of Corona, 96 Cal. App. 4th 87 (2002).

Martinez v. Superior Court, 142 Cal.App.4th 1245 (2006).

McDonough v. Superior Court of Santa Clara, 204 Cal.App.4th 1169 (2012).

People v. Langdon, 54 Cal. App.3d 384 (1976).

Rodeo Sanitary Dist. v. Bd. of Supervisors, 71 Cal. App.4th 1443 (1999).

Yes on 25, Citizens for an On-Time Budget v. Superior Court, 189 Cal.App.4th 1445 (2010).

Interviews:

The Civil Grand Jury conducted interviews with ten individuals between June 28, 2022, and August 22, 2022.

This report was **ADOPTED** by the Santa Clara County 2022 Civil Grand Jury on
this 7th day of October, 2022.

A handwritten signature in black ink, appearing to read "James Renalds", written over a horizontal line.

Mr. James Renalds
Foreperson



CITY OF MILPITAS

OFFICE OF THE CITY MANAGER

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
 PHONE: 408-586-3040, FAX: 408-586-3056, www.milpitas.gov

November 29, 2022

Via U.S. Mail

Honorable Beth McGowen
 Presiding Judge
 Santa Clara County Superior Court
 191 North First Street
 San Jose, CA 95113

Re: City of Milpitas Response to October 7, 2022 Santa Clara County Civil Grand Jury Final Report "If You Only Read the Ballot, You're Being Duped"

The City of Milpitas' responds to the October 7, 2022, Grand Jury report titled "If You Only Read the Ballot, You're Being Duped" (the "Report"). The City is providing this response pursuant to California Penal Code section 933.

FINDINGS

Finding I: The Civil Grand Jury finds that in the current environment, which is unregulated at the local level, it is easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters.

City of Milpitas Response: The City of Milpitas disagrees with the entirety of the Civil Grand Jury's finding that the writing of ballot measures is unregulated at the local level or that authors mislead voters within the City of Milpitas. All ballot measure questions are regulated under the California Elections Code and approved by the Milpitas City Council. Such regulation includes a private right of action for those who disagree with the ballot question associated with any particular ballot measure, and to date, neither the courts nor the State legislature have found that remedy to be inadequate. Measure F, which put forth a one quarter percent sales tax increase to the voters of Milpitas in 2020, is discussed in the Report. The language set forth in the Measure F ballot question mentioned local spending, an independent audit, and an oversight committee. Nonetheless, the ballot question was honest and straightforward. All of the funds appropriated under Measure F are in fact spent locally to fund local municipal programs. Measure F appropriations are in fact subject to an independent audit. Measure F appropriations are subject to oversight from the seven-member Measure F Oversight Committee, which meets quarterly to review and discuss Measure F revenues as well as programs and services funded by Measure F.

RECOMMENDATIONS

Recommendation 1b: Governing entities within Santa Clara County should voluntarily submit their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendation 1d is implemented.

City of Milpitas Response: The City of Milpitas will not implement the recommendation because it is neither reasonable nor warranted. The City of Milpitas is a municipal corporation organized under Article XI of the California Constitution, and it possesses all of the powers inherent thereunder, independent of those powers granted to the County of Santa Clara. The California Elections Code requires that ballot questions to be considered by the electorate of the City of Milpitas are reviewed by the City Attorney. As a result of the nature of the representative system, the voters of the City of Milpitas exercise greater control over the appointment of City Attorney than over appointment of County Counsel.

Recommendation 1c: Governing entities within Santa Clara County should, by March 31, 2023, adopt their own resolution or ordinance to require submission of their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendations 1d and 1e are implemented.

City of Milpitas Response: The City of Milpitas will not implement the recommendation because it is neither reasonable nor warranted. The City of Milpitas is a municipal corporation organized under Article XI of the California Constitution, and it possesses all of the powers inherent thereunder, independent of those powers granted to the County of Santa Clara. The California Elections Code requires that ballot questions to be considered by the electorate of the City of Milpitas are reviewed by the City Attorney. As a result of the nature of the representative system, the voters of the City of Milpitas exercise greater control over the appointment of City Attorney than over County Counsel.

Recommendation 1e: Governing entities within Santa Clara County should submit their ballot questions for review by the Good Governance in Ballots Commission pursuant to Recommendation 1d.

City of Milpitas Response: The City of Milpitas will not implement the recommendation because it is neither reasonable nor warranted. The City of Milpitas is a municipal corporation organized under Article XI of the California Constitution, and it possesses all of the powers inherent thereunder, independent of those powers granted to the County of Santa Clara. The California Elections Code requires that ballot questions to be considered by the electorate of the City of Milpitas are reviewed by the City Attorney. As a result of the nature of the representative system, the voters of the City of Milpitas exercise greater control over the appointment of City Attorney than over a Commission of the County Board of Supervisors.

This completes the City of Milpitas' response to the Report per section 933.

Sincerely,

Steven G. McHarris
City Manager



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive an Update on the American Rescue Plan Act and Provide Direction to Staff (Staff Contact: Ashwini Kantak, Assistant City Manager, 408-586-3053; and Lauren Lai, Director of Finance, 408-586-3111)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/6/2022
	<u>Recommendation:</u> Receive an update on the American Rescue Plan Act (ARPA) programs and provide direction to staff.

Background:

In March 2020, due to the rampant spread of the Coronavirus (Pandemic), a state of emergency was declared at the local, state, and federal levels and stay-at-home orders issued, which had an enormous impact on the local, state and national economy as well as the City's finances.

On March 11, 2021, President Biden signed into law the American Rescue Plan Act (ARPA), a \$1.9 trillion stimulus package, to counteract the economic impacts of the pandemic. The City's ARPA allocation of \$16,736,815 is available in two tranches, which was received in June 2021 and June 2022. Funds need to be either expended or encumbered by December 31, 2024, with all funds to be expended by December 31, 2026.

On May 11 ([link to staff report](#)), staff presented preliminary information on ARPA's Coronavirus State and Local Fiscal Recovery Funding. Staff also provided information on other funding through ARPA that could benefit the Milpitas community since the Coronavirus Local Fiscal Recovery Funding (CLFRF) is only a portion of the total ARPA funding. Staff received Council input on ARPA Plan spending priorities in May and June ([June 8 Council Meeting agenda report](#)). A majority of the spending priorities were related to financial assistance and social services to those impacted by the pandemic, economic vitality, infrastructure, public safety, and technology.

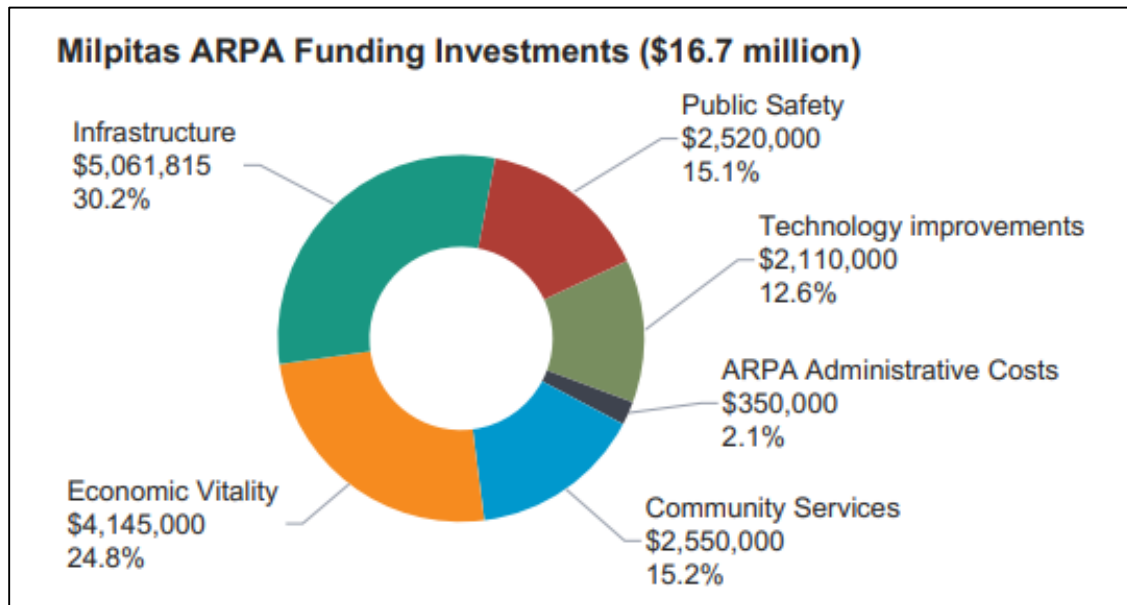
On June 21 ([link to the agenda report](#)), Council approved the ARPA Investment Framework including the Fiscal Guidelines and Five Investment Areas. Fiscal Guidelines include the following:

1. Identify and promote **other ARPA or State funding sources** to the extent possible before dedicating local ARPA funds.
2. Use one-time ARPA funds for **one-time expenditures** such as investment in infrastructure or technology with minimum ongoing operating costs.
3. **Avoid ongoing General Fund commitments** with additional programs and positions.
4. **Avoid creating a structural budget deficit** if restoring any reduced services.
5. Leverage **regional agencies, non-profit partners, and existing programs** to maximize efficiency in delivering programs and services.

On August 9 ([link to the agenda report](#)), Council approved funding for 25 programs in the ARPA Investment Plan and delegated authority to the City Manager to proceed with appropriation actions and contract approvals, up to the approved amount for each program approved by Council, once compliance with ARPA procurement, contracting, and reporting requirements are confirmed. This would allow the funding to go to residents and businesses significantly impacted by the pandemic, in an efficient and expeditious manner. Moreover, Council allocated funding into Five Investment areas of **Community Services, Economic Vitality, Infrastructure, Public Safety, and Technology**.

On January 11, 2022 ([link to the agenda report](#)), Council approved program funding re-allocations to enhance service delivery and/or streamline implementation, especially procurement.

On March 15, 2022 ([link to the agenda report](#)), Council provided feedback and direction as a part of the Fiscal Year 2022-23 budget development, which allocated funding into five Investment areas of **Community Services, Economic Vitality, Infrastructure, Public Safety, and Technology** is as follows.



Analysis:

In accordance with the August 9, 2021, Council direction and delegation, the City Manager and staff proceeded with implementing the ARPA programs. This report highlights project activities since the prior ARPA quarterly report on October 4, 2022, with an attachment that summarizes all projects.

Catalytic Converter Public Safety Initiative (\$200,000)

This provides funding for various catalytic converter theft deterrent program(s) to provide economic support to businesses and address this public safety challenge. Seven (7) automotive businesses are participating in the program, each have reached the 25 participant registration limit. All appointments were booked, for a total of 175 resident participants who will be served. There is a waiting list of approximately 10 residents. Staff will continue to monitor and support the program to encourage vendor and resident participation.

Community Services - Social Services (\$500,000)

This Milpitas ARPA allocation funds a variety of social services such as mental health services and services to the LGBTQ plus community, at-risk youth and victims of domestic violence and abuse. The City has partnered with non-profits that are already serving in these areas. The non-profit grants have been awarded and programs began serving Milpitas residents.

Economic Development Workforce Development (\$300,000)

On December 14, 2021, the Council approved the first tranche of funding recommendations in the amount of \$150,000 for five (5) non-profit beneficiaries to coordinate workforce/job training programs to aide economic recovery. Since the Oct. 5, 2022 ARPA update, Build It Green launched the second training program of their Certified Green Building Professional Training which will run from November 30-December 8, 2022. The program is an opportunity for residents, building professionals, and City staff to develop an understanding of green building concepts and to encourage more environmentally friendly development. There are currently thirteen (13) participants that enrolled in the program (6 residents and 7 City staff members). City Staff participants are representing the Departments of Planning, Public Works, and Economic Development. At the conclusion of the second training session, Build It Green will have served nineteen (19) eligible participants this year. Build It Green was awarded \$10,000 through ARPA funds to coordinate this workforce training program.

Park Playground Rehabilitation (\$1,116,000) CIP Project No. 3500 – Public Works

ARPA funds will be used for safety improvements and retrofitting of equipment at up to eleven (11) of the City's 36 parks. On December 6, Staff will report to Council the bids and recommend the award of contract to G&G Builders Inc for the base bid amount of \$872,019 for the rehabilitation of seven (7) city parks. Staff will also request Council authorize the City Manager to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$468,514.00, subject to City Council appropriation of State grant funds in the amount of \$224,543.00. The contingency may be used for unforeseen conditions and/or to proceed with add alternates of the remaining four (4) parks.

Park Rehabilitation (\$3,270,815) Project No. 3501 - Engineering and RFP

ARPA funds will be used to make repairs and improvements to twelve (12) of the City's 36 parks that were assessed to be in poor and critical condition. The implementation of these repairs and improvements will address health and safety repairs and improve the condition of these parks. The request for proposal for engineering design services was completed and a design services agreement will be forward for signatures in early December.

Proposed process for future changes to the ARPA Investment Plan

On August 9, 2021, Council approved funding for 25 programs in the ARPA Investment Plan (Attachment 1) and delegated authority to the City Manager to proceed with appropriation actions and contract approvals, up to the approved amount for each program approved by Council. Each additional program requires a significant work effort and resources. Council also approved the process to review and align the ARPA funding allocation as a part of the budget development and mid-year budget process. This maximizes efficacy of budget management and service delivery. Accordingly, in February, staff will provide the FY2022-23 mid-year budget report and in conjunction, request Council consideration of potential priorities which may warrant ARPA funding re-allocation.

Fiscal Impact:

The ARPA allocation to the City is in the amount of \$16,736,815 which Council appropriated into investment areas and specific programs.

California Environmental Quality Act:

This item is not a Project under CEQA in accordance with CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) as it can be seen with certainty that a general discussion of funding priorities by the City Council will not have a significant effect on the environment. Further, the item is also not a Project pursuant to CEQA Guidelines Section 15378(b)(2) as an administrative activity which is defined in the CEQA Guidelines to include the purchase of supplies and personnel related actions. It is further exempt under CEQA Guideline 15378(b)(4) as it is a government fiscal activity that does not involve a commitment to any specific project which may result in a potentially significant physical impact on the environment. Although the use of funding will be discussed for various potential projects, future environmental analysis will be conducted for the various potential projects prior to the City making any commitment or approval of any project, or it is covered by the CEQA Guideline 15061(b)(3) and/or 15378(b)(2).

Recommendations:

Receive an Update on the American Rescue Plan Act (ARPA), programs and provide direction to staff

Attachments

1. ARPA status update – All Projects

City of Milpitas

ARPA Project Appropriation and Expenditures through Nov. 22, 2022

No.	Program	Approved Appropriation	Year to Date Expenditure	Balance	Current Status
1	Rent and Mortgage Relief	\$1,100,000	\$1,251	\$1,098,749	FORWARD has been selected as the fiscal agent and staff is meeting weekly with consultant. Staff and consultant are working on launching the program in Q1 2023.
2	Social Services	\$500,000	\$166,688	\$333,312	Non-profit grants awarded and programming has begun, serving Milpitas residents.
3	Financial Assistance to Low and Moderate Income Residents for Utility Payments and Childcare Costs	\$575,000	\$56,340	\$518,660	Dispersing childcare subsidies and utility assistance monthly. Continuing to enroll participants and work directly with childcare providers. Additional marketing on available subsidies starting in January 2023.
4a	Beautify Milpitas Program	\$100,000	\$15,247	\$84,753	Beautification Events are scheduled monthly and kits are ordered, assembled and distributed as needed.
4b	Weed Abatement	\$90,000	\$79,253	\$10,747	Temporary staffing hired for the program.
5	Pilot Curbside Trash Pickup Program	\$85,000	0	\$85,000	The City's waste hauler (MSI) agreed to provide the service at no additional cost to City. Expanded service will start Jan 2, 2023.
6	Homeless Outreach and Assessment	\$100,000	0	\$100,000	Staff is awaiting Santa Clara County's comments on the draft Agreement.
	Community Services Subtotal	\$2,550,000	\$318,780	\$2,231,220	
7	Small Business Assistance Grant Program	\$1,570,000	\$1,565,100	\$4,900	Grants have been disbursed and program is complete.
8	Hotel Assistance Grant Program	\$130,000	\$130,000	\$0	Grants have been disbursed and program is complete.
9	Accessory Dwelling Unit Program	\$990,000	\$243,878	\$746,122	90 ADU/JADU grants; 4 Permits Finalized, 12 Issued, 3 Approved, 71 in Plan Check
10	Storefront Improvement Grant Program	\$365,000	0	\$365,000	The Outdoor Dining Ordinance was recently adopted, which allows the S. Main Street storefront improvements program to proceed.
11	Community Events	\$125,000	\$70,181	\$54,819	Completed: Earth Day, Family Campout, Lantern Festival. ArtWalk, Dia de Los Muertos
12	Financial Assistance to the Chamber of Commerce	\$200,000	0	\$200,000	Financial and event documents were reviewed by the City, an Info Memo was sent to City Council on October 19.
13	Workforce Development Program	\$300,000	\$75,312	\$224,688	Grants have been disbursed to all but one non-profit organization. Build It Green launched the second Certified Green Building Professional Training Program on November 30, 2022.
15	Limited Term Economic Development Specialist Position	\$330,000	\$160,047	\$169,953	Position filled and ARPA program support being provided.
16	Business Improvement District	\$75,000	0	\$75,000	One firm has submitted a proposal under the recent RFP. Staff is currently evaluating the proposal.
17	Sustainable Neighborhood Program	\$60,000	0	\$60,000	Program on hold and pending Congressional approval of the 2023 Federal Budget which includes the City's Carbon Neutral Home Incentive Program .
	Economic Vitality Subtotal	\$4,145,000	\$2,244,518	\$1,900,482	
18	Park Rehabilitation	\$4,386,815	\$15,452	\$4,371,363	Engineering's Project No. 3051: RFP process for ARPA Park Repair design services was completed and a design services agreement will be forwarded for signatures early December. The Design phase will start January 2023 and be completed within 12 months. Construction phase is anticipated to start in 2024. Public Works PH3 park improvement project (7 base bid sites and 4 add alternate sites) scheduled for Council consideration on 12/06/22.
19	Public Safety Facilities' Rehabilitation	\$250,000	0	\$250,000	Funds will be allocated to CIP projects with the FY 2022-23 Mid-year budget adjustments.
20	Mobile Emergency Operations Center (MEOC)	\$425,000	0	\$425,000	Vehicle build is in process. 20% complete. Delivery expected in Summer 2023
	Infrastructure Subtotal	\$5,061,815	\$15,452	\$5,046,363	
21	Public Safety Staffing	\$1,200,000	\$552,497	\$647,503	Four(4) firefighters currently funded. Two(2) police officer recruitments in progress.
22	Fire Pumper Truck	\$920,000	\$455,580	\$464,420	Manufacturer purchase and order in progress.
23	Emergency Management Program Assessment Study	\$200,000	\$9,850	\$190,150	The first five annexes are complete. The remaining 15 will be complete by January 2023.
24	Catalytic Converter Public Safety Initiative	\$200,000	0	\$200,000	7 Businesses are participating, with a maximum of 25 residents each. All 175 resident slots have been filled. There is a waiting list of approximately 10 residents.
	Public Safety Subtotal	\$2,520,000	\$1,017,927	\$1,502,073	
25	Human Resources Information System	\$1,100,000	0	\$1,100,000	Request for Information (RFI) completed and 3 vendor demonstrations held
26	Financial Management System	\$100,000	0	\$100,000	A needs assessment study is underway. Propose swap of funding with General Fund at FY23 mid-year
27	Cybersecurity Programs and Training	\$300,000	\$6,428	\$293,572	User training service contract completed. Staff is exploring additional systems and services.
28	Technology Infrastructure	\$610,000	\$277,563	\$332,437	Initial end-user equipment purchase completed. Year 2 batch purchase in progress.
	Technology Subtotal	\$2,110,000	\$283,991	\$1,826,009	
29	ARPA Funds Administration	\$350,000	\$76,371	\$273,629	Procurement administration in progress.
	Administration Subtotal	\$350,000	\$76,371	\$273,629	
	Grand Total	\$16,736,815	\$3,957,040	\$12,779,776	



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Accept the City's Annual Comprehensive Financial Report and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2022 (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	12/6/2022
	<u>Recommendation:</u> Accept the City's Annual Comprehensive Financial Report (ACFR) and other related annual audited reports for the Fiscal Year ended June 30, 2022 and find a CEQA exemption.

BACKGROUND:

Annually, Maze and Associates, the City's external auditor audits the City's books and staff prepares the Annual Comprehensive Financial Report (ACFR) of the City of Milpitas. In conjunction with the ACFR for the fiscal year ended June 30, 2022, this staff reports presents, Bicycle/Pedestrian Project Financial Statement, Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment, Required Communications, and the Memorandum on Internal Control (MOIC) to the City Council for review.

ANALYSIS:

The ACFR presents the operations and financial activity of all the City's various funds, including the General Fund. It includes an unqualified ("clean") audit opinion from Maze & Associates which means that the financial statements present fairly the results of operations for the fiscal year ended June 30, 2022, in conformance with Generally Accepted Accounting Principles (GAAP). The completion of ACFR has met the debt reporting obligation requirement. The City also achieved to apply for Government Finance Officer Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting Award timely before December 31, 2022.

Highlights and items to note from the ACFR for the fiscal year ended June 30, 2022 are detailed below:

The City's revenues in Fiscal Year 2022 have been slowly recovering since the start of the Pandemic over two years ago. The unemployment rate for the San Jose-Sunnyvale-Santa Clara metropolitan area shows an improvement in June 2022 when compared to Fiscal Year 2021. The unemployment rate was at 2.2%, a decrease of 3% from last year's 5.2%.

The increase in Property taxes is due to a potentially one-time increase in Excess Educational Revenue Augmentation Fund (ERAF) and ongoing increases in secured property tax due to higher property valuation. Sales and use tax increased significantly due to a full year of Measure F, higher consumption and historically high inflation. As people started to travel again post-pandemic, hotel/motel tax experienced some recovery, albeit still at less than 50% of pre-pandemic revenue level.

As the City continues to recover from this unprecedented pandemic, we are optimistic about the future but remain tempered by possible economic impacts that may stem from the unfortunate war in Europe, rising interest rates, rising inflation rates and other economic and political challenges.

Analysis of financial highlights for City-wide and Fund Level statement

City-wide:

- The City's total net position was \$646.4 million at June 30, 2022. Of this total, \$422.9 million were Governmental and \$223.5 million were Business-type, a net increase of total \$25.3 million from prior year's total of \$621.1 million primarily due to a net increase in assets over liabilities.

Net asset increases were primarily due to increases lease receivable and capital assets and liability decreases primarily due to decrease in pension liabilities.

- City-wide revenues include program revenues of \$111.2 million, general revenues and transfers of \$88.8 million, totaling \$200 million, an increase of \$11.5 million from the prior year's total of \$188.5 million primarily due to increase in charges for services, capital grants and contributions and general revenues.
- Total City-wide expenses were \$167.1 million, a decrease of \$16 million from the prior year's \$183 million primarily due to decreases in primary government expenditure and water utility expenses.

Fund Level:

- Governmental Fund balances were \$238.3 million, a net decrease of \$14.5 million from fiscal 2021 primarily due to expenditures exceeding revenues by \$18 million in Street Improvement and General Government Capital projects. The capital project activities are funded primarily by the fund balance.
- Governmental Fund revenues were \$133 million in fiscal 2022, up \$6.2 million from the prior year's \$126.8 million, primarily due to full year of Measure F, high inflation, consumption and resume of travel resulting in increases in Sales and Use tax and Hotel/Motel taxes.
- Governmental Fund expenditures were \$151.4 million compared to \$146.6 million in fiscal year 2021 primarily due to increases in General Government expenditure and Recreation and Community Services as programs and services resumed post-pandemic.
- General Fund revenues of \$112.1 million represented an increase of \$14 million from fiscal 2021 revenues of \$98.1 million caused primarily by increase in Hotel/Motel taxes, Sales and Use taxes, Licenses and Fines and Intergovernmental revenue.
- Net other financing uses of the General Fund were \$3.9 million in fiscal 2022 while fiscal 2021 had a total of other financing uses in (\$23) million. Variance due to creation of Pension Section 115 Internal Service Fund in fiscal year 2021. General Fund balance of \$66.8 million at the fiscal 2022 was \$4.1 million more than the fund balance at fiscal 2021.

Bicycle/Pedestrian Project Financial Statement - The Bicycle/Pedestrian Projects Financial Statements includes Projects that were developed using Transportation Development Act (TDA) grant. The auditor issued an unqualified opinion on these statements.

Memorandum on Internal Control (MOIC) - Under generally accepted auditing standards, the City's auditors are encouraged to report certain matters regarding the City's internal control structure. The City's auditors have provided such a report in their Memorandum on Internal Control ("MOIC") for the Year Ended June 30, 2022. There is one item reported as significant deficiency but no material weakness reported by the auditors regarding the City's internal control structure. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is reasonable possibility that a material misstatement of the City's financial statements will not be prevented or detected and correct on a timely basis. The auditors reported one significant deficiency related to the timeliness of year-end close. Specifically, the auditors recommend adequate resources to improve the timeliness and effectiveness of year-end close. The City was impacted by the labor market with several concurrent vacancies and a legacy financial system, which is inflexible. Since then, the City was successful in filling several critical positions and is also undergoing a financial procedures and systems assessment. Both of these efforts will improve the City's internal controls over year-end close. The auditors also reported on another matter pertaining to bank reconciliations, wherein a few reconciliations lacked the preparer name, reviewer name and/or date. The filled staff positions, process/system assessment and improved bank reconciliation process will enhance these internal controls.

Required Communications Report – Our auditors are required to communicate information related to the audit and financial statements under generally accepted auditing standards and *Government Auditing Standards*. The City's auditors have provided such a report in their Required Communications for the Year Ended June 30, 2022. Please note the following from the Required Communications Report:

- 1) The City's auditors noted no transactions entered into by the City during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.
- 2) The City's auditors encountered no significant difficulties in dealing with management in performing and completing their audit.
- 3) The City's auditors discovered no material misstatements, either individually or in their aggregate, to each opinion unit's financial statements taken as a whole.
- 4) The City's auditors encountered no disagreements with management during the course of their audit.

Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment - This report shows that the auditor applied specific procedures to validate the City's Appropriations Limit ("Gann Limit") calculations. The appropriations limitation imposed by Propositions 4 (1979) and later amended by Proposition 111 (1990) creates a restriction on the amount of government revenue which may be appropriated in any fiscal year. The Appropriations Limit is based on actual appropriations during the base year (1986-87 or the first full year of operation) and increases each year using specified growth factors. The Appropriations Limit applies only to those revenues defined as "proceeds of taxes." Certain expenditures of tax proceeds do not count as Appropriations Subject to Limit including those for voter approved debt, qualified capital outlay, and the costs of complying with court orders and federal mandates. Staff prepares an updated Appropriations Limit in May of each year and presents to Council for review and approval during the budget preparation process.

POLICY ALTERNATIVE(S):

Alternative 1: Do not accept the ACFR report.

Pros: There are no pros to not accept the ACFR report.

Cons: Not Accepting this ACFR report may pose challenges to Staff to remit this report as required per bond indebtedness and otherwise in the course of administering the City's finances.

Reason not recommended: Staff is presenting annual comprehensive financial report to inform the Council and the public on the City's audited financial status.

FISCAL IMPACT:

There is no fiscal impact from this report other than staff time to prepare the report.

California Environmental Quality Act (CEQA):

This item is not a Project under CEQA exempt under CEQA Guideline 15378(b)(4) as it is a government fiscal activity that does not involve a commitment to any specific project which may result in a potentially significant physical impact on the environment.

RECOMMENDATION:

Accept the City's Annual Comprehensive Financial Report and other Related Annual Audited Reports for the Fiscal Year ended June 30, 2022.

Attachment(s):

1. Annual Comprehensive Financial Report for FY 2021-22
2. Bicycle/Pedestrian Project Financial Statement for FY 2021-22
3. Memorandum on Internal Control for FY 2021-22
4. Required Communications for FY 2021-22
5. Agreed Upon Procedures report on Compliance with the Appropriations Limit Increment FY 2021-22

2021-2022

ANNUAL COMPREHENSIVE FINANCIAL R REPORT

FOR FISCAL YEAR ENDED
JUNE 30, 2022



City of Milpitas • California



CITY OF MILPITAS, CALIFORNIA
ANNUAL COMPREHENSIVE FINANCIAL REPORT
FOR THE YEAR ENDED JUNE 30, 2022

Prepared by
THE FINANCE DEPARTMENT



CITY OF MILPITAS
Annual Comprehensive Financial Report
For the Year Ended June 30, 2022

Item # C9.

Page

INTRODUCTORY SECTION:

Table of Contents	i
Letter of Transmittal.....	v
Directory of City Officials	xii
Map of City's Location	xiii
Organization Chart	xiv
GFOA Certificate of Achievement	xv

FINANCIAL SECTION:

<i>Independent Auditor's Report</i>	1
<i>Management's Discussion and Analysis</i>	5

Basic Financial Statements:

Government-wide Financial Statements:

Statement of Net Position	23
Statement of Activities	24

Fund Financial Statements:

Governmental Funds:

Balance Sheet	28
Statement of Revenues, Expenditures, and Changes in Fund Balances	30
Reconciliation of the Net Change in Fund Balances – Total Governmental Funds with the Statement of Activities	32
Statements of Revenues, Expenditures, and Changes in Fund Balance – Budget and Actual (Non GAAP Legal Basis):	
General Fund	33
Housing Authority	34

CITY OF MILPITAS
Annual Comprehensive Financial Report
For the Year Ended June 30, 2022

Item # C9.

Page

FINANCIAL SECTION: (Continued)

Proprietary Funds:

Statement of Net Position	35
Statement of Revenue, Expenses and Changes in Fund Net Position.....	36
Statement of Cash Flows	37

Fiduciary Funds:

Statement of Fiduciary Net Position.....	39
Statement of Changes in Fiduciary Net Position.....	40

Notes to Basic Financial Statements.....	41

Required Supplementary Information:

Retiree Medical Benefits (OPEB) Plan - Schedule of Changes in the Net OPEB Liability and Related Ratios.....	107
Retiree Medical Benefits (OPEB) Plan - Schedule of Contributions.....	108
Schedule of Changes in the Total OPEB Liability and Related Ratios – (Dependent Fund) (OPEB) Plan	109
Schedule of Contributions (Dependent Fund) (OPEB) Plan.....	110
Schedule of Changes in the Net Pension Liability and Related Ratios (Miscellaneous Plan).....	112
Schedule of Contributions (Miscellaneous Plan)	114
Schedule of Changes in the Net Pension Liability and Related Ratios (Safety Plan).....	116
Schedule of Contributions (Safety Plan)	118

Supplemental Information:

Non-major Governmental Funds:

Combining Balance Sheets	122
Combining Statements of Revenues, Expenditures and Changes in Fund Balances.....	124
Combining Schedule of Revenues, Expenditures and Changes in Fund Balances - Budget and Actual (Non GAAP Legal Basis).....	126

CITY OF MILPITAS
Annual Comprehensive Financial Report
For the Year Ended June 30, 2022

Item # C9.

Page

FINANCIAL SECTION: (Continued)

Internal Service Funds:

Combining Statements of Net Position.....	133
Combining Statements of Revenues, Expenditures and Changes in Fund Net Position	134
Combining Statements of Cash Flows.....	135

STATISTICAL SECTION:

Net Position – Last Ten Fiscal Years.....	137
Changes in Net Position – Last Ten Fiscal Years.....	138
Fund Balances, Governmental Funds – Last Ten Fiscal Years	143
Changes in Fund Balances, Governmental Funds – Last Ten Fiscal Years	144
Assessed Value and Actual Value of Taxable Property – Last Ten Fiscal Years	146
Direct and Overlapping Property Tax Rates – Last Ten Fiscal Years.....	147
Principal Property Tax Payers – Fiscal Years 2021-2022 and 2012-2013	148
Property Tax Levies and Collections – Last Ten Fiscal Years.....	149
Taxable Sales by Category – Last Ten Calendar Years.....	150
Direct and Overlapping Sales Tax Rates – Last Ten Fiscal Years	151
Principal Sales Tax Payers – Fiscal Years 2021-2022 and 2012-2013	152
Ratios of Outstanding Debt by Type – Last Ten Fiscal Years	153
Bonded Debt Pledged Revenue Coverage Redevelopment Agency Tax Allocation Bonds – Last Ten Fiscal Years.....	154
Computation of Direct and Overlapping Debt.....	155
Legal Debt Margin Information – Last Ten Fiscal Years.....	156
Installment Payment Coverage, Sewer Certificates of Participation and Wastewater Revenue Refunding Bonds – Last Ten Fiscal Years.....	157
Installment Payment Coverage, Water Revenue Funds – Last Ten Fiscal Years.....	158

CITY OF MILPITAS
Annual Comprehensive Financial Report
For the Year Ended June 30, 2022

Item # C9.

Page

STATISTICAL SECTION: (Continued)

Bimonthly Sewer Rates by Customer Class – Last Ten Fiscal Years	159
Bimonthly Water Rates by Customer Class – Last Ten Fiscal Years	160
Demographic and Economic Statistics – Last Ten Calendar Years	161
Principal Employers – Fiscal Year 2021-2022 and 2012-2013	162
Authorized Full-Time Equivalent Employees by Function/Program – Last Ten Fiscal Years	163
Operating Indicators by Function/Program – Last Ten Fiscal Years	164
Capital Asset Statistics by Function/Program – Last Ten Fiscal Years	166

OTHER AUDIT REPORT:

Independent Auditor’s Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with <i>Government Auditing Standards</i>	169



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479

PHONE: 408-586-3000, www.ci.milpitas.ca.gov

November 15, 2022

Honorable Mayor and Members of the City Council:

Submitted herewith is the Annual Comprehensive Financial Report (ACFR) of the City of Milpitas (the City) for the fiscal year ended June 30, 2022 as prepared by the City's Finance Department with support from other City departments. This report is consistent with generally accepted accounting principles. Responsibility for both the accuracy of the presented data and the completeness and fairness of the presentation, including all disclosures, rests with the City. The data, as presented, is accurate in all material aspects; and is presented in a manner designed to fairly set forth the financial position and results of operations of the City as measured by the financial activity of its various funds. All disclosures necessary to enable the reader to gain the maximum understanding of the City's financial affairs have been included. The organization of the financial report follows the guidelines set forth by the Government Finance Officers' Association of the United States and Canada.

The Reporting Entity and its Services

This report combines the financial statements of the Milpitas Public Financing Authority (MPFA), Milpitas Housing Authority (Housing Authority), the Milpitas Municipal Financing Authority (MMFA) and the Terrace Gardens Inc. with those of the City to constitute a single reporting entity. The MPFA, Housing Authority, MMFA and Terrace Gardens are separate legal entities from the City and are controlled by the City. The MPFA, Housing Authority and MMFA have the same governing board as the City and the City also has control of the Terrace Gardens' governing board. However, the Terrace Gardens Inc. issues its own component unit financial statements. The purpose and authority of the Milpitas Public Financing Authority (MPFA), Milpitas Housing Authority (Housing Authority), the Milpitas Municipal Financing Authority (MMFA) and the Terrace Gardens Inc. are described in Note 1 of this report.

Milpitas is a general law city of the State of California. The City was incorporated in 1954 and operates under a Council-Manager form of government. The City's political and legislative body is the City Council and is empowered by the general laws of the State of California to formulate citywide policy, including a fiscal program, City services, and appointment of the City Manager and City Attorney. There are four City Council members who are elected at-large for staggered four-year terms, and the Mayor is selected every two years in a separate citywide election.

The City provides a full range of municipal services to the community through its departments such as Building Safety and Housing, Planning, Engineering, Fire, Police, Public Works, and Recreation and Community Services. These departments are supported by the internal departments which include the City Manager's Office, City Attorney's office, Finance, Human Resources, and Information Technology.

Community members of the City desiring to assist the City Council in forming government policy may do so by serving on a City commission. The commissions act in an advisory capacity to the City Council. They are: Arts Commission; Community Advisory Commission; Economic Development and Trade Commission; Energy and Environmental Sustainability Commission; Library and Education Advisory Commission; Parks, Recreation and Cultural Resources Commission; Planning Commission; Public Safety and Emergency Preparedness Commission; Science, Technology, and Innovation Commission; Senior Advisory Commission; Veterans Commission; Measure F Committee and Youth Advisory Commission.

Economic Condition, Outlook and Activity

Milpitas is situated within the Silicon Valley region, known throughout the world as the home of high technology, innovation and research. Milpitas is considered the “Crossroads of Silicon Valley,” with most of its 13.6 square miles of land situated between two major freeways, I-680 and I-880. Milpitas has experienced tremendous growth since its incorporation in 1954. Over the past 68 years, the population growth has increased from 26,561 in 1970 to nearly 80,839 based on the latest Department of Finance data. The economy has improved since 2021 and as of September 2022, the City’s unemployment rate was 2.3% while the State of California’s unemployment rate was 4.1% and the national unemployment rate was 3.5%.

Over two years after the National COVID-19 Emergency Declaration, we are tempered with the fiscal recovery and forecast ahead. At the Federal level, the American Rescue Plan Act (ARPA) injected a \$2 trillion fiscal stimulus into the economy with \$16.7 million allocated to the City. Various factors influence our economic outlook. These include the tragic war in Ukraine, inflation with forty-year historically high CPI and fuel prices, rising interest rates, rising inflation rates, Federal Reserve rate hikes and monetary policies, continued supply chain challenges and labor shortages. Another critical variable is how the Pandemic may permanently impact society, such as cut back to in-person commerce or services through online shopping, virtual work, conferences and/or leisure services to name only a few. While the City forecasts our sales tax revenues will recover to pre-pandemic levels, we forecast the Pandemic will permanently alter business travel impairing the City hotel (transient occupancy tax) revenues.

The national GDP (Gross Domestic Product, the value of goods and services less the value of the goods and services used up in production and is the most popular indicator of the nation’s overall economic health.) growth increased at an annual rate of 2.6 percent in the third quarter of 2022 from the previous quarter (according to the BEA, or Bureau of Economic Analysis’ Advanced estimate). With inflation at its highest peak in 40 years as of September 2022, the Federal Reserve continues to raise interest rates to combat high inflation. Consequently, there is volatility in the stock market and slow-down in economic growth. As of September 2022, the Federal Reserve Board’s projected change in median GDP growth is positive 1.2 percent for 2023 and positive 1.7 percent for 2024.

The CPI (Consumer Price Index), is used by the U.S. Bureau of Labor Statistics to measure inflation. The September 2022 CPI-U (Consumer Price index for all Urban Consumers) increased 8.2 percent over the last 12 months. Core CPI (CPI less food and energy) is 6.6 percent compared to 4.0 percent in September 2021. Core CPI represents a more accurate picture of underlying inflation trends since volatile food and energy products are excluded. While the global economic activity remains uncertain, the U.S. Bureau of Labor Statistics’ Employment Projections for 2021-2022 shows a projected growth from 158.1 million to 166.5 million over the 2021-31 decade.

The housing market has remained strong in 2022. Single family residential construction starts decreased 3% year-over-year while multi-family construction starts increased 6% year-over-year. The median sale price of a single family residential home in Milpitas was \$1.3 million as of September 2022, up approximately 7.7 percent from last year. Year-over-year price increases have slowed down in Santa Clara County. Santa Clara County had a 2.1 percent increase in median sale price compared to 14.4 percent increase last year. The California Association of Realtors reported an increase in value of 1.6 percent statewide. The section below entitled “Major Development Activities in the City” will discuss some of the development activities that are occurring in Milpitas.

Consumer Confidence Level

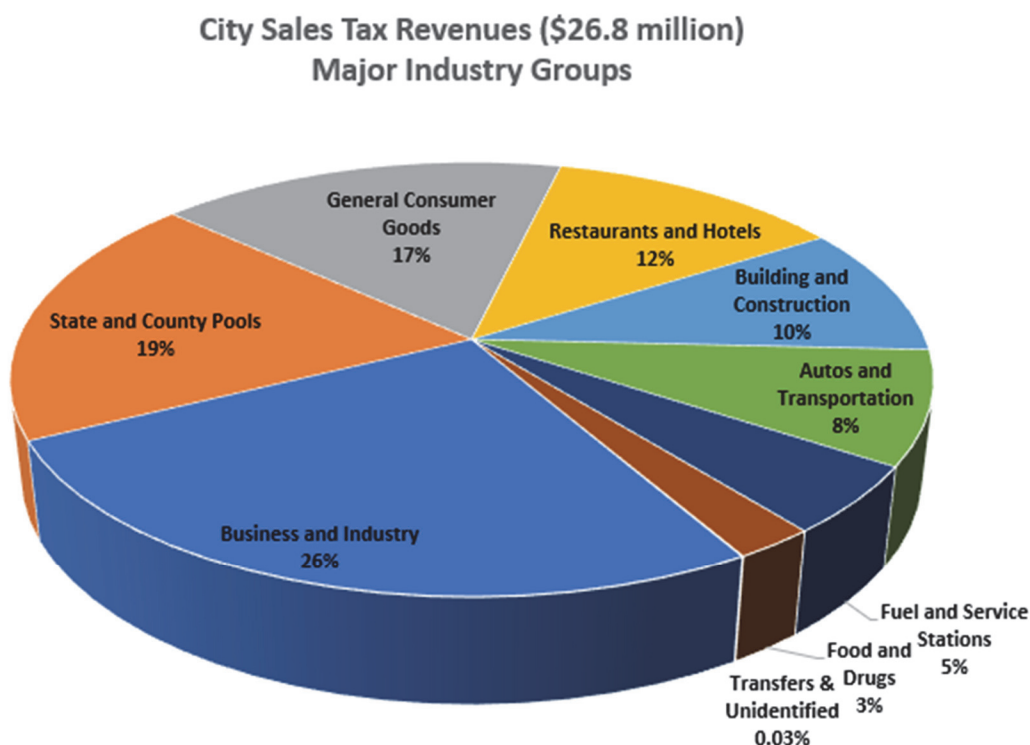
The Conference Board Consumer Confidence Index decreased to 107.8 in September 2022, up from 103.2 in August. Consumer confidence is an indicator designed to measure the degree of optimism that consumers feel about the overall state of the economy and their personal financial situation. Since consumer spending accounts for more than two-thirds of the U.S. Gross Domestic Product, the index is a good indicator that when consumers' confidence is high, consumers would likely make more purchases thus further boosting the economy. Employment drives consumer spending, which in turn impacts the economy greatly. Nonfarm payroll employment increased 263,000 in September 2022, and the unemployment rate declined to 3.5 percent from 3.7 percent in August 2022.

[OBJ]

Source: The Conference Board

Top Ten Sales Tax Generators by Economic Segment

Financial markets continue to remain volatile and inflationary trends in the economy remain high. All states but two, reported year-over-year growth in total state tax revenue collections for the first quarter of 2022. According to Urban-Brookings Tax Policy Center, total state tax revenue collections increased 21.7 percent in nominal terms and 13.9 percent in real terms in the first quarter of 2022, compared to the year prior. The chart below provides a snapshot of the City's sales tax revenue by major industry groups. Total amount of sales tax revenue for the major industry groups generates about \$26.8 million. Total sales tax receipts increased by 15.3 percent from 2021. The sales tax revenue generated from major industry groups such as Fuel and Service Stations, Restaurants and Hotels, General Consumer Goods, Business and Industry, Food and Drugs, and Autos and Transportation increased over a year ago, while the Building and Construction industry group had a 14.2 percent decrease from the prior year.



Source: HdL FY22 Major Business Categories

Major Development Activities in the City

General Plan Update – Considered the blueprint for future development, the General Plan defines a long-term vision for future growth, traffic circulation, economic development, health, housing and resource conservation. The Milpitas 2040 General Plan was unanimously adopted by the City Council on March 9, 2021, and this policy document will guide City decision-making and priorities over the next 20 years. The Plan identifies opportunity sites where changes to land use and development patterns are likely to occur and prioritizes housing and economic growth in areas served by high-quality transit. The Plan also includes policies aimed at preserving the character of existing neighborhoods and protecting the City’s hillsides and other natural resources.

Milpitas Metro Specific Plan – The City adopted a Transit Area Specific Plan (TASP) in June 2008 to encourage medium to high density development surrounding the new Milpitas Transit Center. The Plan was last updated in 2011. The Milpitas Transit Center, which opened in 2020, provides high-quality bus and light rail connections via the Santa Clara Valley Transportation Authority (VTA) system as well as regional rapid transit services via BART. The City will adopt the Milpitas Metro Specific Plan with update policies and programs to further enhance existing neighborhoods and provide new opportunities for future housing, retail, office, and hotel uses in the planning area. The new Metro Plan envisions a network of landscaped open space, parks, and trails that connect housing and jobs to high-quality transit and provide opportunities for active and passive recreation as well as social interaction. The new Plan also envisions development of an employment-oriented Innovation District near the Milpitas Transit Center to foster economic development based on the City’s excellent access to regional bus, light rail, and BART connections. The City anticipates final adoption of the new Plan and the associated Environmental Impact Report in 2023.

Residential Development – The City continues to leverage public and private resources to support planning and development of new affordable housing. The City is recognized for its award-winning online resources and interactive tools that help residents navigate the development review process and find ADU designs that fit their property and needs. For more information, visit www.milpitas.gov/adu/. The City also continues to host the popular “ADU Mondays” program, which brings staff from various departments together to provide direct assistance to residents who wish to pursue an ADU on their property. City staff has presented information about these programs in regional and statewide forums.

In FY 2021-22, the Planning Commission has approved permits for several new housing development, including an 85-unit (100% affordable) multifamily residential project at 308 Sango Court, a 32-unit (15% affordable) multi-family residential projects at 2001 Tarob Court, and an innovative 56-unit townhome project (15% affordable) with 12 ADUs on a redevelopment site on Houret Court. In addition, the City Council reviewed preliminary plans for a 112-unit (100% affordable) multifamily residential project at 113 South Main Street, and a 94-unit (15% affordable) mixed-use project at 265 South Main Street. The City is using \$300,000 in state grant funding to develop a Housing Opportunity Overlay Zone aimed at streamlining the review process for affordable housing and create new by-right housing regulations. In addition, the City received a \$500,000 Priority Development Area (PDA) grant from ABAG to help fund the preparation of the Gateway/Main Street Specific Plan. The City also received \$142,700 from ABAG’s Regional Early Action Planning (REAP) grant program to help fund the preparation of the 2023-2031 Housing Element.

Non-residential Development – FY2021-22 was another busy year for commercial development and expansion. The Planning Commission approved development permits for the redevelopment of a former retail building into a new Stratford School campus at 125 North Main Street and the development of a new 216-room Tribute Hotel at 1851 McCarthy Blvd. In addition, development permits have been approved for a new Rainbow Childcare Center at 158 South Main Street, an expanded after-school program at the Indian Heritage Foundation at 680 Calaveras Boulevard, and a new Primrose Daycare Center at 1000 Jacklin Road.

A new Chick-fil-A restaurant and franchises of Crumbl Cookies and Nothing Bundt Cakes opened in the Town Center shopping center on Calaveras Boulevard.

Accounting System and Budgetary Control

In developing and evaluating the City's accounting system, consideration is given to the adequacy of internal accounting controls. Internal accounting controls are designed to provide reasonable, but not absolute, assurances regarding: (1) the safeguarding of assets against loss from unauthorized use or disposition; and (2) the reliability of financial records for preparing financial statements and maintaining accountability for assets. The concept of reasonable assurance recognizes that: (1) the cost of a control should not exceed the benefits likely to be derived; and (2) the evaluation of costs and benefits requires estimates and judgments by management.

All internal control evaluations occur within the above framework. The Finance Department staff remains committed to improving the City's accounting system; to maintain the City's internal accounting controls to adequately safeguard assets; and to provide reasonable assurances of proper recording of financial transactions. Budgetary control is directed by the City Council by resolution when the budget is adopted each year. Expenditures may not legally exceed appropriations at the department level by fund. The City utilizes the encumbrance system as a management control technique to assist in controlling expenditures. The City Manager has limited budget appropriation authority to transfer appropriations among departments and projects within any one fund, provided that the amount of the amended appropriation is \$100,000 or less. Quarterly reports of revenue and expense are prepared and distributed to the City Council and City departments to monitor spending in relation to the budget. At fiscal year-end, open encumbrances are reported under the "Assigned" fund balance classification. The City's accounting records are organized and operated on a "fund" basis, which is the basic fiscal and accounting entity in governmental accounting. Each fund is classified by category and fund type:

Category and Fund Type

Governmental Funds:	General Fund, Special Revenue Funds, Debt Service Funds, and Capital Projects Funds
Proprietary Funds:	Enterprise Funds and Internal Service Fund
Fiduciary Funds:	Private-Purpose Trust Fund and Agency Funds

Governmental Funds: The basic financial statements necessary to fairly present the financial position and operating results from major governmental funds are the balance sheet, and the statement of revenues, expenditures and changes in fund balance. These funds are maintained using the modified accrual basis of accounting, which is more thoroughly explained in the Notes to the Financial Statements.

Proprietary Funds: Generally accepted accounting principles applicable to private commercial business are applicable to proprietary funds of a government agency. The basic financial statements required to present the financial position and operating results from major proprietary funds are the statement of net position, statement of revenues, expenses, and changes in fund net position, and the statement of cash flows. The accrual basis of accounting is utilized as explained in the Notes to the Financial Statements.

Fiduciary Funds: Fiduciary funds are used to account for assets held by a government agency acting as a trustee or agent for individuals, assessment districts, organizations, other governmental units or other funds of the same entity. These funds are also identified in this report as a Private-Purpose Trust Fund and Agency Funds. The full accrual basis of accounting is used as explained in the Notes to the Financial Statements. Agency Funds are custodial in nature (assets equal liabilities) and do not involve measurement of results of operations.

Financial Analysis

Generally Accepted Accounting Principles (GAAP) require that management provide a narrative introduction, overview, and analysis to accompany the basic financial statements in the form of Management's Discussion and Analysis (MD&A). This letter of transmittal is designed to complement the MD&A and should be read in conjunction with it.

Long Term Financial Planning

Each year the City adopts a balanced budget by June 30. The City has fiscal policies that include the use of one-time revenues for one-time expenditures only, including capital outlay and reserves. The City also adopted reserve policies that requires unassigned fund balance which is made up of the Contingency Reserve to be at least 16.67% of the annual operating expenditures and the Budget Stabilization Reserve with a reserve target of 16.67% of the annual operating expenditures in the General Fund. Additional reserves are included in Note 11.

The City developed a five-year Capital Improvement Plan detailing specific budgeted capital projects. Each of the projects is consistent with the budget priorities of the City. The fiscal year 21-22 Adopted Capital Improvement Project (CIP) Budget totaled \$39.7 million. The CIP included improvements to the City's infrastructure which includes community improvements, parks, streets, water, sewer and storm drain utilities.

In addition, the City produces an annual ten-year General Fund Forecast. The Forecast allows the City Council and the community to assess the financial sustainability of City services in the long term. The projection also identifies the type of commitments and resource demands in the next ten years as known and points out areas of both opportunity and risk as the City navigates through fiscal cycles. This long-term forecast provides an invaluable planning tool and is an indication of sound fiscal planning and strategy.

Independent Audit

Each year the City requires an independent annual audit of the City's financial records, the results of its operations, and cash flows. This report includes the opinion of the City's independent auditors, Maze & Associates, for the basic financial statements of the City. In addition, the document also contains the auditors' report on Internal Control over Financial Reporting and on compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*.

Awards

The Government Finance Officers' Association of the United States and Canada (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to the City for its Annual Comprehensive Financial Report for the fiscal year ended June 30, 2021. The Certificate of Achievement is the highest form of recognition for excellence in state and local government financial reporting. The City has received this award for the last twenty-six years.

Acknowledgments

We extend our appreciation to the entire staff in the Finance Department and other departments who assisted in the process of compiling the information for this report. In addition, we extend a special "thank you" to our external auditors who contributed to make this document possible. Their efforts and continued dedication are greatly appreciated. We sincerely thank the Mayor and members of the City Council for their support, interest, and integrity in directing the financial affairs of the City in a responsible and prudent manner.

Respectfully submitted,



Steven G. McHarris
City Manager



Lauren Lai
Director of Finance/Risk Manager

DIRECTORY OF OFFICIALS

Item # C9.

June 30, 2022

City Council

Mayor	Rich Tran
Vice-Mayor	Carmen Montano
Councilmember	Karina R. Dominguez
Councilmember	Anthony Phan
Councilmember	Evelyn Chua

City Manager

Steven G. McHarris

Assistant City Manager

Ashwini Kantak

Deputy City Manager

Walter C. Rossmann

Building Safety & Housing

Bill Tott (interim Building Safety)
Alex Andrade (interim Housing)

City Attorney

Michael Mutalipassi

City Clerk

Suzanne Guzzetta

Director of Recreation & Community Services

Renee Lorentzen

Economic Development Director

Alex Andrade

Engineering Director/City Engineering

Steve Erickson

Finance Director

Lauren Lai

Fire Chief

Brian Sherrard

Human Resources Director

Jeannine Seher

Information Technology Director

Daniel Nam

Planning Director

Ned Thomas

Police Chief

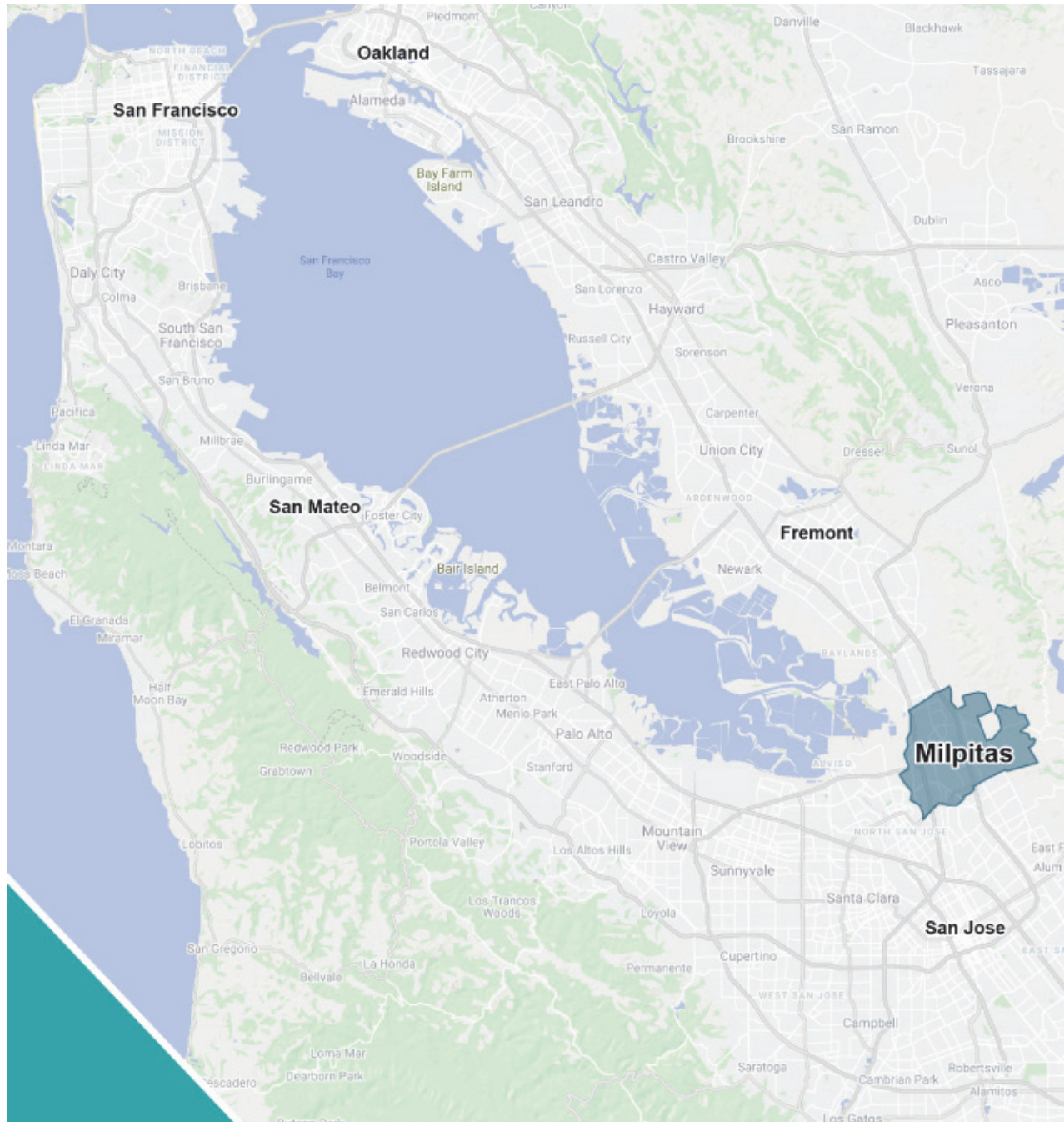
Jared Hernandez

Public Information Officer

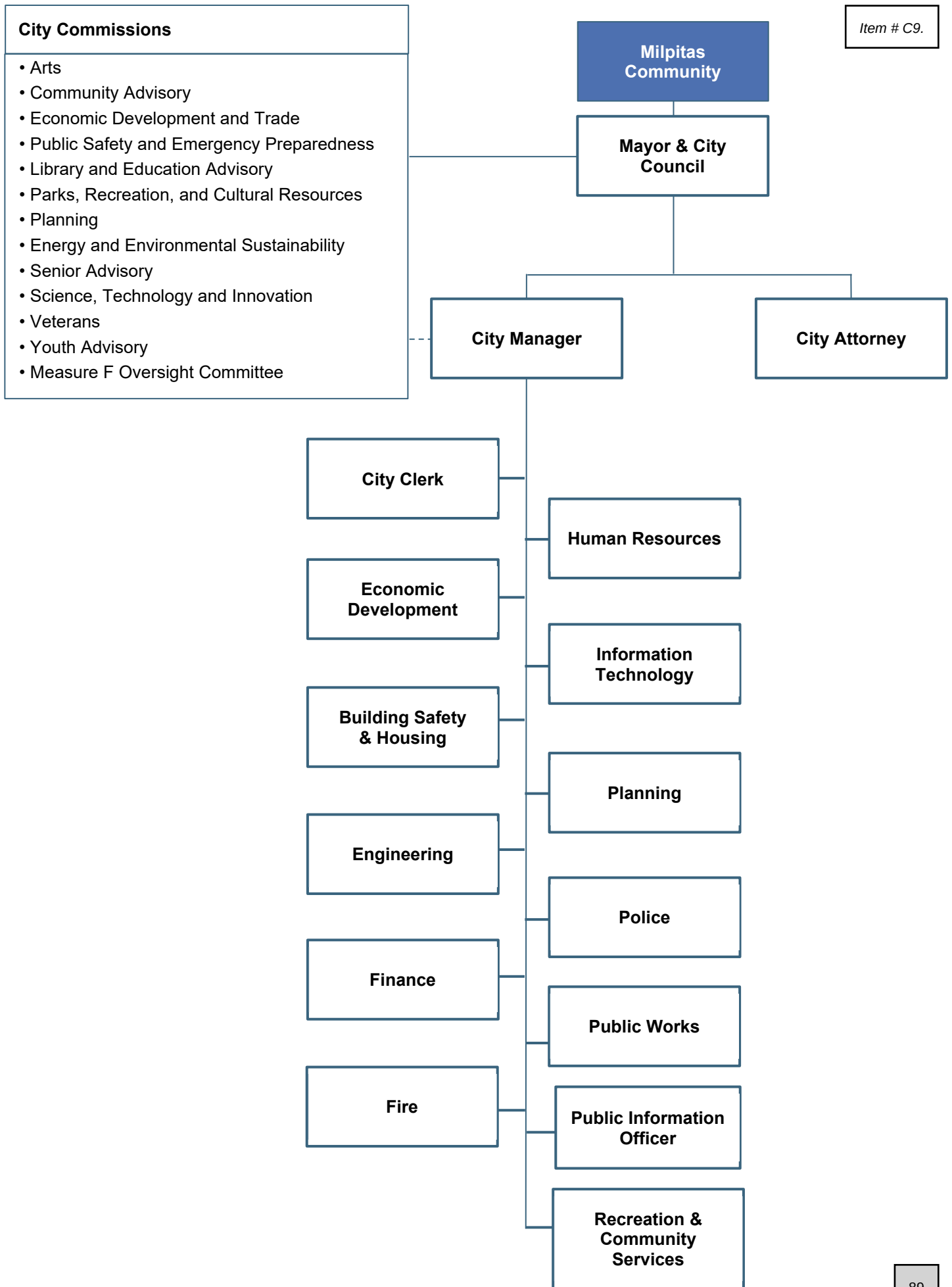
Charmaine Angelo

Interim Public Works Director

Roger Lee



The City of Milpitas is located near the southern tip of San Francisco Bay, forty-five miles south of San Francisco. Milpitas is often called the “Crossroads of Silicon Valley” with most of its 13.6 square miles of land situated between two major freeways (I-880 and I-680), State Route 237, and a county expressway. The light rail line opened for service in 2004 and an extension of BART, with a major multi-modal station, is in the planning stages.





Government Finance Officers Association

Certificate of
Achievement
for Excellence
in Financial
Reporting

Presented to

**City of Milpitas
California**

For its Annual Comprehensive
Financial Report
For the Fiscal Year Ended

June 30, 2021

Christopher P. Morill

Executive Director/CEO



INDEPENDENT AUDITOR'S REPORT

To the Honorable Members of the City Council
City of Milpitas, California

Report on the Audit of the Financial Statements

Opinions

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Milpitas (City), California, as of and for the year ended June 30, 2022, and the related notes to the financial statements, which collectively comprise the City's basic financial statements as listed in the Table of Contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City as of June 30, 2022, and the respective changes in financial position and, where applicable, cash flows thereof and the respective budgetary comparisons listed in the Table of Contents as part of the basic financial statements for the year then ended in accordance with accounting principles generally accepted in the United States of America.

We did not audit the financial statements of the discretely presented component unit financial statements of Terrace Gardens, Inc. as of and for the year ended December 31, 2021, which represent 1.04%, 1.56%, and 1.21% of the assets, net position, and revenues, respectively, of the primary government. The financial statements of the Terrace Gardens, Inc. were audited by other auditors whose report has been furnished to us, and our opinion, insofar as it relates to the amounts included for the City, is based solely on the report of the other auditors.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the City and to meet our other ethical responsibilities, in accordance with the relevant ethical requirement relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the City's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if, individually or in the aggregate, they could reasonably be expected to influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the City's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Change in Accounting Principles

Management adopted the provisions of the Governmental Accounting Standards Board Statement No. 87 – Leases, which became effective during the year ended June 30, 2022.

As discussed in Note 11F to the financial statements, the beginning balances of General Fund leases receivable and deferred inflows of resources related to leases were restated and increased by \$13,405,519 as of July 1, 2021. As a result, the net effect on beginning fund balance was zero.

The implementation of GASB 87 had material effects on the financial statements.

The emphasis of this matter does not constitute a modification to our opinions.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the Management's Discussion and Analysis and other required supplementary information as listed in the Table of Contents be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Supplementary Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the City's basic financial statements. The accompanying Supplementary Information, as listed in the Table of Contents, is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the Supplementary Information is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Other Information

Management is responsible for the other information included in the annual report. The other information comprises the Introductory Section and Statistical Section listed in the Table of Contents, but does not include the basic financial statements and our auditor's report thereon. Our opinions on the basic financial statements do not cover the other information, and we do not express an opinion or any form of assurance thereon.

In connection with our audit of the basic financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the basic financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated November 7, 2022, on our consideration of the City's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the City's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the City's internal control over financial reporting and compliance.

Maze & Associates

Pleasant Hill, California
November 7, 2022



MANAGEMENT'S DISCUSSION AND ANALYSIS

The following discussion provides readers of the City of Milpitas' financial statements a narrative overview and analysis of the financial activities of the City of Milpitas for the fiscal year ended June 30, 2022. Please read this document in conjunction with the accompanying Transmittal Letter and Basic Financial Statements.

FISCAL YEAR 2022 FINANCIAL HIGHLIGHTS

The City's revenues in Fiscal Year 2022 has been slowly recovering since the start of the Pandemic over two years ago. The unemployment rate for the San Jose-Sunnyvale-Santa Clara metropolitan area shows a slight improvement in June 2022 when compared to Fiscal Year 2021. The unemployment rate was at 2.2%, a decrease of 3% from last year's 5.2%. By and large, General Fund revenues were higher compared to Fiscal Year 2021 with especially significant increases in sales and use taxes of \$9 Million (\$5 Million attributed to Measure F), property tax of \$1.6 Million and hotel/motel tax of \$3.8 Million.

The increase in Property taxes are due to a potentially one-time increase in Excess Educational Revenue Augmentation Fund (ERAF) and ongoing increases in secured property tax due to higher property valuation. Sales and use tax increased significantly due to a full-year of Measure F, higher consumption and historically high inflation. As people started to travel again post-pandemic, hotel/motel tax experienced some recovery, albeit still at less than 50% of pre-pandemic revenue level.

As the City continues to recover from this unprecedented pandemic, we are optimistic about the future but remain tempered by possible economic impacts that may stem from the unfortunate war in Europe, rising interest rates, rising inflation rates and other economic and political challenges.

Fiscal 2022 financial highlights include the following:

City-wide:

- The City's total net position was \$646.4 million at June 30, 2022. Of this total, \$422.9 million were Governmental and \$223.5 million were Business-type, a net increase of total \$25.3 million from prior year's total of \$621.1 million primarily due to a net increase in assets over liabilities. Net asset increases were primarily due to increases in lease receivable and capital assets and liability decreases primarily due to decrease in pension liabilities.
- City-wide revenues include program revenues of \$111.2 million, general revenues and transfers of \$88.8 million, totaling \$200 million, an increase of \$11.5 million from the prior year's total of \$188.5 million primarily due to increase in charges for services, capital grants and contributions and general revenues.
- Total City-wide expenses were \$167.1 million, a decrease of \$16 million from the prior year's \$183 million primarily due to decreases in primary government expenditure and water utility expenses.

Fund Level:

- Governmental Fund balances were \$238.3 million, a net decrease of \$14.5 million from fiscal 2021 primarily due to expenditures exceeding revenues by \$18 million in Street Improvement and General Government Capital projects. The capital project activities are funded primarily by the fund balance.
- Governmental Fund revenues were \$133 million in fiscal 2022, up \$6.2 million from the prior year's \$126.8 million, primarily due to full-year of Measure F, high inflation, consumption and resume of travel resulting in increases in Sales and Use tax and Hotel/Motel taxes.
- Governmental Fund expenditures were \$151.4 million compared to \$146.6 million in fiscal year 2021 primarily due to increases in General Government expenditure and Recreation and Community Services as programs and services resumed post-pandemic.

- General Fund revenues of \$112.1 million represented an increase of \$14 million from fiscal 2021 revenues of \$98.1 million caused primarily by increase in Hotel/Motel taxes, Sales and Use taxes, Licenses and Fines and Intergovernmental revenue.
- Net other financing uses of the General Fund were \$3.9 million in fiscal 2022 while fiscal 2021 had a total of other financing uses in (\$23) million. Variance due to creation of Pension Section 115 Internal Service Fund in fiscal year 2021. General Fund balance of \$66.8 million at the fiscal 2022 was \$4.1 million more than the fund balance at fiscal 2021.

OVERVIEW OF THE ANNUAL COMPREHENSIVE FINANCIAL REPORT

This Annual Comprehensive Financial Report consists of eight parts:

- 1) Introductory section, which includes the Transmittal Letter and general information,
- 2) Management's Discussion and Analysis (this part),
- 3) The Basic Financial Statements, which include the Government-wide and the Fund financial statements, along with the Notes to these financial statements,
- 4) Required Supplementary Information,
- 5) Supplementary Information,
- 6) Combining statements for Non-major Governmental Funds and Fiduciary Funds,
- 7) Statistical information,
- 8) Other report.

THE BASIC FINANCIAL STATEMENTS

The Basic Financial Statements comprise the City-wide Financial Statements and the Fund Financial Statements. These two sets of financial statements provide two different views of the City's financial activities and financial position—long-term and short-term.

The City-wide Financial Statements provide a longer-term view of the City's activities as a whole, and comprise the Statement of Net Position and the Statement of Activities. The Statement of Net Position provides information about the financial position of the City as a whole, including all its capital assets and long-term liabilities on the full accrual basis, similar to that used by corporations. The Statement of Activities provides information about all the City's revenues and all its expenses, also on the full accrual basis, with the emphasis on measuring net revenues or expenses of each of the City's programs. The Statement of Activities explains in detail the change in net position for the year.

The Fund Financial Statements report the City's operations in more detail than the City-wide statements and focus primarily on the short-term activities of the City's General Fund and other Major Funds. The Fund Financial Statements measure only current revenues and expenditures, current assets, liabilities, deferred inflows/outflows of resources and fund balances, but exclude capital assets, long-term debt and other long-term amounts.

Major Funds account for the major financial activities of the City and are presented individually, while the activities of Non-major funds are presented in summary, with subordinate schedules presenting the detail for each of these Non-major funds. Major Funds are explained below.

The City is the Successor Agency of the Milpitas Redevelopment Agency. It holds funds to make payments according to the enforceable obligations schedules and eventually dispose of other assets and properties of the former Redevelopment Agency for the benefits of the taxing agencies. The City is also the depository agent for Local Improvement Districts and certain other entities. The fiduciary statements provide information about the cash balances and activities of the Successor Agency, Local Improvement Districts and other entities. These statements are separate from the City's financial statements and their balances are excluded from the City's fund balances.

Together, all these statements are called the Basic Financial Statements.

THE CITY-WIDE FINANCIAL STATEMENTS

All of the City's basic services are considered to be governmental activities, including general government, building safety and inspection, public safety, public works maintenance, recreation, public improvements, planning and zoning, and general administration services. These services are supported by general City revenues such as taxes, and by specific program revenues such as fees. The City-wide financial statements can be found in pages 23-25 of this report.

All of the City's business-type activities includes water and sewer which are also reported in the basic financial statements. Unlike governmental services, these activities are supported by charges paid by users based on the amount of their service consumption.

The City's financial statements include the activities of four other separate legal entities, the Milpitas Public Financing Authority (MPFA), the Milpitas Housing Authority (Housing Authority), the Milpitas Municipal Financing Authority (MMFA) and Terrace Gardens, Inc., because the City is either financially accountable for these entities or has control of these entities' governing boards.

Citywide financial statements are prepared on the accrual basis, which means they measure the flow of all economic resources of the City as a whole.

FUND FINANCIAL STATEMENTS

Governmental Fund financial statements are prepared on the modified accrual basis, which means they measure only current financial resources and uses. Capital assets and other long-lived assets, along with long-term liabilities, are presented only in the citywide financial statements.

Enterprise and internal service fund financial statements are prepared on the full accrual basis and include all these funds' assets and liabilities, both current and long-term.

The Fund financial statements provide detailed information about each of the City's most significant funds, called Major Funds. Each Major Fund is presented individually, with all Non-major Funds summarized and presented only in a single column. Subordinate schedules present the detail of these Non-major funds. Major Funds present the major activities of the City for the year. The General Fund is always a Major Fund, but other funds may change from year to year as a result of changes in the pattern of the City's activities.

The City has four other Major Governmental Funds in fiscal 2022 in addition to the General Fund. These are the Housing Authority Fund, the Street Improvement Fund, the Transit Area Impact Fee Fund, and the General Government Capital Projects Fund, each of which is discussed in detail below.

Both of the City's Enterprise Funds are reported as Major Funds.

Comparisons of Budget and Actual financial information are presented only for the General Fund and other major governmental funds that are Special Revenue Funds. The City has one major Special Revenue Fund, the Housing Authority Fund.

FIDUCIARY STATEMENTS

The City is the Successor Agency of the former Redevelopment Agency and the agent for certain local improvement districts ("Districts"). The City holds property tax revenue distributed from the Redevelopment Property Tax Trust Fund ("RPTTF") to pay outstanding recognized obligations for the Successor Agency. The City also holds amounts collected from property owners which await transfer to the Districts' bond trustees. These activities are excluded from the City's other financial statements because the City cannot use these assets to finance its own operations. The City's fiduciary activities are reported in the separate Statement of Fiduciary Net Position, Statement of Changes in Fiduciary Net Position and the Agency Funds Statement of Changes in Assets and Liabilities.

CITY-WIDE FINANCIAL ANALYSIS

This analysis focuses on the net position and changes in net position of the City as a whole. Comparisons of the current year's net position and activities with fiscal 2021 are presented in table form. Any significant changes are analyzed and discussed.

Governmental Activities

Table 1
Governmental Net Position at June 30
(in Millions)

	Governmental Activities	
	2022	2021
Cash and investments	\$250.6	\$264.2
Restricted cash and investments	2.3	16.3
Other assets	74.2	52.0
Capital assets	384.2	364
Total assets	\$711.3	\$696.5
Deferred Outflows of Resources – Related to pensions and OPEB	38.3	35
Net Pension liabilities	148.1	209.4
Net OPEB liability	0.0	6.5
Total OPEB liability	31.8	29.7
Long-term debt outstanding	21.5	21.9
Other liabilities ¹	45.0	46.0
Total liabilities	246.4	313.5
Deferred Inflows of Resources		
–Related to leases	13.1	-
–Related to pensions and OPEB ²	67.3	13.2
Net position:		
Net investment in capital assets	365.0	358.4
Restricted	176.5	189
Unrestricted	(118.6)	(142.7)
Total net position	\$422.9	\$404.7

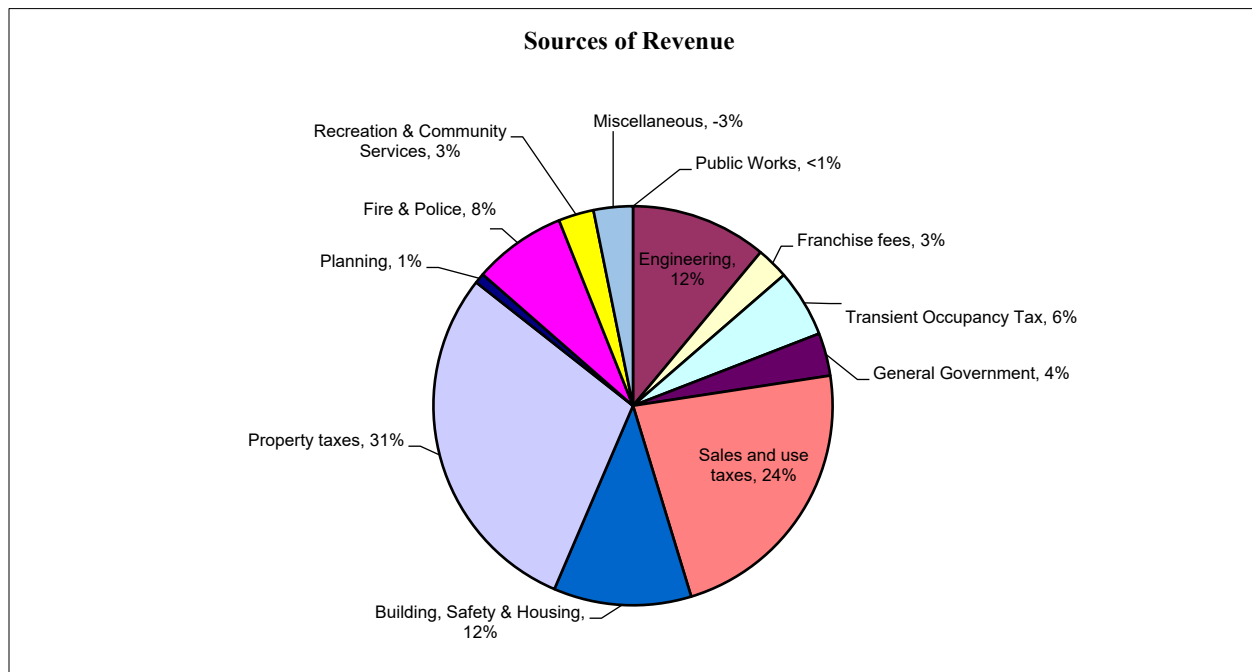
¹ Other liabilities include Accounts Payable, Unearned Revenues and Compensated Absences incurred as of June 30, 2022

² Deferred Inflows of Resources – Related to pensions and OPEB refers to unrecognized liability changes due to plan experience which differs from what was assumed in the prior measurement period.

The City's governmental net position was \$422.9 million at June 30, 2022, an increase of \$18 million from 2021. This increase is reflected as Change in Net Position in the Governmental Activities column of the Statement of Activities and is also shown in Table 2 of this analysis:

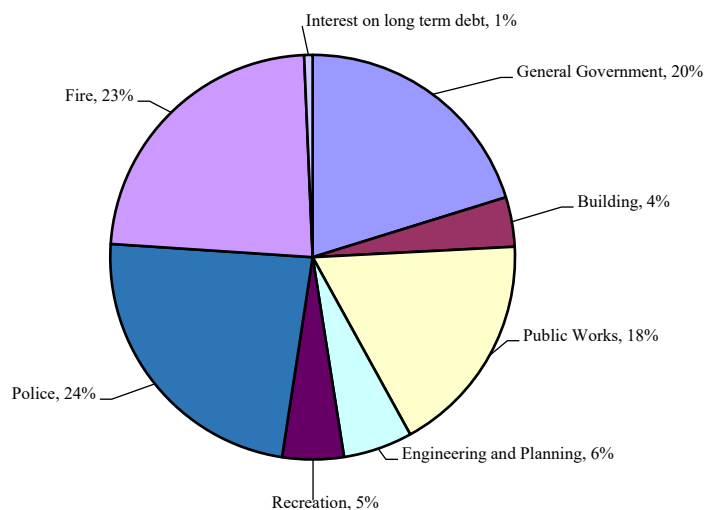
- Cash and investments decreased \$13.6 million principally due to unrealized market loss of City's investment portfolio as the portfolio is heavily impacted by the volatile equity and bond markets.
- Restricted cash and investment decreased by \$14.0 million is primarily due to capital project activities and disbursement in bond funds.
- Other assets increased \$22.2 million from last year due to the net activity between receivables and increase in prepaids, materials, supplies and deposits and addition of lease receivable in amount of \$13.4 million in compliance with GASB 87.
- Capital assets increased \$20.2 million from last year, resulting from \$15.0 million of depreciation, offset by \$35.2 million in asset additions, net of retirements in fiscal 2022. The most significant increases were from Fire Station #2, Community and Senior Center Energy Resilience Project, PMIP Shared Infrastructure and Park Improvement capital projects.
- Deferred outflows of resources related to pension and OPEB increased \$3.3 million from last year due to changes in actuarial results.

Fiscal Year 2022 Governmental Activities



As the Sources of Revenue Chart above shows, \$42.6 million or 31% came from property taxes, while \$33.2 million or 24% came from sales and use taxes. The remainder came from a variety of sources, including charges for services, grants and contributions, franchise fees, transient occupancy taxes, and building fees.

Functional Expense



The Functional Expenses Chart above includes only current year expenses, which are discussed in detail below. It does not include capital outlays, which are added to the City's capital assets. The composition of Fiscal 2022's capital assets is shown in detail at Table 8.

The Statement of Activities presents program revenues and expenses and general revenues in detail. All these are elements in the Changes in Governmental Net Position as summarized below.

Table 2
Changes in Governmental Net Position
(in Millions)

	<u>Governmental Activities</u>	
	<u>2022</u>	<u>2021</u>
Expenses		
General Government	\$25.2	\$25.2
Building, Safety and Housing	4.9	6.7
Recreation and Community Services	6.1	5.1
Public Works	22.1	20.2
Engineering	5.0	6.8
Planning	1.9	2.5
Police	29.5	38.9
Fire	29.0	31.9
Interest on long term debt	0.8	0.8
Total expenses	<u>124.5</u>	<u>138.1</u>
Revenues		
Program revenues:		
Charges for services	18.7	16.9
Operating contributions and grants	15.3	15.0
Capital Grants	19.9	19.0
Total Program Revenues	<u>53.9</u>	<u>50.9</u>
General revenues:		
Taxes:		
Property taxes	42.6	41.0
Sales and use taxes	33.2	24.2
Transient Occupancy taxes	8.0	4.2
Other taxes	1.1	0.8
Franchise fees	5.2	5.0
Investment earnings	(7.5)	1.0
Miscellaneous	1.8	0.6
Total General Revenues	<u>84.4</u>	<u>77.8</u>
Total Revenues	<u>138.3</u>	<u>127.7</u>
Surplus (Deficit) before transfers	<u>13.8</u>	<u>(10.4)</u>
Transfers in/(out), net	4.3	6.1
Changes in net position	<u>18.1</u>	<u>(4.3)</u>
Beginning net position	<u>404.8</u>	<u>409.3</u>
Ending net position	<u>\$422.9</u>	<u>\$405.0</u>

Table 2 compares fiscal 2022 expenses and revenues with those of fiscal 2021. Expenses decreased by \$13.6 million in fiscal 2022 due primarily to continued staff vacancies and non-personnel savings due to reduced COVID- restrictions upon City operations.

Table 2 shows that total governmental revenues increased \$10.6 million in fiscal 2022. Program revenues increased \$3.0 million, and general revenues increased \$6.6 million. The increase in program and general revenues were primarily due to economic recovery from the pandemic.

The general revenue increased \$6.6 million from fiscal 2021, the net activity was due to increase of \$3.8 million in hotel/motel taxes, \$0.2 million in Franchise Fee, \$1.6 million in Property taxes, \$1.4 million in other taxes and miscellaneous and \$9.0 million in sales and uses taxes (primarily from full year of Measure F). The investment earnings decreased by \$8.5 million due primarily to \$12.5 million in unrealized market loss.

Table 3 presents the net cost of each of the City's largest programs—general government, building safety and housing, recreation and community services, public works, engineering, planning, police, and fire. Net cost is defined as total program cost less the revenues generated by those specific activities. The net cost of providing such programs in fiscal year was \$70.7 million.

Table 3
Governmental Activities
(in Millions)

	Net (Expenses) Revenue From Services	
	2022	2021
General Government	\$(20.1)	\$(22.2)
Building, Safety and Housing	11.4	6.3
Recreation and Community Services	(1.9)	(4.1)
Public Works	(22.1)	(20.2)
Engineering	11.1	15.6
Planning	(0.6)	(1.6)
Police	(23.4)	(34.1)
Fire	(24.1)	(26.2)
Interest on long term debt	(0.8)	(0.8)
Totals	\$(70.5)	\$(87.3)

Business-type Activities

Table 4
Business-Type Net Position at June 30
(in Millions)

	Business-Type Activities	
	2022	2021
Cash and investments	\$108.4	\$122.3
Other assets	4.6	4.8
Capital assets	178.5	162.8
Total assets	291.5	289.9
Deferred Outflows of Resources – Related to Pensions and OPEB	1.5	1.1
Other liabilities	4.5	8.2
Net pension liabilities	2.7	3.8
Net OPEB liability	3.3	3.7
Long-term Debt	56.3	57.9
Total liabilities	66.8	73.6
Deferred Inflows of Resources – Related to Pensions and OPEB	2.7	1.1
Net position:		
Net investment in capital assets	127.2	125.2
Restricted	75.1	72.6
Unrestricted	21.2	18.5
Total net position	\$223.5	\$216.3

The net position of business-type activities was \$223.5 million in fiscal 2022, an increase of \$7.2 million from fiscal 2021. The increase in net position was due to increase in total assets of \$1.6 million and a decrease of \$6.8 million in total liabilities. The increase in total assets is comprised of \$15.7 million increase in capital assets, offset by decrease of \$13.9 million in cash & investment.

Table 5
Changes in Business-Type Net Position
(in Millions)

	Business-Type Activities	
	2022	2021
Expenses		
Water Utility	\$26.9	\$29.0
Sewer Utility	15.6	16.0
Total expenses	42.5	45.0
Revenues		
Program revenues:		
Charges for services	55.9	55.0
Operating grants	0.3	0.1
Capital grants	1.0	1.4
Total program revenues	57.2	56.5
General revenues:		
Investment earnings	(3.2)	0.6
Total general revenues	(3.2)	0.6
Total Revenues	54.0	57.1
Excess before transfers	11.6	12.1
Net Transfers	(4.4)	(6.1)
Changes in net position	7.2	6.0
Beginning net position	216.3	210.3
Ending net position	\$223.5	\$216.3

Table 5 compares fiscal 2022 expenses and revenues with those of fiscal year 2021. Total expenses decreased by \$2.6 million in fiscal 2022 due to a decrease in personnel services and a decrease in water purchase and contractual services. Total program revenues increased by \$0.7 million primarily due to an increase in charges for services related to a rate increase and an increase in operating grants and contributions. Total general revenue decreased \$3.8 million from interest earnings due to unrealized market loss in investment as of June 30, 2022. The net transfers represent reimbursements of administration costs to the General Fund.

FINANCIAL ANALYSIS OF THE CITY'S FUNDS

Table 6 below summarizes activities and balances of the governmental funds at the fund level:

Table 6
Financial Highlights of Governmental Funds at Fund Level at June 30
(in Millions)

	2022	2021
Total assets	\$281.7	\$284.6
Total liabilities	30.3	29.9
Total deferred inflow of resources	13.1	1.8
Total fund balances	238.3	252.8
Total revenues	133.0	126.8
Total expenditures	151.4	146.6
Total other financing sources	3.8	(7.3)

At June 30, 2022, the City's governmental funds reported combined fund balances of \$238.3 million, a decrease of \$14.5 million from last year. The fund balances of the Housing Authority Fund, Transit Area Impact Fee Fund, Street Improvement, Other Governmental Funds and General Government Capital Improvement Fund decreased \$0.1 million, \$2.3 million, \$0.5 million, \$3.1 million and \$12.7 million respectively. General Fund increased \$4.1 million due to net operating surplus.

Revenues at the fund level totaled \$133.0 million, a net increase of \$6.2 million. Revenues received in General Fund, Street Improvement Fund, Other Government Funds increased \$14.0 million, \$0.6 million, and \$1.4 million respectively while the Housing Authority, Transit Area Impact Fee and General Government Capital Projects Funds and Other Governmental Funds has a decrease of the fund balance in fiscal year 2022.

Expenditures net increased \$4.8 million this year to \$151.4 million from last year's \$146.6 million. The expenditures of the General Fund, Housing Authority, General Government Capital Improvement Fund, Other Government Funds, and Street Improvement Fund increased \$4.7 million, \$0.2 million, \$1.1 million, \$2.4 million, and \$6.2 million, respectively while Transit Area Impact Fee decreased \$9.9 million.

ANALYSES OF MAJOR GOVERNMENTAL FUNDS

GENERAL FUND

General Fund revenues (excluding transfers) increased to \$112.1 million this fiscal year, up \$14.0 million from the prior fiscal year. Hotel/Motel taxes were increased by \$3.8 million from \$4.2 million in fiscal year 2021 to \$8.0 million in fiscal year 2022.

There were increases in Property tax revenue of \$1.7 million, Licenses and Permit of \$0.2 million, Intergovernmental Revenue of \$1.0 million, and Sales and Use taxes of \$9 million. The ¼ Measure F sales tax contribute to the increase in sales and uses taxes. The Measure F was effective on April 1, 2021 for 8 years, and has become a new revenue source for the City.

General Fund expenditures (excluding transfers) increased \$4.7 million to \$111.9 million without encumbrance in fiscal 2022. The increase is due primarily to personnel cost and contractual services.

Total Other Financing Sources is \$3.9 million net in fiscal 2022. Net Other Financing Sources increased by \$26.9 million compared to fiscal year 2021 Net Other Financing Sources of (\$23.0 million). Transfers out were approximately \$3.0 million in fiscal year 2022, as compared to Transfers out of \$34.3 million in fiscal 2021. The reason of the decrease was due to transfers out of \$33.1 million to fund the establishment of Pension Section 115 Trust in fiscal year 2021. There is no such transfer out in fiscal year 2022.

For the City's General Fund, actual revenues of \$112.1 million were \$1.9 million less than the final budgeted revenues of \$114.0 million. Property taxes, Sales taxes, Licenses and Fines, and Intergovernmental exceeded budget by \$1.5 million, \$2.4 million, \$1.0 million, and \$4.7 million respectively. Intergovernmental is primarily Federal American Rescue Plan Act (ARPA) funding.

At the end of the year, actual General Fund expenditures were \$114.4 million including encumbrance, \$3.3 million less than final budget of \$117.7 million. As a result of general recruitment and/or competitive labor markets, staff vacancies primarily contributed to the expenditures savings. Consequently, it is prudent to deem this as one-time expenditure variance that provides additional fund balance resources, instead of on-going reductions of General Fund operating budget.

HOUSING AUTHORITY

This Fund accounts for the housing activities assumed from the former Redevelopment Agency designed to increase the amount of low and moderate-income housing available in the City. Total revenues were \$0.5 million in fiscal 2022, comprised of interest, rental income and repayment of housing loans. Total expenditures were \$0.6 million for administration, interest forgiveness related to a restructure of an affordable housing loan, management of two affordable housing units and one commercial property with eight tenants.

STREET IMPROVEMENT CAPITAL PROJECT

This Street Improvement Capital Project Fund accounts for the majority of the street capital projects activity in the City. The Fund's revenues were \$2.9 million in fiscal 2022, an increase of \$0.6 million from fiscal 2021. The increase in revenues was mainly due to receiving more reimbursement from Measure B local monies from Valley Transportation Authority (VTA) due to increased activity in the projects. Fund expenditures were \$9.0 million in fiscal 2022, an increase of \$6.3 million from fiscal 2021, due to increase in capital outlay. Net transfers were \$5.6 million in fiscal 2022, an increase of \$5.5 million from fiscal 2021 due to increase funding in street projects from the General Government Fund, Gas Tax Special Revenue Fund, and Transit Area Impact Fee Fund.

TRANSIT AREA IMPACT FEE

The Transit Area Impact Fee Fund was established in fiscal 2009 to account for impact fees revenue collected from developers and related capital expenditures in the Transit Area. In fiscal 2022, fund revenues were \$3.8 million, primarily from fees collected from developers. Expenditures were \$2.5 million, primarily consisting of capital improvement projects. The fund also transferred \$3.6 million in fiscal year 2022 to the Street Improvement Capital Project fund.

GENERAL GOVERNMENT CAPITAL PROJECTS

The General Government Capital Projects Fund accounts for construction and maintenance of general government projects and assets in the City. In fiscal 2022, expenditures of \$15.4 million consisted of \$15.4 million of capital improvement project expenditures. The transfers in of \$3.1 million were primarily from Gas Tax Fund and Public Art Fund. General Government Capital Projects funds also received funding from Community Planning Fund, Midtown Park Fund, and Sewer Infrastructure Fund in an amount of approximately \$1.3 million. The transfers out of \$0.3 million were to the Storm Drain Capital Project Fund, Street Improvement Capital Project Fund, and Park Improvement Capital Project Fund.

OTHER GOVERNMENTAL FUNDS

These funds are not presented separately in the Basic Financial Statements, but are individually presented as Supplemental Information.

FUND BALANCE CLASSIFICATIONS

Fund balances are classified in five categories: nonspendable, restricted, committed, assigned and unassigned based on a hierarchy of constraint. Further details on fund balance classifications can be found in Note 11.

Table 7 shows the classification of the fund balances of the major governmental funds.

Table 7
Fund Balances at June 30 – Major Governmental Funds
(in Millions)

	2022	2021
General Fund		
Nonspendable	\$4.9	\$4.8
Committed	15.8	13.3
Assigned	6.1	6.5
Unassigned	40.0	38.1
Total	<u>\$66.9</u>	<u>\$62.7</u>
Housing Authority Fund		
Restricted	<u>\$39.7</u>	<u>\$39.8</u>
Street Improvement Fund		
Restricted	<u>\$8.3</u>	<u>\$8.8</u>
Transit Area Impact Fee Fund		
Restricted	<u>\$60.9</u>	<u>\$63.2</u>
General Government Project Fund		
Assigned	\$23.4	\$38.3
Restricted	<u>2.2</u>	<u></u>
	<u>\$25.6</u>	<u>\$38.3</u>

At June 30, 2022, the fund balance of the General Fund was \$66.9 million. \$4.9 million was classified as nonspendable, comprised of \$0.6 million for prepaid materials and supplies, and \$4.2 million of property held for resale. \$15.8 million was classified as committed, comprised of \$5.1 million for PERS Rate Stabilization \$1.7 million for Artificial turf replacement, \$2 million for Technology replacement and \$7 million for Facilities replacement. \$6.1 million was classified as Assigned, comprised of \$2.3 million for uninsured claims and \$2.5 million for encumbrances. \$40.0 million was classified as unassigned, comprised of \$18.5 million of contingency reserve, \$18.5 million of budget stabilization reserve, \$1.4 million of future deficit reserve, \$1.2 million ERAF litigation contingency reserve, and \$0.3 million of unassigned.

The fund balances of the Housing Authority Fund, Street Improvement Fund and the Transit Area Impact Fee Fund were also classified as restricted because the amounts were restricted for specific purposes.

ANALYSES OF MAJOR PROPRIETARY FUNDS

Total operating revenues of major proprietary funds increased \$1.1 million from last year, while operating expenses decreased \$2.4 million. Total operating revenues and total operating expenses were \$55.9 million and \$40.3 million, respectively. Total of non-operating expenses were \$5.1 million in fiscal 2022, an increase of \$3.6 million from the prior year. Capital contributions decreased by \$0.4 million and net transfers out increased by \$3.7 million.

WATER UTILITY

Water fund revenues were \$34.4 million in fiscal 2022, a decrease of \$0.3 million from prior year. The decrease in revenues was primarily due to mandated water conservation because of the historic drought. Expenses were \$26.2 million in fiscal 2022, decrease \$2.2 million from prior year, primarily due to decrease in wholesale water purchase expenditure. Net position of the Water Utility Fund increased \$3.8 million in the current year to a total of \$94.3 million. The increase comprised of \$34.3 million of operating revenues for the current year, \$26.1 million of operating expenses, which result in \$8.2 million operating income before accounting for unrealized market loss and transfer out expenses. The water fund also received \$0.2 million of grants, \$0.4 million of capital contributions and net of interest expense of (\$2.4) million and transfers of (\$2.7) million, and this resulted in increase of net position of \$3.8 million.

The Water Fund's Net Position includes \$47.0 million invested in capital assets, \$36.4 million in restricted net position, and \$10.9 million in unrestricted net position.

SEWER UTILITY

Sewer fund revenues were \$21.6 million in fiscal 2022, up \$1.4 million from the prior year due to an increase in usage as businesses re-opened post-pandemic. Expenses were \$14.2 million in fiscal 2022, a decrease of \$0.1 million from the prior year due to a decrease in services and supplies. Non-operating revenues and expenses in fiscal year 2022 consisted of \$3.1 million interest expense. Net position of the Sewer Utility Fund was \$125.8 million in fiscal year 2022. It comprised of \$21.6 million of operating revenues for the current year, \$14.2 million of operating expenses, which result in \$7.4 million operating income before accounting for unrealized market loss and transfer out expenses. The sewer fund also received \$0.1 million in interest income, net of interest expense of \$1.4 million, \$0.6 million of capital contributions and net of transfers of (\$1.7) million. In fiscal year 2022, sewer fund also received a credit of \$1.5 million. This is a true-up of actual expenditure from previous fiscal year budget for both operation and capital improvement program for the San Jose Santa Clara Regional Waste Facility.

The Sewer Fund's Net Position includes \$80.2 million invested in capital assets, \$38.7 million in restricted net position, and \$10.3 million in unrestricted net position.

CAPITAL ASSETS

The City records the cost of all its infrastructure assets such as roads, bridges, signals and similar assets used by the general population and computes the amount of accumulated depreciation for these assets based on their original acquisition dates. At the end of fiscal 2022, the cost of infrastructure and other capital assets recorded on the City's financial statements was as shown in Table 8 below:

Table 8
Capital Assets at Year-end
(in Millions)

	2022	2021
<i>Governmental Activities:</i>		
Land	\$84.8	\$84.8
Construction in progress	94.4	74.8
Buildings and improvements	173.4	173.4
Other improvements	34.0	30.8
Machinery and equipment	49.1	48.7
Landscape system	30.1	30.1
Storm system	74.5	74.5
Street system	313.8	302.4
Traffic system	20.3	20.2
Less accumulated depreciation	(490.1)	(475.7)
Totals	\$384.2	\$364.0
<i>Business-type Activities:</i>		
Land	\$1.1	\$1.1
Construction in progress	28.5	18.8
Distribution facilities	81.2	81.2
Water Service lines	17.1	17.1
Sewer lines	87.5	87.5
Capacity rights	115.2	102.7
Less accumulated depreciation	(152.0)	(145.7)
Totals	\$178.6	\$162.7

The primary additions in fiscal 2022 were due to the street improvement projects and other major projects such as fire station #2, community and senior center energy resilience project, McCandless Park, Alviso Adobe Renovation, Trade Zone/Montague Park and PMIP Shared Infrastructure.

The City depreciates all its capital assets over their estimated useful lives. The purpose of depreciation is to spread the cost of a capital asset over the years of its useful life so that an allocable portion of the cost of the asset is borne by all users. Additional information on depreciable lives and current year activities may be found in Note 8.

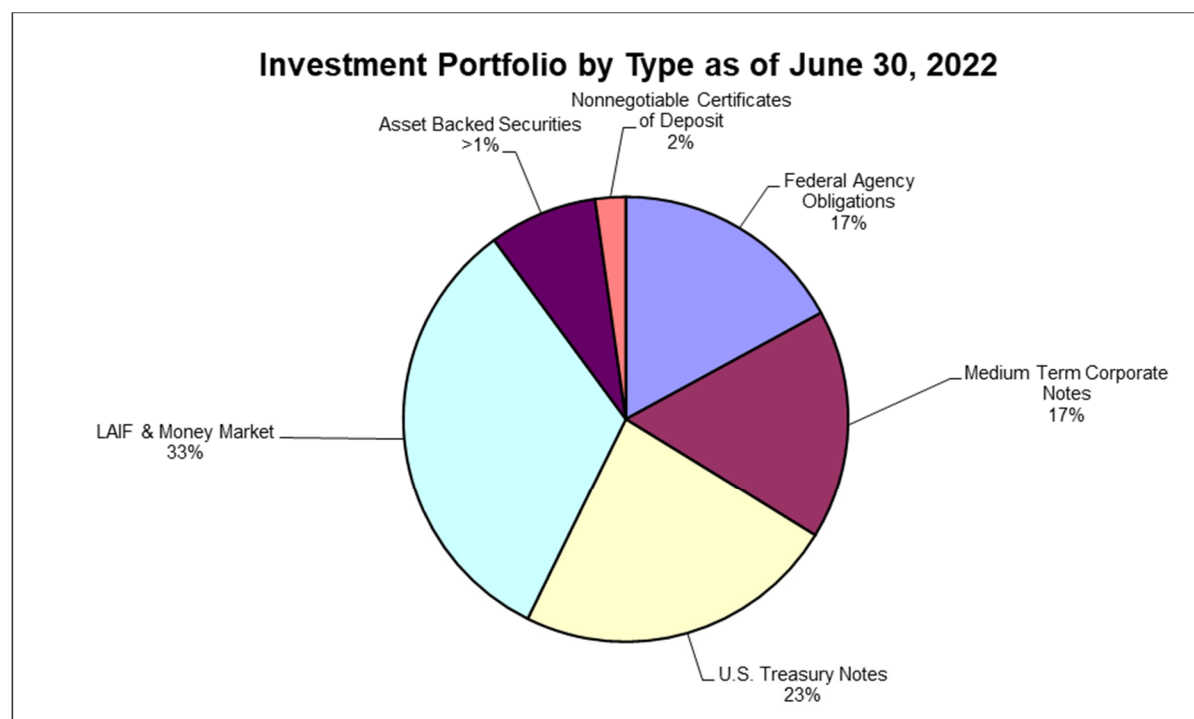
CASH AND INVESTMENTS

The City outsourced the management of the City's investments to Chandler Asset Management effective June 1, 2020 and held in a custodial account with The Bank of New York. The managed portfolio consists of securities invested in accordance with City's investment policy and the California Government Code.

Total cash and investments decreased \$41.5 million from \$402.8 million to \$361.3 million. This decrease was due to volatile bonds and equities market. As the Federal Reserve continues to raise interest rates, the valuation of current City fixed income portfolio decreases because they were purchased and locked in at a lower interest rate. This decrease in value is unrealized market loss unless the City liquidates its investment holdings.

Total investment earnings for fiscal year 2022 was \$2.4 million. City's investment income from interest and dividends on investments was \$2.6 million in 2022. The change in fair value for the portfolio for the fiscal year ending June 30, 2022 was an unrealized loss on investments of \$13.2 million.

The following graphs depict the investment portfolio of \$336.1 million cash and investments at June 30, 2022 and \$352.0 million at June 30, 2021.



DEBT ADMINISTRATION

The City's debt was issued to finance a few City's projects include Sewer infrastructure, Water infrastructure, energy improvement projects and replacement for Fire Station.

In fiscal 2018, the City refunded the 2006 Sewer Bonds with the 2017 Wastewater Revenue Refunding Bonds to reduce interest rate cost over the life of the bond issuance. The 2017 Bonds are pledged by net revenue from the City's sewer system. In fiscal 2020, Milpitas Municipal Financing Authority issued Wastewater Revenue Bonds, Series 2019 in an amount of \$29.8 million to fund for certain improvement to the City's wastewater system. The City also issued Water Revenue Bonds, Series 2019 in an amount of \$17.1 million fund for Water system improvement projects.

In fiscal 2021, Milpitas Municipal Financing Authority issued a Lease Revenue Bonds in an amount of \$18.4 million to provide funds to finance a portion of Fire Station No. 2 Replacement project and variety of energy improvement projects. Each of the City's debt issues are discussed in detail in Note 9 to the financial statements. At June 30, 2022 the City's debt is comprised of:

Table 9
Outstanding Debt
(in Millions)

	Balance June 30, 2022	Balance June 30, 2021
Governmental Activity Debt:		
2020 General Fund Lease Revenue Bond		
4.0% due June 1, 2041	\$18.2	\$18.4
Plus: Unamortized bond premium	3.3	3.5
Total Governmental-type Activity Debt	\$21.5	\$21.9
Business-type Activity Debt:		
Wastewater Revenue Refunding Bonds, 2017 Series		
2.0% - 5.0%, due November 1, 2026	2.8	3.3
Plus: Unamortized bond premium	0.4	0.4
Wastewater Revenue Bonds, 2019 Series		
4.0% - 5.0%, due November 1, 2049	28.9	29.4
Plus: Unamortized bond premium	4.9	5.1
Water Revenue, 2019 Series		
4.0% - 5.0%, due June 1, 2049	16.4	16.8
Plus: Unamortized bond premium	2.8	2.9
Total Business-type Activity Debt	\$56.2	\$57.9

ECONOMIC OUTLOOK AND MAJOR INITIATIVES

The economy of the City and its major initiatives for the coming year are discussed in detail in the accompanying Transmittal Letter.

CONTACTING THE CITY'S FINANCIAL MANAGEMENT

This Comprehensive Annual Financial Report is intended to provide citizens, taxpayers, investors, and creditors with a general overview of the City's finances. Questions about this Report should be directed to the Finance Department, at 455 East Calaveras Boulevard, Milpitas, CA 95035-5479 or to the City's website at www.ci.milpitas.ca.gov.



STATEMENT OF NET POSITION AND STATEMENT OF ACTIVITIES

The Statement of Net Position reports the difference between the City's total assets and deferred outflows of resources and the City's total liabilities and deferred inflows of resources, including all the City's capital assets and all its long-term debt. The Statement of Net Position focuses the reader on the composition of the City's net position by subtracting total liabilities and deferred inflows of resources from total assets and deferred outflows of resources.

The Statement of Net Position summarizes the financial position of the City's Governmental Activities in a single column, and the financial position of all the City's Business-type Activities in a single column; these columns are followed by a Total column that presents the financial position of the primary government. This column is followed by a column that displays the discretely presented component unit.

The City's Governmental Activities include the activities of its General Fund, along with all its Special Revenue, Capital Projects and Debt Service Funds. Since the City's Internal Service Funds service these Funds, their activities are consolidated with Governmental Activities, after eliminating inter-fund transactions and balances. The City's Business-type Activities include all its Enterprise Fund activities.

The Statement of Activities reports increases and decreases in the City's net position. It is prepared on the full accrual basis, which means it includes all the City's revenues and all its expenses, regardless of when cash changes hands. This differs from the "modified accrual" basis used in the Fund financial statements, which reflect only current assets, current liabilities, deferred inflows/outflows of resources, available revenues and measurable expenditures.

The Statement of Activities presents the City's expenses first, listed by the program, and follows these with the expenses of its Business-type Activities. Program revenues – that is, revenues which are generated directly by these programs – are then deducted from program expenses to arrive at the net expense of each governmental and business-type program. The City's general revenues are then listed in the Governmental Activities, Business-type Activities or discretely presented component unit column, as appropriate, and the Change in Net Position is computed and reconciled with the Statement of Net Position.

Both of these Statements include the financial activities of the City and the blended component units: the Milpitas Public Financing Authority (MPFA), the Milpitas Economic Development Corporation (EDC), the City of Milpitas Housing Authority (Housing Authority) and the Milpitas Municipal Financing Authority (MMFA). The Financing Authorities and Housing Authority are legally separate component units of the City, because they are controlled by the City and the City is financially accountable for their activities. The EDC is a California nonprofit public benefit Corporation that is also a legally separate component unit of the City because it is governed by a board consisting of the members of the City Council. The EDC became inactive as of June 30, 2015. The balances and the activities of the discretely presented component unit of Terrace Gardens, Inc. are included in these statements as separate columns.

These financial statements along with the fund financial statements and footnotes are called *Basic Financial Statements*.



CITY OF MILPITAS
STATEMENT OF NET POSITION
JUNE 30, 2022

	Primary Government			Component Unit
				Terrace Gardens Inc.
	Governmental Activities	Business-Type Activities	Total	(As of December 31, 2021)
ASSETS				
Cash and investments available for operations (Note 3)	\$250,611,670	\$103,509,033	\$354,120,703	\$18,289
Restricted cash and investments (Note 3)	2,261,425	4,909,668	7,171,093	3,333,708
Receivables:				
Accounts	2,433,316	3,680,188	6,113,504	37,686
Due from other governments	10,150,299	493,222	10,643,521	
Interest	499,751	204,073	703,824	
Loans receivable (Note 5)	38,484,673		38,484,673	
Prepays, materials, supplies and deposits (Note 1E)	1,293,230	181,101	1,474,331	58,686
Property held for resale (Note 6)	6,533,018		6,533,018	
Leases receivable (Note 10)	13,373,808		13,373,808	
Net OPEB asset (Note 13C):	1,421,071		1,421,071	
Capital assets and capacity rights (Note 8):				
Land and construction in progress	179,219,905	29,593,472	208,813,377	1,565,277
Depreciable capital assets, net	204,997,553	148,946,745	353,944,298	5,393,776
Total assets	711,279,719	291,517,502	1,002,797,221	10,407,422
DEFERRED OUTFLOWS OF RESOURCES				
Related to pensions (Note 12D)	27,753,763	590,895	28,344,658	
Related to OPEB (Note 13E)	10,668,956	863,898	11,532,854	
Total deferred outflows of resources	38,422,719	1,454,793	39,877,512	
LIABILITIES				
Accounts payable	5,412,939	3,147,001	8,559,940	224,586
Accrued payroll	4,374,259	173,856	4,548,115	13,410
Interest payable	60,567	299,979	360,546	
Uninsured claims payable (Note 14):				
Due within one year	1,483,266		1,483,266	
Due in more than one year	4,715,953		4,715,953	
Refundable deposits	3,692,839	184,866	3,877,705	72,500
Unearned revenue	16,979,716	6,922	16,986,638	2,196
Accrued vacation (Note 13F):				
Due within one year	2,647,926	366,572	3,014,498	13,346
Due in more than one year	3,492,608	102,202	3,594,810	
Sick leave payable (Note 12F):				
Due within one year	926,301	103,001	1,029,302	
Due in more than one year	1,247,026	100,958	1,347,984	
Net pension liabilities (Note 12C):				
Due in more than one year	148,117,388	2,723,608	150,840,996	
Net OPEB liability (Note 13C):				
Due in more than one year		612,996	612,996	
Total OPEB liability (Note 13D)				
Due in more than one year	31,832,333	2,692,492	34,524,825	
Long term debt (Note 9):				
Due within one year	470,000	1,335,000	1,805,000	
Due in more than one year	20,999,841	54,911,115	75,910,956	
Total liabilities	246,452,962	66,760,568	313,213,530	326,038
DEFERRED INFLOWS OF RESOURCES				
Related to leases (Note 10)	13,080,290		13,080,290	
Related to pensions (Note 12D)	46,693,376	1,096,366	47,789,742	
Related to OPEB (Note 13E)	20,585,295	1,620,699	22,205,994	
Total deferred inflows of resources	80,358,961	2,717,065	83,076,026	
NET POSITION (Note 11)				
Net investment in capital assets and capacity rights	365,009,042	127,203,770	492,212,812	6,959,053
Restricted for:				
Capital projects	92,471,590	75,083,153	167,554,743	
Redevelopment and community development activities	51,841,582		51,841,582	
Pension expenses	30,537,346		30,537,346	
Other programs	1,600,734		1,600,734	
Total restricted net position	176,451,252	75,083,153	251,534,405	
Unrestricted	(118,569,779)	21,207,739	(97,362,040)	3,122,331
Total net position	\$422,890,515	\$223,494,662	\$646,385,177	\$10,081,384

See accompanying notes to financial statements

CITY OF MILPITAS
STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED JUNE 30, 2022

Functions/Programs	Expenses	Program Revenues			Net (Expense) Revenue and Changes in Net Position	
		Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	Primary Government	
					Governmental Activities	Business-type Activities
Primary Government:						
Governmental Activities:						
General Government	\$25,212,534	\$1,930,588	\$3,141,300		(\$20,140,646)	
Building, Safety and Housing	4,942,998	8,815,194	2,985,467	\$4,524,610	11,382,273	
Recreation and Community Services	6,114,249	2,360,243	258,301	1,564,455	(1,931,250)	
Public Works	22,063,208				(22,063,208)	
Engineering	5,046,635	1,095,831	1,823,839	13,224,162	11,097,197	
Planning	1,850,828	474,267	435,037	295,526	(645,998)	
Police	29,469,175	1,420,688	4,327,544	315,000	(23,405,943)	
Fire	29,039,527	2,582,498	2,363,213		(24,093,816)	
Interest on long term debt	837,667				(837,667)	
Total Governmental Activities	124,576,821	18,679,309	15,334,701	19,923,753	(70,639,058)	
Business-type Activities:						
Water Utility	26,898,185	34,374,429	205,447	418,344		\$8,100,035
Sewer Utility	15,621,881	21,592,843	100,623	607,373		6,678,958
Total Business-type Activities	42,520,066	55,967,272	306,070	1,025,717		14,778,993
Total Primary Government	\$167,096,887	\$74,646,581	\$15,640,771	\$20,949,470	(70,639,058)	14,778,993
Component Unit:						
Terrace Gardens Inc.	\$2,361,448	\$2,319,447	\$48,816			
General revenues:						
Taxes:						
Property taxes					42,647,296	
Sales and use taxes					33,209,512	
Hotel/Motel taxes					8,012,644	
Other taxes					1,069,556	
Franchise fees, unrestricted					5,187,786	
Motor vehicle in-lieu, unrestricted					87,410	
Investment earnings					(7,560,411)	(3,245,797)
Gain from sale of property					198,138	
Miscellaneous					1,554,240	
Transfers (Note 4)					4,356,847	(4,356,847)
Total general revenues and transfers					88,763,018	(7,602,644)
Change in Net Position					18,123,960	7,176,349
Net position-Beginning					404,766,555	216,318,313
Net position-Ending					\$422,890,515	\$223,494,662

See accompanying notes to financial statements

Net (Expense) Revenue and Changes in Net Position	
Primary Government	Component Unit
	Terrace Gardens Inc. (year ended December 31, 2021)
Total	
(\$20,140,646)	
11,382,273	
(1,931,250)	
(22,063,208)	
11,097,197	
(645,998)	
(23,405,943)	
(24,093,816)	
(837,667)	
(70,639,058)	
8,100,035	
6,678,958	
14,778,993	
(55,860,065)	
	\$6,815
42,647,296	
33,209,512	
8,012,644	
1,069,556	
5,187,786	
87,410	
(10,806,208)	832
198,138	
1,554,240	
81,160,374	832
25,300,309	7,647
621,084,868	10,073,737
\$646,385,177	\$10,081,384





CITY OF MILPITAS
GOVERNMENTAL FUNDS
BALANCE SHEET
JUNE 30, 2022

	General	Housing Authority	Street Improvement	Transit Area Impact Fee
ASSETS				
Cash and investments available for operations (Note 3)	\$77,909,466	\$2,195,765	\$7,214,405	\$60,655,097
Restricted cash and investments (Note 3)	71,453			
Receivables:				
Accounts	1,778,339		40,247	614,491
Due from other governments	7,190,243		1,201,936	
Interest	202,825	4,775	14,939	133,397
Loans receivable, net (Note 5)		35,258,763		
Prepays, materials, supplies and deposits (Note 1E)	665,851	2,123		
Property held for resale (Note 6)	4,200,000	2,333,018		
Leases receivable (Note 10)	13,373,808			
Total Assets	\$105,391,985	\$39,794,444	\$8,471,527	\$61,402,985
LIABILITIES				
Accounts payable	\$1,469,551	\$80,026	\$178,994	\$465,088
Accrued payroll	4,200,926	408	1,218	4,876
Refundable deposits	3,661,700	12,100		
Unearned revenue	16,195,218			
Total Liabilities	25,527,395	92,534	180,212	469,964
DEFERRED INFLOWS OF RESOURCES				
Leases related (Note 10)	13,080,290			
Total Deferred Inflows of Resources	13,080,290			
FUND BALANCES				
Fund balances (Note 10):				
Nonspendable	4,865,851	2,123		
Restricted		39,699,787	8,291,315	60,933,021
Committed	15,766,052			
Assigned	6,114,463			
Unassigned	40,037,934			
TOTAL FUND BALANCES	66,784,300	39,701,910	8,291,315	60,933,021
Total Liabilities, Deferred Inflows of Resources and Fund Balances	\$105,391,985	\$39,794,444	\$8,471,527	\$61,402,985

Amounts reported for Governmental Activities in the Statement of Net Position are different from those reported in the Governmental Funds above because of the following:

CAPITAL ASSETS

Capital assets used in Governmental Activities are not current assets or financial resources and therefore are not reported in the Governmental Funds.

ALLOCATION OF INTERNAL SERVICE FUND NET POSITION

Internal service funds are not governmental funds. However, they are used by management to charge the costs of certain activities, such as insurance and central services and maintenance, to individual governmental funds. The net current assets of the Internal Service Funds are therefore included in Governmental Activities in the Statement of Net Position.

LONG-TERM ASSETS AND LIABILITIES

The assets and liabilities below are not due and payable in the current period and therefore are not reported in the Funds:

Long-term debt
Net pension liability and pension-related deferred outflows/inflows of resources
Net OPEB Asset (liability)
Total OPEB Asset(liability)
Deferred outflows/inflows of resources related to OPEB liabilities
Non-current portion of accrued vacation and sick leave
Non-current portion of uninsured claims payable

NET POSITION OF GOVERNMENTAL ACTIVITIES

See accompanying notes to financial statements

General Government Capital Projects	Other Governmental Funds	Total Governmental Funds
\$25,065,086	\$34,235,102	\$207,274,921
2,189,972		2,261,425
		2,433,077
95,526	1,662,594	10,150,299
49,703	68,217	473,856
	3,225,910	38,484,673
	24,597	692,571
		6,533,018
		13,373,808
<u>\$27,400,287</u>	<u>\$39,216,420</u>	<u>\$281,677,648</u>
\$1,812,802	\$1,322,939	\$5,329,400
13,626	102,480	4,323,534
	18,843	3,692,643
	784,498	16,979,716
<u>1,826,428</u>	<u>2,228,760</u>	<u>30,325,293</u>
		13,080,290
		13,080,290
	24,597	4,892,571
2,189,972	35,896,776	147,010,871
		15,766,052
23,383,887	1,066,287	30,564,637
		40,037,934
<u>25,573,859</u>	<u>36,987,660</u>	238,272,065
<u>\$27,400,287</u>	<u>\$39,216,420</u>	
		384,217,458
		43,681,621
		(21,530,408)
		(167,057,001)
		1,421,071
		(31,832,333)
		(9,916,339)
		(8,166,400)
		(6,199,219)
		<u>\$422,890,515</u>

CITY OF MILPITAS
GOVERNMENTAL FUNDS
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
FOR THE YEAR ENDED JUNE 30, 2022

	General	Housing Authority	Street Improvement	Transit Area Impact Fee
REVENUES				
Property taxes	\$42,758,865			
Sales taxes	34,364,274			
Hotel /Motel taxes	8,012,004			
Franchise fees	5,187,786			
Other taxes	1,366,661			
Licenses and fines	11,287,442			
Use of money and property	(2,931,829)	\$508,421	(\$231,075)	(\$2,134,277)
Intergovernmental	5,883,031		3,081,183	
Charges for services	5,718,555			
Developer contributions			78,174	5,914,090
Other	444,931			
Total Revenues	112,091,720	508,421	2,928,282	3,779,813
EXPENDITURES				
Current:				
General Government	22,680,580	574,576		
Building, Safety and Housing	5,011,625			
Recreation and Community Services	5,040,991			
Public Works	8,692,112			
Engineering	3,387,968			
Planning	1,853,036			
Police	34,734,197			
Fire	29,482,707			
Capital outlay			8,962,287	2,518,369
Debt service:				
Principal	275,000			
Interest and fees	737,800			
Total Expenditures	111,896,016	574,576	8,962,287	2,518,369
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	195,704	(66,155)	(6,034,005)	1,261,444
OTHER FINANCING SOURCES (USES)				
Proceeds from sale of property	117,522			
Transfers in (Note 4A)	6,752,931		5,563,042	
Transfers (out) (Note 4A)	(3,002,406)		(109)	(3,578,000)
Total Other Financing Sources (Uses)	3,868,047		5,562,933	(3,578,000)
NET CHANGE IN FUND BALANCES	4,063,751	(66,155)	(471,072)	(2,316,556)
Fund balances at beginning of year	62,720,549	39,768,065	8,762,387	63,249,577
FUND BALANCES AT END OF YEAR	\$66,784,300	\$39,701,910	\$8,291,315	\$60,933,021

See accompanying notes to financial statements

General Government Capital Projects	Other Governmental Funds	Total Governmental Funds
		\$42,758,865
		34,364,274
		8,012,004
		5,187,786
	\$4,573,099	5,939,760
		11,287,442
(\$815,314)	(375,439)	(5,979,513)
544,684	5,893,845	15,402,743
	395,538	6,114,093
200,000	3,139,176	9,331,440
	176,164	621,095
<u>(70,630)</u>	<u>13,802,383</u>	<u>133,039,989</u>
	1,401,430	24,656,586
	841,486	5,853,111
		5,040,991
	2,158,099	10,850,211
	86,301	3,474,269
	289,371	2,142,407
	288,914	35,023,111
		29,482,707
15,435,287	6,911,928	33,827,871
		275,000
		737,800
<u>15,435,287</u>	<u>11,977,529</u>	<u>151,364,064</u>
<u>(15,505,917)</u>	<u>1,824,854</u>	<u>(18,324,075)</u>
		117,522
3,145,118	1,441,703	16,902,794
<u>(320,000)</u>	<u>(6,324,809)</u>	<u>(13,225,324)</u>
<u>2,825,118</u>	<u>(4,883,106)</u>	<u>3,794,992</u>
(12,680,799)	(3,058,252)	(14,529,083)
<u>38,254,658</u>	<u>40,045,912</u>	<u>252,801,148</u>
<u>\$25,573,859</u>	<u>\$36,987,660</u>	<u>\$238,272,065</u>

CITY OF MILPITAS
Reconciliation of the
NET CHANGE IN FUND BALANCES - TOTAL GOVERNMENTAL FUNDS
with the
STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED JUNE 30, 2022

The schedule below reconciles the Net Changes in Fund Balances reported on the Governmental Funds Statement of Revenues, Expenditures and Changes in Fund Balance, which measures only changes in current assets and current liabilities on the modified accrual basis, with the Change in Net Position of Governmental Activities reported in the Statement of Activities, which is prepared on the full accrual basis.

NET CHANGE IN FUND BALANCES - TOTAL GOVERNMENTAL FUNDS (\$14,529,083)

Amounts reported for governmental activities in the Statement of Activities are different because of the following:

CAPITAL ASSETS TRANSACTIONS

Governmental Funds report capital outlays as expenditures. However, in the Statement of Activities the cost of those assets is capitalized and allocated over their estimated useful lives and reported as depreciation expense.

The capital expenditures are therefore added back to fund balance
(Internal service fund additions of \$2,363,427 have already been added to capital assets) 34,238,545

Retirements of capital assets are deducted from fund balance
(Internal service fund retirements of \$12,656 have already been deducted from capital assets)

Depreciation expense is deducted from the fund balance
(Depreciation expense is net of internal service fund depreciation of \$1,190,932 which has already been allocated to serviced funds.)" (13,793,900)

LONG-TERM DEBT PROCEED AND PAYMENTS

Lease proceeds provide current financial resources to governmental funds, but issuing debt increases long-term liabilities in the Statement of Net Position. Repayment of lease principal is an expenditure in the governmental funds, but in the Statement of Net Position the repayment reduces long-term liabilities.

Capital contributions and repayment of debt principal are added back to fund balance 448,675

ACCRUAL OF NON-CURRENT ITEMS

The amounts below included in the Statement of Activities do not provide or (require) the use of current financial resources and therefore are not reported as revenue or expenditures in governmental funds (net change):

Interest payable	916
Non-current portion of accrued vacation and sick leave	523,649
Non-current portion of uninsured claims payable	701,355
Net pension liabilities and pension-related deferred outflows/inflows of resources	13,533,214
Net OPEB liabilities and OPEB-related deferred outflows/inflows of resources	2,850,016
Unavailable revenue	(1,816,557)

ALLOCATION OF INTERNAL SERVICE FUND ACTIVITY

Internal Service Funds are used by management to charge the costs of certain activities, such as equipment acquisition, maintenance, and insurance to individual funds.

The portion of the net revenue (expense) of these Internal Service Funds arising out of their transactions with governmental funds is reported with governmental activities, because they service those activities.

Change in Net Position - All Internal Service Funds (4,032,870)

CHANGE IN NET POSITION OF GOVERNMENTAL ACTIVITIES \$18,123,960

See accompanying notes to financial statements

CITY OF MILPITAS
GENERAL FUND
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL (NON-GAAP LEGAL BASIS)
FOR THE YEAR ENDED JUNE 30, 2022

	Budgeted Amounts		Actual Amounts Budgetary Basis	Variance with Budget Positive (Negative)
	Original	Final		
Revenues				
Property taxes	\$41,269,917	\$41,269,917	\$42,758,865	\$1,488,948
Sales taxes	31,941,250	32,921,008	34,364,274	1,443,266
Hotel /Motel taxes	7,713,639	7,469,237	8,012,004	542,767
Franchise fees	5,751,133	5,298,656	5,187,786	(110,870)
Other taxes	1,023,421	1,023,421	1,366,661	343,240
Licenses and fines	10,276,817	9,915,764	11,287,442	1,371,678
Use of money and property	500,000	300,000	(2,931,829)	(3,231,829)
Intergovernmental	1,154,571	10,764,737	5,883,031	(4,881,706)
Charges for services	4,225,969	4,685,068	5,718,555	1,033,487
Other	370,000	388,200	444,931	56,731
Total Revenues	104,226,717	114,036,008	112,091,720	(1,944,288)
Expenditures				
Current:				
General Government:				
City Manager	4,078,928	5,942,778	5,746,429	196,349
City Attorney	1,029,100	1,049,228	991,071	58,157
Finance	4,180,126	4,333,053	4,330,428	2,625
Human Resources	1,865,271	1,821,035	1,628,823	192,212
Information Services	3,659,100	3,887,948	3,525,929	362,019
Non-departmental	7,003,749	9,283,364	7,786,453	1,496,911
Building, Safety and Housing	5,833,755	5,665,205	5,098,429	566,776
Recreation and Community Services	5,334,672	5,261,199	5,088,018	173,181
Public Works	8,789,060	9,086,558	9,083,838	2,720
Engineering	3,740,281	3,702,361	3,430,900	271,461
Planning	1,712,346	2,158,140	2,158,050	90
Police	35,606,905	34,866,311	34,842,481	23,830
Fire	26,592,973	29,651,412	29,646,775	4,637
Debt service:				
Principal	275,000	275,000	275,000	
Interest	737,800	737,800	737,800	
Total Expenditures	110,439,066	117,721,392	114,370,424	3,350,968
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	(6,212,349)	(3,685,384)	(2,278,704)	1,406,680
OTHER FINANCING SOURCES (USES)				
Proceeds from sale of property			117,522	117,522
Proceeds from issuance of long term debt				
Transfers in	6,552,931	6,852,931	6,752,931	(100,000)
Transfers (out)	(340,590)	(5,152,405)	(3,002,406)	2,149,999
Total Other Financing Sources (Uses)	6,212,341	1,700,526	3,868,047	2,167,521
NET CHANGE IN FUND BALANCE	(\$8)	(\$1,984,858)	1,589,343	\$3,574,201
Adjustments to budgetary basis:				
Encumbrance expenditures			2,474,408	
Change in market value of investments				
Fund balance at beginning of year			62,720,549	
FUND BALANCE AT END OF YEAR			\$66,784,300	

See accompanying notes to financial statements

CITY OF MILPITAS
HOUSING AUTHORITY
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL (NON-GAAP LEGAL BASIS)
FOR THE YEAR ENDED JUNE 30, 2022

	Budgeted Amounts		Actual Amounts	Variance with
	Original	Final	Budgetary Basis	Budget Positive (Negative)
Revenues				
Use of money and property	\$271,000		\$508,421	\$508,421
Total Revenues	271,000		508,421	508,421
Expenditures				
Current:				
General Government:				
City Attorney	6,429	\$35,301	55,262	(19,961)
Non-departmental	946,544	7,662,267	519,314	7,142,953
Total Expenditures	952,973	7,697,568	574,576	7,122,992
NET CHANGE IN FUND BALANCE	<u>(\$681,973)</u>	<u>(\$7,697,568)</u>	(66,155)	<u>\$7,631,413</u>
Fund balances at beginning of year			39,768,065	
FUND BALANCE AT END OF YEAR			<u>\$39,701,910</u>	

See accompanying notes to financial statements

MAJOR PROPRIETARY FUNDS

Proprietary funds account for City operations financed and operated in a manner similar to a private business enterprise. The intent of the City is that the cost of providing goods and services be financed primarily through user charges.

The concept of *major funds* extends to Proprietary Funds. The City has identified the funds below as major proprietary funds.

Financial reporting standards do not provide for the disclosure of budget vs. actual comparisons regarding proprietary funds that are major funds.

WATER UTILITY FUND

Accounts for the provision of water services to residents and businesses of the City. All activities necessary to provide such services are accounted for in this fund, including, but not limited to, administration, operations, capital improvements, maintenance, billing and collection.

SEWER UTILITY FUND

Accounts for the provision of sewer services to residents and businesses of the City. All activities necessary to provide such services are accounted for in this fund, including, but not limited to, administration, operations, capital improvements, maintenance, financing, billing and collection.



CITY OF MILPITAS
 PROPRIETARY FUNDS
 STATEMENT OF NET POSITION
 JUNE 30, 2022

	Business-type Activities-Enterprise Funds			Governmental Activities- Internal Service Funds
	Water Utility	Sewer Utility	Totals	
ASSETS				
Current Assets				
Cash and investments				
available for operations (Note 3)	\$51,901,683	\$51,607,350	\$103,509,033	\$43,336,749
Restricted cash and investments (Note 3)	4,875,479	34,189	4,909,668	
Receivables:				
Accounts	2,236,575	1,443,613	3,680,188	239
Due from other governments	451,027	42,195	493,222	
Interest	104,186	99,887	204,073	25,895
Prepays, materials, supplies and deposits (Note 1E)	164,242	16,859	181,101	600,659
Total current assets	59,733,192	53,244,093	112,977,285	43,963,542
Noncurrent assets:				
Capital assets and capacity rights (Note 8):				
Land and construction in progress	27,246,597	2,346,875	29,593,472	
Depreciable capital assets, net	34,058,772	114,887,973	148,946,745	9,341,366
Total noncurrent assets	61,305,369	117,234,848	178,540,217	9,341,366
Total assets	121,038,561	170,478,941	291,517,502	53,304,908
DEFERRED OUTFLOWS OF RESOURCES				
Related to pensions (Note 12D)	348,075	242,820	590,895	
Related to OPEB (Note 12E)	474,754	389,144	863,898	
Total deferred outflows of resources	822,829	631,964	1,454,793	
LIABILITIES				
Current liabilities:				
Accounts payable	2,723,612	423,389	3,147,001	83,539
Accrued payroll	115,834	58,022	173,856	50,725
Interest payable	61,004	238,975	299,979	
Refundable deposits	184,866		184,866	196
Unearned revenue	3,461	3,461	6,922	
Accrued vacation (Note 13F)	183,286	183,286	366,572	112,221
Sick leave payable (Note 13F)	77,664	25,337	103,001	15,458
Revenue Bonds (Note 9)	315,000	1,020,000	1,335,000	
Total current liabilities	3,664,727	1,952,470	5,617,197	262,139
Non-current liabilities:				
Accrued vacation (Note 13F)	89,184	13,018	102,202	19,782
Sick leave payable (Note 13F)	100,958		100,958	
Net pension liabilities (Note 12C):	1,604,380	1,119,228	2,723,608	
Net OPEB liability (Note 12C)	218,850	394,146	612,996	
Total OPEB liability (Note 13D)	1,460,368	1,232,124	2,692,492	
Revenue Bonds (Note 9)	18,905,919	36,005,196	54,911,115	
Total non-current liabilities	22,379,659	38,763,712	61,143,371	19,782
Total liabilities	26,044,386	40,716,182	66,760,568	281,921
DEFERRED INFLOWS OF RESOURCES				
Related to pensions (Note 12D)	645,830	450,536	1,096,366	
Related to OPEB (Note 13E)	898,204	722,495	1,620,699	
Total deferred inflows of resources	1,544,034	1,173,031	2,717,065	
NET POSITION (Note 11)				
Net investment in capital assets and capacity rights	46,959,929	80,243,841	127,203,770	9,341,366
Restricted for capital projects	36,378,752	38,704,401	75,083,153	
Restricted for pension expenses				30,537,346
Unrestricted	10,934,289	10,273,450	21,207,739	13,144,275
Total net position	\$94,272,970	\$129,221,692	\$223,494,662	\$53,022,987

See accompanying notes to financial statements

CITY OF MILPITAS
 PROPRIETARY FUNDS
 STATEMENT OF REVENUE, EXPENSES
 AND CHANGES IN FUND NET POSITION
 FOR THE YEAR ENDED JUNE 30, 2022

	Business-type Activities-Enterprise Funds			Governmental Activities- Internal Service Funds
	Water Utility	Sewer Utility	Totals	
OPERATING REVENUES				
Charges for services	\$33,883,177	\$21,338,805	\$55,221,982	\$3,734,444
Other operating revenue	491,252	254,038	745,290	(5,670,707)
Total Operating Revenues	34,374,429	21,592,843	55,967,272	(1,936,263)
OPERATING EXPENSES				
Purchased water	17,987,511		17,987,511	
Sewer treatment services		5,243,468	5,243,468	
Personnel services	3,714,096	2,127,958	5,842,054	1,431,811
Services and supplies	2,629,569	1,962,833	4,592,402	1,088,229
Depreciation	1,562,061	4,799,864	6,361,925	1,190,932
Repairs and maintenance	261,898	39,225	301,123	760,039
Total Operating Expenses	26,155,135	14,173,348	40,328,483	4,471,011
Operating Income (Loss)	8,219,294	7,419,495	15,638,789	(6,407,274)
NONOPERATING REVENUES (EXPENSES)				
Gain on sale of capital assets				80,616
Interest income(loss)	(1,641,737)	(1,604,060)	(3,245,797)	409,393
Interest expense	(743,050)	(1,448,533)	(2,191,583)	
Subventions and grants	205,447	100,623	306,070	
Total Nonoperating Revenues (Expenses)	(2,179,340)	(2,951,970)	(5,131,310)	490,009
Income (Loss) Before Contributions and Transfers	6,039,954	4,467,525	10,507,479	(5,917,265)
Capital contributions				1,205,018
Capital contributions - connection fees	418,344	607,373	1,025,717	
Transfers in (Note 4A)		11	11	890,508
Transfers (out) (Note 4A)	(2,657,407)	(1,699,451)	(4,356,858)	(211,131)
Change in net position	3,800,891	3,375,458	7,176,349	(4,032,870)
Net position-beginning	90,472,079	125,846,234	216,318,313	57,055,857
Net position-ending	\$94,272,970	\$129,221,692	\$223,494,662	\$53,022,987

See accompanying notes to financial statements

CITY OF MILPITAS
 PROPRIETARY FUNDS
 STATEMENT OF CASH FLOWS
 FOR THE YEAR ENDED JUNE 30, 2022

	Business-type Activities-Enterprise Funds			Governmental Activities- Internal Service Funds
	Water Utility	Sewer Utility	Totals	
CASH FLOWS FROM OPERATING ACTIVITIES				
Receipts from customers	\$34,489,216	\$21,803,245	\$56,292,461	(\$1,936,502)
Payments to suppliers	(24,338,604)	(7,576,107)	(31,914,711)	(2,423,487)
Payments to employees for salaries and benefits	(3,781,198)	(2,231,637)	(6,012,835)	(1,490,216)
Net cash provided by operating activities	6,369,414	11,995,501	18,364,915	(5,850,205)
CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES				
Subventions and grants	205,447	100,623	306,070	
Transfers in		11	11	890,508
Transfers (out)	(2,657,407)	(1,699,451)	(4,356,858)	(211,131)
Cash Flows from Noncapital Financing Activities	(2,451,960)	(1,598,817)	(4,050,777)	679,377
CASH FLOWS FROM CAPITAL FINANCING ACTIVITIES				
Principal paid on long-term debt	(300,000)	(980,000)	(1,280,000)	
Interest paid	(846,121)	(1,709,913)	(2,556,034)	
Proceeds from sale of capital assets				93,272
Acquisition of capital assets	(8,573,331)	(13,564,198)	(22,137,529)	257,008
Capital contributions - connection fees	418,344	607,373	1,025,717	
Cash Flows from Capital and Related Financing Activities	(9,301,108)	(15,646,738)	(24,947,846)	350,280
CASH FLOWS FROM INVESTING ACTIVITIES				
Interest received	(1,638,614)	(1,588,259)	(3,226,873)	410,033
Cash Flows from Investing Activities	(1,638,614)	(1,588,259)	(3,226,873)	410,033
Net increase (decrease) in cash and cash equivalents	(7,022,268)	(6,838,313)	(13,860,581)	(4,410,515)
Cash and investments at beginning of period	63,799,430	58,479,852	122,279,282	47,747,264
Cash and investments at end of period	\$56,777,162	\$51,641,539	\$108,418,701	\$43,336,749
Reconciliation of operating income to net cash provided by operating activities:				
Operating income (loss)	\$8,219,294	\$7,419,495	\$15,638,789	(\$6,407,274)
Adjustments to reconcile operating income (loss) to net cash provided by operating activities:				
Depreciation	1,562,061	4,799,864	6,361,925	1,190,932
Change in assets and liabilities:				
Receivables, net	70,926	210,893	281,819	(239)
Materials, supplies and deposits	7,607	(1,668)	5,939	(481,042)
Accrued payroll	(28,763)	(14,638)	(43,401)	
Accounts and other payables	(3,401,126)	(331,005)	(3,732,131)	(152,582)
Due to retirement system	47,442	(13,801)	33,641	
Due to OPEB	(108,027)	(73,639)	(181,666)	
Net cash provided by operating activities	\$6,369,414	\$11,995,501	\$18,364,915	(\$5,850,205)
NONCASH TRANSACTIONS:				
Contributions and transfers of capital assets				\$1,205,018

See accompanying notes to financial statements



FIDUCIARY FUNDS**FIDUCIARY FUNDS**

These funds are used to account for assets held by the City as an agent for individuals, private organizations, and other governments. The financial activities of these funds are excluded from the Government-wide financial statements, but are presented in separate Fiduciary Fund financial statements.

SUCCESSOR AGENCY TO THE MILPITAS REDEVELOPMENT AGENCY PRIVATE-PURPOSE TRUST FUND

The Successor Agency to the Milpitas Redevelopment Agency Private-Purpose Trust Fund accounts for the accumulation of resources to be used to make payments that are on the Recognized Obligation Payment Schedule and to dispose of assets and property of the former Redevelopment Agency for the benefit of the taxing agencies.



CITY OF MILPITAS
FIDUCIARY FUNDS
STATEMENT OF FIDUCIARY NET POSITION
JUNE 30, 2022

	Successor Agency to the Milpitas Redevelopment Agency Private-purpose Trust Fund
ASSETS	
Cash and investments (Note 3)	\$13,498,390
Restricted cash and investments (Note 3)	12
Total Assets	13,498,402
LIABILITIES	
Accounts payable	9,300
Interest payable	1,340,667
Long-term obligations (Note 15C):	
Due in one year	10,293,124
Due in more than one year	85,343,594
Total Liabilities	96,986,685
NET POSITION (DEFICIT)	
Held in trust for other governments	(\$83,488,283)

See accompanying notes to financial statements

CITY OF MILPITAS
FIDUCIARY FUND
STATEMENT OF CHANGES IN FIDUCIARY NET POSITION
FOR THE YEAR ENDED JUNE 30, 2022

	Successor Agency to the Milpitas Redevelopment Agency Private-purpose Trust Fund
Additions:	
Property taxes	\$21,575,099
Use of money and property	<u>19,420</u>
Total additions	<u>21,594,519</u>
Deductions:	
General and administrative	23,609
Debt service:	
Interest and fees	<u>6,275,133</u>
Total deductions	<u>6,298,742</u>
Net change in net position	15,295,777
Net position (deficit) - beginning	<u>(98,784,060)</u>
Net position (deficit) - ending	<u><u>(\$83,488,283)</u></u>

See accompanying notes to financial statements

NOTES TO FINANCIAL STATEMENTS



CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The City of Milpitas was incorporated as a general law city on January 26, 1954. The City operates under the Council-Manager form of government and provides the following services: public safety; fire and building inspection; engineering; public works; water; sewer; sanitation; recreation services; building and safety; planning and zoning; general administration services and economic development.

The financial statements and accounting policies of the City conform with generally accepted accounting principles applicable to governments. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for governmental accounting and financial reporting principles. Significant accounting policies are summarized below:

A. *Reporting Entity*

The accompanying basic financial statements present the financial activity of the City, which is the primary government presented, along with the financial activities of its component units, which are entities for which the City is financially accountable. Although they are separate legal entities, *blended* component units are in substance part of the City's operations and are reported as an integral part of the City's financial statements. Each discretely presented component unit, on the other hand, is reported in a separate column in the basic financial statements to emphasize it is legally separate from the government.

PRIMARY GOVERNMENT

The financial statements of the primary government of the City of Milpitas include the activities of the City as well as the Milpitas Public Financing Authority, the Milpitas Economic Development Corporation, the City of Milpitas Housing Authority and the Milpitas Municipal Financing Authority, all of which are controlled by and dependent on the City. While these are separate legal entities, their financial activities are integral to those of the City. Their financial activities have been aggregated and merged (termed "blended") with those of the primary government of the City in the accompanying financial statements.

Blended Component Units

The Milpitas Public Financing Authority is a separate government entity whose purpose is to assist with the financing or refinancing of certain public capital improvements within the City. The Authority has the power to purchase bonds issued by any local agency at public or negotiated sale and may sell such bonds to public or private purchasers at public or negotiated sale. The Authority is controlled by the City and has the same governing body as the City, which also performs all accounting and administrative functions for the Authority. The financial activities of the Authority are included in the Sewer Utility Enterprise Fund.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

The Milpitas Economic Development Corporation, formed in February 2011, is a California nonprofit public benefit Corporation formed by the City and the former Milpitas Redevelopment Agency under the laws of the State of California. As discussed in Note 15, the Redevelopment Agency was dissolved effective January 31, 2012. The Corporation was organized for the purpose of encouraging and facilitating the City's economic development, affordable housing and other community programs. The Corporation is governed by a board of directors consisting of the members of the City Council. Under an operating agreement with the Redevelopment Agency, the Corporation received funding from the Agency and will use the funds for redevelopment purposes consistent with the California Community Redevelopment Law, Health and Safety Code Section 33000 and to implement and carry out the Redevelopment Plans. The Corporation also entered into a Service Agreement with the City under which the City will perform the necessary services on an independent contractor basis to eliminate blight, provide affordable housing, improve the public realm, facilitate public and private developments, stimulate economic development, and create jobs. The Corporation is controlled by the City and has the same governing body as the City, which also performs all accounting and administrative functions for the Corporation. The Corporation became inactive as of June 30, 2015.

The City of Milpitas Housing Authority, formed in February 2011, is a separate government entity whose purpose is to assist with the housing for the City's low and moderate income residents. The Housing Authority is controlled by the City and has the same governing body as the City, which also performs all accounting and administrative functions for the Housing Authority. The Financial activities of the Housing Authority are included in the Housing Authority Special Revenue Fund.

The Milpitas Municipal Financing Authority, formed in March 2016, is a separate government entity whose purpose is to assist with the financing and refinancing of public programs, projects and capital improvements for the benefit of the City and the Housing Authority. The Municipal Financing Authority has the power to purchase bonds issued by any local agency at public or negotiated sale and may sell such bonds to public or private purchasers at public or negotiated sale. The Municipal Financing Authority is controlled by the City and the Housing Authority and has the same governing body as the City, which also performs all accounting and administrative functions for the Municipal Financing Authority. The Financial activities of the Municipal Financing Authority are included in the General Government Capital Projects Fund.

Separate financial statements are not issued for the Milpitas Public Financing Authority, Milpitas Economic Development Corporation, City of Milpitas Housing Authority or Milpitas Municipal Financing Authority.

Discretely Presented Component Unit

Terrace Gardens, Inc. is a non-profit public benefit corporation organized in September 1986 for the purpose of developing and managing the operations of a residential complex known as Terrace Gardens, which is located in the City of Milpitas and is dedicated to the needs of elderly persons. The former Milpitas Redevelopment Agency funded the construction of Terrace Gardens. City Council can appoint a voting majority of the governing board and approves the annual budget. The City Council exercises control over the Board of Terrace Gardens. Therefore, the financial activities of Terrace Gardens, Inc. as of and for the year ended December 31, 2021 are discretely presented in the Terrace Gardens Inc. Component Unit column of the Statement of Net Position and the Statement of Activities.

Financial statements for Terrace Gardens, Inc. may be obtained from Terrace Gardens, Inc., 186 Beresford Court, Milpitas, CA 95035.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

B. Basis of Presentation

The City's Basic Financial Statements are prepared in conformity with accounting principles generally accepted in the United States of America. The Government Accounting Standards Board is the acknowledged standard setting body for establishing accounting and financial reporting standards followed by governmental entities in the United States of America.

These Standards require that the financial statements described below be presented.

Government-wide Statements: The Statement of Net Position and the Statement of Activities display information about the primary government, the City and its blended and discretely presented component units. These statements include the financial activities of the overall City government, except for fiduciary activities. Eliminations have been made to minimize the double counting of internal activities, except for interfund services provided and used, which are not eliminated in the process of consolidation. These statements distinguish between the *governmental* and *business-type activities* of the City. Governmental activities generally are financed through taxes, intergovernmental revenues, and other nonexchange transactions. Business-type activities are financed in whole or in part by fees charged to external parties.

The Statement of Activities presents a comparison between direct expenses and program revenues for each segment of the business-type activities of the City and for each function of the City's governmental activities. Direct expenses are those that are specifically associated with a program or function and, therefore, are clearly identifiable to a particular function. Program revenues include (a) charges paid by the recipients of goods or services offered by the programs, (b) grants and contributions that are restricted to meeting the operational needs of a particular program and (c) fees, grants and contributions that are restricted to financing the acquisition or construction of capital assets. Revenues that are not classified as program revenues, including franchise fees that are based on gross receipts and all taxes, are presented as general revenues.

Fund Financial Statements: The fund financial statements provide information about the City's funds, including fiduciary funds and blended component units. Separate statements for each fund category—*governmental*, *proprietary*, and *fiduciary*—are presented. The emphasis of fund financial statements is on major individual governmental and enterprise funds, each of which is displayed in a separate column. All remaining governmental and enterprise funds are aggregated and reported as nonmajor funds.

Proprietary fund *operating* revenues and expenses, such as charges for services and the related costs, result from exchange transactions associated with the principal activity of the fund. Exchange transactions are those in which each party receives and gives up essentially equal values. *Nonoperating* revenues and expenses, such as subsidies, investment earnings and any related costs, result from nonexchange transactions or ancillary activities.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

C. Major Funds

Major funds are defined as funds that have either assets and deferred outflows of resources, liabilities and deferred inflows of resources, revenues or expenditures/expenses equal to ten percent of their fund-type total and five percent of the grand total. The General Fund is always a major fund. The City may also select other funds it believes should be presented as major funds.

The City reported the following major governmental funds in the accompanying financial statements:

General Fund - The General Fund is the general operating fund of the City. It is used to account for all financial resources except those required to be accounted for in another fund. The major revenue sources for this Fund are sales taxes, property taxes, hotel taxes, unrestricted revenues from the State, fines and forfeitures and interest income. Expenditures are incurred for public safety, public works, recreation services and the other governmental services described above.

Housing Authority Fund – Established to plan and address the housing needs of the City and to act as the Housing Successor of the former Redevelopment Agency. The main source of the revenue for this fund is the repayment of loans restricted for housing activities.

Street Improvement Fund – Established to account for the construction and maintenance of the street system in Milpitas. Financing is provided through State and Federal grants.

Transit Area Impact Fee Fund – Established to account for the capital projects in the transit area. A special transit area impact fee is imposed on developments to provide financing.

General Government Capital Projects Fund – Established to account for the construction and maintenance of general government projects. Financing is provided by the General Fund.

The City reported all its enterprise funds as major funds in the accompanying financial statements:

Water Utility Fund – Accounts for the provision of water services to residents and businesses of the City. All activities necessary to provide such services are accounted for in this fund, including, but not limited to, administration, operations, capital improvements, maintenance, billing and collection.

Sewer Utility Fund – Accounts for the provision of sewer services to residents and businesses of the City. All activities necessary to provide such services are accounted for in this fund, including, but not limited to, administration, operations, capital improvements, maintenance, financing, and billing and collection.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

The City also reports the following fund types:

Internal Service Funds – The Equipment Management Internal Service Fund is used to finance and account for the replacement of equipment used by City departments and the maintenance of the online permit development system on a cost reimbursement basis. The Pension Section 115 Internal Service Fund is used to accumulate funds to pay down the City’s CalPERS Unfunded Accrued Liability.

Fiduciary Funds – Trust funds account for assets held by the City as an agent for various functions. The Successor Agency to the Milpitas Redevelopment Agency Private-Purpose Trust Fund accounts for the accumulation of resources to be used for payments at appropriate amounts and times in the future. This fund accounts for winding down the affairs of the former Milpitas Redevelopment Agency and makes payments on the Enforceable Obligation Schedule and disposes of assets and property of the former Redevelopment Agency for the benefit of taxing agencies. The financial activities of this fund is excluded from the City-wide financial statements, but is presented in separate Fiduciary Fund financial statements.

D. Basis of Accounting

The government-wide, proprietary, and fiduciary fund financial statements are reported using the economic resources measurement focus and the full accrual basis of accounting. Revenues are recorded when earned and expenses are recorded at the time liabilities are incurred, regardless of when the related cash flows take place.

Governmental funds are reported using the *current financial resources* measurement focus and the *modified accrual* basis of accounting. Under this method, revenues are recognized when *measurable and available*. The City considers all revenues reported in the governmental funds to be available if the revenues are collected within sixty days after year-end. Expenditures are recorded when the related fund liability is incurred, except for principal and interest on general long-term debt, including lease liabilities, claims and judgments, and accumulated unpaid vacation, sick pay and other employee benefit amounts, which are recognized as expenditures to the extent they have matured. General capital asset acquisitions, including entering into contracts giving the City the right to use leased assets, are reported as *expenditures* in governmental funds. Proceeds of general long-term debt, financing through leases and acquisitions under capital leases are reported as *other financing sources*.

Non-exchange transactions, in which the City gives or receives value without directly receiving or giving equal value in exchange, include property taxes, grants, entitlements, and donations. On the accrual basis, revenue from taxes is recognized in the fiscal year for which the taxes are levied or assessed. Revenue from grants, entitlements, and donations is recognized in the fiscal year in which all eligibility requirements have been satisfied.

Other revenues susceptible to accrual are sales taxes, significant building permit fees, and interest revenue. Forfeitures, licenses, other permits and miscellaneous revenue are not susceptible to accrual because they are not measurable until received in cash. Grant funding received in advance of the related expenditure is accounted for as unearned revenue.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Grant revenues are recognized in the fiscal year in which all eligibility requirements are met. Under the terms of grant agreements, the City may fund certain programs with a combination of cost-reimbursement grants, categorical block grants, and general revenues. Thus, both restricted and unrestricted net position may be available to finance program expenditures. The City's policy is to first apply restricted grant resources to such programs, followed by unrestricted resources if necessary.

E. *Prepays, Materials, Supplies and Deposits*

Certain payments to vendors reflect costs applicable to future fiscal years and are recorded as prepaid items in both government-wide and fund financial statements. The cost of prepaid items is recorded as expenditures/expenses when consumed, rather than when purchased.

Materials and supplies are valued at cost on a first-in first-out basis. Supplies in the enterprise and internal funds consist principally of materials and supplies for utility and internal operations. Materials and supplies of the governmental funds consist of expendable supplies and materials held for consumption. The cost is recorded as an expense or expenditure in the funds at the time individual inventory items are consumed.

Prepays, materials, supplies and deposits in governmental funds are equally offset by nonspendable fund balance which indicates that they do not constitute available spendable resources even though they are a component of net current assets.

F. *Deferred Inflows and Deferred Outflows of Resources*

In addition to assets, the statement of net position or balance sheet reports a separate section for deferred outflows of resources. This separate net statement element, deferred outflows of resources, represents a consumption of net assets or fund balance that applies to a future period(s) and so will not be recognized as an outflow of resources (expense/expenditure) until then. The City has pension-related deferred outflows of resources arising from certain changes in the collective net pension liability.

In addition to liabilities, the statement of net position or balance sheet reports a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of net assets or fund balance that applies to a future period(s) and so will not be recognized as an inflow of resources (revenue) until that time. The City has deferred inflows of resources arising from certain changes in the collective net pension liability. These amounts are deferred and recognized as an inflow of resources in the period that the amounts become available. In the government-wide financial statements the City reports deferred amounts related to leases and deferred amounts related to pension and OPEB.

G. *Property Tax*

Santa Clara County assesses properties and bills, collects, and distributes property taxes to the City. The County remits the entire amount levied and handles all delinquencies, retaining interest and penalties. Secured and unsecured property taxes are levied on January 1.

Secured property tax is due in two installments, on November 1 and March 1, and becomes a lien on those dates. It becomes delinquent on December 10 and April 10, respectively. Unsecured property tax is due on July 1, and becomes delinquent on August 31. Collection of delinquent accounts is the responsibility of the County, which retains all penalties.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

The term “unsecured” refers to taxes on personal property other than real estate, land and buildings. These taxes are secured by liens on the property being taxed. Property tax revenues are recognized by the City in the fiscal year they are assessed, provided they become available as defined above.

H. Revenue Recognition for Water Utility and Sewer Utility

Revenues are recognized based on cycle billings rendered to customers. Revenues for services provided but not billed at the end of a fiscal period are not material and are not accrued.

I. Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The City categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The fair value hierarchy categorizes the inputs to valuation techniques used to measure fair value into three levels based on the extent to which inputs used in measuring fair value are observable in the market.

Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2 inputs are inputs – other than quoted prices included within level 1 – that are observable for an asset or liability, either directly or indirectly.

Level 3 inputs are unobservable inputs for an asset or liability.

If the fair value of an asset or liability is measured using inputs from more than one level of the fair value hierarchy, the measurement is considered to be based on the lowest priority level input that is significant to the entire measurement.

J. Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 2 – BUDGETS AND BUDGETARY ACCOUNTING

A. *Budgets and Budgetary Accounting*

The City adopts an annual operating budget on or before June 30 of the previous fiscal year, except for the Park Improvement and Storm Drain Capital Projects Funds which are budgeted on a project basis. The operating budget takes the form of a one year financial plan which is adopted in its entirety by the City Council by resolution. Because Milpitas is a general law city, it is not subject to a budgetary process prescribed by statute or charter.

The operating budget is subject to supplemental appropriations throughout its term in order to provide flexibility to meet changing needs and conditions. The City Manager's budget control remains at the level of department and/or project within any one fund. The City Manager may approve supplemental appropriations in the General Fund providing the total increase does not exceed 1% of the original total General Fund expenditure budget subject to the following. All additional appropriations that require the use of reserves must be approved by City Council. Expenditures cannot exceed the appropriated budget at the department level within each fund without City Council approval.

The City Manager is authorized to amend appropriations within the various departments and projects within a fund, provided that the amount of the amended appropriation is \$100,000 or less. Interfund transfers or transfers of an appropriation amount within a fund in which any single instance exceeds \$100,000 require prior approval of the City Council.

Budgeted amounts are as originally adopted, or as amended by the City Council. Individual amendments were not material in relation to the original appropriations which were amended.

B. *Adjustments to GAAP Basis from Budgetary Basis*

The City Manager's budget control remains at the level of department and/or project within any one fund. The City Manager has discretion over the unanticipated reserve (~1% of the General Fund operating budget), adopted by Council during the budget process. All additional appropriations that require the use of reserves must be approved by City Council. Expenditures cannot exceed the appropriated budget at the department level within each fund without City Council approval.

The City Manager is authorized to amend appropriations within the various departments and projects within a fund, provided that the amount of the amended appropriation is \$100,000 or less and does not impact the overall appropriations of a fund. Interfund transfers or transfers of an appropriation amount within a fund in which any single instance exceeds \$100,000 require prior approval of the City Council.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 3 – CASH AND INVESTMENTS

The City pools cash from all sources and all funds except Cash and Investments held by Trustees, so that it can be invested at the maximum yield consistent with safety and liquidity, while individual funds can make expenditures at any time.

A. Policies

The City invests in individual investments, money market mutual funds, and in investment pools. Individual investments are evidenced by specific identifiable *securities instruments*, or by an electronic entry registering the owner in the records of the institution issuing the security, called the *book entry* system. In order to increase security, the City employs the Trust and Custody Department of a bank as the custodian of certain City managed investments, regardless of their form.

California Law requires banks and savings and loan institutions to pledge government securities with a market value of 110% of the City's cash on deposit, or first trust deed mortgage notes with a market value of 150% of the deposit, as collateral for these deposits. Under California Law this collateral is held in a separate investment pool by another institution in the City's name and places the City ahead of general creditors of the institution.

The City's investments are carried at fair value, as required by generally accepted accounting principles. The City adjusts the carrying value of its investments to reflect their fair value at each fiscal year end, and it includes the effects of these adjustments in income for that fiscal year.

B. Classification

Cash and investments are classified in the financial statements as shown below, based on whether or not their use is restricted under the terms of City debt instruments or other agreements.

Cash and investments available for operations	\$354,120,703
Restricted Cash and Investments	7,171,093
Total Primary Government cash and investments	<u>361,291,796</u>
Cash and investments available for operations	18,289
Restricted Cash	3,333,708
Total Component Unit cash and investments	<u>3,351,997</u>
Cash and investments in Fiduciary Funds (separate statement)	13,498,390
Restricted Cash and Investments in Fiduciary Funds (separate account)	12
Total Fiduciary cash and investments	<u>13,498,402</u>
Total cash and investments	<u><u>\$378,142,195</u></u>

Cash and Investments Available for Operations is used in preparing proprietary fund statements of cash flows because these assets are highly liquid and are expended to liquidate liabilities arising during the year.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 3 – CASH AND INVESTMENTS (Continued)

C. Investments Authorized by the California Government Code and the City's Investment Policy

The City's Investment Policy, updated or adopted on an annual basis, and the California Government Code allow the City to invest in the following, provided the credit ratings of the issuers are acceptable to the City; and approved percentages and maturities are not exceeded. The table below also identifies certain provisions of the California Government Code or the City's Investment Policy where it is more restrictive:

Authorized Investment Type	Maximum Maturity	Minimum Credit Quality*	Maximum Percentage of Portfolio	Maximum Investment In One Issuer
U. S. Treasury Bonds, Notes and Bills	5 Years		100%	No Limit
Federal Agency Obligations	5 Years		100%	30%
Bankers Acceptances	180 Days		40%	5%
Commercial Paper – Pooled Funds	270 Days	A	40%	(A)
Commercial Paper – Non-Pooled Funds	270 Days	A	25%	(A)
Negotiable Certificates of Deposit	5 Years		30%	5%
Repurchase Agreements	1 Year		100%	No Limit
Time Certificates of Deposit – Banks or Savings and Loans (Non- negotiable)	5 Years		100%	No Limit
Medium-Term Corporate Notes	5 Years	A	30%	5%
State of California Local Agency Investment Fund (LAIF Pool)	Upon Demand		100%	No Limit
Money Market Funds of Government Securities	Upon Demand	Top Rating Category	20%	10%
Municipal Securities and Municipal Treasury Notes or Bonds	5 Years	A	30%	5%
Mortgage Pass-Through and Asset Backed Securities	5 Years	AA	20%	5%
Collateralized Bank Deposits	Upon Demand		100%	No Limit

(A) Eligible Commercial Paper may not represent more than 5% of outstanding paper of an issuing corporation.

*At time of purchase

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 3 – CASH AND INVESTMENTS (Continued)

D. Investments Authorized by Debt Agreements and Trust Agreements

The City must maintain required amounts of cash and investments with trustees or fiscal agents under the terms of certain debt issues. These funds are unexpended bond proceeds or are pledged reserves to be used if the City fails to meet its obligations under these debt issues. The California Government Code requires these funds to be invested in accordance with City resolutions, bond indentures or State statutes. The table below identifies the investment types that are authorized for investments held by fiscal agents. The table also identifies certain provisions of these debt agreements:

Authorized Investment Type	Maximum Maturity	Minimum Credit Quality*	Maximum Percentage of Portfolio	Maximum Investment In One Issuer
U. S. Treasury Bonds, Notes and Bills	5 Years		100%	No Limit
Federal Agency Obligations	5 Years		100%	30%
Time Certificates of Deposit – Banks or Savings and Loans	5 Years		100%	No Limit
Bankers Acceptances	180 Days	A	20%	5%
Commercial Paper – Pooled Funds	270 Days	A	40%	(A)
Commercial Paper – Non-Pooled Funds	270 Days	A	25%	(A)
Negotiable Certificates of Deposit	5 Years		30%	No Limit
Repurchase Agreements	1 Year		100%	No Limit
Medium-Term Corporate Notes	5 Years	AA	30%	5%
State of California Local Agency Investment Fund (LAIF Pool)	Upon Demand		No Limit	No Limit
Money Market and Mutual Funds	Upon Demand	Aaa/AAm	20%	10%
California Asset Management Program (CAMP)	Upon Demand		No Limit	No Limit

(A) The combined total of commercial paper may not represent more than 10% of the outstanding paper and notes of an issuing corporation.

*At time of purchase

During the fiscal year ended June 30, 2022, the City also implemented investment guidelines for its Section 115 Pension Trust, which authorize investments in a diversified portfolio, including equities and mutual funds, in order to achieve a 3% to 6% investment earnings goal during the next 5 to 10 years.

E. Investments Authorized for Terrace Gardens Inc.

Terrace Gardens, Inc. investments conform with the California Government Code.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 3 – CASH AND INVESTMENTS (Continued)

F. Interest Rate Risk

Interest rate risk is the risk that changes in market interest rates will adversely affect the fair value of an investment. Normally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates. The City generally manages its interest rate risk by holding investments to maturity.

Information about the sensitivity of the fair values of the City's investments (including investments held by trustees) to market interest rate fluctuations is provided by the following table that shows the distribution of the City's investments by maturity or earliest call date:

Investment Type	12 Months or less	13 to 36 Months	36 to 60 Months	Total	Percentage of Portfolio
City and Successor Agency:					
Federal Agency Obligations	\$10,532,975	\$32,926,432	\$13,870,768	\$57,330,175	15.16%
Medium-Term Corporate Notes	3,996,990	29,702,597	22,518,647	56,218,234	14.87%
U.S. Treasury Notes		32,178,185	46,805,811	78,983,996	20.89%
California Local Agency Investment Fund	93,351,600			93,351,600	24.69%
Mutual Funds (U.S. Securities)	16,323,321			16,323,321	4.32%
Asset Backed Securities		13,043,478	13,414,613	26,458,091	7.00%
Negotiable Certificates of Deposit	7,459,278			7,459,278	1.97%
Terrace Gardens, Inc.:					
Nonnegotiable Certificates of Deposit	2,232,426			2,232,426	0.59%
Total Investments	<u>\$133,896,590</u>	<u>\$107,850,692</u>	<u>\$96,609,839</u>	338,357,121	
Demand Deposits - City of Milpitas				38,665,503	10.23%
Demand Deposits - Terrace Gardens				1,119,571	0.30%
Total Cash and Investments				<u>\$378,142,195</u>	<u>100.02%</u>

The City is a participant in the Local Agency Investment Fund (LAIF) that is regulated by California Government Code Section 16429 under the oversight of the Treasurer of the State of California. The City reports its investment in LAIF at the fair value amount provided by LAIF, which is the same as the value of the pool share. The balance is available for withdrawal on demand, and is based on the accounting records maintained by LAIF, which are recorded on an amortized cost basis. Each regular LAIF account is permitted to have up to 15 transactions per month, with a minimum transaction amount of \$5,000, no maximum transaction amount, and at least 24 hours advance notice for withdrawals of \$10 million or more. Bond proceeds accounts are subject to a one-time deposit with no cap and are set up with a monthly draw down schedule. Included in LAIF's investment portfolio are collateralized mortgage obligations, mortgage-backed securities, other asset-backed securities, loans to certain state funds, and floating rate securities issued by federal agencies, government-sponsored enterprises, United States Treasury Notes and Bills, and corporations. At June 30, 2022 these investments matured in an average of 311 days.

Mutual funds are available for withdrawal on demand and at June 30, 2022 matured in an average of 25 days.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 3 – CASH AND INVESTMENTS (Continued)

G. Credit Risk

Credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. This is measured by the assignment of a rating by a nationally recognized statistical rating organization. Presented below is the actual rating as of June 30, 2022 for each of the Primary Government's investment types as provided by Standard and Poor's investment rating system:

Investment Type	AA+/AA/A					Total
	AAA	A-	A+/A/A-	A-1/ A-1+	BBB+/BBB	
Federal Agency Obligations	\$57,330,175					\$57,330,175
Medium-Term Corporate Notes		\$16,287,211	\$38,939,515		\$991,508	56,218,234
Asset Backed Securities	17,793,946					17,793,946
Mutual Funds (U.S. Securities)	16,323,321					16,323,321
Negotiable Certificates of Deposit				\$7,459,278		7,459,278
Totals	<u>\$91,447,442</u>	<u>\$16,287,211</u>	<u>\$38,939,515</u>	<u>\$7,459,278</u>	<u>\$991,508</u>	<u>155,124,954</u>
<i>Not rated:</i>						
California Local Agency Investment Fund					\$93,351,600	93,351,600
Asset Backed Securities					8,664,145	8,664,145
<i>Exempt from credit rate disclosure:</i>						
U.S. Treasury Notes					78,983,996	78,983,996
Total Investments					<u>\$180,999,741</u>	<u>\$336,124,695</u>

All of the unrated negotiable certificates of deposit were fully insured by Federal Deposit Insurance at June 30, 2022.

Terrace Gardens, Inc. invests only in Nonnegotiable Certificates of Deposit. At December 31, 2021, all of Terrace Gardens' Nonnegotiable Certificates of Deposit totaling \$2,232,426 were fully insured by Federal Deposit Insurance.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 3 – CASH AND INVESTMENTS (Continued)

H. Fair Value Hierarchy

The City categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure fair value of the assets. Level 1 inputs are quoted prices in an active market for identical assets; Level 2 inputs are significant other observable inputs; and Level 3 inputs are significant unobservable inputs.

The following is a summary of the fair value hierarchy of the City's investments as of June 30, 2022:

	Level 2	Total
<i>Investments by Fair Value Level:</i>		
Federal Agency Obligations	\$57,330,175	\$57,330,175
Medium-Term Corporate Notes	56,218,234	56,218,234
U.S. Treasury Notes	78,983,996	78,983,996
Negotiable Certificates of Deposit	7,459,278	7,459,278
Asset Backed Securities	26,458,091	26,458,091
	<u>\$226,449,774</u>	<u>226,449,774</u>
<i>Investments Measured at Amortized Cost:</i>		
Mutual Funds (U.S. Securities)		16,323,321
<i>Investments Measured at Cost:</i>		
<i>Terrace Gardens, Inc.</i>		
Nonnegotiable Certificates of Deposit		2,232,426
<i>Investments Exempt from Fair Value Hierarchy:</i>		
California Local Agency Investment Fund		<u>93,351,600</u>
Total Investments		<u>\$338,357,121</u>

Federal Agency Obligations totaling \$57.3 million, Medium Term Corporate Notes of \$56.2 million, U.S. Treasury Notes totaling \$79.0 million, Negotiable Certificates of Deposit of \$7.5 million and Asset Backed Securities of \$26.5 million, classified in Level 2 of the fair value hierarchy, are valued using pricing techniques of matrix pricing or market corroborated pricing, with inputs such as yield curves or indices. These prices are obtained from various pricing sources by our custodian bank.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 3 – CASH AND INVESTMENTS (Continued)

I. Significant Investments

Investments in the securities of any individual issuers, other than U. S. Treasury securities, mutual funds and the California Local Agency Investment Fund, that represent 5% or more of total entity-wide investments are as follows at June 30, 2022:

Issuer	Investment Type	Amount
Federal Bational Mortgage Association	Federal Agency Obligations	\$21,117,115
Federal Home Loan Mortgage Corporation	Federal Agency Obligations	15,843,070
Federal Farm Credit Bank	Federal Agency Obligations	14,908,255

NOTE 4 – INTERFUND TRANSACTIONS

A. Transfers Between Funds

With Council approval, resources may be transferred from one City fund to another. The purpose of the majority of transfers is to move resources from one fund to another. Less often, a transfer may be made to open or close a fund.

Transfers between funds during the fiscal year ended June 30, 2022 were as follows:

Fund Receiving Transfers	Fund Making Transfers	Amount Transferred
Governmental Funds:		
General Fund	Solid Waste Reduction and Services Special Revenue Fund	\$138,558 (A)
General Fund	Community Facility District Special Revenue Fund	2,560,000 (A)
General Fund	Water Utility Proprietary Fund	2,571,407 (A)
General Fund	Sewer Utility Proprietary Fund	1,482,966 (A)
Street Improvement Fund	General Fund	295,254 (A)
Street Improvement Fund	Transit Area Impact Fee Fund	3,500,000 (B)
Street Improvement Fund	General Government Capital Projects Fund	100,000 (B)
Street Improvement Fund	Gas Tax Special Revenue Fund	1,667,788 (B)
General Government Capital Projects Fund	General Fund	595,039 (B), (A)
General Government Capital Projects Fund	Transit Area Impact Fee Fund	78,000 (B)
General Government Capital Projects Fund	Water Utility Proprietary Fund	86,000 (B)
General Government Capital Projects Fund	Sewer Utility Proprietary Fund	216,485 (B)
General Government Capital Projects Fund	Gas Tax Special Revenue Fund	608,947 (B)
General Government Capital Projects Fund	Law Enforcement Services Special Revenue Fund	60,000 (B)
General Government Capital Projects Fund	Lighting & Landscape Maintenance District Special Revenue Fund	4,000 (B)
General Government Capital Projects Fund	Community Facilities District Special Revenue Fund	50,000 (B)
General Government Capital Projects Fund	Community Planning Special Revenue Fund	550,000 (B)
General Government Capital Projects Fund	Public Art Capital Projects Fund	326,000 (B)
General Government Capital Projects Fund	Park Improvement Capital Projects Fund	359,516 (B), (C)
General Government Capital Projects Fund	Equipment Management Internal Service Fund	211,131 (B)
Gas Tax Fund	Street Improvement Capital Projects Fund	98 (C)
Lighting & Landscape Maintenance District Special Revenue Fund	General Fund	40,590 (A)
Affordable Housing Special Revenue Fund	General Fund	295,254 (A)
Park Improvement Capital Projects Fund	General Government Capital Projects Fund	75,000 (B)
Storm Drain Development Capital Projects Fund	General Fund	885,761 (A)
Storm Drain Development Capital Projects Fund	General Government Capital Projects Fund	145,000 (B)
	Governmental Funds Subtotal	<u>16,902,794</u>
Proprietary Funds:		
Sewer Utility Proprietary Fund	Street Improvement Capital Projects Fund	11 (C)
	Internal Service Funds Subtotal	<u>11</u>
Internal Service Funds:		
Equipment Management Internal Service Fund	General Fund	890,508 (A)
	Internal Service Funds Subtotal	<u>890,508</u>
	Total Interfund Transfers	<u>\$17,793,313</u>

(A) To Transfer for Operating Cost

(B) To Fund Capital Project

(C) To Return Unexpended Project Funds

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 5 – LOANS RECEIVABLE

The City and former Redevelopment Agency entered into the loan programs below to improve the quality of housing and to increase the availability of affordable housing, and for other purposes. With the dissolution of the Redevelopment Agency as discussed in Note 16, the City agreed to become the successor to the Redevelopment Agency's housing activities and as a result the City of Milpitas Housing Authority assumed the loans receivable of the Redevelopment Agency's Housing Reserve Special Revenue Fund as of February 1, 2012.

These loans were comprised of the following at June 30, 2022:

Housing and Community Development Loans:

Rehabilitation Loans	\$3,225,910

Housing Authority Loans:

Milpitas Housing Associates	3,277,759
Parc Metropolitan Housing Development	52,186
Parc North Associates LLC	533,870
Mid-Peninsula Milpitas Affordable Housing Associates	17,676,623
KB Home South Bay Inc.	1,222,900
Western Pacific Housing Inc.	1,782,781
Shapell Industries	800,000
MIL Aspen Associates, Ltd.	3,333,041
Sango Court, L.P.	6,579,603
Total Housing Authority Loans Receivable	35,258,763
Total Loans Receivable	\$38,484,673

A. Rehabilitation Loans

The City administers a housing rehabilitation program using Housing and Community Development Act funds. Under the Program, individuals with incomes below a certain level are eligible to receive low or no interest loans, secured by deeds of trust, for construction work on their homes. At June 30, 2022, the City had outstanding rehabilitation loans of \$3,225,910 in its Housing and Community Development Special Revenue Fund. During the year ended June 30, 2022, the City received principal payment of \$269,890 from all participants and accrued interest of \$8,973.

NOTE 5 – LOANS RECEIVABLE (Continued)

B. Milpitas Housing Associates Loan

In fiscal 1997, the former Redevelopment Agency loaned the Milpitas Housing Associates, a partnership of Bridge Housing and a developer, \$3,000,000 to assist in the financing of the construction of a 306 unit apartment complex. Fifty percent of the units were made available to very low and low income tenants. The Loan bore interest at the rate of 5.45% per year, compounded annually and is repayable in 2040, subject to certain conditions. The loan is secured by a subordinated deed of trust in the third position on the property. In January 2020, the City Council and the Housing Authority Commission approved a restructuring of the loan, which, 1) lowered the interest rate from 5.45% to a simple interest of 3.05% effective July 1, 2017, 2) forgave accrued interest of \$1,541,074 through fiscal year 2017, and 3) approved the foregoing of residual receipts totaling \$200,000 annually. As a result, fiscal year 2018 interest was recalculated to be \$91,500 and accrued and the prior fiscal year 2018 accrued interest of \$247,489 was written off. During fiscal year 2022 an additional \$179,741 was written off. During fiscal year 2022, interest of \$91,500 was accrued, and as of June 30, 2022, principal and accrued interest outstanding totaled \$3,277,759.

C. Parc Metropolitan Housing Development Loans

The Housing Authority provides loans to eligible low-income families for the purchase of townhome units at the Parc Metropolitan Housing Development. During the year ended June 30, 2022, the Housing Authority received principal payments of \$1,919 and as of June 30, 2022, there were \$52,186 in loans outstanding.

D. Parc North Associates LLC Loan

In September 2003, the former Redevelopment Agency entered into an Owner Participation Agreement with Parc North Associates LLC for the development of 285 town homes and condominiums. Eighteen of the units were made available to very low income households, six of the units were made available to low income households, and thirty-four units were made available to moderate income households. In exchange, the Agency provided a grant of \$1,823,480 to the Developer for permits, fees, and infrastructure, along with silent-second loans to eligible low-income families for the purchase of these town homes and condominium. Interest of 5% begins on the 61st month after the recordation of the deeds of trust and continues until the loans are paid in full. During fiscal year 2022, principal of \$17,740 was paid and as of June 30, 2022, there were \$533,870 of such loans outstanding.

E. Mid-Peninsula Milpitas Affordable Housing Associates

In December 2005, the former Redevelopment Agency entered into a Disposition and Development Agreement with Mid-Peninsula Milpitas Affordable Housing Associates for the development of a 103-unit senior housing project with long-term affordability to extremely low and very low income seniors. Under the terms of the Agreement, the Agency provided a grant of \$1 million to the Developer and will provide a development loan up to \$14.6 million to the Developer. No interest is accrued on the first \$5 million of loan proceeds. The remaining \$9.6 million bears simple interest of 3.00% annually. Repayment of interest and principal is payable from surplus operating cash subject to certain conditions as defined in the Agreement, and unpaid principal and accrued interest is due in December 2062. The loan is secured by a second deed of trust on the property. Construction began in fiscal year 2006 and was completed in December 2008. During fiscal year 2022, interest of \$346,508 and \$288,000 was paid and accrued, respectively, and as of June 30, 2022, principal and accrued interest outstanding totaled \$17,676,623.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 5 – LOANS RECEIVABLE (Continued)

F. KB Home South Bay Inc. Loans

In January 2005, the former Redevelopment Agency entered into a Disposition and Development Agreement with KB Home South Bay Inc. for the development of a public park and approximately 700 housing units on the two parcels (Parcels C and D). In addition, the former Redevelopment Agency would provide a total of \$4,250,000 of silent-second mortgages to eighty-five moderate income households on Parcel C, approximately \$5,000,000 of subsidies to twenty-five moderate income households on Parcel D. The silent-second mortgages are not due for 45 years or upon the sale, renting or leasing of the property. Interest begins on the 37th month after the recordation of the Deed of Trust and continues until the loans are paid in full.

Due to changes in the housing market and stricter lending requirements which had created unforeseen challenges in finding qualified buyers for the affordable units, the former Redevelopment Agency amended the Agreement in February 2009 to establish an in-lieu housing payment of \$1,702,000 to remove the affordable restrictions on 46 of the 67 remaining unsold affordable units (\$37,000 for each unit). This amount was paid in equal parts to the Agency and to the County. In addition, the commitment for silent-second mortgages was reduced \$2,300,000 to \$1,950,000, and the total number of affordable units was reduced from 110 to 64.

As of June 30, 2022, there were \$954,900 of loans to Parcel C households outstanding. As of June 30, 2022 subsidies totaling \$1,222,900 had been provided.

G. Western Pacific Housing Inc., Loans

In August 2005, the former Redevelopment Agency entered into an Owner Participation Agreement with Fairfield Development, LLC for the development of a 464- unit residential apartment project called Centria, of which 93 units will be deed-restricted for very low- to moderate- income households. In November 2005, the project was purchased by Western Pacific Housing Inc. and obligations of the Owner Participation Agreement were assigned to Western Pacific Housing Inc. The former Redevelopment Agency will provide a grant of \$379,480 for permits, fees, and infrastructure. The former Redevelopment Agency also will provide a total of \$770,000 for silent-second down payment assistance loans for the 22 very-low income units. The loans are not due for 25 years or upon the sale, renting or leasing of the property. Interest will begin on the 61st month after the recordation of the Deed of Trust and continues until the loans are paid in full. Principal of \$1,227 was repaid in fiscal year 2022 and as of June 30, 2022 there were \$585,781 such loans outstanding.

In August 2008 the Owner Participation Agreement was amended to reduce the number of units to be constructed by Western Pacific Housing Inc. to 137 and provide for the conversion of 7 of the moderate income units to low income units. In addition, in August 2008 the 327 unconstructed units of the project were sold to Lyon Milpitas LLC and the Agency entered into a new Owner Participation Agreement with Lyon Milpitas LLC to complete the construction of the affordable housing units.

In September 2006, the former Redevelopment Agency entered into an Owner Participation Agreement with Western Pacific Housing, Inc. for the development of a 147-unit townhome project called Paragon that includes nine units deed-restricted to very low income residents and twenty units deed-restricted to moderate income residents. The Agency will provide silent-second loans of \$133,333 to each of the very low income households. Interest will begin on the date of the promissory note but will be forgiven on the fourth anniversary of the date the Deed of Trust recorded at a rate of 20% per year, and principal is due 45 years from the date the Deed of Trust was recorded. As of June 30, 2022, there were \$1,197,000 of silent second loans outstanding.

NOTE 5 – LOANS RECEIVABLE (Continued)

H. *Shapell Industries*

In June 2004, the former Redevelopment Agency entered into an Agreement with Shapell Industries of Northern California for the development of a 65-unit townhome development, which will include twenty deed-restricted affordable housing units for very low- and moderate-income units. In August 2005 the Agency entered into an Owner Participation Agreement with the Developer that, in exchange for the development of housing units, the Agency will provide a total of \$800,000 silent-second mortgages to sixteen moderate-income households. In addition, under the terms of the Agreement, the Agency assisted in the rehabilitation of four existing very low-income units in fiscal 2006. Interest will begin on the date of the promissory note, but will be forgiven on the fourth anniversary of the date the Deed of Trust recorded at a rate of 20% per year, and principal is due 45 years from the date the Deed of Trust was recorded. As of June 30, 2022, there were \$800,000 of silent second loans outstanding.

I. *MIL Aspen Associates, Ltd.*

In April 2007, the former Redevelopment Agency entered into an Owner Participation Agreement with MIL Aspen Associates, Ltd. for the development of a 101-unit multi-family project, of which 100 units will be deed-restricted for very low-income households. Under the terms of the Agreement, during fiscal year 2011 the Agency provided a \$2,300,000 loan to the Developer. The loan bears 5% interest compounded annually on outstanding principal balance, and is repayable in April 17, 2037. Upon June 1 of the year following the issuance of the final certificate of occupancy of the project and the first day of each June during the term of the loan, the Developer shall pay 50% of Surplus Cash generated by the Project, as defined in the Agreement, during the previous calendar year. During the year ended June 30, 2022, interest of \$166,951 was accrued, and as of June 30, 2022, principal and accrued interest totaled \$3,333,041.

J. *Resources for Community Development*

In November 2017, the Housing Authority entered into a development loan agreement with Resources for Community Development for certain predevelopment costs necessary for the development of a 102-unit affordable rental housing project, 355 Sango Court Apartments, of which 101 will be affordable and 1 will be an above moderate income (AMI) managers unit. The unit mix will include 40 units with project based subsidy providing supportive housing for chronically homeless veterans and individuals at or below 30% AMI, 31 units that will provide permanent housing to households with incomes at or below 30% AMI, and 30 units providing permanent housing to households with incomes at or below 60% AMI. Under the terms of the agreement, the City provided a \$147,768 loan to the Developer. The loan bears interest of 3% and is repayable on May 30, 2022. During the year ended June 30, 2022 the Developer made its final principal and interest payments.

K. *Sango Court, L.P.*

In May 2019, the Housing Authority entered into a development loan agreement with Sango Court, L.P. for construction of affordable housing at 355 Sango Court Apartments of which 101 will be affordable and 1 will be an above moderate income (AMI) managers unit. Under the terms of the Agreement, during fiscal year 2022 the Agency provided a \$6,500,000 loan to the Developer. The loan bears 3% interest compounded annually on outstanding principal balance and must be paid on the earlier of: (a) fifty-five (55) years from the date of conversion, or (b) December 31, 2079, or (c) by acceleration of the loan following a default. During the year ended June 30, 2022, interest of \$79,603 was accrued, and as of June 30, 2022, principal and accrued interest totaled \$6,579,603.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 6 – PROPERTY HELD FOR RESALE OR REDEVELOPMENT

A. General Fund

Pursuant to the terms of a settlement agreement between the City, Economic Development Corporation, Housing Authority, Santa Clara County Auditor-Controller, State Controller and other parties, a land parcel was transferred from the Successor Agency to the Housing Authority in June 2014. However, that parcel was not subject to housing related provisions and was transferred to the City from the Housing Authority in June 2014.

The land parcel is accounted for at the lower of cost or net realizable value or agreed-upon sales price if a disposition agreement has been made with a developer.

As of June 30, 2022, property totaling \$4,200,000 is held by the General Fund.

B. Housing Authority

The former Redevelopment Agency had purchased parcels of land as part of its efforts to develop or redevelop blighted properties within the Redevelopment areas. Such land parcels are accounted for at the lower of cost or net realizable value or agreed-upon sales price if a disposition agreement has been made with a developer. The City agreed to become the successor to the Redevelopment Agency's housing activities and as a result the City of Milpitas Housing Authority assumed the property held for resale of the Redevelopment Agency's Housing Reserve Fund as of February 1, 2012.

In fiscal year 2010 the Agency purchased five housing units for \$1,503,718 in the Parc Metro Subdivision. During fiscal year 2011, the Agency purchased one additional Parc Metro Subdivision unit for \$305,095, one Centria Subdivision housing unit for \$248,056, and four KB Home Subdivision housing units for \$1,273,892. One of the KB Home Subdivision units with a book value of \$374,253 was sold in August 2011. Two of the KB Home Subdivision units with a book value of \$376,795 and \$294,921 were sold in December 2012 and February 2013, respectively. Four of the Parc Metro Subdivision units were sold in fiscal year 2013, with a total book value of \$1,245,559, and one unit with a book value of \$258,160 was sold in fiscal year 2019. The Centria unit was sold in fiscal year 2017 for \$296,000. The units were purchased in order to retain them as affordable housing units and are being held for future resale. The remaining units are rented to tenants.

In February 2011, the Agency purchased additional property along South Main Street in the amount of \$1,800,000 which is intended to be incorporated into the Midtown Specific Plan for housing development. The purchase of this property had been funded by a loan from the Housing Reserve Special Revenue Fund to the Redevelopment Capital Projects Fund, and with the dissolution of the Agency as of February 1, 2012, the State Department of Finance approved the property as a housing asset and the property was transferred to the Housing Authority as the successor housing agency.

As of June 30, 2022, property totaling \$2,333,018 is held by the Housing Authority. The Housing Authority is required to develop or sell the properties on or before August 31, 2022.

On July 2022, the Housing Authority has started the Phase II of the Environmental Site Assessment of the parcel, in which the Housing Authority has started the development process of the sale of the parcel prior to August 31, 2022. The Housing Authority is currently working with consultant on the appraisal and the parcel was expected to be sold in Spring 2023.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 7 – DEVELOPMENT AND TAX SHARING AGREEMENTS

The City and former Redevelopment Agency have entered into the development agreements below in an effort to provide incentives to develop new businesses, new tax revenues and affordable housing.

A. *South Main Senior Lifestyles, LLC.*

In August 2009, the former Redevelopment Agency entered into a Disposition and Development Agreement with the South Main Senior Lifestyles, LLC (SMSL) to develop 180 units of “Continuum of Care Senior Housing” (Phase 1 Parcel), of which 63 units will be for very low and low income households, and 207 units of family housing (Phase 2 Parcel) which will be market rate units. In accordance with the terms of the Agreement, the Agency will acquire the properties and resell them in two phases to the developer prior to construction, subject to certain conditions in the Agreement. In November 2009, the Agency purchased the properties along South Main Street in the amount of \$12,443,137. The sales price for the Phase 1 Parcel will be \$5,022,129, and the sales price for the Phase 2 Parcel will equal the greater of the fair market value of the Phase 2 Parcel as defined in the Agreement or \$7,377,871. In addition, the former Agency’s Housing Reserve Special Revenue Fund was to provide a grant in the amount of \$7.7 million to support the development and operation of the Phase 1 Parcel project.

In March 2011, the Economic Development Corporation assumed the obligations of the Disposition and Development Agreement and on October 18, 2011, a two year extension to the Agreement was approved to include a more extensive high density residential development plan of sixty-three residential units available at affordable housing cost to income-qualified very low and low income households.

In November 2013, the Housing Authority amended the Disposition and Development Agreement. The amendment states the Authority will convey the properties with a carrying value of \$12,443,137 to the developer as a grant after certain requirements are fulfilled. In addition, the amendment also eliminates the \$7.7 million grant obligation included in the initial agreement. It further amended the number of affordable units from 63 to 48, all at the very low income level for seniors.

In June 2015, the Housing Authority amended the Disposition and Development Agreement to extend the deadline to convey the properties to the developer from November 19, 2015 to June 30, 2017. In April 2017, the Housing Authority amended the Disposition and Development Agreement to extend the deadline from June 30, 2017 to December 31, 2017. On April 5, 2018, the agreement was again amended to extend the deadline to the date on which the grant deed conveying the Phase 1 Parcel to the developer is recorded. In April 2018, the terms of the agreement were fulfilled and the properties were transferred to the developer.

In February 2018, the City entered into a reimbursement agreement with the developer to reimburse the developer for the full actual cost of the design and improvement to replace an existing 8-inch sanitary sewer pipe with a 12-inch pipe. As of June 30, 2022, the City has issued a total of \$702,252 reimbursements to date.

B. *Sales Tax Sharing Agreement*

In June 2009, the City entered into a Sales Tax Sharing Agreement with a corporation that provides process control for the semiconductor and related industries. Under the terms of the Agreement, the City agreed to pay the corporation 50% of the calendar year sales and use tax revenues paid by the corporation and collected by the State Board of Equalization for the City that exceed the tax base. The tax base is defined in the Agreement as the average amount of annual sales tax increment received by the City from the corporation for calendar years 2006, 2007 and 2008. The agreement terminates in 2025. During the year ended June 30, 2022, there is no payment of sales tax were made to the corporation during fiscal year 2022.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 7 – DEVELOPMENT AND TAX SHARING AGREEMENTS (Continued)

C. *Piper Montague Infrastructure Payment Cost Sharing Agreement*

In August 2009, the City entered into a four-party agreement with three developers in the Piper/Montague Subdistrict in which the developers agreed to share in the costs of infrastructure improvements, including street improvements, storm drain installation and a traffic signal, and certain storm water management facilities. Under the terms of the agreement, when one of the developers undertakes a project related to the shared infrastructure improvements or storm water facilities project, that developer receives TASP fee credits equal to the other two developers pro-rata share of the improvements. The other two developers are then to reimburse the City for those TASP fee credits through the payment of the Piper Montague Infrastructure Fee Payment (PMIP), when building permits are issued, as a surcharge to the TASP fee. In the event the developers do not pay the PMIP fees within seven years of the completion date of the improvements, then the City may levy assessments or collect Mello-Roos special taxes from the applicable properties for the applicable share of the improvements. The cost of the shared infrastructure improvements and storm water facilities project is estimated to total \$9.8 million. If a developer's TASP fee credits resulting from the installation of the shared infrastructure exceed its aggregate TASP Fee obligations, the developer is not entitled to a cash payment from the City, but they may be entitled to a credit against other development fees.

The developers have completed the shared infrastructure of \$8,838,972 as of June 30, 2022. The balance due from the two developers was \$614,491 as of June 30, 2022.

D. *Milpitas Station (San Jose) Venture, LLLP*

In June 2014, the City entered into a Fee Credit Agreement with Milpitas Station (San Jose) Venture, LLLP, which requires the developer to pay TASP fees of \$9,932,643 to defray all or a portion of the improvements and facilities costs associated with the Milpitas Station Project. Under the terms of the agreement, the developer will be entitled to reimbursements totaling \$1,500,000 for construction costs for roadway improvements, pole relocation improvements, and railroad crossing improvements and a park land fee credit totaling \$4,244,486 for the park land dedication to be applied against projected TASP fees. During the year ended June 30, 2022, there is no reimbursements were issued, and total reimbursements of \$5,744,486 have been issued to date.

E. *Anton Milpitas 730 LLC and 750 LLC*

In April 2018, the City entered into a Fee Reimbursement Agreement with Anton Milpitas 750 LLC and Anton Milpitas 730 LLC, which requires the developer to pay TASP fees of \$19,351,735 to defray all or a portion of the improvements and facilities costs associated with the 730 E. Capitol and 750 E. Capitol apartment complexes. Under the terms of the agreement, the developer will be entitled to reimbursements totaling \$8,910,221 for construction costs for parking and a variety of site improvements, including a public park. During the year ended June 30, 2022, the City issued park improvement credits in the amount of \$1,310,498, and a total fee credits of \$7,220,719 have been issued to date.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 7 – DEVELOPMENT AND TAX SHARING AGREEMENTS (Continued)

F. LMC Milpitas Holdings I, LLC and Lennar Homes of California

In July 2017, the City entered into a Fee Reimbursement Agreement with LMC Milpitas Holdings I LLC and Lennar Homes of California, which requires the developer to pay TASP fees of \$16,029,909 to defray all or a portion of the costs of public parks and public recycled water system. Under the terms of the agreement, the developer will be entitled to reimbursements totaling \$4,689,574 for construction and design costs for Montague Expressway and East Penitencia Creek. During the year ended June 30, 2022, no reimbursements were issued, and total reimbursements of \$3,720,718 have been issued to date.

NOTE 8 – CAPITAL ASSETS

All capital assets are valued at historical cost or estimated historical cost if actual historical cost is not available, except for intangible right to use lease assets, the measurement of which is discussed in **Note 10** below. Contributed capital assets are valued at their estimated acquisition value on the date contributed. The City's policy is to capitalize all assets with costs exceeding certain minimum thresholds and with useful lives exceeding two years.

The City has recorded all its public domain (infrastructure) capital assets, which include landscape, storm, street, and traffic systems.

All capital assets with limited useful lives and the right to use leased assets are required to be depreciated over their estimated useful lives. The purpose of depreciation is to spread the cost of capital assets equitably among all users over the life of these assets. The amount charged to depreciation expense each year represents that year's pro rata share of the cost of capital assets. Depreciation of all capital assets is charged as an expense against operations each year and the total amount of depreciation taken over the years is reported on the statement of net position as a reduction in the book value of capital assets.

Depreciation is provided using the straight line method which means the cost of the asset is divided by its expected useful life in years and the result is charged to expense each year until the asset is fully depreciated. The general capitalization threshold is \$5,000. The City has assigned the useful lives below to capital assets:

	Useful Lives Years
Buildings and improvements	30
Other improvements	20
Machinery and equipment	10
Landscape system	50
Storm system	15-25
Street system	25
Traffic system	20
Water system	30-61
Sewer system	50
Capacity rights	32

Terrace Gardens, Inc. has assigned the following useful lives to its capital assets: Buildings, 50 years; Building improvements, 10-50 years; and Equipment, 5-7 years.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 8 – CAPITAL ASSETS (Continued)

Major outlays for capital assets and improvements are capitalized as projects are constructed. Interest incurred during the construction phase is reflected in the capitalized value of the asset constructed, net of interest earned on the invested proceeds over the same period.

A. Governmental Capital Asset Additions, Retirements and Balances

	Balance at June 30, 2021	Additions	Retirements	Transfers	Balance at June 30, 2022
Capital assets not being depreciated:					
Land	\$84,829,602				\$84,829,602
Construction in progress	74,814,974	\$22,725,740		(\$3,150,411)	94,390,303
Total capital assets not being depreciated	159,644,576	22,725,740		(3,150,411)	179,219,905
Capital assets being depreciated:					
Buildings and improvements	173,371,133				173,371,133
Other improvements	30,834,112			3,150,411	33,984,523
Machinery and equipment	48,732,289	977,834	(\$590,665)		49,119,458
Landscape system	30,075,716	39,505			30,115,221
Storm system	74,477,062				74,477,062
Street system	302,388,719	11,381,995			313,770,714
Traffic system	20,215,410	91,304			20,306,714
Total capital assets being depreciated	680,094,441	12,490,638	(590,665)	3,150,411	695,144,825
Less accumulated depreciation for:					
Buildings and improvements	(93,384,548)	(5,468,249)			(98,852,797)
Other improvements	(23,667,053)	(874,775)			(24,541,828)
Machinery and equipment	(36,629,018)	(1,644,234)	548,186		(37,725,066)
Landscape system	(16,478,280)	(602,762)			(17,081,042)
Storm system	(72,973,569)	(218,072)			(73,191,641)
Street system	(216,431,638)	(5,682,022)			(222,113,660)
Traffic system	(16,146,520)	(494,718)			(16,641,238)
Total accumulated depreciation	(475,710,626)	(14,984,832)	548,186		(490,147,272)
Net capital assets being depreciated	204,383,815	(2,494,194)	(42,479)	3,150,411	204,997,553
Governmental activities capital assets, net	\$364,028,391	\$20,231,546	(\$42,479)		\$384,217,458

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 8 – CAPITAL ASSETS (Continued)

Governmental activities construction in progress comprised the following at June 30, 2022:

Project	Total Budget	Actual Costs	Unexpended Budget
Alviso Adobe Renovation	\$8,159,272	\$7,955,783	\$203,489
McCandless Park	12,154,820	8,393,326	3,761,494
Sports Fields Turf Rehabilitation Program	251,000	142,461	108,539
Sandalwood Park Renovation	475,000	239,347	235,653
Sports Center Skate Park	6,325,000	5,828,083	496,917
Minor Sports Courts Rehabilitation	560,000	392,332	167,668
McCarthy Blvd Landscape	1,032,256	537,614	494,642
Fire Station Improvements	1,550,000	945,625	604,375
City Building Improvement	3,315,000	2,815,269	499,731
Sinclair LMD Improvements	260,750	110,552	150,198
City Building, Exterior Painting	600,000	165,092	434,908
PD Communications	3,155,000	2,917,600	237,400
Replacement Fire Station Alert System	393,000	344,420	48,580
City Building Roofing	900,000	251,377	648,623
Police Records Management	1,599,721	502,874	1,096,847
Citywide Park Playground	2,053,497	1,716,210	337,287
Annual Sidewalk, Curb & Gutter Repair	2,176,840	1,786,225	390,615
Technology Projects	1,800,000	1,303,319	496,681
Midtown Street Light	300,000	264,037	35,963
2017-19 Finance System Upgrade	1,250,000	995,842	254,158
Annual Tree Replacement Program	419,000	321,966	97,034
Fire Station #2 Replacement	15,820,000	11,192,603	4,627,397
Fire Stations Security	200,000		200,000
Facilities Water Fixtures Retrofit Project	670,000	670,000	
Community and Senior Center Energy Resilience Project	5,107,597	3,798,678	1,308,919
Storm Drain System Rehabilitation	1,190,000	937,924	252,076
Dempsey Road Storm Drain	1,660,000	230,962	1,429,038
Bart Project-Storm Improvement	33,000		33,000
Trash Removal Devices	500,000	487,188	12,812
Flap Gate Replacement	100,000	28,899	71,101
Storm Drain System Rehab 17-19	1,058,410	802,572	255,838
Storm Supervisory Control & Data Acquisition	2,416,590	1,020,000	1,396,590
Light Rail Median Landscaping	5,996,000	3,946,346	2,049,654
Second SCVWD Water Reservoir & Pump Station	200,000	825	199,175
Lower Penitencia Creek	1,825,000	352,184	1,472,816
Montague Pedestrian Overcrossing at Piper Drive	8,750,000	7,844,931	905,069
SCVWD Second Water Supply Turnout #2	100,000	643	99,357
Transit Area Police Substation	310,000		310,000
(Rmb) TASP Linear Trails	3,270,000	499,261	2,770,739
(Rmb) Trade Zone/Montague Park - North	3,100,000	1,122,237	1,977,763
S. Milpitas Blvd. Veh. Bridge at Penitencia	5,700,000	430,329	5,269,671
Montague Ped. Overcrossing at Penitencia	1,010,000	560,940	449,060
(Rmb) TASP Recycled Water Distribution	200,391		200,391
SCVWD Zone 1 Pressure Red. Valve	100,000		100,000
Trade Zone/Montague Park - Central	600,000	23,519	576,481
Total construction in progress	<u>\$131,158,052</u>	<u>\$94,390,303</u>	<u>\$36,767,749</u>

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 8 – CAPITAL ASSETS (Continued)

B. Business-Type Capital Asset Additions, Retirements and Balances

	Balance at June 30, 2021	Additions	Retirements	Balance at June 30, 2022
Capital assets not being depreciated:				
Land	\$1,133,079			\$1,133,079
Construction in progress	18,838,905	\$9,759,213	(\$137,725)	28,460,393
Total capital assets not being depreciated	19,971,984	9,759,213	(137,725)	29,593,472
Capital assets being depreciated:				
Distribution facilities	81,197,041			81,197,041
Water Service lines	17,067,611			17,067,611
Sewer lines	87,500,145			87,500,145
Capacity rights	102,703,605	12,516,041		115,219,646
Total capital assets being depreciated	288,468,402	12,516,041		300,984,443
Less accumulated depreciation for:				
Distribution facilities	(55,054,668)	(1,192,283)		(56,246,951)
Water Service lines	(7,589,151)	(369,778)		(7,958,929)
Sewer lines	(52,348,585)	(1,420,580)		(53,769,165)
Capacity rights	(30,683,369)	(3,379,284)		(34,062,653)
Total accumulated depreciation	(145,675,773)	(6,361,925)		(152,037,698)
Net capital assets being depreciated	142,792,629	6,154,116	(137,725)	148,946,745
Business-type activities capital assets, net	\$162,764,613	\$15,913,329	(\$137,725)	\$178,540,217

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 8 – CAPITAL ASSETS (Continued)

Business-type activities construction in progress comprised the following at June 30, 2022:

Project	Total Budget	Actual Costs	Unexpended Budget
Sanitary Sewer Condition Assessment Program	\$283,472	\$265,527	\$17,945
BART Project-Sewer Improvement	243,323	229,730	13,593
Sewer Pump Station Rehabilitation Program	352,000	286,330	65,670
Minor Sewer Projects	163,000	89,335	73,665
Sanitary Supervisory Control & Data	316,600	116,250	200,350
Main Lift Station Odor Emissions Control	2,450,000	948,069	1,501,931
Sanitary Sewer Cathodic Protection Improvement	2,625,000	410,134	2,214,866
Well Upgrade Program	13,975,000	6,282,842	7,692,158
Water System Seismic Improvement	4,887,951	973,862	3,914,089
Hydrant Replacement	476,360	439,218	37,142
Abel St Pipeline Extension	940,000	44,777	895,223
Dempsey Road Water Line	7,857,772	1,240,321	6,617,451
Automated Water Meter	14,047,700	11,975,290	2,072,410
BART Project-Water Improvements	2,503,920	1,820,243	683,677
Supervisory Control & Data	6,516,600	2,772,651	3,743,949
Minor Water Projects	950,000	414,472	535,528
Water Leak Detection	631,474	151,342	480,132
	<u>\$59,220,172</u>	<u>\$28,460,393</u>	<u>\$30,759,779</u>

C. Terrace Gardens, Inc.'s Capital Assets

The following is a summary of Terrace Gardens Inc.'s changes in capital assets for the fiscal year ended December 31, 2021:

	Balance December 31, 2020	Additions	Balance December 31, 2021
Capital assets not being depreciated:			
Land	\$1,565,277		\$1,565,277
Total capital assets not being depreciated	<u>1,565,277</u>		<u>1,565,277</u>
Capital assets being depreciated:			
Buildings	12,107,935		12,107,935
Furniture	381,201	\$59,888	441,089
Office equipment	65,096	7,120	72,216
Improvements	2,742,284	60,844	2,803,128
Total capital assets being depreciated	<u>15,296,516</u>	<u>127,852</u>	<u>15,424,368</u>
Less accumulated depreciation	<u>(9,651,514)</u>	<u>(379,078)</u>	<u>(10,030,592)</u>
Net capital assets being depreciated	<u>5,645,002</u>	<u>(251,226)</u>	<u>5,393,776</u>
Total capital assets, net	<u>\$7,210,279</u>	<u>(\$251,226)</u>	<u>\$6,959,053</u>

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 8 – CAPITAL ASSETS (Continued)

D. Depreciation Allocation

Depreciation expense is charged to functions and programs based on their usage of the related assets. The amounts allocated to each function or program are as follows:

<i>Governmental Activities:</i>	
General Government	\$2,314,600
Public Works	7,435,745
Engineering	2,418,583
Recreation and Community Services	1,253,969
Police	80,908
Fire	290,095
Internal Service Fund	1,190,932
Total Governmental Activities	\$14,984,832
 <i>Business-Type Activities:</i>	
Water Utility	\$1,562,061
Sewer Utility	4,799,864
Total Business-Type Activities	\$6,361,925
 <i>Discretely Presented Component Unit:</i>	
Terrace Gardens, Inc.	\$379,078

E. Sewer Treatment Capacity Rights

The City has a contract with the San Jose/Santa Clara Wastewater Treatment Plant, known as the Regional Wastewater Facility (RWF), which gives Milpitas and other tributary agencies rights to a percentage of the capacity of their sewage treatment facilities. The contract terminates in 2031 and requires the City to pay its share of operations, capital expenses and debt service on the treatment plant. The City also pays capital costs based on allocated flow capacity rights of 14.25 million gallons per day or about 8.53% of the total plant capacity, 167 million gallons per day. The City has capitalized its share in the amount of \$115,219,645. The operation and maintenance costs are calculated based upon actual sewage flow and strengths. In fiscal year 2022, the City's operation and maintenance share was approximately 5.458% of the total RWF operations.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 9 – LONG-TERM DEBT

The City generally incurs long-term debt to finance projects or purchase assets which will have useful lives equal to or greater than the related debt.

A. Current Year Transactions and Balances

The City's debt issues and transactions are summarized below and discussed in detail thereafter.

	Original Issue Amount	Balance June 30, 2021	Retirements	Balance June 30, 2022	Current Portion
Governmental Activities Debt - Direct Borrowing:					
2020 General Fund Lease Revenue Bonds					
4.0%, due June 1, 2041	\$18,445,000	\$18,445,000	\$275,000	\$18,170,000	\$470,000
Plus: Unamortized bond premium		3,473,516	173,675	3,299,841	
	<u>\$18,445,000</u>	<u>\$21,918,516</u>	<u>\$448,675</u>	<u>\$21,469,841</u>	<u>\$470,000</u>
 Business-type Activities Debt					
Wastewater Revenue Refunding Bonds, 2017 Series					
2.0% - 5.0%, due November 1, 2026	\$4,725,000	\$3,310,000	\$495,000	\$2,815,000	\$515,000
Plus: Unamortized bond premium		425,135	70,856	354,279	
Wastewater Revenue Bonds, 2019 Series					
4.0% - 5.0%, due November 1, 2049	29,840,000	29,395,000	485,000	28,910,000	505,000
Plus: Unamortized bond premium		5,129,099	183,182	4,945,917	
Water Revenue Bonds, 2019 Series					
4.0% - 5.0%, due June 1, 2049	17,210,000	16,765,000	300,000	16,465,000	315,000
Plus: Unamortized bond premium		2,857,990	102,071	2,755,919	
Total Business-Type Activities	<u>\$51,775,000</u>	<u>\$57,882,224</u>	<u>\$1,636,109</u>	<u>\$56,246,115</u>	<u>\$1,335,000</u>

B. 2020 General Fund Lease Revenue Bonds

On November 10, 2020, the Milpitas Municipal Financing Authority issued the 2020 Lease Revenue Bonds (Capital Projects) in the original principal amount of \$18,445,000 to provide funds to finance a portion of the Fire Station No. 2 Replacement project and variety of energy improvement projects. The Bonds bear interest rates of 4.0 %. Interest is payable every June 1 and December 1 beginning on June 1, 2021. Principal on the bonds will be payable on June 1 beginning on June 1, 2022 through 2037, followed by a term bond which will be due June 1, 2041. The Bonds were structured with a par optional redemption date of June 1, 2030. Bonds maturing on June 1, 2041 are subject to mandatory redemption.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 9 – LONG-TERM DEBT (Continued)

C. Wastewater Revenue Refunding Bonds, Series 2017

On December 4, 2017, the City issued Wastewater Revenue Refunding Bonds, Series 2017, in the original principal amount of \$4,725,000 to provide funds to prepay an Installment Sale Agreement between the City and the Milpitas Public Financing Authority, thereby defeasing and prepaying all of the Certificates of Participation 2006 Series A and to pay the cost of issuing the 2017 Bonds. The 2006 COPs were called in January 2018. Principal on the 2017 Bonds is payable annually and interest is payable semi-annually through 2027. The 2017 Bonds contain a provision that in an event of default, the Trustee may declare the principal of the bonds, together with all accrued interest at the date of default, immediately due and payable, or exercise any and all rights and remedies available to it under applicable law, including the right to enforce from the City all payments due on the 2017 Bonds, and the City will pay all reasonable fees and expenses incurred by the Trustee and those of its attorneys.

The 2017 Bonds are pledged by net revenues from the City's Sewer System.

D. Wastewater Revenue Bonds, Series 2019

On October 22, 2019, the Milpitas Municipal Financing Authority issued Wastewater Revenue Bonds, Series 2019, in the original principal amount of \$29,840,000 to provide funds for certain improvements to the City's wastewater system. The Bonds bear interest rates of 4.0% to 5.0%. Interest is payable every May 1 and November 1 beginning on May 1, 2020. Principal on the bonds will be payable on November 1 beginning on November 1, 2020 through 2039, followed by a term bond which will be due on November 1, 2049. The Bonds were structured with a par optional redemption date of May 1, 2029. Bonds maturing on May 1, 2049 are subject to mandatory redemption. The Bonds contain a provision that in an event of default, the Trustee may declare the principal of the bonds, together with all accrued interest at the date of default, immediately due and payable, or exercise any and all rights and remedies available to it under applicable law, including the right to enforce from the City all payments due on the Bonds, and the City will pay all reasonable fees and expenses incurred by the Trustee and those of its attorneys.

The 2019 Bonds are pledged by net revenues from the City's Wastewater System and are on parity with the 2017 Bonds. For the fiscal year 2022, net revenues amounted to \$12,219,359 which represented coverage of 5.02 over the \$2,435,875 debt service of both bond issues.

E. Water Revenue Bonds, Series 2019

On October 24, 2019, the Milpitas Municipal Financing Authority issued Water Revenue Bonds, Series 2019, in the original principal amount of \$17,210,000 to provide funds to the City for certain improvements to the City's water system. The Bonds bear interest of 4.0% to 5.0% and interest is payable every June 1 and December 1 beginning on June 1, 2020. Principal on the bonds will be payable on June 1 beginning on June 1, 2020 through 2039, followed by term bonds that are due June 1, 2044 and June 1, 2049 respectively. The Bonds were structured with a par optional redemption date of June 1, 2029. Bonds maturing on June 1, 2044 and June 1, 2049 are subject to mandatory redemption.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 9 – LONG-TERM DEBT (Continued)

The Bonds contain a provision that in an event of default, the Trustee may declare the principal of the bonds, together with all accrued interest at the date of default, immediately due and payable, or exercise any and all rights and remedies available to it under applicable law, including the right to enforce from the City all payments due on the Bonds, and the City will pay all reasonable fees and expenses incurred by the Trustee and those of its attorneys.

The Bonds are collateralized by net revenues from the City's Water System. For the fiscal year 2022, net revenues amounted to \$8,139,618 which represented coverage of 7.80 over the \$1,044,050 debt service.

F. Debt Service Requirements

Annual debt service requirements are shown below:

Year Ending June 30	Governmental Activities		Business-Type Activities	
	Revenue Bonds		Revenue Bonds	
	Total Principal	Total Interest	Total Principal	Total Interest
2023	\$470,000	\$726,800	\$1,335,000	\$2,143,325
2024	520,000	708,000	1,395,000	2,081,400
2025	570,000	687,200	1,460,000	2,013,650
2026	625,000	664,400	1,530,000	1,939,275
2027	735,000	639,400	1,605,000	1,861,400
2028-2032	4,515,000	2,703,400	5,755,000	8,422,625
2033-2037	5,495,000	1,725,200	7,340,000	6,808,250
2038-2042	5,240,000	534,000	9,330,000	4,796,350
2043-2047			11,460,000	2,664,100
2048-2050			6,980,000	424,800
	<u>18,170,000</u>	<u>\$8,388,400</u>	<u>48,190,000</u>	<u>\$33,155,175</u>
Plus: Unamortized bond premium	<u>3,299,841</u>		<u>8,056,115</u>	
	<u>\$21,469,841</u>		<u>\$56,246,115</u>	

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 10 – LEASES

A. Policies

A lease is defined as a contract that conveys control of the right to use another entity's nonfinancial asset (the underlying asset) as specified in the contract for a period of time in an exchange or exchange-like transaction. Examples of nonfinancial assets include buildings, land, vehicles, and equipment. The City recognizes lease receivable or liabilities with an initial, individual value of \$500,000 or more for all funds, except for Capital Project Funds which the threshold is set lower at \$300,000, based on the future lease payments remaining at the start of the lease.

Lessor

The City is a lessor for noncancellable leases of buildings and facilities. The City recognizes a lease receivable and a deferred inflow of resources in the government-wide and fund financial statements.

At the commencement of a lease, the City initially measures the lease receivable at the present value of payments expected to be received during the lease term. Subsequently, the lease receivable is reduced by the principal portion of lease payments received. The deferred inflow of resources is initially measured as the initial amount of the lease receivable, adjusted for lease payments received at or before the lease commencement date. Subsequently, the deferred inflow of resources is recognized as revenue over the life of the lease term.

Key estimates and judgments include how the City determines (1) the discount rate it uses to discount the expected lease receipts to present value, (2) lease term, and (3) lease receipts as follows:

- The City uses bond interest rate as the discount rate for leases.
- The lease term includes the noncancellable period of the lease.
- Lease receipts included in the measurement of the lease receivable is composed of fixed payments from the lessee.

The City monitors changes in circumstances that would require a remeasurement of its lease, and will remeasure the lease receivable and deferred inflows of resources if certain changes occur that are expected to significantly affect the amount of the lease receivable.

Lessee

The City is a lessee for miscellaneous leases. If the lease is over the threshold, the City will recognize a lease liability and an intangible right-to-use lease asset (lease asset) in the government-wide financial statements.

At the commencement of a lease, City initially measures the lease liability at the present value of payments expected to be made during the lease term. Subsequently, the lease liability is reduced by the principal portion of lease payments made. The lease asset is initially measured as the initial amount of the lease liability, adjusted for lease payments made at or before the lease commencement date, plus certain initial direct costs. Subsequently, the lease asset is amortized on a straight-line basis over its useful life.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 10 – LEASES (Continued)

Key estimates and judgments related to leases include how City determines (1) the discount rate it uses to discount the expected lease payments to present value, (2) lease term, and (3) lease payments as follows:

- The City uses the interest rate charged by the lessor as the discount rate. When the interest rate charged by the lessor is not provided, City generally uses bond interest rate as the discount rate for leases.
- The lease term includes the noncancellable period of the lease.
- Lease payments included in the measurement of the lease liability are composed of fixed payments and purchase option price that City is reasonably certain to exercise.

The City monitors changes in circumstances that would require a remeasurement of its lease and will remeasure the lease asset and liability if certain changes occur that are expected to significantly affect the amount of the lease liability.

Lease assets are reported with other capital assets and lease liabilities are reported with long-term debt on the Statement of Net Position.

As of June 30, 2022, the City has no leases over the threshold subject to GASB 87 as a lessee.

B. Leases Receivable (City as Lessor)

The summary for the leases details and balances related to leases receivable and deferred inflows of resources recorded in the General Fund as of June 30, 2022 were:

Lessee	Property Location	Original Lease Date	Original Term (Years)	Extension (Years)	Expiration Date Including Options	Monthly Revenue as of June 30, 2022	Lease Receivable Balance at June 30, 2022	Deferred Inflow of Resources at June 30, 2022
Capital Telecom Acquisition LLC	Fire Station No. 1 Grounds, 777 So. Main Street, Milpitas, CA 95035	6/6/2012	15	25	6/6/2052	\$1,975	\$857,239	\$835,559
American Tower	HWY680 on CALAVERAS	2/1/2019	5	20	2/1/2044	2,648	753,902	736,378
Milpitas Auto Properties LLC	Freeway Sign on 950 Thompson	8/17/2010	10	30	8/17/2050	9,463	2,403,742	2,385,086
Clear Channel	Advertising display on the property	7/30/2013	30	30	7/30/2073	14,013	9,358,925	9,123,267
Total						<u>\$28,099</u>	<u>\$13,373,808</u>	<u>\$13,080,290</u>

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 10 – LEASES (Continued)

The future principal and interest lease receivables as of June 30, were as follows:

For the Year Ended June 30	Principal	Interest	Total
2023	\$55,726	\$284,335	\$340,061
2024	63,046	283,077	346,123
2025	70,691	281,660	352,351
2026	78,671	280,077	358,748
2027	86,999	278,321	365,320
2028-2032	572,949	1,358,653	1,931,602
2033-2037	840,746	1,284,098	2,124,844
2038-2042	1,167,924	1,178,003	2,345,927
2043-2047	1,340,561	1,041,233	2,381,794
2048-2052	1,424,429	890,578	2,315,007
2053-2057	1,115,304	761,822	1,877,126
2058-2062	1,500,273	623,523	2,123,796
2063-2067	1,962,597	440,283	2,402,880
2068-2072	2,515,447	203,192	2,718,639
2073-2077	578,445	6,734	585,179
Totals	<u>\$13,373,808</u>	<u>\$9,195,589</u>	<u>\$12,861,777</u>

Fire Station No. 1 grounds

As shown in the summary table, the City leases a part of the Tower Leases Area in 777 South Main Street to Capital Telecom Acquisition LLC. The original lease terms were 15 years with a 25 year extension. As of June 30, 2022, the leases had 30 years remaining. The City recognized \$6,250 in lease revenue and \$16,785 in interest revenue during the current fiscal year related to these leases. Also, the City has deferred inflows of resources associated with these leases that will be recognized as revenue over the lease term.

HWY 680 on CALAVERAS

As shown in the summary table, the City leases a portion of the parcel in 1325 E. Calaveras Blvd. to American Tower. The original lease terms were 5 years with a 20 year extension. As of June 30, 2022, the leases had 22 years remaining. The City recognized \$14,022 in lease revenue and \$14,871 in interest revenue during the current fiscal year related to these leases. Also, the City has deferred inflows of resources associated with these leases that will be recognized as revenue over the lease term.

Freeway Sign on 950 Thompson

As shown in the summary table, the City leases the Piercey Toyota dealership site at 950 Thompson Street to Milpitas Auto Properties LLC. The original lease terms were 10 years with a 30 year extension. As of June 30, 2022, the leases had 28 years remaining. The City recognized \$66,021 in lease revenue and \$47,537 in interest revenue during the current fiscal year related to these leases. Also, the City has deferred inflows of resources associated with these leases that will be recognized as revenue over the lease term.

Advertising display

As shown in the summary table, the City leases parcels for purpose of advertising to be visible from the US interstate 880 to Clear Channel. The original lease terms were 30 years with a 30 year extension. As of June 30, 2022, the leases had 51 years remaining. The City recognized \$125,088 in rental revenue related to these leases. Also, the City has deferred inflows of resources associated with these leases that will be recognized as revenue over the lease term.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 11 – NET POSITION AND FUND BALANCES

Governmental fund balances represent the net current assets of each fund. Net current assets generally represent a fund's cash, receivables and deferred outflows of resources, less its liabilities and deferred inflows of resources. Portions of a fund's balance may be restricted, committed or assigned for future expenditure.

Net Position is measured on the full accrual basis while Fund Balance is measured on the modified accrual basis, as explained in Note 1D.

A. Net Position

Net Position is the excess of all assets and deferred outflows of resources over all liabilities and deferred inflows of resources. Net Position is divided into three captions. These captions apply only to Net Position, which is determined only for proprietary funds and at the Government-wide level, and are described below:

Net Investment in Capital Assets and Capacity Rights, describes the portion of Net Position which is represented by the current net book value of the City's capital assets and capacity rights, less the outstanding balance of any debt issued to finance these assets.

Restricted describes the portion of Net Position which is restricted as to use by the terms and conditions of agreements with outside parties, governmental regulations, laws, or other restrictions which the City cannot unilaterally alter. These principally include developer fees received for use on capital projects and redevelopment funds restricted for community development activities.

Unrestricted describes the portion of Net Position which is not restricted as to use.

B. Fund Balances

Governmental fund balances represent the net current assets of each fund. Net current assets generally represent a fund's cash, receivables and deferred outflows of resources, less its liabilities and deferred inflows of resources.

The City's fund balances are classified based on spending constraints imposed on the use of resources. For programs with multiple funding sources, the City prioritizes and expends funds in the following order: Restricted, Committed, Assigned, and Unassigned. Each category in the following hierarchy is ranked according to the degree of spending constraint:

Nonspendable represents balances set aside to indicate items do not represent available, spendable resources even though they are a component of assets. Assets not expected to be converted to cash, such as prepaids, notes receivable, and property held for resale are included. However, if proceeds realized from the sale or collection of nonspendable assets are restricted, committed or assigned, then nonspendable amounts are required to be presented as a component of the applicable category.

Restricted fund balances have external restrictions imposed by creditors, grantors, contributors, laws, regulations, or enabling legislation which requires the resources to be used only for a specific purpose. Encumbrances and nonspendable amounts subject to restrictions are included along with spendable resources.

Committed fund balances have constraints imposed by resolution of the City Council which may be altered only by formal action of the City Council. Encumbrances and nonspendable amounts subject to council commitments are included along with spendable resources.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 11 – NET POSITION AND FUND BALANCES (Continued)

Assigned fund balances are amounts constrained by the City's intent to be used for a specific purpose, but are neither restricted nor committed. Intent is expressed by the City Council and may be changed at the discretion of the City Council. This category includes: encumbrances; nonspendables, when it is the City's intent to use proceeds or collections for a specific purpose; and residual fund balances, if any, of Special Revenue, Capital Projects and Debt Service Funds which have not been restricted or committed.

Unassigned fund balance represents residual amounts that have not been restricted, committed, or assigned. This includes the residual General Fund balance and residual fund deficits, if any, of other governmental funds.

Detailed classifications of the City's Fund Balances, as of June 30, 2022, are below:

Fund Balance Classifications	General Fund	Major Special	Major Capital Projects		General Government Projects	Other Governmental Funds	Total
		Revenue Fund Housing Authority	Street Improvement Fund	Transit Area Impact Fee Fund			
Nonspendable:							
Loans receivable							
Prepays, materials, supplies and deposits	\$665,851	\$2,123				\$24,597	\$692,571
Property held for resale	4,200,000						4,200,000
Subtotal Nonspendable	4,865,851	2,123				24,597	4,892,571
Restricted for:							
Programs and Maintenance			\$8,291,315			4,424,694	12,716,009
Housing and community development		39,699,787				3,815,126	43,514,913
Law enforcement services						114,368	114,368
Solid waste reduction and services						1,043,767	1,043,767
Assessment district services						2,328,230	2,328,230
Hetch-Hetchy ground lease						1,486,366	1,486,366
Community planning						302,764	302,764
Community benefits						364,546	364,546
Affordable housing						5,105,433	5,105,433
Affordable housing unrestricted						2,544,174	2,544,174
Park improvement projects						8,347,609	8,347,609
Storm drain projects						6,019,699	6,019,699
General government projects					\$2,189,972		2,189,972
Transit area capital projects				\$60,933,021			60,933,021
Subtotal Restricted		39,699,787	8,291,315	60,933,021	2,189,972	35,896,776	147,010,871
Committed to:							
PERS stabilization	5,096,052						5,096,052
Artificial turf replacement	1,670,000						1,670,000
Technology replacement	2,000,000						2,000,000
Facilities replacement	7,000,000						7,000,000
Subtotal Committed	15,766,052						15,766,052
Assigned to:							
Uninsured claims payable	2,348,962						2,348,962
Public art projects						1,066,287	1,066,287
Contracts	2,516,910						2,516,910
General government capital projects					23,383,887		23,383,887
Other assigned	1,248,591						1,248,591
Subtotal Assigned	6,114,463				23,383,887	1,066,287	30,564,637
Unassigned:							
General Fund							
Contingency reserve	18,542,436						18,542,436
Budget stabilization	18,542,436						18,542,436
Future deficit	1,452,576						1,452,576
ERAF reserve	1,181,451						1,181,451
Unassigned	319,035						319,035
Subtotal Unassigned	40,037,934						40,037,934
Total fund balances	\$66,784,300	\$39,701,910	\$8,291,315	\$60,933,021	\$25,573,859	\$36,987,660	\$238,272,065

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 11 – NET POSITION AND FUND BALANCES (Continued)

C. Fund Balance Policies

The City's Fiscal Policies, which are annually approved as part of the adoption of the budget, prescribes the City's fund balance requirements and targets.

- 1) The City will fund the following reserves as follows with any General Fund audited year end operating surplus after the General Fund Contingency Reserve and General Fund Budget Stabilization Reserve requirements are met and pension budgetary surplus are allocated to the PERS Rate Stabilization Reserve:
 - **Part I**
 - Contingency Reserve (Policy Statement #41)
 - General Fund Budget Stabilization Reserve (Policy Statement #42)
 - **Part II (any remaining balance)**
 - If confirmed by actuary, 20% to PERS Rate Stabilization Reserve (Policy Statement #43)
 - If not confirmed by actuary, 0% to PERS Rate Stabilization Reserve (Policy Statement #43);
 - **Part III (any remaining balance)**
 - Artificial Turf Replacement (\$230,000) (Policy Statement #54)
 - **Part IV (any remaining balance)**
 - 20% to the General Government Capital Improvement Fund (Policy Statement #56);
 - 30% to Storm Drain Fund
 - 10% to the Affordable Housing Community Benefit Fund (Fund 216);
 - 10% to Transportation/Transit (Fund 310)
 - 20% to Technology Replacement Fund; and
 - 10% Unassigned
- 2) The City will maintain a Contingency Reserve of at least 16.67% or two months of the annual operating expenditures in the General Fund to be used only in the case of dire need as a result of physical or financial emergencies and disasters as determined by the City Council. The City Council will set the reserve amount annually after the results of the prior fiscal year's Annual Comprehensive Financial Report (ACFR) are known. For the year ended June 30, 2022, the reserve is set at \$18.5 million and classified in the unassigned fund balance.
- 3) The City will maintain a General Fund Budget Stabilization Reserve with a target of 16.67%, or two months, of annual operating expenditures. The purpose of this reserve is to provide budget stability when there are fluctuations that result in lower than projected revenues and or higher than projected expenditures that cannot be rebalanced within existing budget resources in any given fiscal year. This reserve is intended to provide a buffer, or bridge funding, to protect against reducing service levels when these fluctuations occur. This reserve will be funded only after General Fund Contingency Reserve requirements have been met. The City Council will set the reserve amount annually after the results of the prior fiscal year's Annual Comprehensive Financial Report (ACFR) are known. For the year ended June 30, 2022, the reserve is set at \$18.5 million and classified in the unassigned fund balance.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

Item # C9.

NOTE 11 – NET POSITION AND FUND BALANCES (Continued)

- 4) The City will maintain in the Pension Section 115 Internal Service Fund a Public Employees Retirement (PERS) Rate Stabilization Reserve to be funded by 20% of any General Fund or Enterprise Funds annual operating surpluses. The City's actuary has determined that the General Fund portion of the Unfunded Actuarial Liability for the Miscellaneous Retirement Plan is 84.9% and for the Water and Sewer Utility Enterprise Funds portion of the Unfunded Actuarial Liability for the Miscellaneous Retirement Plan is 8.5% and 6.6%, respectively. The General Fund portion of the contribution to the PERS Rate Stabilization Reserve shall only be funded after General Fund Contingency Reserve and the General Fund Budget Stabilization Reserve requirements have been met. The Utility Funds' portion of the contribution to the PERS Rate Stabilization Reserve shall be consistent with the General Fund contributions and only be funded after the Capital Reserve and Rate Stabilization Reserve (RSR) requirements in the Water and Sewer utility funds have been met. If confirmed by City's actuary that contributions are advised for that respective year, then additionally, 20% of any General Fund or Enterprise Funds annual operating surpluses shall be allocated to the PERS Rate Stabilization Reserve.
- 5) The City will maintain a capital reserve for artificial turf replacement with a target of \$2 million and an annual set-aside amount of at least \$230,000 until the target is reached. This reserve shall be used to accrue funding for the normal depreciation expense of the City's artificial turf fields over their useful life. Eligible uses of this reserve may include the replacement of the City's artificial turf fields so as to eliminate large spikes in capital expenses and normalize annual costs.
- 6) Annually, the City will endeavor to transfer \$300,000 from the General Fund to the Technology Replacement Fund set aside in a reserve with a target of \$5 million. This reserve shall be used to accrue funding for technology projects such as the major rehabilitation or replacement of the City's technology infrastructure or new technology initiatives.
- 7) The City will maintain a capital reserve for Facilities Replacement with a target of \$10 million. This reserve shall be used to accrue funding for major rehabilitation or replacement of City facilities (buildings/structures). Eligible uses of this reserve may include both the direct funding of public facility improvements and the servicing of related debt.
- 8) The City will maintain a Storm Drain replacement reserve to replace and repair storm drain pump stations. The City will endeavor to transfer \$500,000 annually from the General Fund to the Storm Drain Fund for this purpose.
- 9) The City will maintain a General Liability and Workers' Compensation Claims Reserve of \$2 million in the General Fund, which will be reviewed for adjustments annually.
- 10) Other reserves designated in the General Fund for investment portfolio market gain and uninsured claims payable will be calculated adjusted annually at appropriate levels.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 11 – NET POSITION AND FUND BALANCES (Continued)

- 11) The City will maintain capital reserves in the Water and Sewer utility enterprise funds to provide for future capital projects and unanticipated emergencies, such as water main break repairs, pump station repairs. The City will attempt to maintain a capital reserve of approximately 30% of the annual operating and maintenance expenses for the Water utility fund and 25% of the annual operating and maintenance expenses for the Sewer utility fund. The City Council will set the reserve amounts annually after the results of the prior fiscal year's Annual Comprehensive Financial Report (ACFR) are known. For the year ended June 30, 2022, the capital reserve for the Water Operating Fund is set at \$8.0 million and for the Sewer Operating Fund at \$3.1 million.
- 12) The City will maintain a Rate Stabilization Reserve (RSR) in the Water and Sewer utility enterprise funds with a goal of at least 16.67% or two months of the respective annual operating expenditures after the Capital Reserve requirements have been met. The RSR shall be used to mitigate the effects of occasional shortfalls in revenue or unanticipated expenditures that cannot be re-balanced within existing budgeted resources in any given fiscal year. Revenue shortfalls may result from a number of events such as weather factors (wet weather or drought events and natural disasters), increased water conservation, and poor regional economic conditions. The Rate Stabilization Reserves should be used to assist in smoothing out revenue variability resulting from these factors and ensure that adequate resources are available during such times that might otherwise require large rate increases to utility customers. The City Council will set the reserve amounts annually after the results of the prior fiscal year's Annual Comprehensive Financial Report (ACFR) are known. The RSR funding will be phased within five years, or sooner, as part of the fiscal year end closing process. Thereafter, the replenishment of these reserves may also be incorporated into the annual Adopted Operating Budget if resources are available to replenish the reserves.
- 13) The City will maintain \$2 million infrastructure replacement funds in both the Water and Sewer Utility Enterprise Funds. The goal is to accumulate at least \$2 million a year from each utility fund to set-aside for replacement of infrastructure as the infrastructure reaches the end of its useful life.
- 14) The City will maintain a capital reserve in the Equipment Management Internal Service Fund to enable the timely replacement of vehicles and depreciable equipment as cost. The City will maintain a minimum fund balance of at least 30% of the replacement costs for equipment accounted for in this fund.

D. Net Investment In Capital Assets

The balances related to Net Investment in Capital Assets are comprised of the following as of June 30, 2022:

	Governmental Activities	Business-Type Activities	Total
Capital Asset, Net of Accumulated Depreciation	\$384,217,458	\$178,540,217	\$562,757,675
Less Capital Debt	(21,469,841)	(56,246,115)	(77,715,956)
Plus Unspent Bond Proceeds	2,261,425	4,909,668	7,171,093
	<u>\$365,009,042</u>	<u>\$127,203,770</u>	<u>\$492,212,812</u>

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 11 – NET POSITION AND FUND BALANCES (Continued)

F. Restatement

The City implemented the provisions of Governmental Accounting Standards Board Statement No. 87 – Leases during the year ended June 30, 2022. As a result, the City restated and increased beginning balances of General Fund leases receivable and deferred inflows of resources by \$13,405,519 as of July 1, 2021. The net effect on General Fund beginning fund balance was zero. See the Leases disclosure in Note 10.

NOTE 12 – PENSION PLANS

A. General Information

Plan Descriptions – All qualified permanent and probationary employees are eligible to participate in the City’s separate Safety (police and fire) and Miscellaneous (all other) Plans, agent multiple-employer defined benefit pension plans administered by the California Public Employees’ Retirement System (CalPERS), which acts as a common investment and administrative agent for its participating member employers. Benefit provisions under the Plans are established by State statute and City resolution. CalPERS issues publicly available reports that include a full description of the pension plans regarding benefit provisions, assumptions and membership information that can be found on the CalPERS website.

Benefits Provided – CalPERS provides service retirement and disability benefits, annual cost of living adjustments and death benefits to plan members, who must be public employees and beneficiaries. Benefits are based on years of credited service, equal to one year of full time employment. Members with five years of total service are eligible to retire at age 50 with statutorily reduced benefits. All members are eligible for non-duty disability benefits after 10 years of service. The death benefit is one of the following: the Basic Death Benefit, the 1957 Survivor Benefit, or the Optional Settlement 2W Death Benefit. The cost of living adjustments for each plan are applied as specified by the Public Employees’ Retirement Law.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 12 – PENSION PLANS (Continued)

The Plans' provisions and benefits in effect at June 30, 2022, are summarized as follows:

	Miscellaneous		
	Classic Tier I	Classic Tier II	PEPRA
	Prior to October 9, 2011	After October 9, 2011	On or after January 1, 2013
Hire date			
Benefit formula	2.7% @ 55	2.0% @ 60	2.0% @ 62
Benefit vesting schedule	5 years service	5 years service	5 years service
Benefit payments	monthly for life	monthly for life	monthly for life
Retirement age	50 - 55	50 - 67	52 - 67
Monthly benefits, as a % of eligible compensation	2.0% - 2.7%	1.092% - 2.418%	1.0% - 2.5%
Required employee contribution rates	8%	7%	6.25%
Required employer contribution rates	10.290%	10.290%	10.290%
Required Unfunded Actuarial Liability Contribution	\$7,079,203		

	Safety		
	Classic Tier I	Classic Tier II	PEPRA
	Prior to April 8, 2012	After April 8, 2012	On or after January 1, 2013
Hire date			
Benefit formula	3% @ 50	3% @ 55	2.7% @ 57
Benefit vesting schedule	5 years service	5 years service	5 years service
Benefit payments	monthly for life	monthly for life	monthly for life
Retirement age	50	50 - 55	50 - 57
Monthly benefits, as a % of eligible compensation	3%	2.4% - 3%	2.0% - 2.7%
Required employee contribution rates	9%	9%	11%
Required employer contribution rates	19.750%	19.750%	19.750%
Required Unfunded Actuarial Liability Contribution	\$9,505,147		

Beginning in fiscal year 2016, CalPERS collects employer contributions for the Plan as a percentage of payroll for the normal cost portion as noted in the rates above and as a dollar amount for contributions toward the unfunded liability (UAL). The dollar amounts are billed on a monthly basis or the City can elect a lump sum payment option. The City's required contributions for the unfunded liability in the Miscellaneous and Safety Plans for the year ended June 30, 2022 were \$7,079,203 and \$9,505,147, respectively, which were made under the lump sum payment option.

Employees Covered – The following employees were covered by the benefit terms for each Plan as of the most recent actuarial valuation date of June 30, 2020 and measurement date of June 30, 2021:

	Miscellaneous			Safety		
	Classic Tier I	Classic Tier II	PEPRA Tier	Classic Tier I	Classic Tier II	PEPRA Tier
Inactive employees or beneficiaries currently receiving benefits	404			248		
Inactive employees entitled to but not yet receiving benefits	355			28		
Active employees	112	11	109	97	7	56
Total	871	11	109	373	7	56

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 12 – PENSION PLANS (Continued)

Contributions – Section 20814(c) of the California Public Employees’ Retirement Law requires that the employer contribution rates for all public employers be determined on an annual basis by the actuary and shall be effective on the July 1 following notice of a change in the rate. Funding contributions for both Plans are determined annually on an actuarial basis as of June 30 by CalPERS. The actuarially determined rate is the estimated amount necessary to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. The City is required to contribute the difference between the actuarially determined rate and the contribution rate of employees.

In May 2021, the City established a Section 115 irrevocable trust to set aside funds to meet the City’s future pension contributions or unfunded liabilities. The Trust is owned and monitored by the City but externally managed by investment professionals. In June 2021, the City transferred \$35.4 million to the Trust, and as of June 30, 2022, the City reported the account balance of the trust of \$30,537,346. This amount has been reported as cash and investments in the Pension Section 115 Internal Service Fund.

B. Net Pension Liability

The City’s net pension liability for each Plan is measured as the total pension liability, less the pension plan’s fiduciary net position. The net pension liability of each Plan is measured as of June 30, 2021, using an annual actuarial valuation as of June 30, 2020 rolled forward to June 30, 2021 using standard update procedures. A summary of principal assumptions and methods used to determine the net pension liability is shown below.

Actuarial Assumptions – The total pension liabilities as of the June 30, 2021 measurement date were determined using the following actuarial assumptions:

	Miscellaneous (1)	Safety (1)
Valuation Date	June 30, 2020	June 30, 2020
Measurement Date	June 30, 2021	June 30, 2021
Actuarial Cost Method	Entry-Age Normal Cost Method	Entry-Age Normal Cost Method
Actuarial Assumptions:		
Discount Rate	7.15%	7.15%
Inflation	2.50%	2.50%
Payroll Growth	2.75%	2.75%
Projected Salary Increase	(2)	(2)
Investment Rate of Return	7.15% (3)	7.15% (3)
Mortality	Derived using CalPERS Membership Data for all Funds (4)	Derived using CalPERS Membership Data for all Funds (4)
Post Retirement Benefit Increase	The lesser of contract COLA or 2.50% until Purchasing Power Protection Allowance Floor on Purchasing Power applies, 2.50% thereafter	The lesser of contract COLA or 2.50% until Purchasing Power Protection Allowance Floor on Purchasing Power applies, 2.50% thereafter

(1) Actuarial assumptions are the same for all benefit tiers (Classic Tier I, Classic Tier II, and PEPRA)

(2) Depending on age, service and type of employment

(3) Net of pension plan investment expenses, including inflation

(4) The mortality table used was developed based on CalPERS’ specific data. The probabilities of mortality are based on the 2017 CalPERS Experience Study for the period from 1997 to 2015. Pre-retirement and post-retirement mortality rates include 15 years of projected mortality improvement using 90% of Scale MP-2016 published by the Society of Actuaries. For more details on this table, please refer to the CalPERS Experience Study and Review of Actuarial Assumptions report from December 2017 that can be found on the CalPERS website.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 12 – PENSION PLANS (Continued)

The underlying mortality assumptions and all other actuarial assumptions used in the June 30, 2020 valuation were based on the results of a December 2017 actuarial experience study for the period 1997 to 2015. Further details of the Experience Study can be found on the CalPERS website at www.calpers.ca.gov.

Discount Rate – The discount rate used to measure the total pension liability for each Plan was 7.15%. The projection of cash flows used to determine the discount rate for each Plan assumed that contributions from all plan members in the Public Employees Retirement Fund (PERF) will be made at the current member contribution rates and that contributions from employers will be made at statutorily required rates, actuarially determined. Based on those assumptions, each Plan’s fiduciary net position was projected to be available to make all projected future benefit payments of current plan members for all plans in the PERF. Therefore, the long-term expected rate of return on plan investments was applied to all periods of projected benefit payments to determine the total pension liability for each Plan.

The long-term expected rate of return on pension plan investments was determined using a building-block method in which expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class.

In determining the long-term expected rate of return, CalPERS took into account both short-term and long-term market return expectations as well as the expected pension fund cash flows. Using historical returns of all the funds’ asset classes, expected compound (geometric) returns were calculated over the short-term (first 10 years) and the long-term (11+ years) using a building-block approach. Using the expected nominal returns for both short-term and long-term, the present value of benefits was calculated for each fund. The expected rate of return was set by calculating the rounded single equivalent expected return that arrived at the same present value of benefits for cash flows as the one calculated using both short-term and long-term returns. The expected rate of return was then set equal to the single equivalent rate calculated above and adjusted to account for assumed administrative expenses.

The table below reflects the long-term expected real rates of return by asset class.

Asset Class (a)	Assumed Asset Allocation	Real Return Years 1 - 10(b)	Real Return Years 11+(c)
Public Equity	50.0%	4.80%	5.98%
Fixed Income	28.0%	1.00%	2.62%
Inflation Assets	0.0%	0.77%	1.81%
Private Equity	8.0%	6.30%	7.23%
Real Assets	13.0%	3.75%	4.93%
Liquidity	1.0%	0.00%	-0.92%
Total	100.0%		

(a) In the CalPERS Annual Comprehensive Financial Report, Fixed Income is included in Global Debt Securities; Liquidity is included in Short-Term Investments; Inflation Assets are included in both Global Equity Securities and Global Debt Securities.

(b) An expected inflation of 2.00% used for this period.

(c) An expected inflation of 2.92% used for this period.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 12 – PENSION PLANS (Continued)

C. Changes in the Net Pension Liability

The changes in the Net Pension Liability for each Plan follows:

	Miscellaneous Plan		
	Increase (Decrease)		
	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Liability/(Asset)
Balance at June 30, 2020 (Measurement Date)	\$255,070,236	\$177,436,680	\$77,633,556
Changes in the year:			
Service cost	4,262,309		4,262,309
Interest on the total pension liability	18,046,275		18,046,275
Differences between actual and expected experience	1,466,976		1,466,976
Changes in assumptions			
Changes in benefit terms			
Contribution - employer		8,925,250	(8,925,250)
Contribution - employee		1,998,174	(1,998,174)
Net Plan to Plan Resource Movement			
Net investment income		40,453,566	(40,453,566)
Administrative expenses		(177,248)	177,248
Other Miscellaneous Income/(Expense)			
Benefit payments, including refunds of employee contributions	(12,545,846)	(12,545,846)	
Net changes	11,229,714	38,653,896	(27,424,182)
Balance at June 30, 2021 (Measurement Date)	\$266,299,950	\$216,090,576	\$50,209,374
	Safety Plan		
	Increase (Decrease)		
	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Liability/(Asset)
Balance at June 30, 2020 (Measurement Date)	\$377,384,390	\$241,844,813	\$135,539,577
Changes in the year:			
Service cost	7,266,789		7,266,789
Interest on the total pension liability	26,671,979		26,671,979
Differences between actual and expected experience	2,106,663		2,106,663
Changes in assumptions			
Changes in benefit terms			
Contribution - employer		13,294,083	(13,294,083)
Contribution - employee		2,834,054	(2,834,054)
Net Plan to Plan Resource Movement			
Net investment income		55,066,837	(55,066,837)
Administrative expenses		(241,588)	241,588
Other Miscellaneous Income/(Expense)			
Benefit payments, including refunds of employee contributions	(20,179,552)	(20,179,552)	
Net changes	15,865,879	50,773,834	(34,907,955)
Balance at June 30, 2021 (Measurement Date)	\$393,250,269	\$292,618,647	\$100,631,622
Grand Totals - Both Plans	\$659,550,219	\$508,709,223	\$150,840,996

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 12 – PENSION PLANS (Continued)

Sensitivity of the Net Pension Liability to Changes in the Discount Rate – The following presents the net pension liability of the City for each Plan, calculated using the discount rate for each Plan, as well as what the City's net pension liability would be if it were calculated using a discount rate that is 1-percentage point lower or 1-percentage point higher than the current rate:

	<u>Miscellaneous</u>	<u>Safety</u>
1% Decrease	6.15%	6.15%
Net Pension Liability	\$84,335,623	\$151,936,586
Current Discount Rate	7.15%	7.15%
Net Pension Liability	\$50,209,374	\$100,631,622
1% Increase	8.15%	8.15%
Net Pension Liability	\$21,864,019	\$58,203,655

Pension Plan Fiduciary Net Position – Detailed information about each pension plan's fiduciary net position is available in the separately issued CalPERS financial reports.

D. Pension Expenses and Deferred Outflows/Inflows of Resources Related to Pensions

For the year ended June 30, 2022, the City recognized pension expense of \$3,635,318 for the Miscellaneous Plan and \$6,923,337 for the Safety Plan, for total pension expense of \$10,558,655. At June 30, 2022, the City reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	<u>Miscellaneous Plan</u>	
	<u>Deferred Outflows</u>	<u>Deferred Inflows</u>
	<u>of Resources</u>	<u>of Resources</u>
Pension contributions after the measurement date	\$9,799,723	
Differences between actual and expected experience	1,091,405	
Changes in assumptions		
Net differences between projected and actual earnings		
on plan investments		(\$20,211,386)
Total	<u>\$10,891,128</u>	<u>(\$20,211,386)</u>

General Fund typically has been used in prior years to liquidate pension liabilities.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 12 – PENSION PLANS (Continued)

	Safety Plan	
	Deferred Outflows of Resources	Deferred Inflows of Resources
Pension contributions after the measurement date	\$14,258,505	
Differences between actual and expected experience	3,195,025	
Changes in assumptions		
Net differences between projected and actual earnings on plan investments		(\$27,578,356)
Total	<u>\$17,453,530</u>	<u>(\$27,578,356)</u>
Grand Totals - Both Plans	<u>\$28,344,658</u>	<u>(\$47,789,742)</u>

\$24,058,228 reported as deferred outflows of resources related to contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ended June 30, 2023. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized as pension expense as follows:

Year Ended June 30	Annual Amortization	
	Miscellaneous	Safety
2023	(\$4,274,209)	(\$5,226,650)
2024	(4,435,353)	(5,678,389)
2025	(4,842,383)	(6,083,317)
2026	(5,568,036)	(7,394,975)
	<u>(\$19,119,981)</u>	<u>(\$24,383,331)</u>

E. Public Agency Retirement System

The Omnibus Budget Reconciliation Act of 1990 (OBRA) mandates that public sector employees who are not members of their employer's existing retirement system as of January 1, 1992 be covered by either Social Security or an alternative plan.

The City's part-time, seasonal and temporary employees are covered under the Public Agency Retirement System (PARS), a defined contribution plan, which requires these employees to contribute 6% and the City to contribute 1.5% of the employees pay plus administration costs.

The City's required contributions of \$23,419 and the employee's required contributions of \$93,671 were made during the fiscal year ending June 30, 2022.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 13 – EMPLOYEE BENEFITS

A. *Deferred Compensation Plan*

City employees may defer a portion of their compensation under a City sponsored Deferred Compensation Plan created in accordance with Internal Revenue Code Section 457. Under this Plan, participants are not taxed on the deferred portion of their compensation until distributed to them; distributions may be made only at termination, retirement, death or in an emergency defined by the Plan.

The laws governing deferred compensation plan assets require plan assets to be held by a Trust for the exclusive benefit of plan participants and their beneficiaries. Since the assets held under these plans are not the City's property and are not subject to City control, they have been excluded from these financial statements.

B. *Retiree Medical Benefits*

The liability for explicit subsidy benefits for the dependents of City retirees were previously included together with other City plan OPEB liabilities. However, the City was also contributing directly toward the cost of these dependent benefits by making negotiated contributions determined as a percentage of payroll for active employees in each bargaining group, effectively contributing twice. Beginning with fiscal year 2020, the total OPEB liability for these dependent fund benefits is now being determined and reported separately. Further discussion is included in Note 13C and 13D.

The City provides postretirement health care benefits through its defined benefit Retiree Medical Benefits Agent Multiple-employers Plan to employees who retire in good standing from the City after attaining the age of 50 and to certain employees who retire due to disability. As of June 30, 2022, there were 310 participants receiving these health care benefits.

The City joined the California Employers' Retiree Benefit Trust (CERBT), an agent multiple-employer plan administered by CALPERS, consisting of an aggregation of single-employer plans. The CERBT issues a publicly available financial report that includes financial statements and required supplementary information. That report may be obtained from the California Public Employees' Retirement System, CERBT, P.O. Box 942703, Sacramento, CA 94229-2703.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 13 – EMPLOYEE BENEFITS (Continued)

In order to qualify for postemployment medical and dental benefits an employee must retire from the City and maintain enrollment in one of City's eligible health plans. In addition, there are eligibility rules and contribution requirements defined in the Memorandum of Understanding (MOU) with each employee group. In the MOUs, the Benefit Cap is defined as not more than the single medical premium rate paid by the City for active employees, and the Retiree Cap is 15% above the single Kaiser medical premium rate. The eligibility rules for each MOU are summarized below, starting with benefits for retirees, followed by benefits for dependents.

Medical Benefit for Retirees:

	Hire/Retirement Date	Date of Retirement	Eligibility Rule	City Contribution Requirement
			(Continuous Years of Service)	
Professional / Technical (PROTECH)	Before July 1, 1995	Before June 30, 1989	n/a	PEMHCA Minimum Only
		After July 1, 1990 but before September 1, 2002	Less than 5	PEMHCA Minimum Only
			At least 5	Any employee only medical premium rate
		After August 31, 2002	Less than 5	PEMHCA Minimum Only
			At least 5	Benefit Cap
	After June 30, 1995	After August 31, 2002	Less than 5	PEMHCA Minimum Only
			5 but less than 9	Up to 25% of the Benefit cap
			9 but less than 14	Up to 50% of the Benefit Cap
			14 but less than 19	Up to 75% of the Benefit Cap
Mid-Management and Confidential (LIUNA) (Began 9/2003)	Before July 1, 1995	Any	At least 19	Up to 100% of the Benefit Cap
			Less than 5	PEMHCA Minimum Only
	After June 30, 1995	Any	At least 5	Benefit cap
			Less than 5	PEMHCA Minimum Only
			5 but less than 9	Up to 25% of the Benefit Cap
			9 but less than 14	Up to 50% of the Benefit Cap
			14 but less than 19	Up to 75% of the Benefit Cap
			At least 19	Up to 100% of the Benefit Cap
Unrepresented Miscellaneous and Fire*	Before July 1, 1995	Before January 1, 1989	n/a	PEMHCA Minimum Only
		After July 1, 1990 but before September 1, 2002	Less than 5	PEMHCA Minimum Only
			At least 5	Any employee only medical premium rate
		After August 31, 2002	Less than 5	PEMHCA Minimum Only
			At least 5	Benefit cap
	After June 30, 1995	Any	Less than 5	PEMHCA Minimum Only
			5 but less than 10	Up to 25% of the Benefit Cap
			10 but less than 15	Up to 50% of the Benefit Cap
			15 but less than 20	Up to 75% of the Benefit Cap
			At least 20	Up to 100% of the Benefit Cap

- In the grid above and on the following pages, “Benefit Cap” refers to the single medical premium rate paid by the City for active employees, currently Kaiser. “Retiree Cap” refers to 115% of the Benefit Cap.
- Upon reaching Medicare, the City contributes up to 100% of the employee only Medicare rates. “Vesting” percentages still apply.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 13 – EMPLOYEE BENEFITS (Continued)

Medical benefits for retirees (continued):

Hire/Retirement Date		Date of Retirement		Eligibility Rule (Continuous Years of Service)	City Contribution Requirement
Unrepresented Police ONLY*	Before July 1, 1995	Before January 1, 1989		n/a	PEMHCA Minimum Only
		After December 31, 1988 but before July 1, 2003		Less than 5	PEMHCA Minimum Only
				At least 5	Any employee only medical premium rate
		After June 30, 2003		Less than 5	PEMHCA Minimum Only
	After June 30, 1995			At least 5	Retiree Cap
		Any		Less than 5	PEMHCA Minimum Only
				5 but less than 10	Up to 25% of the Retiree Cap
				10 but less than 15	Up to 50% of the Retiree Cap
				15 but less than 20	Up to 75% of the Retiree Cap
				At least 20	Up to 100% of the Retiree Cap
Fire Safety (IAFF)	Before January 1, 1995	Before January 1, 1990		n/a	PEMHCA Minimum Only
		After December 31, 1989 but before January 1, 1995		Less than 1	PEMHCA Minimum Only
				At least 1	Any employee only premium
		After December 31, 1994 but before February 21, 2007		Less than 1	PEMHCA Minimum Only
				1 but less than 10	50% of any employee only premium
				At least 10	100% of any employee only premium
		After February 20, 2007		Less than 1	PEMHCA Minimum Only
				1 but less than 10	Up to 50% of the lesser of the Retiree Cap and the premium rate
				At least 10	Up to 100% of the lesser of the Retiree Cap and the premium rate
	After December 31, 1994	Before February 21, 2007		Less than 1	PEMHCA Minimum Only
				1 but less than 10	Up to 25% of the Benefit Cap
				10 but less than 15	Up to 50% of the Benefit Cap
				15 but less than 20	Up to 75% of the Benefit Cap
				At least 20	Up to 100% of the Benefit Cap
		After February 20, 2007		Less than 1	PEMHCA Minimum Only
				1 but less than 10	25% of the lesser of the Retiree Cap and the premium rate
				10 but less than 15	50% of the lesser of the Retiree Cap and the premium rate
				15 but less than 20	75% of the lesser of the Retiree Cap and the premium rate
				At least 20	100% of the lesser of the Retiree Cap and the premium rate

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 13 – EMPLOYEE BENEFITS (Continued)

Medical benefits for retirees (continued):

	Hire/Retirement Date	Date of Retirement	Eligibility Rule (Continuous Years of Service)	City Contribution Requirement
Police (MPOA)	Before January 1, 1996	Before January 1, 1989	n/a	PEMHCA Minimum Only
		After December 31, 1988 but before July 1, 2003	Less than 5	PEMHCA Minimum Only
			At least 5	Any employee only medical premium rate
		After June 30, 2003	Less than 5	PEMHCA Minimum Only
			At least 5	Up to the Retiree Cap
	After December 31, 1995	Before July 1, 2003	Less than 1	PEMHCA Minimum Only
			1 but less than 9	25% of any employee only premium
			9 but less than 14	50% of any employee only premium
			14 but less than 19	75% of any employee only premium
			At least 19	100% of any employee only premium
		After June 30, 2003	Less than 1	PEMHCA Minimum Only
			1 but less than 9	Up to 25% of the Retiree Cap
			9 but less than 14	Up to 50% of the Retiree Cap
			14 but less than 19	Up to 75% of the Retiree Cap
			At least 19	Up to 100% of the Retiree Cap
Employee Association (MEA)	Before July 1, 1996	Before July 16, 1989	n/a	PEMHCA Minimum Only
		After July 17, 1989 but before March 19, 2003	Less than 5	PEMHCA Minimum Only
			At least 5	Any employee only medical premium rate
		After March 18, 2003	Less than 5	PEMHCA Minimum Only
			At least 5	Benefit Cap
	After June 30, 1996	Any	Less than 1	PEMHCA Minimum Only
			1 but less than 10	Up to 25% of the Benefit Cap
			10 but less than 15	Up to 50% of the Benefit Cap
			15 but less than 20	Up to 75% of the Benefit Cap
Supervisors (MSA) (Ended June, 30, 2012)	Before June 30, 1995	Before July 1, 1996	n/a	PEMHCA Minimum Only
		After June 30, 1996 and before November 27, 2007	Less than 5	PEMHCA Minimum Only
			At least 5	Any employee only medical premium rate
		After November 26, 2007	Less than 5	PEMHCA Minimum Only
			At least 5	Benefit Cap
	After June 29, 1995	After November 27, 2007	Less than 5	PEMHCA Minimum Only
			5 but less than 9	Up to 25% of the Benefit Cap
			9 but less than 14	Up to 50% of the Benefit Cap
			14 but less than 19	Up to 75% of the Benefit Cap
			At least 19	Up to 100% of the Benefit Cap

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 13 – EMPLOYEE BENEFITS (Continued)

Medical benefits for dependents:

Group	Date of Hire	Date of Retirement	Minimum Years of Continuous Service	City Contribution for Dependent Medical Premiums ¹
Professional / Technical (PROTECH)	Before July 1, 1995	After December 4, 2006	At least 5	Up to 100% of family/dependent premium
			5 but less than 9	Up to 25% of the family/dependent premium
	After June 30, 1995	After December 4, 2006	9 but less than 14	Up to 50% of the family/dependent premium
			14 but less than 19	Up to 75% of the family/dependent premium
			At least 19	Up to 100% of the family/dependent premium
Mid-Management and Confidential (LIUNA)	Before July 1, 1995	After January 1, 2007	At least 5	Up to 100% of family/dependent premium
			5 but less than 9	Up to 25% of the family/dependent premium
	After June 30, 1995	After January 1, 2007	9 but less than 14	Up to 50% of the family/dependent premium
			14 but less than 19	Up to 75% of the family/dependent premium
			At least 19	Up to 100% of the family/dependent premium
Unrepresented (UNREP-Police) ²	Before January 1, 1996	After June 30, 2003	At least 5	100% of family/dependent premiums
			5 but less than 9	Up to 25% of the family/dependent premium
	After December 31, 1995	After June 30, 2003	9 but less than 14	Up to 50% of the family/dependent premium
			14 but less than 19	Up to 75% of the family/dependent premium
			At least 19	Up to 100% of the family/dependent premium
Unrepresented (UNREP-Fire) ³	Before January 1, 1996	After September 4, 2007	At least 5	100% of family/dependent premiums
			5 but less than 9	Up to 25% of the family/dependent premium
	After December 31, 1995	After September 4, 2007	9 but less than 14	Up to 50% of the family/dependent premium
			14 but less than 19	Up to 75% of the family/dependent premium
			At least 19	Up to 100% of the family/dependent premium
Unrepresented (UNREP-Misc) ⁴	Before January 1, 1996	After June 30, 2018	At least 5	100% of family/dependent premiums
			5 but less than 9	Up to 25% of the family/dependent premium
	After December 31, 1995	After June 30, 2018	9 but less than 14	Up to 50% of the family/dependent premium
			14 but less than 19	Up to 75% of the family/dependent premium
			At least 19	Up to 100% of the family/dependent premium

¹ Family/Dependent Medical Premium is active employee Single+1 OR Family medical premium rate less active employee Single medical premium rate.

² If the UNREP-Police fund is depleted, MPOA will provide funding for the dependent benefits.

³ The Fire Chief is ineligible for dependent fund benefits.

⁴ The Fire Chief is eligible for dependent fund benefits in UNREP Misc group.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 13 – EMPLOYEE BENEFITS (Continued)

Medical benefits for dependents (continued):

Group	Date of Hire	Date of Retirement	Minimum Years of Continuous Service	City Contribution for Dependent Medical Premiums ¹
Fire Safety (IAFF) ⁵	Before January 1, 1995	After February 19, 2007	5 but less than 9	50% of family/dependent medical premiums
			At least 10	100% of family/dependent medical premiums
	After December 31, 1994	After February 19, 2007	5 but less than 9	Up to 25% of the family/dependent premium
			9 but less than 14	Up to 50% of the family/dependent premium
			14 but less than 19	Up to 75% of the family/dependent premium
Police (MPOA)	Before January 1, 1996	After June 30, 2003	At least 19	Up to 100% of the family/dependent premium
			At least 5	100% of family/dependent premiums
	After December 31, 1995	After June 30, 2003	5 but less than 9	Up to 25% of the family/dependent premium
			9 but less than 14	Up to 50% of the family/dependent premium
			14 but less than 19	Up to 75% of the family/dependent premium
			At least 19	Up to 100% of the family/dependent premium

¹ Family/Dependent Medical Premium is active employee Single+1 OR Family medical premium rate less active employee Single medical premium rate.

⁵ The amounts paid for dependents are adjusted to keep the fund viable. Currently, the IAFF dependent fund pays the following amounts:

- \$300 per month for 1 dependent
- \$500 per month for two or more dependents

C. Net OPEB Liability

Funding Policy and Contributions – The City’s policy is to prefund these benefits by accumulating assets with CERBT discussed above pursuant to the City’s annual budget approved by Council. For the year ended June 30, 2022, the City’s contributions to the Plan were \$1,757,265.

Employees Covered by Benefit Terms – Membership in the plan consisted of the following at the measurement date of June 30, 2021:

Active employees	387
Inactive employees or beneficiaries currently receiving benefit payments	310
Inactive employees entitled to but not yet receiving benefit payments	93
Total	790

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 13 – EMPLOYEE BENEFITS (Continued)

Actuarial Methods and Assumptions – The City’s net OPEB liability was measured as of June 30, 2021 and the total OPEB liability used to calculate the net OPEB liability was determined by an actuarial valuation dated July 1, 2021, that was rolled forward using standard update procedures to determine the total OPEB liability as of June 30, 2021, based on the following actuarial methods and assumptions:

	Actuarial Assumptions
Valuation Date	June 30, 2021
Measurement Date	June 30, 2021
Actuarial Cost Method	Entry Age Normal Cost, level percent of pay
Actuarial Assumptions:	
Discount Rate	6.15%
Inflation	2.50%
Salary Increase	3.00%
Investment Rate of Return	6.15%
Mortality Rate	MacLeod Watts Scale of 2022 applied generationally
Healthcare Trend Rate	5.80% grading down to 3.9% for years 2076 and thereafter

The underlying mortality assumptions were based on the mortality table published by CalPERS in their 2017 study, adjusted to back out 15 years of Scale MP 2016 to central year 2015 and all other actuarial assumptions used in the July 1, 2019 valuation are based on the result of a June 30, 2019 actuarial experience study for the period from 1997 to 2015, except for a different basis used to project future mortality improvements.

The long-term expected rate of return on OPEB plan investments was determined using a building-block method in which expected future real rates of return (expected returns, net of OPEB plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The City’s accumulated assets are allocated using one of three diversified allocation strategies offered by CERBT. The target allocation for each major asset class using Strategy 2 are summarized in the following table:

Asset Class	Target Allocation
Global Equities	49.0%
Fixed Income	23.0%
Global Real Estate (REITs)	20.0%
Treasury Inflation Protected Securities	5.0%
Commodities	3.0%
Total	100.0%

Discount Rate

Explicit Subsidy Liability – The City expects the trust assets to yield 6.15 over the long term, based on information published by CalPERS as of the June 30, 2021 valuation date. Net contributions to the trust in recent years have been set at a level to prefund the explicit portion of benefits, with no advance funding of the implicit subsidy liability. Accordingly, the discount rate used for the City’s explicit OPEB liability is 6.15%.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 13 – EMPLOYEE BENEFITS (Continued)

Implicit Subsidy Liability – The City expects to continue to fund the implicit subsidy liability on a pay-as-you-go basis. Therefore, the Fidelity 20 year AA General Obligation Municipal Bond Index was used in determining the discount rates used to calculate the implicit subsidy liability. As of the end of the Measurement Period, the discount rates for the Fidelity index were 2.45%.

Changes in Net OPEB Liability – The changes in the net OPEB liability follows:

	Increase (Decrease)		
	Total OPEB Liability (a)	Plan Fiduciary Net Position (b)	Net OPEB Liability/(Asset) (a) - (b)
Balance at June 30, 2020	\$59,101,946	\$51,435,598	\$7,666,348
Changes Recognized for the Measurement Period:			
Service Cost	1,503,917		1,503,917
Interest on the total OPEB liability	4,100,155		4,100,155
Changes in benefit terms			
Differences between expected and actual experience			
Changes of assumptions	4,971,305		4,971,305
Contributions from the employer		1,743,593	(1,743,593)
Net investment income		14,164,474	(14,164,474)
Other Expenses			
Plan Experience	(3,161,213)		(3,161,213)
Administrative expenses		(19,480)	19,480
Benefit payments	(3,221,642)	(3,221,642)	
Net changes	4,192,522	12,666,945	(8,474,423)
Balance at June 30, 2021 (Measurement Date)	\$63,294,468	\$64,102,543	(\$808,075)

The benefit payments and refunds include implied subsidy benefit payments in the amount of \$1,088,216.

Sensitivity of the Net OPEB Liability to Changes in the Discount Rate and Healthcare Cost Trend Rates

– The following presents the net OPEB liability of the City, as well as what the City's net OPEB liability would be if it were calculated using a discount rate that is 1-percentage-point lower or 1-percentage-point higher than the current discount rate:

Net OPEB Liability/(Asset)		
Discount Rate		
Discount Rate -1%	(6.15%)	Discount Rate +1%
\$7,267,498	(\$808,075)	(\$7,494,198)

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 13 – EMPLOYEE BENEFITS (Continued)

The following presents the net OPEB liability of the City, as well as what the City's net OPEB liability would be if it were calculated using healthcare cost trend rates that are 1-percentage-point lower or 1-percentage-point higher than the current healthcare cost trend rates:

Net OPEB Liability/(Asset)		
Healthcare Cost		
Trend Rates		
1% Decrease	(5.40%-4.00%)	1% Increase
(\$8,139,926)	(\$808,075)	\$8,193,223

D. Dependent Fund Post Employment Benefit (OPEB) Plan (Total OPEB Liability)

Plan Description – The City provides continuation of medical coverage to its retiring employees and their eligible dependents, through its defined benefit Retiree Medical Benefits Agent Multiple-employers plan. Pursuant to various bargaining agreements with different employee groups, the City contributes a percent of total payroll toward the cost of medical coverage for the eligible dependents of retirees. The City does not define the eligibility for or amount of any such benefits paid, nor is it legally obligated to make any payments to these dependents. The extent of the City's obligation is to make the negotiated contributions to the funds. However, the City has determined that a liability for the projected cost of these benefits must be reported in its financial statements in accordance with current accounting standards. No assets are accumulated in a trust that meets the criteria in paragraph 4 of Governmental Accounting Standards Board Statement No. 75.

Employees Covered by Benefit Terms – Membership in the plan consisted of the following at the measurement date of June 30, 2021:

Active employees	387
Inactive employees or beneficiaries currently receiving benefit payments	310
Inactive employees entitled to but not yet receiving benefit payments	93
Total	790

Actuarial Methods and Assumptions – The Union Dependent Funds' total OPEB liability was measured as of June 30, 2021 and the total OPEB liability was determined by an actuarial valuation dated June 30, 2021, that was rolled forward using standard update procedures to determine the total OPEB liability as of June 30, 2021 based on the following actuarial methods and assumptions:

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 13 – EMPLOYEE BENEFITS (Continued)

Changes in Total OPEB Liability – The changes in the total OPEB liability follows:

	<u>Increase (Decrease)</u> <u>Total OPEB</u> <u>Liability</u> <u>(a)</u>
Balance at June 30, 2021	\$32,212,961
Changes Recognized for the Measurement Period:	
Service Cost	1,402,597
Interest on the total OPEB liability	810,987
Changes in benefit terms	
Differences between expected and actual experience	
Changes of assumptions	2,591,371
Contributions from the employer	
Net investment income	
Other Expenses	
Plan Experience	(1,465,027)
Administrative expenses	
Benefit payments	(1,028,064)
Net changes	2,311,864
Balance at June 30, 2021 (Measurement Date)	<u>\$34,524,825</u>

Sensitivity of the Total OPEB Liability to Changes in the Discount Rate and Healthcare Cost Trend Rates

The following presents the total OPEB liability of the City, as well as what the City's total OPEB liability would be if it were calculated using a discount rate that is 1-percentage-point lower (2.13%) or 1-percentage point higher (4.13%) than the current discount rate:

Net OPEB Liability/(Asset)		
Discount Rate		
Discount Rate -1%	1.92%	Discount Rate +1%
\$40,059,699	\$34,524,825	\$30,041,294

The following presents the total OPEB liability of the City, as well as what the City's total OPEB liability would be if it were calculated using healthcare cost trend rates that are 1-percentage-point lower or 1-percentage-point higher than the current healthcare cost trend rates:

Net OPEB Liability/(Asset)		
Healthcare Cost		
Trend Rates		
1% Decrease	(5.80% - 3.90%)	1% Increase
\$29,769,786	\$34,524,825	\$40,576,360

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 13 – EMPLOYEE BENEFITS (Continued)

E. OPEB Expenses and Deferred Outflows/Inflows of Resources Related to OPEB

For the year ended June 30, 2022, the City recognized Retiree Medical Benefits OPEB Plan and Dependent Fund OPEB Plan recognized expense of (\$3,027,536) and \$2,756,170 respectively, for total OPEB expense of (\$271,366). At June 30, 2022, the Retiree Medical Benefits OPEB plan and Union Dependent Funds reported deferred outflows and inflows of resources related to OPEB from the following sources:

Retiree Medical Benefits OPEB Plan		
	Deferred Outflows of Resources	Deferred Inflows of Resources
Employer contributions made subsequent to the measurement date	\$1,757,265	
Differences between actual and expected experience		(\$8,549,943)
Changes of assumptions	4,214,638	(4,889,297)
Net differences between projected and actual earnings on plan investments		(7,473,477)
Total	<u>\$5,971,903</u>	<u>(\$20,912,717)</u>
Dependent Fund OPEB Plan		
	Deferred Outflows of Resources	Deferred Inflows of Resources
Employer contributions made subsequent to the measurement date	\$1,012,052	
Differences between actual and expected experience		(\$1,293,277)
C plan investments	4,548,899	
Total	<u>\$5,560,951</u>	<u>(\$1,293,277)</u>
Grand Total, Both Plans	<u>\$11,532,854</u>	<u>(\$22,205,994)</u>

\$2,769,317 reported as deferred outflows of resources related to contributions subsequent to the measurement date will be recognized as a reduction of the OPEB liability in the year ended June 30, 2023. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to OPEB will be recognized as part of OPEB expense as follows:

Year Ended June 30	Annual Amortization	
	Retiree Medical Benefits Plan	Dependent Fund
2023	(\$4,870,916)	\$551,586
2024	(4,754,353)	551,586
2025	(4,554,513)	551,586
2026	(2,932,171)	551,586
2027	256,830	551,586
Thereafter	157,044	497,692
Total	<u>(16,698,079)</u>	<u>3,255,622</u>

General Fund has been primarily used in prior years to liquidate OPEB liabilities.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 13 – EMPLOYEE BENEFITS (Continued)

F. Accrued Vacation and Sick Leave Liabilities

Employees accrue vacation up to certain maximums, based on employee classification. Employees may elect to be paid a portion of their vacation at various times according to the applicable memorandum of understanding. Sick leave may be accumulated without limit. Vested sick leave may be paid upon separation from service in good standing and is based on a vesting schedule determined by years of service.

The City measures and adjusts the liability for vacation and sick leave annually at its fiscal year end. During the year ended June 30, 2022, sick leave benefits payable decreased by \$107,716 and vacation benefits payable decreased by \$439,546. For all governmental funds, amounts expected to be paid out for permanent liquidation are recorded as fund liability; the long-term portion is recorded in the Statement of Net Position.

The changes of the Accrued Vacation and Sick Leave Liabilities and the allocation of each liability among the departments are as follows:

	Accrued Vacation		Sick Leave	
	Governmental Activities	Business-Type Activities	Governmental Activities	Business-Type Activities
Balance as of June 30, 2021	\$6,600,398	\$448,456	\$2,281,370	\$203,632
Additions	2,441,894	285,723	1,730,179	135,374
Payments and adjustments	(2,901,758)	(265,405)	(1,838,222)	(135,047)
Balance as of June 30, 2022	<u>\$6,140,534</u>	<u>\$468,774</u>	<u>\$2,173,327</u>	<u>\$203,959</u>
General Government	\$673,940		\$15,243	
Building	213,029			
Public Works	365,930		238,320	
Engineering	323,403		87,650	
Planning	160,611			
Recreation	183,587		25,051	
Police	2,898,029		621,188	
Fire	1,190,002		1,170,417	
Water Utility		\$272,470		\$178,622
Sewer Utility		196,304		25,337
Internal Service	132,003		15,458	
Total	<u>\$6,140,534</u>	<u>\$468,774</u>	<u>\$2,173,327</u>	<u>\$203,959</u>
Long-Term Portion:				
Governmental activities	\$3,492,608		\$1,247,026	
Business-type activities		\$102,202		\$100,958
Total long term portions	<u>\$3,492,608</u>	<u>\$102,202</u>	<u>\$1,247,026</u>	<u>\$100,958</u>
Current Portion:				
Governmental activities	\$2,647,926		\$926,301	
Business-type activities		\$366,572		\$103,001
Total current portions	<u>\$2,647,926</u>	<u>\$366,572</u>	<u>\$926,301</u>	<u>\$103,001</u>

Accrued Vacation and Sick Leave are liquidated by the fund that has recorded the liability. The long-term portion of governmental activities compensated absences is liquidated primarily by the General Fund.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 14 – RISK MANAGEMENT

A. Risk Pool

The City participates in the Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA), a joint powers authority established to provide liability insurance coverage, claims and risk management, and legal defense to its participating members. PLAN JPA provides \$5,000,000 of self-funded general liability and auto coverage and \$30,000,000 excess liability coverage per occurrence and is responsible for paying claims in excess of the City's \$100,000 deductible. PLAN JPA also provides \$2,000,000 employee theft coverage in excess of the City's \$10,000 deductible, and \$2,000,000 of government crime coverage (with various sub-limits depending on the type of crime) in excess of the City's \$10,000 deductible. PLAN JPA provides coverage for property damage up to \$1 billion. The City retains a self-insured amount of \$5,000 for each property and \$5,000 for each vehicle per occurrence.

During the fiscal year, ended June 30, 2022, the City contributed \$1,726,611 for the 2021/22 program year.

PLAN JPA is governed by a Board of Directors consisting of representatives from member municipalities. The Board controls the operations of PLAN JPA, consisting of funding policies and approval of operating budgets, independent of any influence by member municipalities beyond their representation on the Board.

The City's annual contributions to PLAN JPA are calculated based on the ratio of the City's payroll to the total payrolls of all entities participating in the program and the City's loss experience. Actual surpluses or losses are shared according to a formula developed from overall costs and spread to member entities on a percentage basis.

Financial statements may be obtained from PLAN JPA, 1750 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833.

B. Workers Compensation

The City has a commercial insurance policy which provides workers compensation coverage up to a maximum of \$20,000,000. The City has a deductible or uninsured liability of up to \$750,000 per claim for miscellaneous employees and \$1,000,000 for public safety employees.

C. Dental

The City is self-insured for dental care for miscellaneous employees up to a maximum of \$14,000 per family, based on years of service. Claims are funded on a pay-as-you-go basis. During the year ended June 30, 2022 the City paid \$1,078,583 in dental claims and administrative fees. Public safety employees are insured under various dental care insurance plans.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 14 – RISK MANAGEMENT (Continued)

D. Liability for Uninsured Claims

The City provides for the uninsured portion of claims and judgments, including a provision for claims incurred but not reported, when a loss is deemed probable of assertion and the amount of the loss is reasonably determinable.

The City's liability for uninsured claims is limited to worker's compensation and general liability claims, as discussed above, and was computed as follows based on claims experience:

	2022			2021
	Worker's Compensation	General Liability	Total	
Beginning balance	\$6,541,981	\$358,593	\$6,900,574	\$7,174,675
Liability for current fiscal year	1,632,650	667,859	2,300,509	1,978,589
Increase (decrease) in estimated for prior fiscal year claims and incurred but not reported (IBNR)	(1,078,899)	(391,459)	(1,470,358)	(247,932)
Claims paid	(1,291,999)	(239,507)	(1,531,506)	(2,004,758)
Ending balance	<u>\$5,803,733</u>	<u>\$395,486</u>	<u>\$6,199,219</u>	<u>\$6,900,574</u>
Due in one year	<u>\$1,174,799</u>	<u>\$308,467</u>	<u>\$1,483,266</u>	<u>\$1,410,489</u>

Settlements have not exceeded insurance coverage in the past three fiscal years.

NOTE 15 – COMMITMENTS AND CONTINGENT LIABILITIES

A. Litigation

The City is subject to litigation arising in the normal course of business. In the opinion of the City Attorney there is no pending litigation which is likely to have a material adverse effect on the financial position of the City.

B. Federal and State Grant Programs

The City participates in several Federal and State grant programs. These programs are subject to audit by the City's independent accountants in accordance with the provisions of the federal Single Audit Act as amended and applicable State requirements. No cost disallowances have been proposed as a result of audits completed to date; however, these programs are still subject to further examination by the grantors and the amount, if any, of expenditures which may be disallowed by the granting agencies cannot be determined at this time. The City expects such amounts, if any, to be immaterial.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 15 – COMMITMENTS AND CONTINGENT LIABILITIES (Continued)

C. Encumbrances

The City uses an encumbrance system as an extension of normal budgetary accounting for governmental funds. Under this system, purchase orders, contracts, and other commitments for the expenditure of monies are recorded in order to reserve that portion of applicable appropriations. Encumbrances outstanding at year-end are recorded as restricted, committed or assigned fund balance, depending on the classification of the resources to be used to liquidate the encumbrance, since they do not constitute expenditures or liabilities. Outstanding encumbrances at year-end are automatically reappropriated for the following year. Unencumbered and unexpended appropriations lapse at year-end. Encumbrances outstanding by fund as of June 30, 2021 were as follows:

Major Governmental Funds:	
General Fund	\$2,516,910
Housing Authority Fund	84,730
Non-Major Governmental Funds	<u>163,829</u>
Total Encumbrances	<u><u>\$2,765,469</u></u>

D. South Bay Water Recycling System Facility Replacement

As required by the Water Pollution Control Plant's National Pollutant Discharge Elimination System (NPDES) permit, the regional partner agencies are responsible for maintenance and operation of the South Bay Water Recycling System. The regional partner agencies, which includes the City of Milpitas, are also responsible for the planned \$2 billion rehabilitation/replacement of the facility over the next thirty years. The City's share of the project is approximately 6.196% as discussed in Note 8E.

E. Bay Area Water Supply and Conservation Agency Revenue Bonds Surcharge

The City contracts with the City and County of San Francisco for the purchase of water from the Hetch Hetchy System operated by the San Francisco Public Utilities Commission (SFPUC). The City is also a member of the Bay Area Water Supply and Conservation Agency (BAWSCA) which represents the interests of all the 24 cities and water districts, as well as two private utilities, that purchase wholesale water from the SFPUC.

In 2009 the City entered into a new 25 year agreement with the SFPUC that includes a minimum water delivery level of 5.341MGD. One of the ways that the new agreement differs from the old is in how facilities constructed by the SFPUC that benefit the regional customers are treated from a rate and financial perspective. Under the old agreement, facilities were built, capitalized, and added to the rate base with a rate of return (interest), and then paid for over their useful lives through wholesale rates. Under the new agreement, the SFPUC issues revenue bonds and the debt service (which also includes an interest component) is paid for through rates over the life of the bonds.

During the transition from the old to the new contracts, one of the issues addressed was how to deal with the \$370 million in assets that were still being paid for by the wholesale customers under the old agreement. The assets were transferred to the new agreement, assigned a life with an agreed upon rate of return of 5.13%. Also negotiated was a provision to allow the wholesale customers to prepay any remaining existing assets' unpaid principal balance without penalty or premium. This prepayment was executed through the issuance of bonds by BAWSCA which provide a better interest rate given the favorable rate environment.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 15 – COMMITMENTS AND CONTINGENT LIABILITIES (Continued)

BAWSCA issued Revenue Bonds in the principal amount of \$335,780,000 in January 2013 to prepay the capital cost recovery payment obligation and fund a stabilization fund. The Bonds mature in October 2034 and are secured by surcharges to the monthly water purchase charges imposed upon the participating members. The Bonds are not a debt obligation of any member, and BAWSCA's failure to pay its Bonds would not constitute a default by any participating member.

Should any participating member fail to pay its share, BAWSCA will rely on the stabilization fund and will pursue all legal remedies to collect the shortfall from the delinquent member. In the interim, other participating members may have their portion adjusted to insure the continued payment of the debt service surcharge.

The risk of bearing the debt service expense of a defaulting member is not significantly different than the risk each member assumes currently for fluctuations in water purchase charges. Under the Bond indenture, BAWSCA maintains a stabilization fund. If surcharge revenues collected are less than needed (due to a member's failure to pay timely), BAWSCA uses the stabilization fund to fund the debt service deficiency, and increases the surcharge in the subsequent year to make up for the prior year shortfall and reimburse the stabilization fund account. Also, given that each participating agency's governing body adopted a Resolution to participate in the Bond issue, Management believes that default is generally very unlikely.

The annual debt service surcharges are a fixed amount for each participant and are calculated by taking the subsequent fiscal year's debt service, multiplied by each participant's actual water purchase as a percent of total wholesale customer water purchases from the prior fiscal year. One-twelfth of the annual surcharge is included in the monthly bill from SFPUC. Because each participant's share of the debt service surcharge is proportional to the amount of water purchased during the prior fiscal year, the City's share of the debt service will fluctuate from year to year.

The City paid its surcharge of \$1,133,860 during fiscal year 2022, which is included as a component of purchased water expenses in the Water Enterprise Fund. The surcharge for fiscal year 2023 is estimated to be \$949,680.

F. *Sunnyhills Apartment Complex*

In October 2017, the City entered into an agreement with Sunnyhills Investors LLC to purchase affordability covenants for the Sunnyhills Apartment Complex, which has provided 149 affordable housing units to the City over the last 30 years. The City is required to pay \$250,000 per year, ending January 15, 2023, beginning in fiscal year 2019. The first payment under the agreement was made in April 2018, and was for fiscal year 2019. The City has paid a total of \$1,000,000 as of June 30, 2022.

G. *Housing Successor Excess Surplus*

Health and Safety Code (HSC) Section 34176.1(d) defines an excess surplus as an unencumbered balance held by the housing successor that exceeds the greater of \$1,000,000 or the aggregate amount deposited into the housing successor fund during the housing successor's preceding four fiscal years, whichever is greater. If a housing successor has an excess surplus, the HSC Section requires that the housing successor encumber the excess surplus for eligible purposes described in the HSC Section 34176.1(a)(3) or transfer the funds to another local housing successor within three fiscal years. If the housing successor fails to comply with this provision, the housing successor, within 90 days of the end of the third fiscal year, is required to transfer any excess surplus to the Department of Housing and Community Development for expenditure pursuant to the Multifamily Housing Program or the Joe Serna, Jr. Farmworker Housing Grant Program.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 16 – SUCCESSOR AGENCY ACTIVITIES

A. *Redevelopment Dissolution*

In an effort to balance its budget, the State of California adopted ABx1 26 on June 28, 2011, amended by AB1484 on June 27, 2012, which suspended all new redevelopment activities except for limited specified activities as of that date and dissolved redevelopment agencies on January 31, 2012.

The suspension provisions prohibited all redevelopment agencies from a wide range of activities, including incurring new indebtedness or obligations, entering into or modifying agreements or contracts, acquiring or disposing of real property, taking actions to adopt or amend redevelopment plans and other similar actions, except actions required by law or to carry out existing enforceable obligations, as defined in ABx1 26.

Effective January 31, 2012, the Redevelopment Agency was dissolved. Certain assets of the Redevelopment Agency Housing Reserve Fund were distributed to a Housing Successor; and all remaining Redevelopment Agency assets and liabilities were distributed to a Successor Agency. The Successor Agency received a finding of completion on June 27, 2014.

Under the provisions of AB 1484, the City can elect to become the Housing Successor and retain the housing assets. The City's Housing Authority elected to become the Housing Successor and on February 1, 2012, certain housing assets were transferred to the City's Housing Authority Special Revenue Fund.

The City also elected to become the Successor Agency and on February 1, 2012 the Redevelopment Agency's remaining assets were distributed to and liabilities were assumed by the Successor Agency. ABx1 26 requires the establishment of an Oversight Board to oversee the activities of the Successor Agency and one was established on March 26, 2012. The activities of the Successor Agency were subject to review and approval of the Oversight Board, which was comprised of seven members, including one member of City Council and one former Redevelopment Agency employee appointed by the Mayor.

On July 1, 2018, the duties of the Milpitas Oversight Board transferred to a new Santa Clara Countywide Consolidated Oversight Board, which is now responsible for overseeing the winddown affairs of all Successor Agencies in Santa Clara County, including the Successor Agency to the Milpitas Redevelopment Agency.

The activities of the Housing Successor are reported in the Housing Authority Special Revenue Fund as the City has control of those assets, which may be used in accordance with the low and moderate income housing provisions of California Redevelopment Law.

The activities of the Successor Agency are reported in the Successor Agency to the Redevelopment Agency Private-Purpose Trust Fund as the activities are under the control of the County Oversight Board. The City provides administrative services to the Successor Agency to wind down the affairs of the former Redevelopment Agency.

Cash and investments of the Successor Agency as of June 30, 2022 are discussed in Note 3. Information presented in the following footnotes represents other assets and liabilities of the Successor Agency as of June 30, 2022.

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 16 – SUCCESSOR AGENCY ACTIVITIES (Continued)

B. Development Agreements

The Successor Agency assumed the obligations of the former Redevelopment Agency's Disposition and Development Agreements as follows:

Installment Purchase Agreement

The Redevelopment Agency agreed to purchase two parcels of land comprising thirty-five acres surrounding the County Correctional Facility for \$57,750,000 in cash and \$135,000,000 payable over eighteen years at no interest.

The Agency also agreed to re-sell this land to developers for a total of \$57,750,000, of which \$40,000,000 was received in fiscal 2005 and the remainder was received on the close of escrow on the second parcel in fiscal 2006. The Agency's intent in purchasing this land was to simultaneously re-sell it for development.

In addition, starting in 2024 the Agency is required to pay the County the greater of \$2,000,000 or 50% of the sales tax revenue arising out of sales originating on certain properties that are in the Midtown Area, but not to exceed \$5,000,000 annually, until the earlier of either June 30, 2038, the date that tax increment revenue allocated to the Agency has reached its limit; or the termination of the Redevelopment Plan.

C. Long-Term Obligations

1. Current Year Transactions and Balances

The Successor Agency's debt issues and transactions are summarized below and discussed in detail thereafter.

	Balance June 30, 2021	Retirements	Balance June 30, 2022	Current Portion
Installment Purchase Agreement with the County of Santa Clara - Direct Borrowing				
due June 30, 2023	\$5,110,904	\$2,617,780	\$2,493,124	\$2,493,124
2015 Tax Allocation Bonds				
2%-5%, due September 1, 2032	87,865,000	7,425,000	80,440,000	7,800,000
Plus: Unamortized bond premium	13,894,556	1,190,962	12,703,594	
Total	<u>\$106,870,460</u>	<u>\$11,233,742</u>	<u>\$95,636,718</u>	<u>\$10,293,124</u>

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 16 – SUCCESSOR AGENCY ACTIVITIES (Continued)

2. Installment Purchase Agreement with the County of Santa Clara

The former Redevelopment Agency had a non-interest bearing Installment Purchase Agreement with the County of Santa Clara in the original principal amount of \$135,000,000, as mentioned in Note 15B. As discussed in Note 15B, under the Agreement, the former Redevelopment Agency purchased two parcels of land that were later sold to developers. The amount due under the Agreement does not bear interest and is payable annually through 2023. The Successor Agency has therefore recorded a liability of \$2,493,124 at June 30, 2022, representing the present value of future payments due under this Agreement.

3. 2015 Tax Allocation Refunding Bonds

In March 2015, the Successor Agency issued Tax Allocation Refunding Bonds in the original principal amount of \$127,790,000. The proceeds of the Bonds were used to advance refund and defease the outstanding balance of the 2003 Tax Allocation Bonds, which were redeemed on March 23, 2015. The Bonds are secured by Redevelopment Property Tax Trust Fund (RPTTF) revenues. In lieu of a reserve fund, the 2015 Bonds are secured by a reserve insurance policy in the amount of \$11,822,000, issued by Assured Guaranty Municipal Corp. Principal is payable annually and the interest is payable semi-annually through 2032. The 2015 Bonds contain a provision that in an event of default, the Trustee may declare the principal of the bonds, together with all accrued interest at the date of default, immediately due and payable, or (b) exercise any and all rights and remedies available to it under applicable law, including right to enforce from the Successor Agency all payments due on the Bonds, and the Successor Agency will pay all reasonable fees and expenses incurred by the Trustee and those of its attorneys. On August 27, 2021, S&P Global Ratings (formerly Standard & Poor's Financial Services, LLC) upgraded its Local Currency Long-Term Ratings on the Bonds from 'AA-' to 'AA'.

4. Debt Service Requirements

Debt service requirements are shown below for all long-term debt:

Year Ending June 30	Installment Purchase Agreement with the County of Santa Clara		2015 Tax Allocation Bonds	
	Total Principal	Total Interest	Total Principal	Total Interest
2023	\$2,493,124	\$3,506,876	\$7,800,000	\$3,827,000
2024			8,185,000	3,427,375
2025			8,595,000	3,007,875
2026			9,025,000	2,567,375
2027			9,475,000	2,104,875
2028-2032			33,420,000	4,575,000
2033			3,940,000	98,500
	<u>\$2,493,124</u>	<u>\$3,506,876</u>	<u>80,440,000</u>	<u>\$19,608,000</u>
Plus: Unamortized bond premium			<u>12,703,594</u>	
			<u>\$93,143,594</u>	

CITY OF MILPITAS
Notes to Basic Financial Statements
For the Year Ended June 30, 2022

NOTE 16 – SUCCESSOR AGENCY ACTIVITIES (Continued)

5. Defeased Bonds

As of June 30, 2022, the outstanding balance of defeased debt was \$5,130,000 for the Redevelopment Agency 1997 Tax Allocation Bonds.

D. Commitments and Contingencies

State Approval of Enforceable Obligations

The Successor Agency prepares a Recognized Obligation Payment Schedule (ROPS) semi-annually that contains all proposed expenditures for the subsequent six-month period. The ROPS is subject to the review and approval of the County Oversight Board as well as the State Department of Finance. Although the State Department of Finance may not question items included on the ROPS in one period, they may question the same items in a future period and disallow associated activities. The amount, if any, of current obligations that may be denied by the State Department of Finance cannot be determined at this time. The City expects such amounts, if any, to be immaterial.

NOTE 17 – SUBSEQUENT EVENTS

On July 12, 2021, CalPERS reported a preliminary 21.3% net return on investments for fiscal year 2020-21. Based on the thresholds specified in CalPERS Funding Risk Mitigation policy approved by the CalPERS Board in 2015, the excess return of 14.3% prescribes a reduction in investment volatility that corresponds to a reduction in the discount rate used for funding purposes of 0.20%, from 7.00% to 6.80%. Since CalPERS was in the final stages of the four-year Asset Liability Management (ALM) cycle, the CalPERS Board elected to defer any changes to the asset allocation until the ALM process concluded, and the board could make its final decision on the asset allocation in November 2021.

On November 17, 2021, the CalPERS board adopted a new strategic asset allocation. The new asset allocation along with the new capital market assumptions, economic assumptions and administrative expense assumption support a discount rate of 6.80% (net of investment expense, but without a reduction for administrative expense) for financial reporting purposes. This includes a reduction in the price inflation assumption from 2.50% to 2.30% as recommended in the November 2021 CalPERS Experience Study and Review of Actuarial Assumptions. This study also recommended modifications to retirement rates, termination rates, mortality rates and rates of salary increases that were adopted by the CalPERS Board. These new assumptions will be reflected in the CalPERS GASB 68 accounting valuation reports for the June 30, 2022, measurement date.

REQUIRED SUPPLEMENTARY INFORMATION



City of Milpitas
Required Supplementary Information

Item # C9.

SCHEDULE OF CHANGES IN THE NET OPEB LIABILITY AND RELATED RATIOS
Agent Multiple-Employer Retiree Medical Benefits (OPEB) Plan
Last 10 fiscal years *

Measurement Date	6/30/17	6/30/18	6/30/19	6/30/20	6/30/21
Total OPEB Liability					
Service Cost	\$2,386,392	\$2,356,491	\$2,423,566	\$1,958,563	\$1,503,917
Interest	4,794,071	5,155,080	5,462,138	3,581,088	4,100,155
Changes in benefit terms			(17,098,878)		
Differences between expected and actual experience			(11,594,216)		(3,161,213)
Changes of assumptions	(1,263,847)	(113,934)	(1,624,371)	(5,621,298)	4,971,305
Benefit payments	(3,325,081)	(2,994,247)	(3,183,858)	(3,122,284)	(3,221,642)
Net change in total OPEB liability	2,591,535	4,403,390	(25,615,619)	(3,203,931)	4,192,522
Total OPEB liability - beginning	80,926,571	83,518,106	87,921,496	62,305,877	59,101,946
Total OPEB liability - ending (a)	\$83,518,106	\$87,921,496	\$62,305,877	\$59,101,946	\$63,294,468
Plan fiduciary net position					
Contributions - employer	\$4,959,756	\$4,803,893	\$4,651,743	\$4,528,174	\$1,743,593
Contributions - employee					
Net investment income	3,708,342	3,175,844	2,834,217	1,745,028	14,164,474
Administrative expense	(18,732)	(21,490)	(9,742)	(24,292)	(19,480)
Benefit payments	(3,325,081)	(2,994,247)	(3,183,858)	(3,122,284)	(3,221,642)
Other Expenses		(51,721)			
Net change in plan fiduciary net position	5,324,285	4,912,279	4,292,360	3,126,626	12,666,945
Plan fiduciary net position - beginning	33,780,048	39,104,333	44,016,612	48,308,972	51,435,598
Plan fiduciary net position - ending (b)	\$39,104,333	\$44,016,612	\$48,308,972	\$51,435,598	\$64,102,543
Net OPEB liability (asset) - ending (a)-(b)	\$44,413,773	\$43,904,884	\$13,996,905	\$7,666,348	(\$808,075)
Plan fiduciary net position as a percentage of the total OPEB liability	46.82%	50.06%	77.54%	87.03%	101.28%
Covered-employee payroll	\$42,017,236	\$43,375,678	\$48,788,854	\$52,202,907	\$59,298,425
Net OPEB liability as a percentage of covered-employee payroll	105.70%	101.22%	28.69%	14.69%	-1.36%

* Fiscal year 2018 was the first year of implementation.

City of Milpitas

Required Supplementary Information

SCHEDULE OF CONTRIBUTIONS

Agent Multiple-Employer Retiree Medical Benefits (OPEB) Plan
Last 10 fiscal years*

Fiscal Year Ended June 30,

	2018			2019		
	Explicit	Implicit	Total	Explicit	Implicit	Total
Actuarially determined contribution	\$3,387,020	\$1,652,641	\$5,039,661	\$3,492,808	\$1,703,307	\$5,196,115
Contributions in relation to the actuarially determined contribution	3,387,020	1,059,545	4,446,565	3,492,808	1,158,935	4,651,743
Contribution deficiency (excess)	\$0	\$593,096	\$593,096	\$0	\$544,372	\$544,372
Covered-employee payroll	\$43,375,678	\$43,375,678	\$43,375,678	\$48,788,854	\$48,788,854	\$48,788,854
Contributions as a percentage of covered-employee payroll	7.81%	2.44%	10.25%	7.16%	2.38%	9.53%

Fiscal Year Ended June 30,

	2020			2021			2022		
	Explicit	Implicit	Total	Explicit	Implicit	Total	Explicit	Implicit	Total
Actuarially determined contribution	\$788,831	\$1,545,113	\$2,333,944	\$655,377	\$1,552,190	\$2,207,567	\$655,377	\$1,611,861	\$2,267,238
Contributions in relation to the actuarially determined contribution	3,478,018	1,050,156	4,528,174	655,377	1,088,216	1,743,593	682,866	1,074,399	1,757,265
Contribution deficiency (excess)	(\$2,689,187)	\$494,957	(\$2,194,230)	\$0	\$463,974	\$463,974	(\$27,489)	\$537,462	\$509,973
Covered-employee payroll	\$52,202,907	\$52,202,907	\$52,202,907	\$59,134,552	\$59,134,552	\$59,134,552	\$59,298,425	\$59,298,425	\$59,298,425
Contributions as a percentage of covered-employee payroll	6.66%	2.01%	8.67%	1.11%	1.84%	2.95%	1.15%	1.81%	2.96%

Notes to Schedule

Valuation date:

Methods and assumptions used to determine contribution rates:

Valuation Date	June 30, 2021
Actuarial Assumptions:	
Discount Rate	6.15%
Inflation	2.50%
Salary Increase	3.00%
Investment Rate of Return	6.15%
Mortality Rate	MacLeod Watts Scale of 2022 applied generationally
Healthcare Trend Rate	5.8% grading down to 3.9% for years 2076 and thereafter

* Fiscal year 2018 was the first year of implementation.

City of Milpitas
Required Supplementary Information

Item # C9.

SCHEDULE OF CHANGES IN THE TOTAL OPEB LIABILITY AND RELATED RATIOS

Dependent Fund (OPEB) Plan

Last 10 fiscal years*

Measurement Date	6/30/19	6/30/20	6/30/21
Total OPEB Liability			
Service Cost		\$1,139,508	\$1,402,597
Interest		905,377	810,987
Changes in benefit terms	\$28,504,872		
Differences between expected and actual experience			(1,465,027)
Changes of assumptions		3,100,405	2,591,371
Benefit payments		(1,437,201)	(1,028,064)
Net change in total OPEB liability	<u>28,504,872</u>	<u>3,708,089</u>	<u>2,311,864</u>
Total OPEB liability - beginning		<u>28,504,872</u>	<u>32,212,961</u>
Total OPEB liability - ending (a)	<u><u>\$28,504,872</u></u>	<u><u>\$32,212,961</u></u>	<u><u>\$34,524,825</u></u>
Plan fiduciary net position			
Contributions - employer		\$1,437,201	
Contributions - employee			
Net investment income			
Administrative expense			
Benefit payments		(1,437,201)	
Other Expenses			
Net change in plan fiduciary net position	<u>-</u>	<u>-</u>	<u>-</u>
Plan fiduciary net position - beginning		<u>\$0</u>	<u>\$0</u>
Plan fiduciary net position - ending (b)	<u><u>\$0</u></u>	<u><u>\$0</u></u>	<u><u>\$0</u></u>
 Net OPEB liability - ending (a)-(b)	 <u><u>\$28,504,872</u></u>	 <u><u>\$32,212,961</u></u>	 <u><u>\$34,524,825</u></u>
 Plan fiduciary net position as a percentage of the total OPEB liability	 0.00%	 0.00%	 0.00%
 Covered-employee payroll	 <u><u>\$48,788,854</u></u>	 <u><u>\$52,202,907</u></u>	 <u><u>\$59,298,425</u></u>
 Net OPEB liability as a percentage of covered-employee payroll	 <u><u>58.42%</u></u>	 <u><u>61.71%</u></u>	 <u><u>58.22%</u></u>

*The liability of this Plan had been previously included together with other City plan OPEB Liabilities.

Beginning with fiscal year 2020, the City began to report the liability of this plan separately.

No assets are accumulated in a trust that meets the criteria in paragraph 4 of GASB 75.

City of Milpitas
Required Supplementary Information

Item # C9.

SCHEDULE OF CONTRIBUTIONS

Dependent Fund (OPEB) Plan
Last 10 fiscal years*

Fiscal Year Ended June 30,	2020	2021	2022
	Explicit	Explicit	Explicit
Actuarially required contribution	N/A (a)	N/A (a)	N/A (a)
Contributions in relation to the actuarially required contributions	\$1,028,064	\$0	\$1,012,052
Contribution deficiency (excess)	N/A (a)	N/A (a)	N/A (a)
Covered-employee payroll	\$52,202,907	\$59,134,552	\$59,298,425
Contributions as a percentage of covered-employee payroll	N/A (a)	N/A (a)	N/A (a)

*No assets are accumulated in a trust that meets the criteria in paragraph 4 of GASB 75.

(a) Due to the nature of the Plan, actuarially required contribution is not available.

See Note 12D for contribution requirements.



City of Milpitas
Required Supplementary Information

SCHEDULE OF CHANGES IN THE NET PENSION LIABILITY AND RELATED RATIOS

Miscellaneous Plan - Agent Multiple-Employer Defined Pension Plan

Last 10 Years*

Measurement Period	2013-14	2014-15	2015-16	2016-17
Total Pension Liability				
Service Cost	\$2,652,510	\$2,664,628	\$2,666,665	\$3,008,973
Interest	13,600,615	14,114,152	14,689,192	15,078,047
Differences between expected and actual experience		(982,598)	(18,301)	(1,238,427)
Changes in assumptions		(3,463,459)		12,475,424
Changes in benefits				
Benefit payments, including refunds of employee contributions	(8,381,334)	(8,930,516)	(9,558,779)	(10,236,837)
Net change in total pension liability	7,871,791	3,402,207	7,778,777	19,087,180
Total pension liability - beginning	184,205,937	192,077,728	195,479,935	203,258,712
Total pension liability - ending (a)	<u>\$192,077,728</u>	<u>\$195,479,935</u>	<u>\$203,258,712</u>	<u>\$222,345,892</u>
Plan fiduciary net position				
Contributions - employer	\$3,356,909	\$4,076,975	\$4,519,744	\$5,048,143
Contributions - employee	1,439,932	1,326,989	1,333,019	1,266,956
Net investment income	22,034,637	3,281,429	775,183	16,109,364
Administrative expense		(164,523)	(89,109)	(211,414)
Benefit payments, including refunds of employee contributions	(8,381,334)	(8,930,516)	(9,558,779)	(10,236,837)
Other Miscellaneous Income/Expense				
Net Plan to Plan Resource Movement			(370)	(370)
Net change in plan fiduciary net position	18,450,144	(409,646)	(3,020,312)	11,975,842
Plan fiduciary net position - beginning	128,172,005	146,622,149	146,212,503	143,192,191
Plan fiduciary net position - ending (b)	<u>\$146,622,149</u>	<u>\$146,212,503</u>	<u>\$143,192,191</u>	<u>\$155,168,033</u>
Net pension liability - ending (a)-(b)	<u>\$45,455,579</u>	<u>\$49,267,432</u>	<u>\$60,066,521</u>	<u>\$67,177,859</u>
Plan fiduciary net position as a percentage of the total pension liability	76.33%	74.80%	70.45%	69.79%
Covered payroll	<u>\$15,682,538</u>	<u>\$16,009,660</u>	<u>\$16,161,589</u>	<u>\$16,418,123</u>
Net pension liability as percentage of covered payroll	289.85%	307.74%	371.66%	409.17%

Benefit changes. The figures above do not include any liability impact that may have resulted from plan changes which occurred after June 30. This applies for voluntary benefit changes as well as any offers of Two Years Additional Service Credit (a.k.a. Golden Handshakes).

Changes in assumptions. In 2017, the accounting discount rate reduced from 7.65% to 7.15%. In 2016, 2018, 2019, 2020 and 2021, there were no changes. In 2015, amounts reported reflect an adjustment of the discount rate from 7.5% (net of administrative expense) to 7.65% (without a reduction for pension plan administrative expense). In 2014, amounts were based on the 7.5% discount rate.

* Fiscal year 2015 was the first year of implementation.

City of Milpitas
Required Supplementary Information

SCHEDULE OF CHANGES IN THE NET PENSION LIABILITY AND RELATED RATIOS

Miscellaneous Plan - Agent Multiple-Employer Defined Pension Plan

Last 10 Years*

Measurement Period	2017-18	2018-19	2019-20	2020-21
Total Pension Liability				
Service Cost	\$3,042,853	\$3,361,140	\$3,777,335	\$4,262,309
Interest	15,647,110	16,517,342	17,295,222	18,046,275
Differences between expected and actual experience	1,831,444	4,569,776	2,592,349	1,466,976
Changes in assumptions	(1,404,854)			
Changes in benefits				
Benefit payments, including refunds of employee contributions	(10,906,398)	(11,589,225)	(12,009,750)	(12,545,846)
Net change in total pension liability	8,210,155	12,859,033	11,655,156	11,229,714
Total pension liability - beginning	222,345,892	230,556,047	243,415,080	255,070,236
Total pension liability - ending (a)	\$230,556,047	\$243,415,080	\$255,070,236	\$266,299,950
Plan fiduciary net position				
Contributions - employer	\$5,762,448	\$6,864,376	\$7,965,270	\$8,925,250
Contributions - employee	1,473,732	1,569,027	1,772,996	1,998,174
Net investment income	13,123,448	10,774,536	8,527,794	40,453,566
Administrative expense	(241,795)	(116,977)	(241,663)	(177,248)
Benefit payments, including refunds of employee contributions	(10,906,398)	(11,589,225)	(12,009,750)	(12,545,846)
Other Miscellaneous Income/Expense	(459,172)	381		
Net Plan to Plan Resource Movement	(381)			
Net change in plan fiduciary net position	8,751,882	7,502,118	6,014,647	38,653,896
Plan fiduciary net position - beginning	155,168,033	163,919,915	171,422,033	177,436,680
Plan fiduciary net position - ending (b)	\$163,919,915	\$171,422,033	\$177,436,680	\$216,090,576
 Net pension liability - ending (a)-(b)	 \$66,636,132	 \$71,993,047	 \$77,633,556	 \$50,209,374
 Plan fiduciary net position as a percentage of the total pension liability	 71.10%	 70.42%	 69.56%	 81.15%
 Covered payroll	 \$18,846,066	 \$22,079,190	 \$19,463,309	 \$25,754,131
 Net pension liability as percentage of covered payroll	 353.58%	 326.07%	 398.87%	 194.96%

* Fiscal year 2015 was the first year of implementation.

City of Milpitas
Required Supplementary Information

SCHEDULE OF CONTRIBUTIONS

Miscellaneous Plan - Agent Multiple-Employer Defined Pension Plan
 Last 10 Years*

Fiscal Year Ended June 30	2015	2016	2017	2018
Actuarially determined contribution	\$3,252,668	\$4,236,931	\$5,082,638	\$6,243,904
Contributions in relation to the actuarially determined contributions	3,252,668	4,236,931	5,082,638	6,243,904
Contribution deficiency (excess)	\$0	\$0	\$0	\$0
Covered payroll	\$16,009,660	\$16,161,589	\$16,418,123	\$18,846,066
Contributions as a percentage of covered payroll	20.32%	26.22%	30.96%	33.13%
Notes to Schedule				
Valuation date:	6/30/2012	6/30/2013	6/30/2014	6/30/2015

Methods and assumptions used to determine contribution rates:

Actuarial cost method	Entry age
Amortization method	Level percentage of payroll
Remaining amortization period	15 Years as of the Valuation Date
Asset valuation method	Market Value of Assets
Inflation	2.75% for 2015 to 2019, 2.625% for 2020, and 2.50% for 2021 and 2022
Salary increases	Varies by Entry Age and Service
Investment rate of return	7.50% for 2015 to 2018, 7.375% for 2019, 7.25% for 2020, and 7.00% for 2021 and 2022, net of pension plan investment expense, including inflation.
Retirement age	The probabilities of Retirement are based on the CalPERS Experience Study.
Mortality	The probabilities of mortality are based on the CalPERS Experience Study. Pre-retirement and Post-retirement mortality rates include 20 years of projected mortality improvement using Scale BB published by the Society of Actuaries for 2015 to 2018. For 2019, 2020, 2021, and 2022 pre-retirement and post-retirement mortality rates include 15 years of projected mortality improvement using 90% of Scale MP-2016 published by the Society of Actuaries.

* Fiscal year 2015 was the 1st year of implementation.

2019	2020	2021	2022
\$6,863,508	\$8,337,504	\$8,916,157	\$9,799,723
<u>6,863,508</u>	<u>8,337,504</u>	<u>8,916,157</u>	<u>9,799,723</u>
<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
\$22,079,190	\$19,463,309	\$21,793,252	\$25,754,131
31.09%	42.84%	40.91%	38.05%
6/30/2016	6/30/2017	6/30/2018	6/30/2019

City of Milpitas
Required Supplementary Information

SCHEDULE OF CHANGES IN THE NET PENSION LIABILITY AND RELATED RATIOS

Safety Plan - Agent Multiple-Employer Defined Pension Plan

Last 10 Years*

Measurement Period	2013-14	2014-15	2015-16	2016-17
Total Pension Liability				
Service Cost	\$4,932,970	\$4,808,751	\$5,094,318	\$5,934,642
Interest	19,838,662	20,535,893	21,663,378	22,434,283
Differences between expected and actual experience		(2,363,470)	3,274,330	(690,685)
Changes in assumptions		(5,052,089)		18,725,315
Changes in benefits				
Benefit payments, including refunds of employee contributions	(13,076,629)	(13,656,196)	(14,390,575)	(14,864,837)
Net change in total pension liability	11,695,003	4,272,889	15,641,451	31,538,718
Total pension liability - beginning	268,587,329	280,282,332	284,555,221	300,196,672
Total pension liability - ending (a)	\$280,282,332	\$284,555,221	\$300,196,672	\$331,735,390
Plan fiduciary net position				
Contributions - employer	\$5,856,270	\$6,604,951	\$7,230,399	\$7,887,539
Contributions - employee	1,839,234	1,887,408	2,064,277	2,233,341
Net investment income	30,157,647	4,420,615	1,031,136	22,090,936
Administrative expense		(224,227)	(121,445)	(288,028)
Net Plan to Plan Resource Movement				
Other Miscellaneous Income/Expense				
Benefit payments, including refunds of employee contributions	(13,076,629)	(13,656,196)	(14,390,575)	(14,864,837)
Net change in plan fiduciary net position	24,776,522	(967,449)	(4,186,208)	17,058,951
Plan fiduciary net position - beginning	175,461,012	200,237,534	199,270,085	195,083,877
Plan fiduciary net position - ending (b)	\$200,237,534	\$199,270,085	\$195,083,877	\$212,142,828
 Net pension liability - ending (a)-(b)	 \$80,044,798	 \$85,285,136	 \$105,112,795	 \$119,592,562
 Plan fiduciary net position as a percentage of the total pension liability	 71.44%	 70.03%	 64.99%	 63.95%
 Covered payroll	 \$18,310,535	 \$18,810,920	 \$20,170,400	 \$21,078,669
 Net pension liability as percentage of covered payroll	 437.15%	 453.38%	 521.12%	 567.36%

Notes to Schedule:

Benefit changes. The figures above do not include any liability impact that may have resulted from plan changes which occurred after June 30. This applies for voluntary benefit changes as well as any offers of Two Years Additional Service Credit (a.k.a. Golden Handshakes).

Changes in assumptions. In 2017, the accounting discount rate reduced from 7.65% to 7.15%. In 2016, 2018, 2019, 2020 and 2021, there were no changes. In 2015, amounts reported reflect an adjustment of the discount rate from 7.5% (net of administrative expense) to 7.65% (without a reduction for pension plan administrative expense). In 2014, amounts were based on the 7.5% discount rate.

* Fiscal year 2015 was the 1st year of implementation.

<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>	<u>2021-22</u>
\$5,975,378	\$6,211,449	\$6,711,730	\$7,266,789
23,331,989	24,560,414	25,568,359	26,671,979
626,935	4,563,968	981,131	2,106,663
(986,630)			
<u>(16,083,729)</u>	<u>(17,533,455)</u>	<u>(18,278,539)</u>	<u>(20,179,552)</u>
12,863,943	17,802,376	14,982,681	15,865,879
331,735,390	344,599,333	362,401,709	377,384,390
<u>\$344,599,333</u>	<u>\$362,401,709</u>	<u>\$377,384,390</u>	<u>\$393,250,269</u>
\$8,866,550	\$10,288,856	\$12,104,306	\$13,294,083
2,240,962	2,441,763	2,748,961	2,834,054
17,931,642	14,733,700	11,689,024	55,066,837
(330,577)	(159,951)	(329,757)	(241,588)
(521)			
(627,771)	521		
<u>(16,083,729)</u>	<u>(17,533,455)</u>	<u>(18,278,539)</u>	<u>(20,179,552)</u>
11,996,556	9,771,434	7,933,995	50,773,834
212,142,828	224,139,384	233,910,818	241,844,813
<u>\$224,139,384</u>	<u>\$233,910,818</u>	<u>\$241,844,813</u>	<u>\$292,618,647</u>
<u>\$120,459,949</u>	<u>\$128,490,891</u>	<u>\$135,539,577</u>	<u>\$100,631,622</u>
65.04%	64.54%	64.08%	74.41%
<u>\$21,698,152</u>	<u>\$23,314,576</u>	<u>\$21,136,130</u>	<u>\$26,167,767</u>
555.16%	551.12%	641.27%	384.56%

City of Milpitas
Required Supplementary Information

SCHEDULE OF CONTRIBUTIONS
Safety Plan - Agent Multiple-Employer Defined Pension Plan
Last 10 Years*

Fiscal Year Ended June 30	2015	2016	2017	2018
Actuarially determined contribution	\$5,904,019	\$7,346,983	\$8,741,506	\$9,247,165
Contributions in relation to the actuarially determined contributions	5,904,019	7,346,983	8,741,506	9,247,165
Contribution deficiency (excess)	\$0	\$0	\$0	\$0
Covered payroll	\$18,810,920	\$20,170,400	\$21,078,669	\$21,698,152
Contributions as a percentage of covered payroll	31.39%	36.42%	41.47%	42.62%
Notes to Schedule				
Valuation date:	6/30/2012	6/30/2013	6/30/2014	6/30/2015

Methods and assumptions used to determine contribution rates:

Actuarial cost method	Entry age
Amortization method	Level percentage of payroll
Remaining amortization period	15 Years as of the Valuation Date
Asset valuation method	Market Value of Assets
Inflation	2.75% for 2015 to 2019, 2.625% for 2020, and 2.50% for 2021 and 2022
Salary increases	Varies by Entry Age and Service
Investment rate of return	7.50% for 2015 to 2018, 7.375% for 2019, 7.25% for 2020, and 7.00% for 2021 and 2022, net of pension plan investment expense, including inflation.
Retirement age	The probabilities of Retirement are based on the CalPERS Experience Study
Mortality	The probabilities of mortality are based on the CalPERS Experience Study. Pre-retirement and Post-retirement mortality rates include 20 years of projected mortality improvement using Scale BB published by the Society of Actuaries for 2015 to 2018. For 2019, 2020, 2021 and 2022, pre-retirement and post-retirement mortality rates include 15 years of projected mortality improvement using 90% of Scale MP-2016 published by the Society of Actuaries.

* Fiscal year 2015 was the 1st year of implementation.

2019	2020	2021	2022
\$10,289,680	\$11,739,849	\$12,866,635	\$14,258,505
10,289,680	11,739,849	12,866,635	14,258,505
<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
\$23,314,576	\$21,136,130	\$23,212,673	\$26,167,767
44.13%	55.54%	55.43%	54.49%
6/30/2016	6/30/2017	6/30/2018	6/30/2018



SPECIAL REVENUE FUNDS:**GAS TAX FUND**

Established to account for the City's share of state gasoline taxes which are restricted for use on construction and maintenance of the street system in Milpitas.

HOUSING AND COMMUNITY DEVELOPMENT FUND

Established to account for community development block grants and expenditures.

LAW ENFORCEMENT SERVICES FUND

Established to account for the proceeds from Federal and State asset seizures. This fund also accounts for the Supplemental Law Enforcement Services grant, Local Law Enforcement Block grant, Justice Assistance grant and expenditures. These funds must be used only for specified law enforcement purposes.

SOLID WASTE REDUCTION AND SERVICES FUND

Established to account for landfill tipping fees allocated by Santa Clara County. The County allocates a fee of \$1 per ton to each City to be used in relation to the State of California Waste Reduction Act. Revenue is used for the implementation of waste reduction programs to meet the State required landfill deposits percentage reduction. The fund also accounts for special charges built into garbage rates specifically for community promotions and household hazardous waste activities.

LIGHTING AND LANDSCAPE MAINTENANCE DISTRICT FUND

Established to account for assessments collected within the district. Revenue is used for servicing and maintaining the public landscaping and additional lighting for the district.

COMMUNITY FACILITIES DISTRICT FUND

Established to account for assessments collected within the district. Revenue is used for providing City services for the district.

HETCH-HETCHY GROUND LEASE FUND

Established to account for the lease payment to the City and County of San Francisco for the permitted use of the Hetch-Hetchy land.

COMMUNITY PLANNING FUND

Established to account for fees collected to fund the General Plan update, zoning ordinance update and other long range planning documents.

COMMUNITY BENEFITS FUND

Established to account for fees collected from developers to fund Public Benefits for the Community.

AFFORDABLE HOUSING FUND

Established to account for fees collected from developers to fund Affordable Housing activities.

AFFORDABLE HOUSING UNRESTRICTED FUND

Established to account for Affordable Housing unrestricted activities funded by General Fund Surplus.

CAPITAL PROJECTS FUNDS:**PUBLIC ART FUND**

Established to account for the acquisition and installation of public art. Financing provided by a percentage of eligible project expenditures within the City's Annual Capital Improvement Program.

PARK IMPROVEMENT FUND

Established to account for the construction and maintenance of City parks. A special park improvement fee is imposed on developments to provide financing.

STORM DRAIN DEVELOPMENT FUND

Established to account for the construction and maintenance of storm drain projects. A special storm drain fee is imposed on developments to provide financing.





CITY OF MILPITAS
NON-MAJOR GOVERNMENTAL FUNDS
COMBINING BALANCE SHEETS
JUNE 30, 2022

	SPECIAL REVENUE FUNDS					
	Gas Tax	Housing and Community Development	Law Enforcement Services	Solid Waste Reduction and Services	Lighting and Landscape Maintenance District	Community Facilities District
ASSETS						
Cash and investments available for operations	\$3,978,669	\$593,531	\$753,657	\$1,219,102	\$194,509	\$2,156,709
Receivables:						
Due from other governments	437,655	347,656	7,574	21,069		14,296
Interest	8,370		39	2,520	401	5,013
Loans receivable		3,225,910				
Prepays, materials, supplies and deposits		2,179		2,416	1,789	12,763
Total Assets	<u>\$4,424,694</u>	<u>\$4,169,276</u>	<u>\$761,270</u>	<u>\$1,245,107</u>	<u>\$196,699</u>	<u>\$2,188,781</u>
LIABILITIES						
Accounts payable		\$351,971	\$8,266	\$15,856	\$1,888	
Accrued payroll			210	18,153	4,349	\$36,461
Unearned revenue			638,426	146,072		
Refundable deposits				18,843		
Total Liabilities		<u>351,971</u>	<u>646,902</u>	<u>198,924</u>	<u>6,237</u>	<u>36,461</u>
FUND BALANCE						
Fund Balances:						
Nonspendable		2,179		2,416	1,789	12,763
Restricted	\$4,424,694	3,815,126	114,368	1,043,767	188,673	2,139,557
Assigned						
Total Fund Balances	<u>4,424,694</u>	<u>3,817,305</u>	<u>114,368</u>	<u>1,046,183</u>	<u>190,462</u>	<u>2,152,320</u>
Total Liabilities and Fund Balances	<u>\$4,424,694</u>	<u>\$4,169,276</u>	<u>\$761,270</u>	<u>\$1,245,107</u>	<u>\$196,699</u>	<u>\$2,188,781</u>

SPECIAL REVENUE FUNDS					CAPITAL PROJECTS FUNDS			
Hetch-Hetchy Ground Lease	Community Planning	Community Benefits	Affordable Housing	Affordable Housing Unrestricted	Public Art	Park Improvement	Storm Drain Development	Total Nonmajor Governmental Funds
\$1,483,137	\$309,763	\$364,546	\$5,076,140	\$2,539,483	\$1,063,970	\$8,457,494	\$6,044,392	\$34,235,102
	188		62,823			771,333		1,662,594
3,229	1,403		10,586	4,691	2,317	18,416	11,232	68,217
								3,225,910
	2,632		2,818					24,597
<u>\$1,486,366</u>	<u>\$313,986</u>	<u>\$364,546</u>	<u>\$5,152,367</u>	<u>\$2,544,174</u>	<u>\$1,066,287</u>	<u>\$9,247,243</u>	<u>\$6,055,624</u>	<u>\$39,216,420</u>
	\$210		\$21,394			\$887,482	\$35,872	\$1,322,939
	8,380		22,722			12,152	53	102,480
								784,498
								18,843
	8,590		44,116			899,634	35,925	2,228,760
	2,632		2,818					24,597
\$1,486,366	302,764	\$364,546	5,105,433	\$2,544,174		8,347,609	6,019,699	35,896,776
					<u>\$1,066,287</u>			<u>1,066,287</u>
<u>1,486,366</u>	<u>305,396</u>	<u>364,546</u>	<u>5,108,251</u>	<u>2,544,174</u>	<u>1,066,287</u>	<u>8,347,609</u>	<u>6,019,699</u>	<u>36,987,660</u>
<u>\$1,486,366</u>	<u>\$313,986</u>	<u>\$364,546</u>	<u>\$5,152,367</u>	<u>\$2,544,174</u>	<u>\$1,066,287</u>	<u>\$9,247,243</u>	<u>\$6,055,624</u>	<u>\$39,216,420</u>

CITY OF MILPITAS
NON-MAJOR GOVERNMENTAL FUNDS
COMBINING STATEMENTS OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
FOR THE YEAR ENDED JUNE 30, 2022

	SPECIAL REVENUE FUNDS					
	Gas Tax	Housing & Community Development	Law Enforcement Services	Solid Waste Reduction and Services	Lighting and Landscape Maintenance District	Community Facilities District
REVENUES:						
Other taxes					\$445,034	\$4,128,065
Use of money and property	\$61,900	\$9,039	\$6,863	\$10,826	1,080	18,554
Intergovernmental	3,346,867	1,232,162	287,067	158,131		
Charges for services				7,346		
Developer contributions						
Other						
Total Revenues	3,408,767	1,241,201	293,930	176,303	446,114	4,146,619
EXPENDITURES:						
Current:						
General Government		1,241,003				8,454
Building, Safety and Housing						
Public Works				556,149	208,816	1,393,134
Engineering					86,301	
Planning						
Police			288,914			
Capital outlay						
Total Expenditures		1,241,003	288,914	556,149	295,117	1,401,588
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	3,408,767	198	5,016	(379,846)	150,997	2,745,031
OTHER FINANCING SOURCES (USES)						
Transfers in	98				40,590	
Transfers (out)	(2,276,735)		(60,000)	(138,558)	(4,000)	(2,610,000)
Total Other Financing Sources (Uses)	(2,276,637)		(60,000)	(138,558)	36,590	(2,610,000)
NET CHANGE IN FUND BALANCES	1,132,130	198	(54,984)	(518,404)	187,587	135,031
Fund balances at beginning of year	3,292,564	3,817,107	169,352	1,564,587	2,875	2,017,289
FUND BALANCES AT END OF YEAR	\$4,424,694	\$3,817,305	\$114,368	\$1,046,183	\$190,462	\$2,152,320

SPECIAL REVENUE FUNDS					CAPITAL PROJECTS FUNDS			Total Nonmajor Governmental Funds
Hetch-Hetchy Ground Lease	Community Planning	Community Benefits	Affordable Housing	Affordable Housing Unrestricted	Public Art	Park Improvement	Storm Drain Development	
								\$4,573,099
(\$51,851)	\$3,682	\$3,227	\$44,831	\$19,448	(\$37,355)	(\$287,469)	(\$178,214)	(375,439)
			62,823			806,795		5,893,845
	265,191		123,001					395,538
			1,083,650			1,505,434	550,092	3,139,176
					176,164			176,164
(51,851)	268,873	3,227	1,314,305	19,448	138,809	2,024,760	371,878	13,802,383
37,014		8,891	106,068					1,401,430
			841,486					841,486
								2,158,099
	289,371							86,301
								289,371
								288,914
						6,024,411	887,517	6,911,928
37,014	289,371	8,891	947,554			6,024,411	887,517	11,977,529
(88,865)	(20,498)	(5,664)	366,751	19,448	138,809	(3,999,651)	(515,639)	1,824,854
				295,254		75,000	1,030,761	1,441,703
	(550,000)				(326,000)	(359,516)		(6,324,809)
	(550,000)			295,254	(326,000)	(284,516)	1,030,761	(4,883,106)
(88,865)	(570,498)	(5,664)	366,751	314,702	(187,191)	(4,284,167)	515,122	(3,058,252)
1,575,231	875,894	370,210	4,741,500	2,229,472	1,253,478	12,631,776	5,504,577	40,045,912
\$1,486,366	\$305,396	\$364,546	\$5,108,251	\$2,544,174	\$1,066,287	\$8,347,609	\$6,019,699	\$36,987,660

CITY OF MILPITAS
BUDGETED NON-MAJOR FUNDS
COMBINING SCHEDULE OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
BUDGET AND ACTUAL (NON-GAAP LEGAL BASIS)
FOR THE YEAR ENDED JUNE 30, 2022

	GAS TAX			HOUSING AND COMMUNITY DEVELOPMENT		
	Budget	Actual Amounts Budgetary Basis	Variance Positive (Negative)	Budget	Actual Amounts Budgetary Basis	Variance Positive (Negative)
REVENUES						
Other taxes						
Use of money and property		\$61,900	\$61,900		\$9,039	\$9,039
Intergovernmental		3,346,867	3,346,867		1,232,162	1,232,162
Charges for services						
Developer contributions						
Total Revenues		3,408,767	3,408,767		1,241,201	1,241,201
EXPENDITURES						
Current:						
General Government:						
City Manager						
City Attorney						
Finance				\$15,000	15,000	
Non-departmental				1,224,162	1,226,003	(1,841)
Building, Safety and Housing						
Public Works						
Engineering						
Planning						
Police						
Fire						
Total Expenditures				1,239,162	1,241,003	(1,841)
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES		3,408,767	3,408,767	(1,239,162)	198	1,239,360
OTHER FINANCING SOURCES (USES)						
Transfers in		98	98			
Transfers (out)		(2,276,735)	(2,276,735)			
Total Other Financing Sources (Uses)		(2,276,637)	(2,276,637)			
NET CHANGE IN FUND BALANCES		1,132,130	\$1,132,130	(\$1,239,162)	198	\$1,239,360
ADJUSTMENT TO BUDGETARY BASIS:						
Expenditures capitalized for GAAP purposes						
Capital Outlay						
Encumbrance adjustments						
Fund balances at beginning of year		3,292,564			3,817,107	
Fund balances at end of year		\$4,424,694			\$3,817,305	

LAW ENFORCEMENT SERVICES			SOLID WASTE REDUCTION AND SERVICES			LIGHTING AND LANDSCAPING MAINTENANCE DISTRICT		
Budget	Actual Amounts Budgetary Basis	Variance Positive (Negative)	Budget	Actual Amounts Budgetary Basis	Variance Positive (Negative)	Budget	Actual Amounts Budgetary Basis	Variance Positive (Negative)
	\$6,863	\$6,863		\$10,826	\$10,826		\$445,034	\$445,034
	287,067	287,067		158,131	158,131		1,080	1,080
				7,346	7,346			
	293,930	293,930		176,303	176,303		446,114	446,114
			\$988,542	658,966	329,576	\$329,499	208,816	120,683
			8,382		8,382	109,573	88,480	21,093
\$777,897	370,801	407,096						
	38,887	(38,887)						
777,897	409,688	368,209	996,924	658,966	337,958	439,072	297,296	141,776
(777,897)	(115,758)	662,139	(996,924)	(482,663)	514,261	(439,072)	148,818	587,890
	(60,000)	(60,000)		(138,558)	(138,558)		40,590	40,590
							(4,000)	(4,000)
	(60,000)	(60,000)		(138,558)	(138,558)		36,590	36,590
(\$777,897)	(175,758)	\$602,139	(\$996,924)	(621,221)	\$375,703	(\$439,072)	185,408	\$624,480
	120,774			102,817			2,179	
	169,352			1,564,587			2,875	
	\$114,368			\$1,046,183			\$190,462	

(Continued)

CITY OF MILPITAS
BUDGETED NON-MAJOR FUNDS
COMBINING SCHEDULE OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
BUDGET AND ACTUAL (NON-GAAP LEGAL BASIS)
FOR THE YEAR ENDED JUNE 30, 2022

	COMMUNITY FACILITIES DISTRICT			HETCH-HETCHY GROUND LEASE		
	Budget	Actual Amounts Budgetary Basis	Variance Positive (Negative)	Budget	Actual Amounts Budgetary Basis	Variance Positive (Negative)
REVENUES						
Other taxes		\$4,128,065	\$4,128,065			
Use of money and property		18,554	18,554		(\$51,851)	(\$51,851)
Intergovernmental						
Charges for services						
Developer contributions						
Total Revenues		4,146,619	4,146,619		(51,851)	(51,851)
EXPENDITURES						
Current:						
General Government:						
City Manager						
City Attorney						
Finance						
Non-departmental	\$8,454	8,454		\$37,500	37,014	486
Building, Safety and Housing						
Public Works	1,496,433	1,473,134	23,299			
Engineering						
Planning						
Police						
Total Expenditures	1,504,887	1,481,588	23,299	37,500	37,014	486
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	(1,504,887)	2,665,031	4,169,918	(37,500)	(88,865)	(51,365)
OTHER FINANCING SOURCES (USES)						
Transfers in						
Transfers (out)		(2,610,000)	(2,610,000)			
Total Other Financing Sources (Uses)		(2,610,000)	(2,610,000)			
NET CHANGE IN FUND BALANCES	<u>(\$1,504,887)</u>	55,031	<u>\$1,559,918</u>	<u>(\$37,500)</u>	(88,865)	<u>(\$51,365)</u>
ADJUSTMENT TO BUDGETARY BASIS:						
Expenditures capitalized for GAAP purposes						
Capital Outlay						
Encumbrance adjustments		80,000				
Fund balances at beginning of year		2,017,289			1,575,231	
Fund balances at end of year		<u>\$2,152,320</u>			<u>\$1,486,366</u>	

COMMUNITY PLANNING			COMMUNITY BENEFITS			AFFORDABLE HOUSING		
Budget	Actual Amounts Budgetary Basis	Variance Positive (Negative)	Budget	Actual Amounts Budgetary Basis	Variance Positive (Negative)	Budget	Actual Amounts Budgetary Basis	Variance Positive (Negative)
	\$3,682	\$3,682		\$3,227	\$3,227		\$44,831	\$44,831
	265,191	265,191					62,823	62,823
							123,001	123,001
							1,083,650	1,083,650
	268,873	268,873		3,227	3,227		1,314,305	1,314,305
			\$15,000	8,891	6,109	\$34,506	33,838	668
						23,211	14,627	8,584
						65,030	57,603	7,427
						1,171,589	841,486	330,103
\$289,813	289,371	442						
289,813	289,371	442	15,000	8,891	6,109	1,294,336	947,554	346,782
(289,813)	(20,498)	269,315	(15,000)	(5,664)	9,336	(1,294,336)	366,751	1,661,087
	(550,000)	(550,000)						
	(550,000)	(550,000)						
(\$289,813)	(570,498)	(\$280,685)	(\$15,000)	(5,664)	\$9,336	(\$1,294,336)	366,751	\$1,661,087
	875,894			370,210			4,741,500	
	\$305,396			\$364,546			\$5,108,251	

(Continued)

CITY OF MILPITAS
BUDGETED NON-MAJOR FUNDS
COMBINING SCHEDULE OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
BUDGET AND ACTUAL (NON-GAAP LEGAL BASIS)
FOR THE YEAR ENDED JUNE 30, 2022

	AFFORDABLE HOUSING UNRESTRICTED			PUBLIC ART		
	Budget	Actual Amounts Budgetary Basis	Variance Positive (Negative)	Budget	Actual Amounts Budgetary Basis	Variance Positive (Negative)
REVENUES						
Other taxes						
Use of money and property		\$19,448	\$19,448		(\$37,355)	(\$37,355)
Intergovernmental						
Charges for services						
Developer contributions					176,164	176,164
Total Revenues		19,448	19,448		138,809	138,809
EXPENDITURES						
Current:						
General Government:						
City Manager						
City Attorney						
Finance						
Non-departmental						
Building, Safety and Housing						
Public Works						
Engineering						
Planning						
Police						
Total Expenditures						
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES		19,448	19,448		138,809	138,809
OTHER FINANCING SOURCES (USES)						
Transfers in		295,254	295,254			
Transfers (out)					(326,000)	(326,000)
Total Other Financing Sources (Uses)		295,254	295,254		(326,000)	(326,000)
NET CHANGE IN FUND BALANCES		314,702	\$314,702		(187,191)	(\$187,191)
ADJUSTMENT TO BUDGETARY BASIS:						
Expenditures capitalized for GAAP purposes						
Capital Outlay						
Encumbrance adjustments						
Fund balances at beginning of year		2,229,472			1,253,478	
Fund balances at end of year		\$2,544,174			\$1,066,287	

TOTALS		
Budget	Actual Amounts Budgetary Basis	Variance Positive (Negative)
	\$4,573,099	\$4,573,099
	90,244	90,244
	5,024,227	5,024,227
	272,537	272,537
	1,259,814	1,259,814
	11,219,921	11,219,921
\$49,506	33,838	15,668
23,211	14,627	8,584
15,000	15,000	
1,335,146	1,329,074	6,072
1,171,589	841,486	330,103
2,814,474	2,340,916	473,558
117,955	88,480	29,475
289,813	289,371	442
777,897	370,801	407,096
6,594,591	5,323,593	1,270,998
(6,594,591)	5,896,328	12,490,919
	335,942	335,942
	(5,965,293)	(5,965,293)
	(5,629,351)	(5,629,351)
(\$6,594,591)	266,977	\$6,861,568
	305,770	
	21,909,559	
	\$22,482,306	



INTERNAL SERVICE FUNDS

Internal Service Funds report any activity that provides goods or services to other funds, departments, or agencies of the primary government and its components units, or to other governments, on a cost reimbursement basis. These funds include the following:

EQUIPMENT MANAGEMENT INTERNAL SERVICE FUND

The Equipment Management Internal Service Fund is used to finance and account for the replacement of equipment used by City departments and the maintenance of computer systems on a cost reimbursement basis.

PENSION SECTION 115 INTERNAL SERVICE FUND

The Pension Section 115 Internal Service Fund is used to accumulate funds which may be used to fund either the annual actuarially determined pension contribution amounts, pay down unfunded pension liabilities with CalPERS, or reduce the length of pension cost amortization schedules with CalPERS.



CITY OF MILPITAS
INTERNAL SERVICE FUNDS
COMBINING STATEMENTS OF NET POSITION
JUNE 30, 2022

Item # C9.

	Equipment Management	Pension Section 115	Totals
ASSETS			
Current Assets			
Cash and investments	\$12,799,403	\$30,537,346	\$43,336,749
Interest receivable	25,895		25,895
Total current assets	12,825,537	30,537,346	43,362,883
Noncurrent Assets			
Materials, supplies and deposits	600,659		600,659
Capital assets (net of accumulated depreciation)	9,341,366		9,341,366
Total noncurrent assets	9,942,025		9,942,025
Total Assets	22,767,562	30,537,346	53,304,908
LIABILITIES			
Current Liabilities			
Accounts payable	83,539		83,539
Interest payable			
Refundable deposit	196		196
Accrued payroll	50,725		50,725
Accrued vacation	112,221		112,221
Sick leave payable	15,458		15,458
Noncurrent Liabilities			
Accrued vacation	19,782		19,782
Sick leave payable			
Total Liabilities	281,921		281,921
NET POSITION			
Invested in capital assets	9,341,366		9,341,366
Restricted for pension expenses		30,537,346	30,537,346
Unrestricted	13,144,275		13,144,275
Total Net Position	\$22,485,641	\$30,537,346	\$53,022,987

CITY OF MILPITAS
INTERNAL SERVICE FUNDS
COMBINING STATEMENTS OF REVENUES, EXPENSES AND
CHANGES IN FUND NET POSITION
FOR THE YEAR ENDED JUNE 30, 2022

	Equipment Management	Pension Section 115	Totals
OPERATING REVENUES			
Charges for services	\$3,734,444		\$3,734,444
Other	1,696	(\$5,672,403)	(5,670,707)
Total Operating Revenues	3,736,140	(5,672,403)	(1,936,263)
OPERATING EXPENSES			
Personal services	1,431,811		1,431,811
Services and supplies	1,088,229		1,088,229
Depreciation and amortization	1,190,932		1,190,932
Maintenance and repairs	760,039		760,039
Total Operating Expenses	4,471,011		4,471,011
Operating Income (Loss)	(734,871)	(5,672,403)	(6,407,274)
NONOPERATING REVENUES (EXPENSES)			
Gain on sale of capital assets	80,616		80,616
Interest income(loss)	(413,345)	822,738	409,393
Total Nonoperating Revenues (Expenses)	(332,729)	822,738	490,009
Income (Loss) Before Contributions and Transfers	(1,067,600)	(4,849,665)	(5,917,265)
Contributions	1,205,018		1,205,018
Transfer in	890,508		890,508
Transfer out	(211,131)		(211,131)
Change in net position	816,795	(4,849,665)	(4,032,870)
Net position-beginning	21,668,846	35,387,011	57,055,857
Net position-ending	\$22,485,641	\$30,537,346	\$53,022,987

CITY OF MILPITAS
INTERNAL SERVICE FUNDS
COMBINING STATEMENTS OF CASH FLOWS
FOR THE YEAR ENDED JUNE 30, 2022

Item # C9.

	Equipment Management	Pension Section 115	Totals
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts from customers	\$3,735,901	(\$5,672,403)	(\$1,936,502)
Payments to suppliers	(2,423,487)		(2,423,487)
Payments to employees	(1,490,216)		(1,490,216)
Net cash provided by operating activities	(177,802)	(5,672,403)	(5,850,205)
CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES			
Transfers in	890,508		890,508
Transfers out	(211,131)		(211,131)
Cash Flows from Noncapital Financing Activities	679,377		679,377
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES			
Acquisition of capital assets	257,008		257,008
Proceeds from sale of capital assets	93,272		93,272
Cash Flows from Capital and Related Financing Activities	350,280		350,280
CASH FLOWS FROM INVESTING ACTIVITIES			
Interest and dividends	(412,705)	822,738	410,033
Cash Flows from Investing Activities	(412,705)	822,738	410,033
Net increase (decrease) in cash and cash equivalents	439,150	(4,849,665)	(4,410,515)
Cash and investments at beginning of period	12,360,253	35,387,011	47,747,264
Cash and investments at end of period	\$12,799,403	\$30,537,346	\$43,336,749
NONCASH TRANSACTIONS:			
Contributions and transfers of capital assets, net	\$1,205,018		\$1,205,018
Retirement of capital assets, net	(12,656)		(12,656)
Reconciliation of operating income (loss) to net cash provided by operating activities:			
Operating income (loss)	(734,871)	(\$5,672,403)	(6,407,274)
Adjustments to reconcile operating income to net cash provided by operating activities:			
Depreciation	1,190,932		1,190,932
Change in assets and liabilities:			
Receivables, net	(239)		(239)
Materials, supplies and deposits	(481,042)		(481,042)
Accounts and other payables	(152,582)		(152,582)
Net cash provided by operating activities	(\$177,802)	(\$5,672,403)	(\$5,850,205)



STATISTICAL SECTION

This part of the City's Annual Comprehensive Financial Report presents detailed information as a context for understanding what the information in the financial statements, note disclosures, and required supplementary information says about the City's overall financial health. In contrast to the financial section, the statistical section information is not subject to independent audit.

Financial Trends

These schedules contain trend information to help the reader understand how the City's financial performance and wellbeing have changed over time:

- Net Position – Schedule 1
- Changes in Net Position – Schedule 2
- Fund Balances, Governmental Funds – Schedule 3
- Changes in Fund Balance, Governmental Funds – Schedule 4

Revenue Capacity

These schedules contain information to help the reader assess the City's most significant local revenue source, the property tax:

- Assessed Value and Actual Value of Taxable Property – Schedule 5
- Direct and Overlapping Property Taxes Rates – Schedule 6
- Principal Property Taxpayers – Schedule 7
- Property Tax Levies and Collections – Schedule 8
- Taxable Sales by Category – Schedule 9
- Direct and Overlapping Sales Tax Rates – Schedule 10
- Principal Sales Tax Payers – Schedule 11

Debt Capacity

These schedules present information to help the reader assess the affordability of the City's current levels of outstanding debt and the City's ability to issue additional debt in the future:

- Ratios of Outstanding Debt by Type – Schedule 12
- Bonded Debt Pledged Revenue Coverage, Redevelopment Agency Tax Allocation Bonds – Schedule 13
- Computation of Direct and Overlapping Debt – Schedule 14
- Legal Debt Margin Information – Schedule 15
- Installment Payment Coverage, Sewer Certificates of Participation and Waste Water Revenue Refunding Bonds – Schedule 16
- Installment Payment Coverage, Water Revenue Bonds – Schedule 17

Demographic and Economic Information

These schedules offer demographic and economic indicators to help the reader understand the environment within which the City's financial activities take place:

- Bimonthly Sewer Rates by Customer Class – Schedule 18
- Bimonthly Water Rates by Customer Class – Schedule 19
- Demographic and Economic Statistics – Schedule 20
- Principal Employers – Schedule 21

Operating Information

These schedules contain service and infrastructure data to help the reader understand how the information in the City's financial report relates to the services the City provides and the activities it performs:

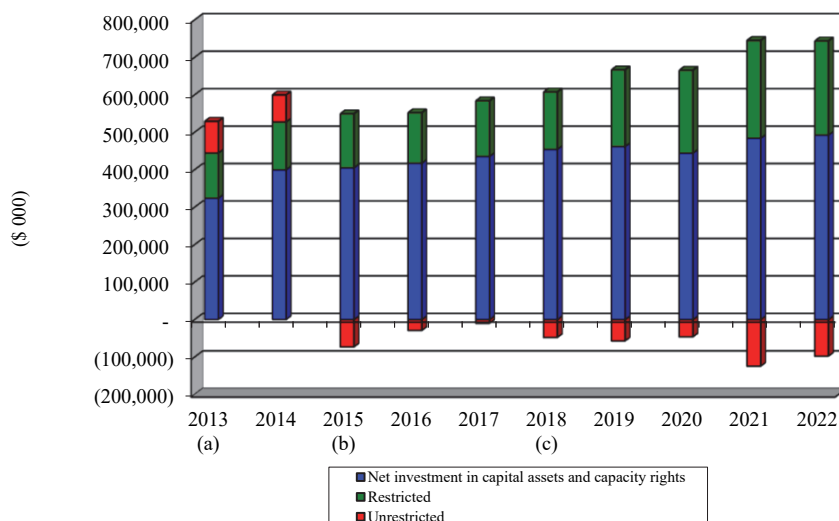
- Authorized Full-Time Equivalent Employees by Function/Program – Schedule 22
- Operating Indicators by Function/Program – Schedule 23
- Capital Asset Statistics by Function/Program – Schedule 24

Sources

Unless otherwise noted, the information in these schedules is derived from the Annual Comprehensive Financial Reports for the relevant year.



CITY OF MILPITAS
NET POSITION
LAST TEN FISCAL YEARS
(Accrual basis of accounting)
(Dollars in Thousands)



	Fiscal Year Ended June 30,				
	2013 (a)	2014	2015 (b)	2016	2017
Governmental activities					
Net investment in capital assets and capacity rights	\$217,002	\$291,704	\$291,500	\$298,321	\$312,138
Restricted	88,147	90,758	103,829	100,327	108,630
Unrestricted	64,876	51,315	(84,598)	(44,368)	(30,091)
Total governmental activities net position	<u>\$370,025</u>	<u>\$433,777</u>	<u>\$310,731</u>	<u>\$354,280</u>	<u>\$390,677</u>
Business-type activities					
Net investment in capital assets and capacity rights	\$106,489	\$107,816	\$113,232	\$118,588	\$122,937
Restricted	32,889	37,254	40,867	35,130	40,311
Unrestricted	19,799	20,880	11,586	15,261	20,254
Total business-type activities net position	<u>\$159,177</u>	<u>\$165,950</u>	<u>\$165,685</u>	<u>\$168,979</u>	<u>\$183,502</u>
Primary government					
Net investment in capital assets and capacity rights	\$323,491	\$399,520	\$404,732	\$416,909	\$435,075
Restricted	121,036	128,012	144,696	135,457	148,941
Unrestricted	84,675	72,195	(73,012)	(29,107)	(9,837)
Total primary government net position	<u>\$529,202</u>	<u>\$599,727</u>	<u>\$476,416</u>	<u>\$523,259</u>	<u>\$574,179</u>
	Fiscal Year Ended June 30				
	2018 (c)	2019	2020	2021	2022
Governmental activities					
Net investment in capital assets and capacity rights	\$323,239	\$326,564	\$344,471	\$358,445	\$365,009
Restricted	109,726	145,983	158,716	189,030	176,451
Unrestricted	(63,405)	(65,799)	(93,911)	(142,708)	(118,570)
Total governmental activities net position	<u>\$369,560</u>	<u>\$406,748</u>	<u>\$409,276</u>	<u>\$404,767</u>	<u>\$422,890</u>
Business-type activities					
Net investment in capital assets and capacity rights	\$130,736	\$135,048	\$99,331	\$125,206	\$127,204
Restricted	43,834	59,191	63,084	72,629	75,083
Unrestricted	15,784	8,930	47,967	18,483	21,208
Total business-type activities net position	<u>\$190,354</u>	<u>\$203,169</u>	<u>\$210,382</u>	<u>\$216,318</u>	<u>\$223,495</u>
Primary government					
Net investment in capital assets and capacity rights	\$453,975	\$461,612	\$443,802	\$483,651	\$492,213
Restricted	153,560	205,174	221,800	261,659	251,534
Unrestricted	(47,621)	(56,869)	(45,944)	(124,225)	(97,362)
Total primary government net position	<u>\$559,914</u>	<u>\$609,917</u>	<u>\$619,658</u>	<u>\$621,085</u>	<u>\$646,385</u>

- (a) The City implemented the provisions of GASB Statement 63 in fiscal year 2013, which replaced the term “net assets” with the term “net position”
- (b) The City implemented the provisions of GASB Statement 68 in fiscal year 2015 that required the restatement of net position. Amounts prior to 2015 have not been restated.
- (c) The City implemented the provisions of GASB Statement 75 in fiscal year 2018 that required the restatement of net position. Amounts prior to 2018 have not been restated.

CITY OF MILPITAS
CHANGES IN NET POSITION
LAST TEN FISCAL YEARS
(accrual basis of accounting)
(Dollars in Thousands)

	Fiscal Year Ended June 30,				
	2013	(a)	2014	2015	2016
Expenses					
Governmental activities					
General Government	\$15,329		\$21,074	\$18,118	\$18,614
Building and Safety	2,293		2,684	2,617	2,513
Building, Housing and Safety					
Recreation and Community Services					
Public Works	17,700	(b)	18,664	17,509	12,761
Engineering					5,790 (d)
Planning and Neighborhood Services	2,553		2,119	2,372	2,649 (d)
Planning					
Parks and Recreation	3,107	(b)	3,012	3,098	4,090
Police	21,702		23,373	24,699	24,556
Fire	15,810		15,159	16,301	16,400
Interest on Long Term Debt	227		240	67	56
Total governmental activities expenses	78,721		86,325	84,781	87,429
Business-type activities					
Water Utility	17,195		17,369	18,344	19,743
Recycled Water Utility	(c)		(c)	(c)	(c)
Sewer Utility	9,418		11,008	10,426	10,872
Total business-type activities expenses	26,613		28,377	28,770	30,615
Total primary government expenses	\$105,334		\$114,702	\$113,551	\$118,044
Program Revenues					
Governmental activities:					
Charges for services:					
General Government	\$1,700		\$1,819	\$1,063	\$2,065
Building and Safety	4,554		6,445	5,128	5,963
Building, Housing and Safety					
Recreation and Community Services					
Public Works	2,668		2,472	2,644	(d)
Engineering					2,863 (d)
Planning and Neighborhood Services	301		432	700	747
Planning					
Parks and Recreation	1,987		1,958	2,060	1,981
Police	1,051		1,091	1,151	1,138
Fire	1,508		2,120	1,885	2,440
Operating grants and contributions	7,487		6,195	6,201	7,320
Capital grants and contributions	8,286		15,483	14,711	35,195
Total government activities program revenues	29,542		38,015	35,543	59,712
Business-type activities					
Charges for services:					
Water Utility	19,801		21,354	21,136	18,709
Recycled Water Utility	(c)		(c)	(c)	(c)
Sewer Utility	12,632		12,753	14,453	15,964
Operating grants and contributions	111		57	127	63
Capital grants and contributions	1,975		1,402	710	1,103
Total business-type activities program revenue	34,519		35,566	36,426	35,839
Total primary government program revenues	\$64,061		\$73,581	\$71,969	\$95,551
Net (Expense)/Revenue					
Governmental activities	(\$49,179)		(\$48,310)	(\$49,238)	(\$27,717)
Business-type activities	7,906		7,189	7,656	5,224
Total primary government net expense	(\$41,273)		(\$41,121)	(\$41,582)	(\$22,493)

- (a) The City implemented the provisions of GASB Statement 63 in fiscal year 2013, which replaced the term "net assets" with the term "net position."
- (b) The parks division is part of the Public Works department beginning in fiscal year 2013.
- (c) Beginning in fiscal year 2013, the Recycled Water Utility is part of the Water Utility.
- (d) Public Works and Engineering are separate departments beginning in fiscal year 2016.
- (e) Neighborhood Services is a component of Building, Housing and Safety, and Planning is a separate department beginning in fiscal year 2019.
- (f) Under the terms of a settlement agreement with the County Auditor - Controller, Successor Agency to the Milpitas Redevelopment Agency and other parties, the City and Economic Development Corporation transferred cash and certain capital assets to the Successor Agency and received certain capital assets from the Successor Agency.

2017	2018	2019	2020	2021	2022
\$21,174	\$19,111	\$25,281	\$24,050	\$25,247	\$25,213
3,389	4,148	(e)	(e)	(e)	(e)
	(e)	5,449	7,418	6,705	4,943
	5,890	7,020	7,095	5,174	6,114
16,266	15,903	20,053	20,342	20,219	22,063
6,249 (d)	5,712 (d)	6,459 (d)	7,314 (d)	6,826 (d)	5,047 (d)
3,103 (d)	3,586 (d)	(e)	(e)	(e)	(e)
		1,851	2,741	2,489	1,851
4,949					
30,270	33,840	35,868	43,505	38,919	29,468
20,499	24,194	26,535	31,472	31,859	29,040
48		17	37	785	838
105,947	112,384	128,533	143,974	138,223	124,577
20,666	23,742	25,232	28,750	28,959	26,898
(c)	(c)	(c)	(c)	(c)	(c)
9,969	12,715	12,231	15,240	15,982	15,622
30,635	36,457	37,463	43,990	44,941	42,520
\$136,582	\$148,841	\$165,996	\$187,964	\$183,164	\$167,097
\$1,970	\$2,088	\$2,347	\$1,809	\$1,710	\$1,931
7,814	10,093	(e)	(e)	(e)	(e)
		9,718	6,621	8,629	8,815
	2,559	2,655	1,145	762	2,360
(d)	(d)	(d)	(d)	(d)	(d)
2,720 (d)	2,465 (d)	2,379 (d)	2,132 (d)	1,792 (d)	1,096 (d)
292	418	(e)	(e)	(e)	(e)
		226	452	408	474
2,301					
1,184	1,089	1,130	1,087	1,055	1,421
3,224	3,326	2,172	2,402	2,553	2,582
7,880	6,521	8,277	10,643	14,986	15,335
32,256	34,003	47,194	33,423	18,997	19,924
59,641	62,562	76,098	59,714	50,892	53,938
26,318	29,667	29,355	32,792	34,658	34,374
(c)	(c)	(c)	(c)	(c)	(c)
16,803	17,139	17,830	19,566	20,152	21,593
89	124	114	171	125	306
4,937	2,507	2,755	601	1,434	1,026
48,147	49,437	50,054	53,130	56,369	57,299
\$107,788	\$111,999	\$126,152	\$112,844	\$107,261	\$111,237
(\$46,306)	(\$49,822)	(\$52,435)	(\$84,260)	(\$87,331)	(\$70,639)
17,512	12,980	12,591	9,140	11,428	14,779
(\$28,794)	(\$36,842)	(\$39,844)	(\$75,120)	(\$75,903)	(\$55,860)

(Continued)

CITY OF MILPITAS
CHANGES IN NET POSITION
LAST TEN FISCAL YEARS
(accrual basis of accounting)
(Dollars in Thousands)

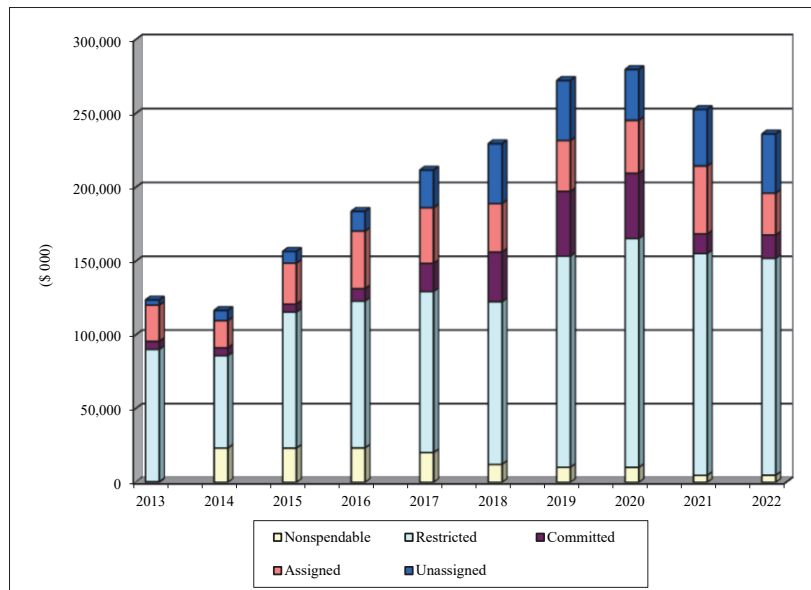
	Fiscal Year Ended June 30,				
	2013	(a)	2014	2015	2016
General Revenues and Other Changes in Net Position					
Governmental activities					
Taxes:					
Property taxes	\$20,469		\$27,607	\$24,927	\$27,068
Sales and use taxes	20,196		19,014	18,779	23,924
Hotel/Motel taxes	7,933		9,336	10,917	11,757
Other taxes	516		672	664	822
Franchise fees	3,270		3,453	3,659	3,841
Motor vehicle in lieu	37		31	29	29
Investment earnings	260		844	379	913
Gain on sale of capital assets/property	46				
Miscellaneous	103		200	333	287
Transfers	3,045		3,402	1,627	2,625
Extraordinary item					
Special Item			49,799		
Total government activities	55,875		64,559	61,314	71,266
Business-type activities					
Investment earnings	94		690	383	695
Transfers	(3,045)		(3,402)	(1,627)	(2,625)
Total business-type activities	(2,951)		(2,712)	(1,244)	(1,930)
Total primary government	\$52,924		\$61,847	\$60,070	\$69,336
Change in net position					
Governmental activities	\$6,696		\$16,249	\$12,076	\$43,549
Business-type activities	4,955		4,477	6,412	3,294
Total primary government	\$11,651		\$20,726	\$18,488	\$46,843

- (a) The City implemented the provisions of GASB Statement 63 in fiscal year 2013, which replaced the term “net assets” with the term “net position.”
- (b) The parks division is part of the Public Works department beginning in fiscal year 2013.
- (c) Beginning in fiscal year 2013, the Recycled Water Utility is part of the Water Utility.
- (d) Public Works and Engineering are separate departments beginning in fiscal year 2016.
- (e) Neighborhood Services is a component of Building, Housing and Safety, and Planning is a separate department beginning in fiscal year 2019.
- (f) Under the terms of a settlement agreement with the County Auditor - Controller, Successor Agency to the Milpitas Redevelopment Agency and other parties, the City and Economic Development Corporation transferred cash and certain capital assets to the Successor Agency and received certain capital assets from the Successor Agency.

2017	2018	2019	2020	2021	2022
\$30,262	\$31,893	\$33,811	\$37,684	\$40,979	\$42,646
25,392	26,991	27,983	24,173	24,170	33,210
11,858	12,122	14,503	11,377	4,213	8,013
803	814	808	836	791	1,070
3,871	4,678	5,127	5,173	5,036	5,188
34	39	36	60	57	87
118	301	4,474	2,808	965	(7,560)
7,324		4	43	28	198
118	186	390	446	503	1,554
2,923	2,511	2,489	4,187	6,079	4,357
	(12,432) (f)				
82,703	67,103	89,625	86,787	82,821	88,763
(65)	171	2,712	2,261	588	(3,246)
(2,923)	(2,511)	(2,489)	(4,187)	(6,079)	(4,357)
(2,988)	(2,340)	223	(1,926)	(5,491)	(7,603)
\$79,715	\$64,763	\$89,848	\$84,861	\$77,330	\$81,160
\$36,397	\$17,281	\$37,190	\$2,527	(\$4,510)	\$18,124
14,524	10,640	12,814	7,214	5,937	7,176
\$50,921	\$27,921	\$50,004	\$9,741	\$1,427	\$25,300



CITY OF MILPITAS
FUND BALANCES, GOVERNMENTAL FUNDS
LAST TEN FISCAL YEARS
(modified accrual basis of accounting)
(Dollars in Thousands)



	Fiscal Year Ended June 30,									
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
General Fund										
Nonspendable	\$468	\$23,279	\$23,265	\$23,387	\$20,209	\$10,043	\$10,234	\$10,189	\$4,783	\$4,866
Restricted										
Committed	5,433	5,433	5,433	8,440	19,026	33,643	43,852	44,082	13,266	15,766
Assigned	10,434	6,658	7,013	9,052	8,067	8,629	5,916	6,118	6,543	6,114
Unassigned	16,444	13,521	13,864	13,410	25,440	40,496	40,655	34,387	38,128	40,038
Total General Fund	\$32,779	\$48,891	\$49,575	\$54,289	\$72,742	\$92,811	\$100,657	\$94,776	\$62,720	\$66,784 (a)
All Other Governmental Funds										
Nonspendable	\$11	\$32	\$11	\$13	\$15	\$2,229	\$85	\$20	\$28	\$27
Restricted	89,821	62,661	92,347	99,701	109,416	110,418	143,232	155,359	150,544	147,231
Assigned	14,244	11,808	20,806	29,956	29,635	24,284	28,532	29,768	39,508	22,250
Unassigned	(12,955)	(6,610)	(5,932)							
Total all other governmental funds	\$91,121	\$67,891	\$107,232	\$129,670	\$139,066	\$136,931	\$171,849	\$185,147	\$190,080	\$169,508 (a)

(a) The change in total fund balance for the General Fund and other governmental funds is explained in Management's Discussion and Analysis.

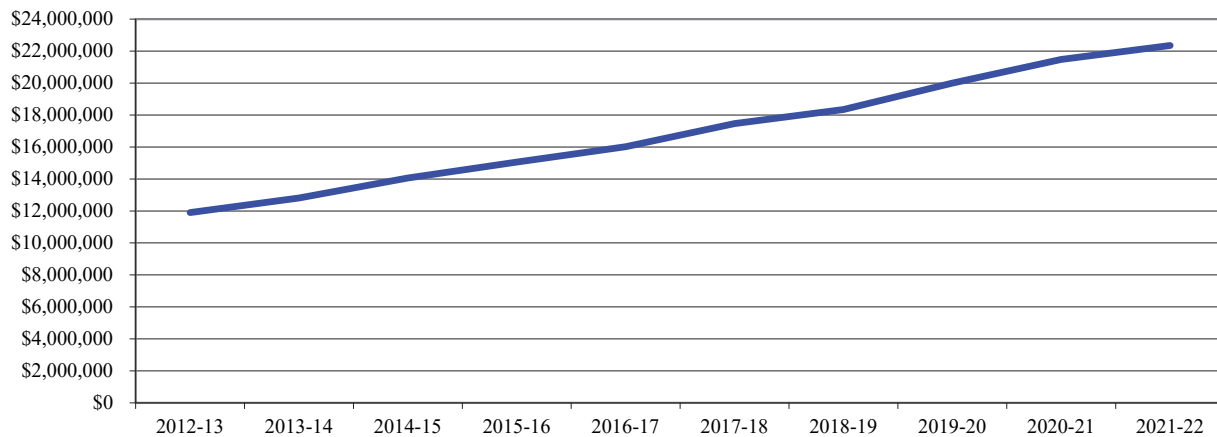
CITY OF MILPITAS
CHANGES IN FUND BALANCES, GOVERNMENTAL FUNDS
LAST TEN FISCAL YEARS
(modified accrual basis of accounting)
(Dollars in Thousands)

	Fiscal Year Ended June 30,				
	2013	2014	2015	2016	2017
Revenues					
Property taxes	\$20,466	\$27,608	\$24,927	\$27,068	\$30,261
Sales taxes	20,908	19,766	19,572	24,719	26,214
Hotel/Motel taxes					
Franchise fees					
Other taxes	13,343	14,992	17,505	18,737	19,349
Licenses and fines	5,875	8,193	6,971	8,051	10,497
Use of money and property	1,538	2,964	2,032	3,037	2,180
Intergovernmental	5,842	5,216	5,482	6,104	4,696
Charges for services	5,550	5,735	6,449	7,196	7,238
Developer contributions	7,987	13,975	11,614	29,410	25,637
Other	715	1,144	205	113	310
Total Revenues	82,224	99,593	94,757	124,435	126,382
Expenditures					
Current:					
General Government	11,871	13,204	12,814	13,771	17,089
Building and Safety	2,278	2,658	2,706	2,885	3,148
Building, Housing and Safety					
Recreation and Community Services				3,383	3,876
Human Resources and Recreation	3,087	3,124	3,329	(c)	(c)
Parks and Recreation	(a)	(a)	(a)	(a)	(a)
Public Works	9,124	8,535	9,199	6,020	6,839
Engineering				3,257	3,527
Planning and Neighborhood Services	2,030	2,202	2,570	2,805	2,978
Planning					
Police	20,978	22,165	24,193	26,124	27,247
Fire	15,420	14,587	15,605	17,470	18,456
Capital outlay	7,510	10,035	14,376	24,811	26,151
Debt service:					
Principal	4,209	3,828	6,000		
Interest and fees	668	223	61	54	48
Total Expenditures	77,175	80,561	90,853	100,580	109,359
Excess (deficiency) of revenues over (under) expenditures	5,049	19,032	3,904	23,855	17,023
Other Financing Sources (Uses)					
Proceeds from debt issuance					
Payments to refunded debt escrow agent	46				
Proceeds/gain from sale of properties		6	4	160	7,324
Loss from sale/conveyance of property	(512)				
Transfers in	13,780	7,499	25,558	23,001	18,405
Transfers (out)	(10,735)	(4,098)	(19,305)	(19,864)	(14,903)
Total other financing sources (uses)	2,579	3,407	6,257	3,297	10,826
Extraordinary Items					
Assets transferred to Housing Successor					
Assets transferred to/liabilities assumed by Successor Agency/Housing Successor					
Special Item					
Assets transferred to/from Successor Agency and County		(27,261) (b)			
Net Change in fund balances	\$7,628	\$22,439	\$10,161	\$27,152	\$27,849
Debt service as a percentage of noncapital expenditures	18.5%	5.5%	7.4%	0.1%	0.1%

- (a) Beginning in fiscal year 2013, parks maintenance division is part of the public works department and the recreation division is part of human resources department. However starting in fiscal year 2016, the recreation was separated out from Human Resources as an individual department
- (b) Under the terms of a settlement agreement with the County Auditor - Controller, Successor Agency to the Milpitas Redevelopment Agency and other parties, the City and Economic Development Corporation transferred cash and certain capital assets to the Successor Agency and received certain capital assets from the Successor Agency.
- (c) Human Resources is a component of General Government and Recreation is a separate department beginning in fiscal year 2016.
- (d) Neighborhood Services is a component of Building, Housing and Safety, and Planning is a separate department beginning in fiscal year 2019.
- (e) Transient occupancy taxes and Franchise fees were reported separately from Other taxes beginning in fiscal year 2020.

0.1%

CITY OF MILPITAS
ASSESSED VALUE AND ACTUAL VALUE OF TAXABLE PROPERTY
LAST TEN FISCAL YEARS
(Dollars in Thousands)



Fiscal Year	Real Property				Unsecured	Less: Tax-Exempt Property (c)	Total Taxable Assessed Value (a)	Total Direct Tax Rate (b)
	Residential Property	Commercial Property	Industrial Property	Other (c)				
2012-13	\$6,291,949	\$1,348,591	\$2,507,227	\$355,453	\$1,706,657	(\$309,165)	\$11,900,712	1%
2013-14	6,793,845	1,388,236	2,622,328	540,230	1,764,760	(296,041)	12,813,358	1%
2014-15	7,728,283	1,427,474	2,628,858	654,879	1,887,428	(266,136)	14,060,786	1%
2015-16	8,629,667	1,445,665	2,788,984	649,712	1,844,591	(299,860)	15,058,759	1%
2016-17	9,386,926	1,493,922	3,248,012	675,017	1,529,223	(314,291)	16,018,809	1%
2017-18	10,143,815	1,581,140	3,563,327	782,718	1,710,357	(315,999)	17,465,358	1%
2018-19	10,997,080	1,619,668	3,504,633	790,143	1,761,094	(328,719)	18,343,899	1%
2019-20	12,311,913	1,684,889	3,752,681	665,325	1,917,745	(333,527)	19,999,026	1%
2020-21	13,398,580	1,792,792	4,048,447	534,924	1,890,212	(186,858)	21,478,097	1%
2021-22	14,045,849	1,861,634	4,231,585	463,153	1,922,357	(178,163)	22,346,415	1%

Source: Hdl Coren & Cone, Santa Clara County Assessor Combined Tax Rolls

Notes:

- (a) The State Constitution requires property to be assessed at one hundred percent of the most recent purchase price, plus an increment of no more than two percent annually, plus any local over-rides. These values are considered to be full market values.
- (b) California cities do not set their own direct tax rate. The state constitution establishes the rate at 1% and allocates a portion of that amount, by an annual calculation, to all the taxing entities within a tax rate area.
- (c) Corrections were made for Fiscal Years 2013-14 through 2018-19 to correct the amounts for Other and Tax-Exempt Property. Total assessed value was unchanged.

CITY OF MILPITAS
DIRECT AND OVERLAPPING PROPERTY TAX RATES
LAST TEN FISCAL YEARS
(Rate per \$100 of assessed value)

Fiscal Year	City Direct Rates		Overlapping Rates (a)		
	Basic Rate (b)	Total Direct	County of Santa Clara (c)	School Districts	Special Districts
2012-13	1.00	1.00	0.0463	0.1140	0.0069
2013-14	1.00	1.00	0.0437	0.0961	0.0070
2014-15	1.00	1.00	0.0503	0.0750	0.0065
2015-16	1.00	1.00	0.0503	0.0817	0.0057
2016-17	1.00	1.00	0.0498	0.0734	0.0086
2017-18	1.00	1.00	0.0621	0.0880	0.0062
2018-19	1.00	1.00	0.0589	0.0850	0.0042
2019-20	1.00	1.00	0.0581	0.1245	0.0410
2020-21	1.00	1.00	0.0412	0.1255	0.0037
2021-22	1.00	1.00	0.0412	0.1210	0.0051

Source: County of Santa Clara, Tax Rates & Information

Notes:

- (a) Overlapping rates are those of local and county governments that apply to property owners within the City of Milpitas. Not all overlapping rates apply to all Milpitas property owners. These are voter approved levies in addition to the 1% State levy.
- (b) The City's basic property tax rate can only be increased by a 2/3 vote of the City's residents.
- (c) The overlapping rates for the County of Santa Clara were corrected in prior years to include amounts that were previously omitted by mistake.

CITY OF MILPITAS
PRINCIPAL PROPERTY TAX PAYERS
FISCAL YEARS 2021-22 and 2012-13

Taxpayer	2021-2022			2012-2013		
	Taxable Assessed Value	Rank	Percentage of Total City Taxable Assessed Value	Taxable Assessed Value	Rank	Percentage of Total City Taxable Assessed Value
Cisco Systems Inc.	\$867,898,866	1	3.88%	\$920,982,774	1	7.74%
KLA Tencor Corporation	465,867,697	2	2.08%	218,574,011	3	1.84%
Milpitas Mills LP	344,278,329	3	1.54%	327,223,683	2	2.75%
Headway Technologies Inc	308,496,406	4	1.38%	97,763,124	7	0.82%
Sandbox Expansion LLC	244,429,905	5	1.09%	90,412,630	8	0.76%
McCarthy Center Holding LLC	199,182,830	6	0.89%			
Trader Joes Company	192,903,762	7	0.86%			
Western Digital Technologies Inc	190,545,438	8	0.85%			
Amalfi Milpitas LLC	172,689,312	9	0.77%			
Lago Vista Milpitas LLC	172,078,619	10	0.77%			0.00%
Linear Technology Corporation				127,580,218	4	1.07%
BRE Milpitas LLC				118,766,415	5	1.00%
California Diversified LLC				114,342,000	6	0.96%
EQR Fresca 2009 LP				80,692,794	9	0.68%
Silicon Valley California I LLC				77,414,549	10	0.65%
Subtotal	<u>\$3,158,371,164</u>		<u>14.13%</u>	<u>\$2,173,752,198</u>		<u>18.27%</u>
Fiscal Year 2021-2022 Total Net Assessed Valuation			\$22,346,415,000			
Fiscal Year 2012-2013 Total Net Assessed Valuation			\$11,900,712,000			

Source: Hdl, Coren & Cone, Santa Clara County Assessor 2021/22 Combined Tax Rolls

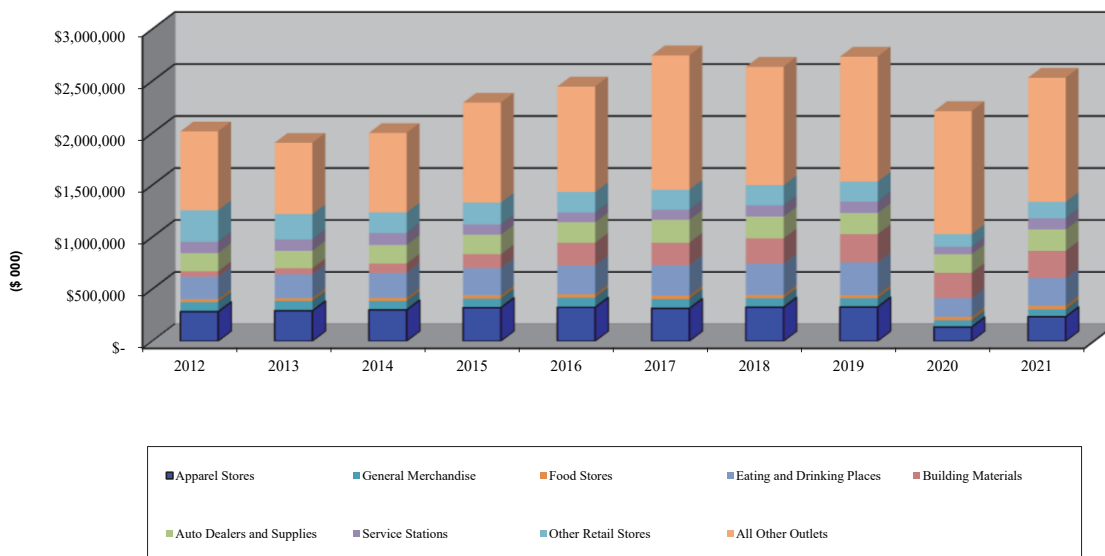
CITY OF MILPITAS
PROPERTY TAX LEVIES AND COLLECTIONS
LAST TEN FISCAL YEARS
(Dollars in thousands)

<u>Fiscal Year</u>	<u>Taxes Levied (a)</u>	<u>Current Collections (a)</u>	<u>Percent of Levy Collected</u>	<u>Delinquent Tax Collections</u>	<u>Total Taxes Collected (a)</u>	<u>Percent of Levy</u>
2012-13 (b)	\$20,469	\$20,469	100.00%	\$0	\$20,469	100.00%
2013-14	27,608	27,608	100.00%	0	27,608	100.00%
2014-15	24,927	24,927	100.00%	0	24,927	100.00%
2015-16	27,068	27,068	100.00%	0	27,068	100.00%
2016-17	30,262	30,262	100.00%	0	30,262	100.00%
2017-18	31,893	31,893	100.00%	0	31,893	100.00%
2018-19	33,811	33,811	100.00%	0	33,811	100.00%
2019-20	37,684	37,684	100.00%	0	37,684	100.00%
2020-21	41,093	41,093	100.00%	0	41,093	100.00%
2021-22	42,759	42,759	100.00%	0	42,759	100.00%

- (a) The City elected to participate in the "Teeter" plan offered by the County whereby cities receive 100% of the taxes levied in exchange for foregoing any interest and penalties collected on delinquent taxes.
- (b) The Redevelopment Agency was dissolved effective January 31, 2012 and collections of property tax increment ceased as of that date. Subsequent to that date, a Successor Agency collects property taxes of the former Redevelopment Agency.

Source: City of Milpitas Annual Comprehensive Financial Report

CITY OF MILPITAS
TAXABLE SALES BY CATEGORY
LAST TEN CALENDAR YEARS
(Dollars in Thousands)
Adjusted for Economic Data (a)



	CALENDAR YEARS									
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Apparel Stores	\$ 282,727	\$ 291,556	\$ 300,238	\$ 321,992	\$ 324,754	\$ 314,471	\$ 325,501	\$ 328,250	\$ 135,581	\$ 234,479
General Merchandise	92,912	93,209	85,048	86,475	92,857	90,725	86,646	83,341	64,448	70,905
Food Stores	28,345	27,962	30,876	32,076	32,093	32,541	31,105	31,622	33,127	35,255
Eating and Drinking Places	215,651	230,422	240,297	261,608	277,250	292,114	300,096	312,895	178,556	266,523
Building Materials	53,043	58,260	90,386	134,128	219,504	217,800	245,999	273,634	246,796	261,114
Auto Dealers and Supplies	173,357	167,073	177,278	186,944	195,658	218,917	208,223	201,342	176,739	204,398
Service Stations	109,768	110,453	115,955	98,980	93,186	97,579	107,423	110,236	70,733	108,408
Other Retail Stores	303,230	241,299	197,343	211,182	198,233	191,574	194,569	192,038	123,966	158,319
All Other Outlets	757,674	686,659	764,395	959,364	1,014,866	1,291,651	1,138,049	1,201,892	1,181,873	1,193,162
Total	<u>\$2,016,707</u>	<u>\$1,906,893</u>	<u>\$2,001,816</u>	<u>\$2,292,749</u>	<u>\$2,448,401</u>	<u>\$2,747,372</u>	<u>\$2,637,611</u>	<u>\$2,735,250</u>	<u>\$2,211,819</u>	<u>\$2,532,563</u>

Source: State Board of Equalization, California Department of Taxes and Fees Administration, State Controller's Office, The HdL Companies

Note: Due to confidentiality issues, the names of the ten largest revenue payers are not available. The categories presented are intended to provide alternative information regarding the sources to the City's revenue.

(a) Adjusted for Economic Data - reflects adjustments for prior periods taxable sales in the appropriate quarters.

CITY OF MILPITAS
DIRECT AND OVERLAPPING SALES TAX RATES
LAST TEN FISCAL YEARS

Fiscal Year	City Direct Rate	Santa Clara County (d)	State of California
2012-13	1.00	1.50 (a)	6.25 (b)
2013-14	1.00	1.50	6.25
2014-15	1.00	1.50	6.25
2015-16	1.00	1.50	6.25
2016-17	1.00	2.00	6.00 (c)
2017-18	1.00	2.00	6.00
2018-19	1.00	2.00	6.00
2019-20	1.00	2.00	6.00
2020-21	1.25	2.00	6.00
2021-22	1.25	2.13	6.00

Source: California State Board of Equalization

(a) April 1, 2013 the County increased the rate 0.25%

(b) On both July 1, 2012 and April 1, 2013 the State increased the State Rate 0.125%

(c) On April 1, 2017, the County increased the rate 0.50% and on January 1, 2017 the State decreased the rate 0.25%.

(d) Corrections were made to the County and State rates in all years. 0.25% that is part of the County Transportation Fund was being counted as State rate by mistake.

Note: The City's sales tax rate may be changed only with approval of the State Legislature.

CITY OF MILPITAS
 PRINCIPAL SALES TAX PAYERS
 FISCAL YEARS 2021-22 and 2012-13
 IN ALPHABETICAL ORDER

Fiscal Year 2021-2022	Fiscal Year 2012-2013
Autumn Information Systems	Best Buy
Best Buy	Burlington
Cisco Systems	Chevron
Coach	Chevron
Consolidated Electrical Distributors	Cisco Systems
Envision Honda of Milpitas	Coach
Envision Toyota of Milpitas	Dave & Busters
Eplus Technology	Flextronics
Flextronics	Gap Outlet
Floor & Decor	Headway Technologies
Headway Technologies	Home Depot
Home Depot	Jacklin Shell
Hoya Optics	KLA Tencor
Independent Electric Supply	Kohls
Jacklin Shell	Leotek Electronics
KLA Tencor	Marshalls
Marshalls	Mazak Corporation
Milpitas Materials Company	Milpitas Materials Company
Piercey Honda	Nike Factory Store
Piercey Toyota	One Workplace
Teledyne Lecroy	Piercey Toyota
Veeco Process Equipment Inc	Pivot Interiors
Vm Services Inc	Shell
Walmart Supercenter	South Bay Honda
Western Digital Technologies	Walmart Supercenter

Source: HDL Coren & Cone

CITY OF MILPITAS
RATIOS OF OUTSTANDING DEBT BY TYPE
LAST TEN FISCAL YEARS
(Dollars in thousands, except per capita)

Fiscal Year	Governmental Activities			Business-type Activities		Total Primary Government	Percentage of Personal Income (a)	Per Capita (a)
	Lease Revenue Bonds	Purchase Agreement	Capital Lease	Certificates of Participation	Revenue Bonds (d)			
2012-13	\$0	\$9,828	\$360	\$7,315	\$0	\$17,503	0.82%	\$258
2013-14	0	6,000	274	6,910	0	13,184	0.59%	188
2014-15	0	0	186	6,490	0	6,676	0.29%	96
2015-16	0	0	94	6,055	0	6,149	0.26%	81
2016-17	0	0	0	5,605	0	5,605	0.22%	74
2017-18	0	0	0	0	5,363	5,363	0.20%	71
2018-19	0	0	728	0	4,812	5,540	0.19% (b)	73
2019-20	0	0	0	0	59,448	59,448	1.76%	763
2020-21	21,919	0	0	0	57,882	79,801	2.11%	1,056
2021-22	21,470	0	0	0	56,246	77,716	2.08%	961

Note: Details regarding the city's outstanding debt can be found in the notes to the financial statements.

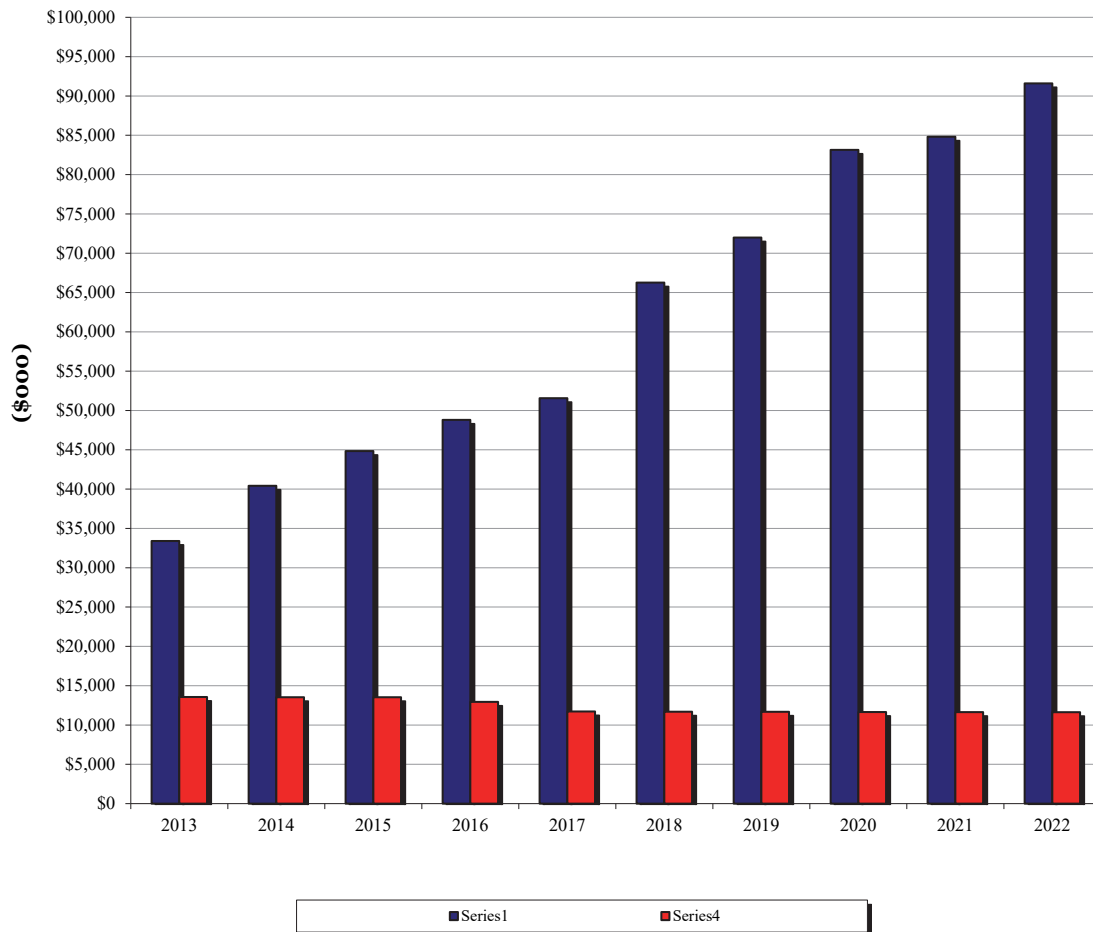
(a) See Schedule 20 for personal income and population data.

(b) The Redevelopment Agency was dissolved as of January 31, 2012 and its debt was assumed by a Successor Agency.

(c) Data for fiscal year 2018-19 not available until May of 2020.

(d) Balance of Revenue Bonds includes unamortized Bond Premium

CITY OF MILPITAS
BONDED DEBT PLEDGED REVENUE COVERAGE
REDEVELOPMENT AGENCY TAX ALLOCATION BONDS
LAST TEN FISCAL YEARS



Fiscal Year Ended June 30	Redevelopment Agency Property Tax Increments (a)	Less Housing Reserve Fund	Net Tax Increment Revenue	Debt Service Requirements			Coverage
				Principal	Interest	Total	
2013	\$33,401,413 (d)	\$0 (b)	\$33,401,413	\$5,595,000 (c)	\$7,973,533 (c)	\$13,568,533	2.46
2014	40,418,284 (d)	0 (b)	40,418,284	5,825,000 (d)	7,713,234 (d)	13,538,234	2.99
2015	44,843,881 (d)	0 (b)	44,843,881	6,120,000 (d)	7,414,608 (d)	13,534,608	3.31
2016	48,810,216 (d)	0 (b)	48,810,216	7,375,000 (d)	5,567,028 (d)	12,942,028	3.77
2017	51,563,292 (d)	0 (b)	51,563,292	6,045,000 (d)	5,682,175 (d)	11,727,175	4.40
2018	66,266,187 (d)	0 (b)	66,266,187	6,225,000 (d)	5,467,000 (d)	11,692,000	5.67
2019	71,988,412 (d)	0 (b)	71,988,412	6,475,000 (d)	5,213,000 (d)	11,688,000	6.16
2020	83,139,471	0 (b)	83,139,471	6,735,000 (d)	4,915,125 (d)	11,650,125	7.14
2021	84,805,793	0 (b)	84,805,793	7,070,000 (d)	4,570,000 (d)	11,640,000	7.29
2022	91,606,749	0 (b)	91,606,749	7,425,000 (d)	4,207,625 (d)	11,632,625	7.87

- (a) Tax increments are net of pass-through payments and administrative fees withheld by the County prior to distribution to the Agency.
- (b) The Redevelopment Agency was dissolved as of January 31, 2012 and its debt was assumed by a Successor Agency. The Successor Agency collects Property Taxes, with no distinction between housing and non-housing revenues, which are used for the repayment of the former Redevelopment Agency's Bonds.
- (c) Includes debt service paid by the Redevelopment Agency prior to the dissolution and by the Successor Agency after the dissolution.
- (d) Tax increment reported in this table after the dissolution date is the amount calculated by the County Auditor-Controller as available for payment of enforceable obligations. Under the provisions of the laws dissolving the Redevelopment Agency, the Successor Agency only receives the funds necessary to fulfill its approved obligations. Debt service reported was paid by the Successor Agency.

CITY OF MILPITAS
COMPUTATION OF DIRECT AND OVERLAPPING DEBT
JUNE 30, 2022

JURISDICTION	PERCENTAGE APPLICABLE TO CITY OF MILPITAS (1)	AMOUNT APPLICABLE TO CITY OF MILPITAS
2021-22 Assessed Valuation, Direct and Overlapping Debt		\$22,346,414,172
<u>OVERLAPPING TAX AND ASSESSMENT DEBT:</u>		
Santa Clara County		\$43,843,055
San Jose- Evergreen Community College District		103,598,543
Milpitas Unified School District		285,549,509
East Side Union High School District		7,188,870
Berryessa Union School District		6,004,597
Santa Clara Valley Water District Benefits Assessment District		1,866,776
TOTAL OVERLAPPING TAX AND ASSESSMENT DEBT		448,051,350
<u>DIRECT AND OVERLAPPING GENERAL FUND DEBT</u>		
Santa Clara County General Fund Obligations		\$46,938,621
Santa Clara County Pension Obligation Bonds		13,012,703
Santa Clara County Board of Education Certificates of Participation		70,561
San Jose-Evergreen Community College District OPEB Bonds		5,893,765
Milpitas Unified School District General Fund Obligations		10,172,783
East Side Union High School District OPEB Bonds		204,019
Berryessa Union School District General Fund Obligations		150,468
City of Milpitas General Fund Obligations	100%	18,170,000
Santa Clara County Vector District Certifications of Participations		58,349
TOTAL GROSS DIRECT AND OVERLAPPING GENERAL FUND DEBT		94,671,269
Less: Santa Clara County supported obligations		700,914
TOTAL DIRECT AND OVERLAPPING GENERAL FUND DEBT		\$93,970,355
<u>OVERLAPPING TAX INCREMENT DEBT (Successor Agency)</u>	100%	\$80,440,000
TOTAL DIRECT DEBT		\$18,170,000
TOTAL GROSS OVERLAPPING DEBT		\$604,992,619
TOTAL NET OVERLAPPING DEBT		\$604,291,705
GROSS COMBINED TOTAL DEBT		\$623,162,619 (2)
NET COMBINED TOTAL DEBT		\$622,461,705

- (1) The percentage of overlapping debt applicable to the city is estimated using taxable assessed property value. Applicable percentages were estimated by determining the portion of the overlapping district's assessed value that is within the boundaries of the city divided by the district's total taxable assessed value.
- (2) Excludes tax and revenue anticipation notes, revenue, mortgage revenue and tax allocation bonds and non-bonded capital lease obligations.

<u>Ratios to 2021-22 Assessed Valuation:</u>	
Total Overlapping Tax and Assessment Debt	2.01%
<u>Ratios to Assessed Valuation:</u>	
Direct Debt %	0.08%
Total Gross Debt %	2.79%

Source: Avenu Insights & Analytics, California Municipal Statistics, Inc.

CITY OF MILPITAS
LEGAL DEBT MARGIN INFORMATION
LAST TEN FISCAL YEARS
(Dollars in Thousands)

Legal Debt Margin Calculation for Fiscal Year 2021-22

Assessed value (net) - June 30, 2022	<u><u>\$22,346,414</u></u>	
Debt limit: 3.75% of assessed value (a)		\$837,991
Debt applicable to limit		
Total Bonded Debt		
Less: Tax Allocation Bonds		
not subject to limit		
Amount of Debt subject to limit		<u>0</u>
Legal debt margin		<u><u>\$837,991</u></u>

Fiscal Year	Debt Limit	Total Net Debt Applicable to Limit	Legal Debt Margin	Total Net Debt Applicable to the Limit as a percentage of Debt Limit
2012-13	\$446,277	\$0	\$446,277	0.0%
2013-14	480,501	0	480,501	0.0%
2014-15	527,280	0	527,280	0.0%
2015-16	564,703	0	564,703	0.0%
2016-17	600,705	0	600,705	0.0%
2017-18	654,951	0	654,951	0.0%
2018-19	687,896	0	687,896	0.0%
2019-20	749,963	0	749,963	0.0%
2020-21	805,429	0	805,429	0.0%
2021-22	837,991	0	837,991	0.0%

(a) California Government Code, Section 43605 sets the debt limit at 15%. The Code section was enacted prior to the change in being assessed value to full market value when it was previously 25% of market value. Thus, the limit shown as 3.75% is one-fourth the limit to account for the adjustment of showing assessed valuation at full cash value.

Source: City of Milpitas Finance Department
Santa Clara County Tax Assessor's Office

CITY OF MILPITAS
INSTALLMENT PAYMENT COVERAGE
SEWER CERTIFICATES OF PARTICIPATION AND
WASTEWATER REVENUE REFUNDING BONDS
LAST TEN FISCAL YEARS

Fiscal Year	Gross Revenues (1)	Less: Operating Expenses (2)	Net Available Revenue	Installment Payments			Coverage
				Principal	Interest	Total	
2012-13	\$12,785,567	\$6,356,621	\$6,428,946	\$395,000	\$292,966	\$687,966	9.34
2013-14	13,235,908	7,834,220	5,401,688	405,000	278,965	683,965	7.90
2014-15	14,664,759	7,263,553	7,401,206	420,000	264,528	684,528	10.81
2015-16	16,408,718	7,687,848	8,720,870	435,000	249,348	684,348	12.74
2016-17	16,803,344	6,657,757	10,145,587	450,000	233,193	683,193	14.85
2017-18	17,245,001	9,031,729	8,213,272	470,000	216,055	686,055	11.97
2018-19	19,163,495	8,427,888	10,735,607	480,000	170,273	650,273	16.51
2019-20	20,664,951	10,235,463	10,429,488	460,000	808,477	1,268,477	8.22
2020-21	20,499,033	11,425,234	9,073,799	920,000	1,498,525	2,418,525	3.75
2021-22	21,592,843	9,373,484	12,219,359	980,000	1,455,875	2,435,875	5.02

NOTE: The Certificates of Participation were issued on November 28, 2006 and called on January 5, 2018.
The 2017 Wastewater Revenue Refunding Bonds were issued on December 4, 2017.
The 2019 Wastewater Revenue Bonds were issued on October 22, 2019.

- (1) Gross Revenues include sewer service charges, other operating revenues, and interest income.
Gross Revenues exclude connection fees and capital contributions.
- (2) Operating Expenses include sewer treatment services, personnel services, services and supplies,
and repairs and maintenance expenses.
Operating Expenses exclude depreciation and amortization expenses.

CITY OF MILPITAS
 INSTALLMENT PAYMENT COVERAGE
 WATER REVENUE FUNDS
 LAST TEN FISCAL YEARS

Fiscal Year	Gross Revenues (1)	Less: Operating Expenses (2)	Net Available Revenue	Installment Payments			Coverage
				Principal	Interest	Total	
2012-13							
2013-14							
2014-15							
2015-16							
2016-17							
2017-18							
2018-19							
2019-20	\$33,954,254	\$26,919,455	\$7,034,799	\$155,000	\$419,018	\$574,018	12.26
2020-21	35,023,092	27,314,613	7,708,479	290,000	755,650	1,045,650	7.37
2021-22	32,732,692	24,593,074	8,139,618	300,000	744,050	1,044,050	7.80

NOTE: The Water Revenue Bonds were issued on October 24, 2019.

- (1) Gross Revenues include water service charges, other operating revenues, and interest income.
 Gross Revenues exclude connection fees and capital contributions.
- (2) Operating Expenses include wholesale water purchases, personnel services, services and supplies,
 and repairs and maintenance expenses.
 Operating Expenses exclude depreciation and amortization expenses.

CITY OF MILPITAS
BIMONTHLY SEWER RATES BY CUSTOMER CLASS
LAST TEN FISCAL YEARS

Fiscal Year	Residential			Commercial	
	Single Family Per Dwelling Unit	Multi-Family Per Dwelling Unit	Mobile Home Parks Per Dwelling Unit	Flat Rate	Quantity Charges (a)
2012-13	75.92	51.06	33.36	13.72	2.38 - 6.99
2013-14	75.92	51.06	33.36	13.72	2.38 - 6.99
2014-15	86.93	52.22	38.20	14.68	2.73 - 8.00
2015-16	90.27	69.32	56.97	14.97	3.94 - 8.34
2016-17	90.27	69.32	56.97	14.97	3.94 - 8.34
2017-18	90.27	69.32	56.97	14.97	3.94 - 8.34
2018-19	102.52	78.73	64.70	24.30	4.21 - 9.63
2019-20	111.07	85.30	70.08	25.78	4.54 - 10.65
2020-21	118.34	90.88	74.66	26.55	4-91 - 11.48
2021-22	124.14	95.34	78.28	27.35	5.31-12.09

Source: City of Milpitas, Ordinance 208.53

(a) For each one hundred cubic feet of water used. Charge varies depending on the business or type of business.

CITY OF MILPITAS
BIMONTHLY WATER RATES BY CUSTOMER CLASS
LAST TEN FISCAL YEARS

Fiscal Year	Single Family Residential			Commercial	
	Potable Residential	Capital Surcharge	5/8 inch Meter Charge	Potable Commercial Industrial Institutional Construction	5/8 to 10 inch Meter Charge
2012-13	2.02 - 4.50*		26.29	4.62	26.29 - 641.40
2013-14	2.30 - 4.86*		26.82	4.94	26.82 - 654.23
2014-15	2.62 - 5.29*		27.36	5.29	27.36 - 667.31
2015-16	4.75		18.00	4.75	18.00 - 900.00
2016-17	5.13	1.30	19.44	5.13	19.44 - 972.00
2017-18	5.13	1.30	19.44	5.13	19.44 - 972.00
2018-19**	5.13 - 5.31	1.30 - 1.08	19.44 - 27.01	5.13 - 5.31	19.44 - 1,350.33
2019-20	5.63	1.08	28.63	5.63	26.83 - 1,431.35
2020-21	6.32	1.08	32.17	6.32	32.17-1608.26
2021-22	6.70	1.08	34.10	6.70	34.10-1704.76

Source: City of Milpitas, Ordinance 120.48

*Residential rates were a range based on consumption amounts for the period. There were 4 levels with the lowest rate being for use under 10 hc, and the highest rate for use over 30 hcf in the period..

**Rate effective Service Period April 1, 2019 to June 30, 2019 implemented on bill dated June 17, 2019. July 2018 rate listed first, and April rate listed second.

CITY OF MILPITAS
DEMOGRAPHIC AND ECONOMIC STATISTICS
LAST TEN CALENDAR YEARS
(Personal Income in Thousands)

<u>Calendar Year</u>	<u>Population</u>	<u>Population Density (Sq. Mile)</u>	<u>Total Personal Income</u>	<u>Per Capita Personal Income</u>	<u>School Enrollment</u>	<u>Unemployment Rate (%)</u>	<u>Land Area (Sq. Mile)</u>
2012	67,894	4,970	\$2,143,889	\$31,577	10,033	6.70%	13.66
2013	70,092	5,131	2,234,603	31,881	10,156	5.50%	13.66
2014	69,903	5,117	2,287,366	32,722	10,281	4.90%	13.66
2015	75,521	5,529	2,374,221	31,437	10,291	3.90%	13.66
2016	75,410	5,520	2,528,663	33,532	10,260	3.50%	13.66
2017	75,410	5,520	2,721,275	36,086	10,318	3.60%	13.66
2018	76,231	5,581	2,966,362	38,912	10,172	2.80%	13.66
2019	77,961	5,707	3,373,340	43,269	10,308	2.70%	13.66
2020	75,663	5,539	3,787,034	50,051	10,413	7.50%	13.66
2021	80,839	5,918	3,744,971	46,326	10,072	5.30%	13.66

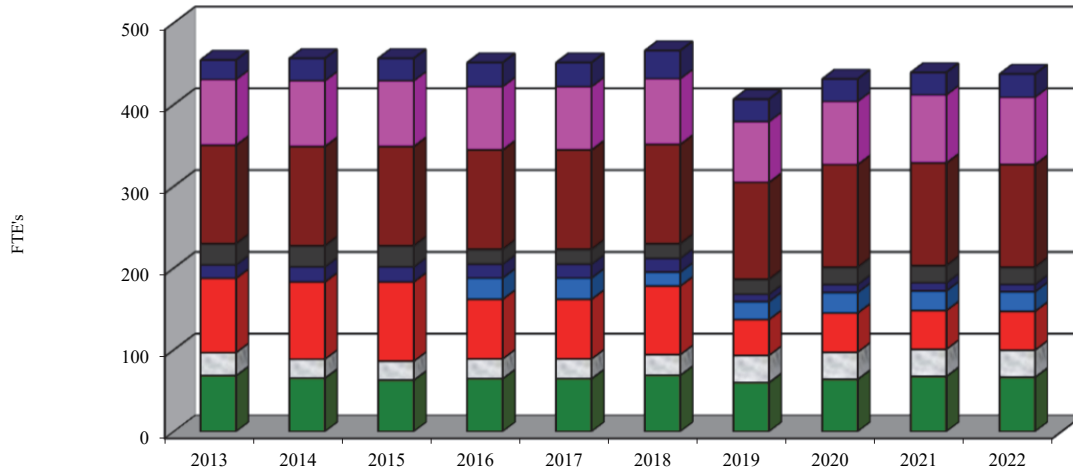
Sources: HdL, Coren & Cone
City of Milpitas Annual Budget

CITY OF MILPITAS
PRINCIPAL EMPLOYERS
FISCAL YEAR 2021-22 and 2012-2013

Employer	2021-22			2012-13		
	Number of Employees	Rank	Percentage of Total City Employment	Number of Employees	Rank	Percentage of Total City Employment
Cisco Systems, Inc.	3,347	1	8.224%	2,741	1	3.36%
KLA-Tencor Corporation	2,611	2	6.415%	2,099	2	2.57%
Western Digital Tech (SanDisk Corporation)	1,773	3	4.356%	1,485	3	1.82%
Analog Devices (Linear Technology Corporation)	1,283	4	3.152%	284	8	0.35%
Flextronics International (aka Vista Point Technologies)	1,449	5	3.560%			
Milpitas Unified School District	819	6	2.012%	825	4	1.01%
Headway Technologies Inc. (2 Locations)	890	7	2.187%	394	5	0.48%
Walmart Supercenter	446	8	1.096%	268	10	0.33%
City of Milpitas	389	9	0.956%			
Nanometrics, Inc.	281	10	0.690%			
Spectra Laboratories				358	6	0.44%
Vista Healthcare Corporation				320	7	0.39%
JDS Uniphase Corporation				277	9	0.34%
Subtotal	<u>13,288</u>		<u>32.6486%</u>	<u>9,051</u>		<u>11.0857%</u>
Total Labor Force	40,700			81,646		

Source: California Municipal Statistics, Inc.

CITY OF MILPITAS
AUTHORIZED FULL-TIME EQUIVALENT EMPLOYEES BY FUNCTION/PROGRAM
LAST TEN FISCAL YEARS



General Government	Building	Public Works	Engineering and Planning
Planning and Neighborhood Services	Recreation	Parks and Recreation	Police
Fire	Utilities		

	Fiscal Year Ended June 30,									
Function	2013	2014	2015	2016	2017	2018	2019 (e)	2020	2021	2022
General Government	68.5	65.5	63.0	64.8	64.8	69.0	60.0	64.0	67.5	66.5
Building, Housing and Safe	28.0	23.0	23.0	24.0	24.0	25.0	33.0 (c)	33.0 (c)	33.0	33.0
Public Works	91.0	94.5	97.0	73.0 (b)	73.0	84.0	44.0	48.0	47.5	47.6
Engineering				26.0 (b)	26.0	17.0	22.0	25.0	24.0	24.0
Planning	16.5	18.5	18.5	17.0	17.0	17.0	9.0 (c)	10.0 (c)	10.0	9.0
Recreation	25.5 (a)	25.5	25.5	18.0	18.0	17.5	18.0	20.75	20.75	20.75
Parks and Recreation										
Police:										
Sworn Police	91.5	92.0	92.0	92.0	93.0	93.0	90.0	93.0	93.0	93.0
Civilians	29.5	30.0	30.0	30.0	29.0	29.0	29.0	33.0	33.0	33.0
Fire:										
Firefighters and Safety										
Officers	70.0	70.0	68.0	66.0	66.0	68.0	71.0	73.0	79.0	78.0
Civilians	10.0	10.0	12.0	11.0	11.0	12.0	3.0	4.0	4.0	4.0
Utilities (d)	24.0	27.5	27.5	29.5	29.5	34.5	27.5	27.5	27.5	28.4
Total	<u>454.5</u>	<u>456.5</u>	<u>456.5</u>	<u>451.3</u>	<u>451.3</u>	<u>466.0</u>	<u>406.5</u>	<u>431.3</u>	<u>439.3</u>	<u>437.3</u>

- (a) Beginning in fiscal year 2013, parks maintenance division is now under public works department and recreation division is part of human resources department, but it is reported separately here.
- (b) Beginning in fiscal year 2016, Public Works and Engineering are separate departments.
- (c) Neighborhood Services is a component of Building, Housing and Safety, and Planning is a separate department beginning in fiscal year 2019.
- (d) Utilities is comprised of employees from Public Works and Finance.
- (e) In Fiscal Year 2019, the City removed unfunded authorized positions.

Source: City of Milpitas, final budget

CITY OF MILPITAS
OPERATING INDICATORS BY FUNCTION/PROGRAM
LAST TEN FISCAL YEARS

Function/Program	Fiscal Year Ended June 30,				
	2013	2014	2015	2016	2017
Building Safety & Housing					
Building permits issued	3,400	4,300	4,300	4,200	4,090
Plan review performed	1,100	1,500	1,400	1,500	1,610
Code Customer Service Requests / Violations abated	725	725	755	755	800
Public Works					
Street miles maintained	139	139	139	139	139
Customer Service Requests	3,500	2,880	2,800	2,794	2,800
Development projects reviewed	200	205	190	178	158
Planning					
Applications to Planning Commission	106	159	236	92	92
Recreation					
Sports Center members	1,600	1,450	1,504	1,600	1,325
Senior nutrition meals served	22,090	20,656	21,231	20,158	18,678
Police					
Avg response time to emergency calls (minutes)	2:32	2:33	2:32	2:40	2:44
Number of anti-terrorist patrol checks	1,996	2,550	2,300	2,400	2,200
Crime prevention presentations	201	200	200	125	70
Number of vehicle citations issued	4,120	3,516	3,600	5,900	5,720
Fire					
Emergency calls for service	4,356	4,356	4,950	5,000	5,000
Public education events	45	45	80	100	112
Permits Inspections	4,510	4,510	4,666	7,600	7,322
Plan Review	807	807	983	1,200	1,550
Utility					
Clean sewer lines (feet)	329,313	640,255	500,000	500,000	500,000
Repair, replace or set water meters	149	298	279	189	152
Average daily consumption (thousands of gallons)	9,340	9,300	9,300	7,800	5,800

Source: City of Milpitas, final budget

Footnote: Statistic for DARE presentations: schools/students is removed from this schedule in 2022 due to no activity since 201

Fiscal Year Ended June 30,				
2018	2019	2020	2021	2022
4,200	4,300	4,000	3,000	3,000
1,700	1,600	4,800	4,900	4,900
714	784	600	600	600
298	298	298	303	303
3,000	2,384	4,468	3,353	4,652
160	225	134	48	24
100	419	37	31	60
1,450	1,575	1,877	506	1,024
17,206	18,322	20,145	39,783	28,699
2:57	2:41	2:36	2:40	2:50
2,200	1,949	1,479	958	490
56	104	110	105	47
5,900	5,895	6,000	6,300	4,230
5,200	5,640	5,600	5,390	6,164
200	223	134	0	2,082
7,577	7,824	7,772	2,949	1,652
1,700	1,600	1,575	1,884	1,401
491,244	528,051	432,022	636,681	331,232
115	147	219	113	25
6,590	8,394	8,410	7,440	6,895

CITY OF MILPITAS
CAPITAL ASSET STATISTICS BY FUNCTION/PROGRAM
LAST TEN FISCAL YEARS

Function/Program	Fiscal Year Ended June 30,			
	2013	2014	2015	2016
Public Works				
Miles of streets	287	287	298	298
Street lights	4,500	4,500	4,577	4,577
Square feet of buildings maintained (in thousands)	376	376	376	376
City vehicles	242	252	260	264
Signs	8,534	5,500	5,700	5,700
Signal lights	72	72	70	71
City Parks	33	34	34	33
Acres of Parkland	179	180	180	180
Playgrounds	24	25	34	34
Parks and recreation				
Community centers	1	1	1	1
Senior centers	1	1	1	1
Sports centers	1	1	1	1
Satellite centers	0	0	0	0
Swimming pools	3	3	3	3
Tennis courts	20	20	21	21
Football field	1	1	1	1
Baseball/softball fields	8	8	9	9
Soccer fields	9	9	12	13
Basketball courts	8	8	7	9
Volleyball courts / Horse Shoe Pits / Bocce Ball / Cricket Field / Par Course	4	9	7	10
Handball courts	5	5	5	5
Skate Park				
Joint use:				
Russell Bobbysocks Fields	0	0	0	0
Soccer fields	0	0	0	0
Open Space - Number of School Sites	0	0	0	0
Police				
Police stations	2	2	2	2
Police patrol vehicles	27	29	28	34
Fire				
Fire stations	4	4	4	4
Fire Apparatus	22	19	19	13
Fire hydrants	1,840	1,847	2,033	2,033
Utility				
Miles of water mains	213	214	213	203
Water Tank Storage capacity (million of gallons)	16	16	16	16
Miles of sanitary sewers	179	179	179	173
Miles of storm drain	110	110	110	99
Miles of recycled water main	4	4	23	23

Source: City of Milpitas, final budget

Fiscal Year Ended June 30,					
2017	2018	2019	2020	2021	2022
298	298	298	298	303	303
4,581	5,119	5,141	4,418	4,494	4,494
376	322	473	473	473	455
264	269	271	258	268	256
6,000	10,000	10,000	6,000	6,000	6,000
72	72	74	78	83	83
32	32	32	36	36	36
195	195	195	154	154	154
33	30	33	33	33	33
1	1	1	1	1	1
1	1	1	1	1	1
1	1	1	1	1	1
2	2	1	2	1	1
3	3	3	3	3	3
21	21	21	21	21	21
1	1	1	1	1	1
7	7	9	9	9	11
13	13	8	8	8	8
10	10	10	10	10	10
13	12	10	10	10	10
6	6	6	6	6	6
					1
3	3	3	3	3	0
2	2	8	2	2	0
0	0	0	0	0	13
2	2	2	2	2	2
29	29	29	29	30	30
4	4	4	4	4	4
11	11	12	13	13	13
2,039	2,039	2,039	2,308	2,308	2,308
203	206	206	206	206	206
16	16	16	16	16	16
173	175	173	173	173	173
99	105	99	99	99	99
21	23	26	26	26	24



OTHER AUDIT REPORT



**INDEPENDENT AUDITOR'S REPORT ON
INTERNAL CONTROL OVER FINANCIAL REPORTING
AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN
AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE
WITH GOVERNMENT AUDITING STANDARDS**

To the Honorable Members of the City Council
City of Milpitas, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the basic financial statements of the City of Milpitas, California, as of and for the year ended June 30, 2021, and have issued our report thereon dated November 7, 2021. Our report includes a reference to other auditors who audited the financial statements of Terrace Gardens, Inc., as described in our report on the City's financial statements. This report does not include the results of the other auditors' testing of internal control over financial reporting or on compliance and other matters that are reported on separately by those auditors.

Report on Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered the City's internal control over financial reporting (internal control) as a basis for designing the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. *A material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the City's financial statements will not be prevented, or detected and corrected on a timely basis. *A significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weakness may exist that have not been identified.

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether the City's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*.

We have also issued a separate Memorandum on Internal Control dated November 7, 2022 which is an integral part of our audit and should be read in conjunction with this report.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the City's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the City's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.



Pleasant Hill, California
November 7, 2022

CITY OF MILPITAS
BICYCLE/PEDESTRIAN PROJECTS
FINANCIAL STATEMENTS
FOR THE YEARS ENDED
JUNE 30, 2021 AND 2022

This Page Left Intentionally Blank

**Bicycle/Pedestrian Projects
Financial Statement
For the Years Ended June 30, 2021 and 2022**

Item # C9.

Table of Contents

	<u>Page</u>
<i>Independent Auditor's Report</i>	1
<i>Fund Financial Statements:</i>	
Balance Sheets	5
Statement of Revenues, Expenditures and Changes in Fund Balances.....	6
Notes to Financial Statements.....	7
<i>Independent Auditor's Report on Internal Control Over Financial Reporting, on Compliance with the Transportation Development Act and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards</i>	9

This Page Left Intentionally Blank

INDEPENDENT AUDITOR'S REPORT

To the Honorable Members of the City Council
City of Milpitas, California

Report on the Audit of the Financial Statements

Opinions

We have audited the accompanying financial statements of the Bicycle/ Pedestrian Projects (Projects) of the City of Milpitas, California, as of and for the years ended June 30, 2022 and 2021, and the related notes to the financial statements, as listed in the Table of Contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the Projects as of June 30, 2022 and 2021, and the respective changes in financial position for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the City and to meet our other ethical responsibilities, in accordance with the relevant ethical requirement relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

Emphasis of a Matter

As discussed in Note 1, the financial statements present only the Projects and do not purport to, and do not present fairly the financial position of the City as of June 30, 2022 and 2021, the changes in its financial position for the years then ended in accordance with accounting principles generally accepted in the United States of America. Our opinions are not modified with respect to this matter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if, individually or in the aggregate, they could reasonably be expected to influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Project's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Projects' ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated November 10, 2022, on our consideration of the Project's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Project's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Project's internal control over financial reporting and compliance.



Pleasant Hill, California
November 10, 2022

This Page Left Intentionally Blank

CITY OF MILPITAS
BICYCLE/PEDESTRIAN PROJECTS
BALANCE SHEETS
JUNE 30, 2021 AND 2022

	<u>2022</u>	<u>2021</u>
ASSETS		
Receivable from MTC	<u>\$155,316</u>	<u>\$211,883</u>
Total Assets	<u><u>\$155,316</u></u>	<u><u>\$211,883</u></u>
LIABILITIES		
Due to the City	<u>\$155,316</u>	<u>\$211,883</u>
Total Liabilities	<u>155,316</u>	<u>211,883</u>
DEFERRED INFLOWS OF RESOURCES		
Unavailable Revenue	<u>155,316</u>	<u>211,883</u>
Total Deferred Inflows of Resources	<u>155,316</u>	<u>211,883</u>
FUND BALANCE		
Fund Balance	<u>(155,316)</u>	<u>(211,883)</u>
Total Fund Balance	<u>(155,316)</u>	<u>(211,883)</u>
Total Liabilities, Deferred Inflows, and Fund Balance	<u><u>(\$155,316)</u></u>	<u><u>(\$211,883)</u></u>

See accompanying notes to financial statements

CITY OF MILPITAS
BICYCLE/PEDESTRIAN PROJECTS
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
FOR THE YEARS ENDED JUNE 30, 2021 AND 2022

	<u>2022</u>	<u>2021</u>
REVENUES		
TDA Article 3.0 (Note 2)	<u>\$211,883</u>	
Total Revenues	<u><u>\$211,883</u></u>	
EXPENDITURES		
ADA Curb Ramp Transition Program (22001050)	\$155,316	
ADA Curb Ramp Transition Program (19001050)		\$127,587
ADA Curb Ramp Transition Program (20001031)		<u>84,296</u>
Total Expenditures	<u>155,316</u>	<u>211,883</u>
Net change in fund balance	56,567	(211,883)
Fund balance at beginning of year	<u>(211,883)</u>	
Fund balance at end of year	<u><u>(\$155,316)</u></u>	<u><u>(\$211,883)</u></u>

See accompanying notes to financial statements

**CITY OF MILPITAS
BICYCLE/PEDESTRIAN PROJECTS
NOTES TO FINANCIAL STATEMENTS
For the Year Ended June 30, 2022**

Item # C9.

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The has developed the Bicycle/Pedestrian Projects (Projects) under the Transportation Development Act (TDA), Article 3.0 for the construction of pedestrian pathways and wheelchair ramps and bicycle master plan studies. The Projects are funded by TDA grants.

The TDA Fund is distributed through the Metropolitan Transportation Commission (MTC) which is the agency responsible for allocation of funds to eligible claimants within the greater San Francisco Bay Area.

The following is a summary of significant accounting policies applicable to the Projects which conform to generally accepted accounting principles as applicable to governments.

A. *Fund Accounting*

The Projects are accounted for as part of the General Government Capital Projects Fund of the City. This fund is a set of self-balancing accounts which comprise its assets, deferred inflows/outflows of resources, liabilities, fund balance, revenues and expenditures.

B. *Basis of Accounting*

Basis of accounting refers to when revenues and expenditures are recognized. The Projects are accounted for in a governmental fund type and the modified accrual basis of accounting is used. Under the modified accrual basis, revenues are recognized when they become measurable and available as net current assets. The Projects considers all revenues reported in the governmental funds to be available if the revenues are collected within forty-five days after year-end. Expenditures are recognized when they are incurred.

C. *Deferred Inflows and Deferred Outflows of Resources*

In addition to assets, the balance sheet will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of fund balance that applies to a future period(s) and so will not be recognized as an outflow of resources (expenditure) until then.

In addition to liabilities, the balance sheet will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of fund balance that applies to a future period(s) and so will not be recognized as an inflow of resources (revenue) until that time.

CITY OF MILPITAS
BICYCLE/PEDESTRIAN PROJECTS
NOTES TO FINANCIAL STATEMENTS
For the Year Ended June 30, 2022

NOTE 2 – TDA ARTICLE 3.0 REVENUE

For the year ended June 30, 2021 and 2022, the City had allocation instructions from the Metropolitan Transportation Commission for the following projects:

Instruction Number	Project Name			Grant Award	Expended in June 30, 2021	Expended in June 30, 2022	Revenue in June 30, 2021	Revenue in Fiscal Year 2022
20001031	2020	.	~	\$84,296	\$84,296			\$84,296
22001050	2022	.	~	155,316		\$155,316		
19001050	2019	.	~	127,587	127,587			127,587
				<u>\$367,199</u>	<u>\$211,883</u>	<u>\$155,316</u>		<u>\$211,883</u>

**INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL
OVER FINANCIAL REPORTING, ON COMPLIANCE WITH THE TRANSPORTATION
DEVELOPMENT ACT AND OTHER MATTERS
BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN
ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS***

To the Honorable Members of the City Council
City of Milpitas, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the basic financial statements of the Bicycle/ pedestrian Projects (Projects) of the City of Milpitas, California, as of and for the year ended June 30, 2022, and have issued our report thereon dated November 10, 2022. Our report included an emphasis of a matter paragraph disclosing the implementation of new accounting principles.

Report on Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered the Project's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Project's internal control. Accordingly, we do not express an opinion on the effectiveness of the Project's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Project's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that have not been identified.

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Projects' financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. Our procedures included the applicable audit procedures contained in §6666 and §6667 of Title 21 of California Code of Regulations and tests of compliance with the applicable provisions of the Transportation Development Act and the allocation instructions and resolutions of the Metropolitan Transportation Commission. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

We have also issued a separate Memorandum on Internal Control dated November 10, 2022, which is an integral part of our audit and should be read in conjunction with this report.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Project's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Project's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.



Pleasant Hill, California
November 10, 2022

CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL
FOR THE YEAR ENDED
JUNE 30, 2022

This Page Left Intentionally Blank

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

For the Year Ended June 30, 2022

Table of Contents

	<u>Page</u>
<i>Memorandum on Internal Control</i>	1
Schedule of Significant Deficiency.....	3
Schedule of Other Matters.....	5
Status of Prior Year Other Matters.....	17

This Page Left Intentionally Blank

MEMORANDUM ON INTERNAL CONTROL

To the City Council of
the City of Milpitas, California

We have audited the basic financial statements of the City of Milpitas for the year ended June 30, 2022, and have issued our report thereon dated November 7, 2022. Our opinions on the basic financial statements and this report, insofar as they relate to Terrace Gardens, Inc, are based solely on the report of other auditors. In planning and performing our audit of the City, in accordance with auditing standards generally accepted in the United States of America, we considered the City's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore material weaknesses or significant deficiencies may exist that were not identified. In addition, because of inherent limitations in internal control, including the possibility of management override of controls, misstatements due to error or fraud may occur and not be detected by such controls. However, as discussed below, we identified certain deficiency in internal control that we consider to be a significant deficiency.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the City's financial statements will not be prevented, or detected and corrected on a timely basis. We did not identify any deficiencies in internal control that we consider to be material weaknesses.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiencies in internal control included on the Schedule of Significant Deficiency to be a significant deficiency.

Included in the Schedule of Other Matters are recommendations not meeting the above definitions that we believe are opportunities for strengthening internal controls and operating efficiency.

Government Auditing Standards require the auditor to perform limited procedures on the City's response to the findings identified in our audit and described in the accompanying Schedule of Significant Deficiency and Schedule of Other Matters and Status of Prior Year Other Matters. The City's response was not subjected to the other auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on the response.

This communication is intended solely for the information and use of management, City Council, others within the organization, and agencies and pass-through entities requiring compliance with *Government Auditing Standards*, and is not intended to be and should not be used by anyone other than these specified parties.

Maze & Associates

Pleasant Hill, California
November 7, 2022

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

SCHEDULE OF SIGNIFICANT DEFICIENCY

2022-01 Timeliness of Year-End Close

Criteria: Effective organizations develops plans to ensure that adequate resources are available to analyze the City's general ledger to ensure that all accounts are accurate and timely for the reporting year. These resources need to be in place throughout the fiscal year to ensure proper accounting processes and procedures and allow time for the analysis of account balances and activities.

Condition: During the audit, City staff proposed numerous journal entries, which caused the audit team to reprocess and reanalyze the trial balance. City staff had difficulty completing closing entries prior to providing the trial balance for audit in various areas, which affected the year-end closing process and many of the City's funds.

Cause: The tight labor market directly impacted the City's recruitment causing multiple vacancies in the finance department. Furthermore, the City's legacy financial system is inflexible which causes staff to perform time-consuming procedures that delay year-end close.

Potential Effect: The above condition delayed the completion of the year-end closing process, which increases the risk that errors or misstatements may go undetected by staff and corrections may not be made in a timely manner.

Recommendation: The City should analyze staff resources to determine what plans can or should be made to ensure that the financial data is processed properly and timely. In addition, the City must develop procedures to ensure that accounts are analyzed throughout the fiscal year and after the year-end close to ensure that additional closing entries are not required prior to providing the general ledger for audit.

Management Response: The City continues to actively recruit and has been successful in filling several key positions. Also, the City launched a project to assess the finance procedures and systems to identify strengths, challenges, and opportunities.

This Page Left Intentionally Blank

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

SCHEDULE OF OTHER MATTERS

2022-02 Missing Dates of Preparation and Review for Bank Reconciliations

Criteria: Bank reconciliations should be completed as soon as reasonably possible after each month-end, usually within 30 days, and subsequently reviewed for accuracy.

Condition: Per review of February 28, 2022, General Checking bank reconciliation, there was no documentation of when it was reviewed. In addition, per review of the August 31, 2021, and October 31, 2021, Worker's Compensation bank reconciliations, there was no documentation of the dates when they were prepared and reviewed.

Cause: The General checking bank reconciliation for February 2022 was reviewed however the date was erroneously omitted. The Worker's Compensation bank reconciliation was transitioned to the City's worker's compensation administrator and in doing so, the process was not thoroughly defined with documentation of preparer, reviewer, and dates.

Potential Effect: Bank reconciliation is an essential element of the City's internal control structure. In order to be an effective control, bank reconciliations should be completed as soon as reasonably possible after each month-end, usually within 30 days, and subsequently reviewed for accuracy. Errors and un-reconciled differences should be investigated and corrected immediately, so as to prevent additional errors, unauthorized transactions and decrease in efficiency.

Recommendation: The City should document the date when each bank reconciliation was prepared and reviewed in a timely manner.

Management Response: City will improve its General checking bank reconciliation and workers' compensation bank reconciliation procedures to ensure the revised forms reflect the preparer, reviewer and dates. A project management tool will ensure the reconciliations are performed and reviewed in a timely manner, and can be monitored accordingly.

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

SCHEDULE OF OTHER MATTERS

NEW GASB PRONOUNCEMENTS OR PRONOUNCEMENTS NOT YET EFFECTIVE

The following comment represents new pronouncements taking affect in the next few years. We cite them here to keep you informed of developments:

EFFECTIVE FISCAL YEARS 2022, 2023 and 2024:

GASB 99 – Omnibus 2022

The objectives of this Statement are to enhance comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing (1) practice issues that have been identified during implementation and application of certain GASB Statements and (2) accounting and financial reporting for financial guarantees. The practice issues addressed by this Statement are as follows:

- Classification and reporting of derivative instruments within the scope of Statement No. 53, *Accounting and Financial Reporting for Derivative Instruments*, that do not meet the definition of either an investment derivative instrument or a hedging derivative instrument
- Clarification of provisions in Statement No. 87, *Leases*, as amended, related to the determination of the lease term, classification of a lease as a short term lease, recognition and measurement of a lease liability and a lease asset, and identification of lease incentives
- Clarification of provisions in Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*, related to (a) the determination of the public-private and public-public partnership (PPP) term and (b) recognition and measurement of installment payments and the transfer of the underlying PPP asset
- Clarification of provisions in Statement No. 96, *Subscription-Based Information Technology Arrangements*, related to the subscription-based information technology arrangement (SBITA) term, classification of a SBITA as a short term SBITA, and recognition and measurement of a subscription liability
- Extension of the period during which the London Interbank Offered Rate (LIBOR) is considered an appropriate benchmark interest rate for the qualitative evaluation of the effectiveness of an interest rate swap that hedges the interest rate risk of taxable debt
- Accounting for the distribution of benefits as part of the Supplemental Nutrition Assistance Program (SNAP)
- Disclosures related to nonmonetary transactions
- Pledges of future revenues when resources are not received by the pledging government
- Clarification of provisions in Statement No. 34, *Basic Financial Statements—and Management’s Discussion and Analysis—for State and Local Governments*, as amended, related to the focus of the government-wide financial statements

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

SCHEDULE OF OTHER MATTERS

GASB 99 – Omnibus 2022 (Continued)

- Terminology updates related to certain provisions of Statement No. 63, *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position*
- Terminology used in Statement 53 to refer to resource flows statements.

The Requirements of this Statement are Effective as Follows:

The requirements in paragraphs 26–32 related to extension of the use of LIBOR, accounting for SNAP distributions, disclosures of nonmonetary transactions, pledges of future revenues by pledging governments, clarification of certain provisions in Statement 34, as amended, and terminology updates related to Statement 53 and Statement 63 are effective upon issuance.

The requirements in paragraphs 11–25 related to leases, PPPs, and SBITAs are effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter.

The requirements in paragraphs 4–10 related to financial guarantees and the classification and reporting of derivative instruments within the scope of Statement 53 are effective for fiscal years beginning after June 15, 2023, and all reporting periods thereafter.

Earlier application is encouraged and is permitted by individual topic.

How the Changes in This Statement Will Improve Financial Reporting

The requirements of this Statement will enhance comparability in the application of accounting and financial reporting requirements and will improve the consistency of authoritative literature. Consistent authoritative literature enables governments and other stakeholders to more easily locate and apply the correct accounting and financial reporting provisions, which improves the consistency with which such provisions are applied. The comparability of financial statements also will improve as a result of this Statement. Better consistency and comparability improve the usefulness of information for users of state and local government financial statements.

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

SCHEDULE OF OTHER MATTERS

EFFECTIVE FISCAL YEAR 2022/23:

GASB 91 – Conduit Debt Obligations

The primary objectives of this Statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. This Statement achieves those objectives by clarifying the existing definition of a conduit debt obligation; establishing that a conduit debt obligation is not a liability of the issuer; establishing standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations; and improving required note disclosures.

A conduit debt obligation is defined as a debt instrument having *all* of the following characteristics:

- There are at least three parties involved:
 - (1) an issuer
 - (2) a third-party obligor, and
 - (3) a debt holder or a debt trustee.
- The issuer and the third-party obligor are not within the same financial reporting entity.
- The debt obligation is not a parity bond of the issuer, nor is it cross-collateralized with other debt of the issuer.
- The third-party obligor or its agent, not the issuer, ultimately receives the proceeds from the debt issuance.
- The third-party obligor, not the issuer, is primarily obligated for the payment of all amounts associated with the debt obligation (debt service payments).

All conduit debt obligations involve the issuer making a limited commitment. Some issuers extend additional commitments or voluntary commitments to support debt service in the event the third party is, or will be, unable to do so.

An issuer should not recognize a conduit debt obligation as a liability. However, an issuer should recognize a liability associated with an additional commitment or a voluntary commitment to support debt service if certain recognition criteria are met. As long as a conduit debt obligation is outstanding, an issuer that has made an additional commitment should evaluate at least annually whether those criteria are met. An issuer that has made only a limited commitment should evaluate whether those criteria are met when an event occurs that causes the issuer to reevaluate its willingness or ability to support the obligor's debt service through a voluntary commitment.

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

SCHEDULE OF OTHER MATTERS

GASB 91 – Conduit Debt Obligations (Continued)

This Statement also addresses arrangements—often characterized as leases—that are associated with conduit debt obligations. In those arrangements, capital assets are constructed or acquired with the proceeds of a conduit debt obligation and used by third-party obligors in the course of their activities. Payments from third-party obligors are intended to cover and coincide with debt service payments. During those arrangements, issuers retain the titles to the capital assets. Those titles may or may not pass to the obligors at the end of the arrangements.

Issuers should not report those arrangements as leases, nor should they recognize a liability for the related conduit debt obligations or a receivable for the payments related to those arrangements. In addition, the following provisions apply:

- If the title passes to the third-party obligor at the end of the arrangement, an issuer should not recognize a capital asset.
- If the title does not pass to the third-party obligor and the third party has exclusive use of the entire capital asset during the arrangement, the issuer should not recognize a capital asset until the arrangement ends.
- If the title does not pass to the third-party obligor and the third party has exclusive use of only portions of the capital asset during the arrangement, the issuer, at the inception of the arrangement, should recognize the entire capital asset and a deferred inflow of resources. The deferred inflow of resources should be reduced, and an inflow recognized, in a systematic and rational manner over the term of the arrangement.

This Statement requires issuers to disclose general information about their conduit debt obligations, organized by type of commitment, including the aggregate outstanding principal amount of the issuers' conduit debt obligations and a description of each type of commitment. Issuers that recognize liabilities related to supporting the debt service of conduit debt obligations also should disclose information about the amount recognized and how the liabilities changed during the reporting period.

How the Changes in this Statement will Improve Financial Reporting

The requirements of this Statement will improve financial reporting by eliminating the existing option for issuers to report conduit debt obligations as their own liabilities, thereby ending significant diversity in practice. The clarified definition will resolve stakeholders' uncertainty as to whether a given financing is, in fact, a conduit debt obligation. Requiring issuers to recognize liabilities associated with additional commitments extended by issuers and to recognize assets and deferred inflows of resources related to certain arrangements associated with conduit debt obligations also will eliminate diversity, thereby improving comparability in reporting by issuers. Revised disclosure requirements will provide financial statement users with better information regarding the commitments issuers extend and the likelihood that they will fulfill those commitments. That information will inform users of the potential impact of such commitments on the financial resources of issuers and help users assess issuers' roles in conduit debt obligations.

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

SCHEDULE OF OTHER MATTERS

GASB 94 – Public-Private and Public-Public Partnerships and Availability Payment Arrangements

The primary objective of this Statement is to improve financial reporting by addressing issues related to public-private and public-public partnership arrangements (PPPs). As used in this Statement, a PPP is an arrangement in which a government (the transferor) contracts with an operator (a governmental or nongovernmental entity) to provide public services by conveying control of the right to operate or use a nonfinancial asset, such as infrastructure or other capital asset (the underlying PPP asset), for a period of time in an exchange or exchange-like transaction. Some PPPs meet the definition of a service concession arrangement (SCA), which the Board defines in this Statement as a PPP in which (1) the operator collects and is compensated by fees from third parties; (2) the transferor determines or has the ability to modify or approve which services the operator is required to provide, to whom the operator is required to provide the services, and the prices or rates that can be charged for the services; and (3) the transferor is entitled to significant residual interest in the service utility of the underlying PPP asset at the end of the arrangement.

This Statement also provides guidance for accounting and financial reporting for availability payment arrangements (APAs). As defined in this Statement, an APA is an arrangement in which a government compensates an operator for services that may include designing, constructing, financing, maintaining, or operating an underlying nonfinancial asset for a period of time in an exchange or exchange-like transaction.

PPPs – This Statement requires that PPPs that meet the definition of a lease apply the guidance in Statement No. 87, Leases, as amended, if existing assets of the transferor that are not required to be improved by the operator as part of the PPP arrangement are the only underlying PPP assets and the PPP does not meet the definition of an SCA. This Statement provides accounting and financial reporting requirements for all other PPPs: those that either (1) meet the definition of an SCA or (2) are not within the scope of Statement 87, as amended (as clarified by this Statement). The PPP term is defined as the period during which an operator has a noncancelable right to use an underlying PPP asset, plus, if applicable, certain periods if it is reasonably certain, based on all relevant factors, that the transferor or the operator either will exercise an option to extend the PPP or will not exercise an option to terminate the PPP.

A transferor generally should recognize an underlying PPP asset as an asset in financial statements prepared using the economic resources measurement focus. However, in the case of an underlying PPP asset that is not owned by the transferor or is not the underlying asset of an SCA, a transferor should recognize a receivable measured based on the operator's estimated carrying value of the underlying PPP asset as of the expected date of the transfer in ownership. In addition, a transferor should recognize a receivable for installment payments, if any, to be received from the operator in relation to the PPP. Measurement of a receivable for installment payments should be at the present value of the payments expected to be received during the PPP term. A transferor also should recognize a deferred inflow of resources for the consideration received or to be received by the transferor as part of the PPP. Revenue should be recognized by a transferor in a systematic and rational manner over the PPP term.

This Statement requires a transferor to recognize a receivable for installment payments and a deferred inflow of resources to account for a PPP in financial statements prepared using the current financial resources measurement focus. Governmental fund revenue would be recognized in a systematic and rational manner over the PPP term.

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

SCHEDULE OF OTHER MATTERS

GASB 94 – Public-Private and Public-Public Partnerships and Availability Payment Arrangements
(Continued)

This Statement also provides specific guidance in financial statements prepared using the economic resources measurement focus for a government that is an operator in a PPP that either (1) meets the definition of an SCA or (2) is not within the scope of Statement 87, as amended (as clarified in this Statement). An operator should report an intangible right-to-use asset related to an underlying PPP asset that either is owned by the transferor or is the underlying asset of an SCA. Measurement of the right-to-use asset should be the amount of consideration to be provided to the transferor, plus any payments made to the transferor at or before the commencement of the PPP term, and certain direct costs. For an underlying PPP asset that is not owned by the transferor and is not the underlying asset of an SCA, an operator should recognize a liability measured based on the estimated carrying value of the underlying PPP asset as of the expected date of the transfer in ownership. In addition, an operator should recognize a liability for installment payments, if any, to be made to the transferor in relation to the PPP. Measurement of a liability for installment payments should be at the present value of the payments expected to be made during the PPP term. An operator also should recognize a deferred outflow of resources for the consideration provided or to be provided to the transferor as part of the PPP. Expense should be recognized by an operator in a systematic and rational manner over the PPP term.

This Statement also requires a government to account for PPP and non-PPP components of a PPP as separate contracts. If a PPP involves multiple underlying assets, a transferor and an operator in certain cases should account for each underlying PPP asset as a separate PPP. To allocate the contract price to different components, a transferor and an operator should use contract prices for individual components as long as they do not appear to be unreasonable based on professional judgment or use professional judgment to determine their best estimate if there are no stated prices or if stated prices appear to be unreasonable. If determining the best estimate is not practicable, multiple components in a PPP should be accounted for as a single PPP.

This Statement also requires an amendment to a PPP to be considered a PPP modification, unless the operator's right to use the underlying PPP asset decreases, in which case it should be considered a partial or full PPP termination. A PPP termination should be accounted for by a transferor by reducing, as applicable, any receivable for installment payments or any receivable related to the transfer of ownership of the underlying PPP asset and by reducing the related deferred inflow of resources. An operator should account for a termination by reducing the carrying value of the right-to-use asset and, as applicable, any liability for installment payments or liability to transfer ownership of the underlying PPP asset. A PPP modification that does not qualify as a separate PPP should be accounted for by remeasuring PPP assets and liabilities.

APAs – An APA that is related to designing, constructing, and financing a nonfinancial asset in which ownership of the asset transfers by the end of the contract should be accounted for by a government as a financed purchase of the underlying nonfinancial asset. This Statement requires a government that engaged in an APA that contains multiple components to recognize each component as a separate arrangement. An APA that is related to operating or maintaining a nonfinancial asset should be reported by a government as an outflow of resources in the period to which payments relate.

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

SCHEDULE OF OTHER MATTERS

GASB 96 – Subscription-Based Information Technology Arrangements

This Statement provides guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for government end users (governments). This Statement (1) defines a SBITA; (2) establishes that a SBITA results in a right-to-use subscription asset—an intangible asset—and a corresponding subscription liability; (3) provides the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA; and (4) requires note disclosures regarding a SBITA. To the extent relevant, the standards for SBITAs are based on the standards established in Statement No. 87, Leases, as amended.

A SBITA is defined as a contract that conveys control of the right to use another party's (a SBITA vendor's) information technology (IT) software, alone or in combination with tangible capital assets (the underlying IT assets), as specified in the contract for a period of time in an exchange or exchange-like transaction.

The subscription term includes the period during which a government has a noncancelable right to use the underlying IT assets. The subscription term also includes periods covered by an option to extend (if it is reasonably certain that the government or SBITA vendor will exercise that option) or to terminate (if it is reasonably certain that the government or SBITA vendor will not exercise that option).

Under this Statement, a government generally should recognize a right-to-use subscription asset—an intangible asset—and a corresponding subscription liability. A government should recognize the subscription liability at the commencement of the subscription term, —which is when the subscription asset is placed into service. The subscription liability should be initially measured at the present value of subscription payments expected to be made during the subscription term. Future subscription payments should be discounted using the interest rate the SBITA vendor charges the government, which may be implicit, or the government's incremental borrowing rate if the interest rate is not readily determinable. A government should recognize amortization of the discount on the subscription liability as an outflow of resources (for example, interest expense) in subsequent financial reporting periods.

The subscription asset should be initially measured as the sum of (1) the initial subscription liability amount, (2) payments made to the SBITA vendor before commencement of the subscription term, and (3) capitalizable implementation costs, less any incentives received from the SBITA vendor at or before the commencement of the subscription term. A government should recognize amortization of the subscription asset as an outflow of resources over the subscription term.

Activities associated with a SBITA, other than making subscription payments, should be grouped into the following three stages, and their costs should be accounted for accordingly:

- Preliminary Project Stage, including activities such as evaluating alternatives, determining needed technology, and selecting a SBITA vendor. Outlays in this stage should be expensed as incurred.
- Initial Implementation Stage, including all ancillary charges necessary to place the subscription asset into service. Outlays in this stage generally should be capitalized as an addition to the subscription asset.
- Operation and Additional Implementation Stage, including activities such as subsequent implementation activities, maintenance, and other activities for a government's ongoing operations related to a SBITA. Outlays in this stage should be expensed as incurred unless they meet specific capitalization criteria.

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

SCHEDULE OF OTHER MATTERS

GASB 96 – Subscription-Based Information Technology Arrangements (Continued)

In classifying certain outlays into the appropriate stage, the nature of the activity should be the determining factor. Training costs should be expensed as incurred, regardless of the stage in which they are incurred.

If a SBITA contract contains multiple components, a government should account for each component as a separate SBITA or nonsubscription component and allocate the contract price to the different components. If it is not practicable to determine a best estimate for price allocation for some or all components in the contract, a government should account for those components as a single SBITA.

This Statement provides an exception for short-term SBITAs. Short-term SBITAs have a maximum possible term under the SBITA contract of 12 months (or less), including any options to extend, regardless of their probability of being exercised. Subscription payments for short-term SBITAs should be recognized as outflows of resources.

This Statement requires a government to disclose descriptive information about its SBITAs other than short-term SBITAs, such as the amount of the subscription asset, accumulated amortization, other payments not included in the measurement of a subscription liability, principal and interest requirements for the subscription liability, and other essential information.

How the Changes in this Statement will Improve Financial Reporting

The requirements of this Statement will improve financial reporting by establishing a definition for SBITAs and providing uniform guidance for accounting and financial reporting for transactions that meet that definition. That definition and uniform guidance will result in greater consistency in practice. Establishing the capitalization criteria for implementation costs also will reduce diversity and improve comparability in financial reporting by governments. This Statement also will enhance the relevance and reliability of a government's financial statements by requiring a government to report a subscription asset and subscription liability for a SBITA and to disclose essential information about the arrangement. The disclosures will allow users to understand the scale and important aspects of a government's SBITA activities and evaluate a government's obligations and assets resulting from SBITAs.

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

SCHEDULE OF OTHER MATTERS

EFFECTIVE FISCAL YEAR 2023/24:

GASB 100 – Accounting for Changes and Error Corrections

The primary objective of this Statement is to enhance accounting and financial reporting requirements for accounting changes and error corrections to provide more understandable, reliable, relevant, consistent, and comparable information for making decisions or assessing accountability.

This Statement defines *accounting changes* as changes in accounting principles, changes in accounting estimates, and changes to or within the financial reporting entity and describes the transactions or other events that constitute those changes. As part of those descriptions, for (1) certain changes in accounting principles and (2) certain changes in accounting estimates that result from a change in measurement methodology, a new principle or methodology should be justified on the basis that it is preferable to the principle or methodology used before the change. That preferability should be based on the qualitative characteristics of financial reporting—understandability, reliability, relevance, timeliness, consistency, and comparability. This Statement also addresses corrections of errors in previously issued financial statements.

This Statement prescribes the accounting and financial reporting for (1) each type of accounting change and (2) error corrections. This Statement requires that (a) changes in accounting principles and error corrections be reported retroactively by restating prior periods, (b) changes to or within the financial reporting entity be reported by adjusting beginning balances of the current period, and (c) changes in accounting estimates be reported prospectively by recognizing the change in the current period. The requirements of this Statement for changes in accounting principles apply to the implementation of a new pronouncement in absence of specific transition provisions in the new pronouncement. This Statement also requires that the aggregate amount of adjustments to and restatements of beginning net position, fund balance, or fund net position, as applicable, be displayed by reporting unit in the financial statements.

This Statement requires disclosure in notes to financial statements of descriptive information about accounting changes and error corrections, such as their nature. In addition, information about the quantitative effects on beginning balances of each accounting change and error correction should be disclosed by reporting unit in a tabular format to reconcile beginning balances as previously reported to beginning balances as restated.

Furthermore, this Statement addresses how information that is affected by a change in accounting principle or error correction should be presented in required supplementary information (RSI) and supplementary information (SI). For periods that are earlier than those included in the basic financial statements, information presented in RSI or SI should be restated for error corrections, if practicable, but not for changes in accounting principles.

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

SCHEDULE OF OTHER MATTERS

EFFECTIVE FISCAL YEAR 2024/25:

GASB 101 – Compensated Absences

The objective of this Statement is to better meet the information needs of financial statement users by updating the recognition and measurement guidance for compensated absences. That objective is achieved by aligning the recognition and measurement guidance under a unified model and by amending certain previously required disclosures.

Recognition And Measurement

This Statement requires that liabilities for compensated absences be recognized for (1) leave that has not been used and (2) leave that has been used but not yet paid in cash or settled through noncash means. A liability should be recognized for leave that has not been used if (a) the leave is attributable to services already rendered, (b) the leave accumulates, and (c) the leave is more likely than not to be used for time off or otherwise paid in cash or settled through noncash means. Leave is attributable to services already rendered when an employee has performed the services required to earn the leave. Leave that accumulates is carried forward from the reporting period in which it is earned to a future reporting period during which it may be used for time off or otherwise paid or settled. In estimating the leave that is more likely than not to be used or otherwise paid or settled, a government should consider relevant factors such as employment policies related to compensated absences and historical information about the use or payment of compensated absences. However, leave that is more likely than not to be settled through conversion to defined benefit postemployment benefits should not be included in a liability for compensated absences.

This Statement requires that a liability for certain types of compensated absences—including parental leave, military leave, and jury duty leave—not be recognized until the leave commences. This Statement also requires that a liability for specific types of compensated absences not be recognized until the leave is used.

This Statement also establishes guidance for measuring a liability for leave that has not been used, generally using an employee’s pay rate as of the date of the financial statements. A liability for leave that has been used but not yet paid or settled should be measured at the amount of the cash payment or noncash settlement to be made. Certain salary-related payments that are directly and incrementally associated with payments for leave also should be included in the measurement of the liabilities.

With respect to financial statements prepared using the current financial resources measurement focus, this Statement requires that expenditures be recognized for the amount that normally would be liquidated with expendable available financial resources.

Notes To Financial Statements

This Statement amends the existing requirement to disclose the gross increases and decreases in a liability for compensated absences to allow governments to disclose only the net change in the liability (as long as they identify it as a net change). In addition, governments are no longer required to disclose which governmental funds typically have been used to liquidate the liability for compensated absences.

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

SCHEDULE OF OTHER MATTERS

GASB 101 – Compensated Absences (Continued)

How the Changes in this Statement Will Improve Financial Reporting

The unified recognition and measurement model in this Statement will result in a liability for compensated absences that more appropriately reflects when a government incurs an obligation. In addition, the model can be applied consistently to any type of compensated absence and will eliminate potential comparability issues between governments that offer different types of leave.

The model also will result in a more robust estimate of the amount of compensated absences that a government will pay or settle, which will enhance the relevance and reliability of information about the liability for compensated absences.

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

**STATUS OF PRIOR YEAR
OTHER MATTERS**

2016-05 Information Systems Best Practices

We conducted an Information Systems Review with our audit which encompassed the City's financial information system and the network environment that houses it. We expanded our work in previous years beyond simply looking at financial information systems as a result of greater risks of unauthorized access caused by overall industry growth of web-based commerce and internet based financial systems. Internal controls that are present in the overall network environment have become more important and relevant to understanding the internal controls over the financial system. We believe Information System controls must be continuously improved and enhanced to stay ahead of the ever increasing sophistication of hackers and criminals.

Currently, there are no Information Systems standards to which local governments are required to conform. Indeed, there are a wide variety of informal guidelines and suggested controls from many different organizations which local governments can use to implement appropriate controls to ensure adequate security over information technology. A voluntary risk-based Cybersecurity Framework has been developed by the National Institute of Standards and Technology (NIST) per Presidential Executive Order 13636 (12 FEB 2013). The *Framework for Improving Critical Infrastructure Cybersecurity* version 1.0 (12 FEB 2014) offers a number of appropriate standards. Our Information Systems auditors have reviewed the voluntary framework and concluded that the risk management framework developed by NIST for the Federal Information Security Management Act (FISMA) is the most appropriate for local governments¹. The NIST risk management framework represents the minimum security requirements for federal government agencies and recommends these controls for private industry and state and local governments.

While the results of our work did not indicate material weaknesses, we noted a few areas which could be improved. A summary of these recommendations which we believe are "best practices" are as follows:

Business Continuity Planning with Regards to Information Technology

The City does not have a formal written information technology business continuity policy. As organizations rely more and more on information technology and electronic data storage for an increasingly wider scope of processes, it becomes more and more important to develop a plan to make those resources available during and after some form of disaster. A formal disaster recovery business continuity policy serves to show management's intent and due diligence for the continuity of operations. A disaster recovery policy or contingency plan should address what to do in case of a disaster and how to prepare for a disaster that cripples or closes the computer center such as a fire, flood, natural or manmade disaster. The City should consider developing and implementing an IT contingency plan which would include procedures for periodic information backup and offsite storage, along with an alternative processing site that would allow the City to continue to operate in the event of a disaster.²

¹ "State, local, and tribal governments, as well as private sector organizations are encouraged to consider using these guidelines, as appropriate." NIST SP 800-37 Rev ¹ pg. 11

² For more information see "Contingency Planning Guide for Information Technology Systems" NIST SP 800-34.

**CITY OF MILPITAS
MEMORANDUM ON INTERNAL CONTROL**

Item # C9.

**STATUS OF PRIOR YEAR
OTHER MATTERS**

2016-05 Information Systems Best Practices (Continued)

Current Status:

Business Continuity Planning with Regards to Information Technology –The City implemented its Business Continuity Plan in December 2018. Since then, the City has implemented a few major changes to its infrastructure, such as implementing Hyperconverged Infrastructure, cloud backup strategies, and moving communications and Office applications to Office 365.

As a part of the City-wide Continuity of Operation review effort, the IT department has been collaborating with the EOC management staff and various departments to update the Business Continuity Plan, which has been completed in June 2022.

CITY OF MILPITAS
REQUIRED COMMUNICATIONS
FOR THE YEAR ENDED
JUNE 30, 2022

This Page Left Intentionally Blank

CITY OF MILPITAS
REQUIRED COMMUNICATIONS

For the Year Ended June 30, 2022

Table of Contents

	<u>Page</u>
<i>Required Communications</i>	1
Significant Audit Matters.....	1
Qualitative Aspects of Accounting Practices.....	1
Difficulties Encountered in Performing the Audit.....	4
Corrected and Uncorrected Misstatements	4
Disagreements with Management	5
Management Representations.....	5
Management Consultations with Other Independent Accountants	5
Other Audit Findings or Issues	5
Other Matters.....	5

This Page Left Intentionally Blank

REQUIRED COMMUNICATIONS

To the City Council of
the City of Milpitas, California

We have audited the basic financial statements of Milpitas for the year ended June 30, 2022. We did not audit the financial statements of Terrace Gardens, Inc. as of and for the year ended December 31, 2021, which represent 1.04%, 1.56%, and 1.21% of the assets, net position and revenues, respectively, of the primary government. These component unit financial statements were audited by other auditors, whose report thereon has been furnished to us, and our opinion, insofar as it relates to the amounts included for this entity, is based solely on the report of the other auditors.

Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards and *Government Auditing Standards* and the Uniform Guidance, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter dated April 29, 2022.

Significant Audit Matters

Qualitative Aspects of Accounting Practices

Accounting Policies - Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the City are described in Note 1 to the financial statements. No new accounting policies were adopted, and the application of existing policies was not changed during the year, except as follows:

GASB 87 – Leases

The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources, thereby enhancing the relevance and consistency of information about governments' leasing activities.

A lease is defined as a contract that conveys control of the right to use another entity's nonfinancial asset (the underlying asset) as specified in the contract for a period of time in an exchange or exchange-like transaction. Examples of nonfinancial assets include buildings, land, vehicles, and equipment. Any contract that meets this definition should be accounted for under the leases guidance, unless specifically excluded in this Statement.

The pronouncement became effective, and as disclosed in Note 10 to the financial statements required a prior period restatement for the cumulative effect on the financial statements.

GASB 90 – Majority Equity Interests (an amendment of GASB Statements No. 14 and No. 61)

The primary objectives of this Statement are to improve the consistency and comparability of reporting a government's majority equity interest in a legally separate organization and to improve the relevance of financial statement information for certain component units. It defines a majority equity interest and specifies that a majority equity interest in a legally separate organization should be reported as an investment if a government's holding of the equity interest meets the definition of an investment. A majority equity interest that meets the definition of an investment should be measured using the equity method, unless it is held by a special-purpose government engaged only in fiduciary activities, a fiduciary fund, or an endowment (including permanent and term endowments) or permanent fund. Those governments and funds should measure the majority equity interest at fair value.

For all other holdings of a majority equity interest in a legally separate organization, a government should report the legally separate organization as a component unit, and the government or fund that holds the equity interest should report an asset related to the majority equity interest using the equity method. This Statement establishes that ownership of a majority equity interest in a legally separate organization results in the government being financially accountable for the legally separate organization and, therefore, the government should report that organization as a component unit.

This Statement also requires that a component unit in which a government has a 100 percent equity interest account for its assets, deferred outflows of resources, liabilities, and deferred inflows of resources at acquisition value at the date the government acquired a 100 percent equity interest in the component unit. Transactions presented in flows statements of the component unit in that circumstance should include only transactions that occurred subsequent to the acquisition.

The pronouncement became effective, but did not have a material effect on the financial statements.

GASB 97 – Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans—An Amendment of GASB Statements No. 14 and No. 84, and a Supersession of GASB Statement No. 32

The primary objectives of this Statement are to (1) increase consistency and comparability related to the reporting of fiduciary component units in circumstances in which a potential component unit does not have a governing board and the primary government performs the duties that a governing board typically would perform; (2) mitigate costs associated with the reporting of certain defined contribution pension plans, defined contribution other postemployment benefit (OPEB) plans, and employee benefit plans other than pension plans or OPEB plans (other employee benefit plans) as fiduciary component units in fiduciary fund financial statements; and (3) enhance the relevance, consistency, and comparability of the accounting and financial reporting for Internal Revenue Code (IRC) Section 457 deferred compensation plans (Section 457 plans) that meet the definition of a pension plan and for benefits provided through those plans.

The pronouncement became effective, but did not have a material effect on the financial statements.

GASB 99 – Omnibus 2022

The objectives of this Statement are to enhance comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing (1) practice issues that have been identified during implementation and application of certain GASB Statements and (2) accounting and financial reporting for financial guarantees. The Statement contains provisions that are to be implemented in phases over three fiscal years. The practice issues addressed by this Statement that are effective in fiscal year 2022 are as follows:

- Extension of the period during which the London Interbank Offered Rate (LIBOR) is considered an appropriate benchmark interest rate for the qualitative evaluation of the effectiveness of an interest rate swap that hedges the interest rate risk of taxable debt
- Accounting for the distribution of benefits as part of the Supplemental Nutrition Assistance Program (SNAP)
- Disclosures related to nonmonetary transactions
- Pledges of future revenues when resources are not received by the pledging government
- Clarification of provisions in Statement No. 34, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments*, as amended, related to the focus of the government-wide financial statements
- Terminology updates related to certain provisions of Statement No. 63, *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position*
- Terminology used in Statement 53 to refer to resource flows statements.

The requirements in paragraphs 26-32 of the pronouncement became effective, but did not have a material effect on the financial statements.

The following pronouncements became effective, but did not have a material effect on the financial statements:

GASB 89 – *Accounting for Interest Cost Incurred before the End of a Construction Period*

GASB 92 – *Omnibus 2020*

GASB 93 – *Replacement of Interbank Offered Rates*

Unusual Transactions, Controversial or Emerging Areas - We noted no transactions entered into by the City during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting Estimates - Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the City's financial statements were:

Estimated Fair Value of Investments: As of June 30, 2022, the City held approximately \$378.1 million of cash and investments as measured by fair value as disclosed in Note 3 to the financial statements. Fair value is essentially market pricing in effect as of June 30, 2022. These fair values are not required to be adjusted for changes in general market conditions occurring subsequent to June 30, 2022.

Estimate of Depreciation: Management's estimate of the depreciation is based on useful lives determined by management. These lives have been determined by management based on the expected useful life of assets as disclosed in Note 8 to the financial statements. We evaluated the key factors and assumptions used to develop the depreciation estimate in determining that it is reasonable in relation to the basic financial statements taken as a whole.

Estimate of Compensated Absences: Accrued compensated absences which are comprised of accrued vacation and sick leave is estimated using accumulated unpaid leave hours and hourly pay rates in effect at the end of the fiscal year as disclosed in Note 13F to the financial statements. We evaluated the key factors and assumptions used to develop the accrued compensated absences in determining that it is reasonable in relation to the basic financial statements taken as a whole.

Estimated Claims Liabilities: Management's estimate of the claims liabilities payable is disclosed in Note 14 to the financial statements and is based on estimates determined by the City's risk pool and third party claims administrator, which are based on the claims experience of the City. We evaluated the key factors and assumptions used to develop the estimate in determining that it is reasonable in relation to the basic financial statements taken as a whole.

Estimated Net Pension Liabilities and Pension-Related Deferred Outflows and Inflows of Resources: Management's estimate of the net pension liabilities and deferred outflows/inflows of resources are disclosed in Note 12C to the financial statements and are based on accounting valuations determined by the California Public Employees Retirement System, which are based on the experience of the City. We evaluated the key factors and assumptions used to develop the estimate in determining that it is reasonable in relation to the basic financial statements taken as a whole.

Estimated Net OPEB Asset: Management's estimate of the net OPEB asset is disclosed in Note 13C to the financial statements and is based on actuarial study determined by a consultant, which is based on the experience of the City. We evaluated the key factors and assumptions used to develop the estimate in determining that it is reasonable in relation to the basic financial statements taken as a whole.

Estimated Net OPEB Liability and Pension-Related Deferred Outflows and Inflows of Resources: Management's estimate of the net OPEB liability is disclosed in Note 13D to the financial statements and is based on actuarial study determined by a consultant, which is based on the experience of the City. We evaluated the key factors and assumptions used to develop the estimate in determining that it is reasonable in relation to the basic financial statements taken as a whole.

Disclosures - The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. In addition, none of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to each opinion unit's financial statements taken as a whole.

Professional standards require us to accumulate all known and likely uncorrected misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. We have no such misstatements to report to the City Council.

Disagreements with Management

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in a management representation letter dated November 7, 2022.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the City's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the City's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Other Matters

We applied certain limited procedures to the required supplementary information that accompanies and supplements the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the required supplementary information and do not express an opinion or provide any assurance on the required supplementary information.

We were engaged to report on the supplementary information that accompanies the financial statements, but is not required supplementary information. With respect to this supplementary information, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

We were not engaged to report on the Introductory and Statistical Sections which accompany the financial statements, but are not required supplementary information. Such information has not been subjected to the auditing procedures applied in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on them.

This information is intended solely for the use of City Council and management and is not intended to be, and should not be, used by anyone other than these specified parties.

Maze & Associates

Pleasant Hill, California
November 7, 2022

**INDEPENDENT ACCOUNTANT'S REPORT ON
APPLYING AGREED UPON PROCEDURES FOR
COMPLIANCE WITH THE PROPOSITION 111
2021-2022 APPROPRIATIONS LIMIT INCREMENT**

Honorable Mayor and Members of the City Council
City of Milpitas, California

We have performed the procedures enumerated below on the Appropriations Limit Worksheet (Worksheet) of the City of Milpitas, California, for the year ended June 30, 2022. The City's management is responsible for the Worksheet.

The City has agreed to and acknowledged that the procedures performed are appropriate to meet the intended purpose of these procedures, which were suggested by the League of California Cities and presented in their Article XIII B Appropriations Limitation Uniform Guidelines, were performed solely to assist you in meeting the requirements of Section 1.5 of Article XIII B of the California Constitution. This report may not be suitable for any other purpose. The procedures performed may not address all the items of interest to a user of this report and may not meet the needs of all users of this report and, as such, users are responsible for determining whether the procedures performed are appropriate for their purposes.

The procedures and associated findings were as follows:

- A. We obtained the Worksheet and determined that the 2021-2022 Appropriations Limit of \$119,175,291 and annual adjustment factors were adopted by Resolution of the City Council. We also determined that the population and inflation options were selected by a recorded vote of the City Council.
- B. We recomputed the 2021-2022 Appropriations Limit by multiplying the 2020-2021 Prior Year Appropriations Limit by the Total Growth Factor. We recomputed the Total Growth Factor by multiplying the population option by the inflation option.
- C. For the Worksheet, we agreed the Per Capita Income Factor, City Population Factor and County Population Factor to California State Department of Finance Worksheets.

We were engaged by the City to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to and did not conduct an examination or review engagement, the objective of which would be the expression of an opinion or conclusion, respectively, on the Worksheet. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the City and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of management and the City Council and is not intended to be and should not be used by anyone other than those specified parties; however, this restriction is not intended to limit the distribution of this report, which is a matter of public record.

Maze & Associates

Pleasant Hill, California
November 7, 2022



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Authorize the City Manager to Execute a Master Encroachment Agreement for Bandwidth IG, LLC, a Delaware Limited Liability Company for Installation of Network Facilities Within Public Right-of-Way (Staff Contact: Steve Erickson, Engineering Director / City Engineer, 408-586-3301; and Roberto Alonzo, Principal Civil Engineer, 408-586-3316)
Category:	Consent Calendar-Community Development
Meeting Date:	12/6/2022
	<u>Recommendation:</u> Authorize the City Manager to execute a master encroachment agreement for Bandwidth IG, LLC, a Delaware Limited Liability Company for installation of network facilities within public right-of-way and find a CEQA exemption.

BACKGROUND:

Bandwidth IG, LLC, a Delaware limited liability company is requesting permission to install and operate private underground fiber optic lines within City public right-of-way for its communication network to serve the business community with a focus on connecting data centers and targeted metro business districts. The initial fiber deployment will consist of a high strand count backbone focused on data centers and end user buildings. The initial fiber optic backbone alignment through the City of Milpitas is anticipated to be along Milpitas Boulevard.

ANALYSIS:

Telecommunications providers are authorized to provide Telecommunications Services in the state of California pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the Public Utilities Commission of the State of California and, as a telephone corporation, may use public roads and highways pursuant to Public Utilities Code section 7901. A Master Encroachment Agreement (Attached) is recommended to allow for the installation, maintenance, perpetual use, and outlines the terms and conditions for the use of the public right-of-way.

POLICY ALTERNATIVE(S):

Alternative 1: Not approve the proposed Master Encroachment Agreement with Bandwidth IG for installation of fiber optic telecommunications equipment with the City's public right of way.

Pros: None

Cons: Not approving the Master Encroachment Agreement may delay installation of the telecommunications equipment and delay business within Milpitas from enhanced communications connectivity.

Reason for Not Recommending: State law has authorized the use of the public right of way for installation of telecommunications equipment. The proposed Master Encroachment Permit Agreement allows for the installation, maintenance, perpetual use, and outlines the terms and conditions for the use of the public right-of-way.

FISCAL IMPACT:

Bandwidth IG will pay City review costs for plan review and construction inspection for installation of their fiber optic communications equipment within City right of way.

California Environmental Quality Act (CEQA):

The item is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a General Plan) and 15061(b)(3) (Common Sense Exemption).

RECOMMENDATION:

Authorize the City Manager to Execute a Master Encroachment Agreement for Bandwidth IG, LLC, a Delaware Limited Liability Company for Installation of Network Facilities Within Public Right-of-Way.

Attachment(s):

Master Encroachment Permit Agreement

Recording Requested By
City of Milpitas

When. Recorded it To:
City of Milpitas
Engineering Director
455 E. Calaveras Blvd.
Milpitas, CA 95035

For the Benefit of
City of Milpitas
Recorded Free
Gov. Code Sec. 27383

(Space above this line for Recorder's Use)

**MASTER ENCROACHMENT AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND BANDWIDTH IG, LLC**

**RELATED TO THE INSTALLATION OF NETWORK FACILITIES
WITHIN PUBLIC RIGHT-OF-WAY**

This Agreement ("Agreement") dated as of _____, 2022 ("Effective Date") is entered into by and between the CITY OF MILPITAS, a California municipal corporation (herein termed "CITY") and Bandwidth IG, LLC, a Delaware limited liability company (herein termed "ENCROACHER"). CITY and ENCROACHER are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, ENCROACHER is authorized to provide Telecommunications Services (as defined herein) in the state of California pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the Public Utilities Commission of the State of California and, as a telephone corporation, may use public roads and highways pursuant to Public Utilities Code Section 7901; and,

WHEREAS, CITY owns, operates and maintains the Public Right-of-Way (as defined herein) within CITY; and,

WHEREAS, ENCROACHER desires to construct Network Facilities (as defined herein) within the Public Right-of-Way within CITY to provide Telecommunications Services; and

WHEREAS, CITY has the authority to regulate the terms and conditions for the use of Public Right-of-Way for the construction, installation, and maintenance of Network Facilities by ENCROACHER.

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, CITY AND ENCROACHER agree as follows:

SECTION 1 **DEFINITIONS**

1.1 Network Facilities or Facilities - Means any and all cables, lines, poles, conduits, access manholes, handholes, pedestals, boxes, and other similar equipment and devices owned or leased by ENCROACHER. The term does not include antennas, cell towers, or other wireless facilities. No portion of Network Facilities shall, without the CITY's prior authorization, be: (1) used by ENCROACHER as all or any portion of a cable television system or community antenna television system; (2) used by ENCROACHER to provide Video Services; or (3) used by ENCROACHER for any purposes other than the provision of Telecommunications Services.

1.2 Public Right-of-Way or Public Rights-of-Way - Means the full width of the right-of-way of any City street, as defined in the California Vehicle Code used by the general public. "Public Right-of-Way" also includes any dedicated public utility easement in which CITY now or hereafter holds any property interest which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining Network Facilities. The term does not include any area designated or delineated as a proposed public street on any tentative subdivision or parcel map approved by CITY which has not yet become a public street.

1.3 Telecommunications Services - Means services that ENCROACHER is authorized to offer and or provide pursuant to any applicable law or CPCN, including its existing CPCN (U-7336-C) which authorizes ENCROACHER to provide facilities-based competitive local exchange service and interexchange services. Telecommunications services also includes offering internet access, data transport, private line, and facilities leasing to affiliates and third parties, which may also be offered through an indefeasible right of use to the extent permitted by applicable law.

1.4 Video Services — Means services provided pursuant to any applicable California Video Franchise Certificate issued by the California Public Utilities Commission pursuant to the *Digital Infrastructure and Video Competition Act* (Public Utilities Code, Section 5800 and following, and California Public Utilities Commission decisions pertaining to video services.

SECTION 2 **SCOPE OF USE OF PUBLIC RIGHT-OF-WAY**

2.1 Nothing in the Agreement shall be construed as granting or creating any franchise rights.

2.2 CITY hereby grants an encroachment right to ENCROACHER, subject to reservations, covenants, and conditions herein contained, to construct, install, maintain and operate, and remove Network Facilities within Public Right-of-Way that are located within

the corporate limits of the CITY to provide Telecommunications Services, subject to obtaining all required permits and approvals. ENCROACHER may install replacement poles (subject to the approval of the pole owner and CITY).

2.3 ENCROACHER shall not commence installation of Network Facilities until ENCROACHER has first obtained a permit to do so in accordance with this Agreement and applicable law. Before ENCROACHER applies for any new permits after the Effective Date of this Agreement, ENCROACHER must submit: (i) a comprehensive master plan ("Master Plan") showing at a minimum the location and specific details (i.e., underground depth, above-ground height, etc.) of all Network Facilities presently installed within the City's limits; (ii) a Master Plan showing a high-level design of all Network Facilities presently intended to be installed over the five-year period from the Effective Date; and (iii) the Bond (as defined in Section 8). The Master Plan shall be submitted in conformance with the requirements of the City's Engineering Plans and Maps and Procedures, and the Master Plan shall be completed by a California Licensed Civil Engineer. ENCROACHER shall provide an updated Master Plan annually, showing, to the extent applicable, any change to the Master Plan submitted in the prior year. ENCROACHER does not warrant the continuing accuracy of the Master Plan or any updates to the Master Plan as it relates to anticipated projects, and ENCROACHER may, in its sole discretion, deviate at any time from the Master Plan as it relates to anticipated projects, subject, however, to ENCROACHER providing notice to the City Engineer and updating the Master Plan and, obtaining all appropriate and necessary Encroachment Permits and other licenses, permits, authorizations, and approvals required under this Agreement

2.4 ENCROACHER shall not install or erect any facilities or apparatus in or on other public property or places, or within any privately owned area within CITY which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision or parcel map approved by CITY, except those installed or erected upon public utility facilities now existing, without obtaining the prior written approval of the City Engineer.

2.5 ENCROACHER is not authorized to place any facilities other than Network Facilities in the Public Right-of-Way, without first obtaining written authorizations and required permits (including any necessary franchises) from the CITY, except that the foregoing does not apply to facilities where state law preempts any requirement for local authorization.

2.6 ENCROACHER shall comply with any lawful provision that the CITY may adopt in the future requiring it to obtain a franchise or other authorization and may be required to do so as a condition of the continued effectiveness of this Agreement. The City Engineer shall, subject to applicable laws, be solely responsible for determining what written authorizations and or permits are required. ENCROACHER agrees that once a written authorization and/or permit is determined to be required, ENCROACHER shall first apply for same before challenging the requirement.

2.7 This Agreement does not authorize use of any property other than the City Public Rights of Way. Any use of any other CITY-owned or CITY-controlled property, including but not limited to poles and conduits, shall require a separate agreement.

2.8 No use of any Public Right-of-Way or other interest or property under this

Agreement shall create or vest in ENCROACHER any ownership or other interest in the Public Right-of-Way, streets or any other property or interest of the CITY. This Agreement is not a grant by the CITY of any property interest but is made subject and subordinate to the prior and continuing right of CITY and its assigns to use all the Public Right-of-Way in the performance of its governmental duties and police powers including but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing, and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric, and telephone lines, electric, cable television, and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress, along, over, across, and in said Public Right-of-Way. ENCROACHER shall have a duty to remove, relocate, and rearrange its facilities within a time frame set forth by CITY (subject to force majeure and events beyond the control of ENCROACHER), and at its own expense (except as otherwise set forth in this Agreement), in order to accommodate such uses, as further provided in this Agreement and applicable law. Further, ENCROACHER shall not cause any unreasonable delay or interference with CITY's access to the Public Right-of-Way. ENCROACHER shall not interfere with the operations of CITY in the Public Right-of-Way, whether or not such interference is considered material.

2.9 The grant of rights in this Agreement is made subject to all easements, restrictions, conditions, covenants, encumbrances, and claims of title which may affect the Public Right-of-Way, and it is understood that ENCROACHER, at its own costs and expense, shall obtain such permission as may be necessary consistent with any other existing rights. No reference herein to a "Public Right-of-Way" shall be deemed to be representation or guarantee by CITY that its interest or other rights to control the use of such property is sufficient to permit its use for such purposes, and ENCROACHER shall be deemed to gain only those rights to use the property as the CITY may have the undisputed right and power to give, and which do not interfere with CITY's needs for uses within the Public Right-of-Way. In the event of any conflict, the use of the subject Public Right-of-Way by ENCROACHER is secondary to the rights and needs of the CITY.

2.10 This Agreement shall be for the non-exclusive use of the Public Right-of-Way. By executing this Agreement, CITY does not agree to restrict the use of the Public Right-of-Way in all or any part of the CITY by any person in the same business, a related business, or a competing business as ENCROACHER.

2.11 If the CITY is not prohibited from charging for use of the Public Right-of-Way by ENCROACHER by state or federal statute, it may do so, and the payment of any lawful compensation established by the CITY shall be a condition of the continued effectiveness of this Agreement.

SECTION 3

CONSTRUCTION AND MAINTENANCE STANDARDS

3.1 The construction, operation or repair and maintenance of Network Facilities shall be in accordance with all applicable Federal, State, and local laws, including, without limitation, zoning laws, construction codes, and CITY's latest standard specifications and details, as the same may exist now, or be hereafter issued, amended or revised, and any supplements thereto or revisions of this Agreement, and any Franchise or other authorization now or in the future. Nothing in this Agreement prevents the CITY from establishing additional or stricter conditions (even with respect to the matters specified in those sections) and requiring ENCROACHER to comply with the same. In the event of a

conflict among codes and standards, the most stringent code or standard, as determined in the sole judgment of the City Engineer consistent with applicable law, shall apply.

3.2 ENCROACHER shall at all times employ reasonable care, within the meaning of applicable law, and shall install, maintain, and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

3.3 This Agreement does not guarantee receipt of a particular permit or approval. CITY reserves the right, and ENCROACHER hereby acknowledges, that CITY may reject without liability the design drawings for any proposed construction and/or require any changes thereto if CITY determines, in its sole and absolute discretion, that such action is necessary to ensure CITY can adequately inspect, clean, maintain, repair, and replace CITY's existing property and structures and/or install additional structures within the Public Right-of-Way.

3.4 ENCROACHER shall construct, operate, and maintain its Network Facilities so as not to endanger or interfere with improvements CITY shall deem appropriate to make, consistent with applicable law, or to interfere in any manner with the Public Right-of-Way or legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic. ENCROACHER shall place facilities in strict conformance with the plans and drawings approved in writing by CITY, consistent with applicable law, and shall not place facilities, equipment, or fixtures where they will interfere with any existing gas, electric, telephone, telecommunications, water, sewer, or other utility facilities or obstruct or hinder in any manner such existing use of any Public Right-of-Way. Any and all Public Rights-of-Way, public property or private property that is disturbed or damaged by ENCROACHER during the construction, repair, replacement, relocation, operation, maintenance, or construction of a Network Facility shall be promptly repaired by ENCROACHER, in accordance with the latest CITY standards and to the satisfaction of the City Engineer, to a condition equal to or better than that which existed prior to the damage.

3.5 All construction shall be open and subject to inspection by CITY, and ENCROACHER shall give notice and allow CITY to inspect any underground improvements or installations prior to backfilling.

3.6 If Public Right-of-Way to be used by ENCROACHER has preexisting installation(s) placed in the said Public Right-of-Way, ENCROACHER shall assume the responsibility to verify the location of the preexisting installation by means as directed by City or other preexisting utility owner and notify, consistent with applicable law, CITY and any third-party owner of ENCROACHER's proposed installation. The cost of any work required of such third-party owner or CITY to provide adequate space or required clearance to accommodate ENCROACHER's installation shall, consistent with applicable law, be borne solely by ENCROACHER. Except as required by applicable law, CITY is under no obligation to move its existing utilities out of the way to accommodate or make room for ENCROACHER's Network Facilities.

3.7 Within ten business (10) days after its receipt of a written request from CITY, ENCROACHER shall, at its sole cost and expense, expose its subsurface Network Facility to a depth of one foot (1') below the bottom of such facility by means as directed by CITY. If ENCROACHER fails to perform, CITY may proceed on ENCROACHER's

account and ENCROACHER shall promptly reimburse CITY for the cost of same, plus a 15 percent administrative overhead charge, and CITY is hereby held harmless and indemnified by ENCROACHER for any loss and or damages resulting from the CITY's performance of the required work.

3.8 Any contractor or subcontractor used for the construction, installation, operation, maintenance, or repair of the Network Facility equipment shall be properly licensed under the laws of the State and all applicable local ordinances, and each contractor or subcontractor shall have the same obligations with respect to its work as ENCROACHER would have under this Agreement and applicable law as if the work were performed by ENCROACHER. ENCROACHER shall be responsible for the performance of the work of contractors and subcontractors consistent with the requirements of this Agreement and applicable law, including all acts or omissions of contractors or subcontractor, and ENCROACHER shall implement a quality control program to monitor that the work is properly performed. This section is not meant to alter tort liability of ENCROACHER to third parties.

3.9 ENCROACHER agrees to keep said Network Facilities in good and safe condition and free from any nuisance.

3.10 ENCROACHER shall identify the Network Facilities installed in each Public Right-of-Way by means of an identification method mutually agreed upon by the Parties, or as directed by the City Engineer if the Parties cannot mutually agree on an identification method. Such identification shall be detectable from ground level without opening the street. To prevent conflicts between ENCROACHER's Network Facilities and public facilities in the same location, ENCROACHER shall participate in the USA North 811 Program and notify Underground Service Alert of the location of the facilities for the benefit of future construction projects which may need to be aware of the presence of the Network Facilities within the Public Right-of-Way. Failure of ENCROACHER to comply with this Section shall not create any claim or right against the CITY, and as set forth herein below, ENCROACHER shall indemnify and hold harmless, and defend CITY from any and all costs for failure to comply with this Section.

SECTION 4 **SERVICE CHANGES**

4.1 ENCROACHER hereby represents and warrants that: 1) it has any and all authorizations and approvals from state and federal regulatory agencies including the California Public Utilities Commission and the Federal Communications Commission as are necessary for the activities and Network Facilities contemplated by the Agreement, and is in compliance in all material respects with its obligations under such authorizations; 2) the type of service offered through the Network Facilities in the Public Right of Way consists solely of Telecommunications Services; 3) it does not offer Video Services; 4) Network Facilities will be installed only within the Public Rights-of-Way (underground within conduit or aerial on poles); and 5) it will not construct or install any new cell towers, poles or antennas.

4.2 The terms of this Agreement are based on the type of equipment comprising the Network Facilities, and the types of Telecommunications Services which ENCROACHER provides via the Network Facilities installed in the Public Right-of-

Way. ENCROACHER. acknowledges that any change in service or change in the law may increase the CITY's regulatory authority over such services, product, and ENCROACHER's use of Public Right-of-Way, and may require modification of this Agreement, and require ENCROACHER to obtain additional authorizations consistent with the requirements of an existing or hereinafter-enacted CITY ordinance regulating such services.

4.3 If ENCROACHER is authorized by the California Public Utilities Commission to provide additional and/or alternative services, including but not limited to Video Services, and intends to offer such services to customers within the corporate limits of CITY, ENCROACHER shall notify CITY in writing, as soon as practicable, comply with CITY's local ordinances, and pay to CITY any applicable franchise or other fees.

SECTION 5 **TAXES**

5.1 ENCROACHER agrees that it will be solely responsible for the payment of any and all lawful taxes, fees, and assessments relating to its use and maintenance of the Network Facilities including but not limited to all taxes, fees, and assessments listed in ENCROACHER's CPCN issued by the California Public Utilities Commission.

5.2 ENCROACHER shall provide such records to CITY as CITY may require to confirm compliance with this requirement as it pertains to CITY's taxes, fees, and assessments. The cost of any auditor to conduct such audit shall be borne by ENCROACHER if that audit discloses an underpayment of more than five percent (5%) of the amount remitted. Audits shall not be conducted more than once every two (2) years, and ENCROACHER or CITY shall pay or rebate such amounts discovered by the auditor within sixty (60) days of receipt of the audit report.

5.3 Pursuant to Section 107.6 of the California Revenue and Taxation Code, the CITY hereby advises, and ENCROACHER recognizes and understands, that should ENCROACHER's use of Public Rights-of-Way create a possessory interest subject to property taxation, ENCROACHER may be subject to the payment of property taxes levied on such interest.

SECTION 6 **REMOVAL AND RELOCATION**

6.1 In the event of an emergency, or where Network Facilities create or are contributing to an imminent danger to health, safety, or property, CITY may remove any or all parts of those Network Facilities without prior notice; however, CITY shall make reasonable efforts to provide prior notice and, where prior notice is not given, shall notify ENCROACHER of such work as soon as practicable.

6.2 ENCROACHER shall upon sixty (60) days written notice from the CITY, relocate its facilities at its sole cost and expense to accommodate projects or needs of CITY, or other government agencies or where relocation is necessary to protect and preserve the public health safety or welfare.

6.3 In the event all or any portion of said Public Right-of-Way occupied by said

Network Facilities shall be needed by CITY for governmental purposes (for example, if and when made necessary by any lawful change of grade, alignment or width of any street, including the construction, maintenance, or operation of any underground subway or viaduct by CITY and/or the construction, maintenance, or operation of any other CITY underground or aboveground facilities), or in the event the existence of said Network Facilities shall be considered detrimental to governmental activities, including but not limited to interference with CITY construction projects, or is in conflict vertically and/or horizontally with any proposed CITY installation, ENCROACHER shall, upon sixty (60) days advance written direction of CITY's City Engineer, remove and relocate said Network Facilities to such other location or locations on said Public Right-of-Way as may be designated by CITY, without cost or expense to CITY. Said removal or relocation shall be completed within sixty (60) days of notification by CITY, except for force majeure events or events beyond the control of ENCROACHER.

6.4 ENCROACHER shall, by a time specified by CITY (subject to force majeure events or events beyond the control of ENCROACHER), protect, support, temporarily disconnect, relocate, or remove any of its property when required by CITY or any other governmental entity by reason of traffic conditions; public safety; Public Rights-of-Way construction; Public Rights-of-Way maintenance or repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation, or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communication system, public work, or improvement, or any government-owned utility; Public Rights-of-Way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the Network Facility.

6.5 In those areas and portions of the CITY where the transmission or distribution facilities of either all wireline public utility telephone corporations or those of the utility providing electric service (in locations where no wireline public utility telephone corporation has aerial facilities), are underground or hereafter must be placed underground, then ENCROACHER shall likewise construct, operate, and maintain all of its Network Facilities underground, except for Facilities which by their nature are placed above ground (e.g., pedestals, pole risers). For the purposes of this subsection, "underground" shall include a partial underground system. The CITY shall not in any manner be responsible for any costs incurred by ENCROACHER in placing ENCROACHER's facilities underground. ENCROACHER may install new poles (subject to the approval of the pole owner and CITY) if another wireline telephone corporation would be permitted to install new poles at the same location.

6.6 If any portions of the Network Facilities covered under this Agreement other than redundant facilities or facilities for emergency use are no longer used or useful by ENCROACHER, or are abandoned for a period in excess of one (1) year, ENCROACHER shall notify CITY and shall either promptly vacate and remove the facilities at its own expense or, at the discretion of the City Engineer, may abandon some or all of the facilities in place and transfer ownership of those facilities to CITY. Notwithstanding the foregoing, this section shall not apply to Network Facilities installed to meet future demand or needs for capacity.

6.7 When removal or relocation is required under this Agreement. ENCROACHER shall, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public Right-of-Way in which the facilities were located to a safe and satisfactory

condition comparable to or better to the condition of the Public Right-of-Way prior to the start of such removal or relocation work in accordance with the construction-related conditions and specifications as established by CITY consistent with applicable law. Before proceeding with removal or relocation work, ENCROACHER shall obtain an encroachment permit from the CITY prior to proceeding with any work. Should ENCROACHER remove the Network Facilities from the Public Right-of-Way, ENCROACHER shall, within ten (10) days after such removal, give notice thereof to CITY specifying the right-of-way affected and the location thereof as well as the date of removal.

6.8 In the event said Network Facilities are not removed or relocated within the timelines specified in any CITY notification, subject to force majeure events or events beyond the control of ENCROACHER, CITY may cause the same to be done at the sole expense of ENCROACHER.

SECTION 7 **CONSTRUCTION PERMIT AND FEES**

7.1 ENCROACHER shall obtain an encroachment permit (and such other permits as may be required) for all work and each job within the Public Right-of-Way. ENCROACHER shall furnish detailed plans of the work and other such information as required by the City Engineer of CITY and shall pay all processing, field marking, engineering, and inspection fees prior to issuance of permit in accordance with the rates in effect at the time of payment.

7.2 Any encroachment permit shall set forth the description of the Network Facilities to be installed and the Public Right-of-Way in which such facilities are to be located. CITY may establish construction-related conditions and specifications in addition to those in this Agreement, and these shall also be set forth in the encroachment permit. Following construction, ENCROACHER shall provide as-builts of the facilities and shall further notify Underground Service Alert (USA) of the location of the facilities.

7.3 In addition to any other remedies available in this Agreement or in applicable law, the failure to comply with the terms and conditions of this Agreement may, at CITY's sole discretion consistent with applicable law, result in withholding issuance of any new encroachment permits and/or other enforcement actions pursuant to Milpitas Municipal Code.

SECTION 8 **PERFORMANCE BOND**

8.1 Prior to the issuance of an encroachment permit and undertaking any of the work, installation, improvements, construction, repair, relocation, removal, or maintenance authorized by permits issued for Facilities under this Agreement, ENCROACHER shall cause to be furnished a bond executed by a corporate surety or financial institution authorized to do business in the State of California in the amount of 100% of the estimated total cost of the work to guarantee performance of ENCROACHER's obligations under this Agreement. The bond shall be conditioned so that ENCROACHER shall observe all the covenants, terms, and conditions and faithfully perform all of the obligations of this Agreement including removal and replacement of defective work or materials discovered in CITY's streets or property under any

designated permits, normal wear and tear excepted as reasonably determined by the City. This bond is to guarantee that the work is of good quality and free from any defective or faulty materials or workmanship and will remain in full force and effect for a period of one (1) year after inspection and acceptance of ENCROACHERS completed work. ENCROACHER may meet the obligations of this subsection with one or more bonds acceptable to the CITY. In the event that a bond issued pursuant to this subsection is canceled by the surety, after proper notice and pursuant to the terms of said bond, ENCROACHER shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this subsection.

8.2 So long as the bond is in place, it may be utilized by the CITY as provided herein for reimbursement to the CITY by reason of ENCROACHER's failure to pay the CITY for actual costs and expenses incurred by the CITY with respect to damages as a result of ENCROACHERS work and failure to complete repairs as may be directed by City under this Agreement. CITY shall provide notice to ENCROACHER of its intention to draw on the Bond at least fifteen (15) days prior to drawing against the bond during which time ENCROACHER shall have the opportunity to cure any failure to pay any amounts due.

8.3 In the event ENCROACHER has been declared by the CITY to be in default of a material provision of this Agreement relating to removal and if ENCROACHER fails, within 30 days of mailing of the CITY's default notice, to perform any of the conditions of this Agreement with respect to removal, or fails to begin to perform any such condition that may take more than thirty (30) days to complete, CITY may thereafter obtain from the bond, after proper claim is made to the surety, an amount sufficient to compensate the CITY for its damages. Upon such withdrawal from the bond, the CITY shall notify ENCROACHER in writing, by First Class Mail, postage prepaid, of the amount withdrawn and the date thereof.

8.4 Thirty (30) days after the CITY's mailing of notice of the bond forfeiture or withdrawal authorized herein, ENCROACHER shall deposit such further bond, or other security, as the CITY may require, which is sufficient to meet the requirements of this Agreement.

8.5 The rights reserved to the CITY with respect to any bond are in addition to all other rights of the CITY whether reserved by this Agreement or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond shall constitute an election or waiver of any rights or other remedies the CITY may have.

SECTION 9

DAMAGE TO FACILITIES IN PUBLIC RIGHT-OF-WAY

9.1 ENCROACHER shall be responsible for any damage to CITY street pavements, existing utilities, curbs, gutters, sidewalks, and all other public or private facilities due to its construction, operation, installation, maintenance, repair, or removal of its Network Facilities in Public Right-of-Way or due to neglect of Network Facilities, and shall repair, replace and restore in kind the said damaged public and private facilities at its sole expense. ENCROACHER shall complete all necessary repairs within thirty (30) days of notification by City Engineer.

9.2 Any premature deterioration of surface and subsurface improvements, such as trench failures, pavement, base, or concrete failure over the facility or trench or adjacent area, or reduction in the life of the street or Public Right-of-Way as determined by City Engineer, normal wear and tear excepted as may be determined by City Engineer, which results from ENCROACHER's acts or omissions shall be the responsibility of ENCROACHER. ENCROACHER shall complete all necessary repairs within thirty (30) days of notification by City Engineer. If ENCROACHER fails to make repairs within thirty (30) days of notice, CITY may have repairs made with the cost being billed to ENCROACHER. If the repair cannot fully reverse the deterioration or loss of life, the CITY may require ENCROACHER to pay for the damage suffered as a result.

SECTION 10

PARTICIPATION WITH OTHER UTILITIES

10.1 ENCROACHER agrees to cooperate, to the extent commercially reasonable, in the planning, locating, and constructing of its Network Facilities in utility joint trenches or common duct banks with other similar utilities providers and to participate in cost-sharing for the joint trench and ducts, when two or more telecommunications service providers are proposing Network Facilities in the same Public Right-of-Way or when an underground project is being planned by CITY.

10.2 The requirements of this section shall not apply when ENCROACHER's excavation work is due to an emergency or other maintenance or repair event that requires urgent action, however, prior to starting emergency work, ENCROACHER shall contact the City Engineer during normal business hours to notify of said emergency work. If after normal business hours, ENCROACHER shall contact the City's Police Dispatch

SECTION 11

MAPS, RECORDS AND FIELD LOCATIONS

11.1 ENCROACHER shall maintain accurate maps and improvement plans of said Network Facilities located within the City of Milpitas. ENCROACHER shall, upon demand of the City Engineer, deliver to the Engineering Department free of charge within thirty (30) days after such demand, such maps and plans as may be required to show in detail the exact location, size, depth, and description of all Network Facilities installed within said Public Right-of-Way. ENCROACHER shall also submit the plan to CITY in digital electronic format as specified by CITY.

11.2 ENCROACHER shall be a member of USA, the regional notification center for subsurface installations, and shall field mark, at ENCROACHER'S sole expense, the locations of its underground Network Facilities upon notification in accordance with the requirements of Section 4216 of the State of California Government Code, as it now reads or may herein after be amended.

11.3 ENCROACHER shall provide books and records for copying and inspection by CITY, and ENCROACHER's facilities shall be subject to such inspection by the CITY, as the CITY finds appropriate to request in the exercise of its rights under this Agreement and its jurisdiction over ENCROACHER.

SECTION 12

HOLD HARMLESS AND INDEMNIFICATION

12.1 ENCROACHER, jointly and severally, for itself, its successors, agents, and ENCROACHER's employees, agrees to indemnify, defend (with reasonable notice to ENCROACHER and with counsel reasonably acceptable to CITY) and hold harmless CITY, its officers, employees, and agents and any successors to CITY's interest from and against any and all claims, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connections therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the "Losses") arising directly or indirectly out of ENCROACHER's and its employees', contractors', or agents' activities or Network Facilities described in this Agreement and/or the installation, construction, operation, maintenance, removal, and/or repair of the improvement and facilities thereto. ENCROACHER shall indemnify CITY for all of CITY's costs, reasonable attorneys' fees, and damages which CITY incurs in enforcing the indemnification provisions set forth herein. However, ENCROACHER shall not indemnify the CITY, its officers, employees, and agents and any successors to CITY's interest for Losses arising directly or indirectly, from the CITY's gross negligence or willful misconduct. CITY shall not be responsible for any damages, losses, or liability of any kind occurring by reason of anything done or omitted to be done by CITY, except for acts which constitute the CITY's gross negligence or willful misconduct, or by any third party, including, without limitation, damages, losses or liability arising from the issuance by the CITY of a permit or approval to any third party or any interruption in service.

12.2 ENCROACHER, for itself and its successors and assigns, hereby waives all claims and causes of action, whether now existing or hereafter arising, against CITY or its officers, agents or employees, for damages, physical or otherwise, to any of the facilities covered by this Agreement from any cause whatsoever excluding those arising as a result of the CITY's gross negligence or willful misconduct. Under no circumstances shall either Party be liable or responsible to the other Party for special, incidental, indirect, punitive, or consequential damages, whether foreseeable or not, including, without limitation, economic loss or lost profits, in connection with this Agreement or the Party's performance or non-performance of its obligations under this Agreement, regardless of the form of action, whether under contract, warranty, tort, or otherwise, all claims for which are hereby specifically waived.

SECTION 13

INSURANCE

13.1 Types; Amounts. ENCROACHER shall procure and maintain, and shall require its contractors to procure and maintain, during construction of any Public Improvement pursuant to this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). The insurance requirements set forth herein in no way limit the indemnity covenants contained in this Agreement. If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

13.1.1 General Liability. ENCROACHER and its contractors shall procure and maintain occurrence version general liability insurance, or equivalent

form, with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage, and \$2,000,000 general aggregate including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury, and advertising injury.

13.1.2 Commercial Automobile Liability. ENCROACHER and its contractors shall procure and maintain commercial automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any vehicle owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

13.1.3 Workers' Compensation. ENCROACHER and its contractors shall procure and maintain workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than \$1,000,000 for each accident; \$1,000,000 disease for each employee; \$1,000,000 disease-policy limit, at all times during which insured retains employees.

13.1.4 Professional Liability. For any consultant or other professional who will engineer or design the Public Improvements, liability insurance for errors and omissions with limits not less than \$1,000,000 per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Public Improvements. Such insurance shall be endorsed to include contractual liability.

13.1.5 Completed Operations. CITY, its elected officials, officers, employees, agents, and volunteers shall be added as an additional insured for completed operations utilizing ISO form CG 20 37, or its equivalent.

13.1.6. Contractors' Pollution Legal Liability. ENCROACHER must maintain Contractors' Pollution Legal Liability insurance with limits of \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. If any coverage required is written on a claims-made coverage form:

- (1) The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
- (2) Insurance must be maintained, and evidence of insurance must be provided for at least five years after completion of contract work.
- (3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the ENCROACHER must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

- (4) A copy of the claims reporting requirements must be submitted to the CITY for review.

13.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) ENCROACHER and its contractors shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

13.3 Additional Insured; Separation of Insureds. The Required Insurance shall name CITY, its elected officials, officers, employees, agents, and volunteers as additional insureds with respect to work performed by or on behalf of ENCROACHER or its contractors, including materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to CITY, its elected officials, officers, employees, agents, and volunteers.

13.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering CITY, its elected officials, officers, employees, agents, and volunteers. All policies for the Required Insurance shall provide that the insurance company waives all right of recovery by way of subrogation against CITY in connection with any damage or harm covered by such policy.

13.5 Certificates; Verification. ENCROACHER and its contractors shall furnish CITY with original certificates of insurance and endorsements effecting coverage for the Required Insurance annually. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by CITY before work pursuant to this Agreement can begin. CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

13.6 Term; Cancellation Notice. ENCROACHER shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. ENCROACHER shall ensure any contractors who perform work for ENCROACHER in the Public Rights-of-Way also maintain the Required Insurance. ENCROACHER shall provide CITY thirty (30) days prior written notice of the suspension, expiration, cancellation, or reduction below the minimums set forth in this Section 13 for all applicable policies. Such notice shall be sent directly to CITY at 455 East Calaveras Blvd, Milpitas, CA 95035, Attn: City Manager.

13.7 Insurer Rating. Unless approved in writing by CITY, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least A:VII or better.

SECTION 14 **ASSIGNMENT**

14.1 ENCROACHER shall not assign, sublet, or transfer any interest in this

Agreement nor the performance of any ENCROACHER's obligations hereunder, without the prior written consent of CITY, which shall not be unreasonably withheld, and any attempt by ENCROACHER to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect. The transfer of the rights and obligations of ENCROACHER to a parent, successor, subsidiary, or other affiliate (defined for the purposes of this section being any person or entity that, directly or indirectly, controls, is wholly controlled or owned by, or is under common control with ENCROACHER) of ENCROACHER, shall not be deemed an assignment for the purposes of this section; provided that ENCROACHER provides written notice of the transfer to CITY within thirty (30) days of such transfer. For the purposes of this section, the leasing or granting in the ordinary course of business of indefeasible rights of use or similar rights in dark fiber, fiber optic capacity, conduit, and other network elements shall not require the express consent of the CITY, so long as ENCROACHER remains solely responsible for locating, placing, installing, maintaining, relocating, and removing the Facilities.

SECTION 15

TERM AND TERMINATION

15.1 This Agreement shall terminate ten (10) years from the Effective Date unless renewed in writing prior to said termination date, except that this Agreement may be terminated sooner under the following circumstances and consistent with applicable law.

- a. This Agreement may be terminated by CITY upon approval of the City Engineer and at least thirty (30) days written notice to ENCROACHER if CITY reasonably determines that the provisions herein interfere with the use or disposal of said Public Right-of-Way or any part thereof by CITY. Where only a portion of ENCROACHER's Network Facilities interferes with the use or disposal of said Public Right-of-Way, CITY shall allow ENCROACHER to relocate the said portion in accordance with this Agreement.
- b. This Agreement may be terminated by CITY for failure, neglect, or refusal by ENCROACHER to fully and promptly comply with any and all of the conditions of this Agreement, or for nonuse in accordance with Section 6.6 herein, upon thirty (30) days written notice, unless ENCROACHER confirms with thirty (30) days of receipt of the notice that the cited condition has ceased, been corrected or, subject to CITY's agreement is diligently being pursued by ENCROACHER, which agreement shall not be unreasonably withheld.
- c. This Agreement may be terminated by CITY if ENCROACHER's Certificate of Public Convenience and Necessity terminates, is revoked, or is abandoned, upon ten (10) days written notice, unless ENCROACHER confirms within ten (10) days of receipt of the notice that the cited condition has ceased, been corrected or, subject to CITY's agreement is diligently being pursued by ENCROACHER, which agreement shall not be unreasonably withheld.

- d. ENCROACHER may, in its sole discretion, provide thirty (30) days' written notice to CITY that ENCROACHER elects to discontinue occupation of CITY Public Rights-of-Way and terminate the Agreement, subject to compliance with removal/abandonment requirements and other obligations that survive the termination of Agreement.

15.2 Upon termination of the Agreement, and upon written request by CITY, ENCROACHER, at its own cost and expense, agrees to remove, or at CITY's discretion, abandon in place some or all of its Network Facilities from the Public Right-of-Way and restore the Public Right-of-Way as set forth in the Removal and Relocation provisions of this Agreement. Should ENCROACHER in such event fail, neglect, or refuse to make such removals or restoration with one hundred eight (180) days of CITY's written request, at the sole option of CITY, such removal and restoration may be performed by CITY at the expense of ENCROACHER, which actual expense, including administrative and legal costs ENCROACHER agrees to pay CITY upon demand. If CITY allows ENCROACHER to abandon its Network Facilities in place, title to those Network Facilities shall pass to CITY and ENCROACHER shall, upon demand, promptly execute and deliver to CITY all documentation necessary to effectuate such transfer of ownership of the Network Facilities. Upon such transfer of ownership after abandonment and acceptance by CITY, ENCROACHER shall have no further obligations or liabilities under this Permit, with the exception of the repair obligations delineated in Section 9 above.

SECTION 16

HAZARDOUS MATERIALS USE

16.1 ENCROACHER covenants that it will not handle or transport Hazardous Materials on Network Facilities or the Public Right-of-Way. As used in this Agreement, the term "Hazardous Materials" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Law"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on

negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (d) asbestos. In the event a Network Facility is now or in the future used in the handling or transporting of Hazardous Materials, ENCROACHER agrees fully to comply with all applicable federal, state, and local laws, rules, regulations, orders, decisions, and ordinances (hereinafter referred to as "Hazardous Materials Standards") concerning Hazardous Materials. Encroacher further agrees that at CITY's request it will furnish CITY with proof, satisfactory to CITY that ENCROACHER is in such compliance.

16.2 Notwithstanding anything else contained in this Agreement and to the extent permitted by law, in case of a breach of the obligations contained in this Section, ENCROACHER agrees to assume liability for and to save and hold harmless CITY from and against any and all injuries to any person, including wrongful death, and damage to property, including without limitation, property of CITY and ENCROACHER, and all related expenses, including without limitation reasonable attorneys' fees, investigators' fees, litigation expenses, and mitigation costs resulting in whole or in part from ENCROACHER's failure to comply with any Hazardous Materials Standards issued by any governmental authority concerning Hazardous Materials. ENCROACHER, at its cost, shall assume the defense of all claims, in accordance with Section 12 hereof. ENCROACHER agrees to reimburse CITY for all reasonable costs of any kind incurred as a result of the ENCROACHER's failure to comply with this Section, including, but not limited to, judicial or administrative fines, penalties, clean-up and disposal costs, and reasonable legal costs incurred as a result of ENCROACHER's handling, transporting, or disposing of Hazardous Materials on, over, or across any Network Facilities and Public Right-of-Way.

SECTION 17 **NOTICES**

17.1 ENCROACHER's Network Operations Center shall be available to CITY staff 24 hours a day, 7 days a week, regarding problems or complaints resulting from the facilities installed pursuant to this Agreement and may be contacted by telephone at 877-353-1695 regarding such problems or complaints. ENCROACHER shall promptly respond to such call(s) and perform the required repair or correct any adverse impact to CITY's use or operations or the use or operations of a third party caused by ENCROACHER's Network Facilities in the Public Right(s)-of-Way at no cost to CITY, except as otherwise set forth in this Agreement.

17.2 All notices given or which may be given pursuant to this Agreement shall be in writing and transmitted by United States mail or by private delivery systems if followed by United States mail or by private delivery systems as follows:

To CITY at:

City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411
Attn: Engineering Director/City Engineer

To ENCROACHER at:

Bandwidth IG, LLC
530 Lakeside Drive, Suite 190
Sunnyvale, CA 94085
ATTN: Andrew Munn

With a copy to:

Bandwidth IG, LLC
530 Lakeside Drive, Suite 190
Sunnyvale, CA 94085
ATTN: Abbi Dayton

SECTION 18 **MISCELLANEOUS**

18.1 This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may be not amended except pursuant to a written instruction signed by all Parties. ENCROACHER and CITY agree to renegotiate this Agreement in good faith if required for CITY to comply with 47 U.S.C. 253, or any similar provision of state law. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected by such invalidity or unenforceability.

18.2 The failure of either Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

18.3 Payments. If any payment due to CITY under this Agreement is not timely made, CITY may assess interest at a rate of ten percent (10%) per annum from the payment due date up until payment is made. In the event payment is not made within ninety (90) days of its due date, ENCROACHER shall be considered to have materially breached this Agreement. CITY's exercise of its rights hereof shall not release ENCROACHER from any liability or obligation hereunder, whether of indemnity or otherwise.

18.4 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any

way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Santa Clara County, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, ENCROACHER expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

18.5 This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

(signatures on next page)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate.

Item # C10.

CITY OF MILPITAS

Approved By:

Steven G. McHarris, City Manager

Date

Approved As To Form:

Michael Mutalipassi, City Attorney

Approved:

Lauren Lai, CPA, MPA
Finance Director/Risk manager

Approved As To Content:

Steven Erickson, Engineering Director/City Engineer

BANDWIDTH IG, LLC,
a Delaware limited liability company

By: Abbi
Dayton

Its: General
Counsel



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Authorizing the City Manager to Execute the Purchase of Two 2023 Ford Super Duty F-250 SRW (W2B) XLT 4WD Crew Cabs for the Fire Department from Through a Sourcewell Cooperative Contract with National Auto Fleet Group in the Amount of \$154,270.06 (Staff Contact: Brian Stelling, Interim Fire Chief, 408-586-2827)
Category:	Consent Calendar-Public Safety
Meeting Date:	12/6/2022
	<u>Recommendation:</u> Adopt a resolution authorizing the City Manager to execute the purchase of two 2023 Ford Super Duty F-250 SRW (W2B) XLT 4WD Crew Cabs for the Fire Department through a Sourcewell Cooperative Contract with National Auto Fleet Group in the amount of \$154,270.06 and find a CEQA exemption.

BACKGROUND:

The next priorities for Fire apparatus replacement are Fire command/deployment vehicles. As part of the Fiscal Year 2022/23 budget, Council approved the purchase of two (2) Fire Command Vehicles for the Fire Department. The two command vehicles are expected to improve reliability of the command fleet when transporting personal protection equipment (PPE) and command staff to sites of emergency calls. The Fire Department is requesting the purchase of two replacement Fire Command Staff vehicles to be stationed at Fire Station One at 777 South Main Street, Milpitas CA. These replacement units will be Ford Super Duty F-250 SRW (W2B) XLT 4WD Crew Cabs.

ANALYSIS:

Staff recommends a cooperative purchase through Sourcewell Contract 091521-NAF for Two 2023 Ford Super Duty F-250 SRW (W2B) XLT 4WD Crew Cabs for the Fire Department from National Auto Fleet Group. Cooperative purchasing through the Sourcewell Contract is specifically authorized pursuant to Municipal Code Section I-2-3.05 "Public Agency Purchases". The Purchasing Agent reviewed all of the documentation from the Sourcewell Contract No. 091521-NAF and has determined that the underlying purchase was made using competitive bidding procedures. Contract No. 091521-NAF is currently valid through November 8, 2025. All Sourcewell contracts provide nationally bid volume pricing to member cities not otherwise available for a single purchase. The purchase will be completed by issuing a purchase order with the City's standard terms and conditions for materials and equipment.

POLICY ALTERNATIVE(S):

Alternative 1: City Council does not adopt a resolution to approve the purchase.

Pros: Savings of expenditures.

Cons: Delay in replacement will increase maintenance of the existing fleet due to age of apparatus as well as increase cost of the purchase of the new vehicles after December 16, 2022.

Reason for Not Recommending: This apparatus is vital to the operations of the Milpitas Fire Department as it has a direct impact on emergency response and reliability of the command fleet when transporting personal protection equipment (PPE).

FISCAL IMPACT:

Purchase of two 2023 Ford Super Duty F-250 SRW (W2B) XLT 4WD Crew Cabs will cost \$154,270.06. Appropriation and funding is included in the FY2022-23 Adopted Budget approved by City Council within the Fire Department budget.

California Environmental Quality Act (CEQA):

Not applicable. The selection and contractual arrangement do not constitute a project, in accordance with Section 15378 of the CEQA Guidelines.

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to execute the purchase of two (2) 2023 Ford Super Duty F-250 SRW (W2B) XLT 4WD Crew Cabs for the Fire Department through a Sourcewell Cooperative Contract with National Auto Fleet Group in the Amount of \$154,270.06.

Attachment(s):

1. Resolution
2. National Auto Fleet Group Quote No. 22504
3. Purchase Order Terms & Conditions for Materials & Equipment

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE OF
TWO FIRE COMMAND VEHICLES THROUGH A SOURCEWELL
COOPERATIVE PROCUREMENT CONTRACT WITH THE NATIONAL AUTO
FLEET GROUP**

WHEREAS, Municipal Code Section I-2-3.05 (“Public Agency Purchase”) specifically authorizes the Purchasing Agent to purchase supplies or services without complying with the quotation or bidding requirements of that Chapter, and to make such purchases based on an agreement or cooperative purchasing program utilizing public agency procurements as the basis for the contract and may be offered by any ‘public agency’ as defined by Government Code Section 6500, regardless of whether the City is named a party to the agreement or an actual participant in such a program, provided that the underlying purchase was made using competitive negotiation or procurement procedures and may include a nationally bid cooperative contract; and

WHEREAS, Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota through legislative authority of Minnesota Statute 123A.21. Feb 24, 2017 that offers cooperative procurement solutions to government entities; and

WHEREAS, on July 28, 2021 Sourcewell solicited Request for Proposal (RFP) No. 091521 for “Automobiles, SUVs, Vans, and Light Trucks with Related Equipment and Accessories”; and

WHEREAS, on November 4, 2021 contract No. 091521-NFA was awarded to National Auto Fleet Group and took effect pursuant to the aforementioned RFP; and

WHEREAS, to support the Fire Department apparatus replacement, staff wishes to purchase two 2023 Ford Super Duty F-250 SRW (W2B) XLT 4WD Crew Cabs for \$154,270.06; and

WHEREAS, the Purchasing Agent has reviewed all of the documentation related to the RFP and the original contract awarded to National Auto Fleet Group and has determined that the underlying purchase was made using competitive bidding procedures and that the price for the vehicles are the same as that offered in the original contract.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Manager is authorized to execute the purchase two 2023 Ford Super Duty F-250 SRW (W2B) XLT 4WD Crew Cabs for \$154,270.06. This is a cooperative purchase from National Auto Fleet Group through the Sourcewell Cooperative.

PASSED AND ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, Acting City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney



National Auto Fleet Group

A Division of Chevrolet of Watsonville
490 Auto Center Drive, Watsonville, CA 95076
(855) 289-6572 • (831) 480-8497 Fax
Fleet@NationalAutoFleetGroup.com

Item # C11.

11/7/2022

Quote ID: **22054**

Order Cut Off Date: **12/16/2022**

Mr Galahad Zamora
Milpitas Fire Department
777 S. Main St.
Milpitas, California, 95035
Dear Galahad Zamora,

National Auto Fleet Group is pleased to quote the following vehicle(s) for your consideration.

Two (2) New/Unused (2023 Ford Super Duty F-250 SRW (W2B) XLT 4WD Crew Cab 6.75' Box 160" WB, Factory Order) and delivered to your specified location, each for

	One Unit (MSRP)	One Unit	Total % Savings	Extended Unit's (2)	Total Savings
Contract Price	\$73,765.00	\$70,515.46	4.405 %	\$141,030.92	\$6,499.08
Factory Order		\$0.00		\$0.00	
Tax (9.3750 %)		\$6,610.82		\$13,221.64	
Tire fee		\$8.75		\$17.50	
Total		\$77,135.03		\$154,270.06	

- per the attached specifications.

This vehicle(s) is available under the **Sourcewell Contract 091521-NAF** . Please reference this Contract number on all purchase orders to National Auto Fleet Group. Payment terms are Net 20 days after receipt of vehicle.

Thank you in advance for your consideration. Should you have any questions, please do not hesitate to call.

Sincerely,

Jesse Cooper
Account Manager
Email: Fleet@NationalAutoFleetGroup.com
Office: (855) 289-6572
Fax: (831) 480-8497

Quoting Department
Account Manager
Fleet@NationalAutoFleetGroup.com
(855) 289-6572



GMC

Purchase Order Instructions & Resources

In order to finalize your purchase please submit this purchase packet to your governing body for a purchase order approval and submit your purchase order in the following way:

Email: Fleet@NationalAutoFleetGroup.com

Fax: (831) 480-8497

Mail: National Auto Fleet Group

490 Auto Center Drive

Watsonville, CA 95076

We will send a courtesy confirmation for your order and a W-9 if needed.

Additional Resources

Learn how to track your vehicle: www.NAFGETA.com

Use the upfitter of your choice: www.NAFGpartner.com

Vehicle Status: ETA@NationalAutoFleetGroup.com

General Inquiries: Fleet@NationalAutoFleetGroup.com

For general questions or assistance please contact our main office at:

1-855-289-6572

Vehicle Configuration Options

Item # C11.

ENGINE	
Code	Description
99T	Engine: 6.7L 4V OHV Power Stroke V8 Turbo Diesel B20, -inc: manual push-button engine-exhaust braking and intelligent oil-life monitor, Operator Commanded Regeneration (OCR), 34 Gallon Fuel Tank, 3.31 Axle Ratio, Dual AGM 68 AH Battery, Dual 78-AH 750 CCA Batteries
TRANSMISSION	
Code	Description
44G	Transmission: TorqShift 10-Speed Automatic, (STD)
WHEELS	
Code	Description
64S	Wheels: 18" Ebony Black Painted Aluminum
TIRES	
Code	Description
TDX	Tires: LT275/70Rx18E BSW A/T (4), -inc: Spare may not be the same as road tire
PRIMARY PAINT	
Code	Description
PQ	Race Red
SEAT TYPE	
Code	Description
2S	Medium Dark Slate, Cloth 40/Console/40 Front Seats, -inc: 8-way power driver w/power lumbar and 2-way adjustable driver/passenger headrests, Flow-Through Console, 120V/400W outlet in rear
AXLE RATIO	
Code	Description
X31	3.31 Axle Ratio
ADDITIONAL EQUIPMENT	
Code	Description
17P	XLT Premium Package, Customers must unlock the navigation service trial by activating the eligible vehicle w/a FordPass member account, If not subscribed by the end of the complimentary period, the connected navigation service will terminate, and the system will revert to embedded offline navigation, Navigation services require SYNC4 and Ford Pass Connect (optional on select vehicles), complimentary connect service and the FordPass app (see FordPass terms for details), Connected service and features depend on compatible AT&T network availability, Evolving technology/cellular networks/vehicle capability may limit functionality and prevent operation of connected features, FordPass app, compatible w/select smartphone platforms, is available via a download, Message and data rates may apply
17K	Sport Appearance Package, -inc: dark fender badge, Foldable & Locking Rear Under-Seat Storage, Tires: LT275/70Rx18E BSW A/T (4), Spare may not be the same as road tire, LED Box Lighting, LED Center High-Mounted Stop Lamp (CHMSL), Black Tow Hooks, Wheels: 18" Ebony Black Painted Aluminum, Body-Color Front & Rear Bumpers, Sport 4x4 Box Side Decal, Dark Painted Grille, Platform Running Boards, LED Center High-Mounted Stop Lamp (CHMSL), Chrome Exhaust Tip, LED Fog Lamps, LED reflector lamps
76S	Remote Start System
86M	Dual AGM 68 AH Battery
68U	GVWR: TBD Payload Package
54F	PowerScope Trailer Tow Mirrors w/Heat, -inc: power-folding w/Autofold, telescoping, power glass, turn signal, high intensity LED security approach lamps and utility lighting system (LED side-mirror spotlights)
43B	Fixed Rear-Window w/Defrost
18B	Platform Running Boards

66L	LED Box Lighting, -inc: LED Center High-Mounted Stop Lamp (CHMSL)	Item # C11.
	Radio: B&O Sound System by Bang & Olufsen, digital owner's manual, conversational voice command recognition and connected built-in navigation w/complimentary 3-year trial for eligible vehicles that begins on the new vehicle warranty start date, Customers must unlock the navigation service trial by activating the eligible vehicle w/a FordPass member account, If not subscribed by the end of the complimentary period, the connected navigation service will terminate, and the system will revert to embedded offline navigation, Navigation services require SYNC4 and Ford Pass Connect (optional on select vehicles), complimentary connect service and the FordPass app (see FordPass terms for details), Connected service and features depend on compatible AT&T network availability, Evolving technology/cellular networks/vehicle capability may limit functionality and prevent operation of connected features, FordPass app, compatible w/select smartphone platforms, is available via a download, Message and data rates may apply	
874	360-Degree Camera Package, -inc: trailer 360-degree camera and wired auxiliary trailer camera compatibility, Rear Parking Sensors, reverse sensing system w/reverse brake assist, LED Center High-Mounted Stop Lamp (CHMSL), 360-Degree Camera System, TBD camera views and picture in picture capability, BLIS w/Cross-Traffic Alert, trailer coverage	
OPTION PACKAGE		
Code	Description	
603A	Order Code 603A	

2023 Fleet/Non-Retail Ford Super Duty F-250 SRW XLT 4WD Crew Cab 6.75' Box 160" WB

WINDOW STICKER

2023 Ford Super Duty F-250 SRW XLT 4WD Crew Cab 6.75' Box 160" WB

CODE	MODEL	MSRP
W2B	2023 Ford Super Duty F-250 SRW XLT 4WD Crew Cab 6.75' Box 160" WB	\$54,510.00
OPTIONS		
99T	Engine: 6.7L 4V OHV Power Stroke V8 Turbo Diesel B20, -inc: manual push-button engine-exhaust braking and intelligent oil-life monitor, Operator Commanded Regeneration (OCR), 34 Gallon Fuel Tank, 3.31 Axle Ratio, Dual AGM 68 AH Battery, Dual 78-AH 750 CCA Batteries	\$9,995.00
44G	Transmission: TorqShift 10-Speed Automatic, (STD)	\$0.00
64S	Wheels: 18" Ebony Black Painted Aluminum	INC
TDX	Tires: LT275/70Rx18E BSW A/T (4), -inc: Spare may not be the same as road tire	INC
PQ	Race Red	\$0.00
2S	Medium Dark Slate, Cloth 40/Console/40 Front Seats, -inc: 8-way power driver w/power lumbar and 2-way adjustable driver/passenger headrests, Flow-Through Console, 120V/400W outlet in rear	\$300.00
X31	3.31 Axle Ratio	INC
17P	XLT Premium Package, Customers must unlock the navigation service trial by activating the eligible vehicle w/a FordPass member account, If not subscribed by the end of the complimentary period, the connected navigation service will terminate, and the system will revert to embedded offline navigation, Navigation services require SYNC4 and Ford Pass Connect (optional on select vehicles), complimentary connect service and the FordPass app (see FordPass terms for details), Connected service and features depend on compatible AT&T network availability, Evolving technology/cellular networks/vehicle capability may limit functionality and prevent operation of connected features, FordPass app, compatible w/select smartphone platforms, is available via a download, Message and data rates may apply	\$4,150.00
17K	Sport Appearance Package, -inc: dark fender badge, Foldable & Locking Rear Under-Seat Storage, Tires: LT275/70Rx18E BSW A/T (4), Spare may not be the same as road tire, LED Box Lighting, LED Center High-Mounted Stop Lamp (CHMSL), Black Tow Hooks, Wheels: 18" Ebony Black Painted Aluminum, Body-Color Front & Rear Bumpers, Sport 4x4 Box Side Decal, Dark Painted Grille, Platform Running Boards, LED Center High-Mounted Stop Lamp (CHMSL), Chrome Exhaust Tip, LED Fog Lamps, LED reflector lamps	\$2,955.00
76S	Remote Start System	INC
86M	Dual AGM 68 AH Battery	INC
68U	GVWR: TBD Payload Package	INC
54F	PowerScope Trailer Tow Mirrors w/Heat, -inc: power-folding w/Autofold, telescoping, power glass, turn signal, high intensity LED security approach lamps and utility lighting system (LED side-mirror spotlights)	INC
43B	Fixed Rear-Window w/Defrost	\$60.00
18B	Platform Running Boards	INC
66L	LED Box Lighting, -inc: LED Center High-Mounted Stop Lamp (CHMSL)	INC
—	Radio: B&O Sound System by Bang & Olufsen, digital owner's manual, conversational voice command recognition and connected built-in navigation w/complimentary 3-year trial for eligible vehicles that begins on the new vehicle warranty start date, Customers must unlock the navigation service trial by activating the eligible vehicle w/a FordPass member account, If not subscribed by the end of the complimentary period, the connected navigation service will terminate, and the system will revert to embedded offline navigation, Navigation services require SYNC4 and Ford Pass Connect (optional on select vehicles), complimentary connect service and the FordPass app (see FordPass terms for details), Connected service and features depend on compatible AT&T network availability, Evolving technology/cellular networks/vehicle capability may limit functionality and prevent operation of connected features, FordPass app, compatible w/select smartphone platforms, is available via a download, Message and data rates may apply	INC
874	360-Degree Camera Package, -inc: trailer 360-degree camera and wired auxiliary trailer camera compatibility, Rear Parking Sensors, reverse sensing system w/reverse brake assist, LED Center High-Mounted Stop Lamp (CHMSL), 360-Degree Camera System, TBD camera views and picture in picture capability, BLIS w/Cross-Traffic Alert, trailer coverage	INC
603A	Order Code 603A	\$0.00

Please note selected options override standard equipment

		Item # C11.
SUBTOTAL		
Advert/ Adjustments		\$0.00
Manufacturer Destination Charge		\$1,795.00
TOTAL PRICE		\$73,765.00
Est City: N/A MPG Est Highway: N/A MPG Est Highway Cruising Range: N/A mi		

Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

Notes

Standard Equipment

Item # C11.

MECHANICAL

Engine: 7.3L 2V DEVCT NA PFI V8 Gas (STD)
Transmission: TorqShift 10-Speed Automatic -inc: SelectShift and selectable drive modes: normal, eco, slippery roads, tow/haul and off-road (STD)
3.73 Axle Ratio (STD)

EXTERIOR

Wheels: 18" Sparkle Silver Painted Cast Aluminum -inc: bright hub covers/center ornaments (STD)
Tires: LT275/65Rx18E BSW A/S -inc: Spare may not be the same as road tire (STD)

ADDITIONAL EQUIPMENT

50-State Emissions System
Transmission w/Oil Cooler
Electronic Transfer Case
Part-Time Four-Wheel Drive
78-Amp/Hr 750CCA Maintenance-Free Battery w/Run Down Protection
HD 190 Amp Alternator
Class V Towing Equipment -inc: Hitch, Brake Controller and Trailer Sway Control
Trailer Wiring Harness
3470# Maximum Payload
GVWR: 10,000 lb Payload Package
HD Shock Absorbers
Front Anti-Roll Bar
Firm Suspension
Hydraulic Power-Assist Steering
34 Gal. Fuel Tank
Single Stainless Steel Exhaust
Auto Locking Hubs
Front Suspension w/Coil Springs
Solid Axle Rear Suspension w/Leaf Springs
4-Wheel Disc Brakes w/4-Wheel ABS, Front And Rear Vented Discs, Brake Assist and Hill Hold Control
Regular Box Style
Steel Spare Wheel
Spare Tire Stored Underbody w/Crankdown
Clearcoat Paint
Chrome Front Bumper w/Body-Colored Rub Strip/Fascia Accent and 2 Tow Hooks
Chrome Rear Step Bumper
Black Side Windows Trim and Black Front Windshield Trim
Black Door Handles
Black Power Heated Side Mirrors w/Convex Spotter, Manual Folding and Turn Signal Indicator
Manual Extendable Trailer Style Mirrors
Fixed Rear Window
Variable Intermittent Wipers
Privacy Glass
Aluminum Panels
Chrome Grille
Tailgate Rear Cargo Access
Tailgate/Rear Door Lock Included w/Power Door Locks

Boxside Steps
Cargo Lamp w/High Mount Stop Light
Perimeter/Approach Lights
Autolamp Auto On/Off Aero-Composite Halogen Auto High-Beam Daytime Running Lights Preference Setting Headlamps w/Delay-Off
Front Fog Lamps
Headlights-Automatic Highbeams
Radio w/Seek-Scan, Clock and Speed Compensated Volume Control
Radio: AM/FM Stereo/MP3 Player -inc: 7 speakers
Fixed Antenna
SYNC 4 -inc: 8" LCD capacitive touchscreen w/swipe capability, wireless phone connection, cloud connected, AppLink w/app catalog, 911 Assist, Apple CarPlay and Android Auto compatibility and digital owner's manual
2 LCD Monitors In The Front
8-Way Power Driver Seat -inc: Power Recline, Height Adjustment, Fore/Aft Movement and Cushion Tilt
4-Way Passenger Seat -inc: Manual Recline and Fore/Aft Movement
60-40 Folding Split-Bench Front Facing Fold-Up Cushion Rear Seat
Manual Tilt/Telescoping Steering Column
Gauges -inc: Speedometer, Odometer, Oil Pressure, Engine Coolant Temp, Tachometer, Transmission Fluid Temp, Engine Hour Meter, Trip Odometer and Trip Computer
Power Rear Windows
FordPass Connect 5G Mobile Hotspot Internet Access
Rear Cupholder
3 12V DC Power Outlets
Remote Keyless Entry w/Integrated Key Transmitter, Illuminated Entry and Panic Button
Keypad
Cruise Control w/Steering Wheel Controls
Manual Air Conditioning
HVAC -inc: Underseat Ducts
Illuminated Locking Glove Box
Full Cloth Headliner
Urethane Gear Shifter Material
Interior Trim -inc: Metal-Look Instrument Panel Insert and Chrome Interior Accents
Cloth 40/20/40 Split Bench Seat -inc: 20% locking center under-seat storage, center armrest, cupholder, storage, 8-way power driver w/power lumbar and 2-way adjustable driver/passenger headrests
Day-Night Auto-Dimming Rearview Mirror
Driver And Passenger Visor Vanity Mirrors
Full Overhead Console w/Storage, 3 12V DC Power Outlets and 1 120V AC Power Outlet
Fade-To-Off Interior Lighting
Front And Rear Map Lights
Full Carpet Floor Covering -inc: Carpet Front And Rear Floor Mats
Pickup Cargo Box Lights
Smart Device Remote Engine Start
Instrument Panel Covered Bin, Dashboard Storage, Driver / Passenger And Rear Door Bins
Power 1st Row Windows w/Driver And Passenger 1-Touch Up/Down
Delayed Accessory Power
Power Door Locks w/Autolock Feature
Systems Monitor
Trip Computer
Outside Temp Gauge
Digital/Analog Appearance
Seats w/Cloth Back Material
Manual Adjustable Rear Head Restraints
2 Seatback Storage Pockets

Securilock Anti-Theft Ignition (pats) Immobilizer
Air Filtration
3 12V DC Power Outlets and 1 120V AC Power Outlet
AdvanceTrac w/Roll Stability Control Electronic Stability Control (ESC) And Roll Stability Control (RSC)
ABS And Driveline Traction Control
Side Impact Beams
Dual Stage Driver And Passenger Seat-Mounted Side Airbags
Ford Co-Pilot360 - Pre-Collision Assist with Automatic Emergency Braking (AEB)
Collision Mitigation-Front
Tire Specific Low Tire Pressure Warning
Safety Canopy System Curtain 1st And 2nd Row Airbags
Outboard Front Lap And Shoulder Safety Belts -inc: Rear Center 3 Point and Height Adjusters
Dual Stage Driver And Passenger Front Airbags
Back-Up Camera

PURCHASE ORDER TERMS AND CONDITIONS FOR EQUIPMENT AND MATERIALS

1. Acceptance. This purchase order for equipment and materials issued by the City of Milpitas ("CITY") to the Vendor designated in the purchase order must be promptly accepted and acceptance is expressly limited to the terms of this order. Any additions or different terms in the Vendor's forms are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. Vendor's shipment of goods in response to this order shall be considered acceptance by the Vendor.

2. Entire Agreement. Unless Vendor and CITY have entered into a separate written contract covering the purchase of the goods described herein, the entire contract between the parties consists of this order and the Vendor's acceptance as above stipulated, and said contract shall not be changed or added to except in writing signed by authorized representatives of each party.

3. Price. The price invoiced for the goods on this purchase order shall be no higher than the price stated on the front of this purchase order unless prior notification is received from Vendor prior to shipment and the change is accepted by CITY. If the Vendor's established price for any item upon the date of delivery shall be lower than the price shown on this purchase order, CITY shall have the benefit of such lower price. Vendor shall deliver to CITY all invoices within 30 days of shipping or service delivery.

4. Payment. Payments will be made net 30 days unless otherwise specified as per agreements regarding discount terms. The period of computation will commence on the date of receipt of a correctly completed invoice. Payment may be withheld, in whole or in part, due to deficiencies in Vendor's performance. Payment of an invoice by CITY shall be without prejudice to any and all claims CITY may have against Vendor in connection with such goods. Invoices are paid on a weekly basis and such practice may result in minor deviations from payment terms otherwise cited herein.

5. Time of the Essence. Time is of the essence on this order. If delivery is not made in the quantity or quantities and at the time or times specified, CITY shall have the right, at its option, to cancel the entire order or that part of same not so delivered. If CITY accepts delayed delivery the time of payment shall be extended accordingly.

6. Delivery and Acceptance. Vendor expressly warrants that any article, material or work is free and clear of all liens and encumbrances whatsoever, and that Vendor has good and marketable title to same. Unless otherwise specified, all goods are to be shipped prepaid, F.O.B. destination. No charge will be allowed for packing, crating, freight, express or other carrier's charges, or cartage, unless specifically agreed to by CITY. Title to equipment and materials purchased hereunder shall pass to Vendor at the designated F.O.B. point, subject to Vendor's right to inspect and reject or revoke acceptance.

7. Warranty. Vendor warrants for a period of 12 months following start of use or 18 months from receipt, whichever occurs first, that the goods described herein will be free of defects in workmanship, design, materials, and title, and notwithstanding anything herein to the contrary, will conform to all applicable proposals, specifications, instructions, drawings, data, descriptions, and samples, and will be of good and merchantable quality and fit and sufficient for the purpose intended. Vendor shall obtain and provide to CITY Material Safety Data Sheets (MSDS) for each product that contains hazardous substances as defined by CalOSHA. ..

8. Rejection of Goods. CITY shall have the right, at its option, to reject or revoke acceptance of any goods which do not conform to these warranties or to the specifications. In case of such rejection or revocation of acceptance, transportation of the rejected goods, both to and from CITY, shall be at the expense of Vendor, said rejected goods are not to be replaced except upon specific instruction from CITY, and CITY shall have the right at its option to cancel the remainder, if any, of the order, by notice to Vendor at the time notice is given of rejection or revocation of acceptance. Vendor shall be liable to CITY for all damages proximately caused by breach of any of the foregoing warranties, including incidental damages but excluding special or consequential damages.

9. Returns. CITY reserves the right to return for full credit any excess over quantity called for in any order or orders. Vendor to bear the cost of transportation both ways.

10. Force Majeure. Vendor shall not be held responsible for failure or delay in shipping nor CITY for failure or delay in accepting goods described herein if such failure or delay is due to act of God, war, federal or state legislation or any regulations or orders, fire, accident, or other causes, either similar or dissimilar to the foregoing, beyond their control. In the event of any such excused interference with shipments, CITY shall have the option either to reduce the quantity provided for in the order accordingly or to exercise its right of cancellation as set forth in these terms and conditions.

11. Additional Fees. Unless otherwise required by law or provided herein, Vendor assumes exclusive liability for, and shall pay before delinquency, all sales, use, excise and other taxes, charges or contributions of any kind now or hereafter imposed on or with respect to, or measured by the article sold or material or work furnished hereunder on the wages, salaries or other remunerations paid to persons employed in connection with performance of this order.

12. No Waiver. No exercise by CITY of its rights hereunder shall constitute a waiver of any rights it may have for breach of contract. CITY's waiver of or failure to enforce its rights on account of Vendor's failure or delay in performing any obligation of Vendor hereunder, or on account of Vendor's breach of contract in any respect, shall not constitute a waiver of any subsequent failure, delay or breach.

13. Compliance with Law. Vendor shall comply with all applicable laws and regulations of the federal, state and local government. CITY shall assist Vendor, as requested, in obtaining and maintaining all permits required of Vendor by Federal, State and local regulatory agencies. Vendor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of his or her Work. Vendor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Work is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Vendor agrees to fully comply with such Prevailing Wage Laws. Vendor shall defend, indemnify and hold CITY, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Any stop orders issued by the Department of Industrial

Relations against Vendor or any subcontractor that affect Vendor's performance of services, including any delay, shall be Vendor's sole responsibility and Vendor shall indemnify CITY from liability arising out of the same. It shall be mandatory upon the Vendor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815), contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 and to be registered with the Department of Industrial Relations shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1771.4, 1725.5 and 1771.1.

14. Insurance. Vendor shall take out and maintain: A. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01; B. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto); C. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and D. Pollution Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate shall be provided by those Vendors transporting hazardous materials. Insurance carriers shall be licensed to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an "A:VII" rating according to the latest Best Key Rating unless otherwise approved by CITY. VENDOR SHALL ENSURE THAT THIRD PARTY SHIPPERS CONTRACTED BY VENDOR HAVE ADEQUATE INSURANCE COVERAGE. If attached, Vendor shall refer to Exhibit "A" – Insurance Requirements, for further insurance requirements applicable to Vendor.

15. Indemnification. The Vendor shall indemnify and hold harmless CITY, its officials, officers, agents and employees from and against any and all claims, liabilities, expenses or damages, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, or patent infringement or fees for use of patented items, or any claim of the Vendor or sub-contractors for wages or benefits which arise in connection with the sale, delivery and/or installation of equipment or materials, except to the extent caused or resulting from the negligence or willful misconduct of CITY. The foregoing indemnity includes, but is not limited to, the cost of prosecuting or defending such action with legal counsel acceptable to CITY and CITY's attorneys' fees incurred in such an action.

16. Substitutions, Changes and Cancellation. No substitutions are acceptable unless expressly accepted in writing by CITY. CITY may make changes in the general scope of this order by giving written notice to Vendor. If any such change affects the cost of or time to deliver or perform under this order, an adjustment in price, delivery or both will be made as CITY determines to be equitable. Vendor may request changes; however, no such change shall be effective

unless accepted in writing by CITY. CITY may cancel this order in whole or in part at any time before acceptance of the equipment and materials due to Vendor's breach or for CITY's convenience.

17. Laws, Venue, and Attorneys' Fees. This purchase order shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this purchase order, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

18. Contract Terms. Nothing herein shall be construed to give any rights or benefits to anyone other than CITY and the Vendor. The unenforceability, invalidity or illegality of any provision(s) of this purchase order shall not render the other provisions unenforceable, invalid or illegal. Notice may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to the parties to the addresses set forth in the purchase order. Vendor shall not assign, sublet, or transfer this purchase order, or any rights under or interest in this purchase order, without the written consent of CITY, which may be withheld for any reason. Vendor is retained as an independent contractor and is not an employee of CITY. No employee or agent of Vendor shall become an employee of CITY. This is an integrated agreement/purchase order representing the entire understanding of the parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. This Contract may not be modified or altered except in writing signed by both parties hereto.

19. Damage to City Facilities. Damage to CITY or public facilities or private property caused by the Vendor or by its subcontractors during delivery or installation shall be repaired and/or replaced in kind at no cost to the CITY.

20. Site Safety and Cleanup. The delivery and installation site shall be kept clean and free of hazards at all times during delivery and installation. After and installation is completed at the site, as applicable, Vendor shall clean the surrounding area to the condition prior to delivery and installation.

21. Installation. If the Vendor is responsible for providing installation services, finished installation work and/or equipment shall be subject to final inspection and acceptance or rejection by the CITY.

22. Wage Theft Prevention. Vendor, and any subcontractor it employs to complete work under this purchase order, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance. By entering into this purchase order, Vendor affirms that it has disclosed any final judgments, decisions or orders from a court or investigatory government agency, finding in the five (5) years prior to the date of this purchase order that Vendor or its subcontractor(s) has violated any applicable wage and hour laws. Vendor further affirms that it or its subcontractor(s) has either fully satisfied each judgment, decision or order, or, if any judgment, decision or order has not been fully satisfied, Vendor affirms that it or its subcontractor(s) is currently satisfying said judgment, decision or order through a payment or alternative plan approved by the applicable court/government agency and that Vendor or its subcontractor(s) are in compliance with

said plan as of the date of this purchase order. If at any time during the term of this purchase order, a court or investigatory government agency issues a final judgment, decision or order finding that Vendor or a subcontractor it employs to perform work under this purchase order has violated any applicable wage and hour law, or Vendor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Vendor shall inform the CITY no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Vendor or its subcontractor(s) shall, within thirty (30) calendar days after notifying the CITY, either (i) fully satisfy any such judgment, decision, or order and provide the CITY with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the CITY documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Vendor or its subcontractor is subject to a payment or other alternative plan, the Vendor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the purchase order demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied. For purposes of this provision, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant

investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the CITY, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws. Failure to comply with any part of this provision constitutes a material breach of this purchase order. Such breach may serve as a basis for immediate termination of this purchase order and/or any other remedies available under this purchase order and/or law. Notice provided to the CITY shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd., Milpitas, CA 95035. The notice provisions of this paragraph are separate from any other notice provisions in this purchase order and, accordingly, only notice provided to the above address satisfies the notice requirements in this provision.

***OPTIONAL TERMS:** Check box if applicable

- ☐ Custom Design: If the goods are produced by Vendor in accordance with designs, drawings or blueprints provided by CITY, Vendor shall return same to CITY upon completion or cancellation of this order. Any materials, equipment, tools, artwork, designs or other property furnished by or specifically paid for by CITY shall be CITY's property.



CITY OF MILPITAS HOUSING AUTHORITY & SUCCESSOR AGENCY AGENDA REPORT (AR)

Item Title:	Sale of the residential unit located at 600 S. Abel Street Unit #208 (Staff Contact: Alex Andrade, Economic Development Director, 408-586-3046 and Michelle Silva, Administrative Analyst II, 408-586-3244)
Category:	Consent Calendar-Community Development
Meeting Date:	12/6/2022
	Recommendation: 1. Adopt the resolution authorizing the Executive Director of the Milpitas Housing Authority to execute documents for the sale of the residential property located at 600 S. Abel Street Unit #208 in the amount of \$314,973 and find a CEQA exemption. 2. Approve related budget amendments due to the sale of the property located at 600 S. Abel Street Unit #208 in the amount of \$314,973.

BACKGROUND:

On February 1, 2012, Assembly Bill X1 26 resulted in the dissolution of all Redevelopment Agencies throughout the State. In anticipation of the dissolution, the Milpitas City Council adopted Resolution No. 8062 in February 2011. The Resolution established the City of Milpitas Housing Authority as the Successor Housing Agency to the Milpitas Redevelopment Agency. Thirteen real properties were transferred from the former Redevelopment Agency to the Milpitas Housing Authority. The transferred properties and its current disposition are summarized in the table below.

	Address	Developed with Affordable Housing	Sold by Housing Authority	Retained by Housing Authority
1	340 Celebration Dr.	X	X	
2	600 S. Abel St. #208	X		X
3	1101 S. Main St. #313	X	X	
4	254 Parc Place Dr.	X	X	
5	1432 S. Main St.			X
6	1434 S. Main St.			X
7	1436 S. Main St.			X
8	1438 S. Main St.			X
9	1438A S. Main St.			X
10	1440 S. Main St.			X
11	1444 S. Main St.			X
12	1446 S. Main St.			X
13	1504-1620 S. Main St.	X	X	

Health and Safety Code section 34176.l(e) requires that all properties acquired by the Redevelopment Agency prior to February 1, 2012, and transferred to the Housing Authority, be developed within certain time frames. According to Health and Safety Code section 33334.16, within five years, from the date the property is acquired, activities must be initiated consistent with the development of the property for affordable housing purposes, or the property must be sold, and the proceeds deposited into the City's Low and Moderate Income

Housing Asset Fund. This Health and Safety Code Section also allows for one additional period not to exceed five years.

The sale of properties located at 1432-1446 S. Main Street, also known as Parcel 1, will be brought forward for Council consideration in Quarter 2 of 2023 (Properties 5-12 in the chart above).

The purpose of this agenda is to authorize the sale of 600 S. Abel Street Unit #208 as affordable housing consistent with the Housing Authorities goals.

ANALYSIS:

There is one remaining residential unit of the thirteen total properties owned by the Housing Authority for sale (Property No. 2 in the table above). The residential property located at 600 S. Abel Street Unit #208 was being rented to a low-income household at a low-income rent level. The tenants of this property signed a Lease Agreement with an Option to Purchase from the Housing Authority. The Option to Purchase provided the tenants with the option to purchase the unit. The lease, which was executed in 2013, expired in 2014. Tenants have been on month-to-month since that time.

Housing staff has periodically reached out to the tenants about purchasing their unit. Staff worked with the tenants to purchase their unit so the sale to a low-income household could have occurred before August 31, 2022. The Option to Purchase was not exercised by the tenants of 600 S. Abel Street Unit #208.

On October 4, 2022, the Housing Division held a lottery to procure an eligible buyer for 600 S. Abel Street Unit #208 (Attachment 1). The application period was from August 15, 2022, to August 26, 2022. The lottery was a fair and transparent process. with 7 applicants participating in the lottery.

The initial five-year period to dispose of the property expired on August 31, 2017. The Housing Authority Commission adopted a resolution approving a one-time expiration date extension to August 31, 2022. Due to delays caused by a lack of staffing resources, the City did not meet the deadline to dispose of 600 S. Abel Street Unit #208 by this date. The sale of this property will bring the City into compliance.

600 S. Abel Street #208 Unit Purchase

In total, 10 applications were received by the Housing Division for the 600 S. Abel Street Unit #208 Below Market Rate property. Of the 10 applications received, 7 applications were eligible to proceed to the lottery phase. A buyer was procured at the lottery held on October 4th, 2022. To be eligible for the lottery phase, applicants must meet all requirements and provide the necessary supporting documents.

The Below Market Rate program requirements for 600 S. Abel Street Unit #208 are as follows:

- Must be a first-time home buyer.
- Must be an eligible "Moderate-Income Household."
- Must have a household size of 1-3.
- Must have the ability to provide at least a 5-10% down payment.
- Must provide a Pre-Qualification Letter.
- Must provide necessary supporting documents to validate application details (W2 forms, lease agreement, paycheck stubs, and tax documents).

The following procedure describes the steps in assigning the number of lottery tickets to applicants:

1. Each applicant receives one lottery ticket as a baseline for submitting their application.
2. Each preference category is assigned additional tickets based on the weighting for that preference category.
3. Each applicant identifies which preferences apply to their household. These preferences are then used to determine how many additional lottery tickets each household will receive. The intent of the weighted

number of tickets is to prioritize the selection of a household that meets most of the City Council's priorities.

Applicants	Number of Lottery Tickets
All applicants	Receive 1 lottery ticket
Milpitas residents	Receive 5 additional lottery tickets
Former Milpitas residents who have been displaced	Receive 3 additional lottery tickets
Households with children enrolled in the Milpitas Unified School District (MUSD) McKinney-Vento Homeless Assistance Act	Receive 3 additional lottery tickets
Applicants employed within the boundaries of the city of Milpitas	Receive 1 additional lottery ticket

A total of 45 tickets were distributed to 7 applicants for the lottery. The selected buyer was assigned 7 lottery tickets as they are an eligible participant (1 lottery ticket), Milpitas Resident (5 additional tickets), and work in Milpitas (1 additional ticket).

As part of the sale, the homebuyer, will be required to sign the City's Resale Restriction Agreement, Option to Purchase, and adhere to its owner-occupied requirement. The Resale Restriction will limit the appreciation in the unit and will give the City the purchase option on the unit if the unit falls into default. Staff will monitor the unit to ensure that it will continue to be the primary residence of the occupant through the required Annual Occupancy form.

FISCAL IMPACT:

Proceeds from the sale will be posted into the Housing Authority Fund for future appropriation.

California Environmental Quality Act (CEQA):

The recommendations have no potential for causing a significant effect on the environment and are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

RECOMMENDATION:

1. Adopt the resolution authorizing the Executive Director of the Milpitas Housing Authority to execute documents for the sale of the residential property located at 600 S. Abel Street Unit #208 in the amount of \$314,973.
2. Approve related budget amendments due to the sale of the property located at 600 S. Abel Street Unit #208 in the amount of \$314,973.

Attachment(s):

1. Sale of 600 S. Abel Street Unit #208 Resolution
2. Exhibit A of Resolution, Residential Purchase Agreement
3. Exhibit B of Resolution, Resale Restriction Agreement and Option to Purchase
4. Exhibit C of Resolution, Disclosure Statements
5. 600 S. Abel Street Unit #208 Budget Change Form

RESOLUTION NO. _____**A RESOLUTION OF THE HOUSING AUTHORITY COMMISSION OF THE CITY OF MILPITAS APPROVING THE SALE OF 600 S. ABEL STREET #208 FOR \$314,975**

WHEREAS, the Redevelopment Agency of the City of Milpitas provided funding to financially support 1,248 affordable housing units; and

WHEREAS, on June 16, 2009, the Redevelopment Agency approved Resolution No. RA 334 to purchase 600 S. Abel Street #208; and

WHEREAS, on October 4, 2022, the Housing Division held a lottery to procure an eligible buyer; and

WHEREAS, pursuant to ABx1 26 enacted effective June 28, 2011, as clarified and amended by AB 1484 effective June 27, 2012, (collectively, the "Redevelopment Dissolution Law"):

1. The Redevelopment Agency, together with every redevelopment agency in California, was dissolved as of February 1, 2012; and

2. The City of Milpitas Housing Authority (the "Housing Authority") Commission, the City Council, and the Agency Board of Directors adopted Joint Resolution HA3/8151/RA426 on January 4, 2012, whereby (a) the City, acting in a separate legal capacity and as a separate legal entity, elected to be the successor agency (the "Successor Agency") to the dissolved Redevelopment Agency for purposes of paying the obligations, unwinding the affairs, and liquidating specified assets of the dissolved Redevelopment Agency; and (b) the Housing Authority, acting in a separate legal capacity and as a separate legal entity, assumed the responsibility of performing the housing functions and accepted transfer of all assets of the dissolved Agency pursuant to California Health and Safety Code Section 34176(b)(2); and

WHEREAS, the Successor Agency does not have a legal interest in the subject of this Resolution since it involves assets now in the control of the Housing Authority under the Redevelopment Dissolution Law, but out of an abundance of caution, so that no cloud will remain on the validity of actions taken herein, the Successor Agency does act in concurrence with the other Public Entity parties; and

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The Housing Authority Commission, the City Council, and the Successor Agency Board have considered the full record before them, which includes, but is not limited to, the supporting documentation, testimony by staff and the public, and other materials and evidence submitted or provided to them. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The Successor Agency Board and Housing Authority Commission hereby authorize their Executive Director or designees, to negotiate and execute all documents necessary for the sale of 600 S. Abel Street #208 in the amount of \$314,975 including but not limited to the Residential Purchase Agreement (Exhibit A), Resale Restriction Agreement and Option to Purchase (Exhibit B), and Disclosure Statements (Exhibit C).
3. The Housing Authority Commission, the City Council, and the Successor Agency Board hereby designate the City Clerk as the custodian of the documents and other materials which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the City Clerk's Office at 445 East Calaveras Street, Milpitas, California 95035.

PASSED AND ADOPTED this _____ day of _____ 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/21)

Item # C12.

☐ (If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(j), (k), and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salespersons and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

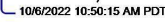
Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

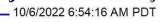
If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE SECOND PAGE.**

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant  **Neil Hilario** Date 10/06/2022
 10/6/2022 10:50:15 AM PDT

Agent Referral Realty/Bayview Residential Mortgage DRE Lic. # 01498198
Real Estate Broker (Firm)

By  **Glenda Queensbury** DRE Lic. # 01365035 Date 10/06/2022
 10/6/2022 6:54:16 AM PDT (Salesperson or Broker-Associate, if any)

© 2021, California Association of REALTORS®, Inc.

AD REVISED 12/21 (PAGE 1 OF 2)



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

Bayview Residential Brokerage, 51 E Campbell Ave Suite 110 Campbell CA 95008
Glenda Queensbury

Phone: (408) 921-2257 Fax: (408) 715-0278
Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com

600

371

CODE SECTIONS 2079.13 – 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. (b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. (c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. (d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. (f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. (n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

Item # C12.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: (a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

CONFIRMATION: (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

Seller's Brokerage Firm	DO NOT COMPLETE. SAMPLE ONLY	License Number	_____
Is the broker of (check one): ☐ the seller; or ☐ both the buyer and seller. (dual agent)			
Seller's Agent	DO NOT COMPLETE. SAMPLE ONLY	License Number	_____
Is (check one): ☐ the Seller's Agent. (salesperson or broker associate) ☐ both the Buyer's and Seller's Agent. (dual agent)			
Buyer's Brokerage Firm	DO NOT COMPLETE. SAMPLE ONLY	License Number	_____
Is the broker of (check one): ☐ the buyer; or ☐ both the buyer and seller. (dual agent)			
Buyer's Agent	DO NOT COMPLETE. SAMPLE ONLY	License Number	_____
Is (check one): ☐ the Buyer's Agent. (salesperson or broker associate) ☐ both the Buyer's and Seller's Agent. (dual agent)			

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. (b) A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. (c) "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. (d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

© 2021, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®, NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by:
 REAL ESTATE BUSINESS SERVICES, LLC.
 a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
 525 South Virgil Avenue, Los Angeles, California 90020

AD REVISED 12/21 (PAGE 2 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)





FAIR HOUSING & DISCRIMINATION ADVISORY

(C.A.R. Form FHDA, 6/22)

Item # C12.

1. **EQUAL ACCESS TO HOUSING FOR ALL:** All housing in California is available to all persons. Discrimination as noted below is prohibited by law. Resources are available for those who have experienced unequal treatment under the law.
2. **FEDERAL AND STATE LAWS PROHIBIT DISCRIMINATION AGAINST IDENTIFIED PROTECTED CLASSES:**
 - A. **FEDERAL FAIR HOUSING ACT ("FHA")** Title VIII of the Civil Rights Act; 42 U.S.C. §§ 3601-3619; Prohibits discrimination in sales, rental or financing of residential housing against persons in protected classes;
 - B. **CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT ("FEHA")** California Government Code ("GC") §§ 12900-12996, 12955; 2 California Code of Regulations ("CCR") §§ 12005-12271; Prohibits discrimination in sales, rental or financing of housing opportunity against persons in protected classes by providers of housing accommodation and financial assistance services as related to housing;
 - C. **CALIFORNIA UNRUH CIVIL RIGHTS ACT ("Unruh")** California Civil Code ("CC") § 51; Prohibits business establishments from discriminating against, and requires full and equal accommodation, advantages, facilities, privileges, and services to persons in protected classes;
 - D. **AMERICANS WITH DISABILITIES ACT ("ADA")** 42 U.S.C. §§ 12181-12189; Title III of the ADA prohibits discrimination based on disability in public accommodations; and
 - E. **OTHER FAIR HOUSING LAWS:** § 504 of Rehabilitation Act of 1973 29 U.S.C. § 794; Ralph Civil Rights Act CC § 51.7.; California Disabled Persons Act; CC §§ 54-55.32; any local city or county fair housing ordinances, as applicable.
3. **POTENTIAL LEGAL REMEDIES FOR UNLAWFUL DISCRIMINATION: Violations of fair housing laws may result in monetary civil fines, injunctive relief, compensatory and/or punitive damages, and attorney fees and costs.**
4. **PROTECTED CLASSES/CHARACTERISTICS:** Whether specified in Federal or State law or both, discrimination against persons if based on that person's belonging to, association with, or perceived membership in, certain classes or categories, such as the following, is prohibited. Other classes, categories or restrictions may also apply.

Race	Color	Ancestry	National Origin	Religion
Age	Sex, Sexual Orientation	Gender, Gender Identity, Gender expression	Marital Status	Familial Status (family with a child or children under 18)
Citizenship	Immigration Status	Primary Language	Military/Veteran Status	Source of Income (e.g., Section 8 Voucher)
Medical Condition	Disability (Mental & Physical)	Genetic Information	Criminal History (non-relevant convictions)	Any arbitrary characteristic

5. **THE CALIFORNIA DEPARTMENT OF REAL ESTATE REQUIRES TRAINING AND SUPERVISION TO PREVENT HOUSING DISCRIMINATION BY REAL ESTATE LICENSEES:**
 - A. California Business & Professions Code ("B&PC") § 10170.5(a)(4) requires 3 hours of training on fair housing for DRE license renewal; Real Estate Regulation § 2725(f) requires brokers who oversee salespersons to be familiar with the requirements of federal and state laws relating to the prohibition of discrimination.
 - B. Violation of DRE regulations or real estate laws against housing discrimination by a real estate licensee may result in the loss or suspension of the licensee's real estate license. B&PC § 10177(l)(1); 10 CCR § 2780
6. **REALTOR® ORGANIZATIONS PROHIBIT DISCRIMINATION:** NAR Code of Ethics Article 10 prohibits discrimination in employment practices or in rendering real estate license services against any person because of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity by REALTORS®.
7. **WHO IS REQUIRED TO COMPLY WITH FAIR HOUSING LAWS?**
Below is a non-exclusive list of providers of housing accommodations or financial assistance services as related to housing who are most likely to be encountered in a housing transaction and who must comply with fair housing laws.

- Sellers
- Real estate licensees
- Mobilehome parks
- Insurance companies
- Landlords
- Real estate brokerage firms
- Homeowners Associations ("HOAs");
- Government housing services
- Sublessors
- Property managers
- Banks and Mortgage lenders
- Appraisers

8. **EXAMPLES OF CONDUCT THAT MAY NOT BE MOTIVATED BY DISCRIMINATORY INTENT BUT COULD HAVE A DISCRIMINATORY EFFECT:**
 - A. Prior to acceptance of an offer, asking for or offering buyer personal information or letters from the buyer, especially with photos. Those types of documents may inadvertently reveal, or be perceived as revealing, protected status information thereby increasing the risk of (i) actual or unconscious bias, and (ii) potential legal claims against sellers and others by prospective buyers whose offers were rejected.
 - B. Refusing to rent (i) an upper-level unit to an elderly tenant out of concern for the tenant's ability to navigate stairs or (ii) a house with a pool to a person with young children out of concern for the children's safety.
9. **EXAMPLES OF UNLAWFUL OR IMPROPER CONDUCT BASED ON A PROTECTED CLASS OR CHARACTERISTIC:**
 - A. Refusing to negotiate for a sale, rental or financing or otherwise make a housing opportunity unavailable; failing to present offers due to a person's protected status;
 - B. Refusing or failing to show, rent, sell or finance housing; "channeling" or "steering" a prospective buyer or tenant to or away from a particular area due to that person's protected status or because of the racial, religious or ethnic composition of the neighborhood;
 - C. "Blockbusting" or causing "panic selling" by inducing a listing, sale or rental based on the grounds of loss of value of property, increase in crime, or decline in school quality due to the entry or prospective entry of people in protected categories into the neighborhood;
 - D. Making any statement or advertisement that indicates any preference, limitation, or discrimination;

© 2022, California Association of REALTORS®, Inc.

FHDA REVISED 6/22 (PAGE 1 OF 2)

FAIR HOUSING AND DISCRIMINATION ADVISORY (FHDA PAGE 1 OF 2)

Bayview Residential Brokerage, 51 E Campbell Ave Suite 110 Campbell CA 95008
Glenda Queensbury

Phone: (408) 921-2257 Fax: (408) 715-0278
Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com

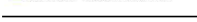


600

373

- E. Inquiring about protected characteristics (such as asking tenant applicants if they are married, or prospective purchasers if they have children or are planning to start a family);
 - F. Using criminal history information before otherwise affirming eligibility, and without a legally sufficient justification;
 - G. Failing to assess financial standards based on the portion of the income responsible by a tenant who receives government subsidies (such as basing an otherwise neutral rent to income ratio on the whole rent rather than just the part of rent that is the tenant's responsibility);
 - H. Denying a home loan or homeowner's insurance;
 - I. Offering inferior terms, conditions, privileges, facilities or services;
 - J. Using different qualification criteria or procedures for sale or rental of housing such as income standards, application requirements, application fees, credit analyses, sale or rental approval procedures or other requirements;
 - K. Harassing a person;
 - L. Taking an adverse action based on protected characteristics;
 - M. Refusing to permit a reasonable modification to the premises, as requested by a person with a disability (such as refusing to allow a wheelchair bound tenant to install, at their expense, a ramp over front or rear steps, or refusing to allow a physically disabled tenant from installing, at their own expense, grab bars in a shower or bathtub);
 - N. Refusing to make reasonable accommodation in policies, rules, practices, or services for a person with a disability (such as the following, if an actual or prospective tenant with a disability has a service animal or support animal):
 - (i) Failing to allow that person to keep the service animal or emotional support animal in rental property,
 - (ii) Charging that person higher rent or increased security deposit, or
 - (iii) Failing to show rental or sale property to that person who is accompanied by the service animal or support animal, and;
 - O. Retaliating for asserting rights under fair housing laws.
- 10. EXAMPLES OF POSITIVE PRACTICES:**
- A. Real estate licensees working with buyers or tenants should apply the same objective property selection criteria, such as location/neighborhood, property features, and price range and other considerations, to all prospects.
 - B. Real estate licensees should provide complete and objective information to all clients based on the client's selection criteria.
 - C. Real estate licensees should provide the same professional courtesy in responding to inquiries, sharing of information and offers of assistance to all clients and prospects.
 - D. Housing providers should not make any statement or advertisement that directly or indirectly implies preference, limitation, or discrimination regarding any protected characteristic (such as "no children" or "English-speakers only").
 - E. Housing providers should use a selection process relying on objective information about a prospective buyer's offer or tenant's application and not seek any information that may disclose any protected characteristics (such as using a summary document, e.g. C.A.R. Form SUM-MO, to compare multiple offers on objective terms).
- 11. FAIR HOUSING RESOURCES:** If you have questions about your obligations or rights under the Fair Housing laws, or you think you have been discriminated against, you may want to contact one or more of the sources listed below to discuss what you can do about it, and whether the resource is able to assist you.
- A. Federal: https://www.hud.gov/program_offices/fair_housing_equal_opp
 - B. State: <https://www.dfeh.ca.gov/housing/>
 - C. Local: local Fair Housing Council office (non-profit, free service)
 - D. DRE: <https://www.dre.ca.gov/Consumers/FileComplaint.html>
 - E. Local Association of REALTORS®. List available at: <https://www.car.org/en/contactus/rosters/localassociationroster>.
 - F. Any qualified California fair housing attorney, or if applicable, landlord-tenant attorney.
- 12. LIMITED EXCEPTIONS TO FAIR HOUSING REQUIREMENTS:** No person should rely on any exception below without first seeking legal advice about whether the exception applies to their situation. Real estate licensees are not qualified to provide advice on the application of these exceptions.
- A. Legally compliant senior housing is exempt from FHA, FEHA and Unruh as related to age or familial status only;
 - B. An owner of a single-family residence who resides at the property with one lodger may be exempt from FEHA for rental purposes, PROVIDED no real estate licensee is involved in the rental;
 - C. An owner of a single-family residence may be exempt from FHA for sale or rental purposes, PROVIDED (i) no real estate licensee is involved in the sale or rental and (ii) no discriminatory advertising is used, and (iii) the owner owns no more than three single-family residences. Other restrictions apply;
 - D. An owner of residential property with one to four units who resides at the property, may be exempt from FHA for rental purposes, PROVIDED no real estate licensee is involved in the rental; and
 - E. Both FHA and FEHA do not apply to roommate situations. See, *Fair Housing Council v Roommate.com LLC*, 666 F.3d 1216 (2019).
 - F. Since both the 14th Amendment of the U.S. Constitution and the Civil Rights Act of 1866 prohibit discrimination based on race; the FHA and FEHA exemptions do not extend to discrimination based on race.

Buyer/Tenant and Seller/Landlord have read, understand and acknowledge receipt of a copy of this Fair Housing & Discrimination Advisory.

Buyer/Tenant		Neil Hilario	Date	10/06/2022
Buyer/Tenant			Date	
Seller/Landlord		Milpitas Housing Authority	Date	
Seller/Landlord			Date	

© 2022, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®, NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by:
 REAL ESTATE BUSINESS SERVICES, LLC.
 a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
 525 South Virgil Avenue, Los Angeles, California 90020





POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT

(C.A.R. Form PRBS, Revised 12/21)

Item # C12.

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

Multiple Buyers: Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Multiple Sellers: Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

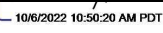
Dual Agency: If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the buyer's or seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the seller's willingness to accept a price less than the listing price or the buyer's willingness to pay a price greater than the price offered; and except as set forth above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.

Offers not necessarily confidential: Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.

Seller _____ Milpitas Housing Authority Date _____
 Seller _____ Date _____
 Buyer  _____ Neil Hilario Date 10/06/2022
 Buyer  _____ Date _____

Buyer's Brokerage Firm Referral Realty/Bayview Residential Mortgage DRE Lic # 01498198 Date 10/06/2022
 By  _____ DRE Lic # 01365035 Date 10/06/2022
Glenda Queensbury
 Seller's Brokerage Firm Referral Realty/Bayview Residential Brokerage DRE Lic # 01498198 Date 10/06/2022
 By  _____ DRE Lic # 01365035 Date 10/06/2022
Glenda Queensbury

© 2021, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

 Published and Distributed by:
 REAL ESTATE BUSINESS SERVICES, LLC.
 a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
 525 South Virgil Avenue, Los Angeles, California 90020

PRBS REVISED 12/21 (PAGE 1 OF 1)



POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (PRBS PAGE 1 OF 1)

Bayview Residential Brokerage, 51 E Campbell Ave Suite 110 Campbell CA 95008
 Glenda Queensbury

Phone: (408) 921-2257
 Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201

Fax: (408) 715-0278
www.lwolf.com

600 S Abel



WIRE FRAUD AND ELECTRONIC FUNDS TRANSFER ADVISORY

(C.A.R. Form WFA, Revised 12/21)

Item # C12.

Property Address: 600 S Abel St Unit 208, Milpitas, CA95014 95035-6968 ("Property").

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFERS ADVISORY:

The ability to communicate and conduct business electronically is a convenience and reality in nearly all parts of our lives. At the same time, it has provided hackers and scammers new opportunities for their criminal activity. Many businesses have been victimized and the real estate business is no exception.

While wiring or electronically transferring funds is a welcome convenience, we all need to exercise extreme caution. Emails attempting to induce fraudulent wire transfers have been received and have appeared to be legitimate. Reports indicate that some hackers have been able to intercept emailed transfer instructions, obtain account information and, by altering some of the data, redirect the funds to a different account. It also appears that some hackers were able to provide false phone numbers for verifying the wiring or funds transfer instructions. In those cases, the victim called the number provided to confirm the instructions, and then unwittingly authorized a transfer to somewhere or someone other than the intended recipient.

ACCORDINGLY, YOU ARE ADVISED:

1. Obtain phone numbers and account numbers only from Escrow Officers, Property Managers, or Landlords at the beginning of the transaction.
2. DO NOT EVER WIRE OR ELECTRONICALLY TRANSFER FUNDS PRIOR TO CALLING TO CONFIRM THE TRANSFER INSTRUCTIONS. ONLY USE A PHONE NUMBER YOU WERE PROVIDED PREVIOUSLY. Do not use any different phone number or account number included in any emailed transfer instructions.
3. Orally confirm the transfer instruction is legitimate and confirm the bank routing number, account numbers and other codes before taking steps to transfer the funds.
4. Avoid sending personal information in emails or texts. Provide such information in person or over the telephone directly to the Escrow Officer, Property Manager, or Landlord.
5. Take steps to secure the system you are using with your email account. These steps include creating strong passwords, using secure WiFi, and not using free services.

If you believe you have received questionable or suspicious wire or funds transfer instructions, immediately notify your bank, and the other party, and the Escrow Office, Landlord, or Property Manager. The sources below, as well as others, can also provide information:

Federal Bureau of Investigation: <https://www.fbi.gov/>; the FBI's IC3 at www.ic3.gov; or 310-477-6565

National White Collar Crime Center: <http://www.nw3c.org/>

On Guard Online: <https://www.onguardonline.gov/>

NOTE: There are existing alternatives to electronic and wired fund transfers such as cashier's checks. By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Wire Fraud and Electronic Funds Transfer Advisory.

Buyer/Tenant		Neil Hilario	Date	10/06/2022
Buyer/Tenant			Date	
Seller/Landlord		Milpitas Housing Authority	Date	
Seller/Landlord			Date	

©2021, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®, REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, LLC.
a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020



WFA REVISED 12/21 (PAGE 1 OF 1)

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFER ADVISORY (WFA PAGE 1 OF 1)

Bayview Residential Brokerage, 51 E Campbell Ave Suite 110 Campbell CA 95008
Glenda Queensbury

Phone: (408) 921-2257 Fax: (408) 715-0278
Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwof.com

600

376



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(C.A.R. FORM RPA, Revised 6/22)

Item # C12.

Date Prepared: October 6, 2022

1. OFFER:

- A. THIS IS AN OFFER FROM Neil Hilario ("Buyer").
- B. THE PROPERTY to be acquired is 600 S Abel St Unit 208, situated in Milpitas (City), Santa Clara (County), California, 95035-6968 (Zip Code), Assessor's Parcel No(s). _____ ("Property").
(Postal/Mailing address may be different from city jurisdiction. Buyer is advised to investigate.)
- C. THE TERMS OF THE PURCHASE ARE SPECIFIED BELOW AND ON THE FOLLOWING PAGES.
- D. Buyer and Seller are referred to herein as the "Parties." Brokers and Agents are not Parties to this Agreement.

2. AGENCY:

- A. **DISCLOSURE:** The Parties each acknowledge receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD) if represented by a real estate licensee. Buyer's Agent is not legally required to give to Seller's Agent the AD form Signed by Buyer. Seller's Agent is not legally obligated to give to Buyer's Agent the AD form Signed by Seller.
- B. **CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction.

Seller's Brokerage Firm Referral Realty/Bayview Residential Brokerage License Number 01498198
Is the broker of (check one): ☐ the Seller; or ☒ both the Buyer and Seller (Dual Agent).

Seller's Agent Glenda Queensbury License Number 01365035
Is (check one): ☐ the Seller's Agent. (Salesperson or broker associate); or ☒ both the Buyer's and Seller's Agent (Dual Agent).

Buyer's Brokerage Firm Referral Realty/Bayview Residential Mortgage License Number 01498198
Is the broker of (check one): ☐ the Buyer; or ☒ both the Buyer and Seller (Dual Agent).

Buyer's Agent Glenda Queensbury License Number 01365035
Is (check one): ☐ the Buyer's Agent. (Salesperson or broker associate); or ☒ both the Buyer's and Seller's Agent (Dual Agent).

- C. ☐ More than one Brokerage represents ☐ Seller, ☐ Buyer. See, Additional Broker Acknowledgement (C.A.R. Form ABA).

- D. **POTENTIALLY COMPETING BUYERS AND SELLERS:** The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. TERMS OF PURCHASE AND ALLOCATION OF COSTS:

The items in this paragraph are contractual terms of the Agreement. Referenced paragraphs provide further explanation. This form is 16 pages. The Parties are advised to read all 16 pages.

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
A	5, 5B (cash)	Purchase Price	\$ <u>314,973.00</u>	☐ All Cash
B		Close of Escrow (COE)	☐ Days after Acceptance OR on ☒ <u>11/22/2022</u> (date)	
C	32A	Expiration of Offer	3 calendar days after all Buyer Signature(s) or _____ (date), at 5PM or ☐ AM/ ☐ PM	
D(1)	5A(1)	Initial Deposit Amount	\$ <u>9,449.19</u> (<u>3.0</u> % of purchase price) (% number above is for calculation purposes and is not a contractual term)	within 3 (or _____) business days after Acceptance by wire transfer OR ☐ _____
D(2)	5A(2)	☐ Increased Deposit (Money placed into escrow after the initial deposit. Use form DID at time increased deposit is made.)	\$ _____ (_____ % of purchase price) (% number above is for calculation purposes and is not a contractual term)	Upon removal of all contingencies OR ☐ _____ (date) OR ☐ _____
E(1)	5C(1)	Loan Amount(s): First Interest Rate Points If FHA or VA checked, Deliver list of lender required repairs	\$ <u>299,224.35</u> (<u>95.0</u> % of purchase price) Fixed rate or ☐ Initial adjustable rate not to exceed <u>7.000</u> % Buyer to pay zero points or up to _____ % of the loan amount 17 (or _____) Days after Acceptance	Conventional or, if checked, ☐ FHA ☐ VA (CAR Forms FVAC, HID attached) ☐ Seller Financing ☐ Other: _____
E(2)	5C(2)	Additional Financed Amount Interest Rate Points	\$ _____ (_____ % of purchase price) Fixed rate or ☐ Initial adjustable rate not to exceed _____ % Buyer to pay zero points or up to _____ % of the loan amount	Conventional or, if checked, ☐ Seller Financing ☐ Other: _____
E(3)	7A	Occupancy Type	Primary, or if checked, ☐ Secondary ☐ Investment	
F	5D	Balance of Down Payment	\$ <u>6,299.46</u>	
		PURCHASE PRICE TOTAL	\$ <u>314,973.00</u>	

© 2022, California Association of REALTORS®, Inc.

RPA Revised 6/22 (PAGE 1 OF 16)

Buyer's Initials

NH

Seller's Initials



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 1 OF 16)

Bayview Residential Brokerage, 51 E Campbell Ave Suite 110 Campbell CA 95008
Glenda Queensbury

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201

Phone: (408) 921-2257 Fax: (408) 715-0278
www.lwof.com

600

377

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms	Item # C12.
G(1)	5E	Seller Credit, if any, to Buyer	☐ \$ _____ (% number above is for calculation purposes and is not a contractual term)	Seller credit to be applied to closing costs OR ☐ Other: _____	
G(2)	ADDITIONAL FINANCE TERMS: _____				
H(1)	5B	Verification of All Cash (sufficient funds)	Attached to the offer or ☐ 3 (or _____) Days after Acceptance		
H(2)	6A	Verification of Down Payment and Closing Costs	Attached to the offer or ☐ 3 (or _____) Days after Acceptance		
H(3)	6B	Verification of Loan Application	Attached to the offer or ☐ 3 (or _____) Days after Acceptance		
I	Intentionally Left Blank				
J	16	Final Verification of Condition	5 (or _____) Days prior to COE		
K	23	Assignment Request	17 (or _____) Days after Acceptance		
L	8	CONTINGENCIES	TIME TO REMOVE CONTINGENCIES		
L(1)	8A	Loan(s)	17 (or _____) Days after Acceptance	☐ No loan contingency	REMOVAL OR WAIVER OF CONTINGENCY: Any contingency in L(1)-L(7) may be removed or waived by checking the applicable box above or attaching a Contingency Removal (C.A.R. Form CR) and checking the applicable box therein. Removal or Waiver at time of offer is against Agent advice. See paragraph 8H. ☐ CR attached
L(2)	8B	Appraisal: Appraisal contingency based upon appraised value at a minimum of purchase price or ☐ \$ _____	17 (or _____) Days after Acceptance	☐ No appraisal contingency Removal of appraisal contingency does not eliminate appraisal cancellation rights in FVAC.	
L(3)	8C, 12	Investigation of Property	17 (or <u>5</u>) Days after Acceptance		
		Informational Access to Property	17 (or _____) Days after Acceptance		
		Buyer's right to access the Property for informational purposes is NOT a contingency, does NOT create cancellation rights, and applies even if contingencies are removed.			
L(4)	8D, 14A	Review of Seller Documents	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later		
L(5)	8E, 13A	Preliminary ("Title") Report	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later		
L(6)	8F, 11K	Common Interest Disclosures required by Civil Code § 4525 or this Agreement	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later		
L(7)	8G, 9B(6)	Review of leased or liened items (Such as for solar panels or propane tanks or PACE or HERO liens)	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later		
L(8)	8J	Sale of Buyer's Property Sale of Buyer's property is not a contingency, UNLESS checked here: ☐ C.A.R. Form COP attached			
M		Possession	Time for Performance	Additional Terms	
M(1)		Time of Possession	Upon notice of recordation, OR ☐ 6 PM or ☐ AM/ ☐ PM on date specified, as applicable, in 3M(2) or attached TOPA.		
M(2)	7C	Seller Occupied or Vacant units	COE date or, if checked below, ☐ _____ days after COE (29 or fewer days) ☐ _____ days after COE (30 or more days)	C.A.R. Form SIP attached if 29 or fewer days. C.A.R. Form RLAS attached if 30 or more days.	
M(3)		Tenant Occupied units	See Tenant Occupied Property Addendum (C.A.R. form TOPA)	If tenant occupied ☐ TOPA or ☐ Other, attached	
N		Documents/Fees/Compliance	Time for Performance		
N(1)	14A	Seller Delivery of Documents	7 (or _____) Days after Acceptance		
N(2)	19B	Sign and return Escrow Holder Provisions and Instructions	5 (or _____) Days after receipt		
N(3)	11K(2)	Time to pay fees for ordering HOA Documents	3 (or _____) Days after Acceptance		
N(4)	10B(1)	Install smoke alarm(s), CO detector(s), water heater bracing	7 (or _____) Days after Acceptance		
N(5)	28	Evidence of representative authority	3 Days after Acceptance		
O	Intentionally Left Blank				

P Items Included and Excluded		Item # C12.
P(1)	9	Items Included - All items specified in Paragraph 9B are included and the following, if checked: ☒ Stove(s), oven(s), stove/oven combo(s); ☒ Refrigerator(s); ☐ Wine Refrigerator(s); ☐ Washer(s); ☐ Dryer(s); ☒ Dishwasher(s); ☒ Microwave(s); Additional Items included: ☐ _____; ☐ Video doorbell(s); ☐ Security camera equipment; ☐ Security system(s)/alarm(s), other than separate video doorbell and camera equipment; ☐ Smart home control devices; ☐ Wall mounted brackets for video or audio equipment; ☐ _____; ☐ Above-ground pool(s) / ☐ spa(s); ☒ Bathroom mirrors, unless excluded below; ☐ Electric car charging systems and stations; ☐ Potted trees/shrubs; ☐ _____;
P(2)	9	Excluded Items: ☐ _____; ☐ _____; ☐ _____;
Q Allocation of Costs		
	Paragraph #	Item Description
		Who Pays (if Both is checked, cost to be split equally unless Otherwise Agreed)
Additional Terms		
Q(1)	10A, 11A	Natural Hazard Zone Disclosure Report, including tax information ☐ Buyer ☒ Seller ☐ Both _____ ☐ Provided by: *MyNHD **Best Value**
Q(2)		_____ Report ☐ Buyer ☐ Seller ☐ Both _____
Q(3)		_____ Report ☐ Buyer ☐ Seller ☐ Both _____
Q(4)	10B(1)	Smoke alarms, CO detectors, water heater bracing ☐ Buyer ☒ Seller ☐ Both _____
Q(5)	10A 10B(2)	Government Required Point of Sale inspections, reports ☐ Buyer ☒ Seller ☐ Both _____
Q(6)	10B(2)(A)	Government Required Point of Sale corrective/remedial actions ☐ Buyer ☐ Seller ☐ Both _____
Q(7)	19B	Escrow Fees ☐ Buyer ☐ Seller ☐ Both _____ ☐ Each to pay their own fees
Q(8)	13	Owner's title insurance policy ☐ Buyer ☒ Seller ☐ Both _____
Q(9)		Buyer's Lender title insurance policy Buyer
Q(10)		County transfer tax, fees ☐ Buyer ☒ Seller ☐ Both _____
Q(11)		City transfer tax, fees ☐ Buyer ☐ Seller ☒ Both _____
Q(12)	11K(2)	HOA fee for preparing disclosures Seller
Q(13)		HOA certification fee Buyer
Q(14)		HOA transfer fees ☐ Buyer ☒ Seller ☐ Both _____
Q(15)		Private transfer fees Seller, or if checked, ☐ Buyer ☐ Both _____
Q(16)		_____ fees or costs ☐ Buyer ☐ Seller ☐ Both _____
Q(17)		_____ fees or costs ☐ Buyer ☐ Seller ☐ Both _____
Q(18)	10C	Home warranty plan: American Home Shield ☐ Buyer ☒ Seller ☐ Both _____ Cost not to exceed \$ 450.00 ☐ Buyer waives home warranty plan Issued by: American Home Shield - September Promo \$100 Off
R OTHER TERMS: <u>Property to be purchased AS-IS</u>		

4. PROPERTY ADDENDA AND ADVISORIES: (check all that apply)

Item # C12.

A. PROPERTY TYPE ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Probate Agreement Purchase Addendum (C.A.R. Form PA-PA)
☐ Manufactured Home Purchase Addendum (C.A.R. Form MH-PA)
☐ Tenant Occupied Property Addendum (C.A.R. Form TOPA) (Should be checked whether current tenants will remain or not.)
☐ Tenancy in Common Purchase Addendum (C.A.R. Form TIC-PA)
☐ Stock Cooperative Purchase Addendum (C.A.R. Form COOP-PA)
☐ Other _____

B. OTHER ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Addendum # _____ (C.A.R. Form ADM) ☐ Short Sale Addendum (C.A.R. Form SSA)
☐ Back Up Offer Addendum (C.A.R. Form BUO) ☐ Court Confirmation Addendum (C.A.R. Form CCA)
☐ Septic, Well, Property Monument and Propane Addendum (C.A.R. Form SWPI)
☐ Buyer Intent to Exchange Addendum (C.A.R. Form BXA) ☐ Seller Intent to Exchange Addendum (C.A.R. Form SXA)
☐ Other _____ ☐ Other _____

C. BUYER AND SELLER ADVISORIES: (Note: All Advisories below are provided for reference purposes only and are not intended to be incorporated into this Agreement.)

- ☒ Buyer's Investigation Advisory (C.A.R. Form BIA) ☒ Fair Housing and Discrimination Advisory (C.A.R. Form FHDA)
☒ Wire Fraud Advisory (C.A.R. Form WFA) ☒ Cal. Consumer Privacy Act Advisory (C.A.R. Form CCPA)
(Parties may also receive a privacy disclosure from their own Agent.)
☐ Wildfire Disaster Advisory (C.A.R. Form WFDA) ☐ Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
☐ Trust Advisory (C.A.R. Form TA) ☐ Short Sale Information and Advisory (C.A.R. Form SSIA)
☐ REO Advisory (C.A.R. Form REO) ☐ Probate Advisory (C.A.R. Form PA)
☐ Other _____ ☐ Other _____

5. ADDITIONAL TERMS AFFECTING PURCHASE PRICE: Buyer represents that funds will be good when deposited with Escrow Holder.

A. DEPOSIT:

- (1) **INITIAL DEPOSIT:** Buyer shall deliver deposit directly to Escrow Holder. If a method other than wire transfer is specified in paragraph 3D(1) and such method is unacceptable to Escrow Holder, then upon notice from Escrow Holder, delivery shall be by wire transfer.
(2) **INCREASED DEPOSIT:** Increased deposit specified in paragraph 3D(2) is to be delivered to Escrow Holder in the same manner as the Initial Deposit. If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount by signing a new liquidated damages clause (C.A.R. Form DID) at the time the increased deposit is delivered to Escrow Holder.
(3) **RETENTION OF DEPOSIT:** Paragraph 29, if initialed by all Parties or otherwise incorporated into this Agreement, specifies a remedy for Buyer's default. Buyer and Seller are advised to consult with a qualified California real estate attorney before adding any other clause specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase. Any such clause shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.

B. ALL CASH OFFER: If an all cash offer is specified in paragraph 3A, no loan is needed to purchase the Property. This Agreement is NOT contingent on Buyer obtaining a loan. Buyer shall, within the time specified in paragraph 3H(1), Deliver written verification of funds sufficient for the purchase price and closing costs.

C. LOAN(S):

- (1) **FIRST LOAN:** This loan will provide for conventional financing UNLESS FHA, VA, Seller Financing (C.A.R. Form SFA), or Other is checked in paragraph 3E(1).
(2) **ADDITIONAL FINANCED AMOUNT:** If an additional financed amount is specified in paragraph 3E(2), that amount will provide for conventional financing UNLESS Seller Financing (C.A.R. Form SFA), or Other is checked in paragraph 3E(2).
(3) **BUYER'S LOAN STATUS:** Buyer authorizes Seller and Seller's Authorized Agent to contact Buyer's lender(s) to determine the status of any Buyer's loan specified in paragraph 3E, or any alternate loan Buyer pursues, whether or not a contingency of this Agreement. If the contact information for Buyer's lender(s) is different from that provided under the terms of paragraph 6B, Buyer shall Deliver the updated contact information within 1 Day of Seller's request.
(4) **FHA/VA:** If FHA or VA is checked in paragraph 3E(1), a FHA/VA amendatory clause (C.A.R. Form FVAC) shall be incorporated and Signed by all Parties. Buyer shall, within the time specified in paragraph 3E(1), Deliver to Seller written notice (C.A.R. Form RR or AEA) (i) of any lender requirements that Buyer requests Seller to pay for or otherwise correct or (ii) that there are no lender requirements. Notwithstanding Seller's agreement that Buyer may obtain FHA or VA financing, Seller has no obligation to pay or satisfy any or all lender requirements unless agreed in writing.

D. BALANCE OF PURCHASE PRICE (DOWN PAYMENT, paragraph 3F) (including all-cash funds) to be deposited with Escrow Holder pursuant to Escrow Holder instructions.

E. LIMITS ON CREDITS TO BUYER: Any credit to Buyer as specified in paragraph 3G(1) or Otherwise Agreed, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender, if any, and made at Close Of Escrow. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit from Seller shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

6. ADDITIONAL FINANCING TERMS:

A. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Written verification of Buyer's down payment and closing costs, within the time specified in paragraph 3H(2) may be made by Buyer or Buyer's lender or loan broker pursuant to paragraph 6B.

B. VERIFICATION OF LOAN APPLICATIONS: Buyer shall Deliver to Seller, within the time specified in paragraph 3H(3) a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3E. If any loan specified in paragraph 3E is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate.

C. BUYER STATED FINANCING: Seller is relying on Buyer's representation of the type of financing specified (including, but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to sell to Buyer in reliance on Buyer's specified financing. Buyer shall pursue the financing specified in this Agreement, even if Buyer also elects to pursue an alternative form of financing. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in this Agreement but shall not interfere with closing at the purchase price on the COE date (**paragraph 3B**) even if based upon alternate financing. Buyer's inability to obtain alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

7. CLOSING AND POSSESSION:

A. OCCUPANCY: Buyer intends to occupy the Property as indicated in **paragraph 3E(3)**. Occupancy may impact available financing.
B. CONDITION OF PROPERTY ON CLOSING:

- (1) Unless Otherwise Agreed: (i) the Property shall be delivered "**As-Is**" in its PRESENT physical condition as of the date of Acceptance; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow or at the time possession is delivered to Buyer, if not on the same date. If items are not removed when possession is delivered to Buyer, all items shall be deemed abandoned. Buyer, after first Delivering to Seller written notice to remove the items within **3 Days**, may pay to have such items removed or disposed of and may bring legal action, as per this Agreement, to receive reasonable costs from Seller.
- (2) **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller and Agents may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had all required permits issued and/or finalized.**

C. SELLER REMAINING IN POSSESSION AFTER CLOSE OF ESCROW: If Seller has the right to remain in possession after Close Of Escrow pursuant to **paragraph 3M(2)** or as Otherwise Agreed: The Parties are advised to (i) consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; and (ii) consult with a qualified California real estate attorney where the Property is located to determine the ongoing rights and responsibilities of both Buyer and Seller with regard to each other, including possible tenant rights, and what type of written agreement to use to document the relationship between the Parties. Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.

D. At Close Of Escrow: (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale; and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Agents cannot and will not determine the assignability of any warranties.

E. Seller shall, on Close Of Escrow unless Otherwise Agreed and even if Seller remains in possession, provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems, intranet and Internet-connected devices included in the purchase price, garage door openers, and all items included in either **paragraph 3P or **paragraph 9**. If the Property is a condominium or located in a common interest development, Seller shall be responsible for securing or providing any such items for Association amenities, facilities, and access. Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.**

8. CONTINGENCIES AND REMOVAL OF CONTINGENCIES:

A. LOAN(S):

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(1) or an attached CR form**, contingent upon Buyer obtaining the loan(s) specified. If contingent, Buyer shall act diligently and in good faith to obtain the designated loan(s). **If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan and Buyer is able to satisfy lender's non-appraisal conditions for closing the loan.**
- (2) Buyer is advised to investigate the insurability of the Property as early as possible, as this may be a requirement for lending. Buyer's ability to obtain insurance for the Property, including fire insurance, is part of Buyer's Investigation of Property contingency. Failure of Buyer to obtain insurance may justify cancellation based on the Investigation contingency but not the loan contingency.
- (3) Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement, unless Otherwise Agreed.
- (4) If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
- (5) **NO LOAN CONTINGENCY:** If "No loan contingency" is checked in **paragraph 3L(1)**, obtaining any loan specified is NOT a contingency of this Agreement. If Buyer does not obtain the loan specified, and as a result is unable to purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

B. APPRAISAL:

- (1) This Agreement is, **unless otherwise specified in paragraph 3L(2) or an attached CR form**, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in **paragraph 3L(2)**, without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the Investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. For any cancellation based upon this appraisal contingency, Buyer shall Deliver a Copy of the written appraisal to Seller, upon request by Seller.
- (2) **NO APPRAISAL CONTINGENCY:** If "No appraisal contingency" is checked in **paragraph 3L(2)**, then Buyer may not use the loan contingency specified in **paragraph 3L(1)** to cancel this Agreement if the sole reason for not obtaining the loan is that the appraisal relied upon by Buyer's lender values the property at an amount less than that specified in **paragraph 3L(2)**. If Buyer is unable to obtain the loan specified solely for this reason, Seller may be entitled to Buyer's deposit or other legal remedies.
- (3) ☒ **Fair Appraisal Act:** The Parties acknowledge receipt of the attached Fair Appraisal Act Addendum (C.A.R. Form FAAA).

C. INVESTIGATION OF PROPERTY: This Agreement is, as specified in **paragraph 3L(3)**, contingent upon Buyer's acceptance of the condition of, and any other matter affecting, the Property. See **paragraph 12**.

D. REVIEW OF SELLER DOCUMENTS: This Agreement is, as specified in **paragraph 3L(4)**, contingent upon Buyer's review of Seller's documents required in **paragraph 14A**.

E. TITLE:

- (1) This Agreement is, as specified in **paragraph 3L(5)**, contingent upon Buyer's ability to obtain the title policy pursuant to **paragraph 13G** and on Buyer's review of a current Preliminary Report and items that are disclosed or observable even if not on record or not specified in the Preliminary Report, and satisfying Buyer regarding the current status of title. Buyer is advised to review all underlying documents and other matters affecting title, including, but not limited to, any documents or deeds referenced in the Preliminary Report and any plotted easements.
- (2) Buyer has **5 Days** after receipt to review a revised Preliminary Report, if any, furnished by the Title Company and cancel the transaction if the revised Preliminary Report reveals material or substantial deviations from a previously provided Preliminary Report.

F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES (IF APPLICABLE): This Agreement is, as specified in **paragraph 3L(6)**, contingent upon Buyer's review of Common Interest Disclosures required by Civil Code § 4525 and under **paragraph 11K** ("CI Disclosures").

G. BUYER REVIEW OF LEASED OR LIENED ITEMS CONTINGENCY: Buyer's review of and ability and willingness to assume any lease, maintenance agreement or other ongoing financial obligation, or to accept the Property subject to any lien, disclosed pursuant to **paragraph 9B(6)**, is, as specified in **paragraph 3L(7)**, a contingency of this Agreement. Any assumption of the lease shall not require any financial obligation or contribution by Seller. Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement if Buyer, by the time specified in **paragraph 3L(7)**, refuses to enter into any necessary written agreements to accept responsibility for all obligations of Seller-disclosed leased or lienied items.

H. REMOVAL OR WAIVER OF CONTINGENCIES WITH OFFER: Buyer shall have no obligation to remove a contractual contingency unless Seller has provided all required documents, reports, disclosures, and information pertaining to that contingency. If Buyer does remove a contingency without first receiving all required information from Seller, Buyer is relinquishing any contractual rights that apply to that contingency. If Buyer removes or waives any contingencies without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Agent.

I. REMOVAL OF CONTINGENCY OR CANCELLATION:

- (1) For any contingency specified in **paragraph 3L** or **8**, Buyer shall, within the applicable period specified, remove the contingency or cancel this Agreement.
- (2) For the contingencies for review of Seller Documents, Preliminary Report, and Condominium/Planned Development Disclosures, Buyer shall, within the time specified in **paragraph 3L** or **5 Days** after receipt of Seller Documents or CI Disclosures, whichever occurs later, remove the applicable contingency in writing or cancel this Agreement.
- (3) If Buyer does not remove a contingency within the time specified, Seller, after first giving Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), shall have the right to cancel this Agreement.

J. SALE OF BUYER'S PROPERTY: This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer unless the Sale of Buyer's Property (C.A.R. Form COP) is checked as a contingency of this Agreement in **paragraph 3L(8)**.

9. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the Multiple Listing Service (MLS), flyers, marketing materials, or disclosures are NOT included in the purchase price or excluded from the sale unless specified in this paragraph or **paragraph 3P** or as Otherwise Agreed. Any items included herein are components of the home and are not intended to affect the price. All items are transferred without Seller warranty.

B. ITEMS INCLUDED IN SALE:

- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances and appliances for which special openings or encasements have been made (whether or not checked in **paragraph 3P**), window and door screens, awnings, shutters, window coverings (which includes blinds, curtains, drapery, shutters or any other materials that cover any portion of the window), attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment (including, but not limited to, any cleaning equipment such as motorized/automatic pool cleaners, pool nets, pool covers), garage door openers/remote controls, mailbox, in-ground landscaping, water features and fountains, water softeners, water purifiers, light bulbs (including smart bulbs) and all items specified as included in **paragraph 3P**, if currently existing at the time of Acceptance.
Note: If Seller does not intend to include any item specified as being included above because it is not owned by Seller, whether placed on the Property by Agent, stager or other third party, the item should be listed as being excluded in **paragraph 3P** or excluded by Seller in a counter offer.
- (3) Security System includes any devices, hardware, software, or control units used to monitor and secure the Property, including but not limited to, any motion detectors, door or window alarms, and any other equipment utilized for such purpose. If checked in **paragraph 3P**, all such items are included in the sale, whether hard wired or not.
- (4) Home Automation (Smart Home Features) includes any electronic devices and features including, but not limited to, thermostat controls, kitchen appliances not otherwise excluded, and lighting systems, that are connected (hard wired or wirelessly) to a control unit, computer, tablet, phone, or other "smart" device. Any Smart Home devices and features that are physically affixed to the real property, and also existing light bulbs, are included in the sale. Buyer is advised to use **paragraph 3P(1)** or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
- (5) Non-Dedicated Devices: If checked in **paragraph 3P**, all smart home and security system control devices are included in the sale, except for any non-dedicated personal computer, tablet, or phone used to control such features. Buyer acknowledges that a separate device and access to wifi or Internet may be required to operate some smart home features and Buyer may have to obtain such device after Close Of Escrow. Buyer is advised to change all passwords and ensure the security of any smart home features.
- (6) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller, within the time specified in **paragraph 3N(1)**, shall (i) disclose to Buyer if any item or system specified in **paragraph 3P** or **9B** or otherwise included in the sale is leased, or not owned by Seller, or is subject to any maintenance or other ongoing financial obligation, or specifically subject to a lien or other encumbrance or loan, and (ii) Deliver to Buyer all written materials (such as lease, warranty, financing, etc.) concerning any such item.
- (7) Seller represents that all items included in the purchase price, unless Otherwise Agreed, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to **paragraph 9B(6)**, and (ii) are transferred without Seller warranty regardless of value. Seller shall cooperate with the identification of any software or applications and Buyer's efforts to transfer any services needed to operate any Smart Home Features or other items included in this Agreement, including, but not limited to, utilities or security systems.

C. ITEMS EXCLUDED FROM SALE: Unless Otherwise Agreed, the following items are excluded from sale: (i) All items in paragraph 3P(2); (ii) audio and video components (such as flat screen TVs, speakers and other items) if any not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (iii) furniture and other items secured to the Property for earthquake or safety purposes. **Unless otherwise specified in paragraph 3P(1), brackets attached to walls, floors or ceilings for any such component, furniture or item will be removed and holes or other damage shall be repaired, but not painted.**

10. ALLOCATION OF COSTS:

A. INSPECTIONS, REPORTS AND CERTIFICATES: Paragraphs 3Q(1), (2), (3), and (5) only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report. Agreements for payment of required work should be specified elsewhere in paragraph 3Q, or 3R, or in a separate agreement (such as C.A.R. Forms RR, RRRR, ADM or AEA).

B. GOVERNMENT REQUIREMENTS AND CORRECTIVE OR REMEDIAL ACTIONS:

(1) **LEGALLY REQUIRED INSTALLATIONS AND PROPERTY IMPROVEMENTS:** Any required installation of smoke alarm or carbon monoxide device(s) or securing of water heater shall be completed within the time specified in paragraph 3N(4) and paid by the Party specified in paragraph 3Q(4). If Buyer is to pay for these items, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the repair or installation. Prior to Close Of Escrow, Seller shall Deliver to Buyer written statement(s) of compliance in accordance with any Law, unless Seller is exempt. If Seller is to pay for these items and does not fulfill Seller's obligation in the time specified, and Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for Buyer's costs.

(2) **POINT OF SALE REQUIREMENTS:**

(A) Point of sale inspections, reports and repairs refer to any such actions required to be completed before or after Close Of Escrow that are required in order to close under any Law and paid by Party specified in paragraphs 3Q(5) and 3Q(6). Unless Parties Otherwise Agree to another time period, any such repair, shall be completed prior to final verification of Property. If Buyer agrees to pay for any portion of such repair, Buyer, shall (i) directly pay to the vendor completing the repair or (ii) provide an invoice to Escrow Holder, deposit funds into escrow sufficient to pay for Buyer's portion of such repair and request Escrow Holder pay the vendor completing the repair.

(B) Buyer shall be provided, within the time specified in paragraph 3N(1), unless Parties Otherwise Agree to another time period, a Copy of any required government-conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.

(3) **REINSPECTION FEES:** If any repair in paragraph 10B(1) is not completed within the time specified and the lender requires an additional inspection to be made, Seller shall be responsible for any corresponding reinspection fee. If Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for those costs.

(4) **INFORMATION AND ADVICE ON REQUIREMENTS:** Buyer and Seller are advised to seek information from a knowledgeable source regarding local and State mandates and whether they are point of sale requirements or requirements of ownership. Agents do not have expertise in this area and cannot ascertain all of the requirements or costs of compliance.

C. HOME WARRANTY:

(1) Buyer shall choose the coverages, regardless of any optional coverages indicated, of the home warranty plan and Buyer shall pay any cost of that plan, chosen by Buyer, that exceeds the amount allocated to Seller in paragraph 3Q(18). Buyer is informed that home warranty plans have many optional coverages, including but not limited to, coverages for Air Conditioner and Pool/Spa. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.

(2) If Buyer waives the purchase of a home warranty plan in paragraph 3Q(18), Buyer may still purchase a home warranty plan, at Buyer's expense, prior to Close Of Escrow.

11. STATUTORY AND OTHER DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:

A. TDS, NHD, AND OTHER STATUTORY AND SUPPLEMENTAL DISCLOSURES:

(1) Seller shall, within the time specified in paragraph 3N(1), Deliver to Buyer: unless exempt, fully completed disclosures or notices required by §§ 1102 et. seq. and 1103 et. seq. of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement (C.A.R. Form TDS), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act of 1982 and Improvement Bond Act of 1915) and, if Seller has actual knowledge, of industrial use and military ordnance location (C.A.R. Form SPQ or ESD), and, if the Property is in a high or very high fire hazard severity area, the information, notices, documentation, and agreements required by §§ 1102.6(f) and 1102.19 of the Civil Code (C.A.R. Form FHDS).

(2) The Real Estate Transfer Disclosure Statement required by this paragraph is considered fully completed if Seller has completed the section titled Coordination with Other Disclosure Forms by checking a box (Section I), and Seller has completed and answered all questions and Signed the Seller's Information section (Section II) and the Seller's Agent, if any, has completed and Signed the Seller's Agent's section (Section III), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. Form AVID). Section V acknowledgment of receipt of a Copy of the TDS shall be Signed after all previous sections, if applicable, have been completed. Nothing stated herein relieves a Buyer's Agent, if any, from the obligation to (i) conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose, on Section IV of the TDS, or an AVID, material facts affecting the value or desirability of the Property that were or should have been revealed by such an inspection or (ii) complete any sections on all disclosures required to be completed by Buyer's Agent.

(3) Seller shall, within the time specified in paragraph 3N(1), provide "Supplemental Disclosures" as follows: (i) unless exempt from the obligation to provide a TDS, complete a Seller Property Questionnaire (C.A.R. Form SPQ) by answering all questions and Signing and Delivering a Copy to Buyer; (ii) if exempt from the obligation to provide a TDS, complete an Exempt Seller Disclosure (C.A.R. Form ESD) by answering all questions and Signing and Delivering a Copy to Buyer.

(4) In the event Seller or Seller's Agent, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer under this paragraph, Seller shall, in writing, promptly provide a subsequent or amended TDS, Seller Property Questionnaire or other document, in writing, covering those items. Any such document shall be deemed an amendment to the TDS or SPQ. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are discovered by Buyer or disclosed in reports or documents provided to or ordered and paid for by Buyer.**

B. LEAD DISCLOSURES:

- (1) Seller shall, within the time specified in **paragraph 3N(1)**, for any residential property built before January 1, 2004, unless exempted by Law, Deliver to Buyer a fully completed Federal Lead-Based Paint Disclosures (C.A.R. Form LPD) and pamphlet ("Lead Disclosures").
- (2) Buyer shall, within the time specified in **paragraph 3L(3)**, have the opportunity to conduct a risk assessment or to inspect for the presence of lead-based paint hazards.

C. HOME FIRE HARDENING DISCLOSURE AND ADVISORY: For any transaction where a TDS is required, the property is located in a high or very high fire hazard severity zone, and the home was constructed before January 1, 2010, Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer: (i) a home hardening disclosure required by law; and (ii) a statement of features of which the Seller is aware that may make the home vulnerable to wildfire and flying embers; and (iii) a final inspection report regarding compliance with defensible space requirements if one was prepared pursuant to Government Code § 51182 (C.A.R. Form FHDS).

D. DEFENSIBLE SPACE DISCLOSURE AND ADDENDUM: For any transaction in which a TDS is required and the property is located in a high or very high fire hazard severity zone, Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer (i) a disclosure of whether the Property is in compliance with any applicable defensible space laws designed to protect a structure on the Property from fire; and (ii) an addendum allocating responsibility for compliance with any such defensible space law (C.A.R. Form FHDS).

E. WAIVER PROHIBITED: Waiver of Statutory, Lead, and other Disclosures in **paragraphs 11A(1), 11B, 11C, and 11D** are prohibited by Law.

F. RETURN OF SIGNED COPIES: Buyer shall, within the time specified in **paragraph 3L(3) OR 5 Days** after Delivery of any disclosures specified in **paragraphs 11 A, B, C or D**, and defensible space addendum in **paragraph 11D**, whichever is later, return Signed Copies of the disclosures, and if applicable, addendum, to Seller.

G. TERMINATION RIGHTS:

- (1) **Statutory and Other Disclosures:** If any disclosure specified in **paragraphs 11A, B, C, or D**, or subsequent or amended disclosure to those just specified, is Delivered to Buyer after the offer is Signed, Buyer shall have the right to terminate this Agreement within **3 Days** after Delivery in person, or **5 Days** after Delivery by deposit in the mail, or by an electronic record or email satisfying the Uniform Electronic Transactions Act (UETA), by giving written notice of rescission to Seller or Seller's Authorized Agent. If Buyer does not rescind within this time period, Buyer has been deemed to have approved the disclosure and shall not have the right to cancel.
- (2) **Defensible Space Compliance:** If, by the time specified in **paragraph 11F**, Buyer does not agree to the terms regarding defensible space compliance Delivered by Seller, as indicated by mutual signatures on the FHDS, then Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement.

H. WITHHOLDING TAXES: Buyer and Seller hereby instruct Escrow Holder to withhold the applicable required amounts to comply with federal and California withholding Laws and forward such amounts to the Internal Revenue Service and Franchise Tax Board, respectively. However, no federal withholding is required if, prior to Close Of Escrow, Seller Delivers (i) to Buyer and Escrow Holder a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law (FIRPTA); **OR (ii)** to a qualified substitute (usually a title company or an independent escrow company) a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law AND the qualified substitute Delivers to Buyer and Escrow Holder an affidavit signed under penalty of perjury (C.A.R. Form QS) that the qualified substitute has received the fully completed Seller's affidavit and the Seller states that no federal withholding is required; **OR (iii)** to Buyer other documentation satisfying the requirements under Internal Revenue Code § 1445 (FIRPTA). No withholding is required under California Law if, prior to Close Of Escrow, Escrow Holder has received sufficient documentation from Seller that no withholding is required, and Buyer has been informed by Escrow Holder.

I. MEGAN'S LAW DATABASE DISCLOSURE: Notice: Pursuant to § 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)

J. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES: This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Website. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)

K. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:

- (1) Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer whether the Property is a condominium or is located in a planned development, other common interest development, or otherwise subject to covenants, conditions, and restrictions (C.A.R. Form SPQ or ESD).
- (2) If the Property is a condominium or is located in a planned development or other common interest development with a HOA, Seller shall, within the time specified in **paragraph 3N(3)**, order from, and pay any required fee as specified in **paragraph 3Q(12)** for the following items to the HOA (C.A.R. Form HOA-IR): (i) Copies of any documents required by Law (C.A.R. Form HOA-RS); (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; (v) the names and contact information of all HOAs governing the Property; (vi) pet restrictions; and (vii) smoking restrictions ("CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Seller shall, as directed by Escrow Holder, deposit funds into escrow or direct to HOA or management company to pay for any of the above.

L. NATURAL AND ENVIRONMENTAL HAZARDS: Seller shall, within the time specified in **paragraph 3N(1)**, if required by Law: (i) Deliver to Buyer the earthquake guide and environmental hazards booklet, and for all residential property with 1-4 units and any manufactured or mobile home built before January 1, 1960, fully complete and Deliver the Residential Earthquake Risk Disclosure Statement; and (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

RPA Revised 6/22 (PAGE 8 OF 16)

Buyer's Initials

NH

Seller's Initials



M. KNOWN MATERIAL FACTS: Seller shall, within the time specified in **paragraph 3N(1)**, DISCLOSE KNOWN FACTS AND DEFECTS affecting the Property, including, but not limited to, known insurance claims within the past 12 months or provide Buyer with permission to contact lender to get such information (C.A.R. Form ARC), and make any and all other disclosures required by Law.

12. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:

- A.** Buyer shall, within the time specified in **paragraph 3L(3)**, have the right, at Buyer's expense unless Otherwise Agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations").
- B.** Buyer Investigations include, but are not limited to:
 - (1) Inspections regarding any physical attributes of the Property or items connected to the Property, such as:
 - (A) A general home inspection.
 - (B) An inspection for lead-based paint and other lead-based paint hazards.
 - (C) An inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2).
 - (D) Any other specific inspections of the physical condition of the land and improvements.
 - (2) All other Buyer Investigations, such as insurance, not specified above. See, Buyer's Investigation Advisory (C.A.R. Form BIA) for more.
 - (3) A review of reports, disclosures or information prepared by or for Seller and Delivered to Buyer pursuant to **paragraphs 3, 10, 11, and 14A**.
- C.** Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report, which shall not include any holes or drilling through stucco or similar material; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- D.** Seller shall make the Property available for all Buyer Investigations. Seller is not obligated to move any existing personal property. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is delivered to Buyer. Buyer shall, (i) by the time specified in **paragraph 3L(3)**, complete Buyer Investigations and satisfy themselves as to the condition of the Property, and either remove the contingency or cancel this Agreement, and (ii) by the time specified in **paragraph 3L(3)** or **3 Days** after receipt of any Investigation report, whichever is later, give Seller at no cost, complete Copies of all such reports obtained by Buyer, which obligation shall survive the termination of this Agreement. This Delivery of Investigation reports shall not include any appraisal, except an appraisal received in connection with an FHA or VA loan.
- E. Buyer indemnity and Seller protection for entry upon the Property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

13. TITLE AND VESTING:

- A.** Buyer shall, within the time specified in **paragraph 3N(1)**, be provided a current Preliminary Report by the person responsible for paying for the title report in **paragraph 3Q(8)**. If Buyer is responsible for paying, Buyer shall act diligently and in good faith to obtain such Preliminary Report within the time specified. The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities.
- B.** Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing. For any lien or matter not being transferred upon sale, Seller will take necessary action to deliver title free and clear of such lien or matter.
- C.** Seller shall within **7 Days** after request, give Escrow Holder necessary information to clear title.
- D.** Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- E.** If Buyer is a legal entity and the Property purchase price is at least \$300,000 and the purchase price is made without a bank loan or similar form of external financing, a Geographic Targeting Order (GTO) issued by the Financial Crimes Enforcement Network, U.S. Department of the Treasury, requires title companies to collect and report certain information about the Buyer, depending on where the Property is located. Buyer agrees to cooperate with the title company's effort to comply with the GTO.
- F.** Buyer shall, after Close Of Escrow, receive a recorded grant deed or any other conveyance document required to convey title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's vesting instructions. The recording document shall contain Buyer's post-closing mailing address to enable Buyer's receipt of the recorded conveyance document from the County Recorder. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

- G.** Buyer shall receive a "ALTA/CLTA Homeowner's Policy of Title Insurance" or equivalent policy of title insurance, to the type of property and buyer. Escrow Holder shall request this policy. If a ALTA/CLTA Homeowner's Policy of Title Insurance is not offered, Buyer shall receive a CLTA Standard Coverage policy unless Buyer has chosen another policy and instructed Escrow Holder in writing of the policy chosen and agreed to pay any increase in cost. Buyer should consult with the Title Company about the availability, and difference in coverage, and cost, if any, between a ALTA/CLTA Homeowner's Policy and a CLTA Standard Coverage policy and other title policies and endorsements. Buyer should receive notice from the Title Company on its Preliminary (Title) Report of the type of coverage offered. If Buyer is not notified on the Preliminary (Title) Report or is not satisfied with the policy offered, and Buyer nonetheless removes the contingency for Review of the Preliminary Report, Buyer will receive the policy as specified in this paragraph.
- 14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
- A. SELLER DELIVERY OF DOCUMENTS:** Seller shall, within the time specified in paragraph 3N(1), Deliver to Buyer all reports, disclosures and information ("Reports") for which Seller is responsible as specified in paragraphs 9B(6), 10, 11A, 11B, 11C, 11D, 11H, 11K, 11L, 11M, 13A, and 13D.
- B. BUYER REVIEW OF DOCUMENTS; REPAIR REQUEST; CONTINGENCY REMOVAL OR CANCELLATION**
- (1) Buyer has the time specified in paragraph 3 to: (i) perform Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 9B(6), and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory and Other Disclosures Delivered by Seller in accordance with paragraph 11.
 - (2) Buyer may, within the time specified in paragraph 3L(3), request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests (C.A.R. Form RR or RRRR). If Seller does not agree or does not respond, Buyer is not contractually entitled to have the repairs or other requests made and may only cancel based on contingencies in this Agreement.
 - (3) Buyer shall, by the end of the times specified in paragraph 3L (or as Otherwise Agreed), Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement (C.A.R. Form CR or CC). However, if any report, disclosure, or information for which Seller is responsible, other than those in paragraph 11A or 11B, is not Delivered within the time specified in paragraph 3N(1), then Buyer has 5 Days after Delivery of any such items, or the times specified in paragraph 3L, whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement. If Delivery of any Report occurs after a contractual contingency pertaining to that Report has already been waived or removed, the Delivery of the Report does not revive the contingency but there may be a right to terminate for a subsequent or amended disclosure under paragraph 11G.
 - (4) **Continuation of Contingency:** Even after the end of the time specified in paragraph 3L and before Seller cancels, if at all, pursuant to paragraph 14C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 14C(1).
- C. SELLER RIGHT TO CANCEL:**
- (1) **SELLER RIGHT TO CANCEL; BUYER CONTINGENCIES:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
 - (2) **SELLER RIGHT TO CANCEL; BUYER CONTRACT OBLIGATIONS:** Seller, after first Delivering to Buyer a Notice to Buyer to Perform, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3D(1) or 3D(2) or if the funds deposited pursuant to paragraph 3D(1) or 3D(2) are not good when deposited; (ii) Deliver updated contact information for Buyer's lender(s) as required by paragraph 5C(3); (iii) Deliver a notice of FHA or VA costs or terms, if any, as specified by paragraph 5C(4) (C.A.R. Form RR); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by paragraph 5B or 6A; (v) Deliver a letter as required by paragraph 6B; (vi) In writing assume or accept leases or liens specified in paragraph 8G; (vii) Return Statutory and Other Disclosures as required by paragraph 11F; (viii) Cooperate with the title company's effort to comply with the GTO as required by paragraph 13E; (ix) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 5A(2) and 29; (x) Provide evidence of authority to Sign in a representative capacity as specified in paragraph 28; or (xi) Perform any additional Buyer contractual obligation(s) included in this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer and other expenses already paid by Escrow Holder pursuant to this Agreement prior to Seller's cancellation.
 - (3) **SELLER RIGHT TO CANCEL; SELLER CONTINGENCIES:** Seller may cancel this Agreement by good faith exercise of any Seller contingency included in this Agreement, or Otherwise Agreed, so long as that contingency has not already been removed or waived in writing.
- D. BUYER RIGHT TO CANCEL:**
- (1) **BUYER RIGHT TO CANCEL; SELLER CONTINGENCIES:** If, by the time specified in this Agreement, Seller does not Deliver to Buyer a removal of the applicable contingency or cancellation of this Agreement, then Buyer, after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer and other expenses already paid by Escrow Holder pursuant to this Agreement prior to Buyer's cancellation.
 - (2) **BUYER RIGHT TO CANCEL; SELLER CONTRACT OBLIGATIONS:** If, by the time specified, Seller has not Delivered any item specified in paragraph 3N(1) or Seller has not performed any Seller contractual obligation included in this Agreement by the time specified, Buyer, after first Delivering to Seller a Notice to Seller to Perform, may cancel this Agreement.
 - (3) **BUYER RIGHT TO CANCEL; BUYER CONTINGENCIES:** Buyer may cancel this Agreement by good faith exercise of any Buyer contingency included in paragraph 8, or Otherwise Agreed, so long as that contingency has not already been removed in writing.

- E. NOTICE TO BUYER OR SELLER TO PERFORM:** The Notice to Buyer to Perform or Notice to Seller to Perform shall be in writing; (ii) be Signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2 Days** after Delivery (or if specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform or Notice to Seller to Perform may not be Delivered any earlier than **2 Days** prior to the Scheduled Performance Day to remove a contingency or cancel this Agreement or meet an obligation specified in **paragraph 14**, whether or not the Scheduled Performance Day falls on a Saturday, Sunday or legal holiday. If a Notice to Buyer to Perform or Notice to Seller to Perform is incorrectly Delivered or specifies a time less than the agreed time, the notice shall be deemed invalid and void, and Seller or Buyer shall be required to Deliver a new Notice to Buyer to Perform or Notice to Seller to Perform with the specified timeframe.
- F. EFFECT OF REMOVAL OF CONTINGENCIES:**
- (1) **REMOVAL OF BUYER CONTINGENCIES:** If Buyer removes any contingency or cancellation rights, unless Otherwise Agreed, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for the non-delivery of any reports, disclosures or information outside of Seller's control and for any Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
 - (2) **REMOVAL OF SELLER CONTINGENCIES:** If Seller removes any contingency or cancellation rights, unless Otherwise Agreed, Seller shall conclusively be deemed to have: (i) satisfied themselves regarding such contingency, (ii) elected to proceed with the transaction; and (iii) given up any right to cancel this Agreement based on such contingency.
- G. DEMAND TO CLOSE ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a Demand to Close Escrow (C.A.R. Form DCE). The DCE shall: (i) be Signed by the applicable Buyer or Seller; and (ii) give the other Party at least **3 Days** after Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** prior to the Scheduled Performance Day for the Close Of Escrow. If a DCE is incorrectly Delivered or specifies a time less than the above timeframe, the DCE shall be deemed invalid and void, and Seller or Buyer shall be required to Deliver a new DCE.
- H. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign and Deliver mutual instructions to cancel the sale and escrow and release deposits, if any, to the Party entitled to the funds, less (i) fees and costs paid by Escrow Holder on behalf of that Party, if required by this Agreement; and (ii) any escrow cancellation fee charged to that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. A release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. **A Party may be subject to a civil penalty of up to \$1,000 for refusal to Sign cancellation instructions if no good faith dispute exists as to which Party is entitled to the deposited funds (Civil Code § 1057.3). Note: Neither Agents nor Escrow Holder are qualified to provide any opinion on whether either Party has acted in good faith or which Party is entitled to the deposited funds. Buyer and Seller are advised to seek the advice of a qualified California real estate attorney regarding this matter.**
- 15. REPAIRS:** Repairs shall be completed prior to final verification of condition unless Otherwise Agreed. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. Buyer acknowledges that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 16. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property condition within the time specified in **paragraph 3J**, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to **paragraph 7B**; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
- 17. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless Otherwise Agreed, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, Seller rental payments, HOA regular assessments due prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. Seller shall pay any HOA special or emergency assessments due prior to Close Of Escrow. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special or emergency assessments that are due after Close Of Escrow. Property will be reassessed upon change of ownership. Any supplemental tax bills delivered to Escrow Holder prior to closing shall be prorated and paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). Seller agrees all service fees, maintenance costs and utility bills will be paid current up and through the date of Close Of Escrow. **TAX BILLS AND UTILITY BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.** Prorations shall be made based on a 30-day month.
- 18. BROKERS AND AGENTS:**
- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
 - B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Agent: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Agent; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

19. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:

Item # C12.

- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3A, 3B, 3D-G, 3N(2), 3Q, 3R, 4A, 4B, 5A(1-2) 5D, 5E, 10B(2)(A), 10B(3), 10C, 11H, 11K(2), 13 (except 13D), 14H, 17, 18A, 19, 23, 25, 27, 28, 32, 33, and paragraph 3 of the Real Estate Brokers Section. If a Copy of the separate compensation agreement(s) provided for in paragraph 18A or paragraph C of the Real Estate Brokers Section is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned.
 - B. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller shall Sign and return Escrow Holder's general provisions or supplemental instructions within the time specified in paragraph 3N(2). Buyer and Seller shall execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 3, 8, 10, 11, or elsewhere in this Agreement.
 - C. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days after Acceptance. Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title Company when received from Seller, if a separate company is providing title insurance. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 11H, Escrow Holder shall deliver to Buyer, Buyer's Agent, and Seller's Agent a Qualified Substitute statement that complies with federal law. If Escrow Holder's Qualified Substitute statement does not comply with federal law, the Parties instruct escrow to withhold all applicable required amounts under paragraph 11H.
 - D. Agents are not a party to the escrow, except for Brokers for the sole purpose of compensation pursuant to paragraph 18A and paragraph 3 of the Real Estate Brokers Section. If a Copy of the separate compensation agreement(s) provided for in either of those paragraphs is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 18A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
 - E. Buyer and Seller acknowledge that Escrow Holder may require invoices for expenses under this Agreement. Buyer and Seller, upon request by Escrow Holder, within 3 Days or within a sufficient time to close escrow, whichever is sooner, shall provide any such invoices to Escrow Holder.
 - F. Upon receipt, Escrow Holder shall provide Buyer, Seller, and each Agent verification of Buyer's deposit of funds pursuant to paragraphs 5A(1) and 5A(2). Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify each Agent: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
 - G. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.
20. **SELECTION OF SERVICE PROVIDERS:** Agents do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Agent or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
21. **MULTIPLE LISTING SERVICE ("MLS"):** Agents are authorized to report to the MLS that an offer has been accepted and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS. Buyer acknowledges that: (i) any pictures, videos, floor plans (collectively, "Images") or other information about the Property that has been or will be inputted into the MLS or internet portals, or both, at the instruction of Seller or in compliance with MLS rules, will not be removed after Close Of Escrow; (ii) California Civil Code § 1088(c) requires the MLS to maintain such Images and information for at least three years and as a result they may be displayed or circulated on the Internet, which cannot be controlled or removed by Seller or Agents; and (iii) Seller, Seller's Agent, Buyer's Agent, and MLS have no obligation or ability to remove such Images or information from the Internet.
22. **ATTORNEY FEES AND COSTS:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 30A.
23. **ASSIGNMENT:** Buyer shall have the right to assign all of Buyer's interest in this Agreement to Buyer's own trust or to any wholly owned entity of Buyer that is in existence at the time of such assignment. Otherwise, Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Prior to any assignment, Buyer shall disclose to Seller the name of the assignee and the amount of any monetary consideration between Buyer and assignee. Buyer shall provide assignee with all documents related to this Agreement including, but not limited to, the Agreement and any disclosures. If assignee is a wholly owned entity or trust of Buyer, that assignee does not need to re-sign or initial all documents provided. Whether or not an assignment requires seller's consent, at the time of assignment, assignee shall deliver a letter from assignee's lender that assignee is prequalified or preapproved as specified in paragraph 6B. Should assignee fail to deliver such a letter, Seller, after first giving Assignee an Notice to Buyer to Perform, shall have the right to terminate the assignment. Buyer shall, within the time specified in paragraph 3K, Deliver any request to assign this Agreement for Seller's consent. If Buyer fails to provide the required information within this time frame, Seller's withholding of consent shall be deemed reasonable. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless Otherwise Agreed by Seller (C.A.R. Form AOA).
24. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
25. **DEFINITIONS and INSTRUCTIONS:** The following words are defined terms in this Agreement, shall be indicated by initial capital letters throughout this Agreement, and have the following meaning whenever used:
- A. "Acceptance" means the time the offer or final counter offer is fully executed, in writing, by the recipient Party and is Delivered to the offering Party or that Party's Authorized Agent.

[Signature]



- B. **"Agent"** means the Broker, salesperson, broker-associate or any other real estate licensee licensed under the broker's license identified in **paragraph 2B**.
- C. **"Agreement"** means this document and any counter offers and any incorporated addenda or amendments, collectively forming the binding agreement between the Parties. Addenda and amendments are incorporated only when Signed and Delivered by all Parties.
- D. **"As-Is"** condition: Seller shall disclose known material facts and defects as specified in this Agreement. Buyer has the right to inspect the Property and, within the time specified, request that Seller make repairs or take other corrective action, or exercise any contingency cancellation rights in this Agreement. Seller is only required to make repairs specified in this Agreement or as Otherwise Agreed.
- E. **"Authorized Agent"** means an individual real estate licensee specified in the Real Estate Broker Section.
- F. **"C.A.R. Form"** means the most current version of the specific form referenced or another comparable form agreed to by the Parties.
- G. **"Close Of Escrow"**, including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded for any real property, or the date of Delivery of a document evidencing the transfer of title for any non-real property transaction.
- H. **"Copy"** means copy by any means including photocopy, facsimile and electronic.
- I. **Counting Days** is done as follows unless Otherwise Agreed: (1) The first Day after an event is the first full calendar date following the event, and ending at 11:59 pm. For example, if a Notice to Buyer to Perform (C.A.R. form NBP) is Delivered at 3 pm on the 7th calendar day of the month, or Acceptance of a counter offer is personally received at 12 noon on the 7th calendar day of the month, then the 7th is Day "0" for purposes of counting days to respond to the NBP or calculating the Close Of Escrow date or contingency removal dates and the 8th of the month is Day 1 for those same purposes. (2) All calendar days are counted in establishing the first Day after an event. (3) All calendar days are counted in determining the date upon which performance must be completed, ending at 11:59 pm on the last day for performance ("Scheduled Performance Day"). (4) After Acceptance, if the Scheduled Performance Day for any act required by this Agreement, including Close Of Escrow, lands on a Saturday, Sunday, or legal holiday, the performing party shall be allowed to perform on the next day that is not a Saturday, Sunday or legal holiday ("Allowable Performance Day"), and ending at 11:59 pm. (5) For the purposes of COE, any day that the Recorder's office in the County where the Property is located is closed, the COE shall occur on the next day the Recorder's office in that County is open. (6) COE is considered Day 0 for purposes of counting days Seller is allowed to remain in possession, if permitted by this Agreement.
- J. **"Day"** or **"Days"** means calendar day or days. However, delivery of deposit to escrow is based on business days.
- K. **"Deliver"**, **"Delivered"** or **"Delivery"** of documents, unless Otherwise Agreed, means and shall be effective upon personal receipt of the document by Buyer or Seller or their Authorized Agent. Personal receipt means (i) a Copy of the document, or as applicable, link to the document, is in the possession of the Party or Authorized Agent, regardless of the Delivery method used (i.e. e-mail, text, other), or (ii) an Electronic Copy of the document, or as applicable, link to the document, has been sent to any of the designated electronic delivery addresses specified in the Real Estate Broker Section on page 16. After Acceptance, Agent may change the designated electronic delivery address for that Agent by, in writing, Delivering notice of the change in designated electronic delivery address to the other Party. Links could be, for example, to DropBox or GoogleDrive or other functionally equivalent program. If the recipient of a link is unable or unwilling to open the link or download the documents or otherwise prefers Delivery of the documents directly, Recipient of a link shall notify the sender in writing, within **3 Days** after Delivery of the link (C.A.R. Form RFR). In such case, Delivery shall be effective upon Delivery of the documents and not the link. Failure to notify sender within the time specified above shall be deemed consent to receive, and Buyer opening, the document by link.
- L. **"Electronic Copy"** or **"Electronic Signature"** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
- M. **"Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
- N. **"Legally Authorized Signer"** means an individual who has authority to Sign for the principal as specified in **paragraph 32** or **paragraph 33**.
- O. **"Otherwise Agreed"** means an agreement in writing, signed by both Parties and Delivered to each.
- P. **"Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
- Q. **"Sign"** or **"Signed"** means either a handwritten or Electronic Signature on an original document, Copy or any counterpart.
26. **TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the terms and conditions herein. The individual Liquidated Damages and Arbitration of Disputes paragraphs are incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a Counter Offer or addendum. **If at least one but not all Parties initial, a Counter Offer is required until agreement is reached.** Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance and to market the Property for backup offers after Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing. By signing this offer or any document in the transaction, the Party Signing the document is deemed to have read the document in its entirety.
27. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as Otherwise Agreed, this Agreement shall be interpreted, and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
28. **LEGALLY AUTHORIZED SIGNER:** Wherever the signature or initials of the Legally Authorized Signer identified in **paragraph 32** or **33** appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Legally Authorized Signer (i) represents that the entity for which that person is acting already exists and is in good standing to do business in California and (ii) shall Deliver to the other Party and Escrow Holder, within the time specified in **paragraph 3N(5)**, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code § 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

29. LIQUIDATED DAMAGES (By initialing in the space below, you are agreeing to Liquidated Damages):

Item # C12.

If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT THE TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM DID).

Buyer's Initials NH / _____

Seller's Initials _____ / _____

30. MEDIATION:

- A.** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. The mediation shall be conducted through the C.A.R. Real Estate Mediation Center for Consumers (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Agents(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. Mediation fees, if any, shall be divided equally among the Parties involved, and shall be recoverable under the prevailing party attorney fees clause. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.
- B. ADDITIONAL MEDIATION TERMS:** (i) Exclusions from this mediation agreement are specified in paragraph 31B; (ii) The obligation to mediate does not preclude the right of either Party to seek a preservation of rights under paragraph 31C; and (iii) Agent's rights and obligations are further specified in paragraph 31D. These terms apply even if the Arbitration of Disputes paragraph is not initialed.

31. ARBITRATION OF DISPUTES:

- A.** The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Agents(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. The arbitration shall be conducted through any arbitration provider or service mutually agreed to by the Parties, OR ☐ _____. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the Parties mutually agree to a different arbitrator. Enforcement of, and any motion to compel arbitration pursuant to, this agreement to arbitrate shall be governed by the procedural rules of the Federal Arbitration Act, and not the California Arbitration Act, notwithstanding any language seemingly to the contrary in this Agreement. The Parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. The arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction.
- B. EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) Any matter that is within the jurisdiction of a probate, small claims or bankruptcy court; (ii) an unlawful detainer action; and (iii) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code § 2985.
- C. PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- D. AGENTS:** Agents shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Agents(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.
- E. "NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."**

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials NH / _____

Seller's Initials _____ / _____

32. BUYER'S OFFER

Item # C12.

- A. EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer upon the date and time specified in **paragraph 3C**, the offer is Signed by Seller and a Copy of the Signed offer is Delivered to Buyer or Buyer's Authorized Agent. **Seller has no obligation to respond to an offer made.**
- B. ☐ ENTITY BUYERS:** (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)
- (1) One or more Buyers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
 - (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 28** for additional terms.
 - (3) The name(s) of the Legally Authorized Signer(s) is/are: _____.
 - (4) If a trust, identify Buyer as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____.

- C.** The RPA has 16 pages. Buyer acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. BUYER SIGNATURE(S):

(Signature) By,  Date: **10/06/2022**

Printed name of BUYER: **Neil Hilario**

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, **Executive Director**

(Signature) By, _____ Date: _____

Printed name of BUYER: _____

☐ Printed name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

33. ACCEPTANCE

- A. ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions. Seller has read and acknowledges receipt of a Copy of this Agreement and authorizes Agent to Deliver a Signed Copy to Buyer.

Seller's acceptance is subject to the attached Counter Offer or Back-Up Offer Addendum, or both, checked below.

Seller shall return and include the entire agreement with any response.

☐ **Seller Counter Offer** (C.A.R. Form SCO or SMCO)

☐ **Back-Up Offer Addendum** (C.A.R. Form BUO)

- B. ☒ Entity Sellers:** (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure form (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

- (1) One or more Sellers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
- (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 28** for additional terms.
- (3) The name(s) of the Legally Authorized Signer(s) is/are: **Steven G McHarris**.
- (4) If a trust, identify Seller as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____.

- C.** The RPA has 16 pages. Seller acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. SELLER SIGNATURE(S):

(Signature) By, _____ Date: _____

Printed name of SELLER: **Milpitas Housing Authority**

☒ Printed Name of Legally Authorized Signer: **Steven G McHarris** Title, if applicable, _____

(Signature) By, _____ Date: _____

Printed name of SELLER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

OFFER NOT ACCEPTED: _____ / _____ No Counter Offer is being made. This offer was not accepted by Seller _____ (date)
Seller's Initials

REAL ESTATE BROKERS SECTION:

1. **Real Estate Agents are not parties to the Agreement between Buyer and Seller.**
2. **Agency relationships are confirmed as stated in paragraph 2.**
3. **Cooperating Broker Compensation:** Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Seller's Broker and Buyer's Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.
4. **Presentation of Offer:** Pursuant to the National Association of REALTORS® Standard of Practice 1-7, if Buyer's Agent makes a written request, Seller's Agent shall confirm in writing that this offer has been presented to Seller.
5. **Agents' Signatures and designated electronic delivery address:**

A. Buyer's Brokerage Firm Referral Realty/Bayview Residential Mortgage Lic. # 01498198
 By Glenda Queensbury Lic. # 01365035 Date 10/06/2022
 By 10/6/2022 6:54:19 AM PDT Lic. # _____ Date _____

- ☐ More than one agent from the same firm represents Buyer. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.
☐ More than one brokerage firm represents Buyer. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.

Designated Electronic Delivery Address(es):

Email _____ Text # _____

Alternate: _____

- ☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.

Address 51 E Campbell Ave Suite 110 City Campbell State CA Zip 95008

B. Seller's Brokerage Firm Referral Realty/Bayview Residential Brokerage Lic. # 01498198
 By Glenda Queensbury Lic. # 01365035 Date 10/06/2022
 By 10/6/2022 7:11:52 PM PDT Lic. # _____ Date _____

- ☐ More than one agent from the same firm represents Seller. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.
☐ More than one brokerage firm represents Seller. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.

Designated Electronic Delivery Address(es) (To be filled out by Seller's Agent):

Email _____ Text # _____

Alternate: _____

- ☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.

Address 51 E Campbell Ave Suite 110 City Campbell State CA Zip 95008

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ _____), Counter Offer numbers _____ and _____, and agrees to act as Escrow Holder subject to paragraph 19 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised by _____ that the date of Acceptance of the Agreement is _____

Escrow Holder Fidelity National Title Escrow # _____

By _____ Date _____

Address _____

Phone/Fax/E-mail _____

Escrow Holder has the following license number # _____

- ☐ Department of Financial Protection and Innovation, ☐ Department of Insurance, ☐ Department of Real Estate.

PRESENTATION OF OFFER: GC / _____ Seller's Brokerage Firm presented this offer to Seller on 10/06/2022 (date).

Agent or Seller Initials

© 2022, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®, REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by:
 REAL ESTATE BUSINESS SERVICES, LLC.
 a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
 525 South Virgil Avenue, Los Angeles, California 90020

RPA Revised 6/22 (PAGE 16 OF 16)

Buyer's Initials

NH

Seller's Initials



**BUYER'S INVESTIGATION ADVISORY**

(C.A.R. Form BIA, Revised 12/21)

Item # C12.

Property Address 600 S Abel St Unit 208, Milpitas, CA95014 95035-6968

- 1. IMPORTANCE OF PROPERTY INVESTIGATION:** The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.
- 2. BROKER OBLIGATIONS:** Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as those listed below. If Broker gives you referrals to professionals, Broker does not guarantee their performance.
- 3. YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE FOLLOWING. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.**
 - A. GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS:** Foundation, roof (condition, age, leaks, useful life), plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa (cracks, leaks, operation), other structural and non-structural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property.
 - B. SQUARE FOOTAGE, AGE, BOUNDARIES:** Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other barriers or markers do not necessarily identify true Property boundaries.
 - C. WOOD DESTROYING PESTS:** Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms.
 - D. SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage.
 - E. WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS; WASTE DISPOSAL:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components. The type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
 - F. ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants).
 - G. EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood.
 - H. FIRE, HAZARD, AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies.
 - I. BUILDING PERMITS, ZONING, GOVERNMENTAL REQUIREMENTS, AND ADDRESS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size. Postal/mailling address and zip code may not accurately reflect the city which has jurisdiction over the property.
 - J. RENTAL PROPERTY RESTRICTIONS:** The State, some counties, and some cities impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants, and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements.
 - K. SECURITY AND SAFETY:** State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property.

© 2021, California Association of REALTORS®, Inc.

BIA REVISED 12/21 (PAGE 1 OF 2)**BUYER'S INVESTIGATION ADVISORY (BIA PAGE 1 OF 2)**

L. NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS: Neighborhood conditions, including schools, law enforcement, crime statistics, registered felons or offenders, fire other government services, availability, adequacy and cost of internet connections or other technology services and installations, commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

Item # C12.

By signing below, Buyers acknowledge that they have read, understand, accept and have received a Copy of this Advisory. Buyers are encouraged to read it carefully.

Buyer  Neil Hilario Date 10/06/2022
 Buyer _____ Date _____

© 2021, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®, NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.



Published and Distributed by:
 REAL ESTATE BUSINESS SERVICES, LLC.
 a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
 525 South Virgil Avenue, Los Angeles, California 90020

BIA REVISED 12/21 (PAGE 2 OF 2)



BUYER'S INVESTIGATION ADVISORY (BIA PAGE 2 OF 2)

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com

600 S Abel

394



FAIR APPRAISAL ACT ADDENDUM (C.A.R. Form FAAA, 6/22)

Item # C12.

The following terms and conditions are hereby incorporated in and made a part of the Purchase Agreement, OR ☐ Other ("Agreement"), dated 10/06/2022, on property known as 600 S Abel St Unit 208, Milpitas, CA95014 95035-6968 ("Property"), in which Milpitas Housing Authority is referred to as ("Seller") and Neil Hilario is referred to as ("Buyer").

Any appraisal of the property is required to be unbiased, objective, and not influenced by improper or illegal considerations, including, but not limited to, any of the following: race, color, religion (including religious dress, grooming practices, or both), gender (including, but not limited to, pregnancy, childbirth, breastfeeding, and related conditions, and gender identity and gender expression), sexual orientation, marital status, medical condition, military or veteran status, national origin (including language use and possession of a driver's license issued to persons unable to provide their presence in the United States is authorized under federal law), source of income, ancestry, disability (mental and physical, including, but not limited to, HIV/AIDS status, cancer diagnosis, and genetic characteristics), genetic information, or age.

If a buyer or seller believes that the appraisal has been influenced by any of the above factors, the seller or buyer can report this information to the lender or mortgage broker that retained the appraiser and may also file a complaint with the Bureau of Real Estate Appraisers at <https://www2.brea.ca.gov/complaint/> or call (916) 552-9000 for further information on how to file a complaint.

By signing below, Buyer and Seller has each read, understands and acknowledges receipt of a copy of this Fair Appraisal Act Addendum.

Buyer  Date 10/06/2022
Neil Hilario REALTOR®

Buyer _____ Date _____

Seller Milpitas Housing Authority Date _____

Seller _____ Date _____

© 2022, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®, REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

R E B S C Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, LLC.
a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020

FAAA 6/22 (PAGE 1 OF 1)



FAIR APPRAISAL ACT ADDENDUM (FAAA PAGE 1 OF 1)

Bayview Residential Brokerage, 51 E Campbell Ave Suite 110 Campbell CA 95008
Glenda Queensbury

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201

Phone: (408) 921-2257 Fax: (408) 715-0278
www.lwolf.com

600 S Abel



CALIFORNIA CONSUMER PRIVACY ACT ADVISORY, DISCLOSURE AND NOTICE

(C.A.R. Form CCPA, Revised 12/21)

Item # C12.

The California Consumer Privacy Act (commencing with Civil Code § 1798.100) ("CCPA") grants to California residents certain rights in their private, personal information ("PI") that is collected by companies with whom they do business. Under the CCPA, PI is defined broadly to encompass non-public records information that could reasonably be linked directly or indirectly to you. PI could potentially include photographs of, or sales information about, your property.

During the process of buying and selling real estate your PI will be collected and likely shared with others, including real estate licensees, a Multiple Listing Service, real estate internet websites, service providers, lenders, and title and escrow companies, to name several possibilities. Businesses that are covered by the CCPA are required to grant you various rights in your PI, including the right to know what PI is collected, "opt out" or stop the transfer of your PI to others, and the right to request that the business delete your PI entirely. You may get one or more notices regarding your CCPA rights from businesses you interact with in a real estate transaction. However, not all businesses that receive or share your PI are obligated to comply with the CCPA. Also, even businesses that are otherwise covered under the CCPA may have a legal obligation to maintain PI, notwithstanding your instruction to the contrary. For instance, regardless of whether they are covered by CCPA, under California law, brokers and Multiple Listing Services are required to maintain their records for 3 years. If you wish to exercise your rights under CCPA, where applicable, you should contact the respective business directly.

You can obtain more information about the CCPA and your rights under the law from the State of California Department of Justice (oag.ca.gov/privacy/ccpa).

I/we acknowledge receipt of a copy of this California Consumer Privacy Act Advisory, Disclosure and Notice.

Buyer/Seller/Landlord/Tenant  Date 10/06/2022

Buyer/Seller/Landlord/Tenant _____ Date _____

© 2021, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®, NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®, REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.



Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, LLC.
a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020



CCPA REVISED 12/21 (PAGE 1 OF 1)

CALIFORNIA CONSUMER PRIVACY ACT ADVISORY (CCPA PAGE 1 OF 1)

Bayview Residential Brokerage, 51 E Campbell Ave Suite 110 Campbell CA 95008
Glenda Queensbury

Phone: (408) 921-2257 Fax: (408) 715-0278
Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwof.com

600 S Abel



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/21)

Item # C12.

☐ (If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(j), (k), and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salespersons and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE SECOND PAGE.**

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant  **Neil Hilario** Date 10/06/2022
10/6/2022 10:51:43 AM PDT

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant _____ Date _____
Agent Referral Realty/Bayview Residential Mortgage DRE Lic. # 01498198
Real Estate Broker (Firm)

By  **Glenda Queensbury** DRE Lic. # 01365035 Date 10/06/2022
10/6/2022 6:54:20 AM PDT (Salesperson or Broker-Associate, if any)

© 2021, California Association of REALTORS®, Inc.

AD REVISED 12/21 (PAGE 1 OF 2)



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

Bayview Residential Brokerage, 51 E Campbell Ave Suite 110 Campbell CA 95008
Glenda Queensbury

Phone: (408) 921-2257 Fax: (408) 715-0278
Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com

600

397

CODE SECTIONS 2079.13 – 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. (b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. (c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. (d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. (f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. (n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

Item # C12.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: (a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

CONFIRMATION: (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

Seller's Brokerage Firm	DO NOT COMPLETE. SAMPLE ONLY	License Number	_____
Is the broker of (check one): ☐ the seller; or ☐ both the buyer and seller. (dual agent)			
Seller's Agent	DO NOT COMPLETE. SAMPLE ONLY	License Number	_____
Is (check one): ☐ the Seller's Agent. (salesperson or broker associate) ☐ both the Buyer's and Seller's Agent. (dual agent)			
Buyer's Brokerage Firm	DO NOT COMPLETE. SAMPLE ONLY	License Number	_____
Is the broker of (check one): ☐ the buyer; or ☐ both the buyer and seller. (dual agent)			
Buyer's Agent	DO NOT COMPLETE. SAMPLE ONLY	License Number	_____
Is (check one): ☐ the Buyer's Agent. (salesperson or broker associate) ☐ both the Buyer's and Seller's Agent. (dual agent)			

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. (b) A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. (c) "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. (d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

© 2021, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®, NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by:
 REAL ESTATE BUSINESS SERVICES, LLC.
 a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
 525 South Virgil Avenue, Los Angeles, California 90020

AD REVISED 12/21 (PAGE 2 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)





CALIFORNIA CONSUMER PRIVACY ACT ADVISORY, DISCLOSURE AND NOTICE

(C.A.R. Form CCPA, Revised 12/21)

Item # C12.

The California Consumer Privacy Act (commencing with Civil Code § 1798.100) ("CCPA") grants to California residents certain rights in their private, personal information ("PI") that is collected by companies with whom they do business. Under the CCPA, PI is defined broadly to encompass non-public records information that could reasonably be linked directly or indirectly to you. PI could potentially include photographs of, or sales information about, your property.

During the process of buying and selling real estate your PI will be collected and likely shared with others, including real estate licensees, a Multiple Listing Service, real estate internet websites, service providers, lenders, and title and escrow companies, to name several possibilities. Businesses that are covered by the CCPA are required to grant you various rights in your PI, including the right to know what PI is collected, "opt out" or stop the transfer of your PI to others, and the right to request that the business delete your PI entirely. You may get one or more notices regarding your CCPA rights from businesses you interact with in a real estate transaction. However, not all businesses that receive or share your PI are obligated to comply with the CCPA. Also, even businesses that are otherwise covered under the CCPA may have a legal obligation to maintain PI, notwithstanding your instruction to the contrary. For instance, regardless of whether they are covered by CCPA, under California law, brokers and Multiple Listing Services are required to maintain their records for 3 years. If you wish to exercise your rights under CCPA, where applicable, you should contact the respective business directly.

You can obtain more information about the CCPA and your rights under the law from the State of California Department of Justice (oag.ca.gov/privacy/ccpa).

I/we acknowledge receipt of a copy of this California Consumer Privacy Act Advisory, Disclosure and Notice.

Buyer/Seller/Landlord/Tenant  Date 10/06/2022

 Buyer/Seller/Landlord/Tenant _____ Date _____

© 2021, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®, REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.



Published and Distributed by:
 REAL ESTATE BUSINESS SERVICES, LLC.
 a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
 525 South Virgil Avenue, Los Angeles, California 90020



CCPA REVISED 12/21 (PAGE 1 OF 1)

CALIFORNIA CONSUMER PRIVACY ACT ADVISORY (CCPA PAGE 1 OF 1)



CALIFORNIA
ASSOCIATION
OF REALTORS®

FOR YOUR PROTECTION: GET A HOME INSPECTION

Required For FHA Transactions

(C.A.R. Form HID, Revised 12/19)

Item # C12.

YOU MUST MAKE A CHOICE ON GETTING A HOME INSPECTION. IT IS NOT DONE AUTOMATICALLY.

You have the right to examine carefully your potential new home with a professional home inspector. But a home inspection is not required by law, and will occur only if you ask for one and make the arrangements. You may schedule the inspection before or after signing your contract. You may be able to negotiate with the seller to make the contract contingent on the results of the inspection. For this reason, it is usually in your best interest to conduct your home inspection as soon as possible if you want one. In a home inspection, a professional home inspector takes an in-depth, unbiased look at your potential new home to:

- ✓ Evaluate the physical condition: structure, construction, and mechanical systems;
- ✓ Identify items that need to be repaired;
- ✓ Estimate the remaining useful life of the major systems, equipment, structure and finishes.

The Appraisal is NOT a Home Inspection and does not replace an inspection.

An appraisal estimates the market value of the home to protect the lender. An appraisal does not examine or evaluate the condition of the home to protect the home buyer. An appraisal only makes sure that the home meets FHA and/or your lender's minimum property standards. A home inspection provides much more detail.

FHA and Lenders may not Guarantee the Condition of your Potential New Home

If you find problems with your new home after closing, neither FHA nor your lender may give or lend you money for repairs. Additionally, neither FHA nor your lender may buy the home back from you. Ask a qualified home inspector to inspect your potential new home and give you the information you need to make a wise decision.

Your Home Inspector may test for Radon, Health/Safety, and Energy Efficiency

EPA, HUD and DOE recommend that houses be tested and inspected for radon, health and safety, and energy efficiency, respectively. Specific tests are available to you. You may ask about tests with your home inspector, in addition to the structural and mechanical systems inspection. For more information: Radon – call 1-800-SOS-Radon; Health and Safety – see the HUD Healthy Homes Program at www.HUD.gov; Energy Efficiency – see the DOE Energy Star Program at www.energystar.gov.

Selecting a Trained Professional Home Inspector

Seek referrals from friends, neighbors, other buyers, realtors, as well as local listings from licensing authorities and local advertisements. In addition, consult the American Society of Home Inspectors (ASHI) on the web at: www.ashi.org or by telephone at: 1-800-743-2744.

I/We (circle one) have read this document and understand that if I/we wish to get a home inspection, it is best to do so as soon as possible. The appraisal is not a home inspection. I/we will make a voluntary choice whether to get a home inspection. A home inspection will be done only if I/we ask for one and schedule it. Your lender may not perform a home inspection and neither FHA nor your lender may guarantee the condition of the home. Health and safety tests can be included in the home inspection if I/we choose.


(Signed) Homebuyer
Neil Hilario

10/06/2022

Date

(Signed) Homebuyer

Date

© 2019, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats.

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.



Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, LLC.
a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by _____ Date _____



HID REVISED 12/19 (PAGE 1 OF 1)

FOR YOUR PROTECTION: GET A HOME INSPECTION (HID PAGE 1 OF 1)

Bayview Residential Brokerage, 51 E Campbell Ave Suite 110 Campbell CA 95008
Glenda Queensbury

Phone: (408) 921-2257
Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201

Fax: (408) 715-0278
www.lwof.com

600 S Abel



REPRESENTATIVE CAPACITY SIGNATURE DISCLOSURE (FOR SELLER REPRESENTATIVES)

(C.A.R. Form RCSD-S, Revised 12/21)

Item # C12.

This form is not an assignment. It should not be used to add new parties after a contract has been formed. The purpose of this form is to identify who the principal is in the transaction and who has authority to sign documents on behalf of the principal.

☐ The disclosure in this form supersedes any Legally Authorized Signer representation or Representative Capacity Signature Disclosure made in the Agreement specified below or on separate form.

This is a disclosure to the Purchase Agreement, OR ☒ Listing Agreement, ☐ Other _____

dated 08/05/2022, for the property known as 600 S Abel St Unit 208, Milpitas, CA 95035-8690 ("Agreement"),
between Neil Hilario ("Buyer", ☐ Listing Broker).
And Milpitas Housing Authority ("Seller").

Buyer and Seller are referred to as the "Parties." If a trust, in the blank line above identify Seller as the trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust 3.). Full name of trust should be identified in 1A below. If power of attorney, insert principal's name as Seller.

1. A. ☐ **TRUST:** (1) The Property is held in trust pursuant to a trust document, titled (Full name of trust): _____

_____ dated _____

(2) The person(s) signing below is/are Sole/Co/Successor Trustee(s) of the Trust.

B. ☒ **ENTITY:** Seller is a ☐ Corporation, ☐ Limited Liability Company, ☐ Partnership ☐ Other: _____
which has authorized the officer(s), managing member(s), partner(s) or person(s) signing below to act on its behalf.
An authorizing resolution of the applicable body of the entity described above ☐ is ☐ is not attached.

C. ☐ **POWER OF ATTORNEY:** Seller ("Principal") has authorized the person(s) signing below ("Attorney-In-Fact",
"Power of Attorney" or "POA") to act on his/her behalf pursuant to a General Power of Attorney (☐ Specific Power
of Attorney for the Property), dated _____. **This form is not a Power of Attorney. A Power of
Attorney must have already been executed before this form is used.**

D. ☐ **ESTATE:** (1) Seller is an ☐ estate, ☐ conservatorship, or ☐ guardianship, identified by Superior Court Case
name as _____, Case # _____.

(2) The person(s) signing below is/are court approved representatives (whether designated as Sole or Co-Executor,
Administrator, Conservator, Guardian) of the estate, conservatorship or guardianship identified above.

2. Seller's Representative represents that the trust, entity or power of attorney for which that Party is acting already exists.

Seller: DocuSigned by: Steven G. McHarris Date: Sep-15-2022
By _____ Date: _____
(6E71130DACC2464...)

(Sign Name of Trustee, Officer, Managing Member, Partner, Attorney-in-Fact or Administrator/Executor)

(Print Representative Name) Steven G McHarris Title: Executive Director

By _____ Date: _____

(Sign Name of Trustee, Officer, Managing Member, Partner, Attorney-in-Fact or Administrator/Executor)

(Print Representative Name) _____ Title: _____

Acknowledgement of Receipt by Other Party:

AT TIME OF SALE

Seller and Neil Hilario ("Buyer") are parties to a
Purchase Agreement dated 10/6/2022 for property known as 600 S Abel St Unit 208, Milpitas, CA 95035-8690.

Buyer Neil Hilario Date 10/06/2022
(10/6/2022 10:51:48 AM PDT)

Buyer _____ Date _____



Item # C12.

AT TIME OF LISTING AGREEMENT

Seller and Referral Realty/Bayview Residential Brokerage ("Seller's Broker")
 are parties to a Listing Agreement dated 08/05/2022.

Real Estate Broker Referral Realty/Bay View Residential Mortgage

By Glenda Queensbury Date 08/15/2022
 Authentisign
 8/15/2022 7:34:58 PM PDT
 Glenda Queensbury

© 2021, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®, NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

R E A L S C Published and Distributed by:
 REAL ESTATE BUSINESS SERVICES, LLC.
 a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
 525 South Virgil Avenue, Los Angeles, California 90020

RCSD-S REVISED 12/21 (PAGE 2 OF 2)

REPRESENTATIVE CAPACITY SIGNATURE DISCLOSURE (RCSD-S PAGE 2 OF 2)

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com

600 S Abel St Unit



**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

CITY OF MILPITAS HOUSING AUTHORITY
455 East Calaveras Boulevard
Milpitas, CA 95035

To be recorded without fee.
(Gov. Code, §§ 6103 and 27383.)

(Space Above This Line For Recorder's Use Only)

**RESALE RESTRICTION AGREEMENT
AND OPTION TO PURCHASE**

Owners: **Neil Hilario**

Property **600 S. Abel Street Unit #208**
Milpitas, California 95035

Name of Development: **Luna at Terra Serena**

Income Level: **Moderate**

Purchase Price: \$314,973

Unit Size: 1 bed/ 1 bath

Household Size: 1

This RESALE RESTRICTION AND OPTION TO PURCHASE AGREEMENT ("Agreement") is entered into by and between the Housing Authority of the City of Milpitas as the housing successor to the former Milpitas Redevelopment Agency ("the Authority") and **Neil Hilario** ("Owner") regarding certain improved real property, which is more particularly described in Exhibit A attached hereto and incorporated herein and commonly known as **600 S. Abel St. #208**, Milpitas, CA 95035 (the "Property") effective as of _____, **2022** (Effective Date"). Authority and Owner are hereinafter collectively referred to as the "Parties."

RECITALS

A. The Authority is the successor in interest to the former Milpitas Redevelopment Agency, which was dissolved by operation of law in 2012 (the "Redevelopment Agency"). Pursuant to the previous Community Redevelopment Law (Health & Safety Code section 33000 et seq.) and the former Redevelopment Plan, the Redevelopment Agency maintained an affordable housing fund, which it used for the purpose encouraging the construction of housing

within the Redevelopment Plan Area that is affordable to persons of low, and moderate income (“the Program”).

B. Pursuant to the Program, the Redevelopment Agency and the Developer of the **Luna at Terra Serena** development entered into a Memorandum of Understanding, and Owner Participation Agreement (collectively “the Agreements”) pursuant to which Developer agreed to construct and sell **110 homes** at prices that are affordable to persons of very low, low and moderate incomes and in exchange the former Milpitas Redevelopment Agency agreed to provided certain financial incentives.

C. In accordance with the Agreements, the Redevelopment Agency entered into a “Property Value Restrictions, Resale Agreement and Option to Purchase” (the “Original Resale Agreement”) with the prior owner of that certain property located within the City of Milpitas, legally described in Exhibit A and commonly known as **600 S. Abel Street #208, Milpitas, CA 95035** (the “Property”), which was recorded in the Official Records of Santa Clara County as **Document No. _____** on _____. The Property is one of the affordable homes constructed by the Developer pursuant to the Agreement. The Original Resale Agreement granted the Redevelopment Agency an Option to Purchase the Property from the prior owner, unless the prior owner sold the Property to a moderate income household for an affordable housing cost, subject to the purchaser agreeing to being subject to resale restrictions similar to those set forth in the Original Resale Agreement.

D. Owner is the owner of Property, which Owner purchased from the prior owner on the condition that Owner would enter into this Agreement to maintain the conditions and restrictions on resale of the Property similar to those set forth in the Original Resale Agreement.

E. Owner is an eligible **moderate-income** purchaser under the Program, intends to live in the Property as an owner occupant, and agrees to maintain the Property as Owner’s principal residence.

F. In order to maintain and preserve the Property as housing affordable to eligible [very low-, low-, or **moderate-**] income purchasers, it is necessary to restrict the use and resale of the Property through imposition of the occupancy and resale restrictions set forth in this Agreement. These restrictions are intended to prevent initial and subsequent purchasers from using the Property for purposes incompatible with the Program and realizing unwarranted gains from sales of the Property at unrestricted prices. The terms and conditions of this Agreement are intended to provide the necessary occupancy and resale restrictions to ensure that the Property is used, maintained, and preserved as housing affordable to eligible [very low-, low-, or **moderate-**] purchasers. To further serve the purposes of the Program, it is necessary that the Authority be granted an option to purchase the property so that the property may be resold by the Authority to an eligible household.

G. Accordingly, the Parties desire to enter into this Resale Restriction and Option to Purchase Agreement, which provides, generally, that Owner may only sell the property to Eligible Households (i.e. households meeting the household income limitations set forth herein) at a price not to exceed the price equal to the initial purchase price adjusted to reflect increases in median household income since the Property was initially purchased by Owner. Alternatively,

the Agreement provides that the City may exercise its option to purchase the Property at the same price.

H. The Property constitutes a valuable community resource by providing decent, safe, and sanitary housing to persons and families of low and moderate income who otherwise would be unable to afford such housing. To protect and preserve this resource it is necessary, proper, and in the public interest for the Authority to administer occupancy and resale controls consistent with the Program by means of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to Owner and the public purposes to be achieved under the Program, Owner and Authority hereby agree as follows:

1. Definitions.

a. “Affordable Unit Cost” means a sales price that results in annual housing expenses that do not exceed 30% of the maximum income level for persons and families of [very low-, low-, or **moderate-**], adjusted for household size and as defined below.

b. “Area Median Income for Santa Clara County” means those income and eligibility levels determined, updated, and published each year by the California Department of Housing and Community Development, based on Santa Clara County median income levels, adjusted for household size.

c. “Persons and families of [very low-, low-, or **moderate-**] income” means persons and families whose income do not exceed [fifty percent (50%); eighty percent (80%); or **one hundred twenty percent (120%)**] of the Area Median Income for Santa Clara County, as adjusted for household size.

d. Persons and families meeting the definition set forth in Paragraph 1(c) above shall be referred to as “Eligible Households.”

2. Program Requirements.

a. **Affordability Restrictions.** Owner hereby covenants and agrees that during the term of this Agreement all of the requirements and restrictions of this Agreement shall apply, and the Property shall be sold or otherwise transferred only pursuant to the terms and conditions of this Agreement and only to (i) Eligible Households at a price not to exceed the Adjusted Resale Price, as defined in Paragraph 5, (ii) the Authority pursuant to Paragraph 3, or (iii) a permitted transferee pursuant to Paragraph 9.

b. **Disclosure.** DURING THE TERM OF THIS AGREEMENT THERE SHALL BE NO SALE OR OTHER TRANSFER OF THE PROPERTY WITHOUT THE WRITTEN CERTIFICATION BY THE AUTHORITY THAT THE TRANSFEREE QUALIFIES AS AN ELIGIBLE HOUSEHOLD AND THAT THE PROPERTY IS BEING TRANSFERRED AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE,

WHICH IS CAPPED AT THE AFFORDABLE UNIT COST AS DEFINED IN PARAGRAPH 1.a. ANY SALE OR OTHER TRANSFER OF THE PROPERTY IN VIOLATION OF THIS COVENANT SHALL BE VOID.

c. **Principal Residence Requirement.** OWNER COVENANTS AND AGREES THAT HE/SHE/THEY SHALL OCCUPY THE PROPERTY AS HIS/HER/THEIR PRINCIPAL RESIDENCE FOR THE DURATION OF HIS/HER/THEIR OWNERSHIP AND SHALL NOT RENT OR LEASE THE PROPERTY OR PORTION THEREOF DURING THE TERM OF THIS AGREEMENT. Without limiting the generality of the foregoing, any absence from the Property by Owner for a period of ninety (90) or more days shall be deemed an abandonment of the Property as the principal residence of Owner in violation of the conditions of this Paragraph. Upon request by the Authority made from time to time, the Owner of the Property shall submit an affidavit to the Authority certifying that the Property is the Owner's principal residence and provide such documents and other evidence as may be requested to verify Owner's compliance with this requirement. Abandonment of the Property shall constitute an Option Event (as defined in Paragraph 3.c below) and shall entitle the Authority to exercise its Option to purchase the Property.

3. **Option to Purchase.**

a. **Grant of Option to Purchase.** Owner hereby grants to the Authority an option ("Option") to purchase all of Owner's right, title and interest in and to the Property upon the occurrence of an Option Event (defined in Paragraph 3.c below), subject to the terms and conditions contained herein.

b. **Assignment of the Option.** The Authority may assign the Option to another government entity, a non-profit affordable housing provider or a person or family that qualifies as an Eligible Household. The Authority's assignment of the Option shall not extend any time limits contained herein with respect to the exercise period of the Option or the period within which the Property must be purchased.

c. **Events Giving Rise to Right to Exercise Option.** The Authority shall have the right to exercise its Option upon the occurrence of any of the following events (each, an "Option Event"):

- i. Receipt of a Notice of Intent to Transfer (defined in Paragraph 3.d.i below);
- ii. Any actual, attempted or pending sale, conveyance, transfer, lease or other attempted disposition of the Property or of any estate or interest therein, except as provided in Paragraph 10 below;
- iii. Any actual, attempted or pending encumbrance of the Property, including without limitation by way of mortgage or deed of trust, or by judgment, mechanics, tax or other lien, except as provided in Paragraph 9 below;

iv. Recordation of a notice of default and/or notice of sale pursuant to California Civil Code section 2924 (or successor provisions) under any deed of trust or mortgage with a power of sale encumbering the Property;

v. Commencement of a judicial foreclosure proceeding regarding the Property;

vi. Execution by Owner of any deed in lieu of foreclosure transferring ownership of the Property;

vii. Commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy statute, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, concerning the Owner; or

viii. Any violation by Owner of any provision of this Agreement including, without limitation, the conditions set forth in Paragraph 2 above.

d. Method of Exercising the Option.

i. **Notice of Intent to Transfer.** If Owner desires to sell, convey, transfer (other than pursuant to Paragraph 9), lease, encumber (other than pursuant to Paragraph 10) or otherwise dispose of the Property or of any estate or interest therein, no less than 120 days prior to the date of such proposed sale, conveyance, transfer, lease, encumbrance or disposition, Owner shall notify Authority in writing to that effect (the “Notice of Intent to Transfer”). The Notice of Intent to Transfer shall be in substantially the form attached hereto as Exhibit B. In the case of a proposed sale of the Property to an identified prospective purchaser, the Owner shall submit to the Authority, together with the Notice of Intent to Transfer, a copy of the prospective purchaser’s income certification, a list of all assets owned by the prospective purchaser, and other financial information reasonably requested by Authority, in a form approved by the Authority, along with the income certification to be provided to any lender making a loan to the prospective purchaser. The Authority may require documentation evidencing and supporting the income and other financial information contained in the certifications.

ii. **Notice of Exercise.** Upon the occurrence of any Option Event, the Authority may exercise its Option by delivering notice, pursuant to Paragraph 16 and within the time period specified in Paragraph 3(d) (iv), to Owner of Authority’s intent to exercise such Option pursuant to the terms of this Agreement (“Notice of Exercise”). The Notice of Exercise may be in the form attached hereto and incorporated herein as Exhibit C, or in such other form as the Authority may from time to time adopt. If the Option Event relates to the potential foreclosure of a mortgage under Paragraphs 3.c.iv, 3.c.v, or 3.c.vi, then the Authority shall also deliver the Notice of Exercise to the mortgagee or beneficiary under such mortgage, at such mortgagee’s or beneficiary’s address of record in the Office of the Recorder of Santa Clara County.

iii. **Notice of Consent to Transfer.** If the Authority does not exercise the Option, it may give its consent to the occurrence of the Option Event (“Consent to Transfer”). If the Option Event involves a proposed sale of the Property to a prospective

purchaser, the Authority's consent shall be conditioned upon (i) the proposed purchaser's qualification as an Eligible Household; (ii) the sale of the Property at a price not to exceed the Adjusted Resale Price; (iii) the proposed purchaser's execution of a Disclosure Statement in the form attached hereto as Exhibit F or such other form or forms as may be promulgated by the Authority ; and (iv) the proposed purchaser's assumption of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement in a form acceptable to Authority, or execution of an agreement substantially similar to this Agreement, within One hundred twenty (120) days after the Consent to Transfer has been delivered to Owner and recordation of such assumption agreement or substitute agreement. If the prospective purchaser (i) fails to qualify as an Eligible Household, (ii) fails to execute and deliver the Disclosure Statement to the Authority, or (iii) fails to execute and deliver to the Authority an assumption agreement or an agreement substantially similar to this Agreement within such one hundred twenty (120) day period, then the Consent to Transfer shall expire and the Authority may, at its option, either notify Owner of the disqualification, thereby entitling Owner to locate another purchaser who qualifies as Eligible Household, or exercise the Option, as if no Consent to Transfer had been delivered.

iv. **Time Period for Notice.** The Authority shall deliver a Consent to Transfer, if applicable, not later than ninety (90) days after the date that it receives notification of an Option Event. The Authority shall deliver a Notice of Exercise, if applicable, on or before the date which is the later to occur of the following: (i) one hundred twenty (120) days after the date that the Authority receives notification of an Option Event or (ii) thirty (30) days after a Consent to Transfer has expired. For purposes of computing commencement of the delivery periods, the Authority shall be deemed to have received notification of an Option Event on the date of delivery of a Notice of Intent to Transfer, pursuant to the terms of Paragraph 16 below or on the date it actually receives notice of default, summons and complaint or other pleading, or other writing specifically stating that an Option Event has occurred. The Authority shall have no obligation to deliver a Notice of Exercise or Consent to Transfer, and the applicable time period for exercise of the Option shall not commence to run, unless and until the Agency has received notification of an Option Event in the manner specified in this subparagraph. If there is a stay or injunction imposed by court order precluding the Authority from delivering its Consent to Transfer or Notice of Exercise within the applicable time period, then the running of such period shall cease until such time as the stay is lifted or the injunction is dissolved and the Authority has been given written notice thereof, at which time the period for delivery of a Consent to Transfer or Notice of Exercise shall again begin to run.

v. **Notice of Abandonment.** If the Authority fails to deliver a Notice of Exercise or Consent to Transfer within the time periods set forth in paragraph 3.d.iv, upon request by Owner, the Authority shall cause to be filed for recordation in the Office of the Recorder of Santa Clara County, a notice of abandonment, which shall declare that the provisions of the Option are no longer applicable to the Property. Unless Owner requests recordation of notice of abandonment within 30 days of the Authority's failure to deliver Notice of Exercise or Consent to Transfer, the Authority shall have no obligation to record the notice of abandonment. Upon recordation of a notice of abandonment, the Option shall terminate and have no further force and effect. If the Authority fails to record a notice of abandonment, the sole remedy of Owner shall be to obtain a judicial order instructing prompt recordation of such a notice.

vi. **Right to Reinstatement.** If the Option Event is the recordation of a notice of default, then the Agency shall be deemed to be Owner's successor in interest under California Civil Code Section 2924c (or successor section) solely for purposes of reinstatement of any mortgage on the Property that has led to the recordation of the notice of default. As Owner's deemed successor in interest, the Authority shall be entitled to pay all amounts of principal, interest, taxes, assessments, homeowners' association fees, insurance premiums, advances, costs, attorneys' fees and expenses required to cure the default. If the Agency exercises the Option, then any and all amounts paid by the Authority pursuant to this Paragraph shall be treated as Adjustments to the Base Resale Price for the Property, as defined in Paragraph 5 below.

vii. **Inspection of Property.** After receiving a Notice of Intent to transfer or delivering a Notice of Exercise, the Authority shall be entitled to inspect the Property one or more times prior to the close of escrow to determine the amount of any Adjustments to the Base Resale Price. Before inspecting the Property, the Authority shall give Owner not less than forty-eight (48) hours' written notice of the date, time and expected duration of the inspection. The inspection shall be conducted between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding court holidays, unless the parties mutually agree in writing to another date and time. Owner shall make the Property available for inspection on the date and at the time specified in the Authority's request for inspection.

viii. **Escrow.** Promptly after delivering a Notice of Exercise, the Authority shall open an escrow account for its purchase of the Property. Close of escrow shall take place on the date that is the later to occur of the following, (a) ninety (90) days after a Notice of Exercise has been delivered, or (b) ten (10) days after Owner has performed all acts and executed all documents required for close of escrow. Prior to the close of escrow, the Authority shall deposit into escrow with a title company of Authority's choosing, an amount equal to the Adjusted Resale Price as defined in Paragraph 5 below and all escrow fees and closing costs to be paid by Authority. Commissions (not to exceed 6% of the actual sales price), closing costs and title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of escrow, or as may otherwise be provided by mutual agreement. Owner agrees to perform all acts and execute all documents reasonably necessary to effectuate the close of escrow and transfer of the Property to the Authority.

ix. **Proceeds of Escrow; Removal of Exceptions to Title.** Prior to close of escrow, Owner shall cause the removal of all exceptions to title to the Property that were recorded after the Effective Date with the exception of (i) taxes for the fiscal year in which the escrow for this transaction closes, which taxes shall be prorated as between Owner and Authority as of the date of close of escrow; (ii) quasi-public utility, public alley, public street easements, and rights of way of record, and (iii) such other liens, encumbrances, reservations and restrictions as may be approved in writing by Authority ("Permitted Exceptions").

The purchase price deposited into escrow by the Authority shall be applied first to the payment of any and all Permitted Encumbrances (as defined in Paragraph 10) recorded against the Property in order of lien priority, and thereafter to the payment of Owner's share of escrow fees and closing costs. Any amounts remaining after the purchase price has been so applied, if any, shall be paid to Owner upon the close of escrow. If the purchase price is

insufficient to satisfy all liens and encumbrances recorded against the Property, the Owner shall deposit into escrow such additional sums as may be required to remove said liens and encumbrances. In the event that the Authority agrees to proceed with close of escrow prior to the date that Owner has caused all exceptions to title recorded after the Effective Date other than Permitted Exceptions to be removed, then Owner shall indemnify, defend and hold Authority harmless from any and all costs expenses or liabilities (including attorneys' fees) incurred or suffered by Authority that relate to such exceptions and their removal as exceptions to title to the Property.

4. **Base Resale Price.** Prior to adjustment pursuant to Paragraph 5 the base resale price ("Base Resale Price") of the Property shall be the lowest of:

a. **Median Income.** The original price("Base Price") paid by Owner for acquisition of the Property pursuant to the Program as set forth on page 1 of this Agreement, increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the median household income ("Median Income") for Santa Clara County published by the California Department of Housing and Community Development, Division of Housing Policy Development, between the Effective Date and the date that the Authority receives notification of an Option Event; or

b. **Index Price.** The Base Price increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index") between the Recording Date and the date that the City receives notification of an Option Event; or

c. **Fair Market Value.** The fair market value of the Property as determined by an appraiser selected and paid for by Owner and approved in writing by the Authority.

5. **Adjustments to Base Resale Price.** Subject to the Affordable Unit Cost restriction described in subparagraph (d) below, the Base Resale Price shall be increased or decreased, as applicable, by the following adjustment factors ("Adjustment"):

a. **Capital Improvements.** An increase for capital improvements made to the Property, but only if the amount of such improvements has been previously approved in writing by the Authority after Owner has submitted original written documentation of the cost to the Authority for verification. The amount of the Adjustment shall equal to the depreciated value of any such capital improvements.

b. **Damages.** A decrease by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by the Authority upon Authority's exercise of its Option hereunder, including, without limitation, amounts attributed to cleaning; painting; replacing worn carpeting and draperies; making necessary structural, mechanical, electrical and plumbing repairs; and repairing or replacing built-in appliances and fixtures. Owner hereby covenants to, at Owner's expense, maintain the Property in the same condition as in existence on the date of Authority's Notice of Exercise, reasonable wear and tear excepted.

c. **Advances by the Authority.** A decrease in an amount equal to the sum of all costs advanced by the Authority for the payment of mortgages, taxes, assessments, insurance premiums, homeowner's association fees and/or associated late fees, costs, penalties, interest, attorneys' fees, pest inspections, resale inspections and other expenses related to the Property, which Owner has failed to pay or has permitted to become delinquent.

d. **Adjusted Resale Price Not to Exceed Affordable Unit Cost.** The Base Resale Price as adjusted, is hereinafter referred to as the "Adjusted Resale Price." Notwithstanding any other provision hereof to the contrary, in no event shall the Adjusted Resale Price exceed the Affordable Unit Cost.

6. **Priority and Effectiveness of the Option.**

a. **Recordation.** This Agreement shall be recorded in the Office of the Recorder of the County of Santa Clara on or as soon as practicable after the Effective Date. The Option shall have priority over any subsequent sale, conveyance, transfer, lease or other disposition or encumbrance of the Property, or of any estate or interest therein, and in the event of exercise of the Option by Authority, the Authority shall take the Property subject only to Permitted Exceptions. Except as otherwise provided in Paragraph 7.a, the exercise of the Option by the Authority at any time and from time to time shall not extinguish the Option or cause a merger of the Option into any estate or other interest in the Property, and the Option shall continue to exist and be effective with respect to the Property against any and all subsequent owners in accordance with the terms and conditions hereof.

b. **Request for Notice of Default.** The Authority shall file a Request for Notice of Default for recordation in the Office of the Recorder of the County of Santa Clara promptly upon execution of this Agreement (see Exhibit E).

7. **Survival of Option Upon Transfer.**

a. **In General.** The Authority's right to exercise the Option shall survive any transfer of the Property by Owner. Each transferee, assignee or purchaser of the Property during the term hereof shall be required to execute an agreement substantially in the form of this Agreement, provided that the term of any such agreement shall be for the duration of the term hereof as of the date of any such transfer, assignment or sale. The Option may be exercised against the Property throughout the term hereof, regardless of whether the Property is owned, possessed or occupied by Owner or any successor, transferee, assignee, heir, executor, or administrator of Owner, regardless of household income (if applicable) including a debtor-in-possession, debtor or trustee pursuant to Title 11 of the United States Code. Notwithstanding the foregoing, the Option shall not survive (i) the sale and transfer of the Property to a third party purchaser pursuant to a judicial or non-judicial foreclosure or a deed-in-lieu of foreclosure under a power of sale contained in a mortgage or deed of trust held by an institutional lender, provided that the Authority has received timely notice of such Option Event and has failed to either reinstate said mortgage or deed of trust or exercise its Option, or (ii) the recording of an instrument conveying Owner's interest in the Property to the Authority, or its assignee, provided the conveyance is in accordance with the terms of this Agreement.

b. **HUD Insured Mortgage.** If Owner has acquired the Property by a mortgage insured by the Secretary of the United States Department of Housing and Urban Development, and a notice of default has been recorded pursuant to California Civil Code Section 2924 (or successor provisions), then this Option shall automatically terminate if title to the Property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the insured mortgage is assigned to the Secretary.

8. **Voidable Transfers.** As long as the Option has not been abandoned pursuant to Paragraph 3.d.v, any actual or attempted sale, conveyance, transfer or other disposition of the Property, or of any estate or interest therein, in violation of the terms and conditions of this Agreement, shall be voidable at the election of the Authority.

9. **Permitted Transfers.** Provided that the transferee assumes, within 30 days of a written request by the Authority, all of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement in a form acceptable to Authority, or at Authority's election, execution of an agreement substantially similar to this Agreement, the following transfers ("Permitted Transfers") of title to the Property, or of any estate or interest therein, shall not be subject to the Authority's prior approval, shall not trigger the exercise of the Option, and shall not be considered Option Events: (a) the creation of a lien or other encumbrance subordinate to Lender's security instrument which does not relate to a transfer of rights of occupancy; (b) the creation of a purchase money security interest for household appliances; (c) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety; (d) a transfer to a relative resulting from the death of a Borrower; (e) a transfer where a spouse or child of a Borrower becomes an owner of the Property; (f) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or incidental property settlement agreement by which the spouse of a Borrower becomes a sole owner of the Property; and (g) a transfer into an inter vivos trust in which a Borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the Property, and the Owner continues to occupy the property as his/her primary residence; (h) an acquisition of title, or of any interest therein, in conjunction with marriage; or (i) any good faith transfer to an Eligible Household Notwithstanding any Permitted Transfer, the Option shall remain effective with respect to the Property for the duration of the term hereof.

10. **Permitted Encumbrances and Refinancing.** This Option shall not become exercisable as the result of Owner's encumbering the Property for the purpose of securing financing to purchase the Property pursuant to the Program, to refinance indebtedness incurred to purchase the Property pursuant to the Program, provided that the refinance shall not provide Owner with the ability to obtain cash advances or other "cash out" options, unless for the purpose of making necessary repairs to the Property in an amount approved by Authority pursuant to Paragraph 5a ("Permitted Encumbrances"). The maximum aggregate amount of such encumbrances outstanding at any time (the "Permitted Encumbrance Amount") shall not exceed an amount equal to ninety percent (90%) of the Base Resale Price calculated as provided in Paragraph 4. The Permitted Encumbrance Amount shall be calculated as if the Authority had received notification of an Option Event on the earlier of (a) the date on which the deed of trust or mortgage securing the indebtedness is filed for record in the Office of the Recorder of the

County of Santa Clara, or (b) the date the Authority receives Notice of Intent to Transfer pursuant to Paragraph 3.d.i above. Owner hereby covenants and agrees that he/she/they shall use his/her/their best efforts to ensure that any deed of trust or other agreement encumbering the property shall include provisions providing for notice to be delivered to Authority of any default thereunder and for Authority's right to cure such default at Authority's election.

11. 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.

12. Limits on Liability. In no event shall the Authority become liable or obligated in any manner to Owner by reason of the assignment of this Agreement or the Option, nor shall Authority be in any way liable or obligated to Owner for any failure of the Authority's assignee to consummate a purchase of the Property or to comply with the terms of this Agreement or the Option, or any escrow instructions or agreement for the purchase of the Property.

13. Insurance Proceeds and Condemnation Award. In the event the Property is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild the Property, or, in the event of condemnation, if the proceeds thereof are distributed to Owner, any surplus of proceeds remaining after payment of the senior liens and encumbrances on the Property shall be distributed as follows: that portion of the surplus up to, but not to exceed, the net amount Owner would have received pursuant to Paragraph 3.d.ix had the Authority exercised its Option on the date of the destruction of condemnation valuation date shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to the Authority.

14. Effective Date. The rights and obligations of the Authority and Owner set forth in this Agreement shall be effective as of the Original Date.

15. Term of Agreement and Option. The restrictions contained herein and the Authority's option to purchase the Property shall continue until **May 28, 2054** which date is forty-five (45) years from the date of the sale of the Property to Owners.

16. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

- (a) Personal delivery, in which case notice shall be deemed delivered upon receipt;

(b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;

(c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or

(d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

Agency: City of Milpitas Housing Authority
455 Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

Owner: **Neil Hilario**
600 S. Abel Street #208
Milpitas, CA 95035

17. Remedies Upon Breach.

a. **Specific Performance.** Owner acknowledges that any breach in the performance of its obligations under this Agreement shall cause irreparable harm to the Authority. Owner agrees that the Authority is entitled to equitable relief in the form of specific performance upon its exercise of the Option, and that an award of damages shall not be adequate to compensate the Authority for Owner's failure to perform according to the terms of this Agreement.

b. **Other Remedies.** Authority shall have all of the remedies provided for at law or equity.

18. General Provisions.

a. **Attorneys' Fees.** If either party initiates legal proceedings to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and costs in additions to any other recovery to which it is entitled under this Agreement.

b. **No Joint Venture; No Third-Party Beneficiary.** No joint venture or other partnership exists or is created between the Parties by virtue of this Agreement. Except as expressly stated herein, this Agreement does not benefit any third party.

c. **Successors; Assignment.** This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, executors, administrators, successors and assigns. Authority shall have the right to assign all of its rights and obligations under this Agreement without the consent of Owner.

d. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior negotiations, correspondence, understandings and agreements with respect thereto. There are no representations, promises, agreements or other understandings between the Parties relating to the subject matter of this Agreement that are not expressed herein. This Agreement may be modified only by an instrument in writing executed by the Parties or their respective successors in interest.

e. **Survival; No Merger.** All of the terms, provisions, representations, warranties and covenants of the Parties under this Agreement shall survive the close of escrow of any sale of the Property and shall not be merged in any deed transferring the Property.

f. **Authority And Execution.** Each Party represents and warrants that it has full power and authority to enter into this Agreement and to undertake all of its obligations hereunder, that each person executing this Agreement on its behalf is duly and validly authorized to do so.

g. **Severability.** The invalidity or unenforceability of any term or provision of this Agreement shall not impair or affect the remainder of this Agreement, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

h. **Waiver; Modification.** No waiver or modification of this Agreement or any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Party to be charged therewith. No evidence or any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the Parties arising out of or affecting this Agreement or the rights or obligations of any Party hereunder, unless such waiver or modification is in writing and duly executed as aforesaid. The provisions of this section may not be waived except as herein set forth. A waiver or breach of any covenant, condition or provision of this Agreement shall not be deemed a waiver of any other covenant, condition or provision hereof.

i. **Construction.** The section headings and captions used in this Agreement are for convenience of reference only and shall not modify, define, limit or amplify any of the terms or provisions hereof. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it.

j. **Governing Law.** This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of California.

k. **Time of the Essence.** Time is of the essence in this Agreement as to each provision in which time is an element of performance.

l. **Further Assurances.** Each Party will, upon reasonable request of the other Party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents as may be reasonably necessary in order to fulfill the intents and purposes of this Agreement.

m. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

OWNER(S):

(Name) Neil Hilario

Date

APPROVED AS TO FORM:

AUTHORITY:

CITY OF MILPITAS HOUSING
AUTHORITY

Michael Mutalipassi, Housing Authority
Counsel

Steven G. McHarris, Executive Director

EXHIBIT A
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MILPITAS,
COUNTY OF SANTA CLARA. STATE OF CALIFORNIA. AND IS DESCRIBED AS
FOLLOW:

ASSESSOR'S PARCEL NO. 086-61-177

Or

LEGAL DESCRIPTION

EXHIBIT B
FORM: NOTICE OF INTENT TO TRANSFER

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

To: CITY OF MILPITAS HOUSING AUTHORITY
 455 East Calaveras Boulevard
 Milpitas, CA 95035
 Attn: Authority Executive Director

Date: _____

Re: Notice of Intent to Transfer

Pursuant to the terms of the Resale Restriction and Option to Purchase Agreement, dated _____, the undersigned Owner(s), _____, hereby give(s) notice of his/her/their intent to transfer the property located at _____, Milpitas, California (the "Property"). Owner may be contacted at the Property or at the following address:

Owner's daytime telephone number is (____) _____

[If applicable: The proposed transfer of the Property is to the following person(s):

Name: _____

Address: _____

Telephone: (____) _____]

The proposed transfer is (check one):

☐ Sale

☐ Other Specify: _____

Owner(s) signature(s):

EXHIBIT C
FORM: NOTICE OF EXERCISE

Date: _____

To: _____
Owner or Transferee

Address

Re: Notice of Exercise

The City of Milpitas Housing Authority ("Authority") hereby gives notice that it is exercising its option to purchase the real property located at _____, Milpitas, California. The option has been granted to the Authority pursuant to the Resale Restriction and Option to Purchase Agreement between Owner and the Authority dated _____ and recorded on _____ as Instrument No. _____. [The Authority has assigned its option to purchase the real property to _____.] An escrow for the purchase will be opened with the Chicago Title Company.

City of Milpitas Housing Authority

By: _____

Its: _____

EXHIBIT D**BASE RESALE PRICE WORKSHEET**

Date: _____

Owner: _____

Address: _____

Purchase Price: _____

Date of Purchase: _____

Years Owned: _____ years

METHOD #1: CALCULATION BASED ON INCREASE IN MEDIAN INCOME***

Present Median Income: \$ _____

Effective Date: _____

Family of four, County of Santa Clara
(at time of sale of unit)

Original Median Income: \$ _____

Effective Date: _____

Family of four, County of Santa Clara
(at time of purchase of unit)

Amount of Increase: _____

Family of four, County of Santa Clara
(Present median income minus original median income)

Increase in Price: _____ x _____ x _____ = _____

Method #1 Resale Price: _____ + _____ = _____

METHOD #2: CALCULATION BASED ON INCREASE IN CONSUMER PRICE INDEX

Present CPI: _____

Effective Date: _____

Original CPI: _____

Effective Date: _____

Rate of Increase: _____ per annum

Increase in Price: _____ x _____ x _____ = _____

Method #2 Resale Price: _____ + _____ = _____

Based on the above, the base resale price as of this date, _____, is: _____

By: _____

EXHIBIT E
REQUEST FOR NOTICE OF DEFAULT

Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

City of Milpitas Housing Authority
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Authority Executive Director

(Space Above This Line For Recorder's Use Only)

REQUEST FOR NOTICE UNDER SECTION 2924b CIVIL CODE

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust recorded as Instrument No. _____ on _____, ____, in the Official Records of Santa Clara County, California, and describing land therein as:

executed by _____, as Trustor, in which
_____ is named as Beneficiary, and
_____, as Trustee, be mailed to the City of Milpitas Housing
Authority, 455 Calaveras Boulevard, Milpitas, California _____, Attn: _____.

By: _____

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____, a Notary Public in and for said county and state, personally appeared _____
_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (This area for official notarial seal)

EXHIBIT FDISCLOSURE STATEMENT

THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY YOU ARE BUYING. EXCEPT FOR A TRANSFER TO THE CITY FOLLOWING CITY'S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN "ELIGIBLE HOUSEHOLD" AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE WHICH IS CAPPED AT AN "AFFORDABLE HOUSING COST."

THIS MEANS THAT YOU MAY NOT SELL THE PROPERTY FOR MARKET VALUE TO WHOMEVER YOU LIKE.

THESE RESTRICTIONS WILL BE IN EFFECT UNTIL _____.
SALE OF THE PROPERTY IN VIOLATION OF THE RESTRICTIONS SHALL BE VOIDABLE AT THE ELECTION OF THE CITY.

TO DETERMINE WHO AN ELIGIBLE HOUSEHOLD IS, AND WHAT THE ADJUSTED RESALE PRICE AND AFFORDABLE HOUSING COST ARE, YOU SHOULD CONTACT THE MILPITAS HOUSING AUTHORITY (FORMER CITY OF MILPITAS REDEVELOPMENT AGENCY).

YOU SHOULD ALSO READ THE RESALE RESTRICTION AND OPTION TO PURCHASE AGREEMENT RECORDED AGAINST THE PROPERTY. YOU MAY OBTAIN A COPY FROM THE MILPITAS HOUSING AUTHORITY OR FROM THE ESCROW COMPANY.

I HAVE READ THE FOREGOING AND I UNDERSTAND WHAT IT MEANS.

 (Owners) Neil Hilario

 Date



CARBON MONOXIDE DETECTOR NOTICE

(C.A.R. Form CMD, 4/12)

Property Address: **600 S Abel St Unit 208, Milpitas, CA95014 95035-6968**

1. INSTALLATION OF CARBON MONOXIDE DETECTORS:

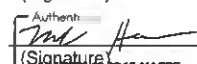
- A. Requirements:** California law (Health and Safety Code sections 13260 to 13263 and 17296 to 17296.2) requires that as of July 1, 2011, all existing single-family dwellings have carbon monoxide detectors installed and that all other types of dwelling units intended for human occupancy have carbon monoxide detectors installed on or before January 1, 2013. The January 1, 2013 requirement applies to a duplex, lodging house, dormitory, hotel, condominium, time-share and apartment, among others.
- B. Exceptions:** The law does not apply to a dwelling unit which does not have any of the following: a fossil fuel burning heater or appliance, a fireplace, or an attached garage. The law does not apply to dwelling units owned or leased by the State of California, the Regents of the University of California or local government agencies. Aside from these three owner types, there are **no other owner exemptions** from the installation requirement; it applies to all owners of dwellings, be they individual banks, corporations, or other entities. There is no exemption for REO properties.

- 2. DISCLOSURE OF CARBON MONOXIDE DETECTORS:** The Health and Safety Code does not require a disclosure regarding the existence of carbon monoxide detectors in a dwelling. However, a seller of residential 1-4 property who is required to complete a Real Estate Transfer Disclosure Statement, (C.A.R. Form TDS) or a Manufactured Home and Mobile home Transfer Disclosure Statement (C.A.R. Form MHTDS) must use section II A of that form to disclose whether or not the dwelling unit has a carbon monoxide detector.

- 3. COMPLIANCE WITH INSTALLATION REQUIREMENT:** State building code requires at a minimum, placement of carbon monoxide detectors in applicable properties outside of each sleeping area, and on each floor in a multi-level dwelling but additional or different requirements may apply depending on local building standards and manufacturer instructions. An owner who fails to install a carbon monoxide detector when required by law and continues to fail to install the detector after being given notice by a governmental agency could be liable for a fine of up to \$200 for each violation. A transfer of a property where a seller, as an owner, has not installed carbon monoxide detectors, when required to do so by law, will not be invalidated, but the seller/owner could be subject to damages of up to \$100, plus court costs and attorney fees. Buyer and Seller are each advised to consult with their own home inspector, contractor or building department to determine the exact location for installation of carbon monoxide detectors. Buyer is advised to consult with a professional of Buyer's choosing to determine whether the property has carbon monoxide detector(s) installed as required by law, and if not to discuss with their counsel the potential consequences.

- 4. LOCAL REQUIREMENTS:** Some localities maintain their own retrofit or point of sale requirements which may include the requirement that a carbon monoxide detector be installed prior to a transfer of property. Therefore, it is important to check the local city or county building and safety departments regarding point of sale or retrofit requirements when transferring property.

The undersigned hereby acknowledge(s) receipt of a copy of this Carbon Monoxide Detector Notice.

Seller/Landlord		Milpitas Housing Authority	Date
	(Signature)	(Print Name)	
Seller/Landlord			Date
	(Signature)	(Print Name)	
Buyer/Tenant		Neil Hilario	Date 10/11/2022
	(Signature)	(Print Name)	
Buyer/Tenant			Date
	(Signature)	(Print Name)	

© 2012, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats.

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.



Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, LLC.
a subsidiary of the California Association of REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020



CMD 4/12 (PAGE 1 OF 1)

CARBON MONOXIDE DETECTOR NOTICE (CMD PAGE 1 OF 1)



CALIFORNIA
ASSOCIATION
OF REALTORS®

MEGAN'S LAW DATA BASE DISCLOSURE

Regarding Registered Sex Offenders
(C.A.R. Form DBD, Revised 11/08)

The following terms and conditions are hereby incorporated in and made a part of the: ☒ Residential Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ other _____

_____ , dated **October 6, 2022** ,

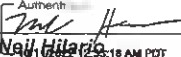
on property known as: **600 S Abel St Unit 208, Milpitas, CA 95014 95035-6968** ,

in which **Neil Hilario** is referred to as Buyer/Tenant

and **Milpitas Housing Authority** is referred to as Seller/Landlord.

Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.

(Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)

Buyer/Tenant  Date **10/11/2022**

Buyer/Tenant _____ Date _____

Seller/Landlord  Date _____

Milpitas Housing Authority

Seller/Landlord _____ Date _____

© 2008, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats.
THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.
This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.



Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, LLC.
a subsidiary of the California Association of REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020

DBD REVISED 11/08 (PAGE 1 OF 1)

MEGAN'S LAW DATA BASE DISCLOSURE (DBD PAGE 1 OF 1)

Bayview Residential Brokerage, 51 E. Campbell Ave Suite 110 Campbell CA 95008
Glenda Queensbury

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201

Phone: (408) 921-2257

Fax: (408) 715-0278

www.lwof.com



600 S Abel



CALIFORNIA
ASSOCIATION
OF REALTORS®

WATER HEATER AND SMOKE DETECTOR STATEMENT OF COMPLIANCE (C.A.R. Form WHSD, Revised 11/10)

Property Address: **600 S Abel St Unit 208, Milpitas, CA95014 95035-6968**

NOTE: A seller who is not required to provide one of the following statements of compliance is not necessarily exempt from the obligation to provide the other statement of compliance.

WATER HEATER STATEMENT OF COMPLIANCE

- STATE LAW:** California Law requires that all new and replacement water heaters and existing residential water heaters be braced, anchored or strapped to resist falling or horizontal displacement due to earthquake motion. "Water heater" means any standard water heater with a capacity of no more than 120 gallons for which a pre-engineered strapping kit is readily available. (Health and Safety Code §19211d). Although not specifically stated, the statute requiring a statement of compliance does not appear to apply to a properly installed and bolted tankless water heater for the following reasons: There is no tank that can overturn; Pre-engineered strapping kits for such devices are not readily available; and Bolting already exists that would help avoid displacement or breakage in the event of an earthquake.
- LOCAL REQUIREMENTS:** Some local ordinances impose more stringent water heater bracing, anchoring or strapping requirements than does California Law. Therefore, it is important to check with local city or county building and safety departments regarding the applicable water heater bracing, anchoring or strapping requirements for your property.
- TRANSFEROR'S WRITTEN STATEMENT:** California Health and Safety Code §19211 requires the seller of any real property containing a water heater to certify, in writing, that the seller is in compliance with California State Law. If the Property is a manufactured or mobile home, Seller shall also file a required Statement with the Department of Housing and Community Development.
- CERTIFICATION:** Seller represents that the Property, as of the Close Of Escrow, will be in compliance with Health and Safety Code §19211 by having the water heater(s) braced, anchored or strapped in place, in accordance with those requirements.

Seller  Milpitas Housing Authority Date _____
(Signature) (Print Name)
Seller _____ Date _____
(Signature) (Print Name)
The undersigned hereby acknowledge(s) receipt of a copy of this document.
Buyer  Neil Hilario Date 10/11/2022
(Signature) (Print Name)
Buyer _____ Date _____
(Signature) (Print Name)

SMOKE DETECTOR STATEMENT OF COMPLIANCE

- STATE LAW:** California Law requires that (i) every single-family dwelling and factory built housing unit sold on or after January 1, 1986, must have an operable smoke detector, approved and listed by the State Fire Marshal, installed in accordance with the State Fire Marshal's regulations (Health and Safety Code §13113.8) and (ii) all used manufactured or mobilehomes have an operable smoke detector in each sleeping room.
- LOCAL REQUIREMENTS:** Some local ordinances impose more stringent smoke detector requirements than does California Law. Therefore, it is important to check with local city or county building and safety departments regarding the applicable smoke detector requirements for your property.
- TRANSFEROR'S WRITTEN STATEMENT:** California Health and Safety Code §13113.8(b) requires every transferor of any real property containing a single-family dwelling, whether the transfer is made by sale, exchange, or real property sales contract (installment sales contract), to deliver to the transferee a written statement indicating that the transferor is in compliance with California State Law concerning smoke detectors. If the Property is a manufactured or mobile home, Seller shall also file a required Statement with the Department of Housing and Community Development (HCD).
- EXCEPTIONS:** Generally, a written statement of smoke detector compliance is not required for transactions for which the Seller is exempt from providing a transfer disclosure statement.
- CERTIFICATION:** Seller represents that the Property, as of the Close Of Escrow, will be in compliance with the law by having operable smoke detector(s) (i) approved and listed by the State Fire Marshal installed in accordance with the State Fire Marshal's regulations Health and Safety Code §13113.8 or (ii) in compliance with Manufactured Housing Construction and Safety Act (Health and Safety Code §18029.6) located in each sleeping room for used manufactured or mobilehomes as required by HCD and (iii) in accordance with applicable local ordinance(s).

Seller  Milpitas Housing Authority Date _____
(Signature) (Print Name)
Seller _____ Date _____
(Signature) (Print Name)
The undersigned hereby acknowledge(s) receipt of a copy of this Water Heater and Smoke Detector Statement of Compliance.
Buyer  Neil Hilario Date 10/11/2022
(Signature) (Print Name)
Buyer _____ Date _____
(Signature) (Print Name)

© 1991-2010, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.



Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, LLC.
a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020

WHSD REVISED 11/10 (PAGE 1 OF 1)

WATER HEATER AND SMOKE DETECTOR STATEMENT OF COMPLIANCE (WHSD PAGE 1 OF 1)



City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From*		To*	
	Account	Amount	Account	Amount
Check one: ☐ Budget Appropriation ☐ Budget Transfer	295-3770	\$314,973	295-2909	\$314,973

1. Adopt the resolution authorizing the Executive Director of the Milpitas Housing Authority to execute documents for the sale of the residential property located at 600 S. Abel Street Unit #208 in the amount of \$314,973.
2. Approve related budget amendments due to the sale of the property located at 600 S. Abel Street Unit #208 in the amount of \$314,973.

BACKGROUND:

On February 1, 2012, Assembly Bill X1 26 resulted in the dissolution of all Redevelopment Agencies throughout the State. In anticipation of the dissolution, the Milpitas City Council adopted Resolution No. 8062 in February 2011. The Resolution established the City of Milpitas Housing Authority as the Successor Housing Agency to the Milpitas Redevelopment Agency. Thirteen real properties were transferred from the former Redevelopment Agency to the Milpitas Housing Authority. The transferred properties and its current disposition are summarized in the table below.

	Address	Developed with Affordable Housing	Sold by Housing Authority	Retained by Housing Authority
1	340 Celebration Dr.	X	X	
2	600 S. Abel St. #208	X		X
3	1101 S. Main St. #313	X	X	
4	254 Parc Place Dr.	X	X	
5	1432 S. Main St.			X
6	1434 S. Main St.			X
7	1436 S. Main St.			X
8	1438 S. Main St.			X
9	1438A S. Main St.			X
10	1440 S. Main St.			X
11	1444 S. Main St.			X
12	1446 S. Main St.			X
13	1504-1620 S. Main St.	X	X	

Health and Safety Code section 34176.l(e) requires that all properties acquired by the Redevelopment Agency prior to February 1, 2012, and transferred to the Housing Authority, be developed within certain time frames. According to Health and Safety Code section 33334.16, within five years, from the date the property is acquired, activities must be initiated consistent with the development of the property for affordable housing purposes, or the property must be sold, and the proceeds deposited into the City's Low and Moderate Income Housing Asset Fund. This Health and Safety Code Section also allows for one additional period not to exceed five years.

Properties located at 1432-1446 S. Main Street, also known as Parcel 1, will be sold in Quarter 2 of 2023 (Properties 5-12 in the chart above).

The purpose of this agenda is to authorize the sale of 600 S. Abel Street Unit #208 to be in compliance with the California Department of Housing and Community Development.

ANALYSIS:

There is one remaining residential unit of the thirteen total properties owned by the Housing Authority for sale (Property 2 on the chart above). The residential property located at 600 S. Abel Street Unit #208 was being rented to a low-income household at a low-income rent level. The tenants of this property signed a Lease Agreement with an Option to Purchase from the Housing Authority. The Option to Purchase provided the tenants with the option to purchase the unit. The lease, which was executed in 2013, expired in 2014. Tenants have been on month-to-month since that time.

Housing staff has periodically reached out to the tenants about purchasing their unit. Staff worked with the remaining tenants to purchase their unit so the sale to low-income household occurred before August 31, 2022. The Option to Purchase was not exercised by the tenants of 600 S. Abel Street Unit #208.

On October 4, 2022, the Housing Division held a lottery to procure an eligible buyer for 600 S. Abel Street Unit #208 (Attachment 1). The application period to apply for the unit was from August 15, 2022, to August 26, 2022. The lottery, was a fair and transparent process, resulting in 7 applicants participating in the lottery.

The initial five-year period to dispose of the property expired on August 31, 2017. The Housing Authority Commission adopted a resolution approving a one-time expiration date extension to August 31, 2022. Due to delays caused by a lack of staffing resources, the City did not meet the deadline to dispose of 600 S. Abel Street Unit #208 by this date. The sale of this property will bring the City into compliance.

600 S. Abel Street #208 Unit Purchase

In total, 10 applications were received by the Housing Division for the 600 S. Abel Street Unit #208 Below Market Rate property. Of the 10 applications received, 7 applications were eligible to proceed to the lottery phase. A buyer was procured at the lottery held on October 4th, 2022. To be eligible for the lottery phase, applicants must meet all requirements and provide the necessary supporting documents.

The Below Market Rate program requirements for 600 S. Abel Street Unit #208 are as follows:

- Must be a first-time home buyer.
- Must be an eligible "Moderate-Income Household."
- Must have a household size of 1-3.
- Must have the ability to provide at least a 5-10% down payment.
- Must provide a Pre-Qualification Letter.
- Must provide necessary supporting documents to validate application details (W2 forms, lease agreement, paycheck stubs, and tax documents).

The following procedure describes the steps in assigning the number of lottery tickets to applicants:

1. Each applicant receives one lottery ticket as a baseline for submitting their application.
2. Each preference category is assigned additional tickets based on the weighting for that preference category.
3. Each applicant identifies which preferences apply to their household. These preferences are then used to determine how many additional lottery tickets each household will receive. The intent of the weighted number of tickets is to prioritize the selection of a household that meets most of the City Council's priorities.

Applicants	Number of Lottery Tickets
All applicants	Receive 1 lottery ticket
Milpitas residents	Receive 5 additional lottery tickets
Former Milpitas residents who have been displaced	Receive 3 additional lottery tickets
Households with children enrolled in the Milpitas Unified School District (MUSD) McKinney-Vento Homeless Assistance Act	Receive 3 additional lottery tickets
Applicants employed within the boundaries of the city of Milpitas	Receive 1 additional lottery ticket

A total of 45 tickets were distributed to 7 applicants for the lottery. The selected buyer was assigned 7 lottery tickets as they are an eligible participant (1 lottery ticket), Milpitas Resident (5 additional tickets), and work in Milpitas (1 additional ticket).

As part of the sale, the homebuyer, will be required to sign the City's Resale Restriction Agreement, Option to Purchase, and adhere to its owner-occupied requirement. The Resale Restriction will limit the appreciation in the unit and will give the City the purchase option on the unit if the unit falls into default. Staff will monitor the unit to ensure that it will continue to be the primary residence of the occupant through the required Annual Occupancy form.

FISCAL IMPACT:

Proceeds from the sale will be posted into the Housing Authority Fund for future appropriation.

California Environmental Quality Act (CEQA):

The recommendations have no potential for causing a significant effect on the environment and are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

RECOMMENDATION:

1. Adopt the resolution authorizing the Executive Director of the Milpitas Housing Authority to execute documents for the sale of the residential property located at 600 S. Abel Street Unit #208 in the amount of \$314,973.
2. Approve related budget amendments due to the sale of the property located at 600 S. Abel Street Unit #208 in the amount of \$314,973.

Attachment(s):

1. Sale of 600 S. Abel Street Unit #208 Resolution
2. Exhibit A of Resolution, Residential Purchase Agreement
3. Exhibit B of Resolution, Resale Restriction Agreement and Option to Purchase
4. Exhibit C of Resolution, Disclosure Statements
5. 600 S. Abel Street Unit #208 Budget Change Form

☐ Check if City Council Approval required.

Meeting Date: December 06, 2022

Requested by:	Department Head: Alex Andrade	Date: December 06, 2022
Reviewed by:	Finance Director: Lauren Lai	Date: December 06, 2022
Date approved by City Council, if required:		Confirmed by:

FI/24786/V

Form 30-222 (Rev. 1/92)



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Appointing Roger Lee as Interim Public Works Director (Liz Brown, Interim Human Resources Director, 408-586-3086)
Category:	Leadership and Support Services
Meeting Date:	12/6/2022
	<u>Recommendation:</u> Adopt a resolution appointing Roger Lee as Interim Public Works Director in accordance with California Government Code Sections 7522.56 and 21221(h) and approve, and authorize the City Manager to execute, an employment agreement with Roger Lee.

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, subject to exceptions that do not apply in this instance. In addition to the requirements of PEPR, 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. Staff has worked with the City Attorney to ensure that additional requirements, such as ones that relate to compensation and hours worked, will be met.

ANALYSIS:

On November 15, 2022, The City Council approved appointing Roger Lee as the Interim Public Works Director; however, the resolution attached to the staff report had inadvertent clerical errors. Therefore, staff is requesting that Council approve the same action with the clerical errors corrected.

Roger Lee retired from the City of Cupertino and served as Public Works Director position with more than 13 years of Public Works leadership experience in the public sector. His last day of work was December 30, 2021, thereby satisfying the statutory 180-day “wait” period. Given his Public Works background, Mr. Lee has significant experience and knowledge related to the management and operation of the Public Works Department.

Consistent with the requirements of Government Code Section 21221(h), the City has initiated a recruitment for a regular appointment to the Public Works Director vacancy. Staff recommends Mr. Lee be appointed to serve as the Interim Public Works Director pending the conclusion of the recruitment process for a regular appointment to assist in the transition of leadership in the Public Works Department. Included in the Council’s agenda packet is the required resolution to appoint a retiree pursuant to Government Code Sections 7522.56 and 21221(h) and the employment agreement.

POLICY ALTERNATIVE(S):

Alternative 1: Do not adopt the resolution appointing Roger Lee as Interim Public Works Director and do not approve and authorize the City Manager to execute, a retroactive employment agreement with Mr. Lee.

Pros: None

Cons: This will create difficulty in the smooth transition of leadership in the Public Works Department.

Reason for Not Recommending: This will create difficulty in the smooth transition of leadership in the Public Works Department.

FISCAL IMPACT:

The compensation paid to retirees cannot be less than the minimum nor exceed the maximum hourly rate paid to other employees performing comparable duties and is limited to 960 hours per fiscal year. Accordingly, the hourly rate to be paid is \$86.32 or up to \$120.85 per fiscal year. Funding is available from staff vacancies within the FY2022-23 adopted budget.

California Environmental Quality Act (CEQA):

Approval of the recommendation is not an activity defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b)(3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

RECOMMENDATION:

Adopt a resolution appointing Roger Lee as Interim Public Works Director in accordance with California Government Code Sections 7522.56 and 21221(h) and approve, and authorize the City Manager to execute, an employment agreement with Roger Lee.

Attachment(s):

1. Resolution appointing Roger Lee as Interim Public Works Director in accordance with California Government Code Section 7522.56 and 21221(h).
2. Employment Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MILPITAS APPOINTING ROGER LEE AS INTERIM
PUBLIC WORKS DIRECTOR AND APPROVING
EMPLOYMENT AGREEMENT**

WHEREAS, Government Code Section 21221(h) permits the City Council to appoint a retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the position of Public Works Director become vacant at close of business on September 2, 2022; and

WHEREAS, Government Code Section 7522.56(f) requires that post-retirement employment commence no earlier than 180 days after the retirement date; and

WHEREAS, Section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the Milpitas City Council, the City of Milpitas, and Roger Lee certify that Roger Lee has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the Milpitas City Council desires to appoint Roger Lee, who retired from the City of Cupertino in the position of Public Works Director, effective December 31, 2021, as an interim appointment retired annuitant to the vacant position of Public Works Director for the City of Milpitas under Government Code Section 21221(h), effective August 29, 2022; and

WHEREAS, Roger Lee has over 13 years of experience in leadership as Public Works Director and Assistant Director with an extensive history in public sector; and

WHEREAS, an appointment under Government Code Section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

WHEREAS, information regarding the recruitment for the Public Works Director has been posted and is on the City's webpage for job opportunities available at <https://www.ci.milpitas.ca.gov/milpitas/departments/about-human-resources-2/38914-2/>; and

WHEREAS, this Section 21221(h) appointment shall only be made once and therefore will end on the date immediately preceding the date on which the permanent replacement for the vacant position of Public Works Director for the City of Milpitas commences his or her

employment or, if earlier, the date that this appointment is terminated by the City or Roger Lee; and

WHEREAS, the entire employment agreement between Roger Lee and the City of Milpitas has been reviewed by this body and is attached hereto as **Exhibit A**; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the minimum hourly rate for this position is \$86.32, and the maximum hourly rate for this position is \$120.85, and

WHEREAS, the hourly rate to be paid to Roger Lee is \$120.65; and

WHEREAS, Roger Lee has not and will not receive any other benefit, incentive compensation in lieu of benefits or any other form of compensation in addition to this hourly pay rate.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby appoints Roger Lee as interim Public Works Director effective August 29, 2022, pursuant to the authority provided under Government Code Section 21221(h) and 7522.56, during the recruitment, selection and employment of a permanent Public Works Director, to provide the critically-needed, specialized skills necessary to assist the City Manager with the management of the Public Works Department.
3. The employment agreement with Roger Lee, a copy of which is incorporated herein as Exhibit A, is approved by the City Council, effective August 29, 2022.
4. The City Manager is authorized to execute said agreement on behalf of the City, with such technical amendments as may be deemed appropriate by the City Manager and City Attorney.

PASSED AND ADOPTED this _____, day of _____, 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

EXHIBIT A

EMPLOYMENT AGREEMENT FOR INTERIM PUBLIC WORKS DIRECTOR

This Employment Agreement (“Agreement”) is made by and between the City of Milpitas, a municipal corporation of the State of California (“City”) and Roger Lee, an individual (“Retiree”) as of August 29, 2022 (“Effective Date”).

RECITALS

- A. Retiree was previously employed by the City of Cupertino as Public Works Director and Assistant Director, serving the City of Cupertino for approximately 13 years; and
- B. Retiree retired from the City of Cupertino effective December 30, 2021, and is collecting a retirement pension from the California Public Employees’ Retirement System (CalPERS); and
- C. The City has a vacancy in the position of Public Works Director, a regular position for which the City is conducting a recruitment for a permanent appointment; and
- D. The City has an immediate need for an employee to temporarily perform the duties of Public Works Director, a position involving specialized skills and training, and which is critically necessary to the on-going duties and functions of the City’s Public Works Department; and
- E. Retiree has the necessary qualifications, experience and abilities to fulfill the duties of the Public Works Director position on an interim basis; and
- F. Retired Annuitant’s employment is authorized by Government Code section 21221(h), which permits the City to appoint a CalPERS retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent replacement; and
- G. City desires to retain the services of Retiree in accordance with California Government Code Section 21221(h) and Retiree agrees to provide certain services to City under the strict terms and conditions set out in this Agreement.

In consideration of this matter described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the parties of this Agreement agree as follows:

AGREEMENT

Section 1. Term of Services

The term of this Agreement is from August 29, 2022, until such time as a permanent replacement for the position of Public Works Director has been selected and has commenced employment, unless terminated sooner as provided below.

Section 2. Scope of Services

Retiree agrees to perform the duties of the Public Works Director position on an interim basis as set forth in the job description for the position. Retiree will report directly to the Deputy City Manager. Retiree shall comply with all City rules, policies, guidelines, regulations, and laws.

Section 3. Compensation; Hours

City agrees to compensate Retiree at \$120.65 per hour for all services provided under this Agreement. Payments from City to Retiree shall be made during the normal payroll cycles of other City employees.

City has reviewed and compared the hourly rate set forth in this Section with other employees performing comparable duties and the hourly rate set forth in this Section does not exceed such other employee's compensation.

Retiree agrees and acknowledges that he shall not perform any services under this Agreement exceeding a total of nine hundred sixty (960) hours during any fiscal year (July 1 to June 30). Retiree shall record his hours on a pre-approved timesheet that shall be submitted to the City every week.

The position is a temporary, hourly assignment which is generally not expected to exceed 40 hours per week. The City, through the Deputy City Manager, will assign Retiree hours to work. Due to the nature of the position, it is understood that the work day and work week hours may vary.

There are no other benefits, incentives, compensation in lieu of benefits or other forms of compensation in addition to the hourly pay rate set forth in this Section.

Section 4. Location

The primary location for services will be at the following address:

Milpitas Public Works, 1265 N. Milpitas Blvd., Milpitas, California 95035

Section 5. Compliance with Laws

This Agreement will be construed in accordance with and governed by the laws in the State of California. In the event that suit shall be brought by any of the parties, the parties agree that venue

shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California. Retiree shall comply with all applicable laws, rules, policies, and guidelines. Retiree agrees and acknowledges that the State of California and the governing body of the California Public Employees' Retirement System enact strict laws, regulations and guidelines relating to services provided by "retired annuitants" to public agencies contracting with the California Public Employees' Retirement System. Retiree agrees to comply with all applicable laws, regulations and guidelines relating to the services provided under this Agreement.

Section 6. Termination

This Agreement may be terminated by either party for convenience by providing written notice to the other party.

Section 7. Miscellaneous

- a. Retiree has read each and every part of this Agreement and Retiree freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.
- b. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjusted shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- c. This Agreement, including the exhibits, represents the entire and integrated agreement between City and Retiree and supersedes all prior negotiations, representations, or agreements, either written or oral.

In witness where of the parties have duly affixed their signatures on this ___ day of December, 2022.

CITY:

RETIREE:

Steve McHarris, City Manager

Roger Lee



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Waive the Second Reading and Adopt Ordinance No. 38.849 Amending the Zoning Map of the City of Milpitas in Accordance with the Provisions of Section 3.03 of Chapter 10 of Title XI of the Milpitas Municipal Code to Change the Zoning Classification of Certain Parcels (APNs 086-38-021, -022, and -037), Located on the East Side of South Hillview Drive and Extending Approximately 1,200 Feet Southerly From Los Coches Street, From the M2 Heavy Industrial Zoning District to the M1 Light Industrial Zoning District (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)
Category:	Consent Calendar-Community Development
Meeting Date:	12/6/2022
<u>Recommendation:</u>	<u>Recommendations:</u> Move to waive the second reading and adopt Ordinance 38.849 amending the Zoning map of the City of Milpitas in accordance with the provisions of Section 3.03 of Chapter 10 of Title XI (Zoning Ordinance) of the Milpitas Municipal Code to change the Zoning Classification of Certain Parcels (APNs 086-38-021, -022, and -037), located on the east side of South Hillview Drive and extending approximately 1200 feet southerly from Los Coches Street, from the M2 Heavy Industrial Zoning District to the M1 Light Industrial Zoning District and find CEQA exemption under sections 15061(b)(3) and 15183.

Background:

This Ordinance was introduced at the City Council meeting held on November 15, 2022. The Ordinance is now ready for its second reading and adoption.

Fiscal Impact:

The adoption of Ordinance No. 38.849 to amend the zoning classifications for three parcels on South Hillview Avenue will have no fiscal impact. The zoning map amendment does not involve a change of use or the construction of new buildings or facilities on the affected parcels.

California Environmental Quality Act:

The adoption of Ordinance No. 38.849 is exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption). As a separate and independent basis, the project is also exempt from further environmental review under CEQA Guidelines Section 15183 (Project Consistent with General Plan, Community Plan, or Zoning).

Recommendation:

Move to waive the second reading and adopt Ordinance No. 38.849 amending the Zoning map of the City of Milpitas in accordance with the provisions of Section 3.03 of Chapter 10 of Title XI (Zoning Ordinance) of the Milpitas Municipal Code to change the Zoning Classification of Certain Parcels (APNs 086-38-021, -022, and -037), located on the east side of South Hillview Drive and extending approximately 1200 feet southerly from Los Coches Street, from the M2 Heavy Industrial Zoning District to the M1 Light Industrial Zoning District.

Attachments:

A) Ordinance No. 38.849

REGULAR**NUMBER:** 38.849

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE ZONING MAP OF THE CITY OF MILPITAS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 3.03 OF CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE TO CHANGE THE ZONING DESIGNATION OF CERTAIN PARCELS (APNs 086-38-021, -022, AND -037), LOCATED ON THE EAST SIDE OF SOUTH HILLVIEW DRIVE AND EXTENDING APPROXIMATELY 1,200 FEET SOUTHERLY FROM LOS COCHES STREET, FROM THE M2 HEAVY INDUSTRIAL ZONING DISTRICT TO THE M1 LIGHT INDUSTRIAL ZONING DISTRICT.

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of November 15, 2022, upon motion by Mayor Rich Tran and was adopted (second reading) by the City Council at its meeting of December 6, 2022, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk_____
Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code Section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, Section 3.03 of Chapter 10 Zoning of Title XI of the Milpitas Municipal Code, divides the City into zoning districts; and

WHEREAS, the City Council is the final authority on General Plan, Specific Plan, and Zoning amendments, including amendments to the Zoning Map; and

WHEREAS, the City wishes to create an appropriate safety and noise buffer between the existing R1 Single-Family Residential neighborhoods and M2 Heavy Industrial areas located south of Los Coches Street and west of Interstate 680 and the adjacent M2 Heavy Industrial area located west of South Hillview Drive; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to the City’s Municipal Code; and

WHEREAS, on October 26, 2022, the Planning Commission of the City of Milpitas held a lawfully noticed public hearing to solicit public comment and consider the proposed Amendment, take public testimony, and make a recommendation to the City Council on the project; and

WHEREAS, per Milpitas Municipal Code Section XI-10-57.02(G)(3), the City Council finds that the Zoning Amendment set forth herein to be consistent with the General Plan, and specifically with Land Use Element Policy LU 1-1 (*Support a full spectrum of conveniently located residential, commercial, public, and quasi-public uses that support and enhance business development and regional transportation objectives and promote the livability of residential neighborhoods*), because the Project will allow a larger variety of commercial, medical, quasi-public, and light industrial uses at the project site. The change promotes the livability of the adjacent residential neighborhood to the east because the types of uses allowed under the M1 Light Industrial Zoning District are more compatible than the uses allowed under the existing M2 Heavy Industrial Zoning Direct. Creating a safety and noise buffer between low-density residential and heavy industrial uses will enhance the livability of the residential neighborhoods and the existing mix of uses along South Hillview Drive; and

WHEREAS, per Milpitas Municipal Code Section XI-10-57.02(G)(3), the City Council finds that the Zoning Amendment set forth herein to be consistent with the General Plan, and specifically with Land Use Element Policy LU 1-7 (*Recognize that the Land Use Map may be amended in accordance with State law to ensure that there is an adequate supply of commercial, business park, industrial, public facility, parks, residential, and other desired land uses to serve the City’s needs*), because the Project allows a variety of commercial, medical, quasi-public, while also preserving the City’s industrial land to serve the City’s needs. The proposed zone change will allow staff to better implement City policies and actions. It will also allow the property owner/landlord a wider range or potential commercial and light industrial tenants in the existing multi-tenant buildings on the site; and

WHEREAS, per Milpitas Municipal Code Section XI-10-57.02(G)(3), the City Council finds that the Zoning Amendment set forth herein to be consistent with the General Plan, and specifically with Land Use Element Policy LU 5-6 (*In existing industrial and manufacturing areas adjacent to neighborhoods and other*

sensitive receptors, promote clean creative industrial uses that are environmentally sustainable and do nuisances such as noise and odors), because the Project creates an appropriate buffer between the existing Low-Density Single-Family Residential neighborhoods to the east and the Heavy Industrial zones to the south and west. Rezoning the parcels to M1 Light Industrial will allow a wider variety of commercial, medical, quasi-public, and light industrial uses that are environmentally sustainable and more compatible with the existing building sizes and site design. The M1 Light Industrial zoning designation and its allowable types of uses are more appropriate for the project site due to its proximity to sensitive receptors and the residential neighborhood; and

WHEREAS, per Milpitas Municipal Code Section XI-10-57.02(G)(3), the City Council likewise finds that the Zoning Amendment set forth herein will not adversely affect the public health, safety and welfare, in that the Project, as the new zoning designation will create a safety buffer between the R1 Low-Density Single-Family Residential neighborhoods to the east and M2 Heavy Industrial areas to the west and south. Moreover, the zoning change from M2 Heavy Industrial to M1 Light Industrial will allow a wider variety of commercial, medical, quasi-public, and clean light industrial uses that are environmentally sustainable and more appropriate for the project site and the public health, safety and welfare of nearby residents, workers, and customers; and

WHEREAS, this ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”), Public Resources Code Section 21000, *et seq.*, each as a separate and independent basis, pursuant to CEQA Guidelines Section 15183 (Projects consistent with the General Plan) and Section 15061(b)(3) (Common Sense Exemption); and

WHEREAS, as a separate and independent basis, the City Council hereby finds and determines that the project is exempt from further CEQA review pursuant to CEQA Guidelines section 15183 (projects consistent with a Community Plan, General Plan or Zoning.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 3.03

Title XI, Chapter 10, Section 3.03 (“Zoning Map”) is hereby amended, as attached hereto in **Exhibit 1**.

SECTION 3. ZONING MAP AMENDMENT FINDINGS (XI-10-57.02)

The City Council makes the following findings based on the evidence in the public record in support of Zoning Amendment No. ZA22-0006:

A. The proposed amendment is consistent with the General Plan.

The proposed amendment is consistent with the Milpitas General Plan because the new zoning designation creates an appropriate safety buffer between the R1 Low-Density Single-Family Residential and M2 Heavy Industrial zones along Hillview Drive. This zone change allows for more appropriate uses, such as a variety of commercial, medical, quasi-public uses, as well as clean light industrial uses to operate at the project site.

B. *The proposed amendment will not adversely affect the public health, safety and welfare.*

Item # C14.

The proposed amendment will not adversely affect the public health, safety and welfare, as the new zoning designation will create a safety buffer between the R1 Low-Density Single-Family Residential neighborhoods to the east and M2 Heavy Industrial areas to the west and south. Moreover, the zoning change from M2 Heavy Industrial to M1 Light Industrial will allow a wider variety of commercial, medical, quasi-public, and clean light industrial uses that are environmentally sustainable and more appropriate for the project site and the public health, safety and welfare of nearby residents, workers, and customers.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that the adoption of Ordinance No. 38.849 is categorically exempt from environmental review under the California Environmental Quality Act (“CEQA”) in accordance with CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption). As a separate and independent basis, adoption of Ordinance No. 38.849 is further exempt from environmental review under CEQA pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

SECTION 5. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision, or part has no effect on the validity of the remainder.

SECTION 6. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The City Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

Exhibit 1: Zoning Map

Item # C14.





CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Waive the Second Reading and Adopt Ordinance No. 38.850 Amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code Relating to Outdoor Dining (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)
Category:	Consent Calendar-Community Development
Meeting Date:	12/6/2022
Recommendation	Move to waive the Second Reading and Adopt Ordinance No. 38.850, amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code and adding a new Subsection 13.19 Relating to Outdoor Dining and find a CEQA exemption under sections 15183 and 15061(b)(3).

Background:

This Ordinance was introduced at the City Council meeting held on November 15, 2022. The Ordinance is now ready for its second reading and adoption.

Fiscal Impact:

The adoption of Ordinance 38.850 to amend Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code to add a new Subsection 13.19 Relating to Outdoor Dining will have no fiscal impact. The zoning ordinance text amendment will establish new standards and regulations for the location and operation of outdoor dining area in conjunction with restaurants, cafés, and bars citywide. New outdoor dining areas may result in increased revenue to the City from permit fees and sales tax. The amount is unknown.

California Environmental Quality Act (CEQA):

The proposed text amendment to the Milpitas Municipal Code is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a General Plan) and 15061(b)(3) (Common Sense Exemption).

Recommendation:

Move to waive the Second Reading and Adopt Ordinance No. 38.850, amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code and adding a new Subsection 13.19 Relating to Outdoor Dining.

Attachments:

Ordinance No. 38.850

PLEASE NOTE:

This copy of Ordinance No. 38.850 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 38.850

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTION 13 "SPECIAL USES" OF CHAPTER 10 "ZONING" OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO OUTDOOR DINING, AND MAKING FINDINGS OF CEQA EXEMPTION

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of November 15, 2022, upon motion by Mayor Rich Tran and was adopted (second reading) by the City Council at its meeting of December 6, 2022, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code Section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, in 2020 the City established a Temporary Outdoor Dining Program, allowing the limited use of parking areas and other outdoor spaces on a temporary basis, to help local restaurants survive financially during the COVID-19 pandemic; and

WHEREAS, in July 2021 following the lifting of state and local COVID-19 health restrictions on indoor dining, and in light of interest among local restaurant owners in continuing to offer outdoor dining areas on a long-term basis, the City of Milpitas extended its temporary guidelines for outdoor dining until permanent regulations and a formal approval process for outdoor dining areas could be established; and

WHEREAS, the City desires to establish new standards and regulations for the location, site design, and operation of outdoor dining areas and to provide an efficient permitting process for outdoor dining as an accessory use to restaurants and cafes; and

WHEREAS, the City has prepared a Zoning Amendment (“Amendment”) to the City’s Municipal Code, adding a new Subsection 13.19 “Outdoor Dining” under Chapter 10 “Zoning” of Title XI; and

WHEREAS, on October 26, 2022, the Planning Commission held a duly noticed public hearing on the subject application, at which all those in attendance were given the opportunity to speak on the Zoning Text Amendment; and

WHEREAS, this ordinance is exempt from the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* (“CEQA”), each as a separate and independent basis, pursuant to CEQA Guidelines Section 15183 (projects consistent with the General Plan) and Section 15061(b)(3) (no possibility of significant environmental effect).

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This ordinance is categorically exempt from environmental review under the California Environmental Quality Act (“CEQA”) in accordance with CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption), which exempts from CEQA any project 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.

This ordinance would create new regulations related to outdoor dining in conjunction with restaurants (which are existing permitted uses in commercial areas under the zoning ordinance). It would enact standards for the location, siting, design, and operational elements of outdoor dining that are comparable to standards for other commercial land uses, and City staff review would be required to ensure that outdoor dining areas are appropriately designed and maintained and that they comply with all applicable requirements. Therefore, it can be seen with certainty that there is no possibility that this Ordinance would have a significant effect on the environment; accordingly, this Ordinance is exempt from CEQA review.

As a separate and independent basis, this Ordinance is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). The proposed zoning amendments serve to implement several goals and policies in the Land Use and Community Design Elements by allowing safe, well-designed outdoor dining areas in appropriate locations to support Milpitas restaurants and cafes while also promoting active commercial areas. Therefore, the proposed Amendment is consistent with the General Plan and is exempt from CEQA review.

SECTION 3. GENERAL PLAN CONSISTENCY

The Land Use and Community Design Elements of the City's General Plan include several policies and actions related to supporting local business development and promoting vibrant, livable commercial areas in Milpitas through land use standards and design guidelines that allow public gathering places, outdoor uses and amenities, and high-quality design in both the public and private realms. The proposed municipal code amendments would facilitate implementation of these policies by permitting and encouraging outdoor dining in well-designed and appropriately located spaces in commercial districts. Allowing high-quality outdoor dining spaces on a permanent basis would contribute to vibrant, visually appealing, and pedestrian-oriented commercial areas in Milpitas.

SECTION 4. AMENDMENT TO MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Section 13 ("Special Uses") of Chapter 10 ("Zoning") of Title XI of the Milpitas Municipal Code is hereby amended to add Subsection 13.19 as follows:

XI-10-13.19 – Outdoor Dining

A. Purpose and Intent. The purpose of the outdoor dining regulations is to increase opportunities for restaurants to expand dining area into outdoor spaces, supporting local businesses and enhancing dining experience for Milpitas residents and visitors; to promote active, vibrant, pedestrian-oriented commercial districts and shopping centers; and to ensure that outdoor dining spaces are safe, well designed, and attractive.

B. Definitions

1. Outdoor dining area: Any privately owned outdoor area serving as an extension of the indoor customer seating area for a café or restaurant, which occupies space adjacent to the business that was formerly used for vehicle parking, pedestrian circulation, or similar use unrelated to the seating or customers.

C. Review and Approval Procedures

1. New or modified outdoor dining areas on private property may be approved with a Minor Site Development Permit (Staff Review) pursuant to Subsection XI-10-57.03(B)(2) of this Chapter.
2. In cases where the underlying zoning district requires a Conditional Use Permit (CUP) for a restaurant, an existing establishment with an approved CUP may add or modify an outdoor dining area with approval of a Minor Site Development Permit. No amendment to the approved CUP shall be required.
3. Written permission from the owner of record of the subject property shall be required as part of the Minor Site Development Permit application for outdoor dining. This requirement shall apply to stand-alone restaurants as well as those located within a multi-tenant commercial center or mixed-use development.

D. Location and Siting Requirements

1. Outdoor dining shall be permitted in any zone where restaurants are a permitted use (or where restaurants are conditionally permitted and a CUP has been approved for the restaurant).
2. Outdoor dining areas may be established on privately owned lots subject to the following requirements:
 - a. Dining areas may be located within outdoor areas adjacent to restaurants, such as existing private sidewalks and walkways, patios, etc. A minimum five (5) foot wide path of travel shall be maintained along all pedestrian walkways from parking areas and public sidewalks to all public building entrances.
 - b. Outdoor dining areas may be located within, and may replace, existing off-street parking spaces (see also Subsection XI-10-13.19(E)) on privately owned parcels.
 - i. Parking spaces to be converted to outdoor dining areas must be immediately adjacent to the restaurant establishment. An outdoor dining area shall not be separated from the restaurant by any vehicular drive aisle.
 - ii. No existing accessible parking spaces required per Title 24, California Building Standards Code, and the Americans with Disabilities Act may be removed to accommodate outdoor dining areas.

- c. Outdoor dining areas shall be subject to the base zone regulations for minimum setback property lines. Any permanent canopies, pergolas or similar shade structures requiring a building permit shall be subject to base zone regulations for maximum lot coverage.
- d. Outdoor dining areas shall not be located within required loading zones or stormwater treatment areas, nor be located so as to obstruct access to utilities.
- e. Outdoor dining areas shall be subject to all emergency access regulations per the California Fire Code.
- f. Outdoor dining areas shall not be located in a manner that creates a potential safety hazard.

E. Allowed Reductions to Required Off-Street Parking

- 1. For restaurants located in the MXD, MXD2, and MXD3 zones or in any commercial zone within the Milpitas Metro Specific Plan or Milpitas Gateway-Main Street Specific Plan areas, total required off-street parking as specified in Subsection XI-10-53.09 – Off-Street Parking Required by Land Use may be reduced by up to 50 percent to accommodate new or expanded outdoor dining areas in existing parking areas.
- 2. No minimum parking requirements shall apply to restaurants located within one-half mile of the Milpitas Transit Center.
- 3. For restaurants located in any other area of the city, required off-street parking may be reduced by up to 15 percent to accommodate new or expanded outdoor dining areas in existing parking areas, provided that the size of the outdoor dining area is 800 square feet or less.
- 4. For multi-tenant commercial properties with shared parking, allowed reductions to required parking to accommodate outdoor dining shall be based on the total parking requirement for all uses and establishments on the subject property, not solely on the parking requirement for the restaurant(s) proposing to add or expand outdoor dining areas. The shared parking standards established in Section XI-10-53.11 shall apply to locations with shared parking arrangements.

F. Design Standards

- 1. Barriers and Materials
 - a. Outdoor dining areas shall be delineated by a substantial and durable barrier that separates the dining area from vehicular drive aisles and parking spaces.

- b. Materials. Barriers should be made from high-quality materials (e.g., wood or iron railing fencing, planter boxes, decorative concrete barriers).
 - i. Materials and design of barriers and associated amenities should be consistent with the design and appearance of the restaurant and complementary to the character and design of the surrounding district.
 - ii. Plywood or other unfinished materials used for construction of a barrier to delineate and protect an outdoor dining area shall be painted or covered in siding or other finished materials approved by the Planning Department.
 - iii. Chain link fencing, corrugated metal, unfinished wood materials, stanchions, retractable belts, screens, and small landscape planters are not acceptable materials for barriers for outdoor dining areas and shall be prohibited.
- c. Solid portions of barriers for outdoor dining areas shall be no more than three (3) feet in height. Transparent, shatterproof glass (plexiglass or similar material) may be placed above a three-foot solid barrier, up to a total maximum height of six (6) feet (for freestanding plexiglass over a solid barrier). If the outdoor dining area has a permanent shade or roof structure, plexiglass or other transparent materials may extend to the height of the ceiling.
- d. Barriers may be permanent or movable. If movable, they should be well secured and designed to support weight leaning against them.
- e. Barriers shall have one opening for emergency access, with a minimum width of 36 inches, for every 20 linear feet of barrier.
- f. Barriers adjacent to parking spaces shall be marked with reflective material, such as tape or plastic reflective strips.

2. Shade Structures, Tables and Chairs, and Other Amenities

- a. Permanent overhead shade structures (e.g. pergolas) may be allowed for outdoor dining areas. The design and location of any permanent overhead shade structure shall complement the main restaurant and shall be subject to review and approval by the Planning Department. All permanent overhead shade structures shall require a building permit.

- b. Permanent overhead shade structures shall be durable and made from high-quality materials as wood or metal. Plywood, corrugated metal, and corrugated polycarbonate are prohibited as materials for roofing or shade structures.
 - c. The maximum height for all overhead shade structures for outdoor dining areas shall be 12 feet.
 - d. Non-permanent shade equipment, such as umbrellas, fabric canopies, or retractable awnings, are permitted, provided they are made from high-quality materials and removed or stored when the outdoor dining area is not in use.
 - i. For awnings projecting from buildings, the minimum vertical clearance shall be eight (8) feet and the maximum extension from the face of a building shall be seven (7) feet.
 - ii. Awnings and umbrellas should have no words or advertising other than the name and logo of restaurant establishment.
 - e. Tables and chairs should be of a high-quality and visually appealing material such as wood or metal. Inexpensive plastic or vinyl tables and chairs are not permitted.
 - f. The layout of outdoor dining areas should incorporate spaces for landscape planters with decorative plants and flowers.
3. Traffic Safety. A minimum two (2) foot setback shall be required between an outdoor dining area barrier and any adjacent parking space(s).
4. Accessibility Requirements
- a. Outdoor dining areas shall have hard, non-slip surfaces, such as concrete, tile, stone, or wood/composite decking. Soft surfaces such as dirt, gravel, and lawn are not permitted.
 - b. If an outdoor dining area is located on a raised platform or in a sunken area, a ramp must be provided that meets the requirements of the California Building Code and the Americans with Disabilities Act.
 - c. A minimum of five (5) percent of the seats provided in an outdoor dining area shall be wheelchair accessible.

- d. Minimum dimensions for wheelchair accessible seating spaces shall be 30 inches wide 1 inches deep. Access to all such seating spaces shall be provided via a path with a minimum unobstructed width of 36 inches.
- 5. Fire Safety. All outdoor dining areas shall comply with the requirements of the California Fire Code. Minor Site Development Permit applications for new or modified outdoor dining areas are subject to review and approval by the Milpitas Fire Department.
- 6. Lighting. No electrical wires for lighting elements shall cross the required clear path of travel along a public sidewalk or private pedestrian walkway. Solar lighting is encouraged for outdoor dining areas.
- 7. Signage. All restaurant signage shall comply with Section XI-10-24 – Signs of this Chapter. No additional signage shall be permitted in outdoor dining areas.

G. Operational Standards

- 1. Hours of Operation.
 - a. The hours of operation for outdoor dining areas shall be limited to the hours the restaurant is open for ordering and serving of meals.
 - b. In addition to Subsection XI-10-13.19(G)(1)(a), in no case shall outdoor dining be permitted before 7:00 am, seven (7) days per week, or after 10:00 pm Sunday through Thursday and after 11:00 pm Friday and Saturday.
- 2. Alcoholic Beverages.
 - a. The restaurant owner or manager shall coordinate with the California Department of Alcoholic Beverage Control (ABC) regarding alcohol sales in conjunction with outdoor dining.
 - b. The restaurant owner or manager shall obtain approval from ABC for a modified license to extend the permitted area for serving alcohol to include all outdoor dining areas associated with the restaurant and shall provide proof of such approval to the City of Milpitas Planning Department.
- 3. No smoking or vaping shall be permitted within outdoor dining areas.
- 4. Outdoor preparation and/or storage of food is not permitted within outdoor dining areas.

5. All live entertainment in outdoor dining areas is subject to the provisions of Subsections XI 5.04(E) and XI-10-6.06(B) of this Chapter.

6. Maintenance Requirements.

- a. Outdoor dining areas shall be kept clean and free of litter and debris at all times.
- b. All plants and landscaping shall be maintained in good health.
- c. All plexiglass or other transparent materials used as part of an outdoor seating barrier shall be regularly cleaned and provide a clear view from the outdoor seating area. Cracked, broken, or discolored materials are prohibited and shall be replaced immediately.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The City Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

SECTION 6. CERTIFICATION

The City Clerk shall either: (a) have this ordinance published in a newspaper of general circulation within 15 days after its adoption, or; (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five days before its adoption and again within 15 days after its adoption.

SECTION 7. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 8. NOTICE OF CEQA EXEMPTION

The City Council hereby directs staff to prepare, execute, and file with the County of Santa Clara Clerk a notice of CEQA exemption within five (5) working days of the adoption of this Ordinance.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Report on Bids and Award Construction Contract to G&G Builders Inc. in the Amount of \$872,029.00 for Rehabilitation of Up to Eleven City Parks Project (Staff Contact: Roger Lee, Interim Public Works Director, 408-586-2602)
Category:	Consent Calendar-Community Services and Sustainable Infrastructure
Meeting Date:	12/6/2022
	<u>Recommendation:</u> (1) Receive report on bids and award a construction contract to the lowest responsible and responsive bidder, G&G Builders Inc., in the amount of \$872,059.00 for the Rehabilitation of Up to Eleven City Parks project; and (2) Authorize the City Manager to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$468,514.00 subject to appropriation of funds and find a CEQA exemption as modifications to existing facilities.

BACKGROUND:

On August 9, 2021, Council approved an allocation of \$4,386,815 of American Rescue Plan Act (ARPA) funding for repairs and improvements to 20 of the City's 36 parks. Of this amount, \$1,116,000 has been scheduled to the repair and improvement of up to 11 parks. Additionally, on April 5, 2022, the City Council adopted a Resolution approving the application for \$224,543 Per Capita Grant Funds from the State Department of Parks and Recreation. Per an allocation formula, the City will receive the funds and allocate it for the Sunnyhills Augustine Park in the amount of \$224,543, which are scheduled to be used as part of the park improvements outlined in this staff report and a forthcoming construction contract bid award, which is currently in design.

Completion of up to eleven parks, including Sunnyhills Augustine, are being managed by both the Public Works and Engineering Departments. Project priorities are to complete potential health and safety repairs and improve the condition of parks in "critical" and "poor" condition in the recently adopted Park & Recreation Master Plan Update. To provide greater flexibility in project completion and ensure critical parks are completed, the project to rehabilitate 11 parks was organized with a base bid improvement of seven parks and add alternates of four parks.

Base bid parks include Sunnyhills Augustine, Memorial, Cerano, John McDermott, O'Toole Elms, Pinewood, Selwyn, and Tom Evatt. Add alternate parks include Parc Metro Central, Parc Metro East, Parc Metro West, and Sinnott.

ANALYSIS:

On October 6, 2022, the Purchasing Division released an Invitation for Bid (IFB) 23-035 for the Rehabilitation of Eleven City Parks Project (Project). The IFB was publicly noticed in accordance with the City's municipal code and advertised on the City's website. Email notifications were sent to companies registered with the City via OpenGov Procurement, the City's eProcurement system and the City maintained construction contractor list. As required by State law, four local plan rooms also received notification of the release of the project on OpenGov Procurement. To comply with Federal ARPA solicitation requirements, the City also invited 43 bids from women and minority-owned construction firms identified via the U.S. Small Business Administration database at www.SBA.gov.

Upon release, 921 firms received the solicitation notification, 54 firms downloaded the IFB documents, and six firms participated in the non-mandatory pre-bid meeting. The City issued one addendum to the solicitation and answered three questions submitted by interested firms.

The Purchasing Division received four bids by the November 10, 2022 deadline to respond to the IFB. After reviewing the required bid documents, G&G Builders, Inc. was the lowest responsible bidder submitting a responsive base bid. The base bid submitted for seven parks exceeded City's 2019 estimated cost of \$696,885. Several factors, including the age of the estimate and pandemic related supply chain issues each contribute to higher-than-expected bids. Alternate bids to rehabilitate four parks were not part of bidder evaluation and exceeded the City's estimated cost of \$355,237.

Bid Rank	Contractor	Base Bid	Estimated Cost
1	G&G Builders Inc.	\$872,059.00	\$696,885
2	Redwood Engineering Construction	\$899,000.00	
3	Paulson Cox Construction Inc.	\$937,677.00	
4	Itech Solution	\$966,700.00	

Add alternate bid pricing from G&G Builders is as follows:

Add Alternate Park	Add Alternate Bid Pricing	Estimated Cost
Parc Metro Central	\$88,700	\$42,525
Parc Metro East	\$98,164	\$28,612.50
Parc Metro West	\$474,200	\$102,675
Sinnott	\$743,400	\$181,425
TOTAL:	\$1,404,464	\$355,237.50

Pricing for add alternate parks is subject to change as additional information is provided to the contractor. If changed pricing can be determined reasonable, both Parc Metro Central and Parc Metro East Parks may be improved. It is unlikely that there will be enough available funds to complete Parc Metro West and/or Sinnott Parks.

The proposed Project will at a minimum provide the seven City parks with much needed play structures and play surface repairs while updating the parks to current Certified Playground Safety Inspector (CPSI) standards. Work under the Project includes repair and/or replacement of sections of failed pour-in-place play surfaces, replacing sand with engineered wood fiber, and replacement of old playground structures.

Staff recommends the City Council award the contract for the Project to G&G Builders Inc., for the base bid amount of \$872,059.00 for the rehabilitation of seven parks and authorize the City Manager to execute contract change orders (up to the scheduled ARPA and State Grant amounts) in an aggregate amount not to exceed \$468,514.00 for unforeseen conditions and/or proceed with add alternates for the remaining four parks. This change order authority will allow for the more efficient administration of the improvements outlined in this Project.

POLICY ALTERNATIVE(S):

Alternative 1: Direct city staff to reject all bids and not proceed with the Project.

Pros: The City would be able to use \$1,116,000.00 for other projects.

Cons: Not proceeding with the Project would defer improvements that would update the parks to current CPSI standards. City would risk losing State Grant for Sunnyhills Augustine Park.

Reason for Not Recommending: The recommendations of the CPSI consultant to make improvements to the parks identified in the project were reviewed and staff believes the Project will address the items in the report and bring the City parks listed to current safety specification.

FISCAL IMPACT:

There are sufficient funds available in Capital Improvement Project No. 3500, ARPA Park Rehabilitation – DPW, for this project. As of November 28, 2022, the balance in CIP 3500 is \$1,116,000. Upon future Coun

action to appropriate State Grant funds and completion of improvements at Sunnyhills Augustine Park, City will receive the State Grant amount of \$224,543.00. The cost to perform the rehabilitation of seven City parks through a construction contract with G&G Builders is \$872,029.00. Staff also requests City Council authorize the City Manager to negotiate and execute contract change order(s) in an aggregate amount not to exceed \$468,514.00 for unforeseen conditions and/or to proceed with add alternates for the remaining four parks subject to Council action to appropriate the State grant funds.

California Environmental Quality Act (CEQA):

This Project is exempt from CEQA under Class 1 - Section 15301 - Existing Facilities because they relate to the operation, repair, maintenance or minor alterations to a public facility involving no or negligible expansion of use.

RECOMMENDATION:

1. Receive report on bids and award a construction contract to the lowest responsible bidder submitting a responsive bid, G&G Builders Inc., in the amount of \$872,029.00 for Rehabilitation of up to Eleven City Parks project.
2. Authorize the City Manager to negotiate and execute contract change order(s) in an aggregate amount not-to-exceed \$468,514.00 subject to appropriation of funds and find a CEQA exemption as modifications to existing facilities.

Attachment(s):

1. Long-Form Construction Contract with G&G Builders Inc. for Project 23-035 for the Rehabilitation of Eleven City Parks Project

View the attachment for this item at:

https://www.milpitas.gov/_pdfs/council/2022/120622/attachment_parks.pdf



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Adopt Ordinance No. 65.152 for Adoption by Reference the 2022 California Building Codes and Amendments (Staff Contact: Bill Tott, Building Official, 408-586-3263)
Category:	Public Hearings-Community Development
Meeting Date:	12/6/2022
	<u>Recommendation:</u> (1) Open the Public Hearing; hear testimony, then move to close the public hearing. (2) Waive the second reading and adopt Ordinance No. 65.152 amending Chapters 3, 3.5, 4, 5, 6, 7, 10, 14, 150, and 170 of Title II of the Milpitas Municipal Code adopting by reference the 2022 California Building Code, 2022 California Residential Code, 2021 International Property Maintenance Code, 2022 California Mechanical Code, 2022 California Electrical Code, 2022 California Plumbing Code, 2021 International Swimming Pool and Spa Code, 2022 California Existing Building Code, and 2022 California Historical Building Code, with amendments and find a CEQA exemption.

BACKGROUND:

On October 18, 2022 the Council introduced Ordinance No. 65.152 and set a public hearing on December 6, 2022 for adoption of the ordinance pursuant to Government Code Section 50022.3. Notice of the public hearing was published on October 4 and October 11, 2022 pursuant to Government Code Section 6066. There were no changes to the Ordinance from the first reading; the Ordinance is now ready for its second reading and adoption.

ANALYSIS:

Adoption of the new 2022 codes will ensure that buildings and structures in Milpitas will safeguard the health, safety, and general welfare of the public. Staff recommends that the Council adopt Ordinance No. 65.152 adopting the new codes with amendments. Please refer to the October 18 Council meeting agenda report (Attachment B) for a brief description of the amendments.

FISCAL IMPACT:

There is no cost to the City other than administrative staff time and expense. Staff training on the new codes is needed and has been planned for in the budget. Training has begun and will be ongoing.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

RECOMMENDATIONS:

Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 65.152 amending Chapters 3, 3.5, 4, 5, 6, 7, 10, 14, and 150 of Title II of the Milpitas Municipal Code relating to Code Administration; adopting by reference the 2022 California Building Code, 2022 California Residential Code, 2021 International Property Maintenance Code, 2022 California Mechanical Code, 2022 California Electrical Code, 2022 California Plumbing Code, 2021 International Swimming Pool and Spa Code, 2022 California Existing Building Code, and 2022 California Historical Building Code, with amendments. Set a public hearing on December 6, 2022, pursuant to California Government Code Section 50022.3, for adoption of the Ordinance.

Attachment(s):

- A. Ordinance No. 65.152
- B. October 18, 2022 City Council Agenda Report

REGULAR

NUMBER: 65.152

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTERS 3, 3.5, 4, 5, 6, 7, 10, 13, 14, AND 150, OF TITLE II OF THE MILPITAS MUNICIPAL CODE RELATING TO CODE ADMINISTRATION; ADOPTING BY REFERENCE THE 2022 CALIFORNIA BUILDING CODE, 2022 CALIFORNIA RESIDENTIAL CODE, 2022 CALIFORNIA MECHANICAL CODE, 2022 CALIFORNIA ELECTRICAL CODE, 2022 CALIFORNIA PLUMBING CODE, 2021 INTERNATIONAL PROPERTY MAINTAINENCE CODE, 2021 INTERNATIONAL SWIMMING POOL AND SPA CODE, 2022 CALIFORNIA EXISTING BUILDING CODE, AND 2022 CALIFORNIA HISTORICAL BUILDING CODE, WITH AMENDMENTS.

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, 2022, upon motion by _____, and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta ,City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi , City Attorney

RECITALS:

WHEREAS, the California Building Standards Commission has adopted and published an updated Title 24 of the California Code of Regulations, also referred to as the 2022 California Building Standards Code, that will become effective statewide on January 1, 2023; and

WHEREAS, California Health and Safety Code Sections 17958, 17958.5, 17958.7 and 18941.5 establish the authority for a city to adopt and make local amendments and modifications to the building standards in the California Building Standards Code to establish more restrictive building standards than those contained in the California Building Standards Code; and

WHEREAS, California Health and Safety Code Sections 17958, 17958.5, 17958.7 and 18941.5 permit a city to make such local amendments and modifications as the city determines are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, California Health and Safety Code Sections 17958, 17958.5, 17958.7 and 18941.5 require a city, before making any amendments and modifications to the California Building Standards Code, make an express finding that such amendments and modifications are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, the City of Milpitas has reviewed and intends to adopt the 2022 California Building Standards Code and the 2021 International Property Maintenance Code and 2021 International Swimming Pool and Spa Code.

WHEREAS, the City Council wishes to amend portions of the California Building Standards Code to better address local conditions and makes express findings that such amendments are reasonably necessary because of local climatic, geological or topographical conditions as set forth in this Ordinance.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council hereby finds and determines that this Ordinance has been assessed in accordance with the California Environmental Quality Act (Cal. Pub. Res. Code, § 21000 et seq.) (“CEQA”) and the State CEQA Guidelines (14 Cal. Code Regs. § 15000 et seq.) and is categorically exempt from CEQA under CEQA Guidelines, § 15061(b)(3), which exempts from CEQA any project 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. Adoption of the proposed Ordinance would not be an activity with potential to cause significant effect on the environment because the changes made to the California Building Standards Code within are enacted to mitigate the threats posed to public peace, health and safety from earthquakes, storms, floods, high winds and fire, and therefore is exempt from CEQA. Therefore, it can be seen with certainty that there is no possibility that the Ordinance in question may have a significant effect on the environment; accordingly, the Ordinance is categorically exempt from CEQA.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE II

Chapters 3, 3.5, 4, 5, 6, 7, 10, 13, 14, and 150, of Title II of the Milpitas Municipal Code are hereby amended with the text below to read as follows:

Section 4 Appeals**II-1-4.01**

Chapter 3 – BUILDING CODE

Chapter 3 of Title II of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Sections:

Section 1 – Adoption of the Building Code

Section 2 – Amendments to the Building Code

Section 1 Adoption of the Building Code

II-3-1.01

The 2022 California Building Code, published and copyrighted by the International Code Council, Inc. and the California Building Standards Commission in Part 2 of Title 24 of the California Code of Regulations, is hereby adopted and referred to, and by this reference expressly incorporated and made a part of this Chapter as though fully set forth herein. This adoption includes Appendix I. The 2022 California Building Code shall be designated and referred to as the “Building Code” for the City of Milpitas. There is one copy of said Code on file in the office of the Building Official for use and examination by the public.

Section 2 Amendments to the Building Code

II-3-2.01 Amendments: Chapter 4

Amend Section 402.5 of the California Building Code by deleting the exception.

Amend Section 403.3 of the California Building Code by deleting all exceptions.

Amend Section 404.3 of the California Building Code by deleting all exceptions.

Amend Section 410.6 of the California Building Code by deleting all exceptions.

II-3-2.02 Amendment: Section 1505.1.5

Amend Section 1505 of the California Building Code by adding Section 1505.1.5 to read as follows:

1505.1.5 Roofing requirements for hillside construction. Class A or Class B roof covering shall be required for all hillside construction.

II-3-2.03 Amendment: Section 1705.3 Exception 1

Amend Section 1705.3 Exception 1 of the California Building Code to read as follows:

1. Isolated spread concrete footings of buildings three stories or less above grade plane that are fully supported on earth or rock, where the structural design of the footing is based upon a specified compressive strength, f'_c , no greater than 2,500 pounds per square inch (psi) (17.2 MPa).

II-3-2.04 Amendment: Section 1808.1

Amend Section 1808.1 of the California Building Code to read as follows:

All new foundations for building additions to R-3 occupancies shall be of the same type of foundation system as the existing structure, unless foundation design recommendation from a soils engineer is provided and the foundation system is designed, and plans, calculations, and specifications are prepared, stamped and signed, by a California licensed engineer or architect.

II-3-2.05 Amendment: Table 2308.6.1

Amend Table 2308.6.1 title and footnotes to read as follows:

1. TABLE 2308.6. 1^{a, f, g}
2. Footnotes “f” and “g” are added to Table 2308.6.1, to read:

- f. Methods PBS, HPS, and SFB are not permitted in Seismic Design Categories D or E.
g. Methods GB, DWB and PCP are not permitted in Seismic Design Category E.

Chapter 3.5 – RESIDENTIAL CODE

Chapter 3.5 of Title II of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Sections:

Section 1 – Adoption of the Residential Code

Section 2 – Amendments to the Residential Code

Section 1 Adoption of the Residential Code

II-3.5-1.01

The 2022 California Residential Code, published by the International Code Council, Inc. and the California Building Standards Commission in Part 2.5 of Title 24 of the California Code of Regulations, is hereby adopted and referred to, and by this reference expressly incorporated and made a part of this Chapter as though fully set forth herein. This adoption includes Appendix AH and Appendix AK. The 2022 California Residential Code shall be designated and referred to as the “Residential Code” for the City of Milpitas. There is one copy of said Code on file in the office of the Building Official for use and examination by the public.

Section 2 Amendments to the Residential Code

II-3.5-2.01 Amendment: Section R902.1.5

Amend Section R902 of the California Residential Code by adding Section R902.1.5 to read as follows:

R902.1.5 Roofing requirements for hillside construction. Class A or Class B roof covering shall be required for all hillside construction.

II-3.5-2.02 Amendment: Table R602.10.3(3)

Amend Table R602.10.3(3) title and footnotes to read:

TABLE R602.10.3(3)^{i, j}

Footnotes:

- i. Methods PBS, HPS, SFB and CS-SFB are not permitted in Seismic Design Categories D₀, D₁, and D₂.
- j. Methods GB, DWB and PCP are not permitted in Seismic Design Categories D₀, D₁, and D₂ where S₁ is greater than or equal to 0.75.

II-3.5-2.03 Amendment: Section R403.1

Amend Section R403.1 of the California Residential Code to read as follows:

All new foundations for building additions to R-3 occupancies shall be of the same type of foundation system as the existing structure, unless foundation design recommendation from a soils engineer is provided and the foundation system is designed, and plans, calculations, and specifications are prepared, stamped and signed, by a California licensed engineer or architect

Chapter 4 – PROPERTY MAINTENANCE CODE

Chapter 4 of Title II of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Sections:

Section 1 – Adoption of the Property Maintenance Code

Section 2 – Amendments to the Property Maintenance Code

Section 1 Adoption of the Property Maintenance Code

II-4-1.01

The 2021 International Property Maintenance Code, published by the International Code Council, Inc., is hereby adopted and referred to, and by this reference expressly incorporated and made a part of this Chapter as though fully set forth herein. The 2021 International Property Maintenance Code shall be designated and referred to as the “Property Maintenance Code” for the City of Milpitas. There is one copy of said Code on file in the office of the Building Official for use and examination by the public.

Section 2 – Amendments to the Property Maintenance Code

II-4-1.02

- Delete Section 404.5 of the International Property Maintenance Code.
- Delete Table 404.5 of the International Property Maintenance Code.
- Delete Section 404.5.1 of the International Property Maintenance Code.
- Delete Section 404.5.2 of the International Property Maintenance Code.

Chapter 5 – MECHANICAL CODE

Chapter 5 of Title II of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Sections:

Section 1 – Adoption of the Mechanical Code

Section 1 Adoption of the Mechanical Code

II-5-1.01

The 2022 California Mechanical Code, published and copyrighted by the International Association of Plumbing and Mechanical Officials and the California Building Standards Commission in Part 4 of Title 24 of the California Code of Regulations, is hereby adopted and referred to, and by this reference expressly incorporated and made a part of this Chapter as though fully set forth herein. The 2022 California Mechanical Code shall be designated and referred to as the “Mechanical Code” for the City of Milpitas. There is one copy of said Code on file in the office of the Building Official for use and examination by the public.

Chapter 6 – ELECTRICAL CODE

Chapter 6 of Title II of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Sections:

Section 1 – Adoption of the Electrical Code

Section 2 – Amendments to the Electrical Code

Section 1 Adoption of the Electrical Code

II-6-1.01

The 2022 California Electrical Code, published and copyrighted by the National Fire Protection Agency and the California Building Standards Commission in Part 3 of Title 24 of the California Code of Regulations, is hereby adopted and referred to, and by this reference expressly incorporated and made a part of this Chapter as though fully set forth herein. The adoption includes Annexes A, B, C, D, and F. The 2022 California Electrical Code shall be designated and referred to as the “Electrical Code” for the City of Milpitas. There is one copy of said Code on file in the office of the Building Official for use and examination by the public.

Section 2 Amendments to the Electrical Code**II-6-2.01**

Amend Section 230.2 of the California Electrical Code by adding subsection (F) to read as follows:

230.2(F). Underground Service. All new electrical services shall be underground and installed per Section 230.30, Underground Service-Lateral Conductors. Exception: Relocation or replacement of existing electrical services at existing buildings.

II-6-2.02

Amend Section 230.70(A) of the California Electrical Code by adding subsection (4) to read as follows:

(4) Main Service Disconnect Location. The building main service disconnect and/or disconnects shall be installed on the first floor level of the building, in accordance with 230.70(A)(1), (A)(2), and (A)(3).

II-6-2.03

Amend Section 250.50 of the California Electrical Code by adding subsection (A) to read as follows:

250.50(A). Grounding System in New Buildings. Grounding electrode systems in all new buildings shall be an electrode encased by at least 50 mm (two inches) of concrete, located horizontally near the bottom or vertically, and within that portion of a concrete foundation or footing that is in direct contact with earth. The electrode shall consist of at least 6.0 m (20 feet) of one or more steel reinforcing bars or rods, of not less than 13 mm (½ inch) diameter, or consisting of at least 6.0 m (20 feet) of bare copper conductor not smaller than 4 AWG. The connection side of this concrete-encased electrode shall be located remotely away from the main electrical service equipment.

Chapter 7 – PLUMBING CODE

Chapter 7 of Title II of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Sections:**Section 1 – Adoption of the Plumbing Code****Section 1 Adoption of the Plumbing Code****II-7-1.01**

The 2022 California Plumbing Code, published and copyrighted by the International Association of Plumbing and Mechanical Officials and the California Building Standards Commission in Part 5 of Title 24 of the California Code of Regulations, is hereby adopted and referred to, and by this reference expressly incorporated and made a part of this Chapter as though fully set forth herein. The adoption includes Appendices A, B, C, D, I, and M. The 2022 California Plumbing Code shall be designated and referred to as the “Plumbing Code” for the City of Milpitas. There is one copy of said code on file in the office of the Building Official for use and examination by the public.

Chapter 10 – SWIMMING POOL AND SPA CODE

Chapter 10 of Title II of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Sections:**Section 1 – Adoption of the Swimming Pool and Spa Code****Section 1 Adoption of the Swimming Pool and Spa Code****II-10-1.01**

The 2021 International Swimming Pool and Spa Code, published by the International Code Council, Inc., is hereby adopted and referred to, and by this reference expressly incorporated and made a part of this Chapter as though fully set forth herein. The 2021 International Swimming Pool and Spa Code shall be designated and referred to as the “Swimming Pool and Spa Code” for the City of Milpitas. There is one copy of said Code on file in the office of the Building Official for use and examination by the public.

Chapter 14 – EXISTING BUILDING CODE

Chapter 14 of Title II of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Sections:**Section 1 – Adoption of the Existing Building Code****Section 1 Adoption of the Existing Building Code****II-14-1.01**

The 2022 California Existing Building Code, published and copyrighted by the International Code Council, Inc. and the California Building Standards Commission in Part 10 of Title 24 of the California Code of Regulations, is hereby adopted and referred to, and by this reference expressly incorporated and made a part of this Chapter as though fully set forth herein. The adoption includes Appendices A1, A2, A3, and A5. The 2022 California Existing Building Code shall be designated and referred to as the “Existing Building Code” for the City of Milpitas. There is one copy of said Code on file in the office of the Building Official for use and examination by the public.

Chapter 150 – HISTORICAL BUILDING CODE

Chapter 150 of Title II of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Sections:**Section 1 – Adoption of Historical Building Code****Section 1 Adoption of the Historical Building Code****II-150-1.01**

The 2022 California Historical Building Code, published and copyrighted by the International Code Council, Inc. and the California Building Standards Commission in Part 8 of Title 24 of the California Code of Regulations, is hereby adopted and referred to, and by this reference expressly incorporated and made a part of this Chapter as though fully set forth herein. The 2022 California Historical Building Code shall be designated and referred to as the “Historical Building Code” for the City of Milpitas. There is one copy of said Code on file in the office of the Building Official for use and examination by the public.

SECTION 4. EXPRESS FINDINGS

Pursuant to California Health and Safety Code Sections 17958.7 and 18941.5, the City Council hereby finds that the above amendments are necessary due to local climatic, geological or topographical conditions as set forth in **Exhibit A**.

SECTION 5. REPEAL OF CONFLICTING ORDINANCES

Upon adoption of each new California Building Standards Code, the Ordinance adopting the previously adopted California Building Standards Code is superseded in its entirety. This Ordinance does not repeal Ordinance No. 65.148, which adopts by reference and amends the 2019 California Energy Code, Ordinance No. 65.149, which adopts by reference and amends the 2019 California Green Building Standards Code, nor Ordinance No. 113.25, which adopts by reference and amends the 2019 California Fire Code.

SECTION 6. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 7. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its final adoption by the City Council, but no sooner than January 1, 2023. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

**FINDINGS IN SUPPORT OF AMENDMENTS
TO TITLE 24 OF THE CALIFORNIA CODE OF REGULATIONS:
LOCAL CLIMATIC, GEOLOGICAL OR TOPOGRAPHICAL CONDITIONS**

Chapter 3 – BUILDING CODE

The proposed substantive amendments to the Building Code involve the following:

- (1) Automatic sprinkler systems
- (2) Roofing cover requirement for hillside areas
- (3) Special inspection exception
- (4) Foundations and foundation reinforcement
- (5) Restrict use of bracing methods

The following findings support that the above amendments and modifications are reasonably necessary because of local climatic, geological or topographical conditions:

(1) Automatic sprinkler systems

Amending the Code to remove exceptions where automatic sprinklers are not required is due to Milpitas being situated in an area of high seismic activities as indicated by the United States Geological Survey and the California Division of Mines and Geology. There is a higher level of risk for significant building damage and fire due to the higher incidence and magnitude of earthquakes in this area. Maintaining a higher level of life-safety of building occupants by providing removal of exceptions to installation of automatic fire sprinkler systems is therefore required.

(2) Roofing cover requirement for hillside areas

Amending the Code to require that the roof covering for structures in the hillside area is a minimum Class B is necessary due to the climatic conditions of the area. The hillside area has a long history of high winds, with an associated higher risk of accelerated and more significant structure damage and higher potential for related casualties.

(3) Special inspection exception

Amending the Code to require special inspection for isolated spread concrete footings of buildings of three stories or less where the structural design of the footing is based upon a specified compressive strength of concrete greater than 2,500 psi is necessary due to expansive (clay) soils and seismic activity common to this geological area.

(4) Foundations and foundation reinforcement

Amending the Code to require all new foundations for building additions to R-3 occupancies shall be of the same type of foundation system as the existing structure, unless foundation design recommendation from a soils engineer is provided, and the foundation system is designed, and plans, calculations, and specifications are prepared, stamped and signed, by a California licensed engineer or architect, is necessary due to expansive (clay) soils and seismic activity common to this geological area.

(5) Restrict use of bracing methods

Amending the Code Table 2308.6.1 with added footnotes f and g to prohibit the use of bracing methods PBS, HPS, and SFB in seismic design categories D or E, and prohibit the use of bracing methods GB, DWB and PCP in seismic design category E due to their poor performance in earthquakes. Milpitas is in seismic design category D2 with potential for frequent and more intense seismic activity

Chapter 3.5 – RESIDENTIAL CODE

The proposed substantive amendments to the Residential Code involve the following:

- (1) Roofing cover requirement for hillside areas
- (2) Restrict use of bracing methods
- (3) Foundations and foundation reinforcement

The following findings support that the above amendments and modifications are reasonably necessary because of local climatic, geological or topographical conditions:

(1) Roofing cover requirement for hillside areas

Amending the Code to require that the roof covering for structures in the hillside area is a minimum Class B is necessary due to the climatic conditions of the area. The hillside area has a long history of high winds, with an associated higher risk of accelerated and more significant structure damage and higher potential for related casualties.

(2) Restrict use of bracing methods

Amending the Code Table R602.10.3(3) and adding footnotes I and j to restrict the use of bracing methods PBS, HPS, SFB, CS-SFB, GB, DWB and PCP in Seismic Design Categories D0, D1 and D2 due to their poor performance in earthquakes. Milpitas is in seismic design category D2.

(3) Foundations and foundation reinforcement

Amending the Code to require all new foundations for building additions to R-3 occupancies shall be of the same type of foundation system as the existing structure, unless foundation design recommendation from a soils engineer is provided, and the foundation system is designed, and plans, calculations, and specifications are prepared, stamped and signed, by a California licensed engineer or architect, is necessary due to expansive (clay) soils and seismic activity common to this geological area.

Chapter 6 – ELECTRICAL CODE

The proposed substantive amendments to the Electrical Code involve the following:

- (1) Requirement for all new electrical services to be underground
- (2) Disconnects of electrical power for each building to be in a readily accessible location on the first floor
- (3) Grounding systems in new buildings shall be an electrode encased in concrete

The following findings support that the above amendments and modifications are reasonably necessary because of local climatic, geological or topographical conditions:

(1) Requirement for all new electrical services to be underground

Buildings in many areas of Milpitas are located in high wind areas and flood plains. Due to these local climatic conditions, amending the Code to provide for elimination of overhead services that are inherently less safe in the event of windstorms and floods will provide a higher level of safety.

(2) Disconnects of electrical power for each building to be in a readily accessible location on the first floor

Amending the Code provides for a quicker means of finding the location of the main power disconnects to buildings in the event of seismic events and related potential for fire and other emergencies. This is critical as Milpitas is located in an area of high seismic activities.

(3) Grounding systems in new buildings shall be an electrode encased in concrete

Amending the Code allows significantly higher assurances that the grounding of the building electrical system will not deteriorate and fail due to the acidic and expansive properties of local soils. Other types of grounding, such as rods, will be subject to deterioration in local soils, whereas an encased electrode will not be in contact with the soils.

Providing equipment grounding conductors enhances capability of keeping electrical systems grounded, which is important in high amperage electrical services common to the City of Milpitas.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Introduce Ordinance No. 65.152 Relating to Adopting by Reference the 2022 California Building Codes with Amendments and Set a Public Hearing on December 6, 2022 for Adoption of the Ordinance (Staff Contact: Bill Tott, Building Official, 408-586-3263)
Category:	Consent Calendar-Community Development
Meeting Date:	10/18/2022
	Recommendation: (1) Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 65.152 amending Chapters 3, 3.5, 4, 5, 6, 7, 10, 14, 150, and 170 of Title II of the Milpitas Municipal Code relating to adopting by reference the 2022 California Building Code, 2022 California Residential Code, 2021 International Property Maintenance Code, 2022 California Mechanical Code, 2022 California Electrical Code, 2022 California Plumbing Code, 2021 International Swimming Pool and Spa Code, 2022 California Existing Building Code, and 2022 California Historical Building Code, with amendments; and (2) Set a public hearing on December 6, 2022, pursuant to California Government Code Section 50022.3, for adoption of the Ordinance.

BACKGROUND:

Title 24 of the California Code of Regulations, also referred to as the California Building Standards Code, governs the design and construction of buildings and associated facilities and equipment throughout California. It is updated and published on a triennial basis by the California Building Standards Commission (CBSC) by order of the California legislature. Each code cycle update improves safety, sustainability, and resiliency, and incorporates new technology, design, and construction methods. Throughout each code adoption cycle, amendments to the codes are developed through an extensive public participation process. In July 2022, the CBSC published the 2022 edition of the California Building Standards Code, making this year a code adoption year. The building regulations in the California Building Standards Code have the same force of law and take effect 180 days after their publication. On January 1, 2023, the 2022 California Building Standards Code will become effective statewide. This 2022 Code has prompted jurisdictions statewide to adopt the new code and complete local amendments as necessary. In accordance with California Health and Safety Code, a city may establish more restrictive building standards than those in the California Building Standards Code if the city makes an express finding that each amendment is reasonably necessary because of local climatic, geological, or topographical conditions.

ANALYSIS:

As part of the triennial code adoption cycle, and pursuant to California Health and Safety Code Sections 17958 and 18941.5, staff recommends that the City of Milpitas adopt the 2022 California Building Standards Code. The parts of the 2022 California Building Standards Code that are included in this proposed adoption ordinance are: The California Building Code, Residential Code, Mechanical Code, Electrical Code, Plumbing Code, Existing Building Code, and Historical Building Code. Staff also proposes several local amendments be adopted as part of the code adoption. The amendments along with the findings that support them are included in the proposed ordinance. If approved, the Building Official will file a copy of this ordinance with the California Building Standards Commission. The 2022 California Building Code is adopted by reference, with amendments. Close examination of the current and prior California Building Code and Municipal Code was performed. The Residential Code was adopted and amended in a similar way as the Building Code. Same was done with the Mechanical, Plumbing, Electrical, Existing Building, and Historical Building Codes. In addition to the California codes, the 2021 International Swimming Pool and Spa Code (ISPSC) and the 2021 International Property Maintenance Code (IPMC) are included. The 2019 ISPSC and IPMC were previously adopted and will be replaced by the 2022 versions. The California Energy Code and Green Building Standards Code are

being adopted under separate ordinances which were established in the previous code adoption cycle due to the introduction of “reach code” amendments as part of the adoption of these codes. Adoption of the new 2022 codes will ensure that buildings and structures in Milpitas will safeguard the health, safety, and general welfare of the public. Staff recommends that the Council introduce the proposed ordinance adopting the new codes with amendments and set a public hearing on December 6, 2022. This timeline will allow notice of the public hearing to be published once a week for two successive weeks pursuant to Government Code Section 6066.

POLICY ALTERNATIVE(S):

Alternative : Adopt the new codes with modifications to the amendments and / or include only a portion of the amendments.

Pros: Would provide a limited increase over the baseline minimum safety standards.

Cons: Would not give full consideration for local conditions in Milpitas.

Reason for Not Recommending: Would not provide the complete code adoption with amendments to address local conditions in Milpitas.

FISCAL IMPACT:

There is no cost to the City other than administrative staff time and expense. Staff training on the new codes is needed and has been planned for in the budget. Training has begun and will be ongoing.

California Environmental Quality Act (CEQA):

The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

RECOMMENDATION:

Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 65.152 amending Chapters 3, 3.5, 4, 5, 6, 7, 10, 14, and 150 of Title II of the Milpitas Municipal Code relating to Code Administration; adopting by reference the 2022 California Building Code, 2022 California Residential Code, 2021 International Property Maintenance Code, 2022 California Mechanical Code, 2022 California Electrical Code, 2022 California Plumbing Code, 2021 International Swimming Pool and Spa Code, 2022 California Existing Building Code, and 2022 California Historical Building Code, with amendments. Set a public hearing on December 6, 2022, pursuant to California Government Code Section 50022.3, for adoption of the Ordinance.

Attachment(s):

Ordinance No. 65.152



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Adopt Ordinance No. 65.153 Adopting by Reference the 2022 California Energy Code; and Adopt Ordinance No. 65.154 Adopting by Reference the 2022 California Green Building Standards Code with Amendments; (Staff Contact: Bill Tott, Building Official, 408-586-3263)
Category:	Public Hearings - Community Development
Meeting Date:	12/6/2022
	Recommendation: (1) Open the public hearing, hear testimony, then move to close the public hearing; (2) Waive the second reading and adopt Ordinance No. 65.153 amending Chapter 11 of Title II of the Milpitas Municipal Code adopting by reference the 2022 California Energy Code; and (3) Waive the second reading and adopt Ordinance No. 65.154 amending Chapter 19 of Title II of the Milpitas Municipal Code adopting by reference the 2022 California Green Building Standards Code with amendments and find a CEQA exemption.

BACKGROUND:

On October 18, 2022, the Council introduced Ordinances No. 65.153 and No. 65.154 and set a public hearing on December 6, 2022 for adoption of the ordinances pursuant to Government Code Section 50022.3. Notice of the public hearing was published on October 4 and October 11, 2022 pursuant to Government Code Section 6066.

There were no changes to the Ordinances from the first reading; the Ordinances are now ready for their second reading and adoption. However, during the discussion with Council regarding certain aspects of the proposed ordinances, four specific concerns were brought forward: 1. What is the impact on the grid from requiring new development to be all-electric? 2. What are the economic impacts on the housing market from the all-electric reach code? 3. Why should the City require affordable multifamily housing to install EV infrastructure when it is perceived by some that most of the residents can't afford an EV? 4. Potential lack of availability of rebates for electric vehicles. Response to these concerns will be given in the following analysis portion of the AR.

Council also asked if a P.G. & E. representative could be invited to attend the December 6th Council meeting. On November 8, 2022 the City Manager extended the invitation to P.G. & E. representatives to speak at the December 6th Council Meeting to share P.G. & E.'s perspective and plans supporting neighborhood electrification, share an update on what P.G. & E. is doing / planning to do to improve long term electrical grid capacity and grid reliability for our customers, and address and provide an update on P.G. & E.'s near term efforts to improve electrical infrastructure reliability for an area of Milpitas that has been experiencing frequent outages. P.G. & E. representatives confirmed that they will be attending the December 6, 2022 Council Meeting to provide the requested information.

The City of Milpitas is participating in the Silicon Valley Clean Energy reach code grant offering, which will provide \$10,000 to the City for presenting reach codes to the City Council for consideration. After Council introduced the ordinances on October 18, 2022 staff submitted the request for the \$10,000 Reach Code Grant. Please see Attachment C for the SVCE Letter of Interest and the City's request for payment of the \$10,000 grant.

ANALYSIS:

Response to the three main concerns raised by Council members at the first reading on October 18, 2022:

1. What is the impact on the grid from requiring new development to be all-electric?

California's power grid needs improvement and State agencies have ordered significant upgrades to the electrical supply grid to be built without delay. Battery storage, which is needed to bridge over times of peak demand, is rapidly expanding. Over 3,000 MW of battery power was active during the September heat wave and was key in avoiding rolling blackouts. The State forecasts only ~1% growth in load per year which can be easily managed. Looking at it from a long term perspective, many of the major stresses on the grid are caused by the very thing electrification will help stop: the use of fossil fuels. Burning fossil fuels has greatly accelerated global warming which is a significant cause of grid alerts from overheated electrical infrastructure. The all-electric reach codes for new construction together with solar PV with battery backup will lessen peak demand at critical times of the day when the use of electricity is highest, which will significantly lessen the impact on the grid.

2. What are the economic impacts on the housing market from the all-electric reach code?

In Climate Zone 4 which includes Milpitas, constructing an average size all-electric single-family home is generally about \$6,000 less to construct than building a mixed-fuel home. Most of the savings come from not having to install gas infrastructure. This is also true for all-electric Multifamily Midrise, Medium Offices, Medium Retail and Small Hotel occupancies, as represented in the table below where the benefit/cost ratios for all of these occupancies is 1 or greater which indicates cost-effectiveness based on studies completed in 2019 and 2022. See Attachment D for links to these studies.

	C-E Study Vintage	Benefit-Cost Ratio ¹	Net Present Value ²	Construction Cost Savings vs Mixed-Fuel
Single-Family	2022	>1	\$6,947	\$6,000
ADU	2022	>1	\$2,393	\$2,100
Multifamily Midrise	2019	>1	\$1,231	\$888 per unit
Medium Office	2019	1.0	\$32,786	\$106,083
Medium Retail	2019	>1	\$22,676	\$23,087
Small Hotel	2019	>1	\$1,246,730	\$1,311,651

Notes:

1. This ratio is used by the CEC to determine cost-effectiveness. A ratio of 1.0 or greater indicates cost-effectiveness.
2. Net present value is based on a 30-year timeline and includes costs for construction, maintenance, equipment replacement, and operation.

3. Why should the City require affordable multifamily housing to install EV chargers when it is perceived by some that most of the residents can't afford an EV?

One aspect of the proposed reach code is that it does increase construction costs for the installation of EV infrastructure in multifamily projects with shared parking. To counter this SVCE will provide a subsidy to offset this cost for low-income and very low-income developments built during this building code cycle. Regarding the cost of an EV, even though the initial cost is more, the overall 5-year cost of ownership is often less, especially given the high cost of gas and maintenance for an internal combustion engine car. Another consideration in response to the question is that multi-family buildings generally have a life of at least 50 years, and now that California law specifies that nearly all new vehicles sold in 2035 (just 13 years away) will be electric, we need to look at the long term value of installing EV infrastructure now during new construction and not later when it will be significantly more expensive to retrofit while inconveniencing the occupants. Residents, even lower income residents, will be predominantly driving EVs for the majority of the life of the building. Charging at your residence is preferred and much more convenient than charging at offsite locations. That's why adding EV chargers during initial construction, whether for lower income residents or others when the costs are minimal

is optimal. EV Charging infrastructure at multi-family properties is severely trailing and many renters cite lack of access to charging as a reason for not buying an EV. This requirement aims to address this equity issue and increase access to EV charges for renters and multi-family occupants.

For the proposed Milpitas EV reach code, the table below show that costs for new construction are significantly lower, at almost four times less per spot compared to the retrofit scenario, for both market rate and affordable housing. An office building scenario is also included to provide comparison for a non-residential project. This table indicates that increasing code requirements for charging infrastructure could potentially save significant amounts of money to building owners in the new construction context rather than waiting for tenants to become interested in electric vehicles, at which point significant costs related to invasive demolition and electrical infrastructure replacement would be necessary.

Scenario	Market Rate 25% Level 2 75% Level 1		Affordable Housing 20% Level 2 80% Level 1	
	New Construction	Retrofit	New Construction	Retrofit
60-Unit Residential	\$1,410	\$4,443	\$1,049	\$3,982
150-Unit Residential	\$1,197	\$4,101	\$1,002	\$3,854
60-Space Office Building	\$1,166	\$3232	N/A	N/A

Notes:

1. Table based on Electric Vehicle Infrastructure Cost Analysis Report for Peninsula Clean Energy (PCE) & Silicon Valley Clean Energy (SVCE) November 2019.
2. "New Construction" and "Retrofit" costs are relative to a CALGreen 2019 mandatory baseline building

4. What incentives are available for electric vehicles?

There are multiple financial incentives available for electric vehicles. The California Clean Vehicle Rebate Project offers incentives for the purchase or lease of qualified vehicles, and low-income applicants are eligible for higher incentives. These incentives range from \$1,000 to \$7,000 depending on vehicle type, location, and applicant income. Staff have confirmed that this program is still accepting rebate applications. Additionally, qualified electric vehicle purchases may be eligible for a federal tax credit through the Clean Vehicle Credit program. The minimum credit amount is \$2,500 and the maximum credit amount is \$7,500 for electric vehicles that meet the new requirement for final assembly in North America. SVCE's [EV Assistant tool](#) can provide a personalized list of incentives for individuals shopping for EVs. Electric vehicle drivers also benefit from lower operating and maintenance costs as all-electric cars do not require as much maintenance as internal combustion engines and it is cheaper to charge an electric vehicle compared to raising gas prices.

The proposed reach codes are largely based on the model codes developed by Silicon Valley Clean Energy which have been vetted through considerable research and public review. Staff also incorporated adjustments to the proposed model reach codes as a result of stakeholder input from the Milpitas community. The proposed reach codes for Milpitas provide pathways / options that offer a more aggressive but balanced approach to newly constructed residential and non-residential projects for electrification and EV charging infrastructure in response to State mandates for greenhouse gas emission reductions and carbon free electricity.

Given that building emissions of GHG account for approximately 35-40% of total GHG emissions, and transportation accounts for 50% of all GHG, the need for all-electric standards for new construction and enhanced EV charging infrastructure is compelling. Elimination of natural gas usage through the use of all-electric standards for new construction would greatly reduce greenhouse gas emissions at an accelerated rate through the adoption of the reach codes.

FISCAL IMPACT:

There is no cost to the City other than administrative staff time and expense. The City of Milpitas is participating in the Silicon Valley Clean Energy reach code grant offering, which will provide \$10,000 to the City for presenting reach codes to the City Council for consideration.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

RECOMMENDATION:

(1) Open the Public Hearing; hear testimony, then move to close the public hearing.(2) Waive the second reading and adopt Ordinance No. 65.153 amending Chapter 11 of Title II of the Milpitas Municipal Code adopting by reference the 2022 California Energy Code and (3) Waive the second reading and adopt Ordinance No. 65.154 amending Chapter 19 of Title II of the Milpitas Municipal Code adopting by reference the 2022 California Green Building Standards Code with amendments.

Attachment(s):

- A. Ordinance No. 65.153 – adopting by reference the 2022 California Energy Code
- B. Ordinance No. 65.154 – adopting by reference the 2022 California Green Building Standards Code with amendments
- C. SVCE Letter of Interest (LOI) and the City's request for the \$10,000 Reach Code Grant
- D. AR Introduce Ordinances 65.153 and 65.154 for the 2022 Energy and Green Building Standards Codes

REGULAR

NUMBER: 65.153

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AMENDING CHAPTER 11 OF TITLE II OF THE MILPITAS MUNICIPAL CODE
ADOPTING BY REFERENCE THE 2019 CALIFORNIA ENERGY CODE

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, 2022, upon motion by _____, and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

RECITALS:

WHEREAS, the California Building Standards Commission has adopted and published an updated Title 24 of the California Code of Regulations, also referred to as the 2022 California Building Standards Code, that will become effective statewide on January 1, 2023; and

WHEREAS, California Health and Safety Code Sections 17958, 17958.5, 17958.7 and 18941.5 establish the authority for a city to adopt and make local amendments and modifications to the building standards in the California Building Standards Code to establish more restrictive building standards than those contained in the California Building Standards Code; and

WHEREAS, California Health and Safety Code Sections 17958, 17958.5, 17958.7 and 18941.5 permit a city to make such local amendments and modifications as the city determines are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, the City of Milpitas has reviewed and intends to adopt the 2022 California Energy Code;

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council hereby finds and determines that this Ordinance has been assessed in accordance with the California Environmental Quality Act (Cal. Pub. Res. Code, § 21000 et seq.) (“CEQA”) and the State CEQA Guidelines (14 Cal. Code Regs. § 15000 et seq.) and is categorically exempt from CEQA under CEQA Guidelines, § 15061(b)(3), which exempts from CEQA any project 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. Adoption of the proposed Ordinance would not be an activity with potential to cause significant effect on the environment because the changes made to the California Energy Code within are enacted to provide more protection to the environment, and therefore is exempt from CEQA. It is also exempt from CEQA pursuant to CEQA Guidelines, § 15038 which exempts actions taken by regulatory agencies for the enhancement and protection of the environment. As such, the Ordinance is categorically exempt from CEQA.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE II, CHAPTER 11

Chapter 11 of Title II of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Chapter 11 ENERGY CODE**Sections:****Section 1 – Adoption of the Energy Code**

Section 1 Adoption of the Energy Code

II-11-1.01

The 2022 California Energy Code, published and copyrighted by the International Code Council, Inc. and the California Building Standards Commission in Part 6 of Title 24 of the California Code of Regulations, is hereby adopted and referred to, and by this reference expressly incorporated and made a part of this Chapter as though fully set forth herein. The adoption includes Appendices 1-A and 1-B. The 2022 California Energy Code shall be designated and referred to as the “Energy Code” for the City of Milpitas. There is one copy of said Code on file in the office of the Building Official for use and examination by the public.

SECTION 5. REPEAL OF CONFLICTING ORDINANCES

Upon adoption of each new California Building Standards Code, the Ordinance adopting the previously adopted California Building Standards Code is superseded in its entirety. This Ordinance does not repeal Ordinance No. 65.147, which adopts by reference and amends the 2022 California Building Standards Code, Ordinance No. 65.149, which adopts by reference and amends the 2019 California Green Building Standards Code, nor Ordinance No. 113.25, which adopts by reference and amends the 2019 California Fire Code.

SECTION 6. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 7. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its final adoption by the City Council, and after approval of the City of Milpitas application to enforce its locally adopted energy standards by the California Energy Commission, but no sooner than January 1, 2023. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

REGULAR

NUMBER: 65.154

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AMENDING CHAPTER 19 OF TITLE II OF THE MILPITAS MUNICIPAL CODE
ADOPTING BY REFERENCE THE 2022 CALIFORNIA GREEN BUILDING
STANDARDS CODE WITH AMENDMENTS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____,
2022, upon motion by _____, and was adopted (second reading) by the City
Council at its meeting of _____, upon motion by _____.
The Ordinance was duly passed and ordered published in accordance with law by the
following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi City Attorney

RECITALS:

WHEREAS, the California Building Standards Commission has adopted and published an updated Title 24 of the California Code of Regulations, also referred to as the 2022 California Building Standards Code, that will become effective statewide on January 1, 2023; and

WHEREAS, California Health and Safety Code Sections 17958, 17958.5, 17958.7 and 18941.5 establish the authority for a city to adopt and make local amendments and modifications to the building standards in the California Building Standards Code to establish more restrictive building standards than those contained in the California Building Standards Code; and

WHEREAS, California Health and Safety Code Sections 17958, 17958.5, 17958.7 and 18941.5 permit a city to make such local amendments and modifications as the city determines are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, California Health and Safety Code Sections 17958, 17958.5, 17958.7 and 18941.5 require a city, before making any amendments and modifications to the California Building Standards Code, make an express finding that such amendments and modifications are reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, the City of Milpitas has reviewed and intends to adopt the 2022 California Green Building Standards Code; and

WHEREAS, the City Council wishes to amend portions of the California Green Building Standards Code to better address local conditions and makes express findings that such amendments are reasonably necessary because of local climatic, geological or topographical conditions as set forth in this Ordinance.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council hereby finds and determines that this Ordinance has been assessed in accordance with the California Environmental Quality Act (Cal. Pub. Res. Code, § 21000 et seq.) (“CEQA”) and the State CEQA Guidelines (14 Cal. Code Regs. § 15000 et seq.) and is categorically exempt from CEQA under CEQA Guidelines, § 15061(b)(3), which exempts from CEQA any project 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. Adoption of the proposed Ordinance would not be an activity with potential to cause significant effect on the environment because the changes made to the California Green Building Standards Code are enacted to provide more protection to the environment, and therefore is exempt from CEQA. Therefore, it can be seen with certainty that there is no possibility that the Ordinance in question may have a significant effect on the environment; accordingly, the Ordinance is categorically exempt from CEQA.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE II, CHAPTER 19

Chapter 19 of Title II of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Chapter 19 GREEN BUILDING STANDARDS CODE

Sections:

Section 1 – Adoption of the Green Building Standards Code

Section 2 – Amendments to the Green Building Standards Code

Section 1 Adoption of the Green Building Standards Code

II-19-1.01

The 2022 Edition of the California Green Building Standards Code, published and copyrighted by the International Code Council, Inc. and the California Building Standards Commission in Part 11 of Title 24 of the California Code of Regulations, also known as the CALGreen Code is hereby adopted and referred to, and by this reference expressly incorporated and made a part of this Chapter as though fully set forth herein. The 2022 California Green Building Standards Code shall be designated and referred to as the “Green Building Standards Code” for the City of Milpitas. There is one copy of said Code on file in the office of the Building Official for use and examination by the public.

Section 2 Amendments to the Green Building Standards Code

II-19-2.01

Amend Section 202 of the Green Building Standards Code by adding the following definitions to read as follows:

Addition. An extension or increase in floor area of an existing building or structure.

Affordable Housing. Residential buildings that consist entirely of below market rate units and whose rents or sales prices are governed by local agencies to be affordable based on area median income.

All-Electric Building. A building that contains no *combustion equipment* or plumbing for combustion equipment serving space heating (including fireplaces), water heating (including pools and spas), cooking appliances and clothes drying, within the building or building property lines, and instead uses electric heating appliances for service.

Alteration or Alter. Any construction or renovation to an existing structure other than repair for the purpose of maintenance or addition.

Automatic Load Management System (ALMS). A control system designed to manage load across one or more electric vehicle supply equipment (EVSE), circuits, panels and to share electrical capacity and/or automatically manage power at each connection point. ALMS systems shall be designed to deliver no less than 3.3 kVa (208/240 volt, 16-ampere) to each EV Capable, EV Ready or EVCS space served by the ALMS, and meet the requirements of California Electrical Code Article 625. The connected amperage to the building site for the EV charging infrastructure shall not be lower than the required connected amperage per California Green Building Standards Code, Title 24 Part 11.

Combustion Equipment. Any equipment or appliance used for space heating, water heating, cooking, clothes drying and/or lighting that uses fuel gas.

Commercial Food Heat-Processing Equipment. Equipment used in a food establishment for heat-processing food or utensils and that produces grease vapors, steam, fumes, smoke, or odors that are

required to be removed through a local exhaust ventilation system, as defined in the California Mechanical Code.

Direct Current Fast Charging (DCFC). A vehicle space provided with electrical infrastructure that meets the following conditions:

- i. A minimum of 48 kVa (480 volt, 100-ampere) capacity wiring.
- ii. Electric vehicle supply equipment (EVSE) located within three (3) feet of the vehicle space providing a minimum capacity of 80-ampere.

Electric Heating Appliance. A device that produces heat energy to create a warm environment by the application of electric power to resistance elements, refrigerant compressors, or dissimilar material junctions, as defined in the California Mechanical Code.

Electric Vehicle Charging Station (EVCS). An EV Ready vehicle space that includes the installation of electric vehicle supply equipment (EVSE). An EVCS space may be used to satisfy EV Ready space requirements. EVSE shall be installed in accordance with the California Electrical Code, Article 625.

Electric Vehicle Supply Equipment (EVSE). The electric vehicle charging connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring and the electric vehicle.

Fuel Gas. A gas that is natural, manufactured, liquefied petroleum, or a mixture of these.

Level 2 EV Capable. A vehicle space provided with electrical infrastructure that meets the following requirements:

- i Conduit that connects a listed electrical panel of sufficient capacity to a junction box with or without a receptacle located within three (3) feet of the vehicle space.
- ii The conduit shall accommodate at least 8.3 kVa (208/240 volt, 40-ampere) per vehicle space. Conduit shall have a minimum nominal trade size of 1 inch inside diameter and may be sized for multiple circuits as allowed by the California Electrical Code. Conduit shall be installed in spaces that will be inaccessible after construction, either trenched underground or where penetrations to walls, floors, or other partitions would otherwise be required for future installation of branch circuits, and such additional elements deemed necessary by the Building Official. Construction documents shall note future installation of conduit from the panel to the vehicle space, via the installed inaccessible conduit.
- iii The electrical panel shall reserve a space for a 40-ampere overcurrent protective device(s) for EV charging, labeled in the panel directory as “EV CAPABLE.”
- iv The EV vehicle space shall have signage with at least a 12” font adjacent to the parking space indicating the space is EV Capable.
- v. Electrical load calculations shall demonstrate that the electrical panel service capacity and electrical system, including any on-site distribution transformer(s), have sufficient capacity to simultaneously charge all EVs at all required EV spaces at a minimum of 40 amperes.

Level 1 EV Ready. A vehicle space that is served by a complete electric circuit with the following requirements:

- i A minimum of 2.2 kVa (110/120 volt, 20-ampere) capacity wiring.
- ii A receptacle labeled “Electric Vehicle Outlet” or electric vehicle supply equipment located within three (3) feet of the vehicle space. If EVSE is provided, the minimum capacity of the EVSE shall be 16-ampere.
- iii Conduit oversized to accommodate future Level 2 EV Ready (208/240 volt, 40-ampere) at each vehicle space.

Level 2 EV Ready. A vehicle space that is served by a complete electric circuit with the following requirements:

- i A minimum of 8.3 kVa (208/240 volt, 40-ampere) capacity wiring.
- ii A receptacle labeled “Electric Vehicle Outlet” or electric vehicle supply equipment located within three (3) feet of the vehicle space. If EVSE is provided, the minimum capacity of the EVSE shall be 30-ampere.

Low Power Level 2 EV Ready. A vehicle space that is served by a complete electric circuit with the following requirements:

- i A minimum of 4.1 kVA (208/240 Volt, 20-ampere) capacity wiring.
- ii A receptacle labeled “Electric Vehicle Outlet” or electric vehicle supply equipment located within three (3) feet of the vehicle space. If EVSE is provided, the minimum capacity of the EVSE shall be 16-ampere.
- iii Conduit oversized to accommodate future Level 2 EV Ready (208/240 volt, 40-ampere) circuit at each vehicle space.

Section 2 – Amendments to the Green Building Standards Code

II-19-2.02

Amend Section 301.1.1 of the Green Building Standards Code to read as follows:

301.1.1 Additions and alterations. [HCD] The mandatory provisions of Chapter 4 shall be applied to additions or alterations of existing residential buildings where the addition or alteration increases the building’s conditioned area, volume, or size. The requirements shall apply only to and/or within the specific area of the addition or alteration. (No change to existing California amendment.)

The mandatory provisions of Section 4.106.4.2 may apply to additions or alterations of existing parking facilities or the addition of new parking facilities serving existing multifamily buildings.

The mandatory provisions of Section 5.106.5.3 may apply to additions or alterations of existing parking facilities or the addition of new parking facilities serving existing nonresidential buildings.

NOTE: Repairs including, but not limited to, resurfacing, restriping, and repairing or maintaining existing lighting fixtures are not considered alterations for the purpose of this section.

II-19-2.03

Amend Section 4.106.4 through Section 4.106.4.3 of the Green Building Standards Code to read as follows:

4.106.4 Electric vehicle (EV) charging. Residential construction shall comply with Section 4.106.4.1 or 4.106.4.2, and 4.106.4.3, to facilitate future installation and use of EV chargers. Electric vehicle supply equipment (EVSE) shall be installed in accordance with the *California Electrical Code*, Article 625. Calculation for spaces shall be rounded up to the nearest whole number.

Exceptions:

1. On a case-by-case basis, where the local enforcing agency has determined EV charging and infrastructure are not feasible based upon one or more of the following conditions:
 - 1.1. Where there is no local utility power supply, or the local utility is unable to supply

adequate power.

2. Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU) without additional parking facilities.
3. Multifamily residential R-2 building projects that have City Council approved entitlements before the code effective date.

4.106.4.1 One-and two-family dwellings and town-houses with attached private garages.

4.106.4.1.1 New Construction. If one vehicle space is provided, it shall be a Level 2 EV Ready space. If a second vehicle space is provided, it shall be provided with a Level 1 EV Ready space.

4.106.4.1.1 Identification.

Deleted.

4.106.4.1.2. Existing Building. Parking additions shall provide electrical capacity and EV infrastructure in accordance with the requirements of 4.106.4.1.1.

4.106.4.2 Multifamily dwellings with residential parking facilities.

4.106.4.2.1 New Construction. Twenty-five percent (25%) of vehicle spaces for dwelling units shall have access to EVCS with Level 2 EV Ready infrastructure. ALMS shall be permitted to reduce load when multiple vehicles are charging. Seventy-five percent (75%) of vehicle spaces for dwelling units shall be Low Power Level 2 EV Ready. EV ready spaces and EVCS in multifamily developments shall comply with California Building Code, Chapter 11A, Section 1109A. EVCS shall comply with the accessibility provisions for EV chargers in the California Building Code, Chapter 11B.

4.106.4.2.2 New Construction. Affordable Housing. Five percent (5%) of vehicle spaces for dwelling units shall have access to EVCS with Level 2 EV Ready infrastructure. ALMS shall be permitted to reduce load when multiple vehicles are charging. Fifteen percent (15%) of vehicle spaces shall have access to Low Power Level 2 Ready infrastructure. Eighty percent (80%) of vehicle spaces for dwelling units shall have access to Level 1 EV Ready infrastructure. EV ready spaces and EVCS in multifamily developments shall comply with California Building Code, Chapter 11A, Section 1109A. EVCS shall comply with the accessibility provisions for EV chargers in the California Building Code, Chapter 11B.

Note: The total number of EV spaces should be one-hundred percent (100%) of dwelling units or one-hundred percent (100%) of parking spaces, whichever is less.

4.106.4.2.3 Existing Buildings.

1. When new vehicle spaces are added and the work requires a building permit, ten percent (10%) of the total number of vehicle spaces added shall be EVCS Level 2 Ready. Any existing EV Capable spaces on the building property required by the locally adopted codes at the time of building permit shall be upgraded to a minimum of Level 1 EV Ready. Upgraded vehicle spaces shall meet the accessibility requirements of California Building Code Chapters 11A and 11B.
2. When new vehicle spaces are added and ALMS is installed, the ALMS must be designed to deliver no less than 2.2 kVa (110/120 volt, 20-ampere).

4.106.4.2.4 Electric Vehicle Ready Space Signage.

Electric vehicle ready spaces shall be identified by signage or pavement markings, in compliance with Caltrans Traffic Operations Policy Directive 13-01 (Zero Emissions Vehicle Signs and Pavement Markings) or its successor (s).

4.106.4.3 Electric Vehicle Charging Stations (EVCS). Electric vehicle charging stations required by Section 4.106.4.2 shall comply with Section 4.106.4.3.

Exception: Electric vehicle charging stations serving public accommodations, public housing, motels, and hotels shall not be required to comply with this section. See *California Building Code*, Chapter 11B, for applicable requirements.

4.106.4.3.1 Location. EVCS shall comply with at least one of the following options:

1. The charging space shall be located adjacent to an accessible parking space meeting the requirements of the *California Building Code*, Chapter 11A, to allow use of the EV charger from the accessible parking space.
2. The charging space shall be located on an accessible route, as defined in the *California Building Code*, Chapter 2, to the building.

Exception: Electric vehicle charging stations designed and constructed in compliance with the *California Building Code*, Chapter 11B, are not required to comply with Section 4.106.4.3.1 and Section 4.106.4.3.2.

4.106.4.3.2 Dimensions. The charging spaces shall be designed to comply with the following:

1. The minimum length of each EV space shall be 18 feet (5486 mm).
2. The minimum width of each EV space shall be 9 feet (2743 mm).
3. One in every 25 charging spaces, but not less than one, shall also have an 8-foot (2438 mm) wide minimum aisle. A 5-foot (1524 mm) wide minimum aisle shall be permitted provided the minimum width of the EV space is 12 feet (3658 mm).
 - a. Slope for the EV space and the access aisle shall not exceed 1 unit vertical in 48 units horizontal (2.083 percent slope) in any direction.

Exception: Where the Milpitas Municipal or Zoning Code permits parking space dimensions that are less than the minimum requirements stated in this section 4.106.4.3.2, and the compliance with would be infeasible due to particular circumstances of a project, an exception may be granted while remaining in compliance with California Building Code Section Table 11B-228.3.2.1 and 11B-812, as applicable.

4.106.4.2.2.1.3 Accessible EV Spaces.

Deleted.

4.106.4.2.3 EV space requirements.

Deleted.

4.106.4.2.4 Identification.

Deleted.

4.106.4.2.5 Electric Vehicle Ready Space Signage.

Deleted.

4.106.4.3 Electric vehicle charging for additions and alterations of parking facilities serving existing multifamily buildings.

Deleted.

4.106.4.4 Direct current fast charging stations. One DCFC may be substituted for up to five (5) EVCS to meet the requirements of 4.106.4.1 and 4.106.4.2. Where ALMS serve DCFC stations, the power demand from the DCFC shall be prioritized above Level 1 and Level 2 spaces.

II-19-2.04

Amend Section 4.106 Site Development to add the following sections for all-electric buildings and qualifying alteration projects:

4.106.5 All-electric buildings. New construction buildings and qualifying alteration projects shall comply with Section 4.106.5.1 or 4.106.5.2 so that they do not use *combustion equipment* or are ready to accommodate installation of *electric heating appliances*.

4.106.5.1. New construction and qualifying alteration projects. All newly constructed buildings shall be *all-electric buildings*. Alterations that include replacement or addition of over 50 percent of the existing foundation for purposes other than a repair or reinforcement as defined in California Existing Building Code Section 202; or where over 50 percent of the existing framing above the sill plate is removed or replaced for purposes other than repair, shall be *all-electric buildings*. If either of these criteria are met within a three-year period, measured from the date of the most recent previously obtained permit final date, the project shall be subject to the *all-electric building's* requirements.

Tenant improvements shall not be considered new construction. The final determination whether a project meets the definition of substantial reconstruction/alteration shall be made by the local enforcing agency.

Exceptions:

1. Multifamily residential building projects that have approved entitlements before the effective date of this ordinance may install fuel gas for water heating systems serving multiple dwelling units. The applicant shall comply with Section 4.106.5.2.
2. If the applicant establishes that there is not an all-electric prescriptive compliance pathway for the building system under the California Building Energy Efficiency Standards, and that the building is not able to achieve the performance compliance standard applicable to the building under the Energy Efficiency Standards using commercially available technology and an approved calculation method, then the local enforcing agency may grant a modification. The applicant shall comply with Section 4.106.5.2.

Inactive *Fuel Gas Infrastructure* may be extended to spaces that are anticipated to qualify for the exceptions contained in this chapter. The inactive *Fuel Gas Infrastructure* shall not be activated, have a meter installed, or otherwise used unless the exemptions specified in this chapter have been confirmed as part of the issuance of a building permit. If the *Fuel Gas Infrastructure* is no longer serving one of the exceptions contained in this chapter, it shall either be capped, otherwise terminated, or removed by the entity previously entitled to the exemption, in a manner pursuant to all applicable Codes.

The City of Milpitas shall have the authority to approve alternative materials, design and methods of construction or equipment per California Building Code Section 104.

4.106.5.2 Requirements for combustion equipment. Where *combustion equipment* is allowed per Exceptions under 4.106.5.1, the construction drawings shall indicate electrical infrastructure and physical space accommodating the future installation of an *electrical heating appliance* in the following ways, as certified by a registered design professional or licensed electrical contractor:

1. Branch circuit wiring, electrically isolated and designed to serve all electrical heating appliances in accordance with manufacturer requirements and the California Electrical Code, including the appropriate voltage, phase, minimum amperage, and an electrical receptacle or junction box within five feet of the appliance that is accessible with no obstructions. Appropriately sized conduit may be installed in lieu of conductors; and
2. Labeling of both ends of the unused conductors or conduit shall be with “For Future Electrical Appliance”; and
3. Reserved circuit breakers in the electrical panel for each branch circuit, appropriately labeled (e.g. “Reserved for Future Electric Range”), and positioned on the opposite end of the panel supply conductor connection; and
4. Connected subpanels, panelboards, switchboards, busbars, and transformers shall be sized to serve the future electrical heating appliances. The electrical capacity requirements shall be adjusted for demand factors in accordance with the California Electric Code; and
5. Physical space for future electrical heating appliances, including equipment footprint, and if needed a pathway reserved for routing of ductwork to heat pump evaporator(s), shall be depicted on the construction drawings. The footprint necessary for future electrical heating appliances may overlap with non-structural partitions and with the location of currently designed combustion equipment.

II-19-2.05

Amend Section 5.106.5.3 through Section 5.106.5.3.3 of the Green Building Standards Code to read as follows:

5.106.5.3 Electric Vehicle (EV) Charging. Nonresidential construction shall comply with Section 5.106.5.3.1 or Section 5.106.5.3.2 to facilitate future installation and use of EV chargers. Accessible EVCS shall be provided in accordance with the California Building Code Chapter 11B Section 11B-228.3. For EVCS signs, refer to Caltrans Traffic Operations Policy Directive 13-01 (Zero Emission Vehicle Signs and Pavement Markings) or its successor(s).

Exception: Where there is no commercial power supply.

Notes:

1. Load balancing systems may be installed to increase the number of EV chargers or the amperage or voltage beyond the minimum requirements in this code. The option does not allow for installing less electrical panel capacity than would be required without load balancing.

5.106.5.3.1 Office Buildings. In nonresidential new construction buildings designated primarily for office use, when 10 or more parking spaces are constructed:

1. 5% of the available parking spaces on site shall be equipped with Level 2 EVCS;
2. An additional 10% shall be provided with at least Level 1 EV Ready circuits; and
3. An additional 20% shall be at least EV Capable or EV Ready.

Calculations for the required minimum number of spaces equipped with Level 2 EVCS, Level 2 EV Ready spaces and EV Capable spaces shall all be rounded up to the nearest whole number.

Construction plans and specifications shall demonstrate that all raceways shall be a minimum of 1” and sufficient for installation of EVCS at all required Level 1 EV Ready and EV Capable spaces; Electrical calculations shall substantiate the design of the electrical system to include the rating of equipment and any on-site distribution transformers, and have sufficient capacity to simultaneously charge EVs at all

required EV spaces including Level 1 EV Ready and EV Capable spaces; and service panel or subpanel(s) shall have sufficient capacity to accommodate the required number of dedicated branch circuit(s) for the future installation of the EVSE.

5.106.5.3.2 Other Nonresidential Buildings. In nonresidential new construction buildings that are not designated primarily for office use, such as retail or institutional uses, when 10 or more parking spaces are constructed:

1. 5 % of the available parking spaces on site shall be equipped with Level 2 EVCS;
2. An additional 15% shall be at least Level 2 EV Capable.
3. Over 100 spaces: option for one 80kW Fast Charger per 100 spaces.

Exception: Installation of each Direct Current Fast Charger with the capacity to provide at least 80 kW output may substitute for 6 Level 2 EVCS and 5 EV Ready spaces after a minimum of 6 Level 2 EVCS and 5 Level 1 EV Capable spaces are installed.

Note: Calculations for the required minimum number of spaces equipped with Level 2 EVCS and Level 1 EV Capable spaces shall be rounded up to the nearest whole number.

5.106.5.3.3 Design Requirements. For all projects subject to Title 24, Part 2, Chapter 11B, construction documents shall indicate how many accessible EVCS would be required under the California Code of Regulations Title 24, Chapter 11B, if applicable, in order to convert Level 1 EV Ready infrastructure to EVCS. Construction documents shall also demonstrate that the facility is designed such that compliance with accessibility standards, including Chapter 11B accessible routes, will be feasible for the required accessible EVCS at the time of EVCS installation. Surface slope for any area designated for accessible EVCS shall meet slope requirements in Chapter 11B and vertical clearance requirements in Chapter 11B at the time of original building construction.

II-19-2.06

Amend Section 5.106.5.3.5 of the Green Building Standards Code to read as follows:

5.106.5.3.5 Clean Air Vehicle Parking Designation. EVCS qualify as designated parking as described in Section 5.106.5.2 Designated parking for clean air vehicles.

Notes:

1. The California Department of Transportation adopts and publishes the California Manual on Uniform Traffic Control Devices (California MUTCD) to provide uniform standards and specifications for all official traffic control devices in California. Zero Emission Vehicle Signs and Pavement Markings can be found in the New Policies & Directives number 13-01. www.dot.ca.gov/hq/traffops/policy/13-01.pdf.
2. See Vehicle Code Section 22511 for EV charging spaces signage in off-street parking facilities and for use of EV charging spaces.
3. The Governor's Office of Planning and Research published a Zero-Emission Vehicle Community Readiness Guidebook which provides helpful information for local governments, residents and businesses. www.opr.ca.gov/docs/ZEV_Guidebook.pdf.
4. Section 11B-812 of the 2022 California Building Code requires that a facility providing EVCS for public and common use also provide one or more accessible EVCS as specified in Table 11B-228.3.2.1. Chapter 11B applies to certain facilities including, but not limited to, public accommodations and publicly funded housing (see section 1.9 of Part 2 of the California Building Code). Section 11B-812 requires that "Parking spaces, access aisles and vehicular routes serving them shall provide a vertical clearance of 98 inches (2489 mm) minimum." It also requires that parking spaces and access aisles meet maximum slope requirements of 1 unit vertical in 48 units horizontal

(2.083 percent slope) in any direction at the time of new building construction or renovation. Section 11B-812.5 contains accessible route requirements.

II-19-2.07

Amend section 5.106 Site Development to add the following sections for all-electric buildings and qualifying alteration projects.:

5.106.13 All-electric buildings. New construction buildings and qualifying alteration projects shall comply with Section 4.106.5.1 or 4.106.5.2 so that they do not use *combustion equipment* or are ready to accommodate installation of *electric heating appliances*.

5.106.13.1 New construction and qualifying alteration projects. All newly constructed buildings shall be *all-electric buildings*. Alterations that include replacement or addition of over 50 percent of the existing foundation for purposes other than a repair or reinforcement as defined in California Existing Building Code Section 202; or where over 50 percent of the existing framing above the sill plate is removed or replaced for purposes other than repair, shall be *all-electric buildings*. If either of these criteria are met within a three-year period, measured from the date of the most recent previously obtained permit final date, the project shall be subject to the *all-electric building's* requirements.

Tenant improvements shall not be considered new construction. The final determination whether a project meets the definition of substantial reconstruction/alteration shall be made by the local enforcing agency.

Exceptions:

1. Nonresidential buildings containing kitchens located in a place of public accommodation, as defined in the California Building Code Chapter 2, may apply to the local enforcing agency for a modification to install commercial food heat-processing equipment served by fuel gas. The local enforcing agency may grant the modification if they find:
 - a. A business-related need to cook with combustion equipment; and
 - b. The need cannot be achieved equivalently with an electric heating appliance; and
 - c. The applicant has installed energy efficient equipment based on Energy Star or California Energy Wise qualifications, as available.
 - d. The applicant shall comply with Section 5.106.13.2.
2. If the applicant establishes that there is not an all-electric prescriptive compliance pathway for the building system under the California Building Energy Efficiency Standards, and that the building is not able to achieve the performance compliance standard applicable to the building under the Energy Efficiency Standards using commercially available technology and an approved calculation method, then the local enforcing agency may grant a modification. The applicant shall comply with Section 5.106.13.2.

Inactive *Fuel Gas Infrastructure* may be extended to spaces that are anticipated to qualify for the exceptions contained in this chapter. The inactive *Fuel Gas Infrastructure* shall not be activated, shall not have a meter installed, and/or shall not otherwise be used unless the exemptions specified in this chapter have been confirmed as part of the issuance of a building permit. If the *Fuel Gas Infrastructure* is no longer serving one of the exceptions contained in this chapter, it shall either be capped, otherwise terminated, or removed by the entity previously entitled to the exemption, in a manner pursuant to all applicable Codes.

The City of Milpitas shall have the authority to approve alternative materials, design and methods of construction or equipment per California Building Code Section 104.

5.106.13.2. Requirements for *combustion equipment*. Where *combustion equipment* is allowed per exceptions under Section 5.106.13.1, the construction drawings shall indicate electrical infrastructure and physical space accommodating the future installation of an *electrical heating appliance* in the following ways, as certified by a registered design professional or licensed electrical contractor:

1. Branch circuit wiring, electrically isolated and designed to serve all electrical heating appliances in accordance with manufacturer requirements and the California Electrical Code, including the appropriate voltage, phase, minimum amperage, and an electrical receptacle or junction box within five feet of the appliance that is accessible with no obstructions. Appropriately sized conduit may be installed in lieu of conductors; and
2. Labeling of both ends of the unused conductors or conduit shall be with “For Future Electrical Appliance”; and
3. Reserved circuit breakers in the electrical panel for each branch circuit, appropriately labeled (e.g. “Reserved for Future Electric Range”), and positioned on the opposite end of the panel supply conductor connection; and
4. Connected subpanels, panelboards, switchboards, busbars, and transformers shall be sized to serve the future electrical heating appliances. The electrical capacity requirements shall be adjusted for demand factors in accordance with the California Electric Code; and
5. Physical space for future electrical heating appliances, including equipment footprint, and if needed a pathway reserved for routing of ductwork to heat pump evaporator(s), shall be depicted on the construction drawings. The footprint necessary for future electrical heating appliances may overlap with non-structural partitions and with the location of currently designed combustion equipment.

SECTION 4. EXPRESS FINDINGS

Pursuant to California Health and Safety Code Sections 17958.7 and 18941.5, the City Council hereby finds that the above amendments are necessary due to local climatic, geological or topographical conditions as set forth in **Exhibit A**

SECTION 5. REPEAL OF CONFLICTING ORDINANCES

Upon adoption of each new California Building Standards Code, the Ordinance adopting the previously adopted California Building Standards Code is superseded in its entirety. This Ordinance does not repeal Ordinance No. 65.147, which adopts by reference and amends parts of the 2022 California Building Standards Code, Ordinance No. 65.148, which adopts by reference the 2022 California Energy Code, nor Ordinance No. 113.25, which adopts by reference and amends the 2022 California Fire Code.

SECTION 6. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 7. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its final adoption by the City Council, but no sooner than January 1, 2023. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

EXHIBIT A

FINDINGS IN SUPPORT OF AMENDMENTS TO TITLE 24 OF THE CALIFORNIA CODE OF REGULATIONS: LOCAL CLIMATIC, GEOLOGICAL OR TOPOGRAPHICAL CONDITIONS

Amendments to the Green Building Standards Code:

II-19-2.01 Section 202
Definitions

II-19-2.02 Section 301.1.1
Mandatory provisions of Chapter 4 shall be applied to additions and remodels

II-19-2.03 Section 4.106.4 through 4.106.4.3 through 5.106.5.3.3
EV charging for single family, duplex, townhouse, and multi-family

II-19-2.04 Add Section 4.106.5 and 4.106.5.1 to Site Development
for all-electric new residential construction

II-19-2.05 Add Section 5.106.5.3 through 5.106.5.3.3
EV charging for new office and other non-residential buildings

II-19-2.06 Add Section 5.106.5.3.5
Clean air vehicle parking designation - EVCS qualify as designated parking

II-19-2.07 Add Section 5.106.13 and Section 5.106.13.1 to Site Development
for all-electric new nonresidential construction

The following findings support that the above amendments and modifications are reasonably necessary because of local climatic, geological or topographical conditions:

Express Findings – Climatic

The effects of climate change caused by Green House Gas (GHG) emissions are increasingly self-evident, and very costly. Higher temperatures are contributing to record heat waves and droughts, rising sea levels, more intense storms, wildfires and floods.

Climate change is the fundamental design problem of our time. The threat that climate change poses is existential, and buildings together with transportation are large contributors.

Amending all of the above referenced code sections is necessary to combat the ever-increasing harmful effects of climate change. Implementation of the proposed reach code amendments will provide an accelerated path to reduce Green House Gas (GHG) emissions and carbonization in an effort to stem the effects of global warming and climate change.

Liz Gibbons, Chair
City of Campbell

March 18, 2022

George Tyson, Vice Chair
Town of Los Altos Hills

Steven McHarris
City Manager
455 East Calaveras Blvd.
Milpitas, CA 95035

Jon Willey
City of Cupertino

Re: SVCE Letter of Interest (LOI) for \$10,000 Reach Code Grant

Zach Hilton
City of Gilroy

Dear Mr. McHarris,

Neysa Fligor
City of Los Altos

SVCE partnered with our member jurisdictions in 2019 to facilitate the adoption of amendments to the Building Code that encouraged all-electric buildings and/or expanded electric vehicle (EV) infrastructure during the new construction process. Milpitas adopted a reach code promoting building electrification and EV charging. For the 2022 code cycle, Milpitas has the opportunity to readopt the reach code, to extend its scope to all-electric requirements, to increase EV charging requirements, or to adopt a municipal ordinance.

Rob Rennie
Town of Los Gatos

Evelyn Chua
City of Milpitas

SVCE has hired a consultant to provide technical support, draft model language, and facilitate stakeholder engagement. In recognition of the required staff resources, SVCE will also provide a \$10,000 grant to jurisdictions that bring code(s) to a vote. SVCE staff will work with your staff to determine your preferred approach.

Javed Ellahie
City of Monte Sereno

Yvonne Martínez Beltrán
City of Morgan Hill

Our organization requests the signature and return of this letter indicating your likely interest in receiving \$10,000 from SVCE to help defray costs associated with developing or readopting code amendments ("reach code") that support building electrification and EV charging. The \$10,000 grant will be provided to jurisdictions completing the following three steps:

Margaret Abe-Koga
City of Mountain View

Tina Walia
City of Saratoga

Larry Klein
City of Sunnyvale

- Return this signed Letter of Interest (LOI) to SVCE by April 30, 2022
- City staff to present valid amendments to the 2022 California Building Standards Code (Title 24) or to the municipal code that exceed statewide minimum requirements for building electrification and/or EV infrastructure for a vote of their respective city council (typically August–October)
- City staff complete the Payment Request document (to be released shortly) and return to SVCE by November 30, 2022 – regardless of Council vote.

Otto Lee
County of Santa Clara



333 W El Camino Real, Ste. 330 | Sunnyvale, CA 94087 | SVCleanEnergy.org | 1-844-474-SVCE

Liz Gibbons, Chair
City of Campbell

We understand this letter is nonbinding and constitutes an indication of interest only.

George Tyson, Vice Chair
Town of Los Altos Hills

Signed:

Printed Name:

Bill Tott

Date:

April 13, 2022

Jon Willey
City of Cupertino

Job Title:

Building Official

Email Address:

btott@ci.milpitas.ca.gov

Zach Hilton
City of Gilroy

Neysa Fligor
City of Los Altos

Please complete and sign a copy of this letter and send an electronic copy via email to zoe.elizabeth@svcleanenergy.org. If you prefer to mail a hard copy, the address is: 333 W. El Camino Real, Suite 330, Sunnyvale, CA 94087.

Rob Rennie
Town of Los Gatos

Evelyn Chua
City of Milpitas

Upon receipt, an email confirmation will be sent to the email address entered above. Please contact Zoe at (408) 721-5301 ext 1022 if you desire any additional information. In addition, I will be presenting information about this opportunity at the Santa Clara County/Cities Managers' Association meeting in April.

Javed Ellahie
City of Monte Sereno

Sincerely,

Yvonne Martínez Beltrán
City of Morgan Hill

Margaret Abe-Koga
City of Mountain View

Girish Balachandran
CEO, Silicon Valley Clean Energy

Tina Walia
City of Saratoga

Larry Klein
City of Sunnyvale

Otto Lee
County of Santa Clara



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Introduce Ordinance No. 65.153 Adopting by Reference the 2022 California Energy Code; introduce Ordinance No. 65.154 Adopting by Reference the 2022 California Green Building Standards Code with Amendments; Set a Public Hearing on December 6, 2022 for Adoption of the Ordinances (Staff Contact: Bill Tott, Building Official, 408-586-3263)
Category:	Community Development
Meeting Date:	10/18/2022
	<u>Recommendation:</u> (1) Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 65.153 amending Chapter 11 of Title II of the Milpitas Municipal Code adopting by reference the 2022 California Energy Code; (2) Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 65.154 amending Chapter 19 of Title II of the Milpitas Municipal Code adopting by reference the 2022 California Green Building Standards Code with amendments; and (3) Set a public hearing on December 6, 2022, pursuant to California Government Code Section 50022.3, for adoption of the ordinances.

EXECUTIVE SUMMARY:

Staff recommends adopting the 2022 California Energy Code and the 2022 California Green Building Standards Code pertaining to all-electric requirement for newly constructed buildings, and electric vehicle (EV) charging for new residential and non-residential construction. These local amendments, referred to as reach codes, would exceed the requirements in the 2022 state codes to more effectively combat climate change and meet established state targets for reducing greenhouse gas emissions (GHG). The proposed reach codes for Milpitas were largely based on the model code amendment initiated by Silicon Valley Clean Energy with adjustments incorporated as a result of outreach and stakeholder input from the Milpitas community. Adopting the proposed reach codes will help reduce GHG emissions for new construction, improve indoor air quality and the safety of our building stock, support affordable housing, and stimulate the use of electric vehicles in the Milpitas community. Adopting reach codes for all-electric new construction and increased EV charging station standards align with Milpitas Climate Action Plan initiatives BE-2.1.1 and TR-2.1.2 for electrification and EV charging.

In order to make amendments to the California Building Standards Code, of which the Green Building Standards Code (CalGreen) is a part of, the City must make express findings that the amendments and modifications are reasonably necessary because of local climatic, geological or topographical conditions. These findings are contained in the proposed ordinance.

This report provides an overview of 1) the reach code adoption process; 2) proposed Milpitas reach code amendments to the 2022 Green Building Standards Code (CALGreen) for the triennial code adoption cycle; 3) benefits of the reach code amendments; 4) regional reach code focus and local engagement efforts; 5) benefits to low-income communities

BACKGROUND:

Every three years, the State of California adopts new building standards that are organized in Title 24 of the California Code of Regulations, referred to as the California Building Standards Code. This regular update is referred to as a "code cycle." The last code cycle was adopted in 2019 and was effective on January 1, 2020. The next code cycle will be adopted in 2022 and will be effective January 1, 2023. Cities and counties have the authority to adopt local amendments (reach codes) that require new development projects to exceed minim

requirements in the California Energy Code and California Green Building Standards Code (also known as CALGreen).

The City of Milpitas has demonstrated leadership in sustainability, especially over the past ten years in which the City installed solar photovoltaic panels at four City facilities including the Sports Center and more recently in conjunction with shade structures in parking areas adjacent to the Senior Center; and installed 12 EV charging stations for fleet vehicles at City Hall. Milpitas also adopted its first Climate Action Plan (CAP) for reducing greenhouse gas emissions (GHG), initially through 2020 which has now been updated to 2040. In 2018 Milpitas also launched a community scale carbon-free electricity endeavor through participation in the Silicon Valley Clean Energy (SVCE) program to provide decarbonized electricity sourced from providers of solar photovoltaic, wind, and hydro generated power.

Through the SVCE community choice energy provider of carbon-free electricity (with opt-up to 100% renewable electricity), almost 100% of Milpitas resident and businesses now enjoy receiving carbon-free electricity and millions in savings in on-bill charges while significantly reducing GHG emissions. Even though these savings and reductions in GHG emissions represent significant actions, more needs to be done to minimize climate change and meet State established GHG reduction targets.

The State target was set by Governor Brown's Executive Order EO B-55-18, signed on September 10, 2018, which establishes the goal for the state to be carbon neutral as soon as possible, and no later than 2045.

Based on the City's Climate Action Plan and State goals to reduce GHG emissions, all-electric requirements for new buildings and electrification retrofits will be necessary and ultimately required for renovation of existing buildings constructed under current standards. Addressing electrification now in new buildings avoids hardships for tenants and retrofit costs for building owners in the future and acknowledges the GHG impacts under current construction practices, especially when considering the benefits of building and transportation electrification when paired with carbon-free electricity that is provided by SVCE.

The City of Milpitas is participating in the Silicon Valley Clean Energy reach code grant offering, which will provide \$10,000 to the City for presenting reach codes to the City Council for consideration. Please see Attachment C for the SVCE Letter of Interest for the \$10,000 grant.

ANALYSIS:

A. Energy Code

Given that the 2022 proposed Milpitas reach codes are not considered as "energy efficiency" code requirements as they do not include energy conservation such as photovoltaics (PV), or energy storage and are for all-electric for newly constructed buildings and not electric readiness, the proposed Milpitas reach codes will only be referencing the Green Building Standards Code (CalGreen).

For purposes of energy efficiency standards, the California Energy Commission (CEC) will continue to adopt those standards for the Energy Code, whereas in the CalGreen code under Residential and Nonresidential Mandatory Measures, Divisions 4.1 and 5.1 for Planning and Design, measures such as all-electric requirements can reside in these sections as all-electric requirements for newly constructed buildings are not considered energy efficiency requirements.

Similarly, EV charging requirements have resided in CalGreen since the advent of this code for the same reason. In other words, EV charging infrastructure requirements are also not considered as energy efficiency requirements.

The upcoming 2022 California Energy Code has greatly enhanced the standards for new construction electrical readiness for heat pumps, cooktops, and clothes dryers. energy storage, and solar photovoltaic (PV) infrastructure, including base line requirements for the use of heat pumps. These new standards mirror the main electric readiness requirements of the Milpitas 2019 reach codes, providing a high level of continuity as these electric readiness standards perpetuate.

The proposed reach code is largely based on the model code amendment developed by Silicon Valley Clean Energy, which has been vetted through considerable research and public review. Staff also incorporated adjustments in the proposed model reach code as a result of stakeholder input from the Milpitas community. The proposed reach codes for Milpitas provide pathways / options that offer a balanced approach to new residential and non-residential construction.

B. Green Building Standards Code (CALGreen)

It is widely known that availability of electric vehicle (EV) charging infrastructure is a critical component to EV adoption. Retrofitting existing buildings with EV charging infrastructure is significantly more expensive than it is during new construction.

EV reach codes will ensure that newly constructed buildings have ample EV charging capability to reduce long term costs of EV infrastructure installation while helping to increase EV adoption and decrease transportation related GHG emissions which account for approximately 50% of total GHG emissions.

The proposed reach code amendments will provide a higher percentage of charging infrastructure in new construction through a combination of Level 1 and Level 2 circuits with varying readiness.

Here is a Summary of the proposed reach code amendments to the Green Building Standards Code:

Section 202

Definitions added such as for Automatic Load Management (ALMS) and All-Electric Building

Section 4.106.4 through 4.106.4.3 through 5.106.5.3.3

Increases EV charging infrastructure requirements for single family, duplex, townhouse, and multi-family occupancies

Add Section 4.106.5 and 4.106.5.1 to Site Development.

Provides the requirement for all-electric new residential construction

Add Section 5.106.5.3 through 5.106.5.3.3

Increases EV charging infrastructure requirements for new office and other non-residential buildings

Add Section 5.106.5.3.5

Provides clean air vehicle parking designation for EVCS as designated parking

Add Section 5.106.13 and Section 5.106.13.1 to Site Development.

Provides for all-electric new nonresidential construction

Costs/Benefits of Proposed Amendments

A. Statewide Cost-Effectiveness Study

Funded by California Investor-Owned Utilities (IOUs) such as Pacific Gas and Electric (PG&E), the California Statewide Codes and Standards Program (Statewide Program) and Energy Solutions completed cost-effectiveness studies for new residential and non-residential construction, for use in the current building code cycle. The proposed Milpitas reach codes are based on data in these studies, specific to Climate Zone 4, for cost effectiveness. For EV infrastructure go to [Electric Vehicle Infrastructure Cost Analysis](#). For new residential and non-residential all-electric cost-effectiveness studies go to; [Low-rise Residential](#), [Mid-rise Residential](#), [High-rise Residential](#), [Non-Residential](#).

B. Project Feasibility

While the environmental benefits of reach codes for all-electric and EV charging have been well-documented, there have been concerns expressed by the development community on the financial impact on project feasibility due to increased construction costs associated with reach codes.

According to the cost-effectiveness studies noted in the previous section, all-electric buildings offer savings on “first” construction costs for all building types when compared to mixed fuel buildings in all 16 California climate zones. Similarly, the cost-effectiveness studies for EV charging infrastructure show that “first” construction costs compared to the cost to retrofit buildings for EV infrastructure are significantly less and do not impact or inconvenience residents.

C. Building Electrification

Given that building emissions of GHG account for approximately 35-40% of total GHG emissions, and transportation accounts for 50% of all GHG, the need for all-electric standards for new construction and enhanced EV charging infrastructure is compelling. Elimination of natural gas usage through the use of all-electric standards for new construction would greatly reduce greenhouse gas emissions at an accelerated rate through the adoption of the reach codes

Other benefits of all-electric standards include on-bill savings for Milpitas SVCE customers, cleaner, healthier indoor air quality, and greater safety due to the elimination of toxic and potentially lethal products of gas combustion such as carbon monoxide. For these reasons, there is considerable interest in promoting higher levels of all-electric new construction.

SVCE has taken the lead in Santa Clara County for researching and developing prototype standards for reach codes. Staff have worked closely with SVCE and its consultants to interpret and apply the 2022 cost-effectiveness studies for all-electric residential and nonresidential new construction to the Milpitas reach code.

Staff have also worked with SVCE and the Statewide Program’s team to establish new construction EV requirements which are more in-line with local EV adoption trends, while providing flexibility for the developer and keeping construction costs as low as possible.

Note that while construction costs will be incurred, there are numerous utility, state and federal incentive programs available to offset or reduce “first” costs for all-electric standards and EV charging infrastructure. One such program is P.G.& E’s Electric Infrastructure Rule 29. Under this rule, P.G.& E. will pay for and coordinate the design and deployment of electric service extensions from P.G.&E. electrical distribution line facilities to the service delivery point for separately metered EV charging stations.

Local residents are showing a significant interest in electric vehicles. According to the Bay Area Air Quality Management 2022 *Climate!* Program, at the end of 2021, there were more than 266,000 EVs registered to Bay Area drivers.

Recent data compiled through surveys of potential electric vehicle customers and other sources indicates that the availability of EV charging infrastructure is a critical component to EV adoption. It is significantly more expensive to install charging infrastructure as a retrofit than during new construction. As such, ensuring that newly constructed residential and non-residential parking has ample EV charging capability will reduce long-term costs of EV infrastructure installation, while helping to increase EV adoption and decrease transportation-related greenhouse gas emissions.

While California’s new minimum requirements are a step forward, it is unlikely that the requirements for multi-family dwellings and non-residential buildings are enough to keep pace with expected EV growth looking towards 2030. The Statewide Program’s team reviewed approaches to increase the amount of EV infrastructure in new construction, while keeping construction costs as low as possible.

E. Low-Income Communities

A recent study by U.S. Environmental Protection Agency (EPA) scientists shows that low-income communities are disproportionately affected by air pollution. It is imperative that clean fuel options such as electricity produced using solar, wind and hydro power are incorporated into Milpitas' low-income housing community to promote reduction of indoor and outdoor air pollution.

EV charging requirements have been perceived by some to be incongruent with low-income housing needs, however, recent studies suggest otherwise. EVs and hybrids are becoming more affordable and their fuel costs are considerably lower than fossil fuel powered vehicles.

There are many incentives available for California buyers such as;

The Clean Vehicle Rebate Program, which provides rebates from \$1,000 to \$7,000 for the purchase or lease of new zero-emission vehicles (ZEV). These can include electric, plugin-hybrid electric and fuel cell vehicles. Since 2010, the program has issued more than 450,000 rebates totaling more than \$1 billion, which accounts for nearly 43 percent of light-duty ZEVs sold in the state, say officials.

The Clean Vehicle Assistance Program provides low-interest loans, vehicle purchase grants and vehicle charging incentives for income-qualified car owners. More than 80 percent of participants have a household income at or below federal poverty level.

Another program, which is led by California's Air Resources Board (CARB), is the Clean Cars 4 All, which provides vouchers to income-qualified participants to be used toward the purchase or lease of a new or used ZEV or hybrid in exchange for scrapping an older gas-burning car. The program also has incentives for transit passes and micromobility.

The California Clean Fuel Reward Program is a time-of-sale program, also funded by CARB, and administered by Southern California Edison. This program can be included in the financing, which makes it very easy for dealers to apply, and gives immediate gratification to the customer.

The Clean Fuel Reward Program was initially offered as an instant "on-the-hood" rebate. By the end of 2021 nearly 200,000 customers had received this rebate, and 21 percent of the customers were in underserved communities, and 72 percent of customers replaced an internal combustion engine vehicle.

For these reasons, accelerating the rate of EV charging access infrastructure through the proposed Milpitas reach codes is just as relevant if not more critical to low-income below market rate housing as market-based or commercial projects.

Reach Code Efforts in Other Jurisdictions

Current regional reach code efforts are focused on new residential and non-residential construction and electric vehicle infrastructure (EVCI), to incentivize or require the following:

- All-electric buildings for new construction
- Mixed fuel (e.g. natural gas and electric) buildings, including electrification readiness
- Additional EVCI requirements for all building types to further prepare for current and future anticipated electric vehicle (EV) uptake.

According to the CEC, over 55 Bay Area cities and Counties have adopted or are considering reach codes, with a focus on requiring all-electric requirements for new buildings and EV charging infrastructure for implementation in the 2022 building code cycle. Bay area jurisdictions include the following:

- 8 in Alameda County
- 24 in San Mateo County
- 16 in Santa Clara County
- 7 in Sonoma County

Milpitas Public Outreach

A. Comments at Community Meetings

Staff conducted a series of outreach and engagement meetings with stakeholders and community members on the proposed reach codes. These include the August 15 Community Development Roundtable initial discussion, September 14 Stakeholder Workshop, and presentation to the Energy and Environmental Sustainability Commission on October 19.

The feedback from the outreach meetings was supportive, and Milpitas residents acknowledged the growing climate change crisis and applauded the City's reach code efforts.

B. Other Stakeholder Comments

Pacific Gas and Electric (PG&E) has repeatedly stated its commitment to helping communities achieve their energy goals and efforts to promote efficient and cost-effective electrification in new construction.

Effective Date of Code Amendments

The Green Building Standards Code (CalGreen) amendments pertaining to all-electric requirements for new residential and non-residential building construction and EV charging infrastructure, if adopted by the City Council on December 6, 2022, would then be filed with the California Building Standards Commission (BSC) for ministerial review and documentation. Once the letter of acknowledgement and approval is received, the reach code amendments would then become effective on January 1, 2023.

POLICY ALTERNATIVE(S):

Alternative 1: Adopt the 2022 California Green Building Standards Code as written without local amendments (reach codes).

Pros: No additional work is needed. The section for amendments would be removed from the Ordinance.

Cons: Without reach codes, it would be increasingly difficult to achieve some of the established goals in the Milpitas Climate Action Plan. Also, the opportunity to join with other local jurisdictions in the efforts to accelerate code requirements to achieve the state mandated goals for greenhouse gas emission reductions by 2020, 2030, and 2045, would be a lost opportunity. Instituting all-electric for new construction and electric vehicle charging requirements with this code cycle will have lasting impacts as buildings constructed under this code cycle will have significant carbon reductions for the 30-40 year life span of the buildings. An added benefit to enacting the reach codes now is the avoidance of the higher costs to retrofit buildings later, and the inconvenience to tenants.

Reason for Not Recommending: This alternative is not recommended because of the loss of opportunity to increase the City's efforts toward achieving a higher, earlier use of renewable energy, the reduction of GHG emissions, and achieving Milpitas Climate Action Plan milestones.

FISCAL IMPACT:

There is no cost to the City other than administrative staff time and expense.

California Environmental Quality Act (CEQA):

The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

RECOMMENDATION:

(1) Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 65.153 amending Chapter 11 of Title II of the Milpitas Municipal Code adopting by reference the 2022 California Energy Code; (2) Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 65.154 amending Chapter 19 of Title II of the

Milpitas Municipal Code adopting by reference the 2022 California Green Building Standards Code with amendments; and (3) Set a public hearing on December 6, 2022, pursuant to California Government Code Section 50022.3, for adoption of the ordinances.

Attachment(s):

- A. Ordinance No. 65.153 – adopting by reference the 2022 California Energy Code
- B. Ordinance No. 65.154 – adopting by reference the 2022 California Green Building Standards Code with amendments
- C. SVCE Letter of Interest for the \$10,000 grant



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	<u>Conduct a Public Hearing. Waive the Second Reading and Adopt Ordinance No. 133.26, Adopting by Reference with Certain Local Amendments the 2022 Edition of the California Fire Code (Staff Contact: Arthur Belton, Deputy Chief/Fire Marshal, 408-586-3384)</u>
Category:	Public Hearings-Public Safety
Meeting Date:	12/6/2022
	<u>Recommendation:</u> (1) Following the City Attorney reading aloud the title, waive the second reading beyond the title of Ordinance No. 113.26; (2) Open the public hearing and move to close following comments; and (3) Adopt Ordinance No. 113.26 adopting by reference with certain local amendments the 2022 edition of the California Fire Code, enacted as Chapter 300, Title V of the Milpitas Municipal Code.

BACKGROUND:

The California State Building Standards Commission adopted the 2021 International Fire Code with State Amendments, known as the 2022 Edition of the California Fire Code, which becomes effective by all local jurisdictions on January 1, 2023. For jurisdictions to maintain their current level of regulation without interruption, the code must be adopted with local amendments. As with past code adoptions, the Santa Clara County Fire Marshals Association collaborated to develop standardized amendments for use throughout the County that maintain the existing level of regulation for the protection of public health and safety.

The proposed Ordinance includes certain findings necessary to locally amend portions of the California Fire Code. Such findings shall be based on but not limited to Health and Safety Code Sections 18941.5, as well as 17958.5 and 17958.7, relative to local climatic, geographical, or topographical conditions.

Ordinance No. 113.26 was introduced at its first reading during the City Council Meeting on October 18, 2022. The Ordinance repeals and replaces Chapter 300 of Title V of the Milpitas Municipal Code, adopting by reference the 2022 California Fire Code along with specified local amendments.

The City Council did not request any changes to the Ordinance and directed staff to notice a public hearing for this meeting at the first reading.

ANALYSIS:

The California Fire Code and local amendments are typically adopted every three years. The 2019 Edition of the California Fire Code with certain local amendments was adopted by the Milpitas City Council on December 3, 2019 and became effective January 1, 2020.

The California Fire Code is Part 9 of 13 parts of the official compilation and publication of adoptions, amendment, and repeal of building regulations to the California Code of Regulations, Title 24 which is also referred to as the California Building Standards Code. The California Building Standards Code incorporates by adoption the 2021 International Fire Code of the International Code Council with necessary California Amendments.

The purpose of the California Fire Code is to establish the minimum requirements consistent with nationally recognized best practices to safeguard public health, safety and general welfare from the hazards of fire,

explosion or dangerous conditions in new and existing buildings, structures, and premises, and to provide safety and assistance to fire fighters and emergency responders during emergency operations.

The provisions of the California Fire Code shall apply to the construction, alterations, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such building structures throughout the State of California.

POLICY ALTERNATIVE(S):

Alternative 1: Do Not Adopt Certain Local Amendments for the 2022 California Fire Code

Pros: None

Cons: Not adopting certain local amendments in conjunction with the 2022 California Fire Code, does not address some of the unique concerns and nuances relative to the residential, commercial, and industrial communities within the City of Milpitas.

Reason for Not Recommending: To further save lives and preserve property, as well as ensuring the highest level of public safety for the community of Milpitas, local amendments must be addressed.

FISCAL IMPACT:

Section 66014 of the California Government Code as referenced in the Health & Safety Code Section 13146, as well as the 2022 California Fire Code Sections 1.11.2.1.1, and Section 106.2, allows fire departments to charge fees for permit, inspection, and enforcement activities. The recently adopted City of Milpitas Master Fee Schedule that became effective on July 1, 2022, aligns with the above Code Sections.

California Environmental Quality Act (CEQA):

The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA guidelines Section 15061(b)(3)

RECOMMENDATION:

1. Following the City Attorney reading aloud the title, waive the second reading beyond the title of Ordinance No. 113.26
2. Open the public hearing and move to close following comments
3. Adopt Ordinance No. 113.26 adopting by reference with certain local amendments the 2022 edition of the California Fire Code, enacted as Chapter 300, Title V of the Milpitas Municipal Code.

Attachment(s):

Draft Ordinance No. 113.26 (Milpitas Municipal Code Title V, Chapter 300)

REGULAR**NUMBER:** 113.25**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS REPEALING AND REPLACING CHAPTER 300 OF TITLE V OF THE MILPITAS MUNICIPAL CODE AND ADOPTING BY REFERENCE THE 2022 EDITION OF THE CALIFORNIA FIRE CODE WITH SPECIFIED LOCAL AMENDMENTS**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____, and was adopted (second reading) by the City Council at its meeting of _____ upon motion by Councilmember _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:**APPROVED:**_____
Suzanne Guzzetta, City Clerk_____
Rich Tran, Mayor**APPROVED AS TO FORM:**_____
Michael Mutalipassi, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City Council of the City of Milpitas intends to adopt by reference into the Milpitas Municipal Code the 2022 California Fire Code; and

WHEREAS, in doing so, the City Council wishes to amend portions of the California Fire Code to better address local concerns and to be consistent with amendments made by the other jurisdictions in Santa Clara County as well as neighboring counties in the Bay Area

WHEREAS, Health and Safety Code Sections 17958.5, 17958.7, and 18941.5 require such amendments to be reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, the City Council hereby makes the following findings with respect to the amendments to the 2022 California Fire Code:

A. The local climatic conditions of the City of Milpitas can affect the acceleration, intensity, and size of fires. Average annual rainfall for the City of Milpitas (approximately 14.9 inches per year), and drought conditions in the State of California require water-use restrictions and may also limit access to water during emergencies. Prevailing winds from the Northwest have velocities ranging from 5-mph to 15-mph, but the region has experienced extreme winds up to 60 mph. Times of little rainfall and high winds can exacerbate and spread fires.

B. The local geological and topographical conditions of the City of Milpitas can affect the response time of emergency service providers. The San Francisco Bay area region is densely populated and located in an area of high seismic activities. In particular, the City of Milpitas is located near the San Andreas Fault zone, which is capable of producing major earthquakes. Should a significant seismic event occur, hazardous materials and gases may be leaked and expose members of the public to significant health risks. Severe seismic events could disrupt communications, damage gas mains, and cause extensive electrical hazards that may exacerbate the size and number of emergencies, and consequently hinder the Fire Department's ability to respond to emergencies effectively and in a timely manner.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

The City Council finds that the above-listed findings correspond with the following amendments to the 2022 California Fire Code:

Amendment	Finding(s)
101.1	Administrative
102.3	Administrative
102.4	Administrative
102.5	Administrative
103.2	Administrative
104.10	Administrative
105.1	Administrative
105.2	Administrative
105.5-105.5.63	Administrative
105.6-105.6.25	Administrative
107.2	Administrative

108.1-108.7	Administrative
111.1-111.3	Administrative
112.1.1-112.1.8	Administrative
202	Findings A & B
316.7	Finding A
503-503.1	Finding A
503.2.1	Finding A
503.2.4	Finding B
503.7	Finding A
504.3.1	Finding A
504.5	Finding A
504.6	Finding A
505.3	Finding A
507.5.1.1	Finding A
507.5.7	Finding A
508.1-508.1.2	Finding A
508.1.6	Finding A
510.1	Finding B
510.5	Finding B
510.5.3	Finding B
605.5	Finding A
605.5.2.1.1	Finding A
606.1.1	Findings A & B
903.1.2	Findings A & B
903.2	Findings A & B
903.2.11.7	Finding B
903.3.1.1	Findings A & B
903.3.1.4	Findings A & B
903.3.5.3-903.3.5.7	Findings A & B
907.2.9.1	Findings A & B
913.7	Findings A & B
914.2.1	Findings A & B
914.3.1	Findings A & B
914.3.9-914.3.10	Findings A & B
914.4.1	Findings A & B
914.6.1	Findings A & B
914.12	Findings A & B
916.8	Findings A & B
1103.2	Findings A & B
1207.6.1-1207.6.1.2	Findings A & B
1207.6.2-1207.6.2.1.2	Findings A & B
2807.6	Findings A & B
2808.11	Findings A & B
3103.2	Findings A & B
3304.8	Findings A & B
3311.1-3311.1.1	Findings A & B
3315.1	Finding B
5001.2.2.2	Finding B
5001.5.1-5001.5.1.1	Finding B

5003.1.3.1	Finding B
5003.1.5	Finding B
5003.1.6	Finding B
5003.2.2.1-5003.2.2.2	Finding B
5003.3.1	Finding B
5003.5.2-5003.5.3	Finding B
5003.9.8	Finding B
5003.9.11	Finding B
5003.9.12	Finding B
5003.10.4.3	Finding B
5004.2.1	Findings A & B
5004.2.2	Findings A & B
5004.2.2.2	Findings A & B
5004.2.2.5	Findings A & B
5004.2.3	Findings A & B
5005.4.4	Findings A & B
5303.5.3	Finding B
5601.1.3	Findings A & B
5704.2.7.5.8-5704.2.7.5.9	Finding B
5707	Finding B
5707.3.3	Finding B
5707.3-5707.4	Finding B
5707.5.5	Finding B
5707.6.4-5707.6.7	Finding B
5809.3.4	Finding B
6004-6004.1.1.3	Finding B
6004.1.2-6004.1.14	Finding B
6004.2-6004.2.2.10.4	Finding B
6004.3-6004.3.3	Finding B
6405.3.1	Finding B
D101.1	Finding A
D103.1	Finding A
D104.1-D104.2	Finding A
D105.2	Finding A
D106.1	Findings A & B
D106.2	Findings A & B
D107.1	Findings A & B
H103, Appendix H	Finding B
H3, Appendix H	Finding B

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council hereby finds and determines that this Ordinance has been assessed in accordance with the California Environmental Quality Act (Cal. Pub. Res. Code, § 21000 et seq.) (“CEQA”) and the State CEQA Guidelines (14 Cal. Code Regs. § 15000 et seq.) and is categorically exempt from CEQA under CEQA Guidelines, § 15061(b)(3), which exempts from CEQA any project 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. Adoption of the proposed Ordinance would not be an activity with potential to cause significant effect on the environment because the changes made to the California Building Standard Code within are enacted to mitigate the threats posed to public peace, health and safety from earthquakes, high winds and fire, and therefore is exempt from CEQA. Therefore, it can be seen with certainty that there is no possibility that the Ordinance in question may have a significant effect on the environment; accordingly, the Ordinance is categorically exempt from CEQA.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE V, CHAPTER 300

Chapter 300 of Title V of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Chapter 300

FIRE CODE

Sections:

V-300-1 Adoption of the California Fire Code, 2022 Edition

V-300-2 Amendments to the 2022 California Fire Code

V-300-1.01 Adoption of the California Fire Code, 2022 Edition

An Ordinance of the City of Milpitas adopting the 2022 edition of the *California Fire Code*, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the City of Milpitas providing for the issuance of permits and collection of fees. That a certain document, except as herein amended, one (1) copy of which is on file in the office of the City Clerk, known as the California Fire Code, including Chapter 1, Chapter 4, and Appendices B, BB, C, CC, D, H and K as published by the International Code Council, based on the International Fire Code, 2018 Edition, is hereby adopted by reference as the Fire Code for the City of Milpitas in the State of California regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; providing for the issuance of permits and collection of fees therefore; and each and all of the regulations, provisions penalties, conditions and terms of said Fire Code on file in the office of the City Clerk are hereby referred to, adopted, and made a part hereof, as if fully set out in this Ordinance, with the additions, insertions, deletions and changes, if any, prescribed in Section 2 of this Ordinance.

V-300-2.01 Amendments to the 2022 California Fire Code

Chapter 1, Scope and Administration, of the California Fire Code, 2022 Edition, is hereby adopted and amended as follows:

V-300-2.02

Section 101.1 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

101.1 Title. These regulations shall be known as the Fire Code of the City of Milpitas, herein referred to as ‘this Code.’

V-300-2.03

Section 102.3 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

102.3 Changes in use or occupancy. No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of this Code and the City of Milpitas Building Codes adopted under Title II of the Milpitas Municipal Code. Subject to the approval of the fire code official, the use or occupancy of an existing structure shall be allowed to be changed and the structure is allowed to be occupied for purposes in other groups without conforming to all of the requirements of this Code and the City of Milpitas Building Codes for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use.

V-300-2.04

Section 102.4 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

102.4 Application of Building Code. The design and construction of new structures shall comply with the City of Milpitas Building Codes adopted under Title II of the Milpitas Municipal Code, and any alterations, additions, changes in use or changes in structures required by this Code, which are within the scope of the City of Milpitas Building Codes, shall be made in accordance therewith.

V-300-2.05

Section 102.5 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

102.5 Application of Residential Code. Where structures are designed and constructed in accordance with the City of Milpitas Building Codes adopted under Title II of the Milpitas Municipal Code, the provisions of this Code shall apply as follows:

1. Construction and design provisions: Provisions of this Code pertaining to the exterior of the structure shall apply, including, but not limited to premises identification, fire apparatus access and water supplies. Where interior or exterior systems or devise are installed, construction permits required by Section 105.7 of this Code shall also apply.
2. Administrative, operational and maintenance provisions: All such provision of this Code shall apply.

V-300-2.06

Section 103.2 of the California Fire Code, 2022 Edition, is deleted in its entirety.

V-300-2.07

Section 104.10 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

104.10 Fire Investigations. The fire code official, the fire department or other responsible authority shall have the authority to investigate the cause, origin and circumstances of any fire, explosion or other hazardous condition. Information that could be related to trade secrets or processes shall not be made part of the public record except as directed by a court of law.

The fire code official and authorized members of the fire department shall have the powers of a peace officer pursuant to Penal Code Section 830.37. Other members of the fire department, as designated by the Fire Chief, may issue citations for violations of fire-related laws and ordinances pursuant to Penal Code Section 836.5.

V-300-2.08

Section 105.1 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

105.1 General. Permits shall be in accordance with Sections 105.1.1 through 105.7.26.

V-300-2.09

Section 105.2 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

105.2 Application. Applications for a permit required by this Code shall be made to the fire code official in such form and detail as prescribed by the fire code official. Applications for permits shall be accompanied by such plans as prescribed by the fire code official. Said application shall be accompanied by a fee in the amount set by Section 106.2 of this Code.

V-300-2.10

Section 105.5 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

105.5 Required operational permits. The fire code official is authorized to issue operational permits for the operations set forth in Sections 105.5.1 through 105.5.63.

V-300-2.11

Table 105.5.9 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

**TABLE 105.5.9
PERMIT AMOUNTS FOR COMPRESSED GASES¹**

TYPE OF GAS	AMOUNT (cubic feet) ²
	X 0.0283 for m ³
Carbon dioxide used in carbon dioxide enrichment systems	875 (100lb)
Carbon dioxide used in insulated liquid carbon dioxide beverage dispensing applications	875 (100lb)
Corrosive	200
Flammable (except cryogenic and liquefied petroleum gases)	200
Highly toxic	Any amount
Inert and simple asphyxiant	200
Irritant	200
Moderately toxic	20
Other health hazards	200
Oxidizing (including oxygen)	200
Pyrophoric	Any amount
Radioactive	Any amount
Sensitizer	200
Toxic	Any Amount
Unstable (reactive)	Any amount

For SI: 1 cubic foot = 0.02832m³.

1 Refer to Chapters 27, 30, 32, 35, 37, 40 and 41 for additional requirements and exceptions.

2 Cubic feet measured at normal temperature and pressure.

3 **V-300-2.12**

Tab of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

**TABLE 105.5.11
PERMIT AMOUNTS FOR CRYOGENIC FLUIDS**

TYPE OF CRYOGENIC FLUID	INSIDE BUILDING (gallons)	OUTSIDE BUILDING (gallons)
Flammable	More than 1	55
Inert	55	55
Oxidizing (includes oxygen)	10	50
Physical or health hazard not indicated above	Any Amount	Any Amount

For SI: 1 gallon = 3.785 L

V-300-2.13

Section 105.5.18 , subsections (3.), (10.) and (11.) of the California Fire Code, 2022 Edition, are amended to read as follows:

- To store, handle or use Class II or Class IIIA liquids in excess of 25 gallons (95L) in a building or in excess of 55 gallons (227 L) outside a building, except for fuel oil used in connection with oil-burning equipment.

10. To engage in the dispensing of liquid fuels into the fuel tanks of motor vehicles at commercial, industrial, governmental or manufacturing establishments in accordance with Section 5706.5.4 or to engage in on-demand mobile fueling operations in accordance with Section 5707.
11. To utilize a site for the dispensing of liquid fuels from tank vehicle into the fuel tanks of motor vehicles, marine craft and other special equipment at commercial, industrial, governmental or manufacturing establishments in accordance with Section 5706.5.4 or to utilize a site for on-demand mobile fueling operations in accordance with Section 5707.

V-300-2.14

Table 105.5.22 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

**TABLE 105.5.22
PERMIT AMOUNTS FOR HAZARDOUS MATERIALS**

TYPE OF MATERIAL	AMOUNT
Carcinogens	10 pounds
Combustible liquids	
Inside	25 gallons
Outside	55 gallons
Corrosive materials:	
Gases	See Table 105.5.9
Liquids	55 gallons
Solids	500 pounds
Cryogenics	See Table 105.5.11
Explosive materials	Any Amount
Flammable materials:	
Gases	See Table 105.5.9
Liquids	See Section 105.5.18
Solids	10 pounds
Highly toxic materials:	
Gases	Any amount
Liquids	Any amount
Solids	Any amount
Moderately toxic gas	20 cubic feet
Organic peroxides:	
Liquids: Class I-II	Any Amount
Liquids: Class III	1 gallon
Liquids: Class IV	2 gallons
Liquids: Class V	No Permit Required
Solids: Class I-II	Any Amount
Solids: Class III	10 pounds
Solids: Class IV	20 pounds
Solids: Class V	No Permit Required
Oxidizing materials:	
Gases	See Table 105.5.9
Liquids: Class 4	Any amount
Liquids: Class 3	1 gallon
Liquids: Class 2	10 gallons
Liquids: Class 1	55 gallons
Solids: Class 4	Any amount
Solids: Class 3	10 pounds
Solids: Class 2	100 pounds
Solids: Class 1	500 pounds

TYPE OF MATERIAL	AMOUNT
Other health hazards and Class IIIB Combustible Liquids: Liquids Solids	55 gallons 500 pounds
Pyrophoric materials: Gases Liquids Solids	Any amount Any amount Any amount
Radioactive materials: Gases Liquids Solids	Any Amount See Section 105.5.61 See Section 105.5.61
Toxic materials: Gases Liquids Solids	Any amount 10 gallons 100 pounds
Unstable (reactive) materials: Liquids Class 4 & 3 Class 2 Class 1 Solids Class 4 & 3 Class 2 Class 1	Any Amount 5 gallons 10 gallons Any Amount 50 pounds 100 pounds
Water-reactive materials: Liquids Class 3 Class 2 Class 1 Solids Class 3 Class 2 Class 1	Any amount 5 gallons 55 gallons Any Amount 50 pounds 500 pounds

For SI: 1 gallon = 3.785 L, 1 pound = 0.454kg.

V-300-2.15

Section 105.5.49 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

105.5.49 Temporary membrane structures, tents and canopies. An operational permit is required to operate an air-supported temporary membrane structure or a tent having an area in excess of 200 square feet (19 m²), or a canopy in excess of 400 square feet (37 m²). Smaller tents or canopies set side by side are considered as one, unless separated from each other by 10 feet on all sides.

Exceptions:

1. Tents used exclusively for recreational camping purposes.

V-300-2.16

Section 105.5.55 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

105.5.55 B Occupancy restaurants. An operational permit is required to operate a B Occupancy restaurant.

V-300-2.17

Section 105.5.57 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

105.5.57 Day care facility. An operational permit is required to operate a large family day care home facility, a Group E day care facility or a Group I-4 day care facility.

V-300-2.18

Section 105.5.58 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

105.5.58 Emergency responders radio coverage system. An operational permit is required to operate an emergency responders radio coverage system in accordance with Section 510.

V-300-2.19

Section 105.5.59 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

105.5.59 On-demand mobile fueling operations. An operational permit is required to conduct on-demand mobile fueling operations. An independent permit is required for the site and the vendor/mobile fuel operator.

V-300-2.20

Section 105.5.60 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

105.5.60 Private School. An operational permit is required to operate a private school Occupancy Group E or a heritage school (CA Education Code Section 33195.4).

V-300-2.21

Section 105.5.61 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

105.5.61 Radioactive materials. To store or handle at any installation more than one microcurie (37,000 becquerel) of radioactive material not contained in a sealed source or more than 1 millicurie (37,000,000 becquerel) of radioactive material in a sealed source or sources, or any amount of radioactive material for which a specific license(s) from the Nuclear Regulatory Commission is required.

V-300-2.22

Section 105.5.62 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

105.5.62 Water base fire protection systems. An operational permit is required to conduct inspections, testing and maintenance of a water base fire protection system in conformance with the CA Code of Regulations, Title 19, Division 1, Chapter 5.

V-300-2.23

Section 105.5.63 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

105.5.63 Woodworking. An operational permit is required to conduct woodworking operations involving mass production or involving more than one of each type of machine, or where machines are used continuously (as opposed to intermittently) or substantial products of sawdust may be a problem.

V-300-2.24

Section 105.6 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

105.6 Required construction permits. The fire code official is authorized to issue construction permits for work as set forth in Sections 105.6.1 through 105.6.25.

V-300-2.2.25

Section 105.6.3 of the California Fire Code, 2022 Edition, is amended to read as follows:

105.6.3 Cryogenic fluids. A construction permit is required for the installation of or alteration to stationary cryogenic fluid storage systems where the system capacity exceeds the amounts listed in Table 105.5.11. Maintenance performed in accordance with this Code is not considered to be an alteration and does not require a construction permit.

V-300-2.26

Section 105.6.24 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

105.6.24 Temporary membrane structures, tents and canopies. A construction permit is required to erect an air-supported temporary membrane structure or a tent having an area in excess of 200 square feet (19 m²), or a canopy in excess of 400 square feet (37 m²). Smaller tents or canopies set side by side are considered as one, unless separated from each other by 10 feet on all sides.

Exceptions:

1. Tents used exclusively for recreational camping purposes

V-300-2.27

Section 105.6.25 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

105.6.25 Other building permits. The Building Department shall transmit to the Fire Department a copy of each plan submitted for construction, alteration, or change of use or occupancy for all occupancy classifications for review and approval for conformance to the fire code of the City of Milpitas. The fee for each permit shall be as set by Section 107.2 of this Code.

V-300-2.28

Section 106.1.1 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

106.1.1 Electronic documents. The fire code official may require electronic base documents for all construction documents, operational permits, and/or modified drawings for the need of Fire Department inspections and/or operations. The fire code official shall designate the software base format for the electronic documents.

V-300-2.29

Section 107.2 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

107.2 Schedule of permit fees. The fee for each permit shall be as set forth by resolution of the City of Milpitas City Council. The City Council may establish fees sufficient to recover its costs in administering this Code and no permit shall be issued until such fees have been paid. For work not disclosed in the fee schedule set by Council, the fire code official has the right to assess the necessary fees to recover the Fire Department's cost.

Operational Permits. All fees for annual operational fire permits under the provision of Section 105.5 of this Chapter shall be due and payable at the time of commencement of occupancy and said permit shall expire by December 31 of the same year. Fees for the renewal of such permit(s) shall be due and payable upon the expiration of the prior permit. No permit fee hereunder shall be refundable by reason of the cessation of occupancy during the permit period. Every annual permit fee that is not paid within a period of thirty (30) days from the time the same become due is hereby declared to be delinquent, and a penalty of 100% shall be added to say fee.

V-300-2.30

Section 108.1 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

108.1 Inspection authority. The fire code official is authorized to inspect, as often as necessary, buildings and premises, including such other hazards or appliances designated by the fire code official for the purposes of ascertaining and causing to be corrected any conditions which would reasonably tend to cause fire or contribute to its spread, result in

an unauthorized discharge of hazardous materials, or any violation of this Code or any other law or standard affecting fire and life safety. The fee for each inspection shall be as set forth by resolution of the City Council. The City may establish fees sufficient to recover its costs in administering this Chapter.

V-300-2.31

Section 108.5 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

108.5 Documents. Any person or party who prevents or attempts to prevent any fire code official from examining any relevant books or records in the conduct of his or her official duties under this Code shall be in violation of this Code.

V-300-2.32

Section 108.6 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

108.6 Evidence. Any person or party who prevents or interferes with the preservation of evidence of any violation of any of the provisions of this Code or of the rules and regulations promulgated pursuant to this Code or any other Federal, State, or local law, rule, or regulation shall be in violation of this Code.

V-300-2.33

Section 108.7 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

108.7 Interference. Any person or party who willfully prevents, interferes with, or attempts to hinder in any way the work of the fire code official in the lawful enforcement of any provision of this Code, or fails to promptly permit entry for the purpose of inspection and examination pursuant to this Code shall be in violation of this Code.

V-300-2.34

Section 111.1 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

111.1 Appeals. Whenever the Fire Chief or his or her designee disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of this Code do not apply or that the true intent and meaning of this Code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Fire Chief to the City Council or designee within ten (10) calendar days from the date of the decision appealed. Appeals shall be carried out pursuant to the provisions of Section 5 Appeals to Council of Chapter 20 Standard Procedures of Title I of the Milpitas Municipal Code. An appeal shall stay all proceedings in furtherance of the act or decision appealed unless the Fire Chief or his or her designee whose act is appealed shall certify in writing that a stay would, in his or her opinion, cause peril to life or property. Said certificate shall contain a detailed statement of the facts of which said peril arises and of the reasons for said opinion. The decision of the City Council or designee shall be final.

V-300-2.35

Section 111.2 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

111.2 Limitations on authority. An application for appeal shall be based on a claim that the intent of this Code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this Code do not fully apply, or an equivalent method of protection or safety is proposed.

V-300-2.36

Section 111.3 of the California Fire Code, 2022 Edition, is deleted in its entirety.

111.3 Qualifications. This section is deleted.

V-300-2.37

Section 112.1.1 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

112.1.1 Abatement of fire and life safety hazards by fire code official. If any person fails to comply with the orders of the fire code official, or if the fire code official is unable to locate the owner, operator, occupant or other person responsible

within a reasonable time, the fire code official or any authorized representative may take such steps as are necessary to abate the hazard for the protection of the public safety. In no event is notice necessary before abatement, when the hazard is a clear and present danger to the public welfare. All costs related to such abatement shall become a lien or special assessment on the subject property.

V-300-2.38

Section 112.1.2 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

112.1.2 Criminal or civil penalty for violation; payment of funds to account. Pursuant to the City's prosecutorial discretion, the City may enforce violations of the provisions of this Code in any manner authorized by this section or by any other law, including but not limited to issuance of criminal citations, referral to the District Attorney, referral to the City Attorney, referral to other appropriate agencies, administrative actions and civil actions.

V-300-2.39

Section 112.1.3 hereby added to the California Fire Code, 2022 Edition, to read as follows:

112.1.3 Misdemeanors – continuing violations. Any person who violates any of the provisions of this Code, any of the provisions of any written authority of the City Manager or his or her duly authorized agents and representatives or any provision of any permit issued pursuant to this Code shall be guilty of an infraction/misdemeanor. Each and every day, or any part thereof, during which any such violation is committed, continued or allowed shall be a separate offense. Penalties for violations shall be as set forth by resolution of the City Council.

V-300-2.40

Section 112.1.4 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

112.1.4 Prosecution. Every violation of this Code shall be a misdemeanor; provided, however, that where the City Attorney or his or her duly authorized agents has determined that such action would be in the best interest of justice, the City Attorney may specify in the accusatory pleading, citation or amendment thereto that the violation shall be prosecuted as an infraction.

V-300-2.41

Section 112.1.5 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

112.1.5 Penalty for infraction. Each and every violation of this Code, which is deemed an infraction, is punishable by:

- (1) A fine not exceeding one hundred dollars (\$100.00) for the first violation;
- (2) A fine not exceeding two hundred dollars (\$200.00) for the second violation of the same provision within one-year period; or,
- (3) A fine not exceeding five hundred dollars (\$500.00) for each additional violation, after the second, of the same provision of this Chapter within a one-year period of the first violation.

V-300-2.42

Section 112.1.6 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

112.1.6 Penalty for misdemeanor. Each and every violation of this Code, which is deemed a misdemeanor, is punishable by a penalty of not more than one thousand dollars (\$1,000.00) or by imprisonment in the City or County jail for a period not exceeding six (6) months, or, by both penalty and imprisonment.

V-300-2.43

Section 112.1.7 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

112.1.7 Enforcement authority. The following designated employee positions may enforce the provisions of this Code by issuance of citations. Peace officers and persons employed in such positions are authorized to exercise the authority

provided in Penal Code Section 836.5 and are authorized to issue citations for violations of this Code. The designated employee positions are: the City Manager or his or her duly authorized agents and representatives.

V-300-2.44

Section 112.1.8 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

112.1.8 Civil penalties. Any person who intentionally, accidentally or negligently violates any provision of this Code, any written authority of the City Manager or his or her duly authorized agents and representatives, or any provision of any permit issued pursuant to this Code may be civilly liable to the City in the sum of not less than one hundred dollars (\$100.00) but not to exceed one thousand dollars (\$1,000.00) per day for each day in which such violation occurs or continues. The City may petition the municipal or superior court to impose, assess, and recover such sums. The civil penalty provided in this Section excludes inspection costs and abatement costs, is cumulative and not exclusive, and shall be in addition to all other remedies available to the City under state and federal law and local ordinances. Funds collected pursuant to this Section shall be paid to the City's Fire Prevention account, which shall be a holding account to be used solely for Fire Code enforcement, fire prevention and hazardous materials training, and for the purchase of equipment as needed for the performance of the fire code official duties.

V-300-2.45

Section 202 of the California Fire Code, 2022 Edition, is amended by adding the following definitions:

CARCINOGEN is a substance that causes the development of cancerous growths in living tissue. A chemical is considered a carcinogen if:

1. It has been evaluated by the International Agency for Research on Cancer and found to be a carcinogen or potential carcinogen,
2. It is listed as a carcinogen or potential carcinogen in the latest edition of the Annual Report on Carcinogens published by the National Toxicology program, or
3. It is regulated by OSHA as a carcinogen.

CORROSIVE LIQUID. Corrosive liquid is:

1. any liquid which, when in contact with living tissue, will cause destruction or irreversible alteration of such tissue by chemical action; or
2. any liquid having a pH of 2 or less or 12.5 or more; or
3. any liquid classified as corrosive by the U.S. Department of Transportation; or
4. any material exhibiting the characteristics of corrosivity in accordance with Title 22, California Code of Regulations §66261.22.

DEVICE is an appliance or piece of equipment that plays an active part in the proper functioning of the regulated systems. Examples include, but are not limited to the following: smoke detectors, heat detectors, flame detectors, manual pull stations, horns, alarms, bells, warning lights, hydrants, risers, FDCs, standpipes, strobes, control panels, transponders, and other such equipment used to detect, transmit, initiate, annunciate, alarm, or respond according to the system design criteria.

LARGE-SCALE FIRE TESTING. Testing a representative energy storage system that induces a significant fire into the device under test and evaluates whether the fire will spread to adjacent energy storage system units, surrounding equipment, or through an adjacent fire-resistance-rated barrier.

MAXIMUM THRESHOLD QUANTITY (MAX TQ). Maximum Threshold Quantity (Max TQ) is the maximum quantity of a moderately toxic or toxic gas, which may be stored in a single vessel before a more stringent category of regulation is applied.

MINIMUM THRESHOLD QUANTITY. Minimum threshold quantity is the aggregate quantity of highly toxic, toxic or moderately toxic gas in a control area which, due to the minimum aggregate quantities, need only comply with the requirements set forth in Section 6004.1.

MODERATELY TOXIC GAS. A chemical or substance that has a median lethal concentration (LC50) in air more than 2000 parts per million but not more than 5000 parts per million by volume of gas or vapor, when administered by continuous inhalation for an hour, or less if death occurs within one hour, to albino rats weighing between 200 and 300 grams each.

OTHER HEALTH HAZARD MATERIAL is a material which is an irritant, sensitizer, or carcinogen or a material which affects target organs of the body, including but not limited to, those materials which produce liver damage, kidney damage, damage to the nervous system, act on the blood to decrease hemoglobin function, deprive the body tissue of oxygen or affect reproductive capabilities, including mutations (chromosomal damage) or teratogens (effect on fetuses).

SECONDARY CONTAINMENT. Secondary containment is that level of containment that is external to and separate from primary containment and is capable of safely and securely containing the material, without discharge, for a period of time reasonably necessary to ensure detection and remedy of the primary containment failure.

SENSITIZER is a chemical that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.

SPILL CONTROL. That level of containment that is external to and separate from the primary containment and is capable of safely and securely containing the contents of the largest container and prevents the materials from spreading to other parts of the room.

TEMPORARY shall not exceed one year.

WORKSTATION is a defined space or independent principal piece of equipment using hazardous materials with a hazard rating of 3 or 4 in accordance with NFPA 704 where a specific function, laboratory procedure or research activity occurs. Approved or listed hazardous materials storage cabinets, flammable liquid storage cabinets or gas cabinets serving a workstation are included as part of the workstation. A workstation is allowed to contain ventilation equipment, fire protection devices, electrical devices, and other processing and scientific equipment.

V-300-2.46

Section 316.7 is hereby added to the California Fire Code, 2022 Edition, as follows:

316.7 Roof guardrails at interior courts. Roof openings into interior courts that are bounded on all sides by building walls shall be protected with guardrails. The top of the guardrail shall not be less than 42 inches in height above the adjacent roof surface that can be walked on. Intermediate rails shall be designed and spaced such that a 12-inch diameter sphere cannot pass through.

Exception: Where the roof opening is greater than 600 square feet in area.

V-300-2.47

Section 503 of the California Fire Code, 2022 Edition is adopted and Section 503.1 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

503.1 Where required. Fire apparatus access roads shall be provided and maintained in accordance with Sections 503.1.1 through 503.7, Appendix D of this Code, and or as directed by the fire code official.

V-300-2.48

Section 503.2.1 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm) or as required by Appendix D, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of 13 feet 6 inches (4115 mm).

Exception: When there are not more than two Group R, Division 3 or Group U occupancies less than 3 stories, the access road width may be modified by the fire code official.

V-300-2.49

Section 503.2.4 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

503.2.4 Turning radius. The required turning radius of a fire apparatus access road shall be a minimum of 28 feet (8534.4 mm) inside, and a minimum of 48 feet 6 inches (14782.8 mm) outside.

V-300-2.50

Section 503.6 the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

503.6 Security gates. The installation of security gates across a fire apparatus access road shall be approved by the fire code official. Where security gates are installed, they shall have an approved means of emergency operation. The security gates and the emergency operation shall be maintained operational at all times. Electric gate operators, where provided, shall be listed in accordance with UL 325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F2200. The minimum width for commercial applications is 20 feet (6096 mm) , and 14 feet (4268 mm) for single-family dwellings.

V-300-2.51

Section 503.7 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

503.7 Adjacent access. No source of access from lands adjoining a property to be developed shall be considered fire apparatus access roads, unless there is obtained the irrevocable and unobstructed rights and recorded as an ingress/egress access easement with the Country of Santa Clara.

V-300-2.52

Section 504.3.1 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

504.3.1 Number of stairways. The fire code official shall determine the required number and location of stairway(s) to the roof.

V-300-2.53

Section 504.5 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

504.5 Enclosed courts. Buildings with enclosed courts shall be provided with readily accessible access for fire department personnel to bring in a 36 feet long ground ladder into the court. The access height and width shall be large enough to accommodate the ladder and the personnel carrying the ladder.

V-300-2.54

Section 504.6 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

504.6 Access Control Devices. When access control devices including bars, grates, gates, electric or magnetic locks or similar devices, which would inhibit rapid fire department emergency access to the building, are installed, such devices shall be approved by the fire code official. All access control devices shall be provided with an approved means for deactivation or unlocking by the fire department. Access control devices shall also comply with Chapter 10 Egress.

V-300-2.55

Section 505.3 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

505.3 Address illumination. All required address numbers shall be provided with illumination.

V-300-2.56

Section 507.5.1.1 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

507.5.1.1 Hydrant for automatic fire sprinkler and or standpipe systems. Buildings equipped with an automatic fire sprinkler system and or a standpipe system installed in accordance with Sections 903 and or 905 shall have a fire hydrant within 50 feet of the fire department connections.

Exception: The distance shall be permitted to exceed 50 feet (30 m) where approved by the fire code official.

V-300-2.57

Section 507.5.7 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

507.5.7 Private hydrants. Private hydrants shall have the bottom 6 inches of the hydrant painted, with a weather resistive paint, white in color.

V-300-2.58

Section 508.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

508.1 General. Where required by other sections of this Code and in all R-1 buildings with more than 200 rooms, R-2 buildings with more than 100 dwellings, and buildings classified as high-rise buildings by the California Building Code and Group I-2 occupancies having occupied floors located more than 75 feet above the lowest level of fire department vehicle access, a fire command center for fire department operations shall be provided and shall comply with Sections 508.1.1 through 508.1.7.

V-300-2.59

Section 508.1.2 of the California Fire Code, 2022 Edition, is amended to read as follows:

508.1.2 Separation. The fire command center shall be separated from the remainder of the building by not less than a 2-hour fire barrier constructed in accordance with Section 707 of the California Building Code or horizontal assembly constructed in accordance with Section 711 of the California Building Code, or both.

V-300-2.60

Section 508.1.6 of the California Fire Code, 2022 Edition, is amended by adding the following:

- 20. A locking key box, approved by the fire code official, large enough for ten (10) sets of master keys.
- 21. Ten (10) sets of master keys for the building.
- 22. A complete set of architectural, electrical, mechanical and plumbing plans for the building.

V-300-2.61

Section 510.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

510.1 Emergency responder radio coverage in new buildings. Approved radio coverage for emergency responders shall be provided within all buildings meeting any one of the following conditions:

- 1. There are more than 3 stories above grade plane (as defined by the Building Code Section 202);
- 2. The total building area is 30,000 square feet or more;
- 3. The total basement area is 5,000 square feet or more;

4. Where required by the fire code official and radio coverage signal strength levels are not consistent with the minimum levels set forth in Section 510.4.1

Exceptions:

1. Where approved by the fire code official, a wired communication system in accordance with Section 907.2.12.2 shall be permitted to be installed or maintained in lieu of an approved radio coverage system.
2. Where it is determined by the fire code official that the radio coverage system is not needed.
3. In facilities where emergency responder radio coverage is required and such systems, components or equipment required could have a negative impact on the normal operations of that facility, the fire code official shall have the authority to accept an automatically activated emergency responder radio coverage system.
4. Buildings and areas of buildings that have minimum radio coverage signal strength levels of the Silicon Valley Regional Interoperability Authority (SVRIA) P25 Phase 2 700 MHz Digital Trunked Radio System within the building in accordance with Section 510.4.1 without the use of an indoor radio coverage system.

The radio coverage system shall be installed and maintained in accordance with Sections 510.4 through 510.6.4 of this Code and with the applicable provisions of NFPA 1221, Standard for the Installation, Maintenance and Use of Emergency Services Communications Systems.

The coverage shall be based upon the existing coverage levels of the public safety communication systems of the jurisdiction at the exterior of the building. This section shall not require improvement of the existing public safety communication systems.

V-300-2.62

Section 510.4 of the California Fire Code, 2019 Edition, is amended to read as follows:

510.4 Technical requirements. Systems, components, and equipment required to provide emergency responder radio coverage systems shall comply with the current Emergency Responders Radio Coverage Systems Standard Details and Specifications enforced by the Milpitas Fire Department.

V-300-2.63

Section 510.5 of the California Fire Code, 2022 Edition, is amended to read as follows:

510.5 Installation requirements. The installation of the emergency responder radio coverage system shall be in accordance with NFPA 1221 and the current Emergency Responder Radio Coverage Systems Standard Details and Specification enforced by the Milpitas Fire Department.

V-300-2.64

Section 510.5.3 first paragraph of the California Fire Code, 2022 Edition, is amended to read as follows:

510.5.3 Acceptance test procedure and system certification. Where an emergency responder radio coverage system is required, and upon completion of installation, the building owner shall have the radio system tested to verify that two-way coverage on each floor of the building is not less than 95 percent. Final system acceptance will require ERRCS power level and DAQ testing with agency FCC license holder, systems administrators, or designee. The test procedure shall be conducted in accordance with NFPA 1221 and the current Emergency Responder Radio Coverage System Standard Details and Specification enforced by the Milpitas Fire Department.

V-300-2.65

Section 605.54 of the California Fire Code, 2022 Edition, is amended to read as follows:

605.5 Portable unvented heaters. Portable unvented fuel-fired heating equipment shall be prohibited in occupancies in Groups A, B, E, I, R-1, R-2, R2.1, R2.2, R-3, R3.1 and R-4 and ambulatory care facilities.

Exceptions:

1. Portable unvented fuel-fired heaters listed in accordance with UL 647 are permitted to be used in one and two-family dwellings, where operated and maintained in accordance with the manufacturer's instructions.
2. Portable outdoor gas-fired heating appliances in accordance with Section 605.5.2.

V-300-2.66

Section 605.5.2.1.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

605.5.2.1.1 Prohibited locations. The storage or use of portable outdoor gas-fired heating appliances is prohibited in any of the following locations:

1. Inside of any occupancy where connected to the fuel gas container.
2. Inside of tents, canopies and membrane structures.
3. On exterior balconies, and rooftops.

V-300-2.67

Section 606.1.1 hereby added to the California Fire Code, 2022 Edition, to read as follows:

606.1.1 New elevators. All new passenger service elevators shall meet the medical service elevator requirements in the California Building Code, 2022 Edition, Chapter 30.

V-300-2.68

Section 903.1.2 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

903.1.2 Fire Walls and Fire Barriers. Fire walls and fire barriers shall not be considered to create separate buildings for the purpose of automatic fire sprinkler requirements as set forth in Chapter 9 of this Code.

Exception: Buildings separated by continuous fire wall of 4-hour fire resistive construction without openings or penetrations. Buildings required to have automatic fire sprinkler protection as set forth in Section 13113 of Health and Safety Code are prohibited from using fire walls in lieu of automatic fire sprinkler protection.

V-300-2.69

Section 903.2 of the California Fire Code, 2022 Edition, is amended to read as follows:

903.2 Where Required. Approved automatic sprinkler systems in new and existing buildings and structures shall be provided in the locations described in this Section or per the requirements set forth in Sections 903.2.1 through 903.2.20, whichever is the more restrictive:

1. In other than residential buildings which require the installation of fire sprinkler for all new buildings according to the California Residential Code, an automatic sprinkler system shall be provided throughout all new buildings and structures greater than 1,000 square feet of building area.

Exception: Group S-2 or U occupancies used exclusively for vehicle parking and which meet all of the following:

- a. Noncombustible construction.
- b. Maximum building area not to exceed 5,000 square feet. Structures with less than 10' horizontal separation are considered as one.

- c. Structure is open on three (3) or more side.
 - d. Minimum of 10 feet separation from existing buildings unless area is separated by fire walls complying with California Building Code.
2. An automatic fire sprinkler system shall be provided throughout existing Group A, B, E, F, L, M, S and U buildings and structures, when additions are made that increase the building area to more than 3,600 square feet or that create conditions described in Sections 903.2.1 through 903.2.2018.
 3. An automatic sprinkler system shall be provided throughout existing Group R occupancies when additions are made that increase the building area to more than 3,600 square feet, or when the Building Department determines that the home needs to comply with the current CA Building Codes due to extensive remodel/renovation.

Exception: Additions where all of the following are met:

- a. Building addition does not exceed 500 square feet.
 - b. The resultant structure meets all water supply requirements of Chapter 5 and Appendix B of the 2022 California Fire Code.
4. Any change in the character of occupancy or in use of any building with a building area equal to or greater than 3,600 square feet which, in the opinion of the fire code official or building official, would place the building into a more hazardous division of the same occupancy group or into a different group of occupancies and constitutes a greater degree of life safety¹ or increased fire risk², shall require the installation of an approved fire automatic fire sprinkler system.
 1. Life Safety – Increased occupant load, public assembly areas, public meeting areas, churches, indoor amusement attractions, buildings with complex exiting systems due to increased occupant loads, large schools/day-care facilities, large residential care facilities with non-ambulatory
 2. Fire Risks – High-piled combustible storage, woodworking operations, hazardous operations using hazardous materials, increased fuel loads (storage of moderate to highly combustible materials), increased sources of ignition (welding, automotive repair with the use of flammable liquids and open flames).

V-300-2.70

Section 903.2.11.7 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

903.2.11.7 Chemical Fume Hood Fire Protection.

NFPA 45, section 7.10.1 approved automatic fire extinguishing systems shall be provided in chemical fume hoods in the following cases:

3. Existing hoods having interiors with a flame spread index greater than 25 in which flammable liquids are handled
4. If a hazard assessment determines that an automatic extinguishing system is required for the chemical fume hood, then the applicable automatic fire protection system standard shall be followed.

V-300-2.71

Section 903.3.1.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

903.3.1.1 NFPA 13 sprinkler systems. Where the provisions of this Code require that a building or portion thereof be equipped throughout with an automatic sprinkler system in accordance with this section, sprinklers shall be installed throughout in accordance with NFPA 13 as amended in Chapter 80 except as provided in Section 903.3.1.1.1 and 903.3.1.1.2.

For a new building having no designated use or tenant, the minimum sprinkler design density shall be Ordinary Hazard Group 2. Where future use or tenant is determined to require a higher density, the sprinkler system shall be augmented to meet the higher density.

V-300-2.72

Section 903.3.1.4 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

903.3.1.4 One sprinkler design. One sprinkler head design shall not be permitted.

V-300-2.73

Section 903.3.5.3 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

903.3.5.3. Riser location. The fire sprinkler system riser shall not be located within electrical rooms or storage closets and shall be provided with clear access and working clearance. The fire sprinkler system riser location shall be approved by the fire code official.

V-300-2.74

Section 903.3.5.4 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

903.3.5.4 Number of water supplies. For buildings and or structures over 200,000 square feet, the fire code official may require more than one source of water supply.

V-300-2.75

Section 903.3.5.5 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

903.3.5.5 Sprinkler riser system. The sprinkler riser system shall be a manifold type system and shall meet the design requirements of the NFPA 13 Standards.

V-300-2.76

Section 903.3.5.6 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

903.3.5.6 Water supply safety margin. Hydraulic design for the automatic fire sprinkler system shall provide a minimum of 20% safety margin.

Exception: The fire code official may grant a reduction in the required safety margin for existing buildings but not less than 10%.

V-300-2.77

Section 903.3.5.7 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

903.3.5.7 Sprinkler pipe velocity. The automatic fire sprinkler system shall be designed to a maximum 20 feet per second water flow.

Exception: The fire code official may grant higher water velocity for existing buildings when supported by mechanical engineering design done by a California registered engineer.

V-300-2.78

Section 907.2.9.1 of the California Fire Code, 2016 Edition, is amended to delete the following:

907.2.9.1 Manual fire alarm system. Exception 3. is deleted.

V-300-2.79

Section 913.7 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

913.7 Fire Pump standby power. Power supply from local utility provider is not considered a reliable source of power. Standby power is required for electrical or natural gas fire pumps.

V-300-2.80

Section 914.2.1 of the California Fire Code, 2022 Edition, is amended to delete the exception:

914.2.1 Automatic sprinkler systems exception is deleted.

V-300-2.81

Section 914.3.1 of the California Fire Code, 2022 Edition, is amended to delete the exception:

914.3.1 Automatic sprinkler systems exception is deleted.

V-300-2.82

Section 914.3.9 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

914.3.9 Anchor devices. Anchor repelling devices meeting the Fire department requirements shall be placed on the roof for Fire department use.

V-300-2.83

Section 914.3.10 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

914.3.10 Helicopter pad. High-rise buildings greater than 150' in height (above the lowest level of Fire department access) may be required to provide a helicopter pad, which meets the requirements of the Fire department.

V-300-2.84

Section 914.4.1 of the California Fire Code, 2022 Edition, is amended to delete the exceptions:

914.4.1 Automatic sprinkler systems exceptions 1 and 2 are deleted.

V-300-2.85

Section 914.6.1 of the California Fire Code, 2022 Edition, is amended to delete the exceptions:

914.6.1 Automatic Sprinkler Systems exceptions 1 and 2 are deleted.

V-300-2.86

Section 914.12 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

914.12 Special Provisions For Group B office Buildings and Group R Division 1 and 2 Occupancies. All Group B office buildings and Group R, Division 1 & 2 Occupancies, each having floor used for human occupancy located more than 60 feet above the lowest level of Fire Department vehicle access, or more than 4 stories in height shall provide the following:

1. Equipment cache rooms shall be located on the 1st floor above the ground floor, and every other floor thereafter, or as directed by the fire code official.
 - a. Cache rooms shall be located and accessible from within the rated stair enclosures.
 - b. Prior to the purchase of the fire department cache room equipment and or materials a complete list of the equipment and or materials with all necessary cut-sheets shall be submitted to the fire department for review and approval.
 - c. Due to operational needs, the fire code official reserves the right to make changes to the required equipment and or materials listed under item 2 below.
2. Each equipment storage room size should be a minimum of 4' deep, full height (8' to 9'), with a door the minimum width of 43". A roll-up door can be used provided it has a 43" minimum width and unobstructed access. It shall have a power outlet to provide electricity, a light (connected to a 'timer'), be sprinklered, and be locked with a

'break-away' type lock. Fixed shelving¹ shall be provided in a configuration approved by the fire agency to store items that may include, but not be limited to:

Item	ITEM DESCRIPTION	PART NUMBER	PER ROOM
1)a	2.5 Inch Hose Pack Straps	Turning Out Solutions	24
1)b	2.5X50 Foot Durabuilt Hose	DB25X50YEN NAFH	8
1)c	Straight Tip 1-1/8 X 1.5 NH	FSS10TFT	2
1)d	Ball Valve 2.5 Female X 1.5 Male	J140F	2
1)e	Universal Spanner Wrench	00100001 AKR	2
1)f	Gated Wye	AYNJNF TFT	2
1)g	2 1/2 x 1 1/2 reducer	3725N15N	2
2)a	50' banded hose roll	DF817X50R15NH NAFH	2
2)b	Red Hose Ret. Bands	HRRBARC	2
3)	15' Stinger length hose	DF3X15Y25NH NAFH	2
4)	Halligan Style Tool	HAL1P36	1
5)a	Pick head axe	6PH36W	1
5)b	Flat head axe	6FH32W	1
6)	Attic ladder	10102LG LITTLE GIANT	1
7)	Ames Wrecking bar	75036	1
8)	Open door industries stops	WIY ODI	24
9)	Salvage Cover	14VSC1214GR GOS	4
10)	Spare Sprinkler heads (3) each type per bldg	To be Determined	3
11)	Sprinkler wrench	To be Determined	1
12)	Push cart for SCBA cylinders	MBR16 GROVES	1
13)	McGuire Diaper	RICTARP MCGUIRE	1
14)	Evacuation Chair	6252 STRYKER	2
15)	Red Webbing	200103 CMC	4
16)	D lock Carabiner	300221 CMC	2
17)	Wagan LED Flare	WAGAN EL2639-3 FRED	2
18)	Cable Cutter	UPB41 BEN NAW	1
19)	18 Inch Pipe Wrench	5862074118 Irwin	1
20)	30 Degree Elbow Adapter 2.5'	E253025N25N	4
21)	Encased Line Gauge 2.5 Redhead	155225N RH	2
22)	Speed Swivel	480-NST	1
23)	Adapter 1.5NHFRLX2.5NHM	3715N25N	2
24)	16" Large Mouth Tool Bag	67126-02 HUSKY	2
25)	Polytac Flashlight	88853 STRMLIT	2

NOTE: Equipment may be subject to change pending current operations usage.

¹ Shelving shall be every 16" after ladder placement is determined.

3. Equipment maintenance, inspections, replacement and or equipment update and required certification(s) shall be the responsibility of the building owner and or owner's association.

*The fire code official may require an air bottle filling system shall have the fill access port located at a reasonable distance from each structure that takes into account debris fall out & collapse zones. A 'monument-type' fill station port should be located near a public roadway, not adjacent to the structure. The underground piping system, designed and installed with stainless steel welded fittings and piping, should terminate at this monument. A weather tight access panel with Knox-box key entry should also be provided. The storage system should be designed to provide enough air @ 4500 psi for up to fifty 45-minute bottles, prior to augmentation by an outside air source.

V-300-2.87

Section 916.8 of the California Fire Code, 2022 Edition, is amended to read as follows:

916.8 System activation. A gas detection alarm shall be initiated where any sensor detects a concentration of gas exceeding the following thresholds:

1. For flammable gases, a gas concentration exceeding 25 percent of the lower flammability limit (LFL).
2. For nonflammable gases, a gas concentration exceeding one-half of the 1DLH, unless a different threshold is specified by the section of this code requiring a gas detection system.

Upon activation of a gas detection alarm, alarm signals or other required responses shall be as specified by the section of this code requiring a gas detection system. Audible and visible alarm signals associated with a gas detection alarm shall be distinct from fire alarm and carbon monoxide alarm signals.

The audible alarm signals shall be in accordance with 907.5.2.1.1 and 907.5.2.1.2. The visual alarm notification appliances shall be in accordance with 907.5.2.3.

V-300-2.88

Section 1103.2 of the California Fire Code, 2022 Edition, is hereby adopted.

V-300-2.89

Section 1207.6.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

1207.6.1 Exhaust ventilation. Where required by Table 1207.6 or elsewhere in this code, exhaust ventilation of rooms, areas and walk-in units containing electrochemical ESS shall be provided in accordance with the California Mechanical Code, Sections 1207.6.1.1 or 1207.6.1.2, and 1207.6.1.3.:

1207.6.1.1 Ventilation based on LFL. The exhaust ventilation system shall be designed to limit the maximum concentration or flammable gas to 25 percent of the lower flammable limit (LFL) of the total volume of the room, area, or walk-in unit during the worst-case event of simultaneous charging of batteries at the maximum charge rate, in accordance with nationally recognized standards.

1207.6.1.2 Ventilation based on exhaust rate. Continuous ventilation shall be provided at a rate of not less than 1 cubic foot per minute (cfm) per square foot [$0.00508 \text{ m}^3 / (\text{s} \cdot \text{m}^2)$] of the floor area, but not less than 150 cfm (4 m^3/min). The exhaust system shall be designed to provide air movement across all parts of the floor for gases having a vapor density greater than air and across all parts of the vault ceiling for gases having a vapor density less than air.

1207.6.1.3 Exhaust ventilation failure. Failure of exhaust ventilation system shall automatically disengage the charging system.

V-300-2.90

Section 1207.6.2 of the California Fire Code, 2022 Edition, is amended to read as follows:

1207.6.2 Spill control and neutralization. Where required by Table 1207.6 or elsewhere in this code, areas containing free-flowing liquid electrolyte or hazardous materials, shall be provided with spill control and neutralization in accordance with this section.

1. **1207.6.2.1 Spill Control.** Spill control shall be provided to prevent the flow of liquid electrolyte or hazardous materials to adjoining rooms or areas. The method shall be capable of containing a spill for the single largest battery or vessel.

1207.6.2.1.1 Spill control design. The spill control shall be designed and constructed in accordance with 5004.2.1.

1207.6.2.1.2 Spill control monitoring. Spill control systems shall be monitored in accordance with 5004.2.2.5.

V-300-2.91

Section 2807.6 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

2807.6 Fire protection water supply system. An approved fire protection water supply and hydrant system suitable for the fire hazard involved shall be provided for open storage yards and processing areas. Hydrant systems shall be installed in accordance with NFPA 24 adopted by this Code.

V-300-2.92

Section 2808.11 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

2808.11 Fire protection water supply system. An approved fire protection water supply and hydrant system suitable for the fire hazard involved shall be provided for open storage yards and processing areas. Hydrant systems shall be installed in accordance with NFPA 24 adopted by this Code.

V-300-2.93

Section 3103.2 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

3103.2 Approval required. Tents and membrane structures having an area in excess of 200 square feet (19 m²) and canopies in excess of 400 square feet (37 m²) shall not be erected, operated or maintained for any purpose without first obtaining a permit and approval from the fire code official. Smaller tents or canopies set side by side are considered as one, unless separated from each other by 10 feet on all sides.

Exceptions:

1. Tents used exclusively for recreational camping purposes.

V-300-2.94

Section 3304.8 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

3304.8 Fire Walls. When fire walls are required, the wall construction shall be completed (with all openings protected) immediately after the building is sufficiently weather-protected at the location of the wall(s).

V-300-2.95

Section 3311.1 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

3311.1 Stairways required. Each level above the first story in new multi-story buildings that requires two (2) exit stairways shall be provided with at least two (2) usable exit stairways after the floor decking is installed. The stairways shall be continuous and discharge to grade level. Stairways serving more than two (2) floor levels shall be enclosed (with openings adequately protected) after the exterior walls/windows are in place. Exit stairs in new and in existing, occupied buildings shall be lighted and maintained clear of debris and construction materials at all times.

Exception: For new multi-story buildings, one of the required exit stairs may be obstructed on not more than two (2) contiguous floor levels for the purposes of stairway construction (i.e., installation of gypsum board, painting, flooring, etc.).

V-300-2.96

Section 3311.1.1 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

3311.1.1 Required means of egress. All new buildings under construction shall have a least one unobstructed means of egress. All means of egress shall be identified in the prefire plan per Section 3308.2.

V-300-2.97 Section 3315.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

3315.1 Completion before occupancy. In buildings where an automatic sprinkler system is required by this code or the California Building Code, it shall be unlawful to occupy any portion of a building or structure until the automatic sprinkler system installation has been tested and approved, except as provided in Section 105.3.4.

In new buildings of combustible construction where, automatic fire sprinkler systems are required to be installed, the system shall be placed in service as soon as possible. Immediately upon the completion of sprinkler pipe installation on each complete wood framed floor level, the piping shall be hydrostatically tested and inspected. After inspection approval from the Fire department, each floor level of sprinkler piping shall be connected to the system supply riser and placed into service with all sprinkler heads uncovered. Protective caps may be installed on the active sprinklers during the installation of drywall, texturing and painting, but shall be removed immediately after this work is completed. For system activation notification, an exterior audible waterflow alarm shall bell can be installed and connected to the sprinkler waterflow device prior to installation of the monitoring system. For the purpose of this requirement, complete wood frame means the installation of a sub-floor, roof sheeting or any other horizontal material that covers the top of the subject floor level.

For buildings equipped with fire sprinkler systems that are undergoing alterations, the sprinkler system(s) shall remain in service at all times except when system modifications are necessary. Fire sprinkler systems undergoing modifications shall be returned to service at the end of each workday unless otherwise approved by the fire department. The General contractor or his/her designee shall check the sprinkler control valve(s) at the end of each workday to confirm that the system has been restored to service.

V-300-2.98

Section 5001.2.2.2 of the California Fire Code, 2022 Edition, is amended to read as follows:

5001.2.2.2 Health hazards. The material categories listed in this section are classified as health hazards. A material with a primary classification as a health hazard can also pose a physical hazard.

1. Highly toxic and toxic materials.
2. Corrosive materials.
3. Moderately toxic gas.
4. Other health hazards.

V-300-2.99

Section 5001.5.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

5001.5.1 Hazardous materials management plan (HMMP). Where required by the fire code official, an application for a hazardous materials permit in accordance with Section 105.6 of this code shall include a Hazardous Materials Management Plan (HMMP).

The HMMP shall include the following:

- a. Information consistent with that outlined in Sections H1, H2 and H3 of Appendix H of this code.
- b. A facility site plan designating the following:

1. Access to each storage and use area.
2. Location of emergency equipment.
3. Location where liaison will meet emergency responders.
4. Facility evacuation meeting point locations.
5. The general purpose of other areas within the building.
6. Location of all above-ground and underground tanks and their appurtenances including, but not limited to, sumps, vaults, below-grade treatment systems and piping.
7. The hazard classes in each area.
8. Locations of all control areas and Group H occupancies.
9. Emergency exits.

The HMMP shall be readily available onsite.

[For SFM] The HMMP shall comply with Health and Safety Code, Chapter 6.95, Sections 25500 through 25545, and Title 19, Division 2, Chapter 4.

V-300-2.100

Section 5001.5.1.1 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

5001.5.1.1 Submittal frequency. Facilities required to maintain a hazardous materials permit shall submit an updated or recertified HMMP within 12 months of the previous submittal, or within 30 days of a change, whichever occurs first.

Exceptions: The following facilities may submit an updated HMMP within 36 months of the previous submittal if no reportable changes have occurred:

1. Cell tower sites with no hazardous materials related permits other than a permit for a battery system.
2. Facilities with no hazardous materials related permits other than a permit for carbon dioxide used in an insulated liquid carbon dioxide beverage dispensing system.
3. Facilities with no other hazardous materials related permits other than a permit for a fixed medical gas system.

V-300-2.101

Section 5003.1.3.1 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

5003.1.3.1 Highly toxic, toxic, moderately toxic gases and similarly used or handled materials. The storage, use and handling of highly toxic, toxic and moderately toxic gases in amounts exceeding Table 6004.1 shall be in accordance with this Chapter and Chapter 60. Any highly toxic, toxic or moderately toxic material that is used or handled as a gas or vapor shall be in accordance with the requirements for highly toxic, toxic or moderately toxic gases.

V-300-2.102

Section 5003.1.5 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

5003.1.5 Other health hazards. The storage, use and handling of materials classified as other health hazards in amounts exceeding 200 cubic feet for gases, 55 gallons for liquids and 5,000 pounds for solids shall be in accordance with Section 5003.

V-300-2.103

Section 5003.1.6 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

5003.1.6 Additional spill control and secondary containment requirements. In addition to the requirements set forth in Section 5004.2, an approved spill control and containment system is required for any quantity of hazardous materials that are liquids or solids at normal temperature and pressure (NTP), where a spill is determined to be a plausible event and where such an event would endanger people, property or the environment. The approved containment system may be required to include a combination of spill control and secondary containment meeting the design and construction requirements set forth in Section 5004.2.

V-300-2.104

Section 5003.2.2.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

5003.2.2.1 Design and construction. Piping, tubing, valves, fittings and related components used for hazardous materials shall be in accordance with the following:

1. Piping, tubing, valves, fittings and related components shall be designed and fabricated from materials compatible with the material to be contained and shall be of adequate strength and durability to withstand the pressure, structural and seismic stress, and exposure to which they are subject.
2. Piping and tubing shall be identified in accordance with ASME A13.1 and Santa Clara County Fire Chiefs Marking Requirements and Guidelines for Hazardous Materials and the Hazardous Waste to indicate the material conveyed.
3. Manual valves or automatic remotely activated fail-safe emergency shutoff valves shall be installed on supply piping and tubing, and provided with ready access at the following locations:
 1. The point of use.
 2. The tank, cylinder or bulk source.
4. Manual emergency shutoff valves and controls for remotely activated emergency shutoff valves shall be identified and the location shall have access clearly visible and indicated by means of a sign.
5. Backflow prevention or check valves shall be provided when the backflow of hazardous materials could create a hazardous condition or cause the unauthorized discharge of hazardous materials.
6. Where gases or liquids having a hazard ranking of:
 - Health hazard Class 3 or 4
 - Flammability Class 4
 - Reactivity Class 4

in accordance with NFPA 704 are carried in pressurized piping above 15 pounds per square inch gauge (psig)(103 Kpa), an approved means of leak detection, emergency shutoff or excess flow control shall be provided. Where the piping originates from within a hazardous material storage room or area, the excess flow control shall be located within the storage room or area. Where the piping originates from a bulk source, the excess flow control shall be located as close to the bulk source as practical.

Exceptions:

1. Piping for inlet connections designed to prevent backflow.
 2. Piping for pressure relief devices.
7. Secondary containment or equivalent protection from spills or leaks shall be provided for piping for liquid hazardous materials and for highly toxic and toxic corrosive gases above threshold quantities listed in Table 6004.1. Secondary containment includes, but is not limited to double walled piping.

Exceptions:

1. Secondary containment is not required for toxic corrosive gases if the piping is constructed of inert materials.
2. Piping under sub-atmospheric conditions if the piping is equipped with an alarm and fail-safe-to-close valve activated by a loss of vacuum.

V-300-2.105

Section 5003.2.2.2 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

5003.2.2.2 Additional regulation for supply piping for health hazard materials. Supply piping and tubing for gases and liquids having a health hazard ranking of 3 or 4 in accordance with NFPA 704 shall be in accordance with ASME B31.3 and the following:

1. Piping and tubing utilized for the transmission of highly toxic, toxic or highly volatile corrosive liquids and gases shall have welded or brazed connections throughout except for connections within an exhausted enclosure if the material is a gas, or an approved method of drainage or containment is provided for connections if the material is a liquid.
2. Piping and tubing shall not be located within corridors, within any portion of a means of egress required to be enclosed in fire-resistance-rated construction or in concealed spaces in areas not classified as Group H Occupancies.

3. All primary piping for highly toxic, toxic and moderately toxic gases shall pass a helium leak test of 1×10^{-9} cubic centimeters/second where practical, or shall pass testing in accordance with an approved, nationally recognized standard. Tests shall be conducted by a qualified "third party" not involved with the construction of the piping and control systems.

Exception: Piping and tubing within the space defined by the walls of corridors and the floor or roof above or in concealed space above other occupancies when installed in accordance with Section 415.11.7.4 of the California Building Code as required for Group H, Division 5 Occupancies.

V-300-2.106

Section 5003.3.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

5003.3.1 Unauthorized discharges. In the event hazardous materials are released in quantities reportable under state, federal or local regulations or when there is a release or a threatened release that presents a threat to health, property or the environment, the fire code official shall be notified immediately in an approved manner and the following procedures required in accordance with Sections 5003.3.1.1 through 5003.3.1.4.

V-300-2.107

Section 5003.5.2 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

5003.5.2 Ventilation ducting. Ducts for venting hazardous materials operations shall be labeled with the hazard class of the material being vented and the direction of flow.

V-300-2.108

Section 5003.5.3 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

5003.5.3 "H" Occupancies. In "H" occupancies, all piping and tubing may be required to be identified when there is any possibility of confusion with hazardous materials transport tubing or piping. Flow direction indicators are required.

V-300-2.109

Section 5003.9.8 of the California Fire Code, 2022 Edition, is amended to read as follows:

5003.9.8 Separation of incompatible materials. Incompatible materials in storage and storage of materials that are incompatible with materials in use shall be separated. When the stored materials are in containers having a capacity of more than 5 pounds (2 kg), 0.5 gallon (2 L), or any amount of compressed gases, separation shall be accomplished by:

1. Segregating incompatible materials in storage by a distance of not less than 20 feet (6096 mm) and in an independent containment system.
2. Isolating incompatible materials in storage by a noncombustible partition extending not less than 18 inches (457 mm) above and to the sides of the stored material.
3. Storing liquid and solid materials in hazardous material storage cabinets.
4. Storing compressed gases in gas cabinets or exhausted enclosures in accordance with Sections 5003.8.5 and 5003.8.6. Materials that are incompatible shall not be stored within the same cabinet or exhausted enclosure.

V-300-2.110

Section 5003.9.11 is hereby added to the California Fire Code, 2022 Edition to read as follows:

5003.9.11 Fire extinguishing systems for workstations dispensing, handling or using hazardous materials. Combustible and non-combustible workstations, which dispense, handle or use hazardous materials, shall be protected by an approved automatic fire extinguishing system in accordance with Section 2703.10.

Exception: Internal fire protection is not required for Biological Safety Cabinets that carry NSF/ANSI certification where quantities of flammable liquids in use or storage within the cabinet do not exceed 500 ml.

V-300-2.111

Section 5003.9.12 hereby added to the California Fire Code, 2022 Edition, to read as follows:

5003.9.12 Immersion heaters. All electrical immersion heaters used in dip tanks, sinks, vats and similar operations shall be provided with approved over-temperature controls and low liquid level electrical disconnects. Manual reset of required protection devices shall be provided.

V-300-2.112

Section 5003.10.4.3 of the California Fire Code, 2022 Edition, is amended to read as follows:

5003.10.4.3 Highly toxic, toxic and moderately toxic, gases shall be limited to a container of a maximum water capacity of 1 lb.

V-300-2.113

Section 5004.2.1 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

5004.2.1 Spill control for hazardous material liquids. Rooms, buildings or areas used for storage of hazardous material liquids, shall be provided with spill control to prevent the flow of liquids to adjoining areas. Floors in indoor locations and similar surfaces in outdoor locations shall be constructed to contain a spill from the largest single vessel by one of the following methods:

1. Liquid-tight sloped or recessed floors in indoor locations or similar areas in outdoor locations.
2. Liquid-tight floors in indoor and/ or outdoor locations or similar areas provided with liquid-tight raised or recessed sills or dikes.
3. Sumps and collection systems, including containment pallets in accordance with Section 5004.2.3.
4. Other approved engineered systems.

Except for surfacing, the floors, sills, dikes, sumps and collection systems shall be constructed of noncombustible material, and the liquid-tight seal shall be compatible with the material stored. When liquid-tight sills or dikes are provided, they are not required at perimeter openings having an open-grate trench across the opening that connects to an approved collection system.

V-300-2.114

Section 5004.2.2 of the California Fire Code, 2022 Edition, is amended to read as follows:

5004.2.2 Secondary containment for hazardous material liquids and solids. Buildings, rooms or areas used for the storage of hazardous materials liquids or solids shall be provided with secondary containment in accordance with this section.

V-300-2.115

Table 5004.2.2 of the California Fire Code, 2022 Edition is hereby deleted.

V-300-2.116

Section 5004.2.2.2 is hereby amended to the California Fire Code, 2022 Edition, to read as follows:

5004.2.2.2 Incompatible materials. Incompatible materials shall be separated from each other in independent secondary containment systems.

V-300-2.117

Section 5004.2.2.5 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

5004.2.2.5 Monitoring. An approved monitoring method shall be provided to detect hazardous materials in the spill control and secondary containment systems and to verify that the provisions of this Code for the storage and handling of hazardous materials are addressed. Monitoring shall be recorded at least once per week. The monitoring method is allowed to be visual inspection of the primary or secondary containment, or other approved means. Where secondary containment

is subject to the instruction of water, a monitoring method for detecting water shall be provided. Where monitoring devices are provide, they shall be connected to approved visual or audible alarms.

V-300-2.118

Section 5004.2.3 of the California Fire Code, 2022 Edition, is amended to read as follows:

5004.2.3 Containment pallets. Combustible containment pallets shall not be used inside buildings to comply with Section 5004.2 where the individual container capacity exceeds 55 gallons (208 L) or an aggregate capacity of multiple containers exceeds 1,000 gallons (3785 L) for liquids or where the individual container capacity exceeds 550 pounds (250 kg) or an aggregate of multiple containers exceeds 10,000 pounds (4540 kg) for solids.

Where used as an alternative to spill control and secondary containment for outdoor storage in accordance, with the exception in Section 5004.2, containment pallets shall comply with all of the following:

1. A liquid-tight sump accessible for visual inspection shall be provided;
2. The sump shall be designed to contain not less than 66 gallons (250L);
3. Exposed surfaces shall be compatible with material stored;
4. Containment pallets shall be protected to prevent collection of rainwater within the sump of the containment pallet.

V-300-2.119

Section 5005.4.4 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

5005.4.4 Dispensing, use and handling. When hazardous materials having a hazard ranking of 3 or 4 in accordance with NFPA 704, or toxic or moderately toxic gases exceeding 405 cu. ft. and any amount of highly toxic compressed gases are transported through corridors or exit enclosures, there shall be an emergency telephone system, a local manual alarm station or an approved alarm-initiating device at not more than 150-foot (45,720 mm) intervals and at each exit and exit-access doorway throughout the transport route. The signal shall be relayed to an approved central, proprietary or remote station service or constantly attended on-site location and shall also initiate a local audible alarm.

V-300-2.120

Section 5303.5.3, method 1. of the California Fire Code, 2022 Edition, is amended to read as follows:

1. Securing containers, cylinders and tanks to a fixed object with one or more noncombustible restraints.

V-300-2.121

Section 5601.1.3 of the California Fire Code 2022 Edition, is amended to read in its entirety as follows:

5601.1.3 Fireworks. The possession, manufacture, storage, sale, handling, and use of fireworks, including those fireworks classified as Safe and Sane by the California State Fire Marshal, are prohibited.

Exception: The use of fireworks for fireworks displays as allowed in Section 5608.

V-300-2.122

Section 5704.2.7.5.8 of the California Fire Code, 2022 Edition, is amended to read as follows:

5704.2.7.5.8 Overfill prevention. An approved means or method in accordance with Section 5704.2.9.7.5 shall be provided to prevent the overfill of all Class I, II and IIIA liquid storage tanks. Storage tanks in refineries, bulk plants or terminals regulated by Sections 5706.4 or 5706.7 shall have overfill protection in accordance with API 2350.

Exception: Outside aboveground tanks with a capacity of 1320 gallons (5000 L) or less need only comply with Section 5704.2.9.7.5, item 1, sub-item (1.1)

An approved means or method in accordance with Section 5704.2.9.7.5 shall be provided to prevent the overfilling of Class IIIB liquid storage tanks connected to fuel-burning equipment inside buildings.

V-300-2.123

Section 5704.2.7.5.9 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

5704.2.7.5.9 Automatic filling of tanks. Systems that automatically fill flammable or combustible liquid tanks shall be equipped with overfill protection, approved by the fire code official that sends an alarm signal to a constantly attended location and immediately stops the filling of the tank. The alarm signal and automatic shutoff shall be tested on an annual basis and records of such testing shall be maintained on-site for a period of five (5) years.

V-300-2.124

Section 5707 of the California Fire Code, 2022 Edition, is hereby adopted and amended as follows:

V-300-2.125

Section 5707.3.3 of the California Fire Code, 2022 Edition, is amended as follows:

5707.3.3 Site plan.

A site plan shall be developed for each location or area at which mobile fueling occurs. The site plan shall be in sufficient detail to indicate the following:

1. All buildings and structures.
2. Lot lines or property lines.
3. Electric car chargers.
4. Solar photovoltaic parking lot canopies.
5. Appurtenances on-site and their use or function.
6. All uses adjacent to the lot lines of the site.
7. Fueling locations.
8. Locations of all storm drain openings and adjacent waterways or wetlands.
9. Information regarding slope, natural drainage, curbing and impounding.
10. How a spill will be kept on the site property.
11. Scale of the site plan.

V-300-12.126 Section 5707.4 of the California Fire Code, 2022 Edition, is amended to read as follows:

5707.4 Mobile fueling areas. Mobile fueling shall not occur on public streets, public ways, any residential street, or inside buildings. Fueling on the roof level of parking structures or other buildings is prohibited.

V-300-2.127

Sections 5707.6.7 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

5707.6.7 Bonding. A means for bonding the mobile fueling vehicle to the motor vehicle shall be provided. Such bonding means shall be employed during fueling operations.

V-300-2.128

Section 5809.3.4 is hereby amended to the California Fire Code, 2022 Edition, to read as follows:

5809.3.4 Site plan. For other than emergency roadside service, a site plan shall be developed for each location at which mobile gaseous hydrogen fueling occurs. The site plan shall be in sufficient detail to indicate: all buildings, structures, lot lines, property lines and appurtenances on site and their use and function, and the scale of the site plan.

V-300-2.129

Section 6004 of the California Fire Code, 2022 Edition, is amended to read as follows:

HIGHLY TOXIC, TOXIC AND MODERATELY TOXIC GASES

V-300-2.130

Section 6004.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.1 General. Materials stored or used as a gas whether or not the material meets the definition of a compressed gas, and meets the definition of a highly toxic, toxic and moderately toxic gas shall comply with Section 6004.

The minimum threshold quantity for highly toxic, toxic and moderately toxic gases, vapors and mists for indoor and exterior storage and use are set forth in Table 6004.1.

Table 6004.1 Minimum Threshold Quantities for Highly Toxic, Toxic and Moderately Toxic Gases	
Highly Toxic	20
Toxic	405 cubic feet
Moderately Toxic	405 cubic feet

V-300-2.131

Section 6004.1.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.1.1 Special limitations for indoor storage and use by occupancy. The indoor storage and use of highly toxic, toxic and moderately toxic gases in certain occupancies shall be subject to the limitations contained in Sections 6004.1.1.1 through 6004.1.1.3.

V-300-2.132

Section 6004.1.1.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.1.1.1 Group A, E, I or U occupancies. Highly toxic, toxic and moderately toxic gases shall not be stored or used within Group A, E, I or U occupancies.

Exception: Cylinders not exceeding 20 cubic feet (0.556m³) at normal temperature and pressure (NTP) are allowed within gas cabinets or fume hoods.

V-300-2.133

Section 6004.1.1.2 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.1.1.2 Group R occupancies. Highly toxic, toxic and moderately toxic gases shall not be stored or used in Group R occupancies.

V-300-2.134

Section 6004.1.1.3 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.1.1.3 Offices, retail sales and classrooms. Highly toxic, toxic and moderately toxic gases shall not be stored or used in offices, retail sales or classroom portions of Group B, F, M or S occupancies.

Exception: In classrooms of Group B occupancies, cylinders with a capacity not exceeding 20 cubic feet (0.566 m³) at NTP are allowed in gas cabinets or fume hoods.

V-300-2.135

Section 6004.1.2 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.1.2 Gas cabinets. Gas cabinets containing highly toxic, toxic and moderately toxic gases shall comply with Section 5003.8.6 and the following requirements:

1. The average ventilation velocity at the face of gas cabinet access ports or windows shall not be less than 200 cubic feet per minute (1.02 m/s) with a minimum of 150 feet per minute (0.76 m/s) at any point of the access port or window.
2. Gas cabinets shall be connected to an exhaust system.
3. Gas cabinets shall not be used as the sole means of exhaust for any room or area.
4. The maximum number of cylinders located in a single gas cabinet shall not exceed three, except that cabinets containing cylinders not exceeding 1 pound (0.454 kg) net contents are allowed to contain up to 100 cylinders.
5. Gas cabinets required by Section 6004.2 or 6004.3 shall be equipped with an approved automatic sprinkler system in accordance with Section 903.3.1.1. Alternative fire-extinguishing systems shall not be used.

V-300-2.136

Section 6004.1.3 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.1.3 Exhausted enclosures. Exhausted enclosures containing highly toxic, toxic or moderately toxic gases shall comply with Section 5003.8.6 and the following requirements:

1. The average ventilation velocity at the face of the enclosure shall not be less than 200 feet per minute (1.02 m/s) with a minimum of 150 feet per minute (0.76 m/s).
2. Exhausted enclosures shall be connected to an exhaust system.
3. Exhausted enclosures shall not be used as the sole means of exhaust for any room or area.

Exhausted enclosures required by Section 6004.2 or 6004.3 shall be equipped with an approved automatic sprinkler system in accordance with Section 903.3.1.1. Alternative fire-extinguishing system shall not be used.

V-300-2.137

Section 6004.1.4 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

2022

6004.1.4 Automatic shut-off valve. If gas monitoring is not provided, an automatic shut-off valve, which is of a fail-safe to close design, shall be provided to shutoff the supply of toxic and moderately toxic gases upon failure of the required gas cabinet or exhausted enclosure ventilation.

An automatic shut-off valve, which is of a fail-safe to close design, shall be provided to shut off the supply of highly toxic gases for any of the following:

1. Activation of a manual fire alarm system.
2. Activation of the gas detection system.
3. Failure of emergency power.
4. Failure of primary containment.
5. Seismic activity.
6. Failure of required ventilation.
7. Manual activation at an approved remote location.

An automatic shutoff valve is not required if a manual shutoff valve at the source is readily accessible and the process is continuously attended and supervised by a qualified individual.

V-300-2.138

Section 6004.1.5 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.1.5 Emergency control station. Signals from emergency equipment used for highly toxic gases shall be transmitted to an approved location.

V-300-2.139

Section 6004.1.6 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.1.6 Maximum threshold quantity. Toxic gases stored or used in quantities exceeding the maximum threshold quantity in a single vessel per control area or outdoor control area shall comply with the additional requirements for highly toxic gases of Section 6004 of this Code.

Moderately toxic gases stored or used in quantities exceeding the maximum threshold quantity. in a single vessel per control area or outdoor control area shall comply with the additional requirements for toxic gases of Section 6004 of this Code.

The following formula shall be used to calculate the maximum threshold quantity:

$$\text{Max TQ (pounds)} = \text{LC}_{50} \text{ (ppm)} \times 2 \text{ lb.}$$

V-300-2.140

Section 6004.1.7 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.1.7 Reduced flow valve. All containers of highly toxic and toxic materials other than lecture bottles containing highly toxic material and having a vapor pressure exceeding 29 psia shall be equipped with a reduced flow valve when available. If a reduced flow valve is not available, the container shall be used with a flow-limiting device. All flow limiting devices shall be part of the valve assembly and visible to the eye when possible; otherwise, they shall be installed as close as possible to the cylinder source.

V-300-2.141

Section 6004.1.8 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.1.8 Fire extinguishing systems. Buildings and areas for the storage and use of materials regulated by this Chapter shall be protected by an automatic fire sprinkler system in accordance with NFPA 13. The design of the sprinkler system for any room or area where highly toxic, toxic and moderately toxic gases are stored, handled or used shall be in accordance with Section 5004.5.

V-300-2.142

Section 6004.1.9 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.1.9 Local gas shut off. Manual activation controls shall be provided for highly toxic and toxic gases at locations near the point of use and near the source, as approved by the fire code official. The fire code official may require additional controls at other places, including, but not limited to, the entry to the building, storage or use areas, and emergency control stations. Manual activated shut-off valves shall be of a fail-safe-to-close design.

V-300-2.143

Section 6004.1.10 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.1.10 Exhaust ventilation monitoring. For highly toxic and toxic gases exceeding threshold quantities, a continuous monitoring system shall be provided to assure that the required exhaust ventilation rate is maintained. The monitoring system shall initiate a local alarm. The alarm shall be both visual and audible and shall be designed to provide warning both inside and outside of the interior storage, use, or handling area.

V-300-2.144

Section 6004.1.11 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.1.11 Emergency response plan. If the preparation of an emergency response plan for the facility is not required by any other law, responsible persons shall prepare, or cause to be prepared, and filed with the fire code official, a written

emergency response plan. If the preparation of an emergency response plan is required by other law, a responsible person shall file a copy of the plan with the fire code official.

V-300-2.145

Section 6004.1.12 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.1.12 Cylinder leak testing. Cylinders shall be tested for leaks immediately upon delivery and again immediately prior to departure. Testing shall be approved by the fire code official in accordance with appropriate nationally recognized industry standards and practices, if any. Appropriate remedial action shall be immediately undertaken when leaks are detected.

V-300-2.146

Section 6004.1.13 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.1.13 Inert gas purge system. Gas systems shall be provided with dedicated inert gas purge systems. A dedicated inert gas purge system may be used to purge more than one gas, provided the gases are compatible. Purge gas systems shall be located in an approved gas cabinet unless the system operates by vacuum demand.

V-300-2.147

Section 6004.1.14 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.1.14 Seismic shutoff valve. An automatic seismic shut-off valve, which is of a fail-safe to close design, shall be provided to shutoff the supply of highly toxic, toxic and moderately toxic gases with an LC_{50} less than or equal to 3000 parts per million upon a seismic event within 5 seconds of a horizontal sinusoidal oscillation having a peak acceleration of 0.3G (1.47 m/sec²) and a period of 0.4 seconds.

V-300-2.148

Section 6004.2 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.2 Indoor storage and use. The indoor storage or use of highly toxic, toxic and moderately toxic compressed gases shall be in accordance with Sections 6004.2.1 through 6004.2.2.10.4.

V-300-2.149

Section 6004.2.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.2.1 Applicability. The applicability of regulations governing the indoor storage and use of highly toxic, toxic, and moderately toxic gases shall be as set forth in Sections 6004.2.1.1 through 6004.2.1.5.

V-300-2.150

Section 6004.2.1.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.2.1.1 Quantities not exceeding the maximum allowable quantity per control area. The indoor storage or use of highly toxic, toxic and moderately toxic gases in amounts exceeding the maximum allowable quantity per control area set forth in Table 5003.1.1(2) shall be in accordance with Sections 5001, 5003, 6001, 6004.2.1.4 and 6004.2.1.5.

V-300-2.151

Section 6004.2.1.4 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.2.1.4 Quantities not exceeding minimum threshold quantity per control area. The indoor storage or use of highly toxic, toxic and moderately toxic gases in amounts not exceeding the minimum threshold quantity per control area set forth in Table 6004.1 shall be in accordance with Sections 6001, 6004.1 and Chapter 50.

V-300-2.152

Section 6004.2.1.5 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.2.1.5 Quantity exceeding the minimum threshold quantity per control area. The indoor storage or use of highly toxic, toxic and moderately gases in amounts exceeding the minimum threshold quantity per control area set forth in Table 6004.1 shall be in accordance with Sections 6001, 6004.1, 6004.2 and Chapter 50.

V-300-2.153

Section 6004.2.2 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.2.2 General indoor requirements. The general requirements applicable to the indoor storage and use of highly toxic and toxic compressed gases shall be in accordance with Sections 6004.2.2.1 through 6004.2.2.10.4.

Moderately toxic gases with an LC_{50} less than or equal to 3000 parts per million shall comply with the requirements for toxic gases in Sections 6004.2.2.1 through 6004.2.2.10.3.

Moderately toxic gases with an LC_{50} more than 3000 parts per million but not greater than 5000 parts per million and exceeding the maximum threshold quantity, as determined by 6004.1.6, shall comply with the requirements for toxic gases in Sections 6004.2.2.1 through 6004.2.2.7.

Moderately toxic gases shall not be considered as toxic gases for maximum allowable quantities determinations under Table 5003.1.1(2).

V-300-2.154

Section 6004.2.2.7 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.2.2.7 Treatment systems. The exhaust ventilation from gas cabinets, exhausted enclosures, gas rooms and local exhaust systems required in Section 6004.2.2.4 and 6004.2.2.5 shall be directed to a treatment system. The treatment system shall be utilized to handle the accidental release of gas and to process exhaust ventilation. The treatment system shall be designed in accordance with Sections 6004.2.2.7.1 through 6004.2.2.7.5 and Section 510 of the California Mechanical Code.

Exceptions:

1. Highly toxic, toxic and moderately toxic gases storage. A treatment system is not required for cylinders, containers and tanks in storage when all of the following are provided:
 - 1.1. Valve outlets are equipped with gas-tight outlet plug or caps.
 - 1.2. Hand wheel-operated valves have handles secured to prevent movement.
 - 1.3. Approved containment vessels or containment systems are provided in accordance with Section 6004.2.2.3.

V-300-2.155

Section 6004.2.2.8 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.2.2.8 Emergency power. For highly toxic and toxic gas systems, emergency power, in accordance with Section 1203, shall be provided for the following:

1. Exhaust ventilation system.
2. Treatment system.
3. Gas detection system.
4. Smoke detection system.
5. Temperature control system.
6. Fire alarm system.
7. Emergency alarm system.

V-300-2.156

Section 6004.2.2.10 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.2.2.10 Gas detection system. A gas detection system complying with Section 916 shall be provided to detect the presence of a highly toxic or toxic gas at or below the PEL or ceiling limit of the gas for which detection is provided. In occupied areas where gas cabinets or exhausted enclosures are not provided, the fire code official may require a cyclical basis at intervals not to exceed 5 minutes.

The system shall be capable of monitoring the discharge from the treatment system at or below one-half the IDLH limit and shall initiate a response in accordance with Sections 6004.2.2.10.1 through 6004.2.2.10.3 if the gas detection system is activated.

Exception: A gas detection system is not required for toxic gases when the physiological warning threshold level for the gas is at a level below the accepted PEL for the gas.

V-300-2.157

Section 6004.2.2.10.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.2.2.10.1 Alarms. The gas detection system shall initiate a local alarm and transmit a signal to an approved location when a short-term hazard condition is detected. The alarm shall be both visual and audible and shall provide warning both inside and outside the area where the gas is detected. The audible alarm shall be distinct from all other alarms.

Exception: Signal transmission to a constantly attended control station is not required where not more than one cylinder of highly toxic, toxic or moderately toxic gas is stored.

V-300-2.158

Section 6004.2.2.10.2 of the California Fire Code, 2022 Edition is amended to read as follows:

6004.2.2.10.2 Shut off of gas supply. The gas detection system shall automatically close the shutoff valve at the source on gas supply piping and tubing related to the system being monitored for whichever gas is detected.

Exception: An automatic shutdown is not required for reactors utilized for the production of highly toxic, toxic or moderately toxic compressed gases where such reactors are:

1. Operated at pressures less than 15 pounds per square inch gauge (psig) (103.4kPa).
2. Constantly attended.
3. Provided with emergency shutoff valves that have ready access.

V-300-2.159

Section 6004.2.2.10.4 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.2.2.10.4 Emergency alarm. The indoor storage or use of highly toxic or toxic gases in amounts exceeding the minimum threshold quantity per control area set forth in Table 6004.1 shall also comply with Sections 5004.9 and 5005.4.4.

V-300-2.160

Section 6004.3 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.3 Outdoor storage and use. The outdoor storage or use of highly toxic, toxic and moderately toxic compressed gases shall be in accordance with Sections 6004.3.1 through 6004.3.4.

V-300-2.161

Section 6004.3.1 of the California Fire Code, 2016 Edition, is amended to read as follows:

6004.3.1 Applicability. The applicability of regulations governing the outdoor storage and use of highly toxic, toxic, and moderately toxic gases shall be as set forth in Sections 6004.3.1.1 through 6004.3.1.5.

V-300-2.162

Section 6004.3.1.1 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.3.1.1 Quantities not exceeding the maximum allowable quantity per control area. The outdoor storage or use of highly toxic and toxic gases in amounts exceeding the threshold quantity per control area set forth in Table 5003.1.1(4) shall be in accordance with Sections 5001, 5003, 6001, 6004.1, and 6004.3.1.4 and 6004.3.1.5.

V-300-2.163

Section 6004.3.1.4 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.3.1.4 Quantities not exceeding minimum threshold quantity per control area. The outdoor storage or use of highly toxic, toxic and moderately toxic gases in amounts not exceeding the minimum threshold quantity per control area set for in Table 6004.1 shall be in accordance with Sections 6001, 6004.1 and Chapter 50.

V-300-2.164

Section 6004.3.1.5 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6004.3.1.5 Quantity exceeding the minimum threshold quantity per control area. The outdoor storage or use of highly toxic, toxic and moderately gases in amounts exceeding the minimum threshold quantity per control area set forth in Table 6004.1 shall be in accordance with Sections 6001, 6004.1, 6004.3 and Chapter 50.

V-300-2.165

Section 6004.3.2 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.3.2 General outdoor requirements. The general requirements applicable to the outdoor storage and use of highly toxic, toxic and moderately toxic gases shall be in accordance with Sections 6004.3.2.1 through 6004.3.2.4.

Moderately toxic gases with an LC₅₀ equal to or less than 3000 parts per million shall comply with the requirements for toxic gases in Sections 5001, 5003, 6001, 6004.1 and 6004.3.

Moderately toxic gases with an LC₅₀ more than 3000 parts per million but not greater than 5000 parts per million and exceeding the maximum threshold quantity, as determined by 6004.1.6, shall comply with the requirements for toxic gases in Sections 5001, 5003, 6001, 6004.1 and 6004.3.2.1 through 6004.3.2.4.

Moderately toxic gases shall not be considered as toxic gases for maximum allowable quantities determinations under Table 5003.1.1(4).

V-300-2.166

Section 6004.3.3 of the California Fire Code, 2022 Edition, is amended to read as follows:

6004.3.3 Outdoor storage weather protection for portable tanks and cylinders. Weather protection in accordance with Section 5004.13 and this section shall be provided for portable tanks and cylinders located outdoors and not within gas cabinets or exhausted enclosures. The storage area shall be equipped with an approved automatic sprinkler system in accordance with Section 903.3.1.1.

V-300-2.167

Section 6405.3.1 is hereby added to the California Fire Code, 2022 Edition, to read as follows:

6405.3.1 Silane distribution systems automatic shutdown. Silane distribution systems shall automatically shut down at the source upon activation of the gas detection system at levels above the alarm level and/or failure of the ventilation system for the silane distribution system.

APPENDIX B

FIRE-FLOW REQUIREMENTS FOR BUILDINGS

SECTION B105 FIRE-FLOW REQUIRES FOR BUILDINGS

Amend Section B105.2 to read:

B105.2 Buildings other than one- and two-family dwellings, Group R-3 and R-4 buildings and townhouses. The minimum fire-flow and flow duration for buildings other than one- and two-family dwellings, Group R-3 and R-4 buildings and townhouses shall be as specified in Tables B105.1(2) and B105.2.

Exceptions: [SFM] Group B, S-2 and U occupancies having a floor area not exceeding 1,000 square feet, primarily constructed of noncombustible exterior walls with wood or steel roof framing, having a Class A roof assembly, with uses limited to the following or similar uses:

1. California State Parks buildings of an accessory nature (restrooms).
2. Safety roadside rest areas (SRRA), public restrooms.
3. Truck inspection facilities (TIF), CHP office space and vehicle inspection bays.
4. Sand/salt storage buildings, storage of sand and salt.

The maximum fire flow reduction for all commercial buildings greater than 30,000 square feet and residential podium buildings shall not exceed 25 percent of the fire flow specified in Table B105.1(2). The maximum fire flow reduction for all other buildings shall not exceed 50 percent of the fire flow specified in Table B105.1(2).

V-300-2.168

Section D101.1 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

D101.1 Scope. Fire apparatus access roads shall be in accordance with this appendix and all other applicable requirements of this Code.

V-300-2.169

Section D103.1 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

D103.1 Access road width with a hydrant. Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet (7925 mm). See Figure D103.1. Only conditions with 26 feet roads are applicable.

Exception: The fire code official may approve other condition that provides equivalent access.

V-300-2.170

Section D104.1 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

D104.1 Buildings with two or more fire apparatus access roads. Buildings or facilities exceeding 30 feet (9144 mm), or three stories in height, or 50,000 square feet (5760m²) shall be provided with at least two means of fire apparatus access for each structure.

V-300-2.171

Section D104.2 of the California Fire Code, 2022 Edition, is deleted in its entirety.

V-300-2.172

Section D105.2 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

D105.2 Width. Fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925 mm) in the immediate vicinity of any building or portion of building more than 30 feet (9144) in height.

Exception: The Fire Code Official may approve the use of other usable space/area that provides equivalent required width.

V-300-2.173

Section D106.1 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

D106.1 Projects having more than 50 dwelling units. Multiple-family residential projects having more than 50 dwelling units shall be equipped throughout with two separate and approved fire apparatus access roads.

V-300-2.174

Section D106.2 of the California Fire Code, 2022 Edition, is amended to read in its entirety as follows:

D106.2 Projects having more than 200 dwelling units. For Multiple-family residential projects having more than 200 units, the fire code official may require more than two fire apparatus access roads.

V-300-2.175

Section D107.1 of the California Fire Code, 2022 Edition, exceptions No. 1 and No. 2 are deleted.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Consider Adopting an Urgency Ordinance Amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code Relating to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)
Category:	Public Hearings-Community Development
Meeting Date:	12/6/2022
	<u>Recommendation:</u> (1) Conduct a public hearing and move to close the hearing following comments; and (2) Adopt an Urgency Ordinance amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code to comply with Government Code Section(s) 65852.2, 65852.22, 65852.23 and Section 17980.12 of the Health and Safety Code and making findings that the proposed zoning ordinance amendment is statutorily exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code section 21080.17, which exempts from CEQA any ordinance that is adopted to implement Government Code Section 65852.1 or 65852.2.

Background:

The State Planning and Zoning Law authorizes a local agency, by ordinance or ministerial approval, to provide for the creation of accessory dwelling units in areas zoned for residential use. Existing law authorizes a local agency to impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, and maximum size of a unit.

In September and October 2022, the California Legislature approved, and the Governor signed into law, Assembly Bill 2221 (AB 2221) and Senate Bill 897 (SB 897) that, among other things, amended sections 65852.2, 65852.22, and 65852.23 of the Government Code and section 17980.12 of the Health and Safety Code to limit local authority and streamline the approval process for ADUs and JADUs.

State law requires consistency between local regulations for ADUs and JADUs and the state ADU law, so the City must amend its ADU Ordinance to comply with the new provisions of AB 2221 and SB 897. Failure to do so by January 1, 2023, would render the City’s local ADU Ordinance null and void.

Overview of Draft Ordinance:

In accordance with recent changes to state law under AB 2221 and SB 897, the proposed urgency ordinance would amend Title XI “Zoning, Planning and Annexations,” Chapter 10 “Zoning,” Section 13 “Special Uses,” Subsection 8 “Accessory Dwelling Units” of the Milpitas Municipal Code in the following ways:

- Increases the maximum allowable height of a detached ADU from 16 feet to 18 feet if the ADU is created on a lot with an existing or proposed single-family or multi-family dwelling unit located within ½-mile walking distance of a major transit stop or a high-quality transit corridor.
- Requires that a detached ADU up to 18 feet in height is subject to ministerial approval.
- Requires that a detached ADU may be up to two additional feet in height (for a maximum of 20 feet) if needed to accommodate a roof pitch on the ADU aligned with the roof pitch of the primary dwelling.

- Increases the maximum allowable height for an attached ADU to 25 feet or the height limitation imposed by the underlying zone that applied to the primary dwelling, whichever is lower. The ADU height may not exceed two stories. Height measured from legal grade to peak of the structure.
- Requires an attached ADU up to 25 feet in height is subject to ministerial approval.
- Requires that the construction of an ADU does not constitute a Group R occupancy change under the local building code, except as specified. The ordinance would prohibit the construction of an ADU from triggering a requirement that fire sprinklers be installed in the existing primary dwelling.
- Prohibits the City from requiring modifications to the primary unit when an ADU is added to an existing multi-family dwelling that exceeds applicable height requirements or has a rear or side setback of less than 4 feet.
- Requires a minimum 20-foot front-yard setback for all ADUs, unless such setback precludes an 800-square-foot ADU from being developed.
- Prohibits the City from imposing any parking standards on an ADU that is included in an application to create a new single-family dwelling unit or a new multi-family dwelling on the same lot, provided that the ADU meets other specified requirements.
- Requires enclosed uses within the proposed or existing single-family residence, such as attached garages, to be considered a part of the proposed or existing single-family residence.
- Requires a JADU that does not include a separate bathroom to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.
- Prohibits the City from denying an application for a JADU permit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not threaten public health and safety and are not in conflict with JADU construction.
- Prohibits denial of a permit to legalize an unpermitted ADU that was constructed before January 1, 2018, because, among other things, the unit violates building standards or state or local standards applicable to ADUs, unless the local agency makes a finding that correcting the violation is necessary to protect the health and safety of the public or occupants of the structure. This prohibition does not apply to structures deemed substandard under state law.
- Prohibits denial of a permit application to create a new ADU or JADU based on the need for correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.
- Requires the City to return a full set of written comments to the applicant with a list of defective or deficient items and a description of how the applicant can remedy the application if the permitting agency denies an application for an ADU or JADU.
- Requires the City to review and issue a demolition permit for a detached garage that is to be replaced by an ADU concurrent with its review and issuance the permit for the ADU.
- In addition to the required changes outlined above to ensure consistency with current state ADU law, the proposed zoning amendment also makes other organizational and formatting changes to the City's ADU Ordinance to clarify standards and facilitate streamlined approval of ADUs and JADUs.

General Plan Conformance

As outlined in Table 1 below, the proposed zoning text amendments for ADUs and JADUs conform to the policies and standards in the City's General Plan.

Table 1: General Plan Consistency

Policy/Goals	Conformance
Land Use Element Policy - Land Use 1-4: Continue to provide a variety of housing types and densities that meet the needs of individuals and families and offer sufficient housing opportunities and choices to Milpitas residents of all income levels, age groups, and special needs.	Consistent. The zoning text amendments modify the ADU and JADU regulations to streamline and encourage the production of these housing unit types, which add diversity to the City's housing stock in terms of unit size and cost. ADUs and JADUs offer new housing options that help meet the needs of various household sizes, income levels, and ages.
Community Health and Wellness Element Policy – Land Use 6-2: Ensure that there is a diversity of housing types to accommodate all income levels and provide housing for very low and extremely low-income populations in areas with high accessibility to public transportation.	Consistent. The proposed ordinance enacts changes to zoning regulations for a specific type of residential development to increase the variety of housing types. By increasing height and configuration requirements and modifying parking and setback requirements, the City is adding greater flexibility for homeowners to develop ADUs and JADUs, potentially increasing the availability and diversity of housing types.
Housing Element - Goal C: Facilitate New Housing Production	Consistent. The zoning text amendments modify the ADU regulations to comply with new state laws intended to reduce barriers to the creation of ADUs and JADUs. The ministerial approval process and objective standards simplify and facilitate new housing production in residential neighborhoods.
Housing Element – Goal D Support Housing Diversity and Affordability.	Consistent. The zoning text amendments modify the City's ADU and JADU regulations and encourage the production of additional housing that is available and appropriate to different household sizes and income levels. ADUs and JADUs are smaller than single-family residences and more affordable than condominiums.

FINDINGS FOR APPROVAL

The City Council shall consider the following findings in considering approval of a zoning ordinance amendment:

Zoning Amendment (Section XI-10-57.02(G)(3))

1. *The proposed amendment is consistent with the General Plan.*

The proposed amendment is consistent with the Milpitas General Plan, as shown in Table 1.

2. *The proposed amendment will not adversely affect the public health, safety, and welfare.*

The proposed zoning amendments will increase the maximum allowable height of ADUs, clarify setbacks and ADU design requirements, remove barriers to the legalization of existing ADUs, and simplify the review and approval process for new ADUs and JADUs. These changes can be implemented without adversely affecting public health, safety, or welfare.

Urgency

There is a current and immediate threat to the public health, safety, or welfare based on the passage of AB2221 and SB897 because if the City does not amend its local Zoning Ordinance for consistency with state ADU law, all of the City's ADU and JADU regulations may be nullified, and the City would thereafter be limited to applying only those few default standards that are provided in Government Code sections 65852.2, 65852.22, and 65852.23. To protect the public safety, health, and welfare, the City Council may adopt this ordinance as an urgency measure in accordance with Government Code section 36937, subdivision (b). The ordinance must be passed by four-fifths vote of the City Council. This urgency ordinance will sunset in either six months or upon the effective date of the new ADU ordinance, whichever is shorter.

Policy Alternative(s):

Alternative: Do not amend Section XI-10-13.08 ("Accessory Dwelling Units") and defer to State law.

Pros: Consistent with State law.

Cons: Potential negative impacts to neighborhoods.

Reason for Not Recommending: If the City does not amend its code to conform to current State law, State law makes the City's ADU regulations null and void. The City will have no ability to regulate ADUs beyond the few minimal standards imposed by State law.

Fiscal Impact:

The proposed zoning ordinance amendment makes minor changes to the City's local regulations for creation of Accessory Dwelling Units (ADUs) to ensure consistency with recent state legislative changes to state ADU law. The changes clarify existing regulations and will have no fiscal impact.

California Environmental Quality Act (CEQA):

Under California Public Resources Code Section 21080.17, CEQA does not apply to the adoption of an ordinance by a local government implementing the provisions of Section 65852.2 of the Government Code, which is California's law regulating ADUs and JADUs, as defined by Government Code Section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State's ADU law. In addition, the ordinance is statutorily exempt pursuant to CEQA Guidelines Section 15282(h) (adoption of an ordinance regarding second units in a single- or multi-family residential zone).

Planning Commission Recommendation:

The Planning Commission considered the proposed zoning text amendment at its regularly scheduled public meeting on November 9, 2022. Following discussion and public comment, the Planning Commission voted unanimously (7-0) to recommend that the City Council adopt the urgency ordinance related to updating the City's regulations and requirements for ADUs and JADUs for consistency with recent changes to the state ADU law. The Commission's resolution in favor of adopting the proposed urgency ordinance is attached (Attachment B).

Recommendation:

- 1) Conduct a public hearing and move to close the hearing following comments.
- 2) Adopt an Urgency Ordinance pursuant to Government Code Section 36937 to amend Subsection 13.08 "Accessory Dwelling Units" of Chapter 10 "Zoning" of Title XI of the Milpitas Municipal Code relating to ADUs and JADUs and determining the Ordinance to be statutorily exempt from CEQA review.

Attachments:

- A) Draft Urgency Ordinance
- B) Exhibit A to Draft Urgency Ordinance

C) Planning Commission Resolution No. 22-027

URGENCY

Item # 20.

NUMBER: ____.

TITLE: **AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTION 13 (“SPECIAL USES”) OF CHAPTER 10 (“ZONING”) OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA**

HISTORY: This Ordinance adopted by the City Council by a four-fifths (4/5) vote in order to protect the public health, safety, and welfare at its meeting of December 6, 2022 upon motion by_____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the Planning and Zoning Law authorizes cities to act by ordinance to provide for the creation and regulation of accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”); and

WHEREAS, in September and October of 2022, the California Legislature approved, and the Governor signed into law, Assembly Bill 2221 and Senate Bill 897 (“2022 ADU Laws”), which among other things, amended Government Code sections 65852.2, 65852.22, and 65852.23 to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, the 2022 ADU Laws take effect January 1, 2023, and preempt any conflicting City ordinance; and

WHEREAS, State law requires consistency between local regulations for ADUs and JADUs and the state ADU law, so the City must amend the current provisions of Milpitas Municipal Code Section XI-10-13.08 (“Accessory Dwelling Units”) to comply with the new provisions of the 2022 ADU Laws; and

WHEREAS, the City desires to amend existing provisions in Milpitas Municipal Code section XI-10-13.08 related to the regulation of ADUs and JADUs to comply with the 2022 ADU Laws; and

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare based on the passage of AB2221 and SB897 because if the City does not amend its local Zoning Ordinance for consistency with state ADU law, all of the City’s ADU and JADU regulations may be nullified, and the City would thereafter be limited to applying only those few default standards that are provided in Government Code sections 65852.2, 65852.22, and 65852.23; and

WHEREAS, the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, may threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety; and

WHEREAS, Planning Department staff prepared the proposed ordinance, including the proposed language and terminology, and any additional information and documents deemed necessary; and

WHEREAS, the City has prepared Zoning Amendment No. ZA22-0007 (“Amendment”) to the City’s Municipal Code, including additions, deletions, and refinements to Section XI-10-13.08 (“Accessory Dwelling Units”); and

WHEREAS, on November 9, 2022, the Planning Commission for the City of Milpitas held a lawfully noticed public hearing to solicit public comment and consider the proposed Amendment, take public testimony, and make a recommendation to the City Council on the project; and

WHEREAS, to protect the public safety, health, and welfare, the City Council may adopt this ordinance as an urgency measure in accordance with Government Code section 36937, subdivision (b).

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. INCORPORATION OF RECITALS

The City Council hereby finds that all the foregoing recitals and staff report presented herewith are correct and are hereby incorporated by reference and adopted as findings by the City Council as if fully set forth herein.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Under Public Resources Code section 21080.17, the adoption of an ordinance by a city or county implementing the provisions of Government Code sections 65852.1 or 65852.2 and regulating the creation of ADUs and JADUs is statutorily exempt from the requirements of the California Environmental Quality Act (“CEQA”). The Ordinance implements Government Code section 65852.2 and is therefore statutorily exempt.

SECTION 3. URGENT NEED

Based on the foregoing recitals and findings, all of which are deemed true and correct, this ordinance is urgently needed for the immediate preservation of the public peace, health, and safety. This Urgency Ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Government Code Section 36937.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Section 13 (“Special Uses”) Chapters 10 (“Zoning”) of Title XI of the Milpitas Municipal Code is hereby amended and restated as provided in Exhibit “A”, attached hereto and incorporated herein by reference.

SECTION 5. AUTHORITY

This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Milpitas by Government Code 36937, and therefore shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council.

SECTION 6. EFFECTIVENESS OF ORDINANCE

This ordinance takes effect immediately upon its adoption.

SECTION 7. EXPIRATION

This Ordinance expires 6 months after the day of adoption or upon the effective date of Ordinance number 38.852 whichever is sooner, unless otherwise extended by the City Council prior to expiration.

SECTION 8. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 9. NOTICE OF CEQA EXEMPTION

The City Council hereby directs staff to prepare, execute, and file with the County of Santa Clara Clerk of CEQA exemption within five (5) working days of the adoption of this Ordinance.

Item # 20.

SECTION 10. **CERTIFICATION**

The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

EXHIBIT A

Item # 20.

Amendments to Section 13 of Chapter 10 of Title XI of the Milpitas Municipal Code

(follows this page)

EXHIBIT A

AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13

Title XI, Chapter 10, Section 13 “Special Uses”, Subsection 8 “Accessory Dwelling Units” of the Milpitas Municipal Code is hereby amended to read as follows:

- A. Purpose and Intent. The purpose of these standards is to allow and regulate accessory dwelling units (hereinafter referred to as ADUs) and junior accessory dwelling units (hereinafter referred to as JADUs) in compliance comply with Government Code Sections 65852.2 and 65852.22.

- B. Effect of Conforming. An ADU or JADU that conforms to the standards in this section shall:
 - 1. Be deemed ~~to be~~ consistent with the City's general plan and zoning designation for the lot on which the ~~unit~~ADU or JADU is located.
 - 2. Not be deemed to exceed the allowable density for the lot on which the ~~unit~~ADU or JADU is located.
 - 3. Not be considered in the application of any local ordinance, policy, or program to limit residential growth.
 - 4. Not be required to correct a "nonconforming zoning condition-" as defined in Subsection XI-10-13.08(C)(10) below. This does not prevent the City from enforcing compliance with applicable building safety standards in accordance with Health and Safety Code section 17980.12.

- C. Definitions.
 - 1. Accessory Dwelling Unit or ADU: As defined by Government Code Section 65852.2, an ADU is an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons, ~~including permanent provisions for living, sleeping, eating, cooking, and sanitation and is located on a lot with a proposed or existing primary residence.~~ An ADU also includes an efficiency unit as defined in Section 17958.1 of the Health and Safety Code and a manufactured home as defined by Section 18007 of the Health and Safety Code.
 - 2. Accessory Structure: For purposes of this section, an accessory structure is a structure that is accessory and incidental to a dwelling located on the same lot.
 - 3. Attached Accessory Dwelling Unit: An attached ADU is an ADU that shares at least one wall with the primary dwelling.

4. Complete and Independent Living Facilities: Permanent provisions for living, sleeping, eating, cooking, and sanitation in an accessory structure located on the same parcel as a proposed or existing primary single-family or multi-family dwelling.
45. Detached Accessory Dwelling Unit: An ADU is detached if it does not share any walls with the primary dwelling unit or existing attached accessory structure.
56. Efficiency Kitchen: In accordance with Government Code Section 65852.22(a)(6), an efficiency kitchen includes the following: (a) a cooking facility with appliances and (b) food-preparation counter space with a total area of at least 15 square feet and food-storage cabinets with a total of at least 30 square feet of shelf space.
67. Junior Accessory Dwelling Unit or JADU: As defined by Government Code Section 65852.22, a JADU is a unit that satisfies all the following:
- a. The unit is no more than 500 square feet in size, ~~and~~
 - b. The unit is contained entirely within an existing or proposed single-family structure.
 - c. ~~A JADU may have only~~ The unit includes an efficiency kitchen, ~~and may include separate sanitation facilities or may share sanitation facilities with the primary dwelling as defined in Subsection XI-10-13.08(C)(6) above.~~
 - d. The unit includes separate sanitation facilities or shares sanitation facilities with the existing or proposed primary dwelling.
 - e. If the unit does not include separate sanitation facilities, then it includes an interior entrance to the main living area of the existing or proposed primary dwelling in addition to an exterior entrance that is separate from the main entrance to the primary dwelling.
78. Livable Space: A space within a building designed for living, sleeping, eating or food preparation, including but not limited to a den, study, library, home office, sewing room, or recreational room and excluding such areas as garages.
89. Living Area: As defined by Government Code Section 65852.2, the interior habitable area of a dwelling unit, including basements and attics, but not including a garage or any accessory ~~building or~~ structure.
910. Natural Person: An individual and living human being, as opposed to a legal person which may be a private (i.e. business entity or non-governmental organization) or public (i.e. government) entity.
101. Nonconforming ~~z~~Zoning ~~e~~Condition: A physical improvement on a property that does not conform with current zoning standards.
112. Passageway: A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.

~~123.~~ 135. Proposed ~~d~~Dwelling: A dwelling that is the subject of a permit application and that meets the requirements for permitting.

135. Public Transit: A location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public. Examples include, but are not limited to, Altamont Commuter Express (ACE), Bay Area Rapid Transit (BART), AC Transit, Valley Transportation Authority (VTA) bus service and light rail, and paratransit.

15. Tandem Parking: Two or more vehicles parked on a driveway or in a garage or any other location on a lot, lined up behind one another.

~~D. General Provisions~~

- ~~1. — Where permitted. An ADU may be established on any lot in any district that allows single-family or multi-family dwelling residential uses. A JADU may be established on any lot in any district that allows single-family residential uses.~~
- ~~2. — Review Requirements. Any application for an ADU or JADU that satisfies the standards in subdivisions (A) through (J) of this section shall be approved ministerially without discretionary review or public hearing.~~
- ~~3. — An ADU or JADU shall meet or exceed the minimum floor area requirements of an efficiency unit, as defined by Section 17958.1 of the State Health and Safety Code, and so may not have a floor area that is smaller than 220 square feet.~~
- ~~4. — All ADUs shall comply with local building code requirements.~~
- ~~5. — No passageway shall be required for an ADU or JADU.~~
- ~~6. — Owner Occupancy. All JADUs are subject to an owner occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or the JADU, as the person's primary residence and legal domicile. However, the owner occupancy requirement of this paragraph does not apply if the property is entirely owned by a governmental agency, land trust, or housing organization.~~
- ~~7. — Sale Prohibited. No ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multi-family lot).~~
- ~~8. — Rental. An ADU or JADU may be rented for a term of 30 days or more. Short-term rental for periods of less than 30 days are not permitted.~~

~~E. Action on Application.~~

~~1. The City shall act on an application to establish an ADU or JADU within 60 days from the date the City receives a complete application, unless either:~~

~~a. The applicant requests a delay, in which the 60-day time period is tolled for the period of the requested delay, or~~

~~b. The application for the ADU or JADU is submitted as part of a permit application for a new single-family dwelling on the lot, in which case the City may delay acting on the permit application for the ADU or JADU until it acts on the permit application for the new single-family dwelling; however, the application shall still be considered ministerially without discretionary review or a hearing.~~

FD. ADUs and JADUs Subject to Limited Requirements Approval Process. The following approvals shall apply to ADUs and JADUs under this section:

1. Specific Types of ADUs and JADUs. To qualify for a building permit, the following types of ADUs and JADUs are subject only to the limited requirements that define each type. Requiring a Building Permit Only. ADUs and JADUs that comply with the general requirements outlined in Subsection XI-10-13.08(E) below shall be allowed with only a building permit in the following scenarios:

a. Converted on Single-family Lot: One ADU as described in this Subsection XI-10-13.08(FD)(1)(a) and one JADU are allowed on a lot with a proposed or existing single-family dwelling on it, where the unit ADU or JADU:

i. Is within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or (in the case of an ADU only) within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress; and

ii. Has exterior access that is independent of that for the single-family dwelling; and

iii. Has side and rear setbacks sufficient for fire and safety, as dictated required by applicable building and fire codes.

iv. The JADU complies with the requirements of Government Code Section 65852.22.

b. Limited Detached on Single-family Lot. One detached, new-construction ADU is allowed on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under Subsection XI-10-13.08(FD)(1)(a)), if the detached ADU satisfies the following limitations:

i. The side- and rear-yard setbacks are at least four feet.

ii. The total floor area is 800 square feet or less.

- iii. The peak height above grade ~~is 16 feet or less~~ does not exceed the applicable height limit in Subsection XI-10-13.08(E)(3) below.
- c. Converted on Multi-family Lot: One or more ADUs are allowed within portions of existing multi-family dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted ADU complies with state building standards for dwellings. Under this Subsection XI-10-13.08(~~FD~~)(1)(c), at least one converted ADU is allowed within an existing multifamily dwelling, up to a quantity equal to 25 percent of the number of existing multifamily dwelling units.
- d. Limited Detached on Multi-family Lot: ~~Up to~~ No more than two detached ADUs are allowed on a lot that has an existing multi-family dwelling if each detached ADU satisfies the following limitations:
 - i. The side- and rear-yard setbacks are at least four feet. If the existing multifamily dwelling has a rear or side yard setback of less than four feet, the City will not require any modification to the multifamily dwelling as a condition of approval for the ADU.
 - ii. The peak height above grade ~~is 16 feet or less~~ does not exceed the applicable height limit provided in Subsection XI-10-13.08(E)(3) below.
 - iii. If more than one detached ADU is created, the ADUs may share a common wall.
- 2. ~~Deed Restriction for JADUs. Prior to obtaining a building permit for a JADU, a deed restriction, approved by the City Attorney, must be recorded with the County Recorder's office, which shall include the pertinent restrictions and limitations of a JADU identified in this Section. Said deed restriction shall run with the land and bind all future owners, heirs, and assigns. A copy of the recorded deed restriction shall be filed with the Department stating that:~~
 - a. ~~The JADU may not be sold separately from the primary dwelling unit;~~
 - b. ~~The JADU is restricted to the maximum size allowed per the development standards;~~
 - e. ~~The JADU is legal only so long as either the primary residence, or the JADU, is occupied by the owner of record of the property~~ Requiring a Building Permit and a Minor Site Development Permit (Minor SDP).
 - a. Except as allowed under Subsection XI-10-13.08(D)(1) above, no ADU may be created without approval of a Building Permit and a Minor SDP in compliance with the standards set forth in Subsections E and F below.
 - b. The City may charge a fee to reimburse the costs incurred in processing Minor SDPs for ADUs, including the costs of adopting or amending the City's ADU

Ordinance. The additional fee for ADUs shall be determined by the Planning Director and approved by the City Council by Resolution.

3. Timing and Process for Review

- a. Any application for an ADU that satisfies the standards in Subsections XI-10-13.08(E) through (F) of this section shall be subject to ministerial approval without discretionary review or public hearing.
- b. The City shall act on an application to create an ADU or JADU within 60 days from the date the City receives a complete application. If the City has not acted on the complete application within 60 days, the application is deemed approved unless either:
 - i. The applicant requests a delay, in which the 60-day time period is tolled for the period of the requested delay; or
 - ii. The application for the ADU or JADU is submitted as part of a permit application for a new single-family or multi-family dwelling on the lot, in which case the City may delay acting on the permit application for the ADU or JADU until it acts on the permit application to create the new single-family dwelling; however, the application for the ADU or JADU shall still be subject to ministerial approval without discretionary review or a hearing.
- c. If the City denies an application to create an ADU or JADU, the City must provide the applicant with comments that include, among other things, a list of all defective or deficient items and a description of how the application may be remedied by the applicant. Notice of the denial and corresponding comments must be provided to the applicant within the 60-day time period established by Subsection XI-10-13.08 (D)(3)(a) above.
- d. A demolition permit for a detached garage that is to be replaced with an ADU shall be reviewed with the application for the ADU and issued concurrently.

E. General ADU and JADU Requirements. The following requirements shall apply to all ADUs and JADUs approved under Subsection XI-10-13.08(D)(1) and (D)(2) above.

1. Location and Zoning.

- a. An ADU or JADU requiring only a building permit under Subsection XI-10-13.08(D)(1) above may be created on any lot located in any residential or mixed-use zone.
- b. An ADU or JADU requiring both a Minor SDP and a building permit under Subsection XI-10-13.08(D)(2) above may be created on any lot located in any zoning district that allows single-family or multi-family residential uses.

2. Building and Safety.

- a. Subject to Subsection XI-10-13.08(E)(2)(b) below, all ADUs and JADUs shall comply with all local building code requirements.
- b. No change of occupancy. Construction of an ADU does not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code, unless the Building Official or Code Enforcement Division Officer makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public health and safety. Nothing in this Subsection XI-10-13.08(E)(2)(b) prevents the City from changing the occupancy code of a space that was non-habitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this section.
- c. Fire sprinklers.
 - i. Fire sprinklers are required in an ADU or JADU if sprinklers are required in the primary residence.
 - ii. The construction of an ADU or JADU does not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

3. Maximum Height.

- a. Except as otherwise provided by Subsections XI-10-13.08(E)(3)(b) and (E)(3)(c) below, a detached ADU created on a lot with an existing or proposed single family or multifamily dwelling unit shall not exceed 16 feet in height.
- b. A detached ADU may be up to 18 feet in height when located on a lot with an existing or proposed single-family or multifamily unit that is located within one-half mile walking distance of a major transit stop or a high quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code.
- c. A detached ADU may be up to two additional feet in height (for a maximum of 20 feet) if needed to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.
- d. A detached ADU created on a lot with an existing or proposed multifamily dwelling that has more than one story above grade shall not exceed 18 feet in height.
- e. An attached ADU shall not exceed 25 feet in height or the height limitation imposed by the standards for the underlying zoning district, whichever is less. Notwithstanding the foregoing, ADUs subject to this Subsection XI-10-13.08(E)(3)(d) shall not exceed two stories.
- f. For purposes of this Subsection XI-10-13.08(E)(3), height is measured from the finished grade to the peak of the structure.

4. Owner Occupancy.

- a. An ADU that is permitted after January 1, 2020, but before January 1, 2025, shall not be subject to any owner-occupancy requirement.
- b. Unless applicable law requires otherwise, all ADUs permitted on or after January 1, 2025 shall be subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.
- c. As required by state law, all JADUs shall be subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement in this Subsection XI-10-13.08(E)(4)(c) shall not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.

5. No Separate Conveyance. An ADU or JADU may be rented, but, except as otherwise provided in Government Code Section 65852.26, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all the dwellings (in the case of a multifamily lot).

6. No Short-Term Rental. No ADU or JADU may be rented for a term that is shorter than 30 days. This prohibition applies regardless of when the ADU or JADU was created.

7. Deed Restriction. Prior to issuance of a building permit for an ADU or JADU, a deed restriction, in a form approved by the City Attorney, shall be recorded against the title of the property in the County Recorder's office and a copy filed with the Planning Department. The deed restriction shall run with the land and bind all future owners, heirs, and assigns. The deed restriction shall provide that:

- a. Except as otherwise provided in Government Code Section 65852.26, the ADU or JADU may not be sold separately from the primary dwelling;
- b. The ADU or JADU is restricted to the approved size and other development standards established in this Section;
- c. The JADU is legal only so long as either the primary residence or the JADU is occupied by the owner of record of the property;
- d. The ADU or JADU shall not be used as a short-term rental of less than 30 days;
- e. The deed restriction runs with the land and may be enforced against future property owner(s);
- f. The deed restriction may be removed if the property owner eliminates the ADU or JADU. To remove the deed restriction, an owner shall make a written request to

the Planning Director and provide evidence that the ADU or JADU has been eliminated. The Director shall then decide whether the evidence supports the claim. The Director's determination may be appealed to the City Council.

g. The deed restriction is enforceable by the City, and failure to comply with the deed restriction may result in legal action against the property owner.

8. Income Reporting. In order to facilitate the City's obligation to identify adequate sites for housing in accordance with Government Code sections 65583.1 and 65852.2, the following requirements must be satisfied:

a. With the building-permit application, the applicant must provide the city with an estimate of the projected annualized rent that will be charged for the ADU or JADU.

G.F. ADUs Subject to Additional Objective-Specific ADU Requirements. The following specific standards shall apply only to ADUs that require a minor Site Development Permit under Subsection XI-10-13.08(D)(2) above.

~~1. Review Requirements. A proposed ADU that does not conform to the standards set forth in Subsection XI-10-13.08 (F)(1) and (F)(2) only requires a building permit if it complies with all of the objective standards set forth in Subsection XI-10-13.08(G)(2) below.~~

~~2. Specific Standards.~~

~~a1. Maximum Size.~~

~~ia. The maximum size of an attached or detached ADU on a property not located in the "H" Hillside Combining District subject to this Subsection XI-10-13.08(F) is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a two-bedroom unit. These standards shall not apply to properties located in the "H" Hillside Combining District.~~

~~ib. The maximum size of an attached or detached ADU on a property located in the "H" Hillside Combining District is 1,200 square feet.~~

~~iiic. The maximum size of an attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of existing primary dwelling. No application of the percent-based size limit in this paragraph or of a floor area ratio (FAR), front setback, lot coverage limit, or open-space requirement may require the ADU to be less than 800 square feet.~~

d. No ADU subject to this Subsection XI-10-13.08(F) may cause the total FAR of the lot to exceed 0.45, subject to Subsection XI-10-13.08(F)(1)(c) above.

~~b. Maximum Height.~~

- i. ~~For properties not located in the "H" Hillside Combining District, a single-story attached or detached ADU may not exceed 16 feet in height above grade. A two-story attached or detached ADU may not exceed 28 feet in height above grade.~~
- ii. ~~For properties located in the "H" Hillside Combining District, an attached or detached ADU on the west side of the crestline may not exceed a height of 17 feet in height and one story from the lowest finished grade to the highest ridgeline of the building. On the east side of the crestline, a detached or attached ADU may not exceed a height of 27 feet and two stories from the lowest finished grade to the highest ridgeline of the building.~~

~~e~~2. Minimum Setbacks.

- ia. ~~Except for ADUs located in the R1-H zoning district, the minimum front yard setback requirement an attached ADU is 4 feet. In the R1-H zoning district, the minimum front yard setback for attached ADUs must be a minimum of 25 feet when the average slope of the lot is less than sixteen 16 percent, or when the front yard slope does not exceed 16 percent; otherwise, the minimum front yard setback must be 40 feet. An ADU that is subject to this Subsection XI-10-13.08(F) must conform to a 25-foot minimum front-yard setback, subject to Subsection XI-10-13.08(F)(1)(c) above.~~
 - ib. An ADU that is subject to this Subsection XI-10-13.08~~(G)(2)(F)~~ must conform to minimum 4-foot side- and rear-yard setbacks.
 - ic. No setback is required for an ADU that is subject to Subsection XI-10-13.08~~(G)(2)(F)~~ if the ADU is constructed in the same location and to the same dimensions as an existing structure.
 - d. ~~An attached ADU shall have a separate entrance from the primary dwelling.~~
- ~~e~~3. Building Separation. A detached ADU shall be located at least six feet from the rear wall of the primary dwelling unit.
- 4. Lot Coverage. No ADU subject to this Subsection XI-10-13.08(F) may cause the total lot coverage of the lot to exceed 50 percent, subject to Subsection XI-10-13.08(F)(1)(c) above.
 - 5. Minimum Open Space. No ADU subject to this Subsection XI-10-13.08(F) may cause the total percentage of open space of the lot to be less than 50 percent, subject to Subsection XI-10-13.08(F)(1)(c) above.
 - 6. Passageway. No passageway is required for an ADU.

~~f~~7. Parking.

~~i. For each ADUa.~~ Generally, one off-street parking space is required for each ADU unless one or more of the following conditions is met:

~~i. (1).~~ The ADU is located within one-half mile walking distance of public transit.

~~ii. (2).~~ The ADU is located within an architecturally and historically significant historic district.

~~iii. (3).~~ The ADU is part of an existing primary residence or an -accessory structure (i.e., it is a converted ADU under Subsection XI-10-13.08(~~FD~~)(1)(a) above).

~~iv. (4).~~ On-street parking permits are required but not offered to the occupant of the ADU.

~~v. (5).~~ An established car share vehicle stop is located within one block of the ADU.

vi. When the permit application to create an ADU is submitted with an application to create a new single-family or new multifamily dwelling on the same lot, provided that the ADU or the lot satisfies any other criteria listed in Subsections (F)(7)(a)(i) through (v) above.

~~iiib.~~ No off-street parking is required for a JADU, except as required under ~~paragraph iv Subsection XI-10-13.08(F)(5)(d)~~ below.

~~iiic.~~ If a parking space is required for an ADU, the space may be located within any setback area, in a tandem configuration, or on a mechanical lift. Each unenclosed parking space shall be at least 8½ feet wide and 18 feet long. Each parking space that is provided in an enclosed garage shall be at least 10 feet wide and 20 feet long.

~~ivd.~~ When a garage, carport, or covered parking structure is converted to an ADU or demolished in conjunction with the construction of an ADU, the off-street parking space or spaces are not required to be replaced. ~~If the parking structure is converted to a JADU, the lost off-street parking spaces must be replaced.~~

g8. Architectural Design Standards.

~~ia.~~ The ~~architectural style, exterior materials, and color palette of materials and colors of the exterior walls, roof, and windows and doors~~ an ADU or JADU shall match the appearance of the existing or proposed primary dwelling.

b. The roof slope shall match that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope of the largest portion of the roof.

- ~~ii~~c. An ADU or JADU shall have an independent exterior entrance, separate from that of the primary dwelling. The entrance to an attached ADU or JADU shall be located on a side or rear building façade, not facing a public right-of-way.
- ~~iii~~d. Exterior lighting shall be limited to down-lights (or as otherwise required by the building or fire code).
- e. The interior horizontal dimensions shall be at least 10 feet wide in every direction, with a minimum interior wall height of seven feet.
- ~~iv~~f. Windows and doors ~~of an ADU or JADU may shall~~ not have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.
- ~~v~~g. Windows located on the second story of an ADU or JADU shall be either clerestory with the bottom of the glass at least six feet above the finished floor or ~~consist of~~ frosted or obscured glazing glass to preserve privacy.
- ~~vi~~h. The ADU and primary dwelling must use the same driveway to access the street, unless otherwise required for fire-apparatus access, as determined by the fire authorityMilpitas Fire Department.

9. Landscape Design Standards.

- ~~vi~~a. ~~Evergreen landscape screening shall~~ must be planted and maintained between the ADU and adjacent parcels as follows:
 - i. ~~(1).~~ (1). At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24-inch box size plant shall be provided for every ten linear feet of exterior wall.
 - ii. ~~(2).~~ (2). Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least 6 feet in height may be installed.
 - iii. ~~(3).~~ (3). All landscaping shall be drought tolerant.
- ~~vii.~~ The ADU and primary dwelling must use the same driveway to access the street, unless otherwise required for fire-apparatus access, as determined by the fire authority.

HG. Fees.

1. Impact Fees and other City Fees.

- a. No impact fee shall be required for an ADU or JADU ~~or for an ADU~~ that is less than 750 square feet in floor area. For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in the Mitigation Fee Act (Gov. Code § 66000(b)), except that it also includes fees specified in the Quimby Act

(Gov. Code § 66477). "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

- b. Any impact fee that is required for an ADU that is 750 square feet or greater in floor area shall be assessed proportionally in relation to the square footage of the primary dwelling unit (e.g. the floor area of the primary dwelling divided by the floor area of the ADU, times the impact fees charged for a new dwelling).
2. Utility Fees.
- a. When an ADU is constructed with a new single-family dwelling, a separate utility connection directly between the ADU and the utility, and payment of the standard connection fee and capacity charge for a new dwelling, is required.
 - b. Except as described in Subsection XI-10-13.08(G)(2)(a), ~~Converted~~ ADUs and JADUs on a single-family lot that are created under Subsection XI-10-13.08(~~FD~~)(1)(a) ~~above~~ are not required to have a new or separate utility connection directly between the ADU or JADU and the utility. Nor is a connection fee or capacity charge required.
 - ~~b. ADUs and JADUs that are not covered by Subsection XI 10-13.08(H)(2)(a) are also not required to have a new or separate utility connection directly between the ADU or JADU and the utility.~~
 - ~~c. Except as described in Subsection XI 10-13.08(H)(2)(a), if a separate utility connection is installed directly between the ADU or JADU and the utility, then a connection fee or capacity charge will be required. The fee or charge shall be proportionate to the burden created by the ADU or JADU, based on either the floor area or the drainage fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system.~~
 - c. Except as described in Subsection XI-10-13.08(G)(2)(a), all ADUs and JADUs that are not covered by Subsection XI-10-13.08(G)(2)(b) require a new, separate utility connection directly between the ADU and the utility.
 - i. The connection shall be subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU on the water and sewer systems, based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code.
 - ii. The portion of the fee or charge that is charged by the City may not exceed the reasonable cost of providing this service.
- H. Nonconforming Zoning Code Conditions, Building Code Violations, and Unpermitted Structures.
- 1. The City shall not deny an ADU or JADU application due to a nonconforming zoning condition, building code violation, or unpermitted structure on the lot that does not

present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.

2. Unpermitted ADUs constructed before 2018.

a. Permit to Legalize. As required by state law, the City may not deny a permit to legalize an existing but unpermitted ADU that was constructed before January 1, 2018, if denial is based on either of the following grounds:

i. The ADU violates applicable building standards, or

ii. The ADU does not comply with Government Code section 65852.2 (State ADU law) or this ADU ordinance (MMC Section XI-10-13.08).

b. Exceptions:

i. Notwithstanding Subsection XI-10-13.08(H)(2)(a) above, the City may deny a permit to legalize an existing but unpermitted ADU that was constructed before January 1, 2018, if the Building Official makes a finding that correcting a violation is necessary to protect the health and safety of the public or of occupants of the structure.

ii. Subsection XI-10-13.08(H)(2)(a) above does not apply to a building that is deemed to be substandard in accordance with California Health and Safety Code section 17920.3.

KI. Nonconforming ADUs and Discretionary Approval. Any proposed ADU or JADU that does not conform to the objective standards set forth in Subsections XI-10-13.08(A) through (H) may be allowed by the City with a Minor Site Development Permit, in accordance with Section XI-10-57 "Applications".

SECTION 5. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision, or part has no effect on the validity of the remainder.

SECTION 6. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The City Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

SECTION 7. SUBMISSION TO HCD

The City Clerk shall submit a copy of this Ordinance to the Department of Housing and Community Development within 60 days after adoption.

RESOLUTION NO. 22-027**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING TEXT
AMENDMENT ZA22-0007 AMENDING SECTION 13 “SPECIAL USES” OF CHAPTER
10 “ZONING” OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO
ACCESSORY DWELLING UNITS, AND DETERMINING THE AMENDMENT TO BE
EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

WHEREAS, the City of Milpitas, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the Planning and Zoning Law authorizes cities to act by ordinance to provide for the creation and regulation of accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”); and

WHEREAS, in September and October of 2022, the California Legislature approved, and the Governor signed into law, Assembly Bill 2221 and Senate Bill 897 (“2022 ADU Laws”), which among other things, amended Government Code sections 65852.2, 65852.22, and 65852.23 to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, the 2022 ADU Laws take effect January 1, 2023, and preempt any conflicting City ordinance; and

WHEREAS, State law requires consistency between local regulations for ADUs and JADUs and the state ADU law, so the City must amend the current provisions of Milpitas Municipal Code Section XI-10-13.08 (“Accessory Dwelling Units”) to comply with the new provisions of the 2022 ADU Laws; and

WHEREAS, the City desires to amend existing provisions in Milpitas Municipal Code section XI-10-13.08 related to the regulation of ADUs and JADUs to comply with the 2022 ADU Laws; and

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare based on the passage of AB2221 and SB897 because if the City does not amend its local Zoning Ordinance for consistency with state ADU law, all of the City’s ADU and JADU regulations may be nullified, and the City would thereafter be limited to applying only those few default standards that are provided in Government Code sections 65852.2, 65852.22, and 65852.23; and

WHEREAS, the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, may threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety; and

WHEREAS, Planning Department staff prepared the proposed ordinance, including the proposed language and terminology, and any additional information and documents deemed necessary; and

WHEREAS, the City has prepared Zoning Amendment No. ZA22-0007 (“Amendment”) to the City’s Municipal Code, including modifications and refinements to Section XI-10-13.08 (“Accessory Dwelling Units”); and

WHEREAS, as separate and independent bases, the Planning Commission hereby finds and determines that the project is exempt from further CEQA review pursuant to CEQA Guidelines section 15282(h) (the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code); and

WHEREAS, the Planning Commission makes and accepts as its own the findings set forth in this Resolution; and

WHEREAS, the Planning Commission is an advisory body to the City Council; and

WHEREAS, on November 9, 2022, the Planning Commission held a duly noticed public hearing on the subject Amendment, at which all those in attendance were given the opportunity to speak on the Zoning Text Amendment; and

WHEREAS, the Planning Commission has considered all the written and oral testimony presented at the public hearing in making its decision.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

SECTION 1. Recitals

The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CEQA Finding

The Planning Commission recommends that the City Council find, under CEQA Guidelines, Section 15282(h), that if this Ordinance is a project, it is nonetheless exempt from further environmental review because it is the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

SECTION 3. Findings for Zoning Amendment

In accordance with Subsection XI-10-57.02(G)(3) of the Milpitas Municipal Code, the Planning Commission makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA22-0007:

1. The proposed amendment is consistent with the General Plan.

The proposed zoning amendments are consistent with the Milpitas General Plan. Specifically, the amendments implement policy 1-4 of the Land Use Element and policy 4-1 of the Community Health and Wellness Element, which speak to the need to provide a variety of housing types suited to a range of household types (e.g., individuals, families) and income levels and creating housing in close proximity to public transportation. The zoning amendments would also help to realize the intent of Goals C and D of the Housing Element, which call for the City to facilitate new housing production and support diversity and affordability in Milpitas' housing stock. Adoption of the proposed amendments to the Zoning Ordinance would make it easier, faster, and more cost-efficient for property owners to create ADUs and JADUs, which are typically smaller housing unit types that tend to be inherently more affordable.

In addition, consistent with Government Code Section 65852.2(a)(1)(C), the proposed zoning amendments include a provision stating that ADUs and JADUs are a residential use that is consistent with the existing General Plan designation for the subject property.

2. The proposed amendment will not adversely affect the public health, safety and welfare.

The proposed zoning amendments refine the streamlined review procedures and standards for ADUs and JADUs to ensure that future units are compatible with surrounding single-family residential uses and avoid potential impacts (e.g., to privacy and solar access) on adjacent properties. In this respect, the amendments will serve to protect neighborhood character and property owner rights, thereby maintaining the public health, safety, and welfare.

SECTION 4: Urgency Findings

The Planning Commission finds that notwithstanding the findings noted above, it is appropriate to recommend that the City Council adopt the proposed Ordinance as an urgency measure pursuant to Government Code Section 36937 for the immediate preservation of the public peace, health and safety. If the City does not amend its local Zoning Ordinance for consistency with state ADU law, all of the City's existing ADU and JADU regulations may be deemed null and void. The City would thereafter be limited to applying only those few default standards that are provided in Government Code sections 65852.2, 65852.22, and 65852.23, and the approval of ADUs and JADUs based solely on the default state statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, may threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety.

SECTION 5: Planning Commission Action

The Planning Commission of the City of Milpitas hereby adopts Resolution No. 22-027 recommending that the City Council adopt an Urgency Ordinance approving Zoning Text Amendment ZA22-0007 based on the above Findings.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on November 9, 2022.

DocuSigned by:

 1CD00AF0E201461...
 Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on November 9, 2022 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Mercedes Albana	✓			
Dipak Awasthi	✓			
Lawrence Ciardella	✓			
Bill Chuan	✓			
Alexander Galang	✓			
Sonia Medina-Ashby	✓			
Zeha Mohsin	✓			



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and Introduce an Ordinance Amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code Relating to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)
Category:	Public Hearings-Community Development
Meeting Date:	12/6/2022
	Recommendations: (1) Conduct a public hearing and move to close the hearing following comments. (2) City Attorney shall read aloud the title of the Ordinance. (3) Move to waive the first reading beyond the title and introduce an Ordinance amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code relating to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) and making findings of CEQA exemption.

Background:

The State Planning and Zoning Law authorizes a local agency, by ordinance or ministerial approval, to provide for the creation of accessory dwelling units in areas zoned for residential use. Existing law authorizes a local agency to impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, and maximum size of a unit.

In September and October 2022, the California Legislature approved, and the Governor signed into law, Assembly Bill 2221 (AB 2221) and Senate Bill 897 (SB 897) that, among other things, amended sections 65852.2, 65852.22, and 65852.23 of the Government Code and section 17980.12 of the Health and Safety Code to limit local authority and streamline the approval process for ADUs and JADUs.

State law requires consistency between local regulations for ADUs and JADUs and the state ADU law, so the City must amend its ADU Ordinance to comply with the new provisions of AB 2221 and SB 897. Failure to do so by January 1, 2023, would render the City's local ADU Ordinance null and void.

Overview of Draft Ordinance:

In accordance with recent changes to state law under AB 2221 and SB 897, the proposed urgency ordinance would amend Title XI “Zoning, Planning and Annexations,” Chapter 10 “Zoning,” Section 13 “Special Uses,” Subsection 8 “Accessory Dwelling Units” of the Milpitas Municipal Code in the following ways:

- Increases the maximum allowable height of a detached ADU from 16 feet to 18 feet if the ADU is created on a lot with an existing or proposed single-family or multi-family dwelling unit located within ½-mile walking distance of a major transit stop or a high-quality transit corridor.
- Requires that a detached ADU up to 18 feet in height is subject to ministerial approval.
- Requires that a detached ADU may be up to two additional feet in height (for a maximum of 20 feet) if needed to accommodate a roof pitch on the ADU aligned with the roof pitch of the primary dwelling.

- Increases the maximum allowable height for an attached ADU to 25 feet or the height limitation imposed by the underlying zone that applied to the primary dwelling, whichever is lower. The ADU height may not exceed two stories. Height measured from legal grade to peak of the structure.
- Requires an attached ADU up to 25 feet in height is subject to ministerial approval.
- Requires that the construction of an ADU does not constitute a Group R occupancy change under the local building code, except as specified. The ordinance would prohibit the construction of an ADU from triggering a requirement that fire sprinklers be installed in the existing primary dwelling.
- Prohibits the City from requiring modifications to the primary unit when an ADU is added to an existing multi-family dwelling that exceeds applicable height requirements or has a rear or side setback of less than 4 feet.
- Requires a minimum 20-foot front-yard setback for all ADUs, unless such setback precludes an 800-square-foot ADU from being developed.
- Prohibits the City from imposing any parking standards on an ADU that is included in an application to create a new single-family dwelling unit or a new multi-family dwelling on the same lot, provided that the ADU meets other specified requirements.
- Requires enclosed uses within the proposed or existing single-family residence, such as attached garages, to be considered a part of the proposed or existing single-family residence.
- Requires a JADU that does not include a separate bathroom to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.
- Prohibits the City from denying an application for a JADU permit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not threaten public health and safety and are not in conflict with JADU construction.
- Prohibits denial of a permit to legalize an unpermitted ADU that was constructed before January 1, 2018, because, among other things, the unit violates building standards or state or local standards applicable to ADUs, unless the local agency makes a finding that correcting the violation is necessary to protect the health and safety of the public or occupants of the structure. This prohibition does not apply to structures deemed substandard under state law.
- Prohibits denial of a permit application to create a new ADU or JADU based on the need for correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.
- Requires the City to return a full set of written comments to the applicant with a list of defective or deficient items and a description of how the applicant can remedy the application if the permitting agency denies an application for an ADU or JADU.
- Requires the City to review and issue a demolition permit for a detached garage that is to be replaced by an ADU concurrent with its review and issuance the permit for the ADU.
- In addition to the required changes outlined above to ensure consistency with current state ADU law, the proposed zoning amendment also makes other organizational and formatting changes to the City's ADU Ordinance to clarify standards and facilitate streamlined approval of ADUs and JADUs.

General Plan Conformance

As outlined in Table 1 below, the proposed zoning text amendments for ADUs and JADUs conform to the policies and standards in the City's General Plan.

Table 1: General Plan Consistency

Policy/Goals	Conformance
Land Use Element Policy - Land Use 1-4: Continue to provide a variety of housing types and densities that meet the needs of individuals and families and offer sufficient housing opportunities and choices to Milpitas residents of all income levels, age groups, and special needs.	Consistent. The zoning text amendments modify the ADU and JADU regulations to streamline and encourage the production of these housing unit types, which add diversity to the City's housing stock in terms of unit size and cost. ADUs and JADUs offer new housing options that help meet the needs of various household sizes, income levels, and ages.
Community Health and Wellness Element Policy – Land Use 6-2: Ensure that there is a diversity of housing types to accommodate all income levels and provide housing for very low and extremely low-income populations in areas with high accessibility to public transportation.	Consistent. The proposed ordinance enacts changes to zoning regulations for a specific type of residential development to increase the variety of housing types. By increasing height and configuration requirements and modifying parking and setback requirements, the City is adding greater flexibility for homeowners to develop ADUs and JADUs, potentially increasing the availability and diversity of housing types.
Housing Element - Goal C: Facilitate New Housing Production	Consistent. The zoning text amendments modify the ADU regulations to comply with new state laws intended to reduce barriers to the creation of ADUs and JADUs. The ministerial approval process and objective standards simplify and facilitate new housing production in residential neighborhoods.
Housing Element – Goal D Support Housing Diversity and Affordability.	Consistent. The zoning text amendments modify the City's ADU and JADU regulations and encourage the production of additional housing that is available and appropriate to different household sizes and income levels. ADUs and JADUs are smaller than single-family residences and more affordable than condominiums.

FINDINGS FOR APPROVAL

The City Council shall consider the following findings in considering approval of a zoning ordinance amendment:

Zoning Amendment (Section XI-10-57.02(G)(3))

1. *The proposed amendment is consistent with the General Plan.*

The proposed amendment is consistent with the Milpitas General Plan, as shown in Table 1.

2. *The proposed amendment will not adversely affect the public health, safety, and welfare.*

The proposed zoning amendments will increase the maximum allowable height of ADUs, clarify setbacks and ADU design requirements, remove barriers to the legalization of existing ADUs, and simplify the review and approval process for new ADUs and JADUs. These changes can be implemented without adversely affecting public health, safety, or welfare.

Policy Alternative(s):

Alternative: Do not amend Section XI-10-13.08 (“Accessory Dwelling Units”) and defer to State law.

Pros: Consistent with State law.

Cons: Potential negative impacts to neighborhoods.

Reason for Not Recommending: If the City does not amend its code to conform to current State law, State law makes the City’s ADU regulations null and void. The City will have no ability to regulate ADUs beyond the few minimal standards imposed by State law.

Fiscal Impact:

The proposed zoning ordinance amendment makes minor changes to the City’s local regulations for creation of Accessory Dwelling Units (ADUs) to ensure consistency with recent state legislative changes to state ADU law. The changes clarify existing regulations and will have no fiscal impact.

California Environmental Quality Act (CEQA):

Under California Public Resources Code Section 21080.17, CEQA does not apply to the adoption of an ordinance by a local government implementing the provisions of Section 65852.2 of the Government Code, which is California’s law regulating ADUs and JADUs, as defined by Government Code Section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State’s ADU law. In addition, the ordinance is statutorily exempt pursuant to CEQA Guidelines Section 15282(h) (adoption of an ordinance regarding second units in a single- or multi-family residential zone).

Planning Commission Recommendation:

The Planning Commission considered the proposed zoning text amendment at its regularly scheduled public meeting on November 9, 2022. Following discussion and public comment, the Planning Commission voted unanimously (7-0) to recommend that the City Council adopt the urgency ordinance related to updating the City’s regulations and requirements for ADUs and JADUs for consistency with recent changes to the state ADU law. The Commission’s resolution in favor of adopting the proposed ordinance is attached (Attachment B).

Recommendation:

- 1) Conduct a public hearing and move to close the hearing following comments.
- 2) City Attorney shall read aloud title of the Ordinance.
- 3) Move to waive the first reading beyond title and introduce an Ordinance amending Section 13 “Special Uses” of Chapter 10 “Zoning” of Title XI of the Milpitas Municipal Code relating to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) and making findings of CEQA exemption.

Attachments:

- A) Draft Ordinance – for Introduction
- B) Exhibit A to Draft Ordinance
- C) Planning Commission Resolution No. 22-028

REGULAR

Item # 21.

NUMBER: ____.

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTION 13 ("SPECIAL USES") OF CHAPTER 10 ("ZONING") OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS, AND MAKING FINDINGS OF CEQA EXEMPTION**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the Planning and Zoning Law authorizes cities to act by ordinance to provide for the creation and regulation of accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”); and

WHEREAS, in September and October of 2022, the California Legislature approved, and the Governor signed into law, Assembly Bill 2221 and Senate Bill 897 (“2022 ADU Laws”), which among other things, amended Government Code sections 65852.2, 65852.22, and 65852.23 to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, the City desires to amend existing provisions in Milpitas Municipal Code section XI-10-13.08 related to the regulation of ADUs and JADUs to comply with the 2022 ADU Laws; and

WHEREAS, Planning Department staff prepared the proposed ordinance, including the proposed language and terminology, and any additional information and documents deemed necessary; and

WHEREAS, the City has prepared Zoning Amendment No. ZA22-0007 (“Amendment”) to modify the City’s Municipal Code, including additions, deletions, and refinements to Section XI-10-13.08 (“Accessory Dwelling Units”); and

WHEREAS, on November 9, 2022, the Planning Commission for the City of Milpitas held a lawfully noticed public hearing to solicit public comment and consider the proposed Amendment, take public testimony, and make a recommendation to the City Council on the project.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Under Public Resources Code section 21080.17, the adoption of an ordinance by a city or county implementing the provisions of Government Code sections 65852.1 or 65852.2 and regulating the creation of ADUs and JADUs is statutorily exempt from the requirements of the California Environmental Quality Act (“CEQA”). The Ordinance implements Government Code section 65852.2 and is therefore statutorily exempt.

SECTION 3. GENERAL PLAN CONSISTENCY

State law requires the City to deem accessory dwelling units, as permitted by this Ordinance, to be “a residential use that is consistent with the existing general plan and zoning designation.” (California Government Code §65852.2(a)(1)(C).) Furthermore, the City Council has considered the Planning Commission staff report, which provides a robust analysis demonstrating that this Ordinance is consistent with the General Plan. Therefore, the Council deems this Ordinance to be consistent with the General Plan both in substance and as a matter of law.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10

Section 13 (“Special Uses”) Chapters 10 (“Zoning”) of Title XI of the Milpitas Municipal Code is amended and restated as provided in Exhibit “A”, attached hereto and incorporated herein by reference.

Item # 21.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The City Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

SECTION 6. CERTIFICATION

The City Clerk shall either: (a) have this ordinance published in a newspaper of general circulation within 15 days after its adoption, or; (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five days before its adoption and again within 15 days after its adoption.

SECTION 7. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 8. NOTICE OF CEQA EXEMPTION

The City Council hereby directs staff to prepare, execute, and file with the County of Santa Clara Clerk a notice of CEQA exemption within five (5) working days of the adoption of this Ordinance.

SECTION 9. SUBMISSION TO HCD

The City Clerk shall submit a copy of this Ordinance to the Department of Housing and Community Development within 60 days after adoption.

EXHIBIT A

Item # 21.

Amendments to Section 13 of Chapter 10 of Title XI of the Milpitas Municipal Code

(follows this page)

EXHIBIT A

AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13

Title XI, Chapter 10, Section 13 “Special Uses”, Subsection 8 “Accessory Dwelling Units” of the Milpitas Municipal Code is hereby amended to read as follows:

- A. Purpose and Intent. The purpose of these standards is to allow and regulate accessory dwelling units (hereinafter referred to as ADUs) and junior accessory dwelling units (hereinafter referred to as JADUs) in compliance comply with Government Code Sections 65852.2 and 65852.22.

- B. Effect of Conforming. An ADU or JADU that conforms to the standards in this section shall:
 - 1. Be deemed ~~to be~~ consistent with the City's general plan and zoning designation for the lot on which the ~~unit~~ADU or JADU is located.
 - 2. Not be deemed to exceed the allowable density for the lot on which the ~~unit~~ADU or JADU is located.
 - 3. Not be considered in the application of any local ordinance, policy, or program to limit residential growth.
 - 4. Not be required to correct a "nonconforming zoning condition-" as defined in Subsection XI-10-13.08(C)(10) below. This does not prevent the City from enforcing compliance with applicable building safety standards in accordance with Health and Safety Code section 17980.12.

- C. Definitions.
 - 1. Accessory Dwelling Unit or ADU: As defined by Government Code Section 65852.2, an ADU is an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons, ~~including permanent provisions for living, sleeping, eating, cooking, and sanitation and is located on a lot with a proposed or existing primary residence.~~ An ADU also includes an efficiency unit as defined in Section 17958.1 of the Health and Safety Code and a manufactured home as defined by Section 18007 of the Health and Safety Code.
 - 2. Accessory Structure: For purposes of this section, an accessory structure is a structure that is accessory and incidental to a dwelling located on the same lot.
 - 3. Attached Accessory Dwelling Unit: An attached ADU is an ADU that shares at least one wall with the primary dwelling.

4. Complete and Independent Living Facilities: Permanent provisions for living, sleeping, eating, cooking, and sanitation in an accessory structure located on the same parcel as a proposed or existing primary single-family or multi-family dwelling.
45. Detached Accessory Dwelling Unit: An ADU is detached if it does not share any walls with the primary dwelling unit or existing attached accessory structure.
56. Efficiency Kitchen: In accordance with Government Code Section 65852.22(a)(6), an efficiency kitchen includes the following: (a) a cooking facility with appliances and (b) food-preparation counter space with a total area of at least 15 square feet and food-storage cabinets with a total of at least 30 square feet of shelf space.
67. Junior Accessory Dwelling Unit or JADU: As defined by Government Code Section 65852.22, a JADU is a unit that satisfies all the following:
- a. The unit is no more than 500 square feet in size, ~~and~~
 - b. The unit is contained entirely within an existing or proposed single-family structure.
 - c. A JADU may have only The unit includes an efficiency kitchen, ~~and may include separate sanitation facilities or may share sanitation facilities with the primary dwelling as defined in Subsection XI-10-13.08(C)(6) above.~~
 - d. The unit includes separate sanitation facilities or shares sanitation facilities with the existing or proposed primary dwelling.
 - e. If the unit does not include separate sanitation facilities, then it includes an interior entrance to the main living area of the existing or proposed primary dwelling in addition to an exterior entrance that is separate from the main entrance to the primary dwelling.
78. Livable Space: A space within a building designed for living, sleeping, eating or food preparation, including but not limited to a den, study, library, home office, sewing room, or recreational room and excluding such areas as garages.
89. Living Area: As defined by Government Code Section 65852.2, the interior habitable area of a dwelling unit, including basements and attics, but not including a garage or any accessory ~~building or~~ structure.
910. Natural Person: An individual and living human being, as opposed to a legal person which may be a private (i.e. business entity or non-governmental organization) or public (i.e. government) entity.
101. Nonconforming ~~z~~Zoning ~~e~~CCondition: A physical improvement on a property that does not conform with current zoning standards.
112. Passageway: A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.

~~123.~~ Proposed ~~ad~~dwelling: A dwelling that is the subject of a permit application and that meets the requirements for permitting.

~~135.~~ Public Transit: A location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public. Examples include, but are not limited to, Altamont Commuter Express (ACE), Bay Area Rapid Transit (BART), AC Transit, Valley Transportation Authority (VTA) bus service and light rail, and paratransit.

15. Tandem Parking: Two or more vehicles parked on a driveway or in a garage or any other location on a lot, lined up behind one another.

~~D. General Provisions~~

- ~~1. Where permitted. An ADU may be established on any lot in any district that allows single-family or multi-family dwelling residential uses. A JADU may be established on any lot in any district that allows single-family residential uses.~~
- ~~2. Review Requirements. Any application for an ADU or JADU that satisfies the standards in subdivisions (A) through (J) of this section shall be approved ministerially without discretionary review or public hearing.~~
- ~~3. An ADU or JADU shall meet or exceed the minimum floor area requirements of an efficiency unit, as defined by Section 17958.1 of the State Health and Safety Code, and so may not have a floor area that is smaller than 220 square feet.~~
- ~~4. All ADUs shall comply with local building code requirements.~~
- ~~5. No passageway shall be required for an ADU or JADU.~~
- ~~6. Owner Occupancy. All JADUs are subject to an owner occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or the JADU, as the person's primary residence and legal domicile. However, the owner occupancy requirement of this paragraph does not apply if the property is entirely owned by a governmental agency, land trust, or housing organization.~~
- ~~7. Sale Prohibited. No ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multi-family lot).~~
- ~~8. Rental. An ADU or JADU may be rented for a term of 30 days or more. Short-term rental for periods of less than 30 days are not permitted.~~

~~E. Action on Application.~~

~~1. The City shall act on an application to establish an ADU or JADU within 60 days from the date the City receives a complete application, unless either:~~

~~a. The applicant requests a delay, in which the 60-day time period is tolled for the period of the requested delay, or~~

~~b. The application for the ADU or JADU is submitted as part of a permit application for a new single-family dwelling on the lot, in which case the City may delay acting on the permit application for the ADU or JADU until it acts on the permit application for the new single-family dwelling; however, the application shall still be considered ministerially without discretionary review or a hearing.~~

FD. ADUs and JADUs Subject to Limited Requirements Approval Process. The following approvals shall apply to ADUs and JADUs under this section:

1. Specific Types of ADUs and JADUs. To qualify for a building permit, the following types of ADUs and JADUs are subject only to the limited requirements that define each type. Requiring a Building Permit Only. ADUs and JADUs that comply with the general requirements outlined in Subsection XI-10-13.08(E) below shall be allowed with only a building permit in the following scenarios:

a. Converted on Single-family Lot: One ADU as described in this Subsection XI-10-13.08(FD)(1)(a) and one JADU are allowed on a lot with a proposed or existing single-family dwelling on it, where the unit ADU or JADU:

i. Is within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or (in the case of an ADU only) within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress; and

ii. Has exterior access that is independent of that for the single-family dwelling; and

iii. Has side and rear setbacks sufficient for fire and safety, as dictated required by applicable building and fire codes.

iv. The JADU complies with the requirements of Government Code Section 65852.22.

b. Limited Detached on Single-family Lot. One detached, new-construction ADU is allowed on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under Subsection XI-10-13.08(FD)(1)(a)), if the detached ADU satisfies the following limitations:

i. The side- and rear-yard setbacks are at least four feet.

ii. The total floor area is 800 square feet or less.

- iii. The peak height above grade ~~is 16 feet or less~~ does not exceed the applicable height limit in Subsection XI-10-13.08(E)(3) below.
- c. Converted on Multi-family Lot: One or more ADUs are allowed within portions of existing multi-family dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted ADU complies with state building standards for dwellings. Under this Subsection XI-10-13.08(~~FD~~)(1)(c), at least one converted ADU is allowed within an existing multifamily dwelling, up to a quantity equal to 25 percent of the number of existing multifamily dwelling units.
- d. Limited Detached on Multi-family Lot: ~~Up to~~ No more than two detached ADUs are allowed on a lot that has an existing multi-family dwelling if each detached ADU satisfies the following limitations:
 - i. The side- and rear-yard setbacks are at least four feet. If the existing multifamily dwelling has a rear or side yard setback of less than four feet, the City will not require any modification to the multifamily dwelling as a condition of approval for the ADU.
 - ii. The peak height above grade ~~is 16 feet or less~~ does not exceed the applicable height limit provided in Subsection XI-10-13.08(E)(3) below.
 - iii. If more than one detached ADU is created, the ADUs may share a common wall.
- 2. ~~Deed Restriction for JADUs. Prior to obtaining a building permit for a JADU, a deed restriction, approved by the City Attorney, must be recorded with the County Recorder's office, which shall include the pertinent restrictions and limitations of a JADU identified in this Section. Said deed restriction shall run with the land and bind all future owners, heirs, and assigns. A copy of the recorded deed restriction shall be filed with the Department stating that:~~
 - a. ~~The JADU may not be sold separately from the primary dwelling unit;~~
 - b. ~~The JADU is restricted to the maximum size allowed per the development standards;~~
 - e. ~~The JADU is legal only so long as either the primary residence, or the JADU, is occupied by the owner of record of the property~~ Requiring a Building Permit and a Minor Site Development Permit (Minor SDP).
 - a. Except as allowed under Subsection XI-10-13.08(D)(1) above, no ADU may be created without approval of a Building Permit and a Minor SDP in compliance with the standards set forth in Subsections E and F below.
 - b. The City may charge a fee to reimburse the costs incurred in processing Minor SDPs for ADUs, including the costs of adopting or amending the City's ADU

Ordinance. The additional fee for ADUs shall be determined by the Planning Director and approved by the City Council by Resolution.

3. Timing and Process for Review

- a. Any application for an ADU that satisfies the standards in Subsections XI-10-13.08(E) through (F) of this section shall be subject to ministerial approval without discretionary review or public hearing.
- b. The City shall act on an application to create an ADU or JADU within 60 days from the date the City receives a complete application. If the City has not acted on the complete application within 60 days, the application is deemed approved unless either:
 - i. The applicant requests a delay, in which the 60-day time period is tolled for the period of the requested delay; or
 - ii. The application for the ADU or JADU is submitted as part of a permit application for a new single-family or multi-family dwelling on the lot, in which case the City may delay acting on the permit application for the ADU or JADU until it acts on the permit application to create the new single-family dwelling; however, the application for the ADU or JADU shall still be subject to ministerial approval without discretionary review or a hearing.
- c. If the City denies an application to create an ADU or JADU, the City must provide the applicant with comments that include, among other things, a list of all defective or deficient items and a description of how the application may be remedied by the applicant. Notice of the denial and corresponding comments must be provided to the applicant within the 60-day time period established by Subsection XI-10-13.08 (D)(3)(a) above.
- d. A demolition permit for a detached garage that is to be replaced with an ADU shall be reviewed with the application for the ADU and issued concurrently.

E. General ADU and JADU Requirements. The following requirements shall apply to all ADUs and JADUs approved under Subsection XI-10-13.08(D)(1) and (D)(2) above.

1. Location and Zoning.

- a. An ADU or JADU requiring only a building permit under Subsection XI-10-13.08(D)(1) above may be created on any lot located in any residential or mixed-use zone.
- b. An ADU or JADU requiring both a Minor SDP and a building permit under Subsection XI-10-13.08(D)(2) above may be created on any lot located in any zoning district that allows single-family or multi-family residential uses.

2. Building and Safety.

- a. Subject to Subsection XI-10-13.08(E)(2)(b) below, all ADUs and JADUs shall comply with all local building code requirements.
- b. No change of occupancy. Construction of an ADU does not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code, unless the Building Official or Code Enforcement Division Officer makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public health and safety. Nothing in this Subsection XI-10-13.08(E)(2)(b) prevents the City from changing the occupancy code of a space that was non-habitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this section.
- c. Fire sprinklers.
 - i. Fire sprinklers are required in an ADU or JADU if sprinklers are required in the primary residence.
 - ii. The construction of an ADU or JADU does not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

3. Maximum Height.

- a. Except as otherwise provided by Subsections XI-10-13.08(E)(3)(b) and (E)(3)(c) below, a detached ADU created on a lot with an existing or proposed single family or multifamily dwelling unit shall not exceed 16 feet in height.
- b. A detached ADU may be up to 18 feet in height when located on a lot with an existing or proposed single-family or multifamily unit that is located within one-half mile walking distance of a major transit stop or a high quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code.
- c. A detached ADU may be up to two additional feet in height (for a maximum of 20 feet) if needed to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.
- d. A detached ADU created on a lot with an existing or proposed multifamily dwelling that has more than one story above grade shall not exceed 18 feet in height.
- e. An attached ADU shall not exceed 25 feet in height or the height limitation imposed by the standards for the underlying zoning district, whichever is less. Notwithstanding the foregoing, ADUs subject to this Subsection XI-10-13.08(E)(3)(d) shall not exceed two stories.
- f. For purposes of this Subsection XI-10-13.08(E)(3), height is measured from the finished grade to the peak of the structure.

4. Owner Occupancy.

- a. An ADU that is permitted after January 1, 2020, but before January 1, 2025, shall not be subject to any owner-occupancy requirement.
- b. Unless applicable law requires otherwise, all ADUs permitted on or after January 1, 2025 shall be subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.
- c. As required by state law, all JADUs shall be subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement in this Subsection XI-10-13.08(E)(4)(c) shall not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.

5. No Separate Conveyance. An ADU or JADU may be rented, but, except as otherwise provided in Government Code Section 65852.26, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all the dwellings (in the case of a multifamily lot).

6. No Short-Term Rental. No ADU or JADU may be rented for a term that is shorter than 30 days. This prohibition applies regardless of when the ADU or JADU was created.

7. Deed Restriction. Prior to issuance of a building permit for an ADU or JADU, a deed restriction, in a form approved by the City Attorney, shall be recorded against the title of the property in the County Recorder's office and a copy filed with the Planning Department. The deed restriction shall run with the land and bind all future owners, heirs, and assigns. The deed restriction shall provide that:

- a. Except as otherwise provided in Government Code Section 65852.26, the ADU or JADU may not be sold separately from the primary dwelling;
- b. The ADU or JADU is restricted to the approved size and other development standards established in this Section;
- c. The JADU is legal only so long as either the primary residence or the JADU is occupied by the owner of record of the property;
- d. The ADU or JADU shall not be used as a short-term rental of less than 30 days;
- e. The deed restriction runs with the land and may be enforced against future property owner(s);
- f. The deed restriction may be removed if the property owner eliminates the ADU or JADU. To remove the deed restriction, an owner shall make a written request to

the Planning Director and provide evidence that the ADU or JADU has been eliminated. The Director shall then decide whether the evidence supports the claim. The Director's determination may be appealed to the City Council.

g. The deed restriction is enforceable by the City, and failure to comply with the deed restriction may result in legal action against the property owner.

8. Income Reporting. In order to facilitate the City's obligation to identify adequate sites for housing in accordance with Government Code sections 65583.1 and 65852.2, the following requirements must be satisfied:

a. With the building-permit application, the applicant must provide the city with an estimate of the projected annualized rent that will be charged for the ADU or JADU.

G.F. ADUs Subject to Additional Objective-Specific ADU Requirements. The following specific standards shall apply only to ADUs that require a minor Site Development Permit under Subsection XI-10-13.08(D)(2) above.

~~1. Review Requirements. A proposed ADU that does not conform to the standards set forth in Subsection XI-10-13.08 (F)(1) and (F)(2) only requires a building permit if it complies with all of the objective standards set forth in Subsection XI-10-13.08(G)(2) below.~~

~~2. Specific Standards.~~

~~a1. Maximum Size.~~

~~ia. The maximum size of an attached or detached ADU on a property not located in the "H" Hillside Combining District subject to this Subsection XI-10-13.08(F) is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a two-bedroom unit. These standards shall not apply to properties located in the "H" Hillside Combining District.~~

~~ib. The maximum size of an attached or detached ADU on a property located in the "H" Hillside Combining District is 1,200 square feet.~~

~~iiic. The maximum size of an attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of existing primary dwelling. No application of the percent-based size limit in this paragraph or of a floor area ratio (FAR), front setback, lot coverage limit, or open-space requirement may require the ADU to be less than 800 square feet.~~

d. No ADU subject to this Subsection XI-10-13.08(F) may cause the total FAR of the lot to exceed 0.45, subject to Subsection XI-10-13.08(F)(1)(c) above.

~~b. Maximum Height.~~

- ~~i. For properties not located in the "H" Hillside Combining District, a single-story attached or detached ADU may not exceed 16 feet in height above grade. A two-story attached or detached ADU may not exceed 28 feet in height above grade.~~
- ~~ii. For properties located in the "H" Hillside Combining District, an attached or detached ADU on the west side of the crestline may not exceed a height of 17 feet in height and one story from the lowest finished grade to the highest ridgeline of the building. On the east side of the crestline, a detached or attached ADU may not exceed a height of 27 feet and two stories from the lowest finished grade to the highest ridgeline of the building.~~

~~e2.~~ Minimum Setbacks.

- ~~ia. Except for ADUs located in the R1-H zoning district, the minimum front yard setback requirement an attached ADU is 4 feet. In the R1-H zoning district, the minimum front yard setback for attached ADUs must be a minimum of 25 feet when the average slope of the lot is less than sixteen 16 percent, or when the front yard slope does not exceed 16 percent; otherwise, the minimum front yard setback must be 40 feet. An ADU that is subject to this Subsection XI-10-13.08(F) must conform to a 25-foot minimum front-yard setback, subject to Subsection XI-10-13.08(F)(1)(c) above.~~
 - ~~ib. An ADU that is subject to this Subsection XI-10-13.08(G)(2)(F) must conform to minimum 4-foot side- and rear-yard setbacks.~~
 - ~~ic. No setback is required for an ADU that is subject to Subsection XI-10-13.08(G)(2)(F) if the ADU is constructed in the same location and to the same dimensions as an existing structure.~~
 - ~~d. An attached ADU shall have a separate entrance from the primary dwelling.~~
- ~~e3. Building Separation. A detached ADU shall be located at least six feet from the rear wall of the primary dwelling unit.~~
- ~~4. Lot Coverage. No ADU subject to this Subsection XI-10-13.08(F) may cause the total lot coverage of the lot to exceed 50 percent, subject to Subsection XI-10-13.08(F)(1)(c) above.~~
 - ~~5. Minimum Open Space. No ADU subject to this Subsection XI-10-13.08(F) may cause the total percentage of open space of the lot to be less than 50 percent, subject to Subsection XI-10-13.08(F)(1)(c) above.~~
 - ~~6. Passageway. No passageway is required for an ADU.~~

~~f7.~~ Parking.

~~i. For each ADU.~~ Generally, one off-street parking space is required for each ADU unless one or more of the following conditions is met:

~~i. (1).~~ The ADU is located within one-half mile walking distance of public transit.

~~ii. (2).~~ The ADU is located within an architecturally and historically significant historic district.

~~iii. (3).~~ The ADU is part of an existing primary residence or an -accessory structure (i.e., it is a converted ADU under Subsection XI-10-13.08(~~FD~~)(1)(a) above).

~~iv. (4).~~ On-street parking permits are required but not offered to the occupant of the ADU.

~~v. (5).~~ An established car share vehicle stop is located within one block of the ADU.

vi. When the permit application to create an ADU is submitted with an application to create a new single-family or new multifamily dwelling on the same lot, provided that the ADU or the lot satisfies any other criteria listed in Subsections (F)(7)(a)(i) through (v) above.

~~iiib.~~ No off-street parking is required for a JADU, except as required under ~~paragraph iv Subsection XI-10-13.08(F)(5)(d)~~ below.

~~iiic.~~ If a parking space is required for an ADU, the space may be located within any setback area, in a tandem configuration, or on a mechanical lift. Each unenclosed parking space shall be at least 8½ feet wide and 18 feet long. Each parking space that is provided in an enclosed garage shall be at least 10 feet wide and 20 feet long.

~~ivd.~~ When a garage, carport, or covered parking structure is converted to an ADU or demolished in conjunction with the construction of an ADU, the off-street parking space or spaces are not required to be replaced. ~~If the parking structure is converted to a JADU, the lost off-street parking spaces must be replaced.~~

g8. Architectural Design Standards.

~~ia.~~ The ~~architectural style, exterior materials, and color palette of materials and colors of the exterior walls, roof, and windows and doors~~ an ADU or JADU shall match the appearance of the existing or proposed primary dwelling.

b. The roof slope shall match that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope of the largest portion of the roof.

- ~~ii~~c. An ADU or JADU shall have an independent exterior entrance, separate from that of the primary dwelling. The entrance to an attached ADU or JADU shall be located on a side or rear building façade, not facing a public right-of-way.
- ~~iii~~d. Exterior lighting shall be limited to down-lights (or as otherwise required by the building or fire code).
- e. The interior horizontal dimensions shall be at least 10 feet wide in every direction, with a minimum interior wall height of seven feet.
- ~~iv~~f. Windows and doors ~~of an ADU or JADU may shall~~ not have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.
- ~~v~~g. Windows located on the second story of an ADU or JADU shall be either clerestory with the bottom of the glass at least six feet above the finished floor or ~~consist of~~ frosted or obscured glazing glass to preserve privacy.
- ~~vi~~h. The ADU and primary dwelling must use the same driveway to access the street, unless otherwise required for fire-apparatus access, as determined by the fire authorityMilpitas Fire Department.

9. Landscape Design Standards.

- ~~vi~~a. ~~Evergreen landscape screening shall must~~ be planted and maintained between the ADU and adjacent parcels as follows:
 - i. ~~(1).~~ — At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24-inch box size plant shall be provided for every ten linear feet of exterior wall.
 - ii. ~~(2).~~ — Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least 6 feet in height may be installed.
 - iii. ~~(3).~~ — All landscaping shall be drought tolerant.
- ~~vii.~~ The ADU and primary dwelling must use the same driveway to access the street, unless otherwise required for fire-apparatus access, as determined by the fire authority.

HG. Fees.

1. Impact Fees and other City Fees.

- a. No impact fee shall be required for an ADU or JADU ~~or for an ADU~~ that is less than 750 square feet in floor area. For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in the Mitigation Fee Act (Gov. Code § 66000(b)), except that it also includes fees specified in the Quimby Act

(Gov. Code § 66477). "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

- b. Any impact fee that is required for an ADU that is 750 square feet or greater in floor area shall be assessed proportionally in relation to the square footage of the primary dwelling unit (e.g. the floor area of the primary dwelling divided by the floor area of the ADU, times the impact fees charged for a new dwelling).
2. Utility Fees.
- a. When an ADU is constructed with a new single-family dwelling, a separate utility connection directly between the ADU and the utility, and payment of the standard connection fee and capacity charge for a new dwelling, is required.
 - b. Except as described in Subsection XI-10-13.08(G)(2)(a), ~~Converted~~ ADUs and JADUs on a single-family lot that are created under Subsection XI-10-13.08(~~FD~~)(1)(a) ~~above~~ are not required to have a new or separate utility connection directly between the ADU or JADU and the utility. Nor is a connection fee or capacity charge required.
 - ~~b. ADUs and JADUs that are not covered by Subsection XI 10-13.08(H)(2)(a) are also not required to have a new or separate utility connection directly between the ADU or JADU and the utility.~~
 - ~~c. Except as described in Subsection XI 10-13.08(H)(2)(a), if a separate utility connection is installed directly between the ADU or JADU and the utility, then a connection fee or capacity charge will be required. The fee or charge shall be proportionate to the burden created by the ADU or JADU, based on either the floor area or the drainage fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system.~~
 - c. Except as described in Subsection XI-10-13.08(G)(2)(a), all ADUs and JADUs that are not covered by Subsection XI-10-13.08(G)(2)(b) require a new, separate utility connection directly between the ADU and the utility.
 - i. The connection shall be subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU on the water and sewer systems, based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code.
 - ii. The portion of the fee or charge that is charged by the City may not exceed the reasonable cost of providing this service.
- H. Nonconforming Zoning Code Conditions, Building Code Violations, and Unpermitted Structures.
- 1. The City shall not deny an ADU or JADU application due to a nonconforming zoning condition, building code violation, or unpermitted structure on the lot that does not

present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.

2. Unpermitted ADUs constructed before 2018.

a. Permit to Legalize. As required by state law, the City may not deny a permit to legalize an existing but unpermitted ADU that was constructed before January 1, 2018, if denial is based on either of the following grounds:

i. The ADU violates applicable building standards, or

ii. The ADU does not comply with Government Code section 65852.2 (State ADU law) or this ADU ordinance (MMC Section XI-10-13.08).

b. Exceptions:

i. Notwithstanding Subsection XI-10-13.08(H)(2)(a) above, the City may deny a permit to legalize an existing but unpermitted ADU that was constructed before January 1, 2018, if the Building Official makes a finding that correcting a violation is necessary to protect the health and safety of the public or of occupants of the structure.

ii. Subsection XI-10-13.08(H)(2)(a) above does not apply to a building that is deemed to be substandard in accordance with California Health and Safety Code section 17920.3.

KI. Nonconforming ADUs and Discretionary Approval. Any proposed ADU or JADU that does not conform to the objective standards set forth in Subsections XI-10-13.08(A) through (H) may be allowed by the City with a Minor Site Development Permit, in accordance with Section XI-10-57 "Applications".

SECTION 5. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision, or part has no effect on the validity of the remainder.

SECTION 6. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The City Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

SECTION 7. SUBMISSION TO HCD

The City Clerk shall submit a copy of this Ordinance to the Department of Housing and Community Development within 60 days after adoption.

RESOLUTION NO. 22-028**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
RECOMMENDING THAT THE CITY COUNCIL ADOPT A REGULAR ORDINANCE
TO APPROVE ZONING TEXT AMENDMENT ZA22-0007 AMENDING SECTION 13
“SPECIAL USES” OF CHAPTER 10 “ZONING” OF TITLE XI OF THE MILPITAS
MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS, AND
DETERMINING THE AMENDMENT TO BE EXEMPT FROM THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT (CEQA)**

WHEREAS, the City of Milpitas, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the Planning and Zoning Law authorizes cities to act by ordinance to provide for the creation and regulation of accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”); and

WHEREAS, In September and October of 2022, the California Legislature approved, and the Governor signed into law, Assembly Bill 2221 (“AB 2221”) and Senate Bill 897 (“SB 897”), which among other things, amended Sections 65852.2, 65852.22, and 65852.23 of the Government Code and Section 17980.12 of the Health and Safety Code to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, the City desires to amend existing provisions in Milpitas Municipal Code section XI-10-13.08 related to the regulation of ADUs and JADUs to comply with the 2022 ADU Laws; and

WHEREAS, State law requires consistency between local regulations for ADUs and JADUs and the state ADU law, so the City must amend the current provisions of Milpitas Municipal Code Section XI-10-13.08 (“Accessory Dwelling Units”) to comply with the new provisions of AB 2221 and SB 897; and

WHEREAS, the City desires to amend existing provisions in Milpitas Municipal Code section XI-10-13.08 related to the regulation of ADUs and JADUs to add clarity for the benefit of staff and the general public and comply with the changes in state law; and

WHEREAS, Planning Department staff prepared the proposed ordinance, including the proposed language and terminology, and any additional information and documents deemed necessary; and

WHEREAS, the City has prepared Zoning Amendment No. ZA22-0007 (“Amendment”) to the City’s Municipal Code, including modifications and refinements to Section XI-10-13.08 (“Accessory Dwelling Units”); and

WHEREAS, as separate and independent bases, the Planning Commission hereby finds and determines that the project is exempt from further CEQA review pursuant to CEQA

Guidelines section 15282(h) (the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code); and

WHEREAS, the Planning Commission makes and accepts as its own the findings set forth in this Resolution; and

WHEREAS, the Planning Commission is an advisory body to the City Council; and

WHEREAS, on November 9, 2022, the Planning Commission held a duly noticed public hearing on the subject Amendment, at which all those in attendance were given the opportunity to speak on the Zoning Text Amendment; and

WHEREAS, the Planning Commission has considered all the written and oral testimony presented at the public hearing in making its decision.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

SECTION 1. Recitals

The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CEQA Finding

The Planning Commission recommends that the City Council find, under CEQA Guidelines, Section 15282(h), that if this Ordinance is a project, it is nonetheless exempt from further environmental review because it is the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

SECTION 3. Findings for Zoning Amendment

In accordance with Subsection XI-10-57.02(G)(3) of the Milpitas Municipal Code, the Planning Commission makes the following findings based on the evidence in the public record in support of Zoning Text Amendment No. ZA22-0007:

- 1. The proposed amendment is consistent with the General Plan.*

The proposed zoning amendments are consistent with the Milpitas General Plan. Specifically, the amendments implement policy 1-4 of the Land Use Element and policy 4-1

of the Community Health and Wellness Element, which speak to the need to provide a variety of housing types suited to a range of household types (e.g., individuals, families) and income levels and creating housing in close proximity to public transportation. The zoning amendments would also help to realize the intent of Goals C and D of the Housing Element, which call for the City to facilitate new housing production and support diversity and affordability in Milpitas' housing stock. Adoption of the proposed amendments to the Zoning Ordinance would make it easier, faster, and more cost-efficient for property owners to create ADUs and JADUs, which are typically smaller housing unit types that tend to be inherently more affordable. Adding more ADUs and JADUs within the City's existing neighborhoods would greatly help to meet local housing demand, especially for smaller households with lower- to moderate incomes such as students, single working individuals, and seniors.

In addition, consistent with Government Code Section 65852.2(a)(1)(C), the proposed zoning amendments include a provision stating that ADUs and JADUs are a residential use that is consistent with the existing General Plan designation for the subject property.

2. *The proposed amendment will not adversely affect the public health, safety and welfare.*

The proposed zoning amendments refine the streamlined review procedures and standards for ADUs and JADUs to ensure that future units are compatible with surrounding single-family residential uses and avoid potential impacts (e.g., to privacy and solar access) on adjacent properties. In this respect, the amendments will serve to protect neighborhood character and property owner rights, thereby maintaining the public health, safety, and welfare.

SECTION 4: Planning Commission Action

The Planning Commission of the City of Milpitas hereby adopts Resolution No. 22-028 recommending that the City Council adopt Zoning Text Amendment ZA22-0007 based on the above Findings.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on November 9, 2022.

DocuSigned by:

1CD00AF0F204464...
Chair

Resolution No. 22-028**Page 4****Item # 21.****TO WIT:**

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on November 9, 2022 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Mercedes Albana	✓			
Dipak Awasthi	✓			
Lawrence Ciardella	✓			
Bill Chuan	✓			
Alexander Galang	✓			
Sonia Medina-Ashby	✓			
Zeha Mohsin	✓			



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Staff Report on Draft Water Rates Study, Direct Staff to Proceed with Community Engagement on Proposed Rates, Including Identifying a Date for the Public Hearing and Mailing a Notice of the Public Hearing for the Proposed Water Rates (Staff Contact: Roger Lee, Interim Public Works Director, 408-586-2602; and Lauren Lai, Finance Director, 408-586-3111)
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	12/6/2022
	<u>Recommendation:</u> (1) Receive staff report on Draft Water Rates Study; and (2) Direct staff to proceed with community engagement on proposed rates, including identifying a date for the public hearing and mailing a notice of the public hearing not less than 45 days prior to the hearing and find a CEQA exemption.

BACKGROUND:

The City of Milpitas owns, operates and maintains an extensive network of water system infrastructure (Water System). The Water System consists of 206 miles of pipeline, four pumping stations, five storage reservoirs and pressure valves regulating seven pressure zones delivering on average 11 million gallons of drinking water per day to approximately 16,750 customer accounts. The type and number of customers served are as follows:

Customer Type	Approximate Number
Single family residence	12,450
Multi-family residence*	11,800
Mobile Home*	521
Commercial/Industrial/Institutional	950
Irrigation /Recycled Water/Fire	1,400

* Multi-family are served by 1,950 customer accounts; mobile homes are served by three consumer accounts.

The City purchases wholesale drinking water from the San Francisco Public Utilities Commission (SFPUC) and Valley Water (VW). SFPUC water is delivered through the Hetch Hetchy Aqueduct originating in the Sierra Nevada Mountain Range. VW treats raw water from the Sacramento-San Joaquin River Delta, through the State Water and Federal San Felipe Projects. The City's drinking water is an aggregate of approximately two-thirds from SFPUC and the remaining one-third from VW.

In accordance with State Regulations and Title 4, Chapter 3, Section 4.00 of the Milpitas Municipal Code, the City must review and set water rates and charges to ensure revenues cover all system operation and maintenance (O&M) costs and all capital improvement program (CIP) costs. It is important to note that the costs for water purchases are passed through from the water wholesalers to the Milpitas rate payers. Additionally, financial reserves for unforeseen events are targeted per the City's financial reserve policy. Collection of revenues to offset the appropriate level of expenditures ensure that the Water System is well maintained and adequately sized. For customers of the Water System, receipt of sufficient revenues ensures that delivered water is safe and reliable.

The analysis and setting of maximum water rates and charges must occur no less than every five years. Within these five years, staff annually reviews revenues and expenditures. If revenues and expenditures occur as expected, the maximum authorized rate for the upcoming year will be applied. Alternatively, if revenues and expenditures indicate the authorized upcoming rate is excessive, a lower rate may be applied. In no circumstances would staff increase rates above the maximum authorized amount without future City Council approval.

authorization and in accordance with the provisions of Article XIII D, Section (6)(b) of the California Constitution (commonly referred to as Proposition 218). City Council last adopted a five-year water rate and charge schedule in February of 2019. The first year of charges occurred in April 2019 and the fifth year ends on June 30, 2023. A new five-year water rate and charge schedule is needed for an effective date beginning July 1, 2023.

In the preparation of proposing FY23/24 to FY27/28 water rates and charges, the City contracted with the financial consulting firm Raftelis to develop a Draft Water Rates Study (Study). The Study is a five-year modeling analysis with inputs of financial projections of revenue requirements, expected expenditures, and in-depth analysis of proposed rates / charges so that revenues fully offset expenditures. City Departments providing input into the Study include Public Works, Finance and the City Manager's Office.

ANALYSIS:

The Study recommends increases to water rates and charges at an amount necessary to recover projected costs, including cost increases in wholesale water. The rates and charges recommended will ensure the Water System meets or exceeds customer requirements for water quality and quantity, avoids operational deficits and the depletion of reserves and maintains favorable credit ratings to minimize potential future debt services costs.

Operating Costs:

O&M expenses for the Water System include the purchase of wholesale water, staff costs, and costs for services and supplies. Approximately 72% of the City's O&M expenses are the purchase of wholesale water from SFPUC and VW. Based on forecasts provided by both wholesalers, staff expects annual wholesale water cost increases of 7% to 12% over the next five years. Expected increases in wholesale water costs account for approximately 49% of the proposed five-year rate increases. FY23-24 wholesale water purchases are estimated at \$24 million. For the five-year period (FY23/24 to FY27/28) water purchases are estimated to total \$137 million.

City operating costs are estimated to increase by 4% annually through FY27/28. This increase includes costs to enhance the City's cross connection program to ensure compliance with State requirements and for increased support of remote monitoring / control of facilities. Expected increases in City operating costs account for approximately 12% of the proposed five-year increases. FY23/24 estimated operating costs are \$10.1 million. For the five-year period (FY23/24 to FY27/28) operating costs are estimated to total \$54.6 million.

Capital Improvement Program:

On August 9, 2022, City Council adopted the 2022 Water Master Plan (Plan) that included recommendations for CIP projects through the year 2040. The CIP projects recommended in the Plan were prioritized based on existing conditions, completed asset renewal/replacement studies and completed risk/resiliency assessments. High priority improvements were recommended for completion within the first five years, medium and low priority improvements were recommended for completion prior to 2040. Current funded CIP projects are being evaluated. Significant CIP projects programmed in the next five years (in 2022 dollars) include:

- Replacement or rehabilitation of assets or facilities. Projects include replacement of aging pipes, valves and improvements to above grade facilities such as pump stations and water tanks. (\$16.5 million)
- Detailed condition assessment of Water System (\$2.7 million)
- Pipeline replacement to improve flow in the system for fire suppression (\$6.5 million)
- Citywide cross connection survey (\$750k)

Due to the cost and impact on rates in FY23/24, some projects programmed in the Plan to begin design and construction in FY23/24 were pushed to FY25/26. Increases in capital spending costs account for approximately 39% to the proposed five-year increases. For the five-year period (FY23/24 to FY27/28) capital costs are estimated to total \$32.6million.

FY22-23 Ending Balance, Reserve Balance &, Capital Surcharge Balance

For FY22/23, the Water Utility Enterprise Fund is projected to have an ending balance of \$34 million. \$14.8 million of this amount is set aside per targets in the City's financial reserve policy. The remaining \$19.2 million will be used to fund O&M and CIP projects from FY23/24 to FY27/28. Reserve balance details are provided in attachment #2.

Wholesale water costs are projected to increase faster than proposed customer rates and charges in the first years of the five-year schedule. Costs differences will be absorbed by existing operating surpluses and the rate stabilization reserve. In the later years of the five-year period, accumulating annual rate and charges will substantially catch up with no additional funding needed. With the proposed rate and charge increases of 6.4% annually, the reserve targets in FY27/28 are \$20.8 million. Capital reserves for emergencies will be \$11.3M (88% of target level), rate stabilization reserves will be \$4.9M (68% of target level), pension liability reserve will be \$0.8M (no target level) and infrastructure (CIP) reserves will be \$5.6M (exceeds target level of "at least \$2M"). Total Water Utility Enterprise Fund ending balance will be approximately \$22.5 million.

A capital surcharge in customers water bills was implemented in FY16/17. The purpose of this surcharge is to provide funding for capital projects and debt service. Approximately \$17.5 million is available in this fund and will be applied to the Plan projects.

Proposed Rate Recommendations:

The City's water rate and charge schedules consist of three components, "Fixed Charges," are charged for the meter and system infrastructure, "Volume Charges" are charged per hundred cubic feet (HCF) of metered water use, and the "Capital Surcharge Charges".

The proposed rate and charge amounts include increases for all three charges. The annual increase percentages for each charge and each of the next five years for a typical single-family residence are shown below.

Fiscal Year	Fixed & Volume Charges	Capital Charges	Average Bill Impact
FY24/25	6.5%	5.6%	6.4%
FY25/26	6.5%	4.3%	6.4%
FY26/27	6.5%	5.0%	6.4%
FY27/28	6.5%	5.6%	6.4%
FY28/29	6.5%	5.3%	6.4%

*Volume and capital surcharge charges are charged at the same rate for all customer classifications.
Fixed charges vary by customer meter size.*

If the proposed rate and charge amounts become effective on July 1, 2023, the bill would increase by approximately \$9.19 bi- monthly for FY23/24 for a "typical customer," which is a single-family residential customer, with a 5/8-inch water meter and using 14 HCF in a bi-monthly period, as shown below:

Item	Current Rates	Proposed Maximum Rates FY 2023/2024
Fixed Meter Charge	\$34.10	\$35.87
Volumetric Charge	\$6.70 x 14 HCF = \$93.80	\$7.17 x 14 HCF = \$100.38
Capital Surcharge	\$1.08 x 14 HCF = \$15.12	\$1.14 x 14 HCF = \$15.96
Bi-monthly Amount	\$143.02	\$152.21
Bi-monthly Difference		\$9.19

The proposed maximum rate and capital surcharge five-year fee schedule for all customers are included in attachment #3. A comparison of current rates, proposed rates and the amounts charged by other agencies are included in attachment #4.

Rate Subsidy Program:

Water funds collected as penalties and Federal American Rescue Plan Act (ARPA) funds, administered by the City, are available to eligible customers through the Milpitas Assistance Program (MAP). Currently, customers do need to have their own separate water meter to be eligible. All mobile home parks and some multi-family units in the City have one master water meter that serves multiple residents. For these customers, their homeowner association then bills its' residents for water through homeowner association fees. Staff is investigating how to provide the MAP to these residents.

For eligible residents, the amount of MAP discount varies based on eligibility requirements of four tiers. In FY21/22, the number of enrolled customers for both water and sewer was 211. Average discount amount for both water and sewer was \$22 bi-monthly (\$132 annually). Information regarding MAP is included in attachment #5.

Aside from MAP, public agencies providing water service may implement low-income water rate assistance programs, but rate discounts must be funded from non-rate sources of revenues – e.g., lease revenues and revenues from fines and penalties other than a civil liability imposed for violations of the City's water conservation program. A household may qualify for Low Income Household Water Assistance Program which is a federally funded program administered through the State of California, Department of Community Services and Development. Information on this program can be found at: www.csd.ca.gov/waterbill.

Proposition 218 Noticing and Community Engagement:

Proposition 218, a state proposition approved by California voters in 1996, added Article XIII D to the California Constitution which requires voter approval prior to the imposition of any new or increased existing tax, assessment or certain user fees. It also requires local agencies imposing any new or any increases in any existing property-related fees and charges to comply with certain procedural requirements prior to their adoption. Water Service fees and charges are subject to these procedural requirements. Pursuant to Article XIII D, section 6, the City is required to hold a public hearing to consider the proposed water service rates, fees, and charges. Additionally, the City is required to provide ratepayers and property owners with a written notice of the proposed rate increases, and the date, time and location of the public hearing on the proposed rate increase. Subdivision (a) of Section 6 of the California Constitution's Article XIII D requires that 45 days must elapse from the time the notices are mailed until the public hearing on the proposed rate increases. Any property owner may submit a written protest of the proposed increase. Only one protest per parcel will be counted. If a majority of parcels submit protests, the City cannot adopt the proposed rates.

Staff will prepare the notice and will ensure it is user friendly and easy to understand. The notice will include a full description of all proposed maximum rates and charges for FY23/24 through FY27/28, the reasons for and the basis upon which the rates and charges are calculated, an explanation of the process, and a description on how to participate in the process. With Council's authorization to proceed with a notice, a special mailing notifying property owners and ratepayers of the proposed increase to the City's water service rates, fees and charges will begin.

The Draft Water Rates Study will be finalized by March 2023 prior to the public hearing on the proposed rates. In the interim, staff will conduct community meetings and a public workshop on the proposed rate and charge increases in January 2023.

Staff will host a series of workshops to help customers better understand the budget and infrastructure challenges facing the Water System including but not limited to, what services are paid for by water rates, what the proposed water rate and charge increases fund and why the City is proposing water rate and charge increases. The locations of the workshops will be included in the notice. Additionally, staff will establish a dedicated webpage on the City's website and include a frequently asked questions section and other pertinent information. The information will be posted to allow for the translation into over 100 languages utilizing the built-in Google Translator tool. Staff will also post information about the workshops on the City's social media accounts.

(i.e., Facebook, Nextdoor, Twitter). The proposed schedule for the notification, community meetings, public workshops, and public hearing is below.

Date	Meeting	Action
December 6, 2022	City Council	Council Consideration to issue Prop 218 Notice
January – February 2023	Community Meetings and Public Workshop	Community Outreach
March 7, 2023	City Council	Public Hearing at Milpitas City Hall Council consideration of proposed water rates
May 9, 2023	City Council	FY 2023-24 Operating Budget Study Session
June 6, 2023	City Council	Public Hearing and FY 2023-24 Budget Adoption
July 1, 2023		New FY23/24 rate implementation date.

POLICY ALTERNATIVE(S):

Alternative 1: Do Not Accept Water Rates Study and Defer Community Engagement and Notification on Proposed Rate Increases

Pros: The existing water rates would remain in place.

Cons: This action would delay community engagement efforts and delay action on adjusting water rates.

Reason for Not Recommending: Financially, no-action to ultimately increase rates and charges will result in revenues falling below what is needed. This would result in the delay of construction of priority capital improvement projects and an increased risk of customer requirements for water quality and quantity not being met. By FY25/26, operating reserves would fall further below policy targets and the Water System will not generate sufficient revenues to pay for its wholesale water purchases and debt services obligations without impact to the General Fund. All reserves would be depleted by FY26/27 and future credit ratings would be impacted.

FISCAL IMPACT:

If the Proposition 218 majority protest process is concluded without a majority protest and the water rate adjustments are adopted as presented, the new water rate and charge structure would generate enough revenues for the next five years to meet or exceed customer requirements for water quality and quantity, avoid operational deficits, depletion of reserves and maintains favorable credit ratings to minimize potential future debt services costs. City operating costs are estimated to increase by 4% annually through FY27/28.

California Environmental Quality Act (CEQA):

This action is exempt from CEQA as there will be no physical change to the environment.

RECOMMENDATION:

1. Receive staff report on Water Rates Study.
2. Direct staff to proceed with community engagement on proposed rates, including identifying a date for the Public Hearing and mailing a notice of the Public Hearing and proposed rates not less than 45 days prior to the Hearing.

Attachment(s):

1. Draft Water Rates Study – December 2, 2022
2. Water Utility Fund Reserve Analysis
3. Water Proposed Maximum Rate / Charge Fee Schedule
4. Water Bill Comparison for Single Family
5. Milpitas Assistance Program

City of Milpitas, CA

Draft Water and Wastewater Rate Study
Study Report / December 2, 2022



December 2, 2022

Mr. Harris Siddiqui, PE
Principal Engineer
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Subject: Water and Wastewater Rate Study

Dear Mr. Siddiqui,

Raftelis is pleased to provide this Draft Water and Wastewater Study Report to the City of Milpitas. The study's purpose was to develop a five-year proposed water and wastewater rate schedule for the City for Fiscal Year (FY) 2024 through FY 2028 that is fair and equitable.

The study's major goals are to:

- » Develop a five-year financial plan to ensure financial sufficiency, meet operating costs, fund the long-term Capital Improvement Plan (CIP) including the projects identified in the Master Plans adopted by the City in June 2022, and maintain prudent reserves.
- » Conduct a cost-of-service analysis to ensure a strong nexus between proposed water and wastewater rates and the cost to provide service to customers.

It has been a pleasure working with you, and we thank you and other City staff for the support provided to Raftelis during this study.

Sincerely,

A handwritten signature in black ink that reads 'Todd Cristiano'.

Todd Cristiano
Project Manager

Table of Contents

1. EXECUTIVE SUMMARY	1
1.1. Study Overview	1
1.2. Proposed Water Financial Plan.....	1
1.3. Proposed Wastewater Financial Plan	3
1.4. Bill Impacts and Comparison.....	6
2. INTRODUCTION.....	8
2.1. Study Overview	8
3. LEGAL REQUIREMENTS AND RATE SETTING METHODOLOGY	9
3.1. Legal Requirements	9
3.2. Rate-Setting Methodology	9
4. WATER UTILITY KEY INPUTS AND ASSUMPTIONS	11
4.1. Available Fund Balance.....	11
4.2. Current Water Rates.....	11
4.3. Financial Assumptions.....	12
4.4. Projected Service Connections	12
4.5. Projected Water Use and Supply	13
5. WATER FINANCIAL PLAN.....	15
5.1. Revenues From Current Rates	15
5.2. Operations and Maintenance Expenses	18
5.3. Debt Service	19
5.4. Capital Improvement Plan	20
5.5. Financial Policies.....	20
5.6. Status Quo Financial Plan	21
5.7. Proposed Financial Plan	23
6. WATER COST OF SERVICE ANALYSIS.....	26
6.1. Methodology	26
6.2. Revenue Requirement.....	26
6.3. Allocation of Expenses to Rate Components.....	27
7. PROPOSED WATER RATES	29
7.1. Proposed FY 2024 Fixed Meter Charges.....	29
7.2. Proposed FY 2024 Volume Charges	29
7.3. Proposed Five-Year Rate Schedule.....	30
7.4. Bi-Monthly Bill Impacts	31
8. WASTEWATER UTILITY KEY INPUTS AND ASSUMPTIONS.....	32
8.1. Available Fund Balance.....	32
8.2. Current Wastewater Rates	32
8.3. Financial Assumptions.....	33
8.4. Projected Service Connections	33
8.5. Projected Wastewater Volumes	34
9. WASTEWATER FINANCIAL PLAN.....	36
9.1. Revenues From Current Rates	36
9.2. Operations and Maintenance Expenses	39
9.3. Capital Improvement Plan	40
9.1. Debt Service	41
9.2. Financial Policies.....	42

9.3.	Status Quo Financial Plan	42
9.4.	Proposed Financial Plan	45
10.	WASTEWATER COST OF SERVICE ANALYSIS.....	48
10.1.	Methodology	48
10.2.	Units of Service	48
10.3.	Revenue Requirement.....	50
10.4.	Allocation of Expenses to Rate Components.....	50
10.1.	Customer Class Costs.....	52
11.	PROPOSED WASTEWATER RATES	54
11.1.	Proposed FY 2024 Fixed Meter Charges.....	54
11.2.	Proposed FY 2024 Volume Charges	55
11.3.	Proposed Five-Year Rate Schedule.....	55
11.4.	Causes of Different Rate Changes.....	57
11.5.	Mobile Home Rate Subsidy	57
12.	COMBINED BILL IMPACTS AND BILL COMPARISON	58

List of Tables

Table 1-1: Proposed Water Revenue Adjustments	1
Table 1-2: Proposed Five-Year Water Rate Schedule	3
Table 1-3: Proposed Wastewater Revenue Adjustments	3
Table 1-4: Proposed Five-Year Wastewater Rate Schedule	5
Table 4-1: FY 2023 Beginning Fund Balances	11
Table 4-2: Current Water Rate Schedule	12
Table 4-3: Projected Number of Water Meters Under Existing Rate Structure	13
Table 4-4: Projected Water Use Under Existing Rate Structure	14
Table 4-5: Projected Water Supply Mix	14
Table 5-1: Projected Fixed Meter Charge Revenues under Current Rates	15
Table 5-2: Projected O&M Volume Charge Revenues Under Current Rates	16
Table 5-3: Projected Capital Charge Revenues Under Current Rates	17
Table 5-4: Projected Other Revenues	17
Table 5-5: Summary of Projected Revenues Under Current Rates	18
Table 5-6: O&M Summary by Department	18
Table 5-7: Water Purchase Cost Detail	19
Table 5-8: Schedule of Debt Service Payments	19
Table 5-9: Capital Improvement Plan	20
Table 5-10: Status Quo Operating Financial Plan	21
Table 5-11: Status Quo Capital Financial Plan	22
Table 5-12: Status Quo Financial Plan – Projected Reserves	23
Table 5-13: Proposed Revenue Adjustments	23
Table 5-14: Proposed Operating Financial Plan	24
Table 5-15: Proposed Capital Financial Plan	24
Table 5-16: Proposed Financial Plan – Projected Ending Balances	25
Table 6-1: FY 2024 Revenue Required from Rates	27
Table 6-2: Allocation of Revenue Requirement	28
Table 7-1: Proposed FY 2024 Fixed Meter Charge Calculation	29
Table 7-2: Proposed FY 2024 Volume Charge Calculation	29
Table 7-3: Proposed Five-Year Water Rate Schedule	30
Table 7-4: Average Residential Bill Forecast	31
Table 7-5: Residential Bill Impacts at Varying Levels of Water Use	31
Table 8-1: FY 2023 Beginning Fund Balances	32
Table 8-2: Current Wastewater Rate Schedule	33
Table 8-3: Projected Number of Billed ERUs and Commercial Accounts	34
Table 8-4: Projected Wastewater Use	35
Table 9-1: Projected Fixed Charge Revenues under Current Rates	37
Table 9-2: Projected Volume Charge Revenues Under Current Rates	38
Table 9-3: Projected Other Revenues	39
Table 9-4: Summary of Projected Revenues Under Current Rates	39
Table 9-5: O&M Summary by Department	40
Table 9-6: Capital Improvement Plan	41
Table 9-7: Debt Service	41
Table 9-8: Status Quo Operating Financial Plan	43
Table 9-9: Status Quo Capital Financial Plan	44
Table 9-10: Status Quo Financial Plan- Projected Ending Balances	45
Table 9-11: Proposed Revenue Adjustments	45
Table 9-12: Proposed Operating Financial Plan	46

Table 9-13: Proposed Capital Financial Plan	46
Table 9-14: Proposed Financial Plan – Projected Ending Balances	47
Table 10-1: FY 2024 Wastewater Units of Service	49
Table 10-2: FY 2024 Revenue Required from Wastewater Rates	50
Table 10-3: Wastewater Revenue Requirement Allocation	52
Table 10-4: Customer Class Cost of Service	53
Table 11-1: Proposed FY 2024 Fixed Charge Calculation	54
Table 11-2: Proposed FY 2023 Volume Charge Calculation	55
Table 11-3: Proposed Five-Year Wastewater Rate Schedule	56
Table 11-4: Mobile Home Subsidy Option	57
Table 12-1: Combined Bi-Monthly Bill Impact	58

List of Figures

Figure 1-1: Proposed Financial Plan – Projected Ending Balances	2
Figure 1-2: Proposed Financial Plan – Projected Ending Balances	4
Figure 1-3: Single Family Residential Water Bill Comparison with Neighboring Agencies	6
Figure 1-4: Single Family Residential Wastewater Bill Comparison with Neighboring Agencies	7
Figure 5-1: Status Quo Financial Plan – Projected Ending Operating and Capital Balances	22
Figure 5-2: Proposed Financial Plan – Projected Ending Balances	25
Figure 9-1: Status Quo Financial Plan – Projected Ending Balances	44
Figure 9-2: Proposed Financial Plan – Projected Ending Balances	47
Figure 12-1: Single Family Residential Water Bill Comparison with Neighboring Agencies	59
Figure 12-2: Single Family Residential Wastewater Bill Comparison with Neighboring Agencies	60

This page intentionally left blank to facilitate two-sided printing.

1. Executive Summary

1.1. Study Overview

Public water agencies in California typically conduct cost-of-service and rate studies to ensure there is a strong nexus between rates charged to customers and costs incurred to provide service, as required by Proposition 218. The City of Milpitas (City) last conducted a cost-of-service study in 2018, which was adopted in February 2019 and established rates through Fiscal Year (FY) 2023. The City engaged Raftelis in 2022 to conduct this Water and Wastewater Rate Study to establish proposed water and wastewater rates over a five-year period from FY 2024 to FY 2028. Note that the proposed rates presented in this study report may not be implemented until formally adopted by the City Council after a public hearing.

The major study objectives are to:

- » Develop a five-year financial plan that sufficiently funds the City's operations and maintenance (O&M) expenses, debt service payments, and Capital Improvement Plan (CIP) while adequately funding reserves and meeting debt coverage requirements.
- » Conduct a cost-of-service analysis that establishes a clear nexus between the cost to serve customers and the water rates charged to customers, per Proposition 218 requirements.
- » Review the City's existing water and wastewater rate structures and recommend changes as necessary.
- » Develop a five-year schedule of water rates that is fair, equitable, and compliant with Proposition 218.

1.2. Proposed Water Financial Plan

Raftelis conducted a status quo cash flow analysis to evaluate whether existing water rates can adequately fund the City's various expenses over the five-year study period. With the assistance of City staff, annual revenues, O&M expenses, debt service payments, and capital expenditures were projected through FY 2028. Raftelis projects that with no rate increases over the five-year study period, the City will fully deplete its reserves by the end of FY 2027. This demonstrates a clear need for revenue adjustments (i.e. water rate revenue increases relative to the status quo). Raftelis worked with City staff to develop the following proposed revenue adjustments over the five-year study period (see **Table 1-1**). The proposed revenue adjustments were selected to provide financial sufficiency for the City while minimizing impacts to City customers.

Table 1-1: Proposed Water Revenue Adjustments

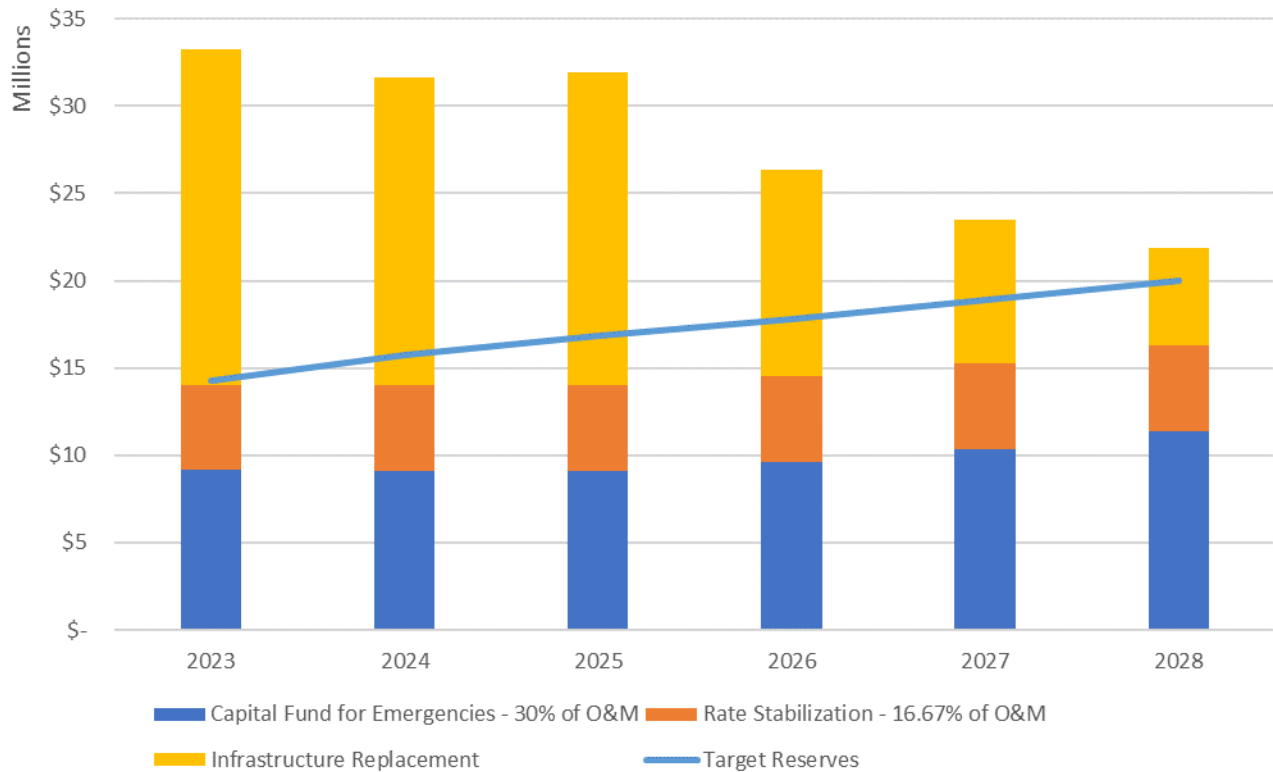
Line	Description	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Effective Date of Revenue Adjustment	July 1, 2023	July 1, 2024	July 1, 2025	July 1, 2026	July 1, 2027
2	O&M Revenue Adjustment	4.9%	6.5%	6.5%	6.5%	6.5%
3	Capital Revenue Adjustment	5.0%	5.0%	5.0%	5.0%	5.0%
4	Average Bill Increase - 14 hcf	6.4%	6.4%	6.4%	6.4%	6.4%

Key factors influencing the need for proposed revenue adjustments include:

- » **Planned capital expenditures:** Projects scheduled over the next five years total about \$34M, including beginning work on the projects identified in the City's master plan.
- » **Increases in purchased water costs from SFPUC and SCVWD:** The City's cost to purchase treated water is expected to increase by an average of 8.6 percent per year over the study period, including a 12 percent increase in 2024.

Figure 1-1 shows projected ending balances over the study period relative to the City's operating and total reserve targets under the proposed financial plan. Reserves are drawn down beginning in FY 2026 as work begins on the City's master plan projects. Although not displayed on the chart below, the City is projected begin covering all expenses (contribute to reserves rather than drawing on them) in FY 2029. The use of reserves over this period will mitigate the impact on ratepayers while still maintaining a healthy fund balance.

Figure 1-1: Proposed Financial Plan – Projected Ending Balances



1.2.1. PROPOSED WATER RATES

Table 1-2 shows the proposed five-year water rate schedule through FY 2028. Proposed FY 2024 rates are calculated based on the results of the cost of service analysis. Overall, FY 2024 O&M rates are designed to collect 4.9 percent more rate revenue than current FY 2023 rates; capital rates will collect 5 percent more. Proposed rates beginning in FY 2025 are calculated by simply increasing the prior year's proposed rates by the proposed annual revenue adjustments.

Table 1-2: Proposed Five-Year Water Rate Schedule

Bi-Monthly Potable Fixed Charges		FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Line							
1	5/8"	\$ 34.10	\$ 35.87	\$ 38.21	\$ 40.70	\$ 43.35	\$ 46.17
2	3/4"	51.14	47.03	50.09	53.35	56.82	60.52
3	1"	85.24	69.34	73.85	78.66	83.78	89.23
4	1 1/2"	170.48	125.14	133.28	141.95	151.18	161.01
5	2"	272.76	192.10	204.59	217.89	232.06	247.15
6	3"	511.43	404.13	430.40	458.38	488.18	519.92
7	4"	852.38	716.60	763.18	812.79	865.63	921.90
8	6"	1,704.76	1,464.29	1,559.47	1,660.84	1,768.80	1,883.78
9	8"	1,704.76	3,138.22	3,342.21	3,559.46	3,790.83	4,037.24
10	10"	1,704.76	4,700.56	5,006.10	5,331.50	5,678.05	6,047.13

Line	Volume Charges	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Potable	\$ 6.70	\$ 7.17	\$ 7.64	\$ 8.14	\$ 8.67	\$ 9.24
2	Recycled	4.51	5.41	5.77	6.15	6.55	6.98
3	Capital	1.08	1.14	1.20	1.26	1.33	1.40

1.3. Proposed Wastewater Financial Plan

Raftelis also conducted a similar analysis to evaluate whether existing wastewater rates can adequately fund the City's various expenses over the five-year study period. Raftelis projects that with no rate increases over the five-year study period, the City will fully deplete its reserves by the end of FY 2028. This demonstrates a clear need for revenue adjustments. Raftelis worked with City staff to develop the following proposed revenue adjustments over the five-year study period (see **Table 1-3**). The proposed revenue adjustments were selected to provide financial sufficiency for the City while minimizing impacts to City customers.

Table 1-3: Proposed Wastewater Revenue Adjustments

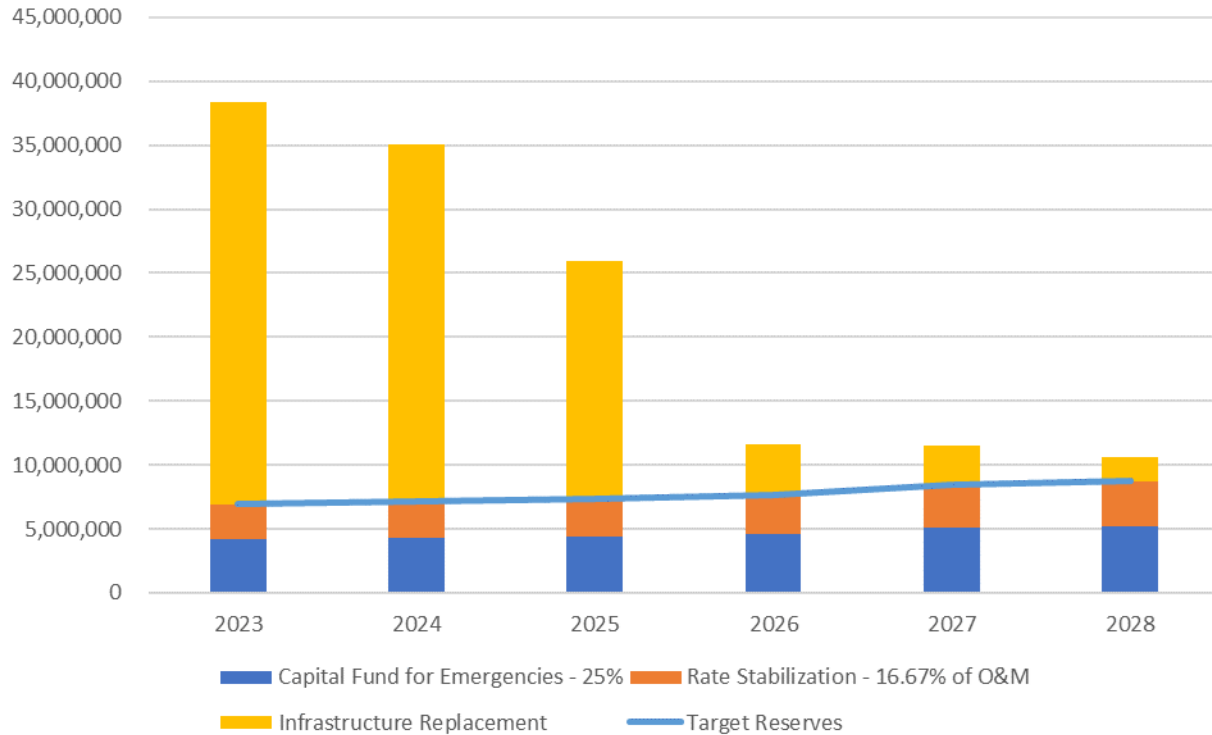
Line	Description	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Effective Date of Revenue Adjustment	July 1, 2023	July 1, 2024	July 1, 2025	July 1, 2026	July 1, 2027
2	Revenue Adjustment	4.00%	4.00%	4.00%	4.00%	4.00%

Key factors influencing the need for proposed revenue adjustments include:

- » **San Jose Capital Expenditures:** The expense due to the City of San Jose related to capital projects at the wastewater treatment facility is expected to total approximately \$36M over the study period, peaking in FY 2025 at approximately \$11M.
- » **Replacement of the Force Main A Pipeline:** The large pipeline that conveys all of the City's wastewater to San Jose is approaching the end of its useful life and is recommended to be replaced to mitigate the risk of catastrophic failure in the near future. This is expected to cost approximately \$26M. Raftelis recommends the use of bonds to finance a portion of this project.

Figure 1-1 shows projected ending balances over the study period relative to the City's operating and total reserve targets under the proposed financial plan. The City's substantial reserves are heavily used over the study period to fund capital projects, including San Jose expenses and the Force Main A pipeline in FY 2026.

Figure 1-2: Proposed Financial Plan – Projected Ending Balances



1.3.1. PROPOSED WASTEWATER RATES

Table 1-4 shows the proposed five-year water rate schedule through FY 2028. Proposed FY 2024 rates are calculated based on the results of the cost of service analysis. Overall, FY 2024 O&M rates are designed to collect 4 percent more rate revenue than current FY 2023 rates. Proposed rates beginning in FY 2025 are calculated by simply increasing the prior year's proposed rates by the proposed annual revenue adjustments.

Table 1-4: Proposed Five-Year Wastewater Rate Schedule

Line	Fixed Charge Schedule	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family	124.14	128.44	133.58	138.93	144.49	150.27
2	Multi-Family	95.34	97.96	101.88	105.96	110.20	114.61
3	Mobile Home	78.28	97.61	101.52	105.59	109.82	114.22
4	Schools/Colleges	27.35	29.25	30.43	31.65	32.92	34.24
5	Motels and Hotels	27.35	29.25	30.43	31.65	32.92	34.24
6	General Office	27.35	29.25	30.43	31.65	32.92	34.24
7	City of Milpitas	27.35	29.25	30.43	31.65	32.92	34.24
8	Service Stations	27.35	29.25	30.43	31.65	32.92	34.24
9	Eat/Drink Establishments	27.35	29.25	30.43	31.65	32.92	34.24
10	Convalescent Hosp/Daycare	27.35	29.25	30.43	31.65	32.92	34.24
11	Personal Services, Laundrys	27.35	29.25	30.43	31.65	32.92	34.24
12	Electrical/Electronics	27.35	29.25	30.43	31.65	32.92	34.24
13	Machinery Manufacture	27.35	29.25	30.43	31.65	32.92	34.24
14	RockTenn (Jefferson Smurfit)	27.35	29.25	30.43	31.65	32.92	34.24
15	T. Marzetti Co.	27.35	29.25	30.43	31.65	32.92	34.24
16	Prudential Overall Supply	27.35	29.25	30.43	31.65	32.92	34.24
17	Evoqua Water Technologies	27.35	29.25	30.43	31.65	32.92	34.24
18	Elmwood Rehabilitation	27.35	29.25	30.43	31.65	32.92	34.24
19	Linear Technology	27.35	29.25	30.43	31.65	32.92	34.24
20	DS Waters of America	27.35	29.25	30.43	31.65	32.92	34.24
21	Magic Tech & Headway Tech	27.35	29.25	30.43	31.65	32.92	34.24
22	Lucky Pure Water	27.35	29.25	30.43	31.65	32.92	34.24
23	Milpitas Materials	27.35	29.25	30.43	31.65	32.92	34.24
24	Union Pacific Railroad	27.35	29.25	30.43	31.65	32.92	34.24
25	Cisco	27.35	29.25	30.43	31.65	32.92	34.24

Line	Volume Charge Schedule	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family			-	-	-	-
2	Multi-Family			-	-	-	-
3	Mobile Home			-	-	-	-
4	Schools/Colleges	9.99	11.58	12.04	12.53	13.04	13.57
5	Motels and Hotels	5.75	5.64	5.88	6.12	6.37	6.63
6	General Office	6.84	6.92	7.20	7.49	7.79	8.11
7	City of Milpitas	5.80	5.59	5.82	6.06	6.31	6.57
8	Service Stations	5.70	5.61	5.84	6.08	6.33	6.59
9	Eat/Drink Establishments	9.06	10.88	11.32	11.78	12.26	12.76
10	Convalescent Hosp/Daycare	5.60	5.45	5.67	5.90	6.14	6.39
11	Personal Services, Laundrys	5.31	4.97	5.17	5.38	5.60	5.83
12	Electrical/Electronics	6.72	6.82	7.10	7.39	7.69	8.00
13	Machinery Manufacture	8.43	9.92	10.32	10.74	11.17	11.62
14	RockTenn (Jefferson Smurfit)	10.46	10.79	11.23	11.68	12.15	12.64
15	T. Marzetti Co.	12.09	11.17	11.62	12.09	12.58	13.09
16	Prudential Overall Supply	8.42	9.88	10.28	10.70	11.13	11.58
17	Evoqua Water Technologies	7.06	6.40	6.66	6.93	7.21	7.50
18	Elmwood Rehabilitation	6.69	7.78	8.09	8.42	8.76	9.12
19	Linear Technology	6.88	6.62	6.89	7.17	7.46	7.76
20	DS Waters of America	6.04	5.38	5.61	5.84	6.08	6.33
21	Magic Tech & Headway Tech	7.32	7.73	8.04	8.37	8.71	9.06
22	Lucky Pure Water	5.29	4.95	5.15	5.36	5.58	5.81
23	Milpitas Materials	5.29	4.95	5.15	5.36	5.58	5.81
24	Union Pacific Railroad	7.35	7.85	8.17	8.50	8.84	9.20
25	Cisco	6.72	6.82	7.10	7.39	7.69	8.00

1.4.Bill Impacts and Comparison

Figure 1-3 shows comparison of Single Family Residential bi-monthly bills with neighboring agencies. All bills are representative of a typical residential customer with a 5/8” meter using 14 HCF per bi-monthly billing period (equal to the average residential water use in the City). Note that many of the other agencies shown are either scheduled or expected to implement rate increases in FY 2024, which are not reflected in the graphs. Many other factors affect rates such as whether or not a water purveyor receives a portion of county property tax revenue, infrastructure age and condition, whether the system has to pump water up to higher elevations, water source, and the willingness of the agency to reinvest in the system to maintain infrastructure.

Figure 1-3: Single Family Residential Water Bill Comparison with Neighboring Agencies

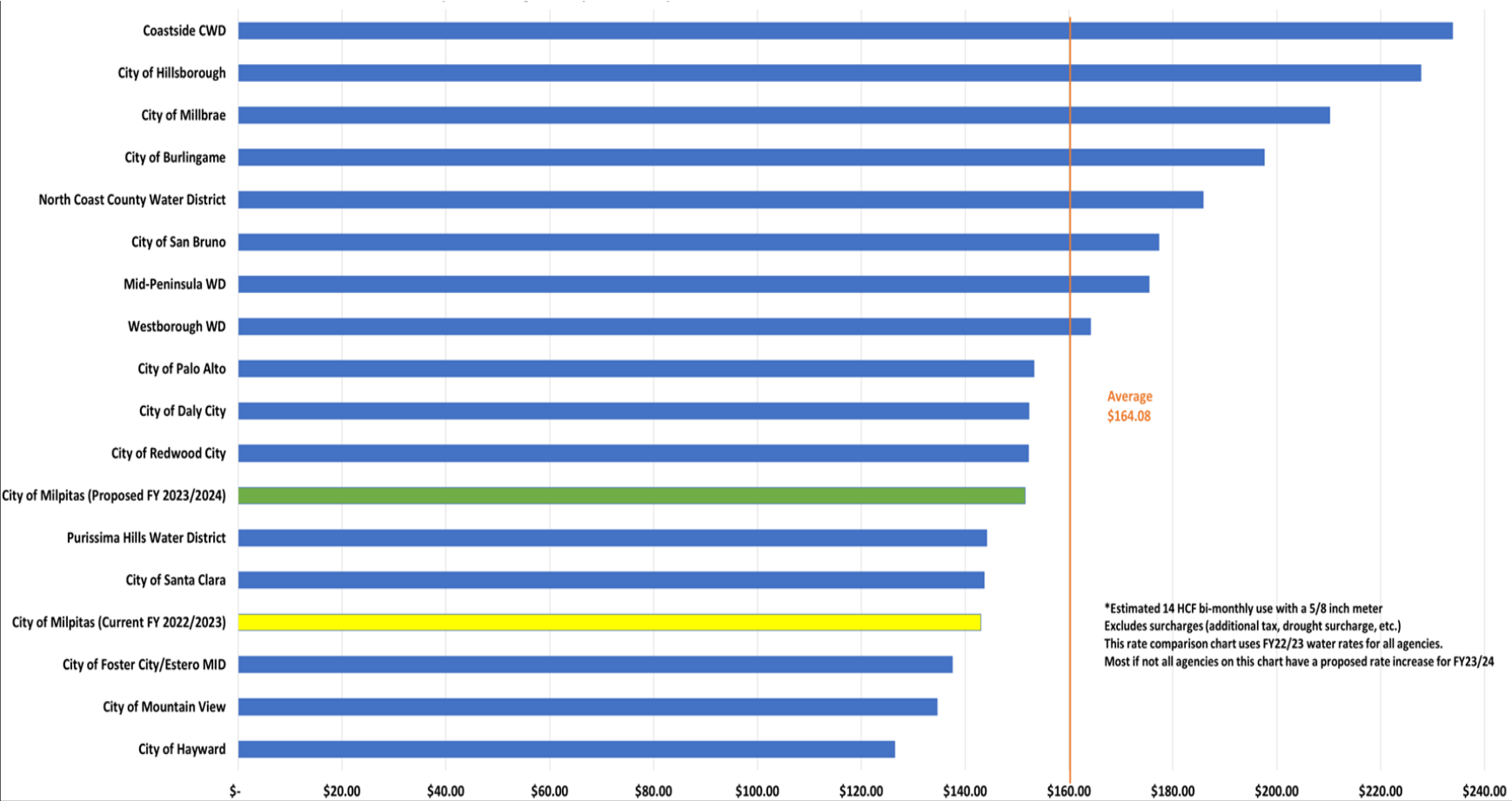
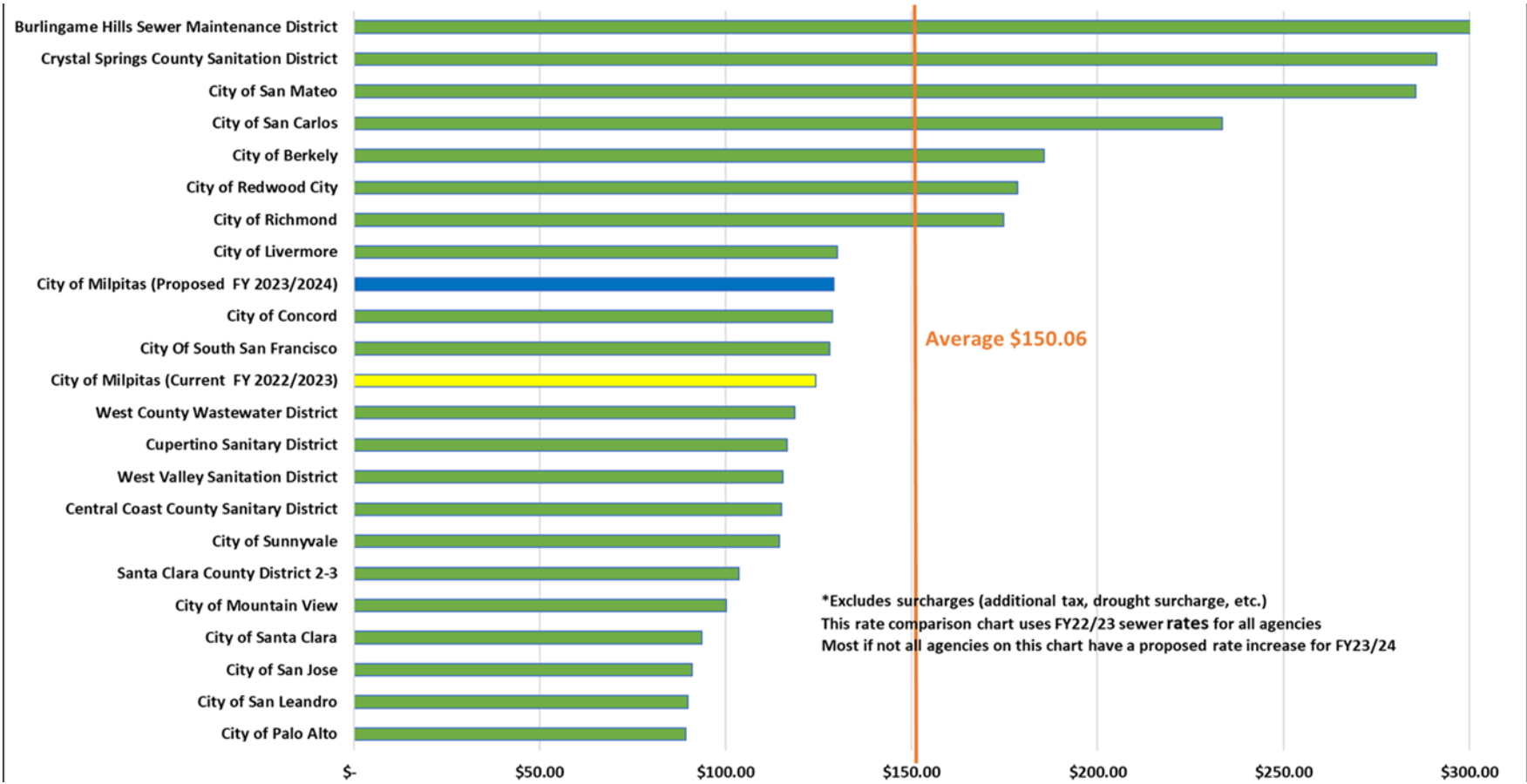


Figure 1-4: Single Family Residential Wastewater Bill Comparison with Neighboring Agencies



2. Introduction

2.1. Study Overview

Public water agencies in California typically perform a cost-of-service analysis to ensure that customers are appropriately charged for water and wastewater service commensurate with the cost to provide service. The City engaged Raftelis in 2022 to conduct this Water and Wastewater Rate Study to establish proposed water and wastewater rates for FY 2024 through FY 2028. Note that proposed rates cannot be implemented until formally adopted by the City Council after a public hearing. Proposition 218 requires that City customers must be mailed a public hearing notice detailing any proposed rate changes no fewer than 45 days before the public hearing.

Study Objectives

The major study objectives are to:

- » Develop a five-year financial plan that sufficiently funds the City's operations and maintenance (O&M) expenses, debt service payments, and capital expenditures while adequately funding reserves and meeting debt coverage requirements.
- » Conduct a cost of service analysis that establishes a clear nexus between the cost to serve customers and the water rates charged to customers, per Proposition 218 requirements.
- » Review the City's existing water and wastewater rate structures and recommend changes as necessary to ensure that proposed rates achieve financial sufficiency while furthering the City's policy goals of affordability and conservation.
- » Develop a five-year schedule of water and wastewater rates that are fair, equitable, and compliant with Proposition 218 requirements.

Reliance on City Provided Data

During this project, the City (and/or its representatives) provided Raftelis with a variety of technical information, including cost and revenue data. Raftelis reviewed the data provided for reasonableness but did not independently assess or test for the accuracy of such data – historic or projected. Raftelis has relied on this data in the formulation of our findings and subsequent recommendations, as well as in the preparation of this report. Raftelis also relied on cost allocation data provided by the City needed to complete the cost of service analysis.

There are often differences between actual and projected data. Some of the assumptions used for projections in this report will not be realized, and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between the data or results projected in this report and actual results achieved, and those differences may be material. As a result, Raftelis takes no responsibility for the accuracy of data or projections provided by or prepared on behalf of the City, nor do we have any responsibility for updating this report for events occurring after the date of this report.

In the Study, Raftelis made rate calculations using the best estimates of the City's expected costs, planned capital improvements, and future customer demands. Making such calculations in advance is normal for public water providers because providers need to recover revenue matched to public budgets adopted in advance of their fiscal periods. For this reason, and others, achieving mathematical exactitude in rate calculations is virtually impossible. Instead, there are methods and techniques available to water providers that promote proportionality between the costs incurred to provide water service and the demand for that service. These methods and techniques are broadly referred to as "cost-of-service principles."

3. Legal Requirements and Rate Setting Methodology

3.1. Legal Requirements

California Constitution - Article XIII D, Section 6 (Proposition 218)

Proposition 218, reflected in the California Constitution as Article XIII D, was enacted in 1996 to ensure that rates and fees are reasonable and proportional to the cost of providing service. The principal requirements, as they relate to public water service, are as follows:

1. A property-related charge (such as water rates) imposed by a public agency on a parcel shall not exceed the costs required to provide the property-related service.
1. Revenues derived by the charge shall not be used for any purpose other than that for which the charge was imposed.
2. The amount of the charge imposed upon any parcel shall not exceed the proportional cost of service attributable to the parcel.
3. No charge may be imposed for a service unless that service is actually used or immediately available to the owner of the property.
4. A written notice of the proposed charge shall be mailed to both the customer of record and owner of record of each parcel at least 45 days prior to the public hearing, when the agency considers all written protests against the charge.

As stated in the American Water Works Association's (AWWA) *Principles of Water Rates, Fees, and Charges: Manual of Water Supply Practices - M1 Seventh Edition* (Manual M1), "water rates and charges should be recovered from classes of customers in proportion to the cost of serving those customers." Raftelis follows industry-standard rate-setting methodologies set forth by the AWWA Manual M1 to ensure this study meets Proposition 218 requirements and establishes rates that do not exceed the proportionate cost of providing water services on a parcel basis. The methodology in the Manual M1 is a nationally recognized industry rate-making standard that courts have recognized as consistent with Proposition 218.

California Constitution Article X, Section 2

California Constitution Article X, Section 2 mandates that water resources be put to beneficial use and that the waste or unreasonable use of water be prevented through conservation. Section 106 of the Water Code declares that the highest priority use of water is for domestic purposes, with irrigation secondary. Thus, the management of water resources is part of the property-related service provided by public water suppliers to ensure the resource is available over time.

3.2. Rate-Setting Methodology

This study was conducted using industry-standard principles outlined by the AWWA Manual M1 and WEF Manual of Practice No. 27. The process and approach Raftelis utilized in the study to determine water rates is informed by the City's policy objectives, the current water and wastewater systems and rates, and the legal requirements in California (namely, Proposition 218). The resulting financial plan, cost of service analysis, and rate

design process follows five key steps, outlined below, to determine proposed rates that fulfill the City's objectives, meet industry standards, and comply with relevant regulations.

1. **Financial Plan:** The first study step is to develop a multi-year financial plan that projects the City's revenues, expenses, capital project financing, annual debt service, and reserve funding. The financial plan is used to determine the revenue adjustment, which allows the City to recover adequate revenues to fund expenses and reserves.
2. **Revenue Requirement Determination:** After completing the financial plan, the rate-making process begins by determining the revenue requirement for the test year, also known as the rate-setting year. The test year for this study is FY 2024. The revenue requirement should sufficiently fund the City's operating costs, annual debt service (including coverage requirements), capital expenditures, and reserve funding as projected based on the annual budget estimates.
3. **Cost of Service Analysis:** The annual cost of providing water or wastewater service, or the revenue requirement, is then distributed to customer classes commensurate with their use of and burden on the water system. A cost of service analysis involves the following steps:
 - » Functionalize costs – the different components of the revenue requirement are categorized into functions such as supply, customer service, etc.
 - » Allocate to cost causation components – the functionalized costs are then allocated to cost causation components such as volume, bills, equivalent meters, etc.
 - » Develop unit costs – unit costs for each cost causation component are determined using units of service, such as total use, peaking units, equivalent meters, number of customers, etc., for each component.
 - » Distribute cost components – the cost components are allocated to each customer class using the unit costs in proportion to their demand and burden on the system.
4. **Rate Design:** After allocating the revenue requirement to each customer class, the project team designs and calculates rates. Rates do more than simply recover costs; within the legal framework and industry standards, properly designed rates should support and optimize the City's policy objectives. Rates also act as a public information tool in communicating these policy objectives to customers. This process also includes a rate impact analysis and sample customer bill impacts.
5. **Administrative Record Preparation and Rate Adoption:** The final step in a rate study is to develop the administrative record in conjunction with the rate adoption process. This report serves as the administrative record for this study. The administrative record documents the study results and presents the methodologies, rationale, justifications, and calculations used to determine the proposed rates. A thorough and methodological administrative record serves two important functions: maintaining defensibility in a stringent legal environment and communicating the rationale for revenue adjustments and proposed rates to customers and key stakeholders.

4. Water Utility Key Inputs and Assumptions

Raftelis developed a rate model in Microsoft Excel to project financial and rate calculations over a five-year study period through FY 2028. The City's fiscal year spans from July 1 through June 30. Projections in future years were generally made based on FY 2022 or FY 2023 data using key assumptions outlined below. All assumptions were discussed with and reviewed by City staff to ensure that the City's unique characteristics were incorporated. Note that most table values shown throughout this report are rounded to the last digit shown and may therefore not add precisely to the totals shown.

4.1. Available Fund Balance

Table 4-1 presents the available fund balance as of the end of FY 2022 and beginning of FY 2023. The financial plan presented in this report does not propose to spend any of the Capital Reserve for Emergencies or Rate Stabilization Fund; however, portions of the existing Infrastructure Fund balance will be used for the construction of future capital projects identified in the master plan.

Table 4-1: FY 2023 Beginning Fund Balances

Line	Fund Description	Balance
Water Utility		
1	Capital for Emergencies	\$ 8,167,439
2	Rate Stabilization	4,538,374
3	CALPERS	822,539
4	Infrastructure	17,499,492
5	Total	\$ 31,027,844

4.2. Current Water Rates

Table 4-2 shows the current adopted rate schedule developed during the prior rate study. Customers are currently subject to two primary charges: 1) bi-monthly Fixed Meter Charges and 2) Volume Charges per hundred cubic feet (HCF)¹ of water delivered with separate O&M and Capital rates. Fixed Meter Charges vary based on meter size. Water used by all potable customers, regardless of customer class, are subject to the same volumetric rates. Recycled customers have a separate volumetric rate but pay the same fixed charge; these customers do not pay the capital volumetric charge.

¹ One HCF equals approximately 748 gallons.

Table 4-2: Current Water Rate Schedule

Line	Description	FY 2023
Bi-Monthly Fixed Charge (\$/period)		
1	5/8"	\$ 34.10
2	3/4"	51.14
3	1"	85.24
4	1 1/2"	170.48
5	2"	272.76
6	3"	511.43
7	4"	852.38
8	6"	1,704.76
9	8"	1,704.76
10	10"	1,704.76
Volume Charges (\$/hcf)		
11	Potable	\$ 6.70
12	Recycled	4.51
13	Capital Charge	1.08

4.3. Financial Assumptions

Inflationary assumptions were used to project O&M expenses beyond FY 2023. All inflationary factors were reviewed by City staff and are based on historical and anticipated cost increases. For O&M expenses, a general inflation rate of 4 percent is consistent with long-term changes in the Consumer Price Index (CPI), though recent inflation is above 3 percent. However, projections for imported water supply costs are based on projected wholesale water rate increases, as shown in detail below in **Table 5-7**. Interest earnings on cash reserves are projected assuming a 1 percent annual interest rate.

4.4. Projected Service Connections

Customer account growth projections are necessary to estimate water demand and rate revenues over the study period. City staff provided Raftelis with the number of water meters and fire lines by connection size for FY 2021; projections from 2021 data are based on forecasted growth rates per the City's Decision Support System Model (DSS) which was used in the adopted Urban Water Management Plan (2020 UWMP) and 2020 Water Shortage Contingency Plan (2020 WSCP). **Table 4-3** shows the projected number of bi-monthly bills issued by customer class and meter size in each year of the study period.

Table 4-3: Projected Number of Water Meters Under Existing Rate Structure

Line	Total Potable Bills	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	5/8"	74,878	75,079	75,080	75,081	75,082	75,083
2	3/4"	3,293	3,299	3,300	3,301	3,302	3,303
3	1"	8,003	8,015	8,093	8,171	8,249	8,327
4	1 1/2"	2,776	2,784	2,792	2,799	2,806	2,813
5	2"	3,390	3,405	3,420	3,433	3,446	3,459
6	3"	534	534	534	534	534	534
7	4"	362	363	364	364	364	364
8	6"	173	173	173	173	173	173
9	8"	263	263	263	263	263	263
10	10"	12	12	12	12	12	12
11	12"	-	-	-	-	-	-
12	Total	93,684	93,927	94,031	94,131	94,231	94,331

Line	Recycled	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	5/8"	-	-	-	-	-	-
2	3/4"	18	18	18	18	18	18
3	1"	66	66	66	66	66	66
4	1 1/2"	312	312	312	312	312	312
5	2"	858	858	858	858	858	858
6	3"	18	18	18	18	18	18
7	4"	54	54	54	54	54	54
8	6"	-	-	-	-	-	-
9	8"	-	-	-	-	-	-
10	10"	-	-	-	-	-	-
11	12"	-	-	-	-	-	-
12	Total	1,326	1,326	1,326	1,326	1,326	1,326

4.5. Projected Water Use and Supply

City staff provided Raftelis with total annual water use data by customer class for FY 2018 through FY 2021. Raftelis worked closely with City staff to develop water use projections for FY 2024 through FY 2028. Water demand projections depend on two key assumptions: account growth and water demand factor (i.e., water use per account). Beginning in FY 2021, annual water use was projected at the customer class level using an annual water demand growth rate to determine total annual water use. **Table 4-4** shows projected water use by customer class over the study period. The water use per account growth rate is forecasted at 0 percent through the study period.

Table 4-4: Projected Water Use Under Existing Rate Structure

Line	Customer Class Volume (hcf)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single Family	1,218,854	1,222,358	1,222,358	1,222,358	1,222,358	1,222,358
2	Duplex	23,466	23,466	23,466	23,466	23,466	23,466
3	Condo/Townhouse	195,512	195,512	195,512	195,512	195,512	195,512
4	Multi-Family	624,235	624,235	643,914	663,594	683,273	702,953
5	Mobile Home	23,361	23,361	23,361	23,361	23,361	23,361
6	SCC/Ed Levin	3,970	3,970	3,970	3,970	3,970	3,970
7	City - Domestic	15,246	15,514	15,781	15,915	16,049	16,182
8	City - Irrigation	107,001	109,710	112,419	113,773	115,128	116,482
9	Commercial	367,078	368,166	369,254	370,342	371,430	372,518
10	Industrial	399,569	400,518	401,466	402,415	403,363	404,312
11	Institutional/Gov/Schools	77,945	79,096	80,248	80,632	81,016	81,400
12	Nonresidential Irrigation	217,184	217,475	217,766	218,201	218,637	219,073
13	Residential Irrigation	158,635	158,635	158,635	159,093	159,551	160,009
14	Recycled	467,686	467,686	467,686	467,686	467,686	467,686
15	Total	3,899,741	3,909,701	3,935,836	3,960,317	3,984,799	4,009,281

Raftelis calculated projected water purchase volumes from each water source based on direction from City Staff, as shown in **Table 4-6**. The City purchases treated water from the San Francisco Public Utilities Commission (SFPUC) and Valley Water (VW); recycled water is purchased from South Bay Water Recycling (SBWR).

Table 4-5 shows the water supply mix projected to meet water demand over the study period. Total water use (from **Table 4-4**) is adjusted to account for estimated water loss resulting from leaks in the water distribution system. Costs to purchase this water are forecasted in **Table 5-7**.

Table 4-5: Projected Water Supply Mix

Line	Wholesale Water Purchases	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Potable Volume Purchased							
1	Total Demand	3,432,055	3,442,015	3,468,150	3,492,632	3,517,114	3,541,595
2	Loss%	11.0%	11.0%	11.0%	11.0%	11.0%	11.0%
3	Equals: Total Demand (hcf)	3,856,242	3,867,433	3,896,798	3,924,305	3,951,813	3,979,321
Recycled Volume Purchased							
4	Total Demand	467,686	467,686	467,686	467,686	467,686	467,686
5	Loss%	11.0%	11.0%	11.0%	11.0%	11.0%	11.0%
6	Equals: Total Demand (hcf)	525,490	525,490	525,490	525,490	525,490	525,490
7	SFPUC Minimum Purchase	2,606,052	2,606,052	2,606,052	2,606,052	2,606,052	2,606,052
Water Purchases (hcf)							
8	SFPUC	2,606,052	2,606,052	2,606,052	2,606,052	2,606,052	2,606,052
9	SCVWD ²	1,250,190	1,261,381	1,290,746	1,318,253	1,345,761	1,373,269
10	SBWR	525,490	525,490	525,490	525,490	525,490	525,490
11	Total	4,381,732	4,392,922	4,422,287	4,449,795	4,477,303	4,504,810

5. Water Financial Plan

Section 5 details the development of a proposed five-year financial plan for the water utility over the study period. The following subsections include estimates and projections of annual revenues, O&M expenses, debt service payments, capital expenditures, and reserve funding through FY 2028. The overall purpose of the financial plan is to determine the annual rate revenue needed to achieve sufficient cash flow, maintain adequate reserves, and meet debt coverage requirements.

5.1. Revenues From Current Rates

The City's revenues consist of rate revenues, interest earnings on cash reserves, and other miscellaneous revenues. The rate revenue projections shown below assume that current FY 2023 rates are effective throughout the study period and therefore represent estimated revenues in the absence of any rate increase. This status quo scenario provides a baseline from which Raftelis evaluates the need for revenue adjustments (i.e., rate increases).

Calculated Water Rate Revenues

Raftelis projected water rate revenues from Fixed Meter Charges and Volume Charges for FY 2024 through FY 2028 based on current FY 2023 water rates, the projected number of water meters/private fire lines, and projected annual water use.

Table 5-1 shows projected Fixed Meter Charge revenues under current rates over the study period. Fixed Meter Charge revenues are calculated by connection size/type in each year as follows based on current FY 2023 water rates (from **Table 4-2**), and the projected number of water meters (from **Table 4-3**).

$$\text{Annual Fixed Meter Charge Revenue} = [\text{FY 2023 bi-monthly rate}] \times [\text{Number of connections}] \times [6 \text{ Bills per year}]$$

Table 5-1: Projected Fixed Meter Charge Revenues under Current Rates

Line	Customer Class	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single Family	\$ 2,797,383	\$ 2,805,226	\$ 2,805,226	\$ 2,805,226	\$ 2,805,226	\$ 2,805,226
2	Duplex	49,747	49,747	49,747	49,747	49,747	49,747
3	Condo/Townhouse	487,760	487,760	487,760	487,760	487,760	487,760
4	Multi-Family	880,171	880,171	886,564	892,957	899,350	905,743
5	Mobile Home	30,686	30,686	30,686	30,686	30,686	30,686
6	SCC/Ed Levin	10,229	10,229	10,229	10,229	10,229	10,229
7	City - Domestic	55,541	56,240	56,939	57,195	57,451	57,707
8	City - Irrigation	56,359	57,791	59,223	59,939	60,655	61,371
9	Commercial	707,410	709,098	710,786	712,474	714,161	715,849
10	Industrial	489,318	490,307	491,295	492,284	493,273	494,262
11	Institutional/Gov/Schools	132,971	134,369	135,767	136,040	136,313	136,585
12	Nonresidential Irrigation	320,667	321,110	321,553	322,269	322,985	323,701
13	Residential Irrigation	128,983	128,983	128,983	129,426	129,869	130,313
14	Recycled	348,998	348,998	348,998	348,998	348,998	348,998
15	Private Fire	173,053	173,053	173,053	173,053	173,053	173,053
16	Total	\$ 6,669,278	\$ 6,683,769	\$ 6,696,811	\$ 6,708,284	\$ 6,719,757	\$ 6,731,230

Table 5-2 shows projected Volume Charge revenues under current rates over the study period. Volume Charge revenues are calculated by customer class in each year as follows based on current FY 2023 water rates (from **Table 4-2**) and projected water use (from **Table 4-4**):

$$\text{Annual Volume Charge Revenue} = [\text{FY 2023 rate per HCF}] \times [\text{Annual Water Use in HCF}]$$

Table 5-2: Projected O&M Volume Charge Revenues Under Current Rates

Line	Customer Class	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single Family	\$ 8,166,319	\$ 8,189,799	\$ 8,189,799	\$ 8,189,799	\$ 8,189,799	\$ 8,189,799
2	Duplex	157,223	157,223	157,223	157,223	157,223	157,223
3	Condo/Townhouse	1,309,931	1,309,931	1,309,931	1,309,931	1,309,931	1,309,931
4	Multi-Family	4,182,371	4,182,371	4,314,224	4,446,077	4,577,930	4,709,783
5	Mobile Home	156,518	156,518	156,518	156,518	156,518	156,518
6	SCC/Ed Levin*	17,744	21,039	21,992	22,984	24,056	25,167
7	City - Domestic	102,150	103,942	105,734	106,630	107,526	108,422
8	City - Irrigation	716,906	735,056	753,205	762,280	771,355	780,430
9	Commercial	2,459,423	2,466,712	2,474,001	2,481,291	2,488,580	2,495,869
10	Industrial	2,677,112	2,683,467	2,689,823	2,696,178	2,702,533	2,708,888
11	Institutional/Gov/Schools	522,228	529,946	537,664	540,236	542,809	545,381
12	Nonresidential Irrigation	1,455,136	1,457,082	1,459,029	1,461,949	1,464,869	1,467,789
13	Residential Irrigation	1,062,857	1,062,857	1,062,857	1,065,924	1,068,992	1,072,059
14	Recycled	2,109,263	2,109,263	2,109,263	2,109,263	2,109,263	2,109,263
15	Private Fire	-	-	-	-	-	-
16	Total	\$ 25,095,182	\$ 25,165,207	\$ 25,341,263	\$ 25,506,283	\$ 25,671,383	\$ 25,836,523

Table 5-3: Projected Capital Charge Revenues Under Current Rates

Line	Customer Class	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single Family	\$ 1,316,362	\$ 1,320,147	\$ 1,320,147	\$ 1,320,147	\$ 1,320,147	\$ 1,320,147
2	Duplex	25,343	25,343	25,343	25,343	25,343	25,343
3	Condo/Townhouse	211,153	211,153	211,153	211,153	211,153	211,153
4	Multi-Family	674,173	674,173	695,427	716,681	737,935	759,189
5	Mobile Home	25,230	25,230	25,230	25,230	25,230	25,230
6	SCC/Ed Levin	4,287	4,287	4,287	4,287	4,287	4,287
7	City - Domestic	16,466	16,755	17,044	17,188	17,333	17,477
8	City - Irrigation	115,561	118,487	121,412	122,875	124,338	125,801
9	Commercial	396,444	397,619	398,794	399,969	401,144	402,319
10	Industrial	431,535	432,559	433,583	434,608	435,632	436,657
11	Institutional/Gov/Schools	84,180	85,424	86,668	87,083	87,498	87,912
12	Nonresidential Irrigation	234,559	234,873	235,187	235,657	236,128	236,599
13	Residential Irrigation	171,326	171,326	171,326	171,821	172,315	172,810
14	Recycled	-	-	-	-	-	-
15	Private Fire	-	-	-	-	-	-
16	Total	\$ 3,706,620	\$ 3,717,376	\$ 3,745,602	\$ 3,772,042	\$ 3,798,483	\$ 3,824,923

Other Revenues

Table 5-4 shows all other revenues. All FY 2023 other revenues are based on the latest information available to City staff and do not correspond directly to the City's adopted budget. Additional revenues from FY 2023 through FY 2027 were projected by Raftelis. Interest revenue is estimated beginning in FY 2024 based on estimated fund balances and an assumed interest rate. Water rate revenue from Ed Levin Park is set based on contract equal to the forecasted cost of purchasing water from SFPUC. All other revenues are forecasted to remain constant.

Table 5-4: Projected Other Revenues

Line	Other Revenue Detail	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Operating Fund							
1	Interest Income	\$ 81,674	\$ 91,474	\$ 76,050	\$ 38,365	\$ (18,825)	\$ (97,470)
2	Ed Levin Park	17,744	21,039	21,992	22,984	24,056	25,167
3	Private Fire Connections	173,053	173,053	173,053	173,053	173,053	173,053
4	Subtotal	\$ 272,472	\$ 285,566	\$ 271,094	\$ 234,402	\$ 178,284	\$ 100,750
Capital Fund							
5	Interest Income	\$ 174,995	\$ 192,354	\$ 174,753	\$ 173,334	\$ 107,018	\$ 62,646
6	Development Charges	500,000	300,000	300,000	300,000	300,000	300,000
7	Misc. Other	7,215	7,215	7,215	7,215	7,215	7,215
8	Subtotal	\$ 682,210	\$ 499,569	\$ 481,968	\$ 480,549	\$ 414,233	\$ 369,861
9	Total	\$ 954,682	\$ 785,135	\$ 753,062	\$ 714,951	\$ 592,517	\$ 470,611

Table 5-5 shows a summary of projected revenues under current rates over the study period. This represents expected revenues in the absence of any rate increase over the study period.

Table 5-5: Summary of Projected Revenues Under Current Rates

Line	Revenue Type	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Operating Fund							
1	Fixed Charge	\$ 6,496,225	\$ 6,510,716	\$ 6,523,758	\$ 6,535,231	\$ 6,546,704	\$ 6,558,177
2	Volume Charge	25,077,437	25,144,168	25,319,271	25,483,299	25,647,327	25,811,355
3	Other	272,472	285,634	270,417	232,898	175,872	97,342
4	Subtotal	\$ 31,846,134	\$ 31,940,518	\$ 32,113,445	\$ 32,251,428	\$ 32,369,903	\$ 32,466,874
Infrastructure Fund							
5	Capital Volume Charge	\$ 3,706,620	\$ 3,717,376	\$ 3,745,602	\$ 3,772,042	\$ 3,798,483	\$ 3,824,923
6	Other	682,210	499,569	481,968	480,549	414,233	369,861
7	Subtotal	\$ 4,388,830	\$ 4,216,945	\$ 4,227,570	\$ 4,252,592	\$ 4,212,716	\$ 4,194,784
8	Total	\$ 35,552,753	\$ 35,657,894	\$ 35,859,047	\$ 36,023,470	\$ 36,168,386	\$ 36,291,797

5.2. Operations and Maintenance Expenses

Table 5-6 shows O&M expenses by department over the study period. O&M expenses shown in FY 2023 are from the City's adopted FY 2023 budget with modifications to the water purchase cost and for additional employees related to the City's cross connection control program and SCADA management. All other projections beyond FY 2023 were developed based on inflationary assumptions discussed above.

Table 5-6: O&M Summary by Department

Line	O&M Summary	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Administration	\$ 898,693	\$ 934,641	\$ 972,027	\$ 1,010,908	\$ 1,051,344	\$ 1,093,398
2	Utility Engineering	865,791	1,169,798	1,216,590	1,265,253	1,315,863	1,368,498
3	Utility Maintenance	2,381,145	2,476,391	2,575,446	2,678,464	2,785,603	2,897,027
4	Compliance	245,963	255,801	266,033	276,675	287,742	299,251
5	Water Purchases	21,079,197	23,595,942	25,604,553	27,286,825	29,128,667	31,115,101
6	Non-Departmental	1,234,538	1,283,920	1,335,276	1,388,687	1,444,235	1,502,004
7	Finance Administration	8,171	8,498	8,838	9,191	9,559	9,941
8	Fiscal Services	1,103,052	1,147,174	1,193,061	1,240,784	1,290,415	1,342,031
9	City Attorney	9,000	9,360	9,734	10,124	10,529	10,950
10	Transfer to General Fund	2,688,427	2,795,964	2,907,803	3,024,115	3,145,079	3,270,883
11	Total	\$ 30,513,977	\$ 33,677,488	\$ 36,089,361	\$ 38,191,025	\$ 40,469,036	\$ 42,909,084

Table 5-7 shows the detailed forecast of water purchase costs. The City purchases as much water as possible from VW while still meeting minimum purchase requirements from SFPUC. Costs include a fixed charge of approximately \$120,000 per month and volume rates for each unit of water purchased.

Table 5-7: Water Purchase Cost Detail

Line	Wholesale Water Rates	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Wholesale Volume Rates (hcf)							
1	SFPUC ³	4.76	5.30	5.54	5.79	6.06	6.34
2	SCVWD3 - Groundwater	4.23	4.82	5.51	5.98	6.50	7.07
3	Groundwater Production Charge	3.96	4.56	5.24	5.72	6.24	6.81
4	Treated water surcharge	0.26	0.26	0.26	0.26	0.26	0.26
5	SBWR	3.72	4.32	5.00	5.48	6.00	6.56
6	Groundwater Production Charge	3.96	4.56	5.24	5.72	6.24	6.81
7	Treated water surcharge	(0.24)	(0.24)	(0.24)	(0.24)	(0.24)	(0.24)
Wholesale Water Rate Increases							
8	SFPUC ³	15.9%	11.2%	4.5%	4.5%	4.5%	4.5%
9	SCVWD3 - Groundwater						
10	Groundwater Production Charge	15.0%	15.0%	15.0%	9.1%	9.1%	9.1%
11	Treated water surcharge	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	SBWR						
12	Groundwater Production Charge						
13	Treated water surcharge	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Wholesale Fixed Charges (Monthly)							
14	SFPUC Water Service Monthly Charge	\$ 14,022	\$ 14,022	\$ 14,022	\$ 14,022	\$ 14,022	\$ 14,022
15	BAWSCA Bond Monthly Surcharge	105,472	105,472	105,472	105,472	105,472	105,472
16	Annual Fixed Charge Total	1,433,928	1,433,928	1,433,928	1,433,928	1,433,928	1,433,928
Wholesale Water Total Costs							
17	400-910-4424 SF Wholesale Water	\$ 13,838,736	\$ 15,246,004	\$ 15,871,456	\$ 16,522,969	\$ 17,226,603	\$ 17,956,298
18	400-910-4425 SCVWD Wholesale Water	5,284,855	6,081,965	7,105,901	7,886,042	8,750,827	9,709,261
19	400-910-4427 Recycled Water Purchase	1,955,606	2,267,974	2,627,196	2,877,814	3,151,237	3,449,543
20	Total	21,079,197	23,595,942	25,604,553	27,286,825	29,128,667	31,115,101

5.3. Debt Service

Table 5-8 shows the City's existing debt service obligations associated with its outstanding Series 2019 bonds. These obligations are secured by a pledge of City revenues. The proposed financial plan assumes that no additional debt will be issued by the City over the study period.

Table 5-8: Schedule of Debt Service Payments

Line	Debt Service Forecast	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Series 2019 Debt Service							
1	Principal	\$ 315,000	\$ 325,000	\$ 340,000	\$ 355,000	\$ 375,000	\$ 395,000
2	Interest	732,050	719,450	706,450	689,450	671,700	652,950
3	Subtotal: Series 2019 Debt Service	\$ 1,047,050	\$ 1,044,450	\$ 1,046,450	\$ 1,044,450	\$ 1,046,700	\$ 1,047,950

5.4. Capital Improvement Plan

The City's adopted FY 2023 budget includes approximately \$1.5M in capital project costs. The City has also developed a long-term utility master plan that outlines capital project expenditures required through 2040 to address current and future system needs. These projects are shown in detail in **Table 5-9** and amount to approximately \$32M over the next five years. The projects are associated with distribution system reliability, aging infrastructure replacement, fire flow improvements, or system-wide reliability and safety. The capital costs assume an annual capital inflation factor of 6% per year. The final line of **Table 5-9** presents the total proposed annual capital spending to be funded from rates and the use of reserves.

Table 5-9: Capital Improvement Plan

Line	Capital Project	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Fire Flow Pipeline Improvements	-	-	-	2,754,255	1,340,535	1,471,435
2	Interconnection - Fire Flow	-	-	-	-	479,000	-
3	Interconnection - Fire Flow	-	-	-	-	479,000	-
4	Interconnection - Fire Flow	-	-	-	-	14,000	-
5	Pipeline Condition Assessment	-	-	-	500,000	-	-
6	Detailed Facility Condition Assess	-	-	-	2,240,000	-	-
7	Water Meter Test Program	-	-	-	100,000	-	-
8	Ongoing Asset Renewal and Repl	-	-	-	1,684,667	1,684,667	1,684,667
9	Physical Security Updates - Perim	-	-	-	30,000	-	-
10	Site Security Protocols	-	-	-	20,000	-	-
11	Harden Critical Transmission Mair	-	-	-	-	-	2,000,000
12	ShakeAlert Participation	-	-	-	85,000	-	-
13	Previously Adopted Capital Project	1,515,000	4,090,000	2,790,000	530,000	1,905,000	-
14	Utility Billing System	-	300,000	-	-	-	-
15	Subtotal	\$ 1,515,000	\$ 4,390,000	\$ 2,790,000	\$ 7,943,922	\$ 5,902,202	\$ 5,156,102
16	CIP Inflation Factor	106.00%	112.36%	119.10%	123.87%	128.82%	133.97%
17	Total Proposed Capital Spending	\$ 1,605,900	\$ 4,932,604	\$ 3,322,935	\$ 9,839,791	\$ 7,603,233	\$ 6,907,789

5.5. Financial Policies

Utility-specific financial policies must be considered during the financial planning process. Financial policies typically define key financial metrics that an agency strives to meet or exceed.

Required Debt Coverage

The City must meet the minimum coverage requirements on its outstanding debt to ensure that it meets the associated debt covenants. The required debt service coverage ratio (DSCR) is 1.15, which means that the City's net revenue must amount to at least 1.15 times annual debt service. Net revenues equal revenues less O&M expenses. Annual debt service includes annual principal and interest payments on all outstanding debt.

Reserve Targets

Prudent fiscal management requires that the City maintain reserve balances to provide sufficient working capital, maintain necessary cash on hand to efficiently award construction contracts, and provide funding during emergencies. The City's current policy consists of several targets:

- » **Capital Reserve for Emergencies:** The City's adopted O&M reserve target is 30 percent of annual O&M expenses. This is intended to ensure sufficient working capital during short-term fluctuations in cash flow.

- » **Rate Stabilization Reserve:** The target is 16.67 percent of annual operating expenses.
- » **CALPERS Reserve:** Twenty percent of any remaining annual surplus after meeting O&M expenses and the reserve targets above are transferred to the CALPERS fund.
- » **Infrastructure Fund:** The remaining 80 percent portion of any operating surplus is transferred to the Infrastructure funds to be spent on capital projects in future years.

5.6. Status Quo Financial Plan

In order to evaluate the need for revenue adjustments (i.e., rate increases), Raftelis first developed a status quo financial plan. The status quo financial plan assumes that current FY 2023 rates remain unchanged over the study period. **Table 5-10** combines projected operating revenues (from **Table 5-5**), O&M expenses (from **Table 5-6**), and water purchases (from **Table 5-7**) to generate cash flow, ending balance, and debt coverage projections under the status quo.

Under the status-quo financial plan, net cash change (revenue less total cash expenses) is negative for most years of the study period and results in a depletion of the Capital Reserve for Emergencies and Rate Stabilization Funds by the end of FY 2027. The status quo financial plan is insufficient to meet the City's needs. This demonstrates a clear need for revenue adjustments over the study period to increase rate revenues and achieve financial sustainability.

Table 5-10: Status Quo Operating Financial Plan

Line	Operating Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Rate Revenue	\$ 31,573,662	\$ 31,654,884	\$ 31,843,028	\$ 32,018,530	\$ 32,194,031	\$ 32,369,532
2	Other Misc. Revenue	272,472	405,634	395,217	362,690	310,856	237,725
3	Use of Reserves	-	1,616,971	3,851,116	5,809,805	7,964,149	10,301,827
4	Total	\$ 31,846,134	\$ 33,677,488	\$ 36,089,361	\$ 38,191,025	\$ 40,469,036	\$ 42,909,084
Outflows							
5	City O&M	\$ 9,434,780	\$ 10,081,546	\$ 10,484,808	\$ 10,904,200	\$ 11,340,368	\$ 11,793,983
6	Water Purchases	21,079,197	23,595,942	25,604,553	27,286,825	29,128,667	31,115,101
Reserve Contributions							
7	<i>Capital for Emergencies</i>	986,754	-	-	-	-	-
8	<i>Rate Stabilization</i>	345,403	-	-	-	-	-
9	<i>Pension</i>	-	-	-	-	-	-
10	Total	\$ 31,846,134	\$ 33,677,488	\$ 36,089,361	\$ 38,191,025	\$ 40,469,036	\$ 42,909,084
11	Rate Increase		0.0%	0.0%	0.0%	0.0%	0.0%
12	Cumulative Rate Increase		0.0%	0.0%	0.0%	0.0%	0.0%
13	Debt Service Coverage Ratio	4.81	2.01	(0.10)	(1.95)	(3.98)	(6.18)

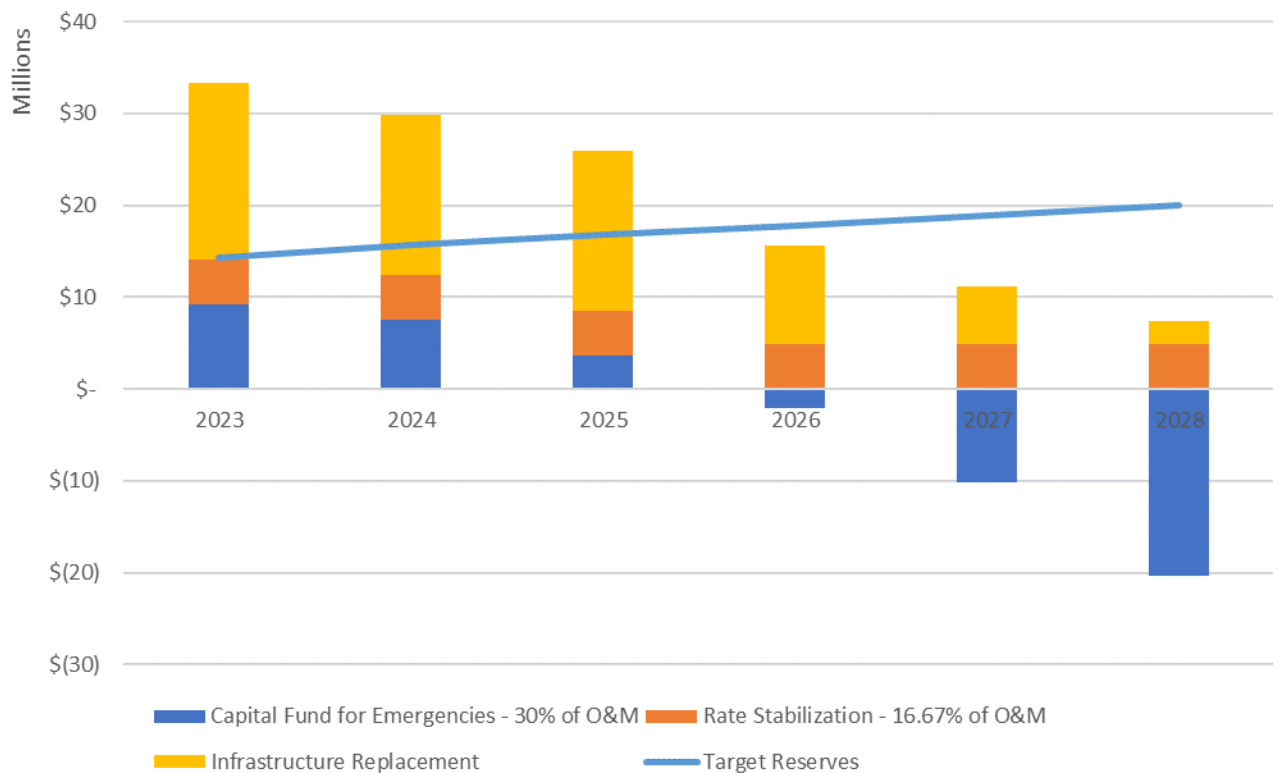
Table 5-11 presents the status quo capital financing plan. The City intends to use the dedicated capital charge, existing fund balance, and other miscellaneous revenues to make debt service payments (from **Table 5-8**) and finance the completion of its capital plan (from **Table 5-9**).

Table 5-11: Status Quo Capital Financial Plan

Line	Infrastructure Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Capital Charge Revenue	\$ 3,706,620	\$ 3,717,376	\$ 3,745,602	\$ 3,772,042	\$ 3,798,483	\$ 3,824,923
2	Developer Fees and Interest	682,210	499,569	481,968	480,549	414,233	369,861
3	Use of Infrastructure Reserves	-	1,760,109	141,815	6,631,650	4,437,218	3,760,956
4	Total	\$ 4,388,830	\$ 5,977,054	\$ 4,369,385	\$ 10,884,241	\$ 8,649,933	\$ 7,955,739
Outflows							
5	Capital Projects	\$ 1,605,900	\$ 4,932,604	\$ 3,322,935	\$ 9,839,791	\$ 7,603,233	\$ 6,907,789
6	Debt Service	1,047,050	1,044,450	1,046,450	1,044,450	1,046,700	1,047,950
7	Contribution to Infrastructure Reserves	1,735,880	-	-	-	-	-
8	Total	\$ 4,388,830	\$ 5,977,054	\$ 4,369,385	\$ 10,884,241	\$ 8,649,933	\$ 7,955,739

Figure 5-1 shows the City's projected ending balances under the status quo. The operating reserve targets are represented by blue line. Projected ending balances are represented by the stacked columns. The City's total reserves will fall below the operating target in FY 2026, with reserves to be fully depleted by the end of FY 2028.²

Figure 5-1: Status Quo Financial Plan – Projected Ending Operating and Capital Balances



² This scenario presents negative reserve balances in order to demonstrate the need for rate increases. The City is unable to implement any plan that results in negative reserves. This scenario should not be considered an alternative option.

Table 5-12: Status Quo Financial Plan – Projected Reserves

Line	End of Year Reserves	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Capital for Emergencies	\$ 9,154,193	\$ 7,537,222	\$ 3,686,106	\$ (2,123,699)	\$ (10,087,848)	\$ (20,389,674)
2	Rate Stabilization	4,883,777	4,883,777	4,883,777	4,883,777	4,883,777	4,883,777
3	Pension	822,539	822,539	822,539	822,539	822,539	822,539
4	Infrastructure	19,235,372	17,475,263	17,333,448	10,701,798	6,264,581	2,503,625
5	Total	\$ 34,095,880	\$ 30,718,801	\$ 26,725,870	\$ 14,284,415	\$ 1,883,049	\$ (12,179,733)

5.7. Proposed Financial Plan

The status quo financial plan demonstrates that the City must increase its revenues from water rates over the study period in order to adequately fund its operating and capital expenditures, meet required debt coverage, and generate sufficient reserve funding. Raftelis worked closely with City staff to select the proposed annual revenue adjustments shown in **Table 5-13**. Revenue adjustments represent annual percentage increases in rate revenue relative to how much rate revenue would have been collected under the prior year's water rates.

Table 5-13: Proposed Revenue Adjustments

Line	Description	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Effective Date of Revenue Adjustment	July 1, 2023	July 1, 2024	July 1, 2025	July 1, 2026	July 1, 2027
2	O&M Revenue Adjustment	4.9%	6.5%	6.5%	6.5%	6.5%
3	Capital Revenue Adjustment	5.0%	5.0%	5.0%	5.0%	5.0%
4	Average Bill Increase - 14 hcf	6.4%	6.4%	6.4%	6.4%	6.4%

Table 5-14 shows the proposed financial plan pro forma. Revenue adjustments over the study period generate significant increases in rate revenues over the study period. This results in positive net operating cash flow and sufficient debt coverage in all years.

Table 5-14: Proposed Operating Financial Plan

Line	Operating Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Rate Revenue	\$ 31,573,662	\$ 33,205,973	\$ 35,574,554	\$ 38,095,711	\$ 40,794,317	\$ 43,682,787
2	Other Misc. Revenue	272,472	405,634	410,728	415,671	425,139	439,154
3	Use of Reserves	-	65,881	104,080	-	-	-
4	Total	\$ 31,846,134	\$ 33,677,488	\$ 36,089,361	\$ 38,511,383	\$ 41,219,456	\$ 44,121,941
Outflows							
5	City O&M	\$ 9,434,780	\$ 10,081,546	\$ 10,484,808	\$ 10,904,200	\$ 11,340,368	\$ 11,793,983
6	Water Purchases	21,079,197	23,595,942	25,604,553	27,286,825	29,128,667	31,115,101
Reserve Contributions							
7	<i>Capital for Emergencies</i>	986,754	-	-	320,358	750,420	1,212,857
8	<i>Rate Stabilization</i>	345,403	-	-	-	-	-
9	<i>Pension</i>	-	-	-	-	-	-
10	Total	\$ 31,846,134	\$ 33,677,488	\$ 36,089,361	\$ 38,511,383	\$ 41,219,456	\$ 44,121,941
11	Rate Increase		4.9%	6.5%	6.5%	6.5%	6.5%
12	Cumulative Rate Increase		4.9%	11.7%	19.0%	26.7%	35.0%
13	Debt Service Coverage Ratio	4.81	3.67	3.85	4.49	5.13	5.82

Table 5-15: Proposed Capital Financial Plan

Line	Infrastructure Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Capital Charge Revenue	\$ 3,706,620	\$ 3,903,245	\$ 4,129,526	\$ 4,366,610	\$ 4,617,079	\$ 4,881,679
2	Developer Fees and Interest	682,210	499,569	483,826	486,266	425,952	389,883
3	Use of Infrastructure Reserves	-	1,574,240	-	6,031,365	3,606,902	2,684,177
4	Total	\$ 4,388,830	\$ 5,977,054	\$ 4,613,352	\$ 10,884,241	\$ 8,649,933	\$ 7,955,739
Outflows							
5	Capital Projects	\$ 1,605,900	\$ 4,932,604	\$ 3,322,935	\$ 9,839,791	\$ 7,603,233	\$ 6,907,789
6	Debt Service	1,047,050	1,044,450	1,046,450	1,044,450	1,046,700	1,047,950
7	Contribution to Infrastructure Reserves	1,735,880	-	243,968	-	-	-
8	Total	\$ 4,388,830	\$ 5,977,054	\$ 4,613,352	\$ 10,884,241	\$ 8,649,933	\$ 7,955,739

Figure 5-2 shows the City's projected ending balance under the proposed financial plan. The light blue line indicates the total target balance of 46.67 percent of O&M. The proposed financial plan will draw heavily on reserves as the master plan is implemented in FY 2026. Although not detailed in this report, projections indicate that the City will be able to cover all operating and capital expenses without the use of reserves beginning in FY 2029.

Figure 5-2: Proposed Financial Plan – Projected Ending Balances

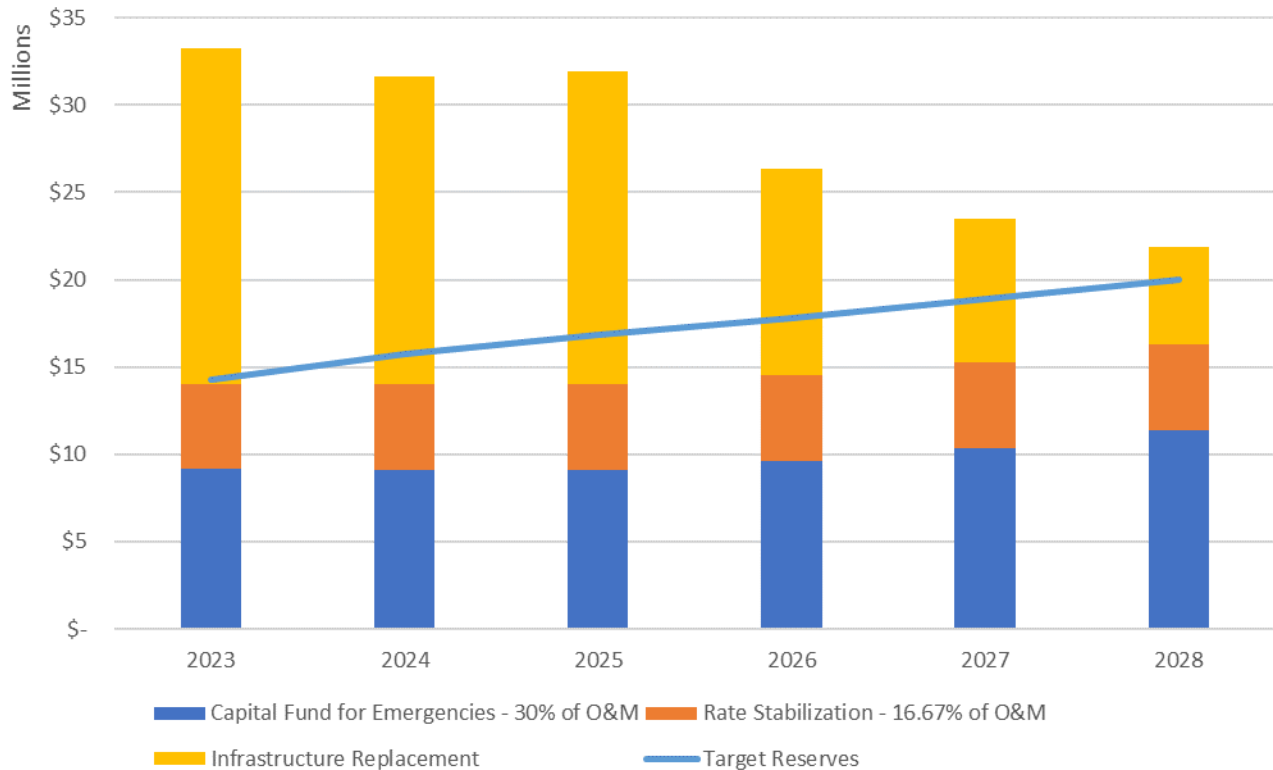


Table 5-16: Proposed Financial Plan – Projected Ending Balances

Line	End of Year Reserves	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Capital for Emergencies	\$ 9,154,193	\$ 9,088,312	\$ 8,984,232	\$ 9,304,590	\$ 10,055,010	\$ 11,267,867
2	Rate Stabilization	4,883,777	4,883,777	4,883,777	4,883,777	4,883,777	4,883,777
3	Pension	822,539	822,539	822,539	822,539	822,539	822,539
4	Infrastructure	19,235,372	17,661,132	17,905,099	11,873,735	8,266,833	5,582,656
5	Total	\$ 34,095,880	\$ 32,455,759	\$ 32,595,647	\$ 26,884,640	\$ 24,028,159	\$ 22,556,839

6. Water Cost of Service Analysis

Section 6 details the cost of service (COS) analysis performed for FY 2024. The COS analysis allocates the overall rate revenue requirement to customer classes based on their proportion of use of and burden on the City's water system. This provides the basis for the development of proposed FY 2024 water rates.

6.1. Methodology

The first step in the COS analysis is to determine the revenue required from rates. The total revenue requirement is determined in the financial plan and the proposed revenue adjustments in **Section 5**. The framework and methodology utilized to develop the COS analysis and to apportion the revenue requirement to each customer class and tier is informed by the processes outlined in the AWWA Manual M1.

COS analyses are tailored specifically to meet the unique needs of each water system. However, there are several distinct steps in every COS analysis to recover costs from customers in an accurate, equitable, and defensible manner:

1. **Cost Component Allocation:** The revenue requirement is allocated to demand parameters and customer characteristics based on the design and functional parameters that characterize each expense.
2. **Unit Cost Development:** The revenue requirement for each cost component is divided by the appropriate units of service to determine the unit cost for each rate component.
3. **Distribution of Costs to Customer Classes:** The unit costs are applied to the units of service from each customer class to allocate the revenue requirement to customers in accordance with their impact on the water system.
4. **Rate Design:** The costs allocated to each class and the units of service for each class are used to develop fixed and volume charges.

6.2. Revenue Requirement

Table 6-1 shows the rate revenue requirement for FY 2024 (also referred to as the test year or rate-setting year). The revenue requirement is split into operating and capital categories which are later allocated to the O&M and capital rates. The expenses (Lines 1-4) are equal to FY 2024 expenses. The miscellaneous revenue (Line 6) includes interest earnings and miscellaneous revenues that are applied as offsets to the final rate revenue requirement. The contribution to reserves adjustment (Line 7) is equal to FY 2024 net cash change and represents the increase in the rate revenue requirement resulting from an addition to operating reserves and use of infrastructure reserves in FY 2024. All aforementioned values are from the proposed financial plan pro formas (**Table 5-14 and Table 5-15**). The final rate revenue requirement (Line 8) is calculated as follows:

Total revenue required from rates (Line 8) = Revenue requirements (Line 5) + Other Revenues (Line 6) + Reserves (Line 7)

Table 6-1: FY 2024 Revenue Required from Rates

Line	Description	Operating	Capital	Total
Expenses				
1	City O&M	\$ 10,081,546		\$ 10,081,546
2	Water Purchases	23,595,942		23,595,942
3	Debt Service		1,044,450	1,044,450
4	CIP Projects		4,932,604	4,932,604
5	Subtotal	\$ 33,677,488	\$ 5,977,054	\$ 39,654,542
6	Other Revenues	(405,634)	(499,569)	\$ (905,203)
7	Contribution to (from) Reserves	\$ (65,881)	\$ (1,574,240)	\$ (1,640,121)
8	Revenue Required from Rates	\$ 33,205,973	\$ 3,903,245	\$ 37,109,218

6.3. Allocation of Expenses to Rate Components

After determining the revenue requirement, the next step of the COS analysis is to allocate O&M to the various rate components:

- » **Potable Supply:** Part of the potable O&M volume rate intended to directly recover the cost of purchasing and pumping treated water.
- » **Recycled Supply:** part of the recycled O&M volume rate intended to directly recover the cost of purchasing water.
- » **Customer:** Part of the bi-monthly fixed charge that recovers the cost of providing customer service and billing. These costs are recovered from all customers equally, regardless of their size.
- » **Meter Capacity:** part of the bi-monthly fixed charge that recovers costs in proportion to the capacity of the customer meter size in recognition of the fact that customers with larger meters place a higher demand on the water system.

Table 6-2 shows the basis for allocating each O&M expense category to the various rate components. Most expense categories are allocated entirely to the corresponding cost causation component. The allocation basis for functional categories are as follows:

- » **Electricity:** Primarily related to operating pump stations to deliver potable water. This costs scales closely with the quantity of water used.
- » **Potable and Recycled Water Purchases:** Allocated directly to the corresponding cost components for those customers to ensure that the costs are recovered by the customers who use the water.
- » **Finance Administration and Fiscal Services:** These costs are related to customer service, billing, and general financial services. These services are provided to customers equally, regardless of their size or quantity of water used.

- » **Utility Engineering, Utility Maintenance, Compliance, and other Non-Departmental:** These are primarily allocated to the Meter Capacity rate component. Many engineering and maintenance expenses are related to providing capacity within the system and ensuring reliable service to all customers at all times, regardless of the amount of water used. Recovering these costs on a fixed basis also provides revenue stability for the City. A portion of these expenses (approximately \$120,000) are related to maintaining the recycled water distribution system and are therefore allocated to those customers alone.
- » **Administration, Transfer to General Fund, City Attorney, and Misc. Revenue:** These expenses and revenues are primarily allocated to the General rate component, which is reallocated to all other rate components on Line 18. The SBWR reimbursement of City operating costs related to the recycled water system is fully credited to recycled water customers.

Table 6-2: Allocation of Revenue Requirement

Line	Cost Center	FY 2024 Expense	Potable Volume	Recycled Volume	Customer	Meter Capacity	General	Capital
City O&M Expenses								
1	Administration	\$ 934,641					100.0%	
2	Utility Engineering	1,169,798		3.3%		96.7%		
3	Utility Maintenance	2,476,391		3.3%		96.7%		
4	Compliance	255,801				100.0%		
5	Non-Departmental	535,114				100.0%		
6	Electricity	748,805	100.0%					
7	Finance Administration	8,498			100.0%			
8	Fiscal Services	1,147,174			100.0%			
9	City Attorney	9,360					100.0%	
10	Transfer to General Fund	2,795,964					100.0%	
11	Subtotal City O&M	\$ 10,081,546						
Water Purchases								
12	Potable	21,327,968	100.0%					
13	Recycled	2,267,974		100.0%				
14	Subtotal Water Purchases	\$ 23,595,942						
15	Contribution to Reserves	(65,881)				100.0%		
16	Misc. Revenues	(405,634)		29.6%			70.4%	
17	Subtotal Operating Expenses	\$ 33,205,973	22,076,774	2,267,974	1,155,672	4,251,222	3,454,331	-
18	Reallocation of General	-	2,563,236	263,324	134,180	493,591	\$ (3,454,331)	
19	Total Operating Expenses	\$ 33,205,973	\$ 24,640,010	\$ 2,531,298	\$ 1,289,852	\$ 4,744,813	\$ -	\$ -
20	Capital Expenses	3,903,245						3,903,245
21	Total Units of Service		3,438,046	467,686	95,253	212,590		3,438,046
	<i>Units</i>		<i>Potable Volume (hcf)</i>	<i>Recycled Volume (hcf)</i>	<i>Number of Bills</i>	<i>5/8" Eq. Meters</i>		<i>Potable Volume (hcf)</i>
22	Unit Cost		\$ 7.17	\$ 5.41	\$ 13.54	\$ 22.32		\$ 1.14

7. Proposed Water Rates

Section 7 details the proposed water rate calculations. Proposed FY 2024 rates are calculated directly from the results of the COS allocations (from **Section 6**). All proposed rates beginning in FY 2025 are calculated by simply increasing the prior year's proposed rate by the annual revenue adjustment (from **Table 5-13**).

7.1. Proposed FY 2024 Fixed Meter Charges

Table 7-1 shows the detailed calculation of proposed FY 2024 Fixed Meter Charges which are based on Customer and Meter Capacity unit rates. Customer costs do not vary by connection type or size. Therefore, the Customer unit rate, previously derived in **Table 6-2**, is applied uniformly to all Fixed Meter Charges. Because Capacity costs vary by meter size based on hydraulic capacity, the unit cost is multiplied by the AWWA capacity ratio for each meter size. For example, the AWWA capacity ratio for a 1" meter is 1.67, which is multiplied by \$22.32 to derive the meter component cost of \$33.48. The two fixed charge components are added to derive the total proposed bi-monthly potable fixed charge. The fixed charge for recycled customers is simply the Customer component in order to recover customer service and billing costs without also recovering the potable O&M costs in the Meters component.

Table 7-1: Proposed FY 2024 Fixed Meter Charge Calculation

Line	Potable Fixed Charge		Total		Current	% Change	% Change
	Calculation	Customer	Meters	Proposed			
1	5/8"	\$ 13.54	\$ 22.32	\$ 35.87	\$ 34.10	5.2%	\$ 1.77
2	3/4"	13.54	33.48	47.03	51.14	-8.0%	(4.11)
3	1"	13.54	55.80	69.34	85.24	-18.7%	(15.90)
4	1 1/2"	13.54	111.60	125.14	170.48	-26.6%	(45.34)
5	2"	13.54	178.55	192.10	272.76	-29.6%	(80.66)
6	3"	13.54	390.58	404.13	511.43	-21.0%	(107.30)
7	4"	13.54	703.05	716.60	852.38	-15.9%	(135.78)
8	6"	13.54	1,450.74	1,464.29	1,704.76	-14.1%	(240.47)
9	8"	13.54	3,124.68	3,138.22	1,704.76	84.1%	1,433.46
10	10"	13.54	4,687.02	4,700.56	1,704.76	175.7%	2,995.80

7.2. Proposed FY 2024 Volume Charges

Table 7-2 shows the proposed FY 2024 Volume Charges as derived in **Table 6-2**.

Table 7-2: Proposed FY 2024 Volume Charge Calculation

Line	Rate	Proposed	Current	% Change	% Change
1	Potable	\$ 7.17	\$ 6.70	7.0%	\$ 0.47
2	Recycled	5.41	4.51	20.0%	0.90
3	Capital	1.14	1.08	5.1%	0.06

7.3. Proposed Five-Year Rate Schedule

Table 7-3 shows the proposed five-year schedule of water rates through FY 2027. Proposed FY 2024 Fixed Meter Charges (see **Table 7-1**) and Volume Charges (**Table 7-2**) were calculated in the preceding subsections. All proposed rates beginning in FY 2025 are calculated by increasing the prior year's proposed rate by the proposed annual revenue adjustment (from **Table 5-13**). Current FY 2023 water rates (from **Table 4-2**) are also shown.

Table 7-3: Proposed Five-Year Water Rate Schedule

Bi-Monthly Potable Fixed		FY 2023		FY 2024		FY 2025		FY 2026		FY 2027		FY 2028	
Line	Charges												
1	5/8"	\$	34.10	\$	35.87	\$	38.21	\$	40.70	\$	43.35	\$	46.17
2	3/4"		51.14		47.03		50.09		53.35		56.82		60.52
3	1"		85.24		69.34		73.85		78.66		83.78		89.23
4	1 1/2"		170.48		125.14		133.28		141.95		151.18		161.01
5	2"		272.76		192.10		204.59		217.89		232.06		247.15
6	3"		511.43		404.13		430.40		458.38		488.18		519.92
7	4"		852.38		716.60		763.18		812.79		865.63		921.90
8	6"		1,704.76		1,464.29		1,559.47		1,660.84		1,768.80		1,883.78
9	8"		1,704.76		3,138.22		3,342.21		3,559.46		3,790.83		4,037.24
10	10"		1,704.76		4,700.56		5,006.10		5,331.50		5,678.05		6,047.13

Bi-Monthly Recycled Fixed		FY 2023		FY 2024		FY 2025		FY 2026		FY 2027		FY 2028	
Line	Charges												
1	5/8"	\$	34.10	\$	13.54	\$	14.43	\$	15.37	\$	16.37	\$	17.44
2	3/4"		51.14		13.54		14.43		15.37		16.37		17.44
3	1"		85.24		13.54		14.43		15.37		16.37		17.44
4	1 1/2"		170.48		13.54		14.43		15.37		16.37		17.44
5	2"		272.76		13.54		14.43		15.37		16.37		17.44
6	3"		511.43		13.54		14.43		15.37		16.37		17.44
7	4"		852.38		13.54		14.43		15.37		16.37		17.44
8	6"		1,704.76		13.54		14.43		15.37		16.37		17.44
9	8"		1,704.76		13.54		14.43		15.37		16.37		17.44
10	10"		1,704.76		13.54		14.43		15.37		16.37		17.44

Line	Volume Charges	FY 2023		FY 2024		FY 2025		FY 2026		FY 2027		FY 2028	
1	Potable	\$	6.70	\$	7.17	\$	7.64	\$	8.14	\$	8.67	\$	9.24
2	Recycled		4.51		5.41		5.77		6.15		6.55		6.98
3	Capital		1.08		1.14		1.20		1.26		1.33		1.40

7.4. Bi-Monthly Bill Impacts

Table 7-4 shows sample bi-monthly bills for an average residential customer with a 5/8" meter using 14 hcf per bi-monthly billing period. **Table 7-5** presents a water bill under current and FY 2024 rates for a similar customer at different water use levels.

Table 7-4: Average Residential Bill Forecast

Line	Typical Bill - 14 hcf	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Water Charges							
1	Fixed Charge	\$ 34.10	\$ 35.87	\$ 38.21	\$ 40.70	\$ 43.35	\$ 46.17
2	Volume Charge	93.80	100.38	106.96	113.96	121.38	129.36
3	Capital Charge	15.12	15.96	16.80	17.64	18.62	19.60
4	Subtotal	\$ 143.02	\$ 152.21	\$ 161.97	\$ 172.30	\$ 183.35	\$ 195.13
5	Percent Change		6.4%	6.4%	6.4%	6.4%	6.4%

Table 7-5: Residential Bill Impacts at Varying Levels of Water Use

Use	Current		Proposed Rates		
	Bill	Bill	\$ Change	% Change	
0	\$ 34.10	\$ 35.87	\$ 1.77	5.2%	
1	41.88	44.18	2.30	5.5%	
2	49.66	52.49	2.83	5.7%	
3	57.44	60.80	3.36	5.8%	
4	65.22	69.11	3.89	6.0%	
5	73.00	77.42	4.42	6.1%	
6	80.78	85.73	4.95	6.1%	
7	88.56	94.04	5.48	6.2%	
8	96.34	102.35	6.01	6.2%	
9	104.12	110.66	6.54	6.3%	
10	111.90	118.97	7.07	6.3%	
11	119.68	127.28	7.60	6.4%	
12	127.46	135.59	8.13	6.4%	
13	135.24	143.90	8.66	6.4%	
14	143.02	152.21	9.19	6.4%	
15	150.80	160.52	9.72	6.4%	
16	158.58	168.83	10.25	6.5%	
17	166.36	177.14	10.78	6.5%	
18	174.14	185.45	11.31	6.5%	
19	181.92	193.76	11.84	6.5%	
20	189.70	202.07	12.37	6.5%	
21	197.48	210.38	12.90	6.5%	
22	205.26	218.69	13.43	6.5%	
23	213.04	227.00	13.96	6.6%	
24	220.82	235.31	14.49	6.6%	
25	228.60	243.62	15.02	6.6%	

8. Wastewater Utility Key Inputs and Assumptions

Raftelis developed a rate model in Microsoft Excel to project financial and rate calculations over a five-year study period through FY 2028. The City's fiscal year spans from July 1 through June 30. Projections in future years were generally made based on estimated FY 2023 data using key assumptions outlined below. All assumptions were discussed with and reviewed by City staff to ensure that the City's unique characteristics were incorporated. Note that most table values shown throughout this report are rounded to the last digit shown and may therefore not add precisely to the totals shown.

8.1. Available Fund Balance

Table 8-1 presents the available fund balance as of the end of FY 2022 and beginning of FY 2023. The financial plan presented in this report does not propose to spend any of the Capital Reserve for Emergencies or Rate Stabilization Fund; however, a significant portion of the existing Infrastructure Fund balance will be used for the construction of future capital projects identified in the master plan, particularly the Force Main A project in FY 2026.

Table 8-1: FY 2023 Beginning Fund Balances

Line	Fund Description	Balance
Wastewater Utility		
1	Capital Reserve for Emergencies	\$ 3,143,350
2	Rate Stabilization	2,095,986
3	CALPERS	3,164,653
4	Infrastructure	34,541,175
5	Total	\$ 42,945,164

8.2. Current Wastewater Rates

Table 8-2 shows the current adopted rate schedule developed during the prior rate study. Customers are currently subject to two primary charges: 1) bi-monthly Fixed Charges and 2) Volume Charges per hundred cubic feet (HCF)³ of water delivered. Fixed charges for the residential classes (Single Family, Multi-Family, and Mobile Homes) are charged per ERU⁴. Fixed charges for the commercial classes are levied on a per account basis. Only commercial customers are subject to a volumetric charge based on water use; this rate varies between classes depending on the unique wastewater quality characteristics of each class.

³ One HCF equals approximately 748 gallons.

⁴ ERU = Equivalent Residential Unit. One dwelling unit, such as a home, apartment, or condominium is one ERU.

Table 8-2: Current Wastewater Rate Schedule

Line	Customer Class	Fixed Charge	Volume Charge
1	Single-Family	\$ 124.14	\$ -
2	Multi-Family	95.34	-
3	Mobile Home	78.28	-
4	Schools/Colleges	27.35	9.99
5	Motels and Hotels	27.35	5.75
6	General Office	27.35	6.84
7	City of Milpitas	27.35	5.80
8	Service Stations	27.35	5.70
9	Eat/Drink Establishments	27.35	9.06
10	Convalescent Hosp/Daycare	27.35	5.60
11	Personal Services, Laundrys	27.35	5.31
12	Electrical/Electronics	27.35	6.72
13	Machinery Manufacture	27.35	8.43
14	RockTenn (Jefferson Smurfit)	27.35	10.46
15	T. Marzetti Co.	27.35	12.09
16	Prudential Overall Supply	27.35	8.42
17	Evoqua Water Technologies	27.35	7.06
18	Elmwood Rehabilitation	27.35	6.69
19	Linear Technology	27.35	6.88
20	DS Waters of America	27.35	6.04
21	Magic Tech & Headway Tech	27.35	7.32
22	Lucky Pure Water	27.35	5.29
23	Milpitas Materials	27.35	5.29
24	Union Pacific Railroad	27.35	7.35
25	Cisco	27.35	6.72

8.3. Financial Assumptions

Inflationary assumptions were used to project O&M expenses beyond FY 2023. All inflationary factors were reviewed by City staff and are based on historical and anticipated cost increases. For O&M expenses, a general inflation rate of 4 percent is consistent with long-term changes in the Consumer Price Index (CPI) and near term inflation forecasts from the Federal Reserve Bank of Philadelphia, though recent inflation is above this amount. Interest earnings on cash reserves are projected assuming a 1 percent annual interest rate.

8.4. Projected Service Connections

Customer account growth projections are necessary to estimate water demand and rate revenues over the study period. City staff provided Raftelis with the number of ERUs and commercial accounts for FY 2023; projections from 2023 data are based on forecasted growth rates detailed in the City's METRO plan. **Table 8-3** shows the projected number of units by customer class in FY 2023 and each year of the study period.

Table 8-3: Projected Number of Billed ERUs and Commercial Accounts

Line	Customer Class	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family	75,240	75,459	75,678	75,813	75,949	76,084
2	Multi-Family	70,248	72,904	75,704	78,504	81,304	84,104
3	Mobile Home	3,126	3,126	3,126	3,126	3,126	3,126
4	Schools/Colleges	402	414	425	433	440	447
5	Motels and Hotels	156	157	157	158	158	159
6	General Office	2,226	2,234	2,242	2,251	2,259	2,268
7	City of Milpitas	228	235	241	245	250	254
8	Service Stations	252	253	254	255	256	257
9	Eat/Drink Establishments	1,026	1,030	1,033	1,037	1,041	1,045
10	Convalescent Hosp/Daycare	144	144	144	144	144	144
11	Personal Services, Laundrys	348	348	348	348	348	348
12	Electrical/Electronics	612	614	616	619	621	624
13	Machinery Manufacture	84	84	85	85	85	86
14	RockTenn (Jefferson Smurfit)	6	6	6	6	6	6
15	T. Marzetti Co.	12	12	12	12	12	12
16	Prudential Overall Supply	12	12	12	12	12	12
17	Evoqua Water Technologies (	12	12	12	12	12	12
18	Elmwood Rehabilitation	30	30	30	30	30	30
19	Linear Technology	36	36	36	36	36	36
20	DS Waters of America	12	12	12	12	12	12
21	Magic Tech & Headway Tech	12	12	12	12	12	12
22	Lucky Pure Water	6	6	6	6	6	6
23	Milpitas Materials	6	6	6	6	6	6
24	Union Pacific Railroad	12	12	12	12	12	12
25	Cisco	30	30	30	30	30	30
26	Total	154,278	157,187	160,239	163,203	166,167	169,131

8.5. Projected Wastewater Volumes

City staff provided Raftelis with projected total annual wastewater use data by customer class for FY 2023. Raftelis worked closely with City staff to develop water use projections for FY 2024 through FY 2028. Demand projections depend on two key assumptions: account growth and water demand factor (i.e., water use per account). Beginning in FY 2023, annual water use was projected at the customer class level using an annual water demand growth rate to determine total annual water use. Billable wastewater volumes for commercial customers are based on water use with a return factor applied. Volumes for the residential classes in this Table are not used for revenue calculations, but are used below in the cost of service analysis. **Table 8-4** shows projected water use by customer class over the study period. The wastewater use per account growth rate is forecasted at 0 percent through the study period.

Table 8-4: Projected Wastewater Use

Line	Customer Class Volume	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family	1,107,882	1,111,104	1,114,326	1,116,321	1,118,315	1,120,310
2	Multi-Family	825,451	856,655	889,556	922,457	955,359	988,260
3	Mobile Home	35,875	35,875	35,875	35,875	35,875	35,875
4	Schools/Colleges	17,572	18,084	18,596	18,913	19,230	19,546
5	Motels and Hotels	74,758	75,029	75,300	75,590	75,880	76,170
6	General Office	121,612	122,054	122,495	122,966	123,438	123,910
7	City of Milpitas	11,997	12,347	12,696	12,912	13,129	13,345
8	Service Stations	16,558	16,618	16,678	16,742	16,807	16,871
9	Eat/Drink Establishments	128,268	128,734	129,199	129,696	130,194	130,691
10	Convalescent Hosp/Daycare	14,960	14,960	14,960	14,960	14,960	14,960
11	Personal Services, Laundrys	23,340	23,340	23,340	23,340	23,340	23,340
12	Electrical/Electronics	108,597	108,991	109,385	109,806	110,227	110,648
13	Machinery Manufacture	3,685	3,698	3,711	3,726	3,740	3,754
14	RockTenn (Jefferson Smurfit)	4,271	4,271	4,271	4,271	4,271	4,271
15	T. Marzetti Co.	19,850	19,850	19,850	19,850	19,850	19,850
16	Prudential Overall Supply	10,354	10,354	10,354	10,354	10,354	10,354
17	Evoqua Water Technologies	30,363	30,363	30,363	30,363	30,363	30,363
18	Elmwood Rehabilitation	64,490	64,490	64,490	64,490	64,490	64,490
19	Linear Technology	71,587	71,587	71,587	71,587	71,587	71,587
20	DS Waters of America	609	609	609	609	609	609
21	Magic Tech & Headway Tech	38,085	38,085	38,085	38,085	38,085	38,085
22	Lucky Pure Water	838	838	838	838	838	838
23	Milpitas Materials	74	74	74	74	74	74
24	Union Pacific Railroad	1,254	1,254	1,254	1,254	1,254	1,254
25	Cisco	53,232	53,232	53,232	53,232	53,232	53,232
26	Total	2,785,561	2,822,493	2,861,123	2,898,310	2,935,498	2,972,686

9. Wastewater Financial Plan

Section 9 details the development of a proposed five-year financial plan for the wastewater utility over the study period. The following subsections include estimates and projections of annual revenues, O&M expenses, debt service payments, capital expenditures, and reserve funding through FY 2028. The overall purpose of the financial plan is to determine the annual rate revenue needed to achieve sufficient cash flow, maintain adequate reserves, and meet debt coverage requirements.

9.1. Revenues From Current Rates

The City's revenues consist of rate revenues, interest earnings on cash reserves, and other miscellaneous revenues. The rate revenue projections shown below assume that current FY 2023 rates are effective throughout the study period and therefore represent estimated revenues in the absence of any rate increase. This status quo scenario provides a baseline from which Raftelis evaluates the need for revenue adjustments (i.e., rate increases).

Calculated Wastewater Rate Revenues

Raftelis projected wastewater rate revenues from Fixed ERU Charges and Volume Charges for FY 2024 through FY 2028 based on current FY 2023 rates, the projected number of ERUs and accounts, and projected annual wastewater use.

Table 9-1 shows projected Fixed Charge revenues under current rates over the study period. Fixed Charge revenues are calculated by customer class in each year as follows based on current FY 2023 rates (from **Table 8-2**), the projected number of ERUs and accounts (from **Table 8-3**).

$$\text{Annual Fixed Charge Revenue} = [\text{FY 2023 bi-monthly rate}] \times [\text{Number of units}] \times [6 \text{ Bills per year}]$$

Table 9-1: Projected Fixed Charge Revenues under Current Rates

Line	Customer Class	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family	\$ 9,340,294	\$ 9,367,460	\$ 9,394,626	\$ 9,411,442	\$ 9,428,259	\$ 9,445,075
2	Multi-Family	6,697,444	6,950,622	7,217,574	7,484,526	7,751,478	8,018,430
3	Mobile Home	244,703	244,703	244,703	244,703	244,703	244,703
4	Schools/Colleges	10,995	11,315	11,635	11,833	12,032	12,230
5	Motels and Hotels	4,267	4,282	4,298	4,314	4,331	4,347
6	General Office	60,881	61,102	61,323	61,559	61,795	62,031
7	City of Milpitas	6,236	6,417	6,599	6,711	6,824	6,936
8	Service Stations	6,892	6,917	6,942	6,969	6,996	7,022
9	Eat/Drink Establishments	28,061	28,163	28,265	28,374	28,482	28,591
10	Convalescent Hosp/Daycare	3,938	3,938	3,938	3,938	3,938	3,938
11	Personal Services, Laundrys	9,518	9,518	9,518	9,518	9,518	9,518
12	Electrical/Electronics	16,738	16,799	16,860	16,925	16,989	17,054
13	Machinery Manufacture	2,297	2,306	2,314	2,323	2,332	2,341
14	RockTenn (Jefferson Smurfit)	164	164	164	164	164	164
15	T. Marzetti Co.	328	328	328	328	328	328
16	Prudential Overall Supply	328	328	328	328	328	328
17	Evoqua Water Technologies (Sien	328	328	328	328	328	328
18	Elmwood Rehabilitation	821	821	821	821	821	821
19	Linear Technology	985	985	985	985	985	985
20	DS Waters of America	328	328	328	328	328	328
21	Magic Tech & Headway Tech	328	328	328	328	328	328
22	Lucky Pure Water	164	164	164	164	164	164
23	Milpitas Materials	164	164	164	164	164	164
24	Union Pacific Railroad	328	328	328	328	328	328
25	Cisco	821	821	821	821	821	821
26	Total	\$ 16,437,352	\$ 16,718,629	\$ 17,013,681	\$ 17,298,222	\$ 17,582,763	\$ 17,867,305

Table 9-2 shows projected Volume Charge revenues under current rates over the study period. Volume Charge revenues are calculated by customer class in each year as follows based on current FY 2023 wastewater rates (from Table 8-2) and projected wastewater use (from **Table 8-4**):

$$\text{Annual Volume Charge Revenue} = [\text{FY 2023 rate per HCF}] \times [\text{Annual Wastewater Use in HCF}]$$

Table 9-2: Projected Volume Charge Revenues Under Current Rates

Line	Customer Class	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2	Multi-Family	-	-	-	-	-	-
3	Mobile Home	-	-	-	-	-	-
4	Schools/Colleges	175,549	180,661	185,774	188,938	192,103	195,268
5	Motels and Hotels	429,856	431,415	432,974	434,641	436,308	437,975
6	General Office	831,829	834,846	837,864	841,090	844,316	847,541
7	City of Milpitas	69,584	71,610	73,636	74,891	76,145	77,400
8	Service Stations	94,381	94,723	95,066	95,432	95,798	96,164
9	Eat/Drink Establishments	1,162,110	1,166,326	1,170,541	1,175,048	1,179,555	1,184,061
10	Convalescent Hosp/Daycare	83,774	83,774	83,774	83,774	83,774	83,774
11	Personal Services, Laundrys	123,937	123,937	123,937	123,937	123,937	123,937
12	Electrical/Electronics	729,772	732,419	735,066	737,896	740,727	743,557
13	Machinery Manufacture	31,060	31,173	31,286	31,406	31,527	31,647
14	RockTenn (Jefferson Smurfit)	44,677	44,677	44,677	44,677	44,677	44,677
15	T. Marzetti Co.	239,984	239,984	239,984	239,984	239,984	239,984
16	Prudential Overall Supply	87,178	87,178	87,178	87,178	87,178	87,178
17	Evoqua Water Technologies (Sien	214,363	214,363	214,363	214,363	214,363	214,363
18	Elmwood Rehabilitation	431,438	431,438	431,438	431,438	431,438	431,438
19	Linear Technology	492,516	492,516	492,516	492,516	492,516	492,516
20	DS Waters of America	3,679	3,679	3,679	3,679	3,679	3,679
21	Magic Tech & Headway Tech	278,785	278,785	278,785	278,785	278,785	278,785
22	Lucky Pure Water	4,433	4,433	4,433	4,433	4,433	4,433
23	Milpitas Materials	390	390	390	390	390	390
24	Union Pacific Railroad	9,218	9,218	9,218	9,218	9,218	9,218
25	Cisco	357,718	357,718	357,718	357,718	357,718	357,718
26	Total	\$ 5,896,229	\$ 5,915,263	\$ 5,934,297	\$ 5,951,432	\$ 5,968,567	\$ 5,985,702

Other Revenues

Table 9-3 shows all other revenues. All FY 2023 other revenues are based on the latest information available to City staff and do not correspond directly to the City's adopted budget. Additional revenues from FY 2023 through FY 2027 were projected by Raftelis. Interest revenue is estimated beginning in FY 2024 based on estimated fund balances and an assumed interest rate. All other revenues are forecasted to remain constant.

Table 9-3: Projected Other Revenues

Line	Other Revenue Detail	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Operating Fund							
1	Interest Income	102,932	69,132	71,576	74,094	76,644	84,713
2	Subtotal	\$ 102,932	\$ 69,132	\$ 71,576	\$ 74,094	\$ 76,644	\$ 84,713
Infrastructure Fund							
3	Interest Income	\$ 450,000	\$ 314,099	\$ 271,880	\$ 162,733	\$ (7,199)	\$ (49,374)
4	Development Fees	750,000	250,000	250,000	250,000	250,000	250,000
5	Subtotal	\$ 1,200,000	\$ 564,099	\$ 521,880	\$ 412,733	\$ 242,801	\$ 200,626
6	Total	\$ 1,302,932	\$ 633,232	\$ 593,456	\$ 486,827	\$ 319,445	\$ 285,339

Table 9-4 shows a summary of projected revenues under current rates over the study period. This represents expected revenues in the absence of any rate increase over the study period.

Table 9-4: Summary of Projected Revenues Under Current Rates

Line	Revenue Type	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Operating Fund							
1	Fixed Charge	\$16,437,352	\$16,718,629	\$17,013,681	\$17,298,222	\$17,582,763	\$17,867,305
2	Volume Charge	5,896,229	5,915,263	5,934,297	5,951,432	5,968,567	5,985,702
3	Other	102,932	69,132	71,576	74,094	76,644	84,713
4	Subtotal	\$22,436,512	\$22,703,024	\$23,019,554	\$23,323,748	\$23,627,974	\$23,937,719
Infrastructure Fund							
5	Other	\$ 1,200,000	\$ 564,099	\$ 521,880	\$ 412,733	\$ 242,801	\$ 200,626
6	Subtotal	\$ 1,200,000	\$ 564,099	\$ 521,880	\$ 412,733	\$ 242,801	\$ 200,626
7	Total	\$23,636,512	\$23,267,123	\$23,541,434	\$23,736,481	\$23,870,775	\$24,138,345

9.2. Operations and Maintenance Expenses

Table 9-5 shows O&M expenses by department over the study period. O&M expenses shown in FY 2023 are from the City's adopted FY 2023 budget with modifications to the wastewater treatment cost based on the latest information from the City of San Jose, the wastewater treatment provider for the City of Milpitas as well as the addition of personnel related to SCADA operation. All projections beyond FY 2023 were developed based on inflationary assumptions above.

Table 9-5: O&M Summary by Department

Line	O&M Summary	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Administration	\$ 1,625,083	\$ 1,690,087	\$ 1,757,690	\$ 1,827,998	\$ 1,901,118	\$ 1,977,162
2	Utility Engineering	480,513	519,108	559,248	581,618	604,882	629,078
3	Utility Maintenance	1,583,788	1,647,140	1,713,025	1,781,546	1,852,808	1,926,921
4	Compliance	191,878	199,553	207,535	215,836	224,470	233,449
5	Wastewater Treatment	6,997,426	7,277,323	7,568,416	7,871,153	8,185,999	8,513,439
6	Non-Departmental	1,124,227	1,169,196	1,215,964	1,264,602	1,315,187	1,367,794
7	Finance Administration	24,778	25,769	26,800	27,872	28,987	30,146
8	Fiscal Services	686,527	713,988	742,547	772,249	803,139	835,265
9	City Attorney	-	-	-	-	-	-
10	Transfer to General Fund	1,444,869	1,502,664	1,562,770	1,625,281	1,690,292	1,757,904
11	Total	\$ 14,159,089	\$ 14,744,828	\$ 15,353,996	\$ 15,968,156	\$ 16,606,882	\$ 17,271,157

9.3. Capital Improvement Plan

The City's adopted FY 2023 budget includes approximately \$600 thousand in capital project costs. The City has also developed a long-term utility master plan that outlines capital project expenditures required through 2040 to address current and future system needs.

Capital costs related to improvements at the regional wastewater treatment plant are also included in the City's CIP. San Jose provided a forecast of capital expenses; these are expected to peak at approximately \$11M in FY 2025 before decreasing to historical levels of \$2-3M per year.

A significant driver of the City's proposed rate increases is the replacement of Force Main A. The Force Main A (FMA) is a 50-year steel pipeline which conveys sewage flows from the City to the San Jose treatment facility. The pipeline is one of two critical pipelines connected to the Main Lift Sewer Pump Station from which all Milpitas sewage flows are pumped. The pipe crosses Coyote Creek after it leaves the pump station and runs through an easement on City of San Jose property, to the treatment plant. The pipeline is in a corrosive environment and is approaching the end of its useful life. Staff recommends that this pipeline be replaced as soon as possible. The study assumes that this project, totaling \$26 million, will be completed in FY 2026.

These projects are shown in detail in **Table 9-6** and amount to approximately \$80M over the study period. The final line presents the total proposed annual capital spending.

Table 9-6: Capital Improvement Plan

Line	Capital Project	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Sanitary Sewer Pipeline Improvements	\$ -	\$ -	\$ -	\$ 995,743	\$ 1,417,288	\$ 2,912,640
2	Ongoing Sanitary Sewer CCTV	-	200,000	100,000	100,000	-	-
3	CCTV Improvements	-	333,333	333,333	333,333	333,333	333,333
4	Forcemain A Design	-	-	939,400	-	-	-
5	Forcemain A Construction	-	-	-	25,160,600	-	-
6	San Jose Capital	6,655,953	6,836,915	11,329,085	6,379,020	3,009,097	2,519,945
7	Previously Adopted Capital Projects	579,000	350,000	250,000	250,000	250,000	-
8	Utility Billing System		300,000				
9	Subtotal	\$ 7,234,953	\$ 8,020,248	\$12,951,818	\$33,218,696	\$ 5,009,718	\$ 5,765,918
10	CIP Inflation Factor	106.00%	112.36%	119.10%	123.87%	128.82%	133.97%
11	Total Proposed Capital Spending	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780

9.1. Debt Service

Table 9-7 shows the City's existing debt service obligations associated with its outstanding Series 2017 and Series 2019 bonds. These obligations are secured by a pledge of City revenues. The proposed financial plan assumes that the City will issue a \$20M bond in FY 2026 to finance the replacement of Force Main A. Debt service for this future bond was provided by the City's financial advisor, assuming a 20 year repayment period and 7% interest rate⁵.

Table 9-7: Debt Service

Line	Debt Service Forecast	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Existing Debt - Series 2017							
1	Principal	\$ 515,000	\$ 535,000	\$ 560,000	\$ 590,000	\$ 615,000	
2	Interest	124,950	101,625	74,250	45,500	15,375	
3	Subtotal: Existing Debt - Series 2017	\$ 639,950	\$ 636,625	\$ 634,250	\$ 635,500	\$ 630,375	\$ -
Existing Debt - Series 2019							
4	Principal	\$ 505,000	\$ 535,000	\$ 560,000	\$ 585,000	\$ 615,000	\$ 645,000
5	Interest	1,286,325	1,260,325	1,232,950	1,204,325	1,174,325	1,142,825
6	Subtotal: Existing Debt - Series 2019	\$ 1,791,325	\$ 1,795,325	\$ 1,792,950	\$ 1,789,325	\$ 1,789,325	\$ 1,787,825
7	Total Existing Debt	\$ 2,431,275	\$ 2,431,950	\$ 2,427,200	\$ 2,424,825	\$ 2,419,700	\$ 1,787,825
8	Proposed Debt Service	\$ -	\$ -	\$ -	\$ -	\$ 1,302,904	\$ 1,884,550
9	Total Debt Service	\$ 2,431,275	\$ 2,431,950	\$ 2,427,200	\$ 2,424,825	\$ 3,722,604	\$ 3,672,375

⁵ Raftelis also conducted a sensitivity analysis to compare the impact of varying interest rates, bond terms, and project costs. The impact on rates over the full period of changes in financing assumptions is minimal; differences in actual debt service financing assumptions when issued will require only small changes, if any, to the proposed rates.

9.2. Financial Policies

Utility-specific financial policies must be considered during the financial planning process. Financial policies typically define key financial metrics that an agency strives to meet or exceed.

Required Debt Coverage

The City must meet the minimum coverage requirements on its outstanding debt to ensure that it meets the associated debt covenants. The required debt service coverage ratio (DSCR) is 1.15, which means that the City's net revenue must amount to at least 1.15 times annual debt service. Net revenues equal revenues less O&M expenses. Annual debt service includes annual principal and interest payments on all outstanding debt.

Reserve Targets

Prudent fiscal management requires that the City maintain reserve balances to provide sufficient working capital, maintain necessary cash on hand to efficiently award construction contracts, and provide funding during emergencies. The City's current policy consists of several targets:

- » **Capital Reserve for Emergencies:** The City's adopted O&M reserve target is 25 percent of annual O&M expenses. This is intended to ensure sufficient working capital during short-term fluctuations in cash flow.
- » **Rate Stabilization Reserve:** The target is 16.67 percent of annual operating expenses.
- » **CALPERS Reserve:** Twenty percent of any remaining annual surplus after meeting O&M expenses and the reserve targets above are transferred to the CALPERS fund.
- » **Infrastructure Fund:** The remaining 80 percent portion of any operating surplus is transferred to the Infrastructure funds to be spent on capital projects in future years.

9.3. Status Quo Financial Plan

In order to evaluate the need for revenue adjustments (i.e., rate increases), Raftelis first developed a status quo financial plan. The status quo financial plan assumes that current FY 2023 rates remain unchanged over the study period.

Table 9-8 combines projected operating revenues (from **Table 9-4**), and O&M expenses (from **Table 9-5**), and debt service (from **Table 9-7**) to generate cash flow, ending balance, and debt coverage projections under the status quo.

Under the status-quo financial plan, net cash change (revenue less total cash expenses) is negative for most years of the study period and results in a near complete depletion of the City's reserves in Capital Reserve for Emergencies, Rate Stabilization, and Infrastructure Funds by the end of FY 2027. The status quo financial plan is insufficient to meet the City's needs. This demonstrates a clear need for revenue adjustments over the study period to increase rate revenues and achieve financial sustainability.

Table 9-8: Status Quo Operating Financial Plan

Line	Operating Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Rate Revenue	\$22,333,580	\$22,633,892	\$22,947,978	\$23,249,654	\$23,551,330	\$23,853,006
2	Other Misc. Revenue	102,932	69,132	71,576	74,094	76,644	84,713
3	Total	\$22,436,512	\$22,703,024	\$23,019,554	\$23,323,748	\$23,627,974	\$23,937,719
Outflows							
4	City O&M	\$ 7,161,663	\$ 7,467,505	\$ 7,785,580	\$ 8,097,003	\$ 8,420,883	\$ 8,757,718
5	Wastewater Treatment	6,997,426	7,277,323	7,568,416	7,871,153	8,185,999	8,513,439
6	Debt Service	2,431,275	2,431,950	2,427,200	2,424,825	3,722,604	3,672,375
Reserve Contributions							
7	Capital for Emergencies	1,004,241	146,603	151,105	152,946	484,126	153,512
8	Rate Stabilization	669,628	97,755	100,756	101,985	322,815	102,361
9	Pension	834,456	1,056,378	997,299	935,167	498,309	547,663
10	Transfer to Infrastructure	3,337,823	4,225,510	3,989,198	3,740,670	1,993,237	2,190,651
11	Total	\$22,436,512	\$22,703,024	\$23,019,554	\$23,323,748	\$23,627,974	\$23,937,719
12	Rate Increase		0.0%	0.0%	0.0%	0.0%	0.0%
13	Cumulative Rate Increase		0.0%	0.0%	0.0%	0.0%	0.0%
14	Debt Service Coverage Ratio	3.40	3.27	3.16	3.03	1.89	1.82

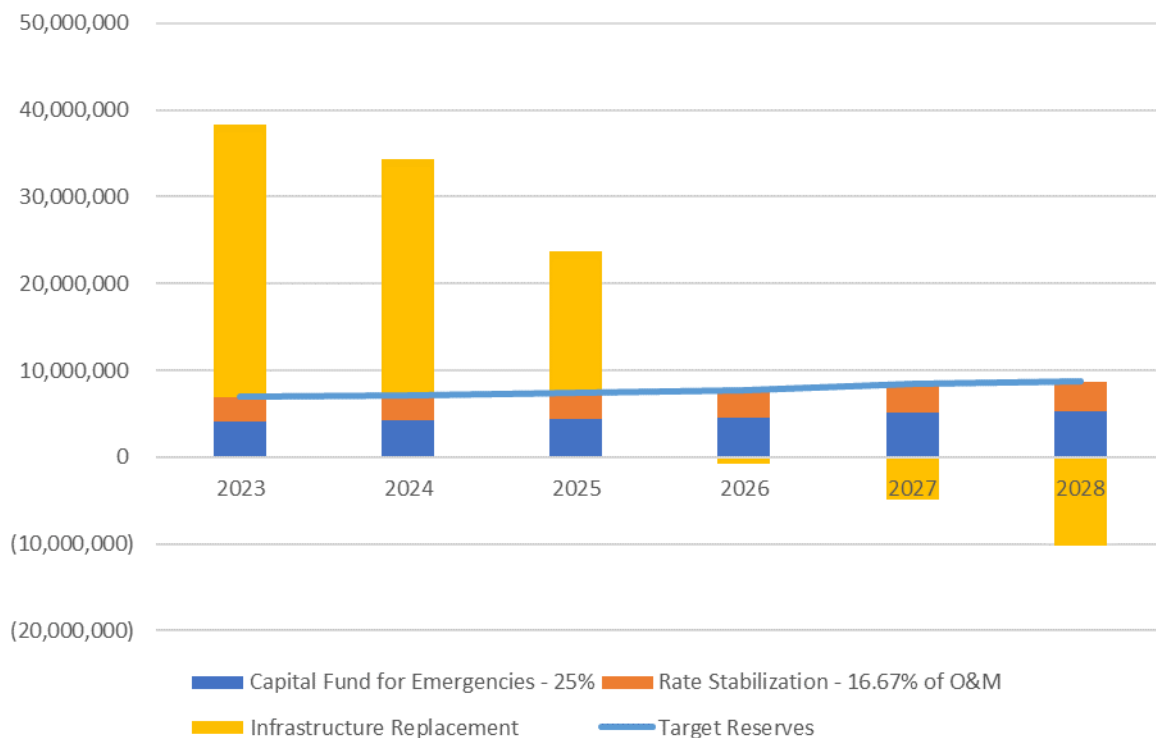
Table 5-11 presents the proposed capital financing plan in the status quo scenario. The use of bond proceeds is reflected on Line 3, but rate revenues are insufficient to fund remaining capital expenses.

Table 9-9: Status Quo Capital Financial Plan

Line	Infrastructure Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Transfer from Operating	\$ 3,337,823	\$ 4,225,510	\$ 3,989,198	\$ 3,740,670	\$ 1,993,237	\$ 2,190,651
2	Developer Fees and Interest	1,200,000	564,099	521,880	412,733	242,801	200,626
3	Bond Proceeds	-	-	-	20,000,000	-	-
4	Use of Infrastructure Reserves	3,131,227	4,221,941	10,914,745	16,993,157	4,217,496	5,333,502
5	Total	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780
Outflows							
7	Capital Projects	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780
8	Total	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780
9	Ending Balance	\$31,409,948	\$27,188,007	\$16,273,262	\$ (719,895)	\$ (4,937,391)	\$ (10,270,893)

Figure 9-1 shows the City's projected ending balances under the status quo. The operating reserve targets are represented by blue line. Projected ending balances are represented by the stacked columns. The City's total reserves will fall below the operating target in FY 2026, with reserves to be fully depleted by the end of FY 2028.⁶

Figure 9-1: Status Quo Financial Plan – Projected Ending Balances



⁶ This scenario presents negative reserve balances in order to demonstrate the need for rate increases. The City is unable to implement any plan that results in negative reserves. This scenario should not be considered an alternative option.

Table 9-10: Status Quo Financial Plan- Projected Ending Balances

Line	End of Year Reserves	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Capital for Emergencies	\$ 4,147,591	\$ 4,294,194	\$ 4,445,299	\$ 4,598,245	\$ 5,082,371	\$ 5,235,883
2	Rate Stabilization	2,765,614	2,863,369	2,964,125	3,066,110	3,388,925	3,491,287
3	Pension	3,999,109	5,055,486	6,052,786	6,987,953	7,486,262	8,033,925
4	Infrastructure	31,409,948	27,188,007	16,273,262	(719,895)	(4,937,391)	(10,270,893)
5	Total	\$42,322,262	\$39,401,057	\$29,735,472	\$13,932,413	\$11,020,168	\$ 6,490,202

9.4. Proposed Financial Plan

The status quo financial plan demonstrates that the City must increase its revenues from water rates over the study period in order to adequately fund its operating and capital expenditures, meet required debt coverage, and generate sufficient reserve funding. Raftelis worked closely with City staff to select the proposed annual revenue adjustments shown in **Table 9-11**. Revenue adjustments represent annual percentage increases in rate revenue relative to how much rate revenue would have been collected under the prior year's wastewater rates.

Table 9-11: Proposed Revenue Adjustments

Line	Description	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Effective Date of Revenue Adjustment	July 1, 2023	July 1, 2024	July 1, 2025	July 1, 2026	July 1, 2027
2	Revenue Adjustment	4.00%	4.00%	4.00%	4.00%	4.00%

Table 9-12 shows the proposed financial plan pro forma. This combines projected revenues, O&M expenses, debt service, capital expenditures, and reserve targets to generate cash flow, ending balance, and debt coverage projections under the proposed financial plan. Revenue adjustments over the study period generate significant increases in rate revenues over the study period. This results in positive net operating cash flow and sufficient debt coverage in all years.

Table 9-12: Proposed Operating Financial Plan

Line	Operating Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Rate Revenue	\$22,333,580	\$23,539,248	\$24,820,533	\$26,152,699	\$27,551,725	\$ 29,020,829
2	Other Misc. Revenue	102,932	69,132	71,576	74,094	76,644	84,713
3	Total	\$22,436,512	\$23,608,380	\$24,892,109	\$26,226,793	\$27,628,369	\$ 29,105,542
Outflows							
4	City O&M	\$ 7,161,663	\$ 7,467,505	\$ 7,785,580	\$ 8,097,003	\$ 8,420,883	\$ 8,757,718
5	Wastewater Treatment	6,997,426	7,277,323	7,568,416	7,871,153	8,185,999	8,513,439
6	Debt Service	2,431,275	2,431,950	2,427,200	2,424,825	3,722,604	3,672,375
Reserve Contributions							
7	<i>Capital for Emergencies</i>	1,004,241	146,603	151,105	152,946	484,126	153,512
8	<i>Rate Stabilization</i>	669,628	97,755	100,756	101,985	322,815	102,361
9	<i>Pension</i>	834,456	1,237,449	1,371,810	1,515,776	1,298,388	1,581,227
10	Transfer to Infrastructure	3,337,823	4,949,795	5,487,242	6,063,105	5,193,553	6,324,910
11	Total	\$22,436,512	\$23,608,380	\$24,892,109	\$26,226,793	\$27,628,369	\$ 29,105,542
12	Rate Increase		4.0%	4.0%	4.0%	4.0%	4.0%
13	Cumulative Rate Increase		4.0%	8.2%	12.5%	17.0%	21.7%
14	Debt Service Coverage Ratio	3.40	3.64	3.93	4.23	2.96	3.22

Table 9-13: Proposed Capital Financial Plan

Line	Infrastructure Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Transfer from Operating	\$ 3,337,823	\$ 4,949,795	\$ 5,487,242	\$ 6,063,105	\$ 5,193,553	\$ 6,324,910
2	Developer Fees and Interest	1,200,000	564,099	529,123	435,028	288,544	278,830
3	Bond Proceeds	-	-	-	20,000,000	-	-
4	Use of Infrastructure Reserves	3,131,227	3,497,657	9,409,458	14,648,425	971,437	1,121,040
5	Total	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780
Outflows							
7	Capital Projects	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780
8	Total	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780
9	Ending Balance	\$31,409,948	\$27,912,291	\$18,502,833	\$ 3,854,408	\$ 2,882,971	\$ 1,761,931

Figure 5-2 shows the City's projected ending balance under the proposed financial plan. The light blue line indicates the total target balance of 41.67 percent of O&M. The proposed financial plan will draw heavily on reserves as the master plan is implemented in FY 2026. Although not detailed in this report, projections indicate that the City will be able to cover all operating and capital expenses without the use of reserves beginning in FY 2029.

Figure 9-2: Proposed Financial Plan – Projected Ending Balances

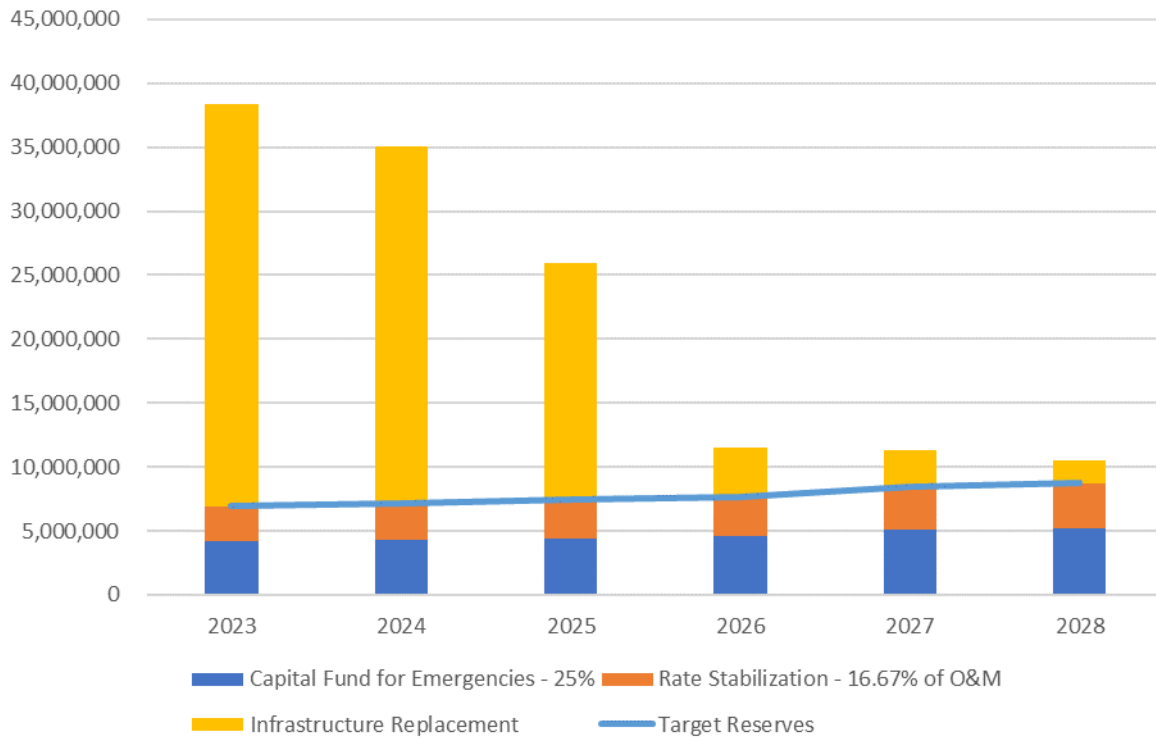


Table 9-14: Proposed Financial Plan – Projected Ending Balances

Line	End of Year Reserves	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Capital for Emergencies	\$ 4,147,591	\$ 4,294,194	\$ 4,445,299	\$ 4,598,245	\$ 5,082,371	\$ 5,235,883
2	Rate Stabilization	2,765,614	2,863,369	2,964,125	3,066,110	3,388,925	3,491,287
3	Pension	3,999,109	5,236,558	6,608,368	8,124,144	9,422,532	11,003,760
4	Infrastructure	31,409,948	27,912,291	18,502,833	3,854,408	2,882,971	1,761,931
5	Total	\$42,322,262	\$40,306,412	\$32,520,625	\$19,642,907	\$20,776,800	\$ 21,492,861

10. Wastewater Cost of Service Analysis

Section 6 details the cost of service (COS) analysis performed for FY 2024. The COS analysis allocates the overall rate revenue requirement to customer classes based on their proportion of use of and burden on the City's water system. This provides the basis for the development of proposed FY 2024 water rates.

10.1. Methodology

The first step in the COS analysis is to determine the revenue required from rates. The total revenue requirement is determined in the financial plan and the proposed revenue adjustments in **Section 9**. The framework and methodology utilized to develop the COS analysis and to apportion the revenue requirement to each customer class and tier is informed by the processes outlined in the WEF Manual of Practice No. 27.

COS analyses are tailored specifically to meet the unique needs of each wastewater system. However, there are several distinct steps in every COS analysis to recover costs from customers in an accurate, equitable, and defensible manner:

1. **Cost component allocation:** Costs are allocated to demand parameters and customer characteristics based on the design and functional parameter the characterize each expense
2. **Unit cost development:** The revenue requirement for each cost causation component is divided by the appropriate units of service to determine the unit cost for each rate component
3. **Distribution of Costs to Customer Classes:** The unit costs are applied to the units of service from each customer class to allocate the revenue requirement to customers in accordance with their impact on the wastewater system
4. **Rate Design:** The costs allocated to each class and the units of service for each class are used to develop fixed and volume charges.

10.2. Units of Service

Table 10-1 summarizes the forecasted units of service for each wastewater class. ERUs, bills, and commercial volumes are from the latest available City billing data. Pollutant strengths for BOD, TSS, and NH₃ as well as the estimate of days active are from estimates provided by San Jose. The pollutant units used to allocate costs are pounds per day, calculated using the contributed volume estimate and pollutant concentration for each class to estimate total annual pounds and dividing by the number of days active.

Table 10-1: FY 2024 Wastewater Units of Service

Line	Units of Service	Days	Volume		BOD			TSS			NH3			Customer	
			HCF	Gallons / Day	Strength (mg/l)	Pounds / Year	Pounds / Day	Strength (mg/l)	Pounds / Year	Pounds / Day	Strength (mg/l)	Pounds / Year	Pounds / Day	ERUs	Bills
1	Single-Family	365	1,107,882	2,270,556	250.00	1,729,040	4,737	250.00	1,729,040	4,737	35.00	242,066	663	75,459	74,644
2	Multi-Family	365	825,451	1,691,726	250.00	1,288,258	3,529	250.00	1,288,258	3,529	35.00	180,356	494	72,904	11,315
3	Mobile Home	365	35,875	73,524	250.00	55,989	153	250.00	55,989	153	35.00	7,838	21	3,126	18
4	Schools/Colleges	176	18,084	76,863	130.00	14,676	83	100.00	11,289	64	30.00	3,387	19	414	414
5	Motels and Hotels	365	75,029	153,768	310.00	145,198	398	121.00	56,674	155	7.00	3,279	9	157	157
6	General Office	261	122,054	349,818	130.00	99,053	380	80.00	60,955	234	11.00	8,381	32	2,234	2,234
7	City of Milpitas	323	12,347	28,594	130.00	10,020	31	80.00	6,166	19	11.00	848	3	235	235
8	Service Stations	365	16,618	34,058	180.00	18,674	51	280.00	29,048	80	-	-	-	253	253
9	Eat/Drink Establishments	365	128,734	263,834	1,250.00	1,004,554	2,752	560.00	450,040	1,233	10.00	8,036	22	1,030	1,030
10	Convalescent Hosp/Daycare	365	14,960	30,659	230.00	21,479	59	85.00	7,938	22	15.00	1,401	4	144	144
11	Personal Services, Laundrys	365	23,340	47,835	150.00	21,856	60	110.00	16,028	44	5.00	729	2	348	348
12	Electrical/Electronics	261	108,991	312,379	30.00	20,412	78	15.00	10,206	39	30.00	20,412	78	614	614
13	Machinery Manufacture	261	3,698	10,598	290.00	6,695	26	550.00	12,697	49	-	-	-	84	84
14	RockTenn (Jefferson Smurfit)	365	4,271	8,754	1,746.71	46,574	128	39.68	1,058	3	17.10	456	1	6	6
15	T. Marzetti Co.	313	19,850	47,440	1,555.25	192,721	616	31.16	3,861	12	0.41	51	0	12	12
16	Prudential Overall Supply	261	10,354	29,675	583.25	37,698	144	269.23	17,402	67	1.52	98	0	12	12
17	Evoqua Water Technologies	261	30,363	87,023	28.93	5,484	21	148.62	28,170	108	1.19	226	1	12	12
18	Elmwood Rehabilitation	365	64,490	132,170	507.05	204,134	559	341.68	137,557	377	25.39	10,222	28	30	30
19	Linear Technology	261	71,587	205,174	17.72	7,919	30	25.03	11,186	43	25.22	11,271	43	36	36
20	DS Waters of America	261	609	1,746	1.58	6	0	1.68	6	0	0.01	0	0	12	12
21	Magic Tech & Headway Tech	261	38,085	109,156	449.42	106,852	409	4.83	1,148	4	1.63	388	1	12	12
22	Lucky Pure Water	365	838	1,717	130.00	680	2	80.00	418	1	11.00	58	0	6	6
23	Milpitas Materials	365	74	151	130.00	60	0	80.00	37	0	11.00	5	0	6	6
24	Union Pacific Railroad	261	1,254	3,595	180.00	1,409	5	280.00	2,192	8	-	-	-	12	12
25	Cisco	261	53,232	152,568	30.00	9,969	38	15.00	4,985	19	30.00	9,969	38	30	30
26	Total		2,788,067	6,123,381		5,049,408	14,291		3,942,349	11,001		509,475	1,462	157,187	91,675

10.3. Revenue Requirement

Table 10-2 shows the rate revenue requirement for FY 2024 (also referred to as the test year or rate-setting year). The revenue requirement is split into operating and capital categories which are later allocated based on O&M expenses and capital assets, respectively. The expenses (Lines 1-4) are equal to FY 2024 expenses. The miscellaneous revenue (Line 6) includes interest earnings and miscellaneous revenues that are applied as offsets to the final rate revenue requirement. The contribution to reserves adjustment (Line 7) is equal to FY 2024 net cash change and represents the increase in the rate revenue requirement resulting from an addition to operating reserves and use of infrastructure reserves in FY 2024. All aforementioned values are from the proposed financial plan pro forma (

Table 9-8). The final rate revenue requirement (Line 8) is calculated as follows:

Total revenue required from rates (Line 8) = Revenue requirements (Line 5) + Other Revenues (Line 6) + Reserves (Line 7)

Table 10-2: FY 2024 Revenue Required from Wastewater Rates

Line	Description	Operating	Capital	Total
Expenses				
1	City O&M	\$ 7,467,505		\$ 7,467,505
2	Wastewater Treatment	7,277,323		7,277,323
3	Debt Service		2,431,950	2,431,950
4	Rate Funded Capital		4,949,795	4,949,795
5	Subtotal	\$14,744,828	\$ 7,381,745	\$22,126,572
6	Other Revenues	\$ (69,132)		\$ (69,132)
7	Contribution to (from) Reserves	\$ 1,481,807		\$ 1,481,807
8	Revenue Required from Rates	\$16,157,503	\$ 7,381,745	\$23,539,248

10.4. Allocation of Expenses to Rate Components

After determining the revenue requirement, the next step of the COS analysis is to allocate O&M to the various rate components:

- » **Volume:** Part of the potable O&M volume rate intended to recover costs associated with the quantity of contributed wastewater.
- » **BOD, TSS, and NH3:** Recognizes the costs related to treating wastewater that vary with the level of pollutants in the water.
- » **ERUs:** Costs that should be recovered by all customers equally in the bi-monthly fixed charge. An ERU is a single home, apartment, or commercial account – in the multifamily and mobile home classes, there are many ERUs per account.
- » **Customer:** Part of the bi-monthly fixed charge that recovers the cost of providing customer service and billing. These costs are recovered from all customer accounts equally, regardless of their wastewater contributions or ERUs.

Table 10-3 shows the basis for allocating each O&M expense category to the various rate components. Most expense categories are allocated entirely to the corresponding cost causation component. The allocation basis for functional categories are as follows:

- » **Electricity:** Primarily related to operating lift stations to convey wastewater. This costs scales closely with the quantity of wastewater contributed to the system.
- » **Wastewater Treatment O&M:** Allocated directly to the corresponding volume and pollutant cost components in proportion to San Jose's revenue requirement assigned to the City.
- » **Wastewater Treatment Capital:** The City pays for a portion of San Jose's capital costs based on a fixed capacity allocation rather than actual annual use. This capacity is approximately 2.5 times greater than the actual flow requirements of the City. Raffelis has allocated the costs associated with this unused capacity to the ERU cost component to be recovered from all customers equally. The remaining capital expense is allocated to the volume and pollutant components in the same proportion as the wastewater O&M expense, which corresponds to actual use patterns.
- » **Debt Service:** The Series 2017 bonds are allocated according to the functional use of the Series 2006 bonds as determined by the City during the 2018 rate study. The Series 2019 bonds were issued in order to finance improvements at the San Jose regional wastewater treatment plant; therefore, this cost is allocated in the same way as the San Jose capital expense discussed above.
- » **Finance Administration and Fiscal Services:** These costs are related to customer service, billing, and general financial services.
- » **Utility Engineering, Utility Maintenance, Compliance, City Capital, Contributions to Reserves, and other Non-Departmental:** These are allocated to the Volume rate component. Many engineering, maintenance, and capital expenses are related to the size of the customer and their use of the wastewater system.
- » **Administration, Transfer to General Fund, City Attorney, and Misc. Revenue:** These expenses and revenues are allocated to the General cost component, which is reallocated to all other rate components on Line 22.

Table 10-3: Wastewater Revenue Requirement Allocation

Line	Cost Center	FY 2024	Volume	BOD	TSS	NH3	ERUs	Customer	General
City O&M Expenses									
1	Administration	\$ 1,690,087							100.0%
2	Utility Engineering	519,108	100.0%						
3	Utility Maintenance	1,647,140	100.0%						
4	Compliance	199,553	100.0%						
5	Non-Departmental	859,196	100.0%						
6	Electricity	310,000	100.0%						
7	Finance Administration	25,769						100.0%	
8	Fiscal Services	713,988						100.0%	
9	City Attorney	-							100.0%
10	Transfer to General Fund	1,502,664							100.0%
11	Subtotal City O&M	\$ 7,467,505							
12	Wastewater Treatment	\$ 7,277,323	33.3%	24.7%	21.4%	20.5%			
Debt Service									
13	Series 2017	\$ 636,625	69.7%	13.5%	7.3%	9.5%			
14	Series 2019	1,795,325	17.3%	12.9%	11.2%	10.7%	48.0%		
15	Subtotal Debt Service	\$ 2,431,950							
Capital									
16	San Jose Capital	\$ 3,875,286	17.3%	12.9%	11.2%	10.7%	48.0%		
17	City Capital	1,074,509	100.0%						
19	Subtotal Capital	\$ 4,949,795							
18	Contribution to Reserves	1,481,807	100.0%						
20	Misc. Revenues	(69,132)							100.0%
21	Subtotal Expenses	\$ 23,539,248	\$ 9,945,137	\$ 2,612,009	\$ 2,240,114	\$ 2,158,860	\$ 2,719,753	\$ 739,757	\$ 3,123,618
22	Reallocation of General		\$ 1,521,619	\$ 399,641	\$ 342,740	\$ 330,308	\$ 416,126	\$ 113,184	\$ (3,123,618)
23	Total Expenses		\$ 11,466,756	\$ 3,011,650	\$ 2,582,854	\$ 2,489,168	\$ 3,135,878	\$ 852,941	\$ -

10.1. Customer Class Costs

Unit costs developed in Line 25 of **Table 10-3** are used to distribute costs to each customer class based on their contributed wastewater volume, strength loadings, and ERUs. The Unit Costs are multiplied by the service units to derive the cost to each class for each cost component. The final columns of this table compare the proposed cost of service revenue from each class and the revenue from each class if all rates were increased by the same percentage amount. Note that the weighted average percent change is equal to the 4 percent rate adjustment determined in the financial plan above.

Table 10-4: Customer Class Cost of Service

Customer Class Cost of								Total	Revenue at		
Line	Service	Volume	BOD	TSS	NH3	ERUs	Bills	Proposed Revenue	Current Rates	% Change	\$ Change
1	Single-Family	4,251,886	998,280	1,112,220	1,129,518	1,505,407	694,484	9,691,795	9,367,460	3.5%	324,335
2	Multi-Family	3,167,958	743,790	828,683	841,571	1,454,429	105,274	7,141,705	6,950,622	2.7%	191,083
3	Mobile Home	137,682	32,326	36,015	36,575	62,364	167	305,129	244,703	24.7%	60,425
4	Schools/Colleges	143,935	17,573	15,060	32,774	8,253	3,849	221,446	191,976	15.4%	29,469
5	Motels and Hotels	287,949	83,832	36,456	15,299	3,123	1,457	428,116	435,697	-1.7%	(7,581)
6	General Office	655,075	79,977	54,834	54,692	44,570	20,786	909,934	895,948	1.6%	13,986
7	City of Milpitas	53,546	6,537	4,482	4,471	4,681	2,183	75,900	78,027	-2.7%	(2,128)
8	Service Stations	63,778	10,781	18,685	-	5,046	2,353	100,643	101,641	-1.0%	(997)
9	Eat/Drink Establishments	494,060	579,990	289,492	37,499	20,543	9,580	1,431,166	1,194,489	19.8%	236,677
10	Convalescent Hosp/Daycare	57,413	12,401	5,106	6,536	2,873	1,340	85,670	87,712	-2.3%	(2,043)
11	Personal Services, Laundrys	89,576	12,619	10,310	3,399	6,943	3,238	126,085	133,454	-5.5%	(7,370)
12	Electrical/Electronics	584,967	16,481	9,181	133,197	12,254	5,715	761,794	749,218	1.7%	12,576
13	Machinery Manufacture	19,847	5,405	11,422	-	1,682	784	39,140	33,479	16.9%	5,661
14	RockTenn (Jefferson Smurfit)	16,392	26,890	681	2,128	120	56	46,266	44,841	3.2%	1,425
15	T. Marzetti Co.	88,837	129,755	2,896	276	239	112	222,116	240,313	-7.6%	(18,197)
16	Prudential Overall Supply	55,569	30,438	15,654	641	239	112	102,654	87,506	17.3%	15,148
17	Evoqua Water Technologies	162,962	4,428	25,341	1,472	239	112	194,554	214,691	-9.4%	(20,137)
18	Elmwood Rehabilitation	247,503	117,859	88,485	47,697	599	279	502,421	432,259	16.2%	70,162
19	Linear Technology	384,213	6,394	10,062	73,546	718	335	475,269	493,500	-3.7%	(18,231)
20	DS Waters of America	3,269	5	6	0	239	112	3,631	4,007	-9.4%	(376)
21	Magic Tech & Headway Tech	204,408	86,274	1,033	2,529	239	112	294,595	279,113	5.5%	15,483
22	Lucky Pure Water	3,216	393	269	268	120	56	4,322	4,597	-6.0%	(275)
23	Milpitas Materials	283	35	24	24	120	56	540	554	-2.5%	(14)
24	Union Pacific Railroad	6,731	1,138	1,972	-	239	112	10,192	9,547	6.8%	646
25	Cisco	285,701	8,049	4,484	65,054	599	279	364,167	358,539	1.6%	5,628
26	Total	\$ 11,466,756	\$ 3,011,650	\$ 2,582,854	\$ 2,489,168	\$ 3,135,878	\$ 852,941	\$ 23,539,248	\$ 22,633,892	4.0%	905,356

11. Proposed Wastewater Rates

Section 11 details the proposed water rate calculations. Proposed FY 2024 rates are calculated directly from the results of the COS allocations (from **Section 10**). All proposed rates beginning in FY 2025 are calculated by simply increasing the prior year's proposed rate by the annual revenue adjustment (from **Table 9-11**).

11.1. Proposed FY 2024 Fixed Meter Charges

Table 11-1 shows the detailed calculation of proposed FY 2024 Fixed Charges. The charge for the single family, multifamily, and mobile home classes recover the entire revenue requirement for these classes shown on Lines 1 to 3 of **Table 10-4**; these customers will not pay a volumetric charge. The rate is calculated by dividing the total cost by the number of billed bi-monthly ERUs.

Table 11-1: Proposed FY 2024 Fixed Charge Calculation

Line	Class Fixed Charge	Cost	Bills / ERUs	Proposed Rate	Current Rate	% Change	\$ Change
1	Single-Family	\$ 9,691,795	75,459	\$ 128.44	\$ 124.14	3.5%	\$4.30
2	Multi-Family	7,141,705	72,904	97.96	95.34	2.7%	2.62
3	Mobile Home	305,129	3,126	97.61	78.28	24.7%	19.33
4	Schools/Colleges	12,103	414	29.25	27.35	7.0%	1.90
5	Motels and Hotels	4,580	157	29.25	27.35	7.0%	1.90
6	General Office	65,356	2,234	29.25	27.35	7.0%	1.90
7	City of Milpitas	6,864	235	29.25	27.35	7.0%	1.90
8	Service Stations	7,399	253	29.25	27.35	7.0%	1.90
9	Eat/Drink Establishments	30,123	1,030	29.25	27.35	7.0%	1.90
10	Convalescent Hosp/Daycare	4,213	144	29.25	27.35	7.0%	1.90
11	Personal Services, Laundrys	10,180	348	29.25	27.35	7.0%	1.90
12	Electrical/Electronics	17,968	614	29.25	27.35	7.0%	1.90
13	Machinery Manufacture	2,466	84	29.25	27.35	7.0%	1.90
14	RockTenn (Jefferson Smurfit)	176	6	29.25	27.35	7.0%	1.90
15	T. Marzetti Co.	351	12	29.25	27.35	7.0%	1.90
16	Prudential Overall Supply	351	12	29.25	27.35	7.0%	1.90
17	Evoqua Water Technologies (	351	12	29.25	27.35	7.0%	1.90
18	Elmwood Rehabilitation	878	30	29.25	27.35	7.0%	1.90
19	Linear Technology	1,053	36	29.25	27.35	7.0%	1.90
20	DS Waters of America	351	12	29.25	27.35	7.0%	1.90
21	Magic Tech & Headway Tech	351	12	29.25	27.35	7.0%	1.90
22	Lucky Pure Water	176	6	29.25	27.35	7.0%	1.90
23	Milpitas Materials	176	6	29.25	27.35	7.0%	1.90
24	Union Pacific Railroad	351	12	29.25	27.35	7.0%	1.90
25	Cisco	878	30	29.25	27.35	7.0%	1.90

11.2. Proposed FY 2024 Volume Charges

Table 7-2 shows the proposed FY 2024 Volume Charges. The costs for commercial classes are the sum of the volume and pollutant rate components shown in **Table 10-4**. This cost is divided by the amount of billable wastewater as previously shown in **Table 10-1**.

Table 11-2: Proposed FY 2023 Volume Charge Calculation

Volume Charge			Proposed				
Line	Calculation	Cost	Volume (hcf)	Rate	Current Rate	% Change	\$ Change
1	Single-Family						
2	Multi-Family						
3	Mobile Home						
4	Schools/Colleges	\$ 209,343	18,084	\$ 11.58	\$ 9.99	15.9%	\$1.59
5	Motels and Hotels	423,536	75,029	5.64	5.75	-1.8%	(0.11)
6	General Office	844,579	122,054	6.92	6.84	1.2%	0.08
7	City of Milpitas	69,036	12,347	5.59	5.80	-3.6%	(0.21)
8	Service Stations	93,245	16,618	5.61	5.70	-1.6%	(0.09)
9	Eat/Drink Establishments	1,401,042	128,734	10.88	9.06	20.1%	1.82
10	Convalescent Hosp/Daycare	81,457	14,960	5.45	5.60	-2.8%	(0.15)
11	Personal Services, Laundrys	115,904	23,340	4.97	5.31	-6.5%	(0.34)
12	Electrical/Electronics	743,826	108,991	6.82	6.72	1.6%	0.10
13	Machinery Manufacture	36,674	3,698	9.92	8.43	17.6%	1.49
14	RockTenn (Jefferson Smurfit)	46,091	4,271	10.79	10.46	3.2%	0.33
15	T. Marzetti Co.	221,765	19,850	11.17	12.09	-7.6%	(0.92)
16	Prudential Overall Supply	102,303	10,354	9.88	8.42	17.3%	1.46
17	Evoqua Water Technologies	194,202	30,363	6.40	7.06	-9.4%	(0.66)
18	Elmwood Rehabilitation	501,544	64,490	7.78	6.69	16.2%	1.09
19	Linear Technology	474,216	71,587	6.62	6.88	-3.7%	(0.26)
20	DS Waters of America	3,280	609	5.38	6.04	-10.8%	(0.66)
21	Magic Tech & Headway Tech	294,244	38,085	7.73	7.32	5.5%	0.41
22	Lucky Pure Water	4,146	838	4.95	5.29	-6.5%	(0.34)
23	Milpitas Materials	364	74	4.95	5.29	-6.5%	(0.34)
24	Union Pacific Railroad	9,841	1,254	7.85	7.35	6.8%	0.50
25	Cisco	363,289	53,232	6.82	6.72	1.6%	0.10

11.3. Proposed Five-Year Rate Schedule

Table 11-3 shows the proposed five-year schedule of water rates through FY 2027. Proposed FY 2024 Fixed Charges were calculated in the preceding subsections. All proposed rates beginning in FY 2025 are calculated by increasing the prior year's proposed rate by the proposed annual revenue adjustment (from **Table 9-11**). Current FY 2023 wastewater rates (from **Table 8-2**) are also shown.

Table 11-3: Proposed Five-Year Wastewater Rate Schedule

Line	Fixed Charge Schedule	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family	124.14	128.44	133.58	138.93	144.49	150.27
2	Multi-Family	95.34	97.96	101.88	105.96	110.20	114.61
3	Mobile Home	78.28	97.61	101.52	105.59	109.82	114.22
4	Schools/Colleges	27.35	29.25	30.43	31.65	32.92	34.24
5	Motels and Hotels	27.35	29.25	30.43	31.65	32.92	34.24
6	General Office	27.35	29.25	30.43	31.65	32.92	34.24
7	City of Milpitas	27.35	29.25	30.43	31.65	32.92	34.24
8	Service Stations	27.35	29.25	30.43	31.65	32.92	34.24
9	Eat/Drink Establishments	27.35	29.25	30.43	31.65	32.92	34.24
10	Convalescent Hosp/Daycare	27.35	29.25	30.43	31.65	32.92	34.24
11	Personal Services, Laundrys	27.35	29.25	30.43	31.65	32.92	34.24
12	Electrical/Electronics	27.35	29.25	30.43	31.65	32.92	34.24
13	Machinery Manufacture	27.35	29.25	30.43	31.65	32.92	34.24
14	RockTenn (Jefferson Smurfit)	27.35	29.25	30.43	31.65	32.92	34.24
15	T. Marzetti Co.	27.35	29.25	30.43	31.65	32.92	34.24
16	Prudential Overall Supply	27.35	29.25	30.43	31.65	32.92	34.24
17	Evoqua Water Technologies	27.35	29.25	30.43	31.65	32.92	34.24
18	Elmwood Rehabilitation	27.35	29.25	30.43	31.65	32.92	34.24
19	Linear Technology	27.35	29.25	30.43	31.65	32.92	34.24
20	DS Waters of America	27.35	29.25	30.43	31.65	32.92	34.24
21	Magic Tech & Headway Tech	27.35	29.25	30.43	31.65	32.92	34.24
22	Lucky Pure Water	27.35	29.25	30.43	31.65	32.92	34.24
23	Milpitas Materials	27.35	29.25	30.43	31.65	32.92	34.24
24	Union Pacific Railroad	27.35	29.25	30.43	31.65	32.92	34.24
25	Cisco	27.35	29.25	30.43	31.65	32.92	34.24

Line	Volume Charge Schedule	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family			-	-	-	-
2	Multi-Family			-	-	-	-
3	Mobile Home			-	-	-	-
4	Schools/Colleges	9.99	11.58	12.04	12.53	13.04	13.57
5	Motels and Hotels	5.75	5.64	5.88	6.12	6.37	6.63
6	General Office	6.84	6.92	7.20	7.49	7.79	8.11
7	City of Milpitas	5.80	5.59	5.82	6.06	6.31	6.57
8	Service Stations	5.70	5.61	5.84	6.08	6.33	6.59
9	Eat/Drink Establishments	9.06	10.88	11.32	11.78	12.26	12.76
10	Convalescent Hosp/Daycare	5.60	5.45	5.67	5.90	6.14	6.39
11	Personal Services, Laundrys	5.31	4.97	5.17	5.38	5.60	5.83
12	Electrical/Electronics	6.72	6.82	7.10	7.39	7.69	8.00
13	Machinery Manufacture	8.43	9.92	10.32	10.74	11.17	11.62
14	RockTenn (Jefferson Smurfit)	10.46	10.79	11.23	11.68	12.15	12.64
15	T. Marzetti Co.	12.09	11.17	11.62	12.09	12.58	13.09
16	Prudential Overall Supply	8.42	9.88	10.28	10.70	11.13	11.58
17	Evoqua Water Technologies	7.06	6.40	6.66	6.93	7.21	7.50
18	Elmwood Rehabilitation	6.69	7.78	8.09	8.42	8.76	9.12
19	Linear Technology	6.88	6.62	6.89	7.17	7.46	7.76
20	DS Waters of America	6.04	5.38	5.61	5.84	6.08	6.33
21	Magic Tech & Headway Tech	7.32	7.73	8.04	8.37	8.71	9.06
22	Lucky Pure Water	5.29	4.95	5.15	5.36	5.58	5.81
23	Milpitas Materials	5.29	4.95	5.15	5.36	5.58	5.81
24	Union Pacific Railroad	7.35	7.85	8.17	8.50	8.84	9.20
25	Cisco	6.72	6.82	7.10	7.39	7.69	8.00

11.4.Causes of Different Rate Changes

It is common in a cost of service study to have significantly different rate impacts for different customer classes. Although it is difficult to precisely quantify differences between rate calculations from previous studies to this current study, there are a few general factors that contribute to the differential impacts:

1. **Updated units of service:** the contributed volumes and pollutant strengths have been updated since the 2018 study. This is particularly important for the individually monitored commercial customers whose strengths are continuously monitored. The units of service for each class as a proportion of the whole customer base are used to determine the proportion of the total costs.
2. **Changes in expenses:** the structure of the City's expenses are significantly different in 2023 than in 2018. For example, the San Jose capital expense is over three times larger than previously, resulting in a higher proportion of total City costs allocated to the pollutant components. This disproportionately affects customers with a higher than average estimated strength, all of which are commercial customers.
3. **Updated methodology:** Although the approach to calculating the previous rates was valid and justifiable, Raftelis believes that making several changes to the allocation process results in rates with a closer link to actual costs. These changes include the allocation of customer service and billing costs to customer accounts rather than ERUs, treating all City O&M expenses similarly rather than allocating a portion of them on a fixed ERU basis, and adjusting the recovery of the excess capacity portion of the San Jose capital expense.

11.5.Mobile Home Rate Subsidy

Following the completion of the 2018 rate study, the City determined that the proposed rates for mobile home customers would increase too sharply and implemented a transfer of funds from outside the utility in order to reduce the rate for these customers. The mobile home rate proposed above in **Table 11-3** represents the full cost of service requirement for this class. If the City chose to do so, it could continue to provide a subsidy to these customers. Increasing the mobile home rate by 7.85% per year from FY 2024 to FY 2028 would bring these rates into alignment with the class cost of service requirement in FY 2028. The total subsidy over the study period is approximately \$109 thousand⁷.

Table 11-4: Mobile Home Subsidy Option

Line	Description	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Subsidized Rate	\$ 78.28	\$ 84.42	\$ 91.05	\$ 98.20	\$ 105.91	\$ 114.22
2	% Rate Increase		7.85%	7.85%	7.85%	7.85%	7.85%
3	Revenue Recovered	\$ 244,703	\$ 263,911	\$ 284,627	\$ 306,969	\$ 331,065	\$ 357,052
4	COS Requirement		\$ 305,129	\$ 317,352	\$ 330,074	\$ 343,297	\$ 357,052
5	Annual Subsidy		41,217	32,724	23,105	12,233	-
6	Cumulative Subsidy		41,217	73,942	97,047	109,280	\$ 109,280

⁷ Raftelis prepared this calculation at the request of the City and do not endorse this approach. We recommend the City adopt cost of service rates to ensure equity between customer classes, maintain compliance with generally accepted rate setting principles, and Prop 218.

12. Combined Bill Impacts and Bill Comparison

Table 12-1 shows a combined bi-monthly bill for a single-family residential customer with a 5/8” meter using 14 hcf of water per billing period. The average annual increase to the total bill is approximately 5.3 percent per year.

Table 12-1: Combined Bi-Monthly Bill Impact

Line	Typical Bill - 14 hcf	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Water Charges							
1	Fixed Charge	\$ 34.10	\$ 35.87	\$ 38.21	\$ 40.70	\$ 43.35	\$ 46.17
2	Volume Charge	93.80	100.38	106.96	113.96	121.38	129.36
3	Capital Charge	15.12	15.96	16.80	17.64	18.62	19.60
4	Subtotal	\$ 143.02	\$ 152.21	\$ 161.97	\$ 172.30	\$ 183.35	\$ 195.13
5	<i>Percent Change</i>		6.4%	6.4%	6.4%	6.4%	6.4%
6	Wastewater Charges	\$ 124.14	\$ 128.44	\$ 133.58	\$ 138.93	\$ 144.49	\$ 150.27
7	<i>Percent Change</i>		3.5%	4.0%	4.0%	4.0%	4.0%
8	Total Charges	\$ 267.16	\$ 280.65	\$ 295.55	\$ 311.23	\$ 327.84	\$ 345.40
9	<i>Percent Change</i>		5.0%	5.3%	5.3%	5.3%	5.4%

Figure 12-2 shows a comparison of sample Single Family Residential bi-monthly bills with several nearby utilities. All bills are calculated based on a 5/8-inch or 3/4-inch water meter size and bi-monthly water use of 14 HCF. Note that many of the other agencies shown are either scheduled or expected to implement rate increases in FY 2024. Many factors affect the cost of serving water by the agency. Some of these factors include:

1. Tax revenue – some agencies receive tax revenue substantially lowering the revenue required from rates,
2. Water sources – agencies who buy more imported water usually pay more for water compared to purveyors who pump groundwater,
3. Topography – hilly agencies will incur costs to pump water compared to agencies with flat topography,
4. System reinvestment – deferred investment in rehabilitation projects will keep rates low compared to agencies are investing in their system,
5. Age – newer systems are often in better shape than older systems and require less repair,
6. Size – smaller systems often have a higher cost per customer since they lack economies of scale.

Figure 12-1: Single Family Residential Water Bill Comparison with Neighboring Agencies

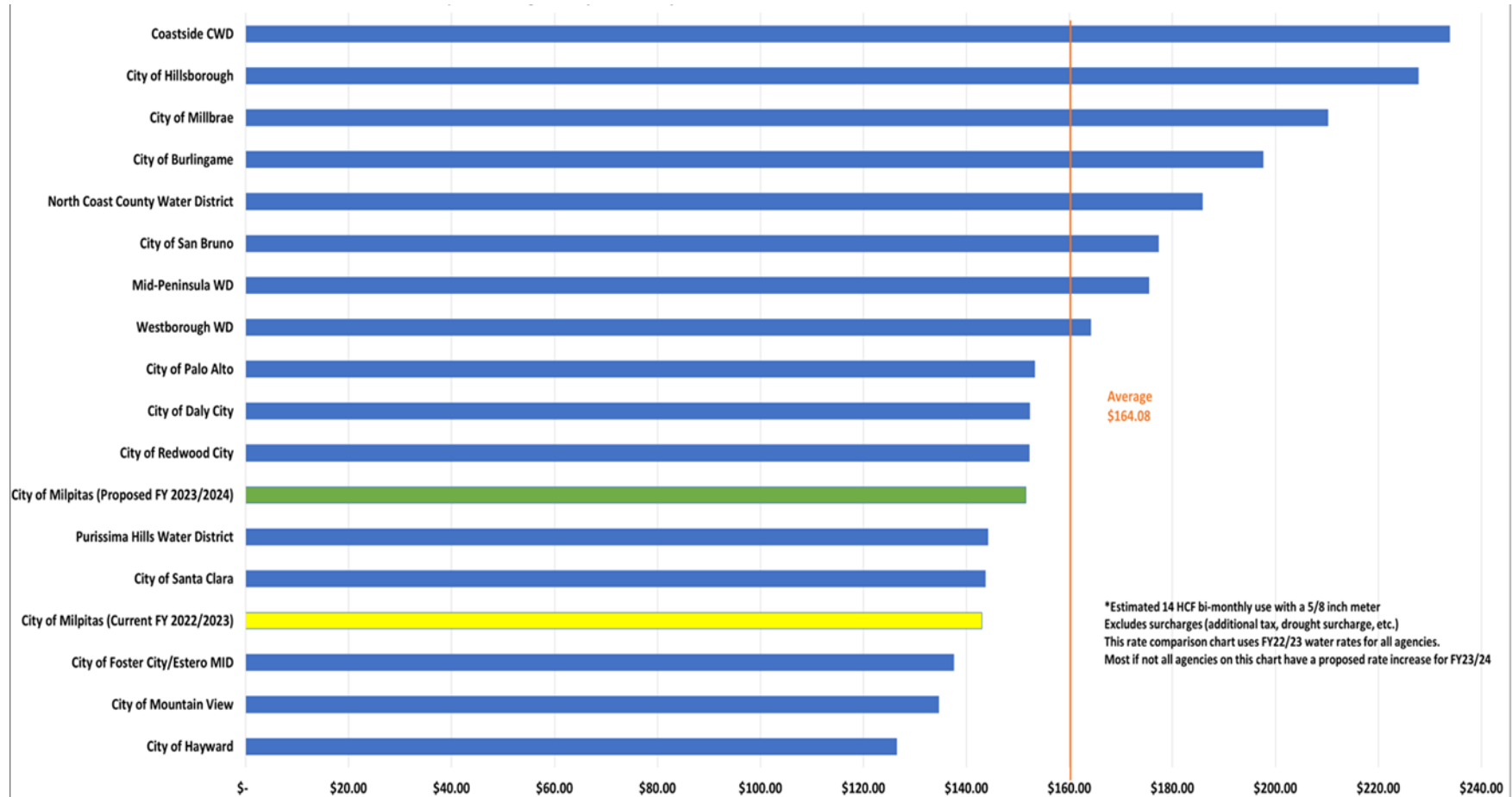
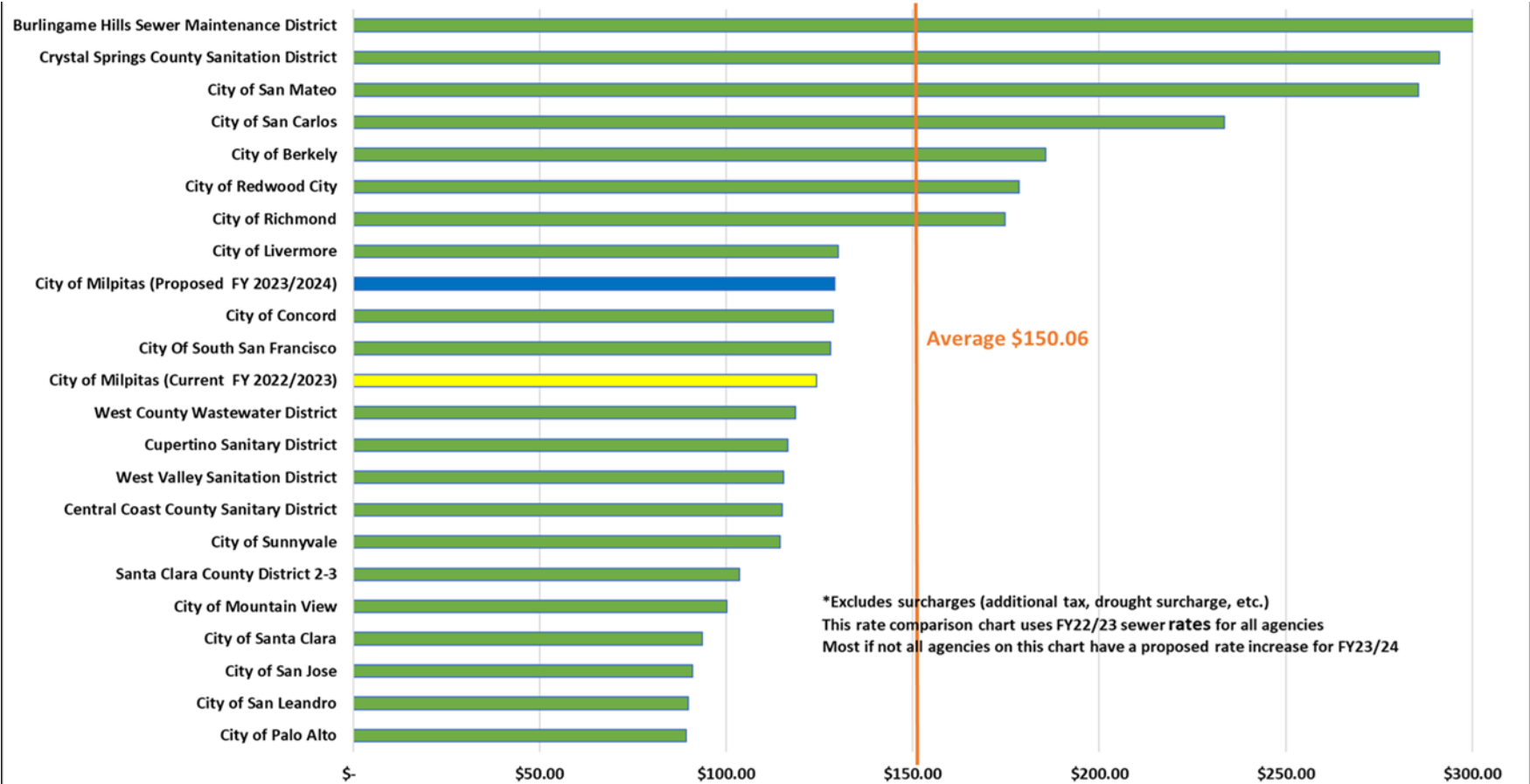
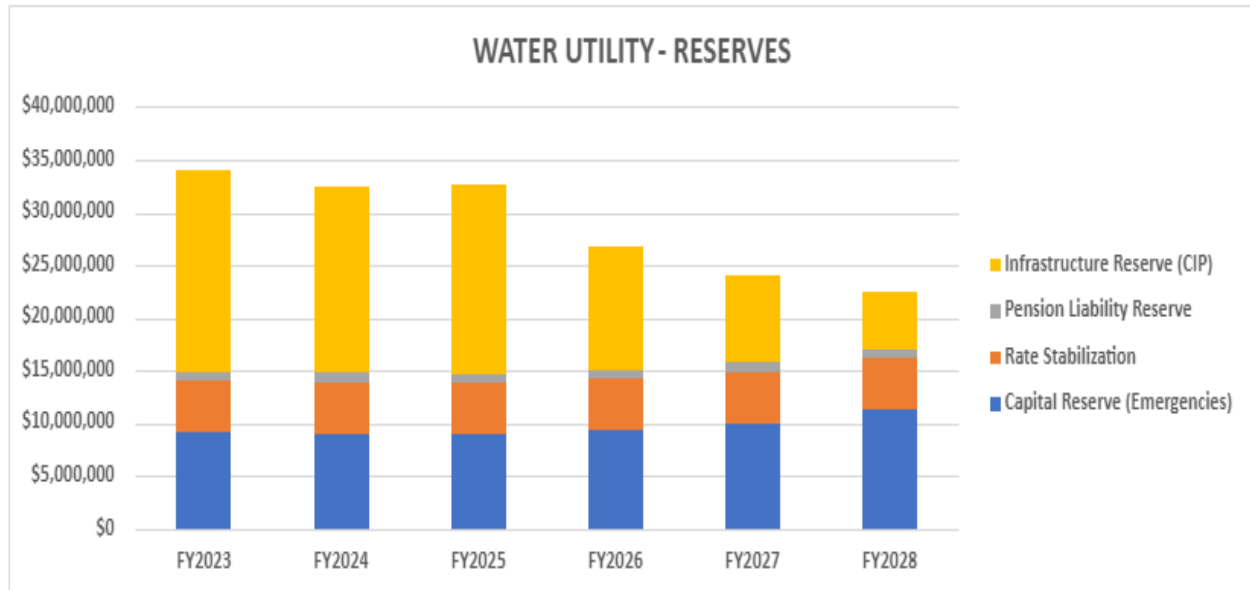


Figure 12-2: Single Family Residential Wastewater Bill Comparison with Neighboring Agencies



Water Utility Fund Reserve Analysis



Water Proposed Maximum Rate / Charge Fee Schedule

Item # 22.

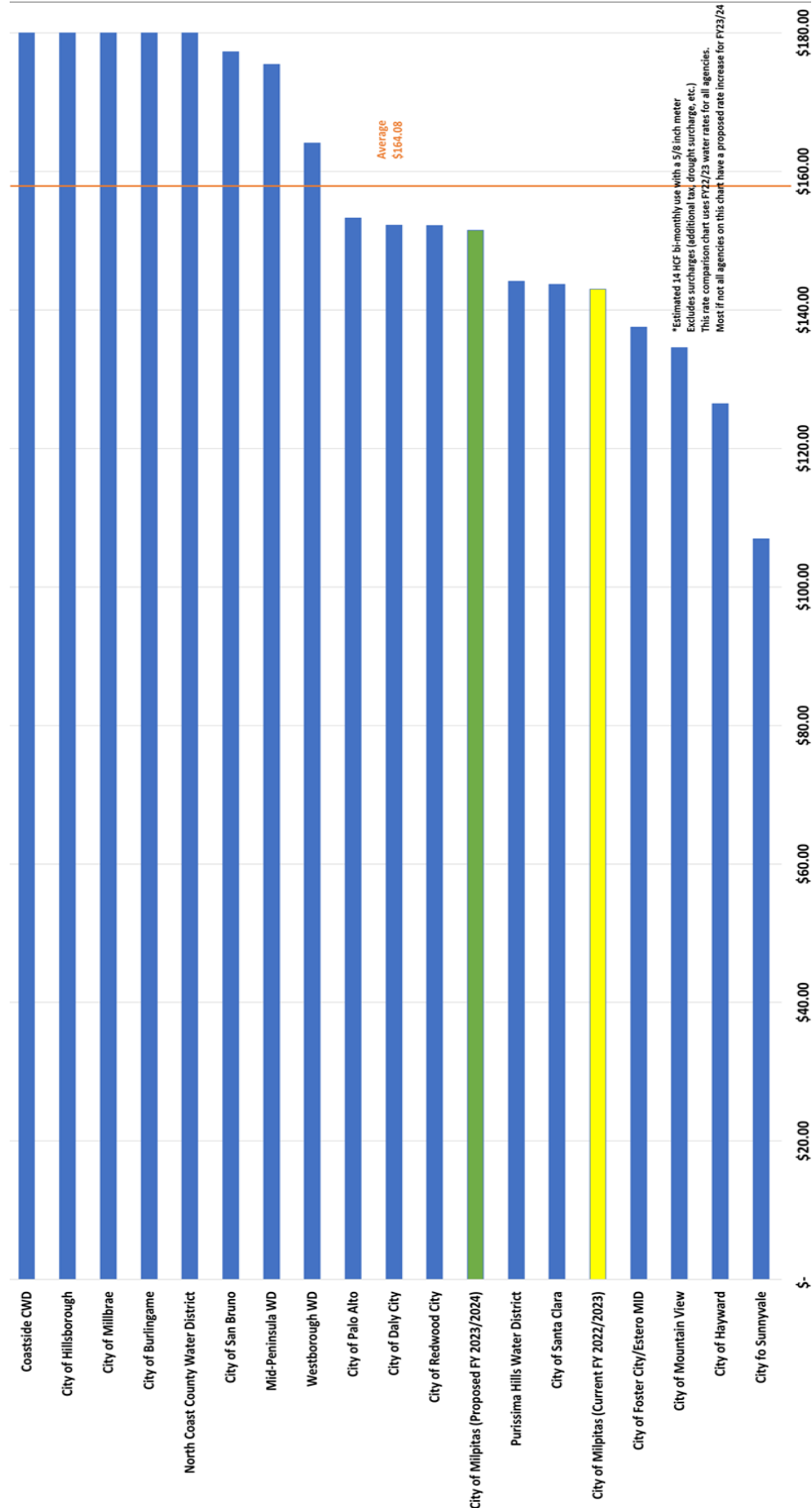
Bi-Monthly Potable Fixed							
Line	Charges	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	5/8"	\$ 34.10	\$ 35.87	\$ 38.21	\$ 40.70	\$ 43.35	\$ 46.17
	% Increase		5.2%	6.5%	6.5%	6.5%	6.5%
2	3/4"	51.14	47.03	50.09	53.35	56.82	60.52
	% Increase		-8.0%	6.5%	6.5%	6.5%	6.5%
3	1"	85.24	69.34	73.85	78.66	83.78	89.23
	% Increase		-18.7%	6.5%	6.5%	6.5%	6.5%
4	1 1/2"	170.48	125.14	133.28	141.95	151.18	161.01
	% Increase		-26.6%	6.5%	6.5%	6.5%	6.5%
5	2"	272.76	192.10	204.59	217.89	232.06	247.15
	% Increase		-29.6%	6.5%	6.5%	6.5%	6.5%
6	3"	511.43	404.13	430.40	458.38	488.18	519.92
	% Increase		-21.0%	6.5%	6.5%	6.5%	6.5%
7	4"	852.38	716.60	763.18	812.79	865.63	921.90
	% Increase		-15.9%	6.5%	6.5%	6.5%	6.5%
8	6"	1,704.76	1,464.29	1,559.47	1,660.84	1,768.80	1,883.78
	% Increase		-14.1%	6.5%	6.5%	6.5%	6.5%
9	8"	1,704.76	3,138.22	3,342.21	3,559.46	3,790.83	4,037.24
	% Increase		84.1%	6.5%	6.5%	6.5%	6.5%
10	10"	1,704.76	4,700.56	5,006.10	5,331.50	5,678.05	6,047.13
	% Increase		175.7%	6.5%	6.5%	6.5%	6.5%

Bi-Monthly Recycled Fixed							
Line	Charges	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	5/8"	\$ 34.10	\$ 13.54	\$ 14.43	\$ 15.37	\$ 16.37	\$ 17.44
	% Increase		-60.3%	6.6%	6.5%	6.5%	6.5%
2	3/4"	51.14	13.54	14.43	15.37	16.37	17.44
	% Increase		-73.5%	6.6%	6.5%	6.5%	6.5%
3	1"	85.24	13.54	14.43	15.37	16.37	17.44
	% Increase		-84.1%	6.6%	6.5%	6.5%	6.5%
4	1 1/2"	170.48	13.54	14.43	15.37	16.37	17.44
	% Increase		-92.1%	6.6%	6.5%	6.5%	6.5%
5	2"	272.76	13.54	14.43	15.37	16.37	17.44
	% Increase		-95.0%	6.6%	6.5%	6.5%	6.5%
6	3"	511.43	13.54	14.43	15.37	16.37	17.44
	% Increase		-97.4%	6.6%	6.5%	6.5%	6.5%
7	4"	852.38	13.54	14.43	15.37	16.37	17.44
	% Increase		-98.4%	6.6%	6.5%	6.5%	6.5%
8	6"	1,704.76	13.54	14.43	15.37	16.37	17.44
	% Increase		-99.2%	6.6%	6.5%	6.5%	6.5%
9	8"	1,704.76	13.54	14.43	15.37	16.37	17.44
	% Increase		-99.2%	6.6%	6.5%	6.5%	6.5%
10	10"	1,704.76	13.54	14.43	15.37	16.37	17.44
	% Increase		-99.2%	6.6%	6.5%	6.5%	6.5%

Line	Volume Charges	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Potable	\$ 6.70	\$ 7.17	\$ 7.64	\$ 8.14	\$ 8.67	\$ 9.24
	% Increase		7.0%	6.6%	6.5%	6.5%	6.6%
2	Recycled	4.51	5.41	5.77	6.15	6.55	6.98
	% Increase		20.0%	6.6%	6.6%	6.5%	6.6%
3	Capital	1.08	1.14	1.20	1.26	1.33	1.40
	% Increase		5.6%	5.3%	5.0%	5.6%	5.3%

Water Bill Comparison for Single Family

Item # 22.



Milpitas Assistance Program

Item # 22.

WHAT DISCOUNTS ARE AVAILABLE?

TIER 1 Customers are eligible for ARPA-funded childcare subsidies; 75% off on City-run Recreation programs to a maximum of \$1,000 per household; modest discounts on bi-monthly water and sewer utility bills; and 100% waiver of residential permit fees on water heater, furnace, air conditioner or replacement electrical panel change-outs. Tier 1 customers also are permitted to pay for Recreation programs over time on a payment plan.

TIER 2 Customers are eligible for ARPA-funded childcare subsidies; 50% off on City-run Recreation programs to a maximum of \$750 per household; modest discounts on bi-monthly water and sewer utility bills; and 75% off residential permit fees on water heater, furnace, air conditioner replacements or electrical panel change-outs. Tier 2 customers also are permitted to pay for Recreation programs over time on a payment plan.

TIER 3 Customers are eligible for ARPA-funded childcare subsidies; 75% off on City-run Recreation programs to a maximum of \$750 per household; and 75% off residential permit fees on water heater, furnace, air conditioner replacements or electrical panel change-outs. Tier 3 customers are permitted to pay for Recreation programs and water utility service over time on a payment plan. The City of Milpitas waives late fees on water and sewer utility bills incurred during your period of eligibility as a Tier 3 customer.

TIER 4 Customers are eligible for ARPA-funded childcare subsidies. No other MAP benefits are offered at this time.

Note: Childcare subsidies require additional application paperwork.

The City of Milpitas may adjust the discounts annually depending on program demand and funds available.

WHERE CAN I GET MORE INFORMATION?

Information is available online in English, Spanish, Chinese and Vietnamese at www.milpitas.gov/MAP.

For assistance by phone, or to make an appointment to meet in person with City of Milpitas Staff at the Barbara Lee Senior Center at 40 N. Milpitas Blvd., call **(408) 586-3405**.

The City of Milpitas is a welcoming and inclusive community. When assistance notices are mailed, we make reasonable efforts to accommodate special needs and translation requests.

HOW DOES THE PROGRAM WORK?

Submit an application and the requested documentation to the City of Milpitas Social Services Coordinator. If you qualify, you will receive a letter confirming your eligibility. For Recreation and Water/ Sewer discounts, you will automatically receive your discount. Discount amount subject to change annually in July. Water/ sewer discounts will begin with the next billing cycle. Discounts cannot be applied retroactively to previously made payments. Tiers 1, 2 and 4 customers are eligible for one year. Tier 3 customers are eligible for 6 months. When your eligibility expires, you must re-apply. Tier 3 customers may re-apply once per hardship.

OTHER RESOURCES

MAP only provides discounts off City of Milpitas fees. MAP does not provide discounts to individual customers, not to any third parties, including landlords, PG&E, contractors, retail businesses or other recreation providers.

For housing assistance resources, contact the Building Safety and Housing Department, (408) 586-3240, or www.milpitas.gov/housingresources.

For energy assistance resources, contact the Low-Income Home Energy Assistance Program <https://www.acl-hhs.gov/oc/programs/lineap>

For assistance with third-party recreation programs, contact the provider directly.

WHO IS ELIGIBLE?

Household Income			
# of People in Household	Eligible for MAP Tier 1 Benefits	Eligible for MAP Tier 2 Benefits	Eligible for MAP Tier 4 Benefits
1	\$59,000	\$92,250	\$117,950
2	\$67,400	\$105,400	\$134,800
3	\$75,850	\$118,600	\$151,650
4	\$84,250	\$131,750	\$168,500
5	\$91,000	\$142,300	\$182,000
6	\$97,750	\$152,850	\$195,450
7	\$104,500	\$163,400	\$208,950
8	\$111,250	\$173,950	\$222,400

*These figures are based on 2022 HUD Income Limits for Santa Clara County and are subject to change. HUD Income Limits are revised annually in late Spring.

Customers who participate in qualifying Federal, State or County assistance programs or your household is a Veteran, are eligible for MAP discounts. Tier 1: Those who are at or below HUD Low Income Limits for the Santa Clara County are Tier 2. Those who are at or below HUD Median Income Limits for Santa Clara County are Tier 4. Individuals and families experiencing temporary financial hardship due to job loss, loss of a primary wage earner, serious illness or a government shutdown are Tier 3.

WHEN CAN I APPLY?

The City of Milpitas offers continuous enrollment. Customers are eligible for discounts for one year from the date of approval and must re-apply annually to verify their income level. MAP discounts will automatically cease if the customer does not re-apply.

Milpitas Assistance Program

Because we know every little bit helps!

YOU OR SOMEONE YOU KNOW MAY QUALIFY FOR DISCOUNTS

Recreation Programs | Childcare Subsidies | Water and Sewer Utility Bills Permits for Residential Water Heater, Furnace, Air Conditioning or Electrical Panel Replacement

For more information, contact us at
(408) 586-3405 or visit
www.milpitas.gov/MAP

Last updated 7/2022



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Staff Report on Draft Sewer Rates Study, Direct Staff to Proceed with Community Engagement on Proposed Rates, Including Identifying a Date for the Public Hearing and Mailing a Notice of the Public Hearing for the Proposed Sewer Rates (Staff Contact: Roger Lee, Interim Public Works Director, 408-586-2602; and Lauren Lai, Director of Finance, 408-586-3111)
Category:	Community Services and Sustainable Infrastructure
Meeting Date:	12/6/2022
	<u>Recommendation:</u> (1) Receive staff report on Draft Sewer Rates Study; and (2) Direct staff to proceed with community engagement on proposed rates, including identifying a date for the public hearing and mailing a notice of the public hearing not less than 45 days prior to the hearing and find a CEQA exemption.

BACKGROUND:

The City of Milpitas owns, operates and maintains an extensive network of sewer system infrastructure (Sewer System). The Sewer System consists of 175 miles of pipeline and two pumping stations, which conveys an average rate of 6-7 million gallons per day (MGD) to the San Jose/Santa Clara Regional Wastewater Facility (RWF). The Sewer System serves approximately 15,350 customer accounts. The type and number of customers served are as follows:

Customer Type	Approximate Number
Single family residence	12,450
Multi-family residence*	11,800
Mobile Home*	521
Commercial/Industrial/Institutional	950

* Multi-family are served by 1,950 customer accounts, mobile homes are served by three customer accounts.

The Sewer System discharges to the RWF operated by the City of San Jose. At the RWF, the discharge is treated and either released to the San Francisco Bay or recycled for industrial and irrigation purposes. The cost to customers of the Sewer System for treatment at the RWF is determined by a master agreement between the City and the RWF. Per the agreement, the City of San Jose bills the City of Milpitas for the treatment cost plus a share of the capital cost. Treatment costs are based on the annual volume of wastewater received by the RWF while capital costs are based on the treatment capacity that the City owns. The City has rights to discharge 14.25 MGD. This is approximately 8.5 percent of the total RWF treatment capacity of 167 MGD.

In accordance with State Regulations and Title 4, Chapter 3, Section 4.00 of the Milpitas Municipal Code, the City must review and set sewer rates and charges to ensure revenues cover all system operation and maintenance (O&M) costs and all capital improvement program (CIP) costs. It is important to note that the costs for the treatment of sewage are passed through from the City of San Jose to the Milpitas rate payers. Additionally, financial reserves for unforeseen events are targeted per the City's financial reserve policy. Collection of revenues to offset the appropriate level of expenditures to ensure that the Sewer System is well maintained and adequately sized. For customers of the Sewer System, receipt of sufficient revenues ensures that system operation is efficient and reliable.

The analysis and setting of maximum sewer rates and charges must occur no less than every five years. Within these five years, staff annually reviews revenues and expenditures. If revenues and expenditures occur as expected, the maximum authorized rate for the upcoming year will be applied. Alternatively, if revenues

expenditures indicate the authorized upcoming rate is excessive, a lower rate may be applied. In no circumstances would staff increase rates above the maximum authorized amount without future City Council authorization and in accordance with the provisions of Article XIII D, Section (6)(b) of the California Constitution (commonly referred to as Proposition 218). City Council last adopted a five-year sewer rate and charge schedule in February of 2019. The first year of charges occurred in April 2019 and the fifth year ends on June 30, 2023. A new five-year sewer rate and charge schedule is needed for an effective date beginning July 1, 2023.

In the preparation of proposing FY23/24 to FY27/28 sewer rates and charges, the City contracted with the financial consulting firm Raffetis to develop a Draft Sewer Rates Study (Study). The Study is a five-year modeling analysis with inputs of financial projections of revenue requirements, expected expenditures, and in-depth analysis of proposed rates / charges so that revenues fully offset expenditures.

ANALYSIS:

The Study recommends increases to sewer rates and charges at an amount necessary to recover projected costs, including City of San Jose's pass-through cost increases for treatment at the RWF and to maintain target reserve funds per policy. The rates and charges recommended will ensure the Sewer System meets or exceeds customer requirements for reliable service, avoids operational deficits and the depletion of reserves and maintains favorable credit ratings to minimize potential future debt services costs.

Operating Costs:

O&M expenses for the Sewer System include O&M payments to RWF for treatment, staff costs and costs for services and supplies. Approximately 50% of the City's O&M expenses are pass-through RWF treatment payments to the City of San Jose. Expected increases at the RWF for treatment and capital costs account for approximately 16% of the proposed five-year rate increases. Per the City of San Jose, FY23-24 RWF treatment costs are estimated at \$7.3 million. For the five-year period (FY23-24 to FY27-28), the City of San Jose total RWF treatment costs amount to \$39.4 million.

City operating costs are estimated to increase by 4% annually through FY27/28. This increase includes costs for support of remote monitoring / control of facilities. FY23/24 estimated operating costs are approximately \$7.5 million. Expected increases in City operating costs account for approximately 14% to the proposed five-year increases. For the five-year period (FY23/24 to FY27/28) operating costs are estimated to total \$40.5 million.

Capital Improvement Program:

On August 9, 2022, City Council adopted the 2022 Sewer Master Plan (Plan) which included recommendations for CIP projects through the year 2040. The CIP projects recommended in the Plan were prioritized based on existing conditions, completed asset renewal/replacement studies and completed risk/resiliency assessments. High priority improvements were recommended for completion within the first five years, medium and low priority improvements are recommended for completion prior to 2040. Significant CIP projects programmed in the next five years (in 2022 dollars) include:

- Replacement or rehabilitation for assets or facilities. Projects include replacement of ageing pipes, and appurtenances (\$6.4 million)
- Pipeline replacement and pump station improvements of Force Main A (FMA) (\$26.1 million)
- Detailed condition assessment of Sewer System (CCTV) (\$2.1 million)

Due to the cost and impact on rates in FY23/24, some projects programmed in the Plan to begin design and construction in FY 23/24 are recommended to be delayed to FY 25/26. Increases in capital spending costs, including debt services, account for approximately 70% to the proposed five-year increases. For the five-year period (FY23/24 to FY27/28) City capital costs are estimated to total \$34.6 million. The City's share of capital costs for the RWF estimated by and passed through from City of San Jose for the same five-year period amounts to \$30.1 million.

FMA is a 50-year-old 30-inch diameter steel pipeline that conveys flows from the City to the RWF. The pipeline is one of two critical pipelines connected to the Main Lift Sewer Pump Station from which all discharges from the City are pumped. From the station, FMA crosses under Coyote Creek, through an easement on City of San Jose property under sludge drying beds and then ends at the RWF. The pipeline is in a corrosive environment and is approaching the end of its useful life. Due to these factors, Staff developed two options for the replacement of FMA.

Consistent with City Council discussion as part of the approval of the Sewer Master Plan, the recommended option is the design of FMA starting in FY24/25 and construction in FY25/26. This scenario estimates cash funding of \$6.1 million using sewer revenues and up to 30-year term bonding of \$20 million. The estimated cost of FMA's design and construction costs are preliminary and will change as design is completed and future bidding conditions. Unless significant unanticipated cost changes were to occur, proposed rates should not be upwardly impacted. Staff is recommending this option and proposed rates and charges have included these costs.

The alternative option is the design of FMA starting in FY27/28 and construction in FY28/29. This scenario is a no bond option and assumes all cash funding using sewer revenues. Delaying the project to FY28/29 and fully funding the project without bonds has several consequences. These include increased customer rates and charges, potential increased construction costs due to inflation and most significantly, increased risk of failure. Failure of FMA, if it were to occur under or adjacent to the creek would harm the environment and would be costly to repair. Additionally, failure of FMA would shift all discharge to Force Main B until FMA is repaired or replaced. Due to the size and alignment of the FMA, repairs or replacement timelines may extend beyond one or two years.

FY22/23 Ending Balance & Reserve Balance:

For FY22/23, the Sewer Utility Enterprise Fund is projected to have a total ending reserve balance of \$42.3 million. \$11 million of this amount is set aside per targets in the City's financial reserve policy. The remaining \$31.3 million will be used to fund the RWF costs, City O&M and CIP projects (including FMA), from FY23/24 to FY27/28. Reserve balance details are provided in attachment 2.

City costs to the RWF for treatment, O&M and CIP are a significant portion of total expenditures (approximately \$70 million from FY23/24 to FY27/28). Current and future estimated operating surpluses and existing reserves in the Infrastructure Fund can fund these costs. In FY23/24, the City's expenditures for O&M and CIP are projected to exceed existing revenues. With the proposed rate and charge increase of 4% annually and issuance of a \$20 million bond for FMA, the reserve targets in FY27/28 are \$19.7 million. Capital reserve for emergencies will be \$5.2M (100% of target level), rate stabilization reserves will be \$3.5M (100% of target level), pension liability reserves will be \$11M (no target level) and infrastructure (CIP) reserves will be \$1.8M (90% of target level of "at least \$2M"). Total Sewer Utility Enterprise Fund ending balance will be \$21.5 million.

Proposed Rate Recommendations:

The City's sewer rate and charge schedules allocate cost to different customer classifications equitably to their use of the Sewer System. Like how current rates and charges are collected, the proposed rate and charges distribute costs to volume, strength (determines how much treatment is required) and customer billing requirements.

Sewer System customers include both residential and non-residential customers. Residential customers include single-family, multi-family residential and mobile home parks. Non-Residential customers include all other commercial/industrial/institutional including offices, hotels, restaurants, schools and manufacturing.

The proposed rates and charges include a volumetric rate and a flat-fee charge to collect revenues sufficient to pay for expenditures necessary to operate the system, complete capital projects and pay for treatment.

Residential:

Sewer rates for residential accounts are based on a fixed charge. All accounts within each of the three residential categories pay the same rate regardless of the amount of sewer discharged into the sewer system. The rate is based on how the City is charged by RWF assuming an average daily rate of discharge.

Non-Residential:

Sewer rates for non-residential customers include a fixed charge and a volumetric charge. The bi-monthly bills are based on contributed sewage flow, which is determined by multiplying metered water use per hundred cubic feet (1ccf=748 gallons) by a return factor of 90%. Volumetric rates for non-residential customers vary and are determined by how the City is charged by RWF for each customer type.

The proposed rate and charge amounts include increases for all residential and non-residential customers for both fixed and volumetric charges. The average annual increase percentages for each year for residential are shown below.

Fiscal Year	Volume Charges	Fixed Charge	Average Bill Impact
FY23/24	4.1%	4.0%	4.0%
FY24/25	4.1%	4.0%	4.0%
FY25/26	4.1%	4.0%	4.0%
FY26/27	4.0%	4.0%	4.0%
FY27/28	4.1%	4.0%	4.0%

If the proposed rate and charge amounts become effective on July 1, 2023, the bill for residential customers, in a bi-monthly period (typical customer), will increase in FY23-24 by the amounts as shown below:

Residential Customer Class	Current Bi-monthly Rate	Proposed Maximum Bi-monthly Rate FY2023-2024	Maximum Monthly Increase
Single-Family Residential	\$124.14	\$128.44	\$2.15
Multi-Family Residential	\$95.34	\$97.96	\$2.62
Mobile Home Park	\$78.28 (Subsidized)	\$97.61*	\$19.33

*Mobile home rate without subsidy.

City Council, as part of the 2019 rate setting process, authorized a mobile home subsidy which averaged to \$18.43 bi-monthly and \$222,000 cumulative total from FY18/19 to FY22/23. Based on how the City is charged by RWF for mobile homes, if the current subsidy was to end, the bi-monthly charge to mobile home customers would increase 24.7% (an additional \$19.36 bi-monthly).

To avoid a large increase to mobile home customers, a cumulative FY23/24 to FY27/28 subsidy totaling \$109,481 from utility late fees is recommended. To achieve this, a series of 7.9% increases is proposed that would result in a bi-monthly increase of \$6.15 in FY23/24 increasing to \$8.29 in FY27/28.

Mobile Homes (Bi-monthly)	FY22/23 (current rate)	FY23/24	FY24/25	FY25/26	FY26/27	FY27/28
Subsidized Rate	\$78.28	\$84.43	\$91.06	\$98.21	\$105.93	\$114.22 *
Rate Increase	-	7.9%	7.9%	7.9%	7.9%	7.9%
\$ Change		\$6.15	\$6.63	\$7.15	\$7.72	\$8.29
Cumulative Subsidy Amount	-	\$41,285	\$74,073	\$97,224	\$109,481	\$109,481

*Mobile home rates and charges will approximate multi-family rates and charges.

The proposed maximum rate and charge five-year fee schedule for all customers are included in attachment #3. A comparison of current rates, proposed rates and the amounts charged by other agencies are included in attachment #4.

Rate Subsidy Program:

Sewer funds collected as fees and penalties and American Rescue Plan Act (ARPA) funds, administered by the City, are available to eligible customers through the Milpitas Assistance Program (MAP). Currently, customers do need to have their own separate water meter to be eligible. All mobile home parks and some multi-family units in the City have one master water meter that serves multiple residents. For these customers, their homeowner association then bills its' residents for sewer through homeowner association fees. Staff is investigating how to provide the MAP to these residents.

For eligible residents, the amount of discount varies based on eligibility requirements of four tiers. In FY21/22, the number of enrolled customers for both water and sewer was 211. Average discount amount for both water and sewer was \$22 bi-monthly (\$132 annually). Information regarding MAP is included in attachment #5.

Aside from MAP, public agencies providing sewer service may implement low-income sewer rate assistance programs, but rate discounts must be funded from non-rate sources of revenues.

Proposition 218 Noticing and Community Engagement:

Proposition 218, a state proposition approved by California voters in 1996, added Article XIII D to the California Constitution which requires voter approval prior to the imposition of any new or increased existing tax, assessment or certain user fees. It also requires local agencies imposing any new or any increases in any existing property-related fees and charges to comply with certain procedural requirements prior to their adoption. Sewer Service fees and charges are subject to these procedural requirements. Pursuant to Article XIII D, section 6, the City is required to hold a public hearing to consider the proposed sewer service rates, fees, and charges. Additionally, the City is required to provide ratepayers and property owners with a written notice of the proposed rate increases, and the date, time and location of the public hearing on the proposed rate increase. Subdivision (a) of Section 6 of the California Constitution's Article XIII D requires that 45 days must elapse from the time the notices are mailed until the public hearing on the proposed rate increases. Any property owner may submit a written protest of the proposed increase. Only one protest per parcel will be counted. If a majority of parcels submit protests, the City cannot adopt the proposed rates.

Staff will prepare the notice and will ensure it is user friendly and easy to understand. The notice will include a full description of all proposed maximum rates and charges for FY23/24 through FY27/28, the reasons for and the basis upon which the rates and charges are calculated, an explanation of the process, and a description on how to participate in the process. With Council's authorization to proceed with a notice, a special mailing notifying property owners and ratepayers of the proposed increase to the City's sewer service rates, fees and charges will begin.

The Draft Sewer Rates Study will be finalized by March 2023 prior to the public hearing on the proposed rates. In the interim, staff will conduct community meetings and a public workshop on the proposed rate and charge increases in January 2023.

Staff will host a series of workshops to help customers better understand the budget and infrastructure challenges facing the Sewer System including but not limited to, what services are paid for by sewer rates, what the proposed sewer rate and charge increases fund and why the City is proposing sewer rate and charge increases. The locations of the workshops will be included in the notice. Additionally, staff will establish a dedicated webpage on the City's website and include a frequently asked questions section and other pertinent information. The information will be posted to allow for the translation into over 100 languages utilizing the built-in Google Translator tool. Staff will also post information about the workshops on the City's social media accounts (i.e., Facebook, Nextdoor, Twitter). The proposed schedule for the notification, community meetings, public workshops, and public hearing is below.

Date	Meeting	Action

December 6, 2022	City Council	Council Consideration to issue Prop 218 Notice
January – February 2023	Community Meetings and Public Workshop	Community Outreach
March 7, 2023	City Council	Public Hearing at Milpitas City Hall. Council consideration of proposed sewer rates
May 9, 2023	City Council	FY 2023-24 Operating Budget Study Session
June 5, 2023	City Council	Public Hearing and FY 2023-24 Budget Adoption
July 1, 2023		New FY23/24 rate implementation date.

POLICY ALTERNATIVE(S):

Alternative 1: Do Not Accept Sewer Rates Study and Defer Community Engagement and Notification on Proposed Rate Increases

Pros: The existing sewer rates would remain in place.

Cons: This action would delay community engagement efforts and delay action on adjusting sewer rates and charges.

Reason for Not Recommending: Financially, no-action to ultimately increase rates and charges will result in revenues falling below what is needed. This would result in the delay of construction of priority capital improvement projects, such as FMA. Delaying FMA would further extend its risk for failure. Additionally, customer requirements for reliable service would not be met. By FY25/26, operating reserves would fall below policy level and the Sewer System will not generate sufficient revenues after the City pays RWF obligations without impact to the General Fund. Subsidy of mobile homes would not be recommended. All reserves would be depleted by FY26/27 and future credit ratings would be impacted.

FISCAL IMPACT:

If the Proposition 218 majority protest process is concluded without a majority protest and the sewer rate adjustments are adopted as presented, the new sewer rate and charges would generate enough revenues for the next five years to meet or exceed customer requirements for reliable service, avoid operational deficits, depletion of reserves and maintains favorable credit ratings to minimize potential future debt services costs. A total late fee (Fund 109) utility subsidy in the amount of \$109,481 will be needed to supplement mobile home customers from FY23/24 to FY 26/27.

California Environmental Quality Act (CEQA):

This action is exempt from CEQA as there will be no physical change to the environment.

RECOMMENDATION:

1. Receive staff report on Sewer Rates Study.
2. Direct staff to proceed with community engagement on proposed rates, including identifying a date for the Public Hearing and mailing a notice of the Public Hearing and proposed rates not less than 45 days prior to the Hearing.

Attachment(s):

1. Draft Sewer Rates Study – December 2, 2022
2. Sewer Utility Fund Reserve Analysis
3. Sewer Proposed Maximum Rate / Charge Fee Schedule
4. Sewer Bill Comparison for Single Family
5. Milpitas Assistance Program

City of Milpitas, CA

Draft Water and Wastewater Rate Study
Study Report / December 2, 2022



December 2, 2022

Mr. Harris Siddiqui, PE
Principal Engineer
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Subject: Water and Wastewater Rate Study

Dear Mr. Siddiqui,

Raftelis is pleased to provide this Draft Water and Wastewater Study Report to the City of Milpitas. The study's purpose was to develop a five-year proposed water and wastewater rate schedule for the City for Fiscal Year (FY) 2024 through FY 2028 that is fair and equitable.

The study's major goals are to:

- » Develop a five-year financial plan to ensure financial sufficiency, meet operating costs, fund the long-term Capital Improvement Plan (CIP) including the projects identified in the Master Plans adopted by the City in June 2022, and maintain prudent reserves.
- » Conduct a cost-of-service analysis to ensure a strong nexus between proposed water and wastewater rates and the cost to provide service to customers.

It has been a pleasure working with you, and we thank you and other City staff for the support provided to Raftelis during this study.

Sincerely,

A handwritten signature in black ink that reads 'Todd Cristiano'.

Todd Cristiano
Project Manager

Table of Contents

1. EXECUTIVE SUMMARY	1
1.1. Study Overview	1
1.2. Proposed Water Financial Plan.....	1
1.3. Proposed Wastewater Financial Plan	3
1.4. Bill Impacts and Comparison.....	6
2. INTRODUCTION.....	8
2.1. Study Overview	8
3. LEGAL REQUIREMENTS AND RATE SETTING METHODOLOGY	9
3.1. Legal Requirements	9
3.2. Rate-Setting Methodology	9
4. WATER UTILITY KEY INPUTS AND ASSUMPTIONS	11
4.1. Available Fund Balance.....	11
4.2. Current Water Rates.....	11
4.3. Financial Assumptions.....	12
4.4. Projected Service Connections	12
4.5. Projected Water Use and Supply	13
5. WATER FINANCIAL PLAN.....	15
5.1. Revenues From Current Rates	15
5.2. Operations and Maintenance Expenses	18
5.3. Debt Service	19
5.4. Capital Improvement Plan	20
5.5. Financial Policies.....	20
5.6. Status Quo Financial Plan	21
5.7. Proposed Financial Plan	23
6. WATER COST OF SERVICE ANALYSIS.....	26
6.1. Methodology	26
6.2. Revenue Requirement.....	26
6.3. Allocation of Expenses to Rate Components.....	27
7. PROPOSED WATER RATES	29
7.1. Proposed FY 2024 Fixed Meter Charges.....	29
7.2. Proposed FY 2024 Volume Charges	29
7.3. Proposed Five-Year Rate Schedule.....	30
7.4. Bi-Monthly Bill Impacts	31
8. WASTEWATER UTILITY KEY INPUTS AND ASSUMPTIONS.....	32
8.1. Available Fund Balance.....	32
8.2. Current Wastewater Rates	32
8.3. Financial Assumptions.....	33
8.4. Projected Service Connections	33
8.5. Projected Wastewater Volumes	34
9. WASTEWATER FINANCIAL PLAN.....	36
9.1. Revenues From Current Rates	36
9.2. Operations and Maintenance Expenses	39
9.3. Capital Improvement Plan	40
9.1. Debt Service	41
9.2. Financial Policies.....	42

9.3.	Status Quo Financial Plan	42
9.4.	Proposed Financial Plan	45
10.	WASTEWATER COST OF SERVICE ANALYSIS.....	48
10.1.	Methodology	48
10.2.	Units of Service	48
10.3.	Revenue Requirement.....	50
10.4.	Allocation of Expenses to Rate Components.....	50
10.1.	Customer Class Costs.....	52
11.	PROPOSED WASTEWATER RATES	54
11.1.	Proposed FY 2024 Fixed Meter Charges.....	54
11.2.	Proposed FY 2024 Volume Charges	55
11.3.	Proposed Five-Year Rate Schedule.....	55
11.4.	Causes of Different Rate Changes.....	57
11.5.	Mobile Home Rate Subsidy	57
12.	COMBINED BILL IMPACTS AND BILL COMPARISON	58

List of Tables

Table 1-1: Proposed Water Revenue Adjustments	1
Table 1-2: Proposed Five-Year Water Rate Schedule	3
Table 1-3: Proposed Wastewater Revenue Adjustments	3
Table 1-4: Proposed Five-Year Wastewater Rate Schedule	5
Table 4-1: FY 2023 Beginning Fund Balances	11
Table 4-2: Current Water Rate Schedule	12
Table 4-3: Projected Number of Water Meters Under Existing Rate Structure	13
Table 4-4: Projected Water Use Under Existing Rate Structure	14
Table 4-5: Projected Water Supply Mix	14
Table 5-1: Projected Fixed Meter Charge Revenues under Current Rates	15
Table 5-2: Projected O&M Volume Charge Revenues Under Current Rates	16
Table 5-3: Projected Capital Charge Revenues Under Current Rates	17
Table 5-4: Projected Other Revenues	17
Table 5-5: Summary of Projected Revenues Under Current Rates	18
Table 5-6: O&M Summary by Department	18
Table 5-7: Water Purchase Cost Detail	19
Table 5-8: Schedule of Debt Service Payments	19
Table 5-9: Capital Improvement Plan	20
Table 5-10: Status Quo Operating Financial Plan	21
Table 5-11: Status Quo Capital Financial Plan	22
Table 5-12: Status Quo Financial Plan – Projected Reserves	23
Table 5-13: Proposed Revenue Adjustments	23
Table 5-14: Proposed Operating Financial Plan	24
Table 5-15: Proposed Capital Financial Plan	24
Table 5-16: Proposed Financial Plan – Projected Ending Balances	25
Table 6-1: FY 2024 Revenue Required from Rates	27
Table 6-2: Allocation of Revenue Requirement	28
Table 7-1: Proposed FY 2024 Fixed Meter Charge Calculation	29
Table 7-2: Proposed FY 2024 Volume Charge Calculation	29
Table 7-3: Proposed Five-Year Water Rate Schedule	30
Table 7-4: Average Residential Bill Forecast	31
Table 7-5: Residential Bill Impacts at Varying Levels of Water Use	31
Table 8-1: FY 2023 Beginning Fund Balances	32
Table 8-2: Current Wastewater Rate Schedule	33
Table 8-3: Projected Number of Billed ERUs and Commercial Accounts	34
Table 8-4: Projected Wastewater Use	35
Table 9-1: Projected Fixed Charge Revenues under Current Rates	37
Table 9-2: Projected Volume Charge Revenues Under Current Rates	38
Table 9-3: Projected Other Revenues	39
Table 9-4: Summary of Projected Revenues Under Current Rates	39
Table 9-5: O&M Summary by Department	40
Table 9-6: Capital Improvement Plan	41
Table 9-7: Debt Service	41
Table 9-8: Status Quo Operating Financial Plan	43
Table 9-9: Status Quo Capital Financial Plan	44
Table 9-10: Status Quo Financial Plan- Projected Ending Balances	45
Table 9-11: Proposed Revenue Adjustments	45
Table 9-12: Proposed Operating Financial Plan	46

Table 9-13: Proposed Capital Financial Plan	46
Table 9-14: Proposed Financial Plan – Projected Ending Balances	47
Table 10-1: FY 2024 Wastewater Units of Service	49
Table 10-2: FY 2024 Revenue Required from Wastewater Rates	50
Table 10-3: Wastewater Revenue Requirement Allocation	52
Table 10-4: Customer Class Cost of Service	53
Table 11-1: Proposed FY 2024 Fixed Charge Calculation	54
Table 11-2: Proposed FY 2023 Volume Charge Calculation	55
Table 11-3: Proposed Five-Year Wastewater Rate Schedule	56
Table 11-4: Mobile Home Subsidy Option	57
Table 12-1: Combined Bi-Monthly Bill Impact	58

List of Figures

Figure 1-1: Proposed Financial Plan – Projected Ending Balances	2
Figure 1-2: Proposed Financial Plan – Projected Ending Balances	4
Figure 1-3: Single Family Residential Water Bill Comparison with Neighboring Agencies	6
Figure 1-4: Single Family Residential Wastewater Bill Comparison with Neighboring Agencies	7
Figure 5-1: Status Quo Financial Plan – Projected Ending Operating and Capital Balances	22
Figure 5-2: Proposed Financial Plan – Projected Ending Balances	25
Figure 9-1: Status Quo Financial Plan – Projected Ending Balances	44
Figure 9-2: Proposed Financial Plan – Projected Ending Balances	47
Figure 12-1: Single Family Residential Water Bill Comparison with Neighboring Agencies	59
Figure 12-2: Single Family Residential Wastewater Bill Comparison with Neighboring Agencies	60

This page intentionally left blank to facilitate two-sided printing.

1. Executive Summary

1.1. Study Overview

Public water agencies in California typically conduct cost-of-service and rate studies to ensure there is a strong nexus between rates charged to customers and costs incurred to provide service, as required by Proposition 218. The City of Milpitas (City) last conducted a cost-of-service study in 2018, which was adopted in February 2019 and established rates through Fiscal Year (FY) 2023. The City engaged Raftelis in 2022 to conduct this Water and Wastewater Rate Study to establish proposed water and wastewater rates over a five-year period from FY 2024 to FY 2028. Note that the proposed rates presented in this study report may not be implemented until formally adopted by the City Council after a public hearing.

The major study objectives are to:

- » Develop a five-year financial plan that sufficiently funds the City's operations and maintenance (O&M) expenses, debt service payments, and Capital Improvement Plan (CIP) while adequately funding reserves and meeting debt coverage requirements.
- » Conduct a cost-of-service analysis that establishes a clear nexus between the cost to serve customers and the water rates charged to customers, per Proposition 218 requirements.
- » Review the City's existing water and wastewater rate structures and recommend changes as necessary.
- » Develop a five-year schedule of water rates that is fair, equitable, and compliant with Proposition 218.

1.2. Proposed Water Financial Plan

Raftelis conducted a status quo cash flow analysis to evaluate whether existing water rates can adequately fund the City's various expenses over the five-year study period. With the assistance of City staff, annual revenues, O&M expenses, debt service payments, and capital expenditures were projected through FY 2028. Raftelis projects that with no rate increases over the five-year study period, the City will fully deplete its reserves by the end of FY 2027. This demonstrates a clear need for revenue adjustments (i.e. water rate revenue increases relative to the status quo). Raftelis worked with City staff to develop the following proposed revenue adjustments over the five-year study period (see **Table 1-1**). The proposed revenue adjustments were selected to provide financial sufficiency for the City while minimizing impacts to City customers.

Table 1-1: Proposed Water Revenue Adjustments

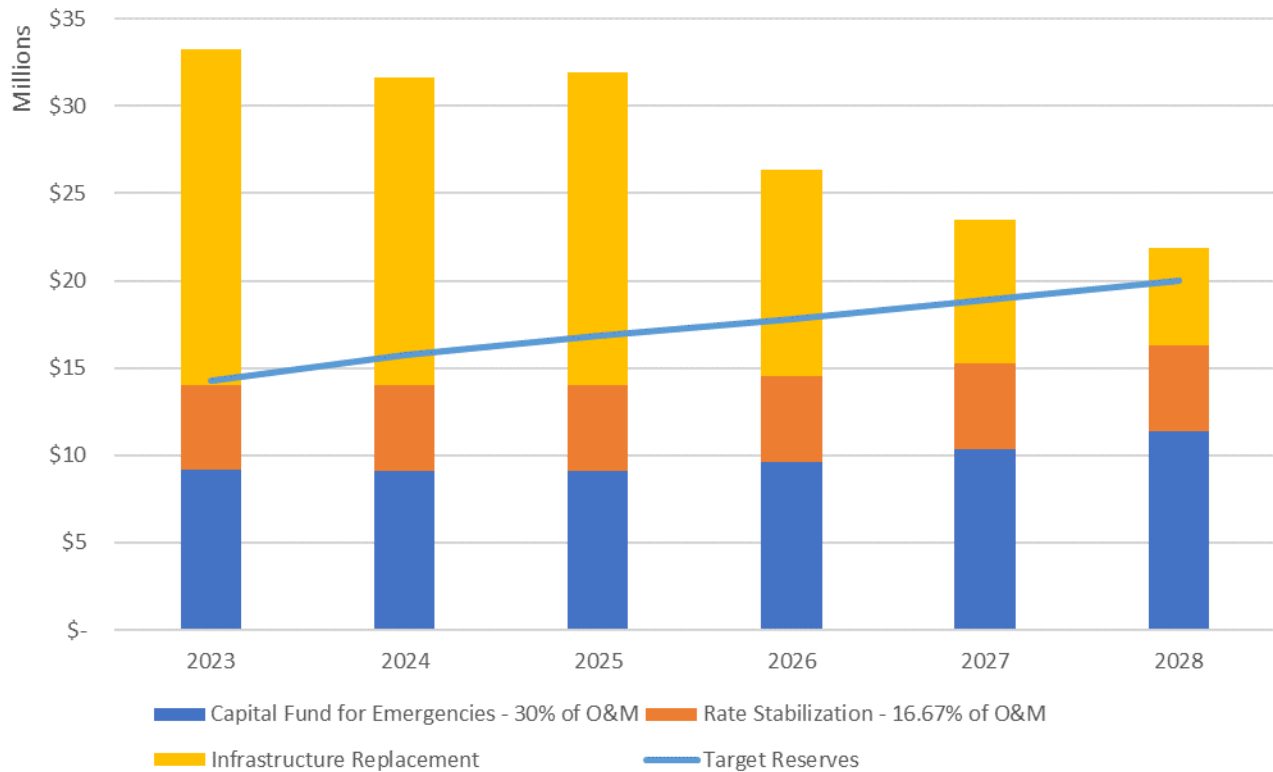
Line	Description	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Effective Date of Revenue Adjustment	July 1, 2023	July 1, 2024	July 1, 2025	July 1, 2026	July 1, 2027
2	O&M Revenue Adjustment	4.9%	6.5%	6.5%	6.5%	6.5%
3	Capital Revenue Adjustment	5.0%	5.0%	5.0%	5.0%	5.0%
4	Average Bill Increase - 14 hcf	6.4%	6.4%	6.4%	6.4%	6.4%

Key factors influencing the need for proposed revenue adjustments include:

- » **Planned capital expenditures:** Projects scheduled over the next five years total about \$34M, including beginning work on the projects identified in the City's master plan.
- » **Increases in purchased water costs from SFPUC and SCVWD:** The City's cost to purchase treated water is expected to increase by an average of 8.6 percent per year over the study period, including a 12 percent increase in 2024.

Figure 1-1 shows projected ending balances over the study period relative to the City's operating and total reserve targets under the proposed financial plan. Reserves are drawn down beginning in FY 2026 as work begins on the City's master plan projects. Although not displayed on the chart below, the City is projected begin covering all expenses (contribute to reserves rather than drawing on them) in FY 2029. The use of reserves over this period will mitigate the impact on ratepayers while still maintaining a healthy fund balance.

Figure 1-1: Proposed Financial Plan – Projected Ending Balances



1.2.1. PROPOSED WATER RATES

Table 1-2 shows the proposed five-year water rate schedule through FY 2028. Proposed FY 2024 rates are calculated based on the results of the cost of service analysis. Overall, FY 2024 O&M rates are designed to collect 4.9 percent more rate revenue than current FY 2023 rates; capital rates will collect 5 percent more. Proposed rates beginning in FY 2025 are calculated by simply increasing the prior year's proposed rates by the proposed annual revenue adjustments.

Table 1-2: Proposed Five-Year Water Rate Schedule

Bi-Monthly Potable Fixed Charges		FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Line							
1	5/8"	\$ 34.10	\$ 35.87	\$ 38.21	\$ 40.70	\$ 43.35	\$ 46.17
2	3/4"	51.14	47.03	50.09	53.35	56.82	60.52
3	1"	85.24	69.34	73.85	78.66	83.78	89.23
4	1 1/2"	170.48	125.14	133.28	141.95	151.18	161.01
5	2"	272.76	192.10	204.59	217.89	232.06	247.15
6	3"	511.43	404.13	430.40	458.38	488.18	519.92
7	4"	852.38	716.60	763.18	812.79	865.63	921.90
8	6"	1,704.76	1,464.29	1,559.47	1,660.84	1,768.80	1,883.78
9	8"	1,704.76	3,138.22	3,342.21	3,559.46	3,790.83	4,037.24
10	10"	1,704.76	4,700.56	5,006.10	5,331.50	5,678.05	6,047.13

Line	Volume Charges	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Potable	\$ 6.70	\$ 7.17	\$ 7.64	\$ 8.14	\$ 8.67	\$ 9.24
2	Recycled	4.51	5.41	5.77	6.15	6.55	6.98
3	Capital	1.08	1.14	1.20	1.26	1.33	1.40

1.3. Proposed Wastewater Financial Plan

Raftelis also conducted a similar analysis to evaluate whether existing wastewater rates can adequately fund the City's various expenses over the five-year study period. Raftelis projects that with no rate increases over the five-year study period, the City will fully deplete its reserves by the end of FY 2028. This demonstrates a clear need for revenue adjustments. Raftelis worked with City staff to develop the following proposed revenue adjustments over the five-year study period (see **Table 1-3**). The proposed revenue adjustments were selected to provide financial sufficiency for the City while minimizing impacts to City customers.

Table 1-3: Proposed Wastewater Revenue Adjustments

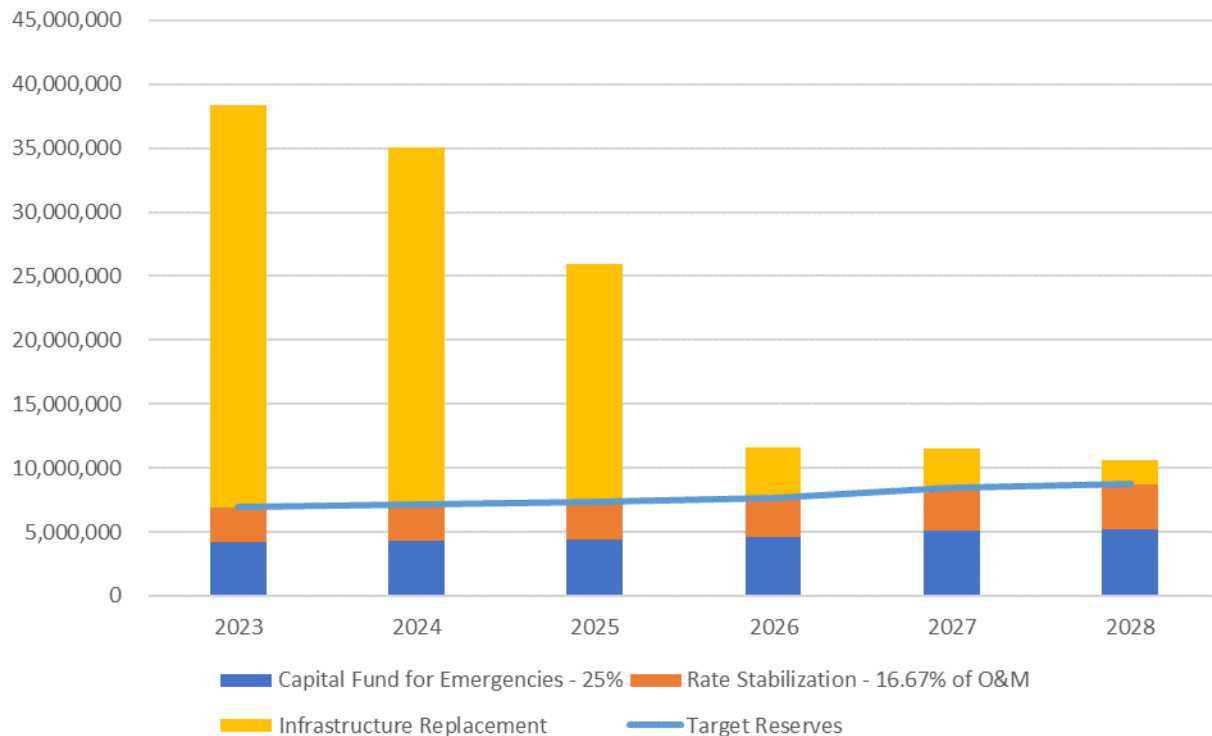
Line	Description	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Effective Date of Revenue Adjustment	July 1, 2023	July 1, 2024	July 1, 2025	July 1, 2026	July 1, 2027
2	Revenue Adjustment	4.00%	4.00%	4.00%	4.00%	4.00%

Key factors influencing the need for proposed revenue adjustments include:

- » **San Jose Capital Expenditures:** The expense due to the City of San Jose related to capital projects at the wastewater treatment facility is expected to total approximately \$36M over the study period, peaking in FY 2025 at approximately \$11M.
- » **Replacement of the Force Main A Pipeline:** The large pipeline that conveys all of the City's wastewater to San Jose is approaching the end of its useful life and is recommended to be replaced to mitigate the risk of catastrophic failure in the near future. This is expected to cost approximately \$26M. Raftelis recommends the use of bonds to finance a portion of this project.

Figure 1-1 shows projected ending balances over the study period relative to the City's operating and total reserve targets under the proposed financial plan. The City's substantial reserves are heavily used over the study period to fund capital projects, including San Jose expenses and the Force Main A pipeline in FY 2026.

Figure 1-2: Proposed Financial Plan – Projected Ending Balances



1.3.1. PROPOSED WASTEWATER RATES

Table 1-4 shows the proposed five-year water rate schedule through FY 2028. Proposed FY 2024 rates are calculated based on the results of the cost of service analysis. Overall, FY 2024 O&M rates are designed to collect 4 percent more rate revenue than current FY 2023 rates. Proposed rates beginning in FY 2025 are calculated by simply increasing the prior year's proposed rates by the proposed annual revenue adjustments.

Table 1-4: Proposed Five-Year Wastewater Rate Schedule

Line	Fixed Charge Schedule	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family	124.14	128.44	133.58	138.93	144.49	150.27
2	Multi-Family	95.34	97.96	101.88	105.96	110.20	114.61
3	Mobile Home	78.28	97.61	101.52	105.59	109.82	114.22
4	Schools/Colleges	27.35	29.25	30.43	31.65	32.92	34.24
5	Motels and Hotels	27.35	29.25	30.43	31.65	32.92	34.24
6	General Office	27.35	29.25	30.43	31.65	32.92	34.24
7	City of Milpitas	27.35	29.25	30.43	31.65	32.92	34.24
8	Service Stations	27.35	29.25	30.43	31.65	32.92	34.24
9	Eat/Drink Establishments	27.35	29.25	30.43	31.65	32.92	34.24
10	Convalescent Hosp/Daycare	27.35	29.25	30.43	31.65	32.92	34.24
11	Personal Services, Laundrys	27.35	29.25	30.43	31.65	32.92	34.24
12	Electrical/Electronics	27.35	29.25	30.43	31.65	32.92	34.24
13	Machinery Manufacture	27.35	29.25	30.43	31.65	32.92	34.24
14	RockTenn (Jefferson Smurfit)	27.35	29.25	30.43	31.65	32.92	34.24
15	T. Marzetti Co.	27.35	29.25	30.43	31.65	32.92	34.24
16	Prudential Overall Supply	27.35	29.25	30.43	31.65	32.92	34.24
17	Evoqua Water Technologies	27.35	29.25	30.43	31.65	32.92	34.24
18	Elmwood Rehabilitation	27.35	29.25	30.43	31.65	32.92	34.24
19	Linear Technology	27.35	29.25	30.43	31.65	32.92	34.24
20	DS Waters of America	27.35	29.25	30.43	31.65	32.92	34.24
21	Magic Tech & Headway Tech	27.35	29.25	30.43	31.65	32.92	34.24
22	Lucky Pure Water	27.35	29.25	30.43	31.65	32.92	34.24
23	Milpitas Materials	27.35	29.25	30.43	31.65	32.92	34.24
24	Union Pacific Railroad	27.35	29.25	30.43	31.65	32.92	34.24
25	Cisco	27.35	29.25	30.43	31.65	32.92	34.24

Line	Volume Charge Schedule	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family			-	-	-	-
2	Multi-Family			-	-	-	-
3	Mobile Home			-	-	-	-
4	Schools/Colleges	9.99	11.58	12.04	12.53	13.04	13.57
5	Motels and Hotels	5.75	5.64	5.88	6.12	6.37	6.63
6	General Office	6.84	6.92	7.20	7.49	7.79	8.11
7	City of Milpitas	5.80	5.59	5.82	6.06	6.31	6.57
8	Service Stations	5.70	5.61	5.84	6.08	6.33	6.59
9	Eat/Drink Establishments	9.06	10.88	11.32	11.78	12.26	12.76
10	Convalescent Hosp/Daycare	5.60	5.45	5.67	5.90	6.14	6.39
11	Personal Services, Laundrys	5.31	4.97	5.17	5.38	5.60	5.83
12	Electrical/Electronics	6.72	6.82	7.10	7.39	7.69	8.00
13	Machinery Manufacture	8.43	9.92	10.32	10.74	11.17	11.62
14	RockTenn (Jefferson Smurfit)	10.46	10.79	11.23	11.68	12.15	12.64
15	T. Marzetti Co.	12.09	11.17	11.62	12.09	12.58	13.09
16	Prudential Overall Supply	8.42	9.88	10.28	10.70	11.13	11.58
17	Evoqua Water Technologies	7.06	6.40	6.66	6.93	7.21	7.50
18	Elmwood Rehabilitation	6.69	7.78	8.09	8.42	8.76	9.12
19	Linear Technology	6.88	6.62	6.89	7.17	7.46	7.76
20	DS Waters of America	6.04	5.38	5.61	5.84	6.08	6.33
21	Magic Tech & Headway Tech	7.32	7.73	8.04	8.37	8.71	9.06
22	Lucky Pure Water	5.29	4.95	5.15	5.36	5.58	5.81
23	Milpitas Materials	5.29	4.95	5.15	5.36	5.58	5.81
24	Union Pacific Railroad	7.35	7.85	8.17	8.50	8.84	9.20
25	Cisco	6.72	6.82	7.10	7.39	7.69	8.00

1.4.Bill Impacts and Comparison

Figure 1-3 shows comparison of Single Family Residential bi-monthly bills with neighboring agencies. All bills are representative of a typical residential customer with a 5/8” meter using 14 HCF per bi-monthly billing period (equal to the average residential water use in the City). Note that many of the other agencies shown are either scheduled or expected to implement rate increases in FY 2024, which are not reflected in the graphs. Many other factors affect rates such as whether or not a water purveyor receives a portion of county property tax revenue, infrastructure age and condition, whether the system has to pump water up to higher elevations, water source, and the willingness of the agency to reinvest in the system to maintain infrastructure.

Figure 1-3: Single Family Residential Water Bill Comparison with Neighboring Agencies

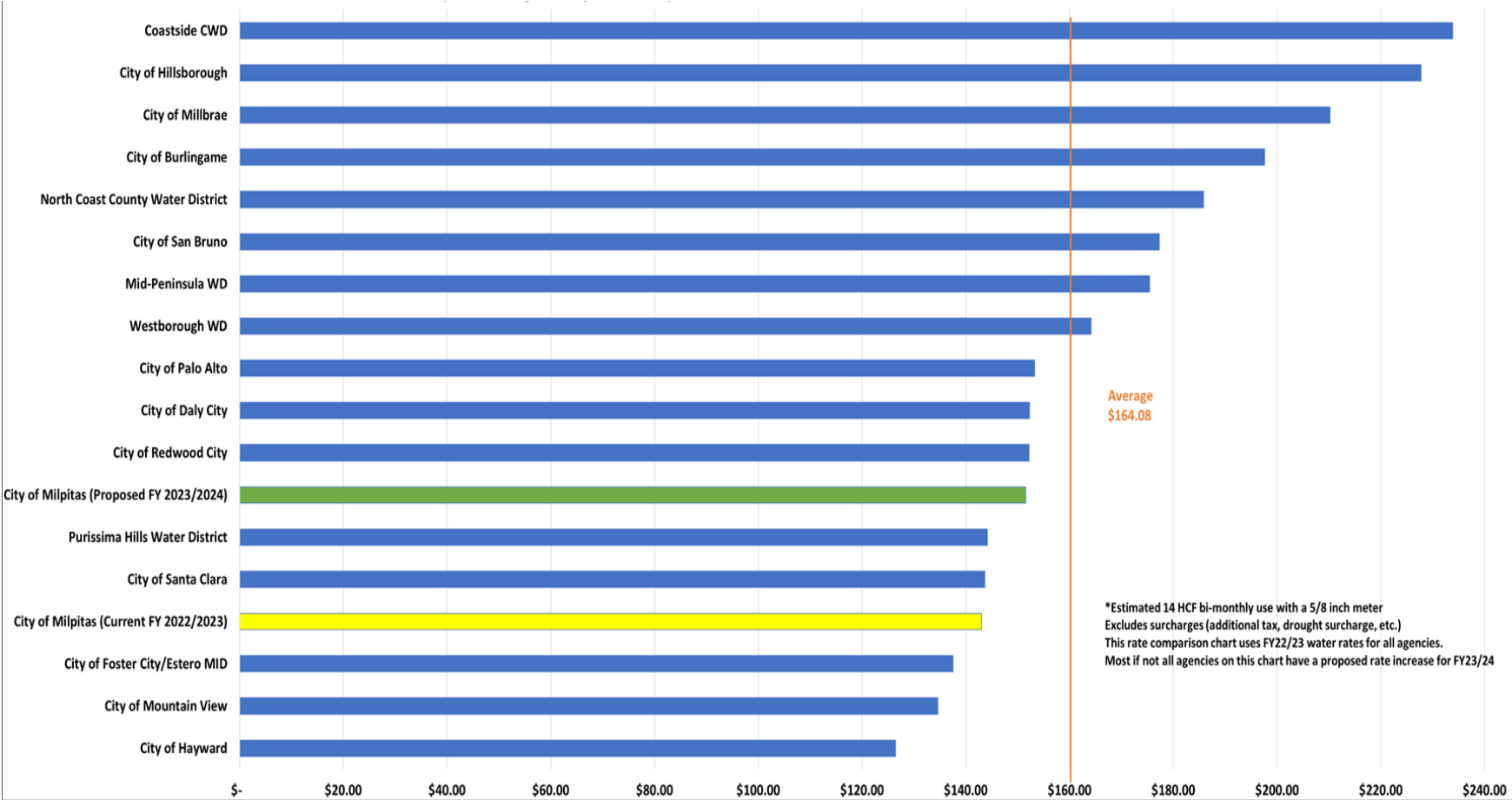
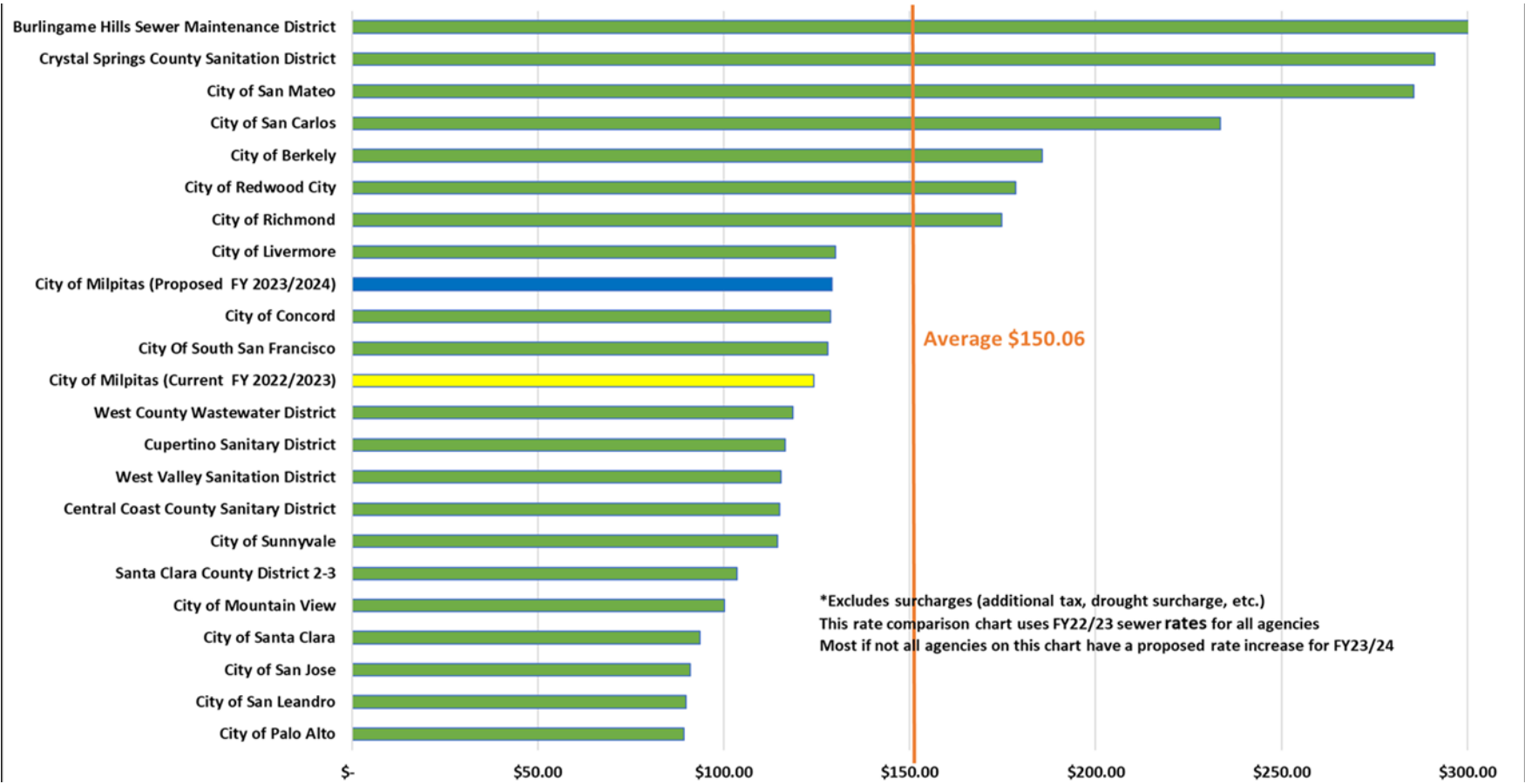


Figure 1-4: Single Family Residential Wastewater Bill Comparison with Neighboring Agencies



2. Introduction

2.1. Study Overview

Public water agencies in California typically perform a cost-of-service analysis to ensure that customers are appropriately charged for water and wastewater service commensurate with the cost to provide service. The City engaged Raftelis in 2022 to conduct this Water and Wastewater Rate Study to establish proposed water and wastewater rates for FY 2024 through FY 2028. Note that proposed rates cannot be implemented until formally adopted by the City Council after a public hearing. Proposition 218 requires that City customers must be mailed a public hearing notice detailing any proposed rate changes no fewer than 45 days before the public hearing.

Study Objectives

The major study objectives are to:

- » Develop a five-year financial plan that sufficiently funds the City's operations and maintenance (O&M) expenses, debt service payments, and capital expenditures while adequately funding reserves and meeting debt coverage requirements.
- » Conduct a cost of service analysis that establishes a clear nexus between the cost to serve customers and the water rates charged to customers, per Proposition 218 requirements.
- » Review the City's existing water and wastewater rate structures and recommend changes as necessary to ensure that proposed rates achieve financial sufficiency while furthering the City's policy goals of affordability and conservation.
- » Develop a five-year schedule of water and wastewater rates that are fair, equitable, and compliant with Proposition 218 requirements.

Reliance on City Provided Data

During this project, the City (and/or its representatives) provided Raftelis with a variety of technical information, including cost and revenue data. Raftelis reviewed the data provided for reasonableness but did not independently assess or test for the accuracy of such data – historic or projected. Raftelis has relied on this data in the formulation of our findings and subsequent recommendations, as well as in the preparation of this report. Raftelis also relied on cost allocation data provided by the City needed to complete the cost of service analysis.

There are often differences between actual and projected data. Some of the assumptions used for projections in this report will not be realized, and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between the data or results projected in this report and actual results achieved, and those differences may be material. As a result, Raftelis takes no responsibility for the accuracy of data or projections provided by or prepared on behalf of the City, nor do we have any responsibility for updating this report for events occurring after the date of this report.

In the Study, Raftelis made rate calculations using the best estimates of the City's expected costs, planned capital improvements, and future customer demands. Making such calculations in advance is normal for public water providers because providers need to recover revenue matched to public budgets adopted in advance of their fiscal periods. For this reason, and others, achieving mathematical exactitude in rate calculations is virtually impossible. Instead, there are methods and techniques available to water providers that promote proportionality between the costs incurred to provide water service and the demand for that service. These methods and techniques are broadly referred to as "cost-of-service principles."

3. Legal Requirements and Rate Setting Methodology

3.1. Legal Requirements

California Constitution - Article XIII D, Section 6 (Proposition 218)

Proposition 218, reflected in the California Constitution as Article XIII D, was enacted in 1996 to ensure that rates and fees are reasonable and proportional to the cost of providing service. The principal requirements, as they relate to public water service, are as follows:

1. A property-related charge (such as water rates) imposed by a public agency on a parcel shall not exceed the costs required to provide the property-related service.
1. Revenues derived by the charge shall not be used for any purpose other than that for which the charge was imposed.
2. The amount of the charge imposed upon any parcel shall not exceed the proportional cost of service attributable to the parcel.
3. No charge may be imposed for a service unless that service is actually used or immediately available to the owner of the property.
4. A written notice of the proposed charge shall be mailed to both the customer of record and owner of record of each parcel at least 45 days prior to the public hearing, when the agency considers all written protests against the charge.

As stated in the American Water Works Association's (AWWA) *Principles of Water Rates, Fees, and Charges: Manual of Water Supply Practices - M1 Seventh Edition* (Manual M1), "water rates and charges should be recovered from classes of customers in proportion to the cost of serving those customers." Raftelis follows industry-standard rate-setting methodologies set forth by the AWWA Manual M1 to ensure this study meets Proposition 218 requirements and establishes rates that do not exceed the proportionate cost of providing water services on a parcel basis. The methodology in the Manual M1 is a nationally recognized industry rate-making standard that courts have recognized as consistent with Proposition 218.

California Constitution Article X, Section 2

California Constitution Article X, Section 2 mandates that water resources be put to beneficial use and that the waste or unreasonable use of water be prevented through conservation. Section 106 of the Water Code declares that the highest priority use of water is for domestic purposes, with irrigation secondary. Thus, the management of water resources is part of the property-related service provided by public water suppliers to ensure the resource is available over time.

3.2. Rate-Setting Methodology

This study was conducted using industry-standard principles outlined by the AWWA Manual M1 and WEF Manual of Practice No. 27. The process and approach Raftelis utilized in the study to determine water rates is informed by the City's policy objectives, the current water and wastewater systems and rates, and the legal requirements in California (namely, Proposition 218). The resulting financial plan, cost of service analysis, and rate

design process follows five key steps, outlined below, to determine proposed rates that fulfill the City's objectives, meet industry standards, and comply with relevant regulations.

1. **Financial Plan:** The first study step is to develop a multi-year financial plan that projects the City's revenues, expenses, capital project financing, annual debt service, and reserve funding. The financial plan is used to determine the revenue adjustment, which allows the City to recover adequate revenues to fund expenses and reserves.
2. **Revenue Requirement Determination:** After completing the financial plan, the rate-making process begins by determining the revenue requirement for the test year, also known as the rate-setting year. The test year for this study is FY 2024. The revenue requirement should sufficiently fund the City's operating costs, annual debt service (including coverage requirements), capital expenditures, and reserve funding as projected based on the annual budget estimates.
3. **Cost of Service Analysis:** The annual cost of providing water or wastewater service, or the revenue requirement, is then distributed to customer classes commensurate with their use of and burden on the water system. A cost of service analysis involves the following steps:
 - » Functionalize costs – the different components of the revenue requirement are categorized into functions such as supply, customer service, etc.
 - » Allocate to cost causation components – the functionalized costs are then allocated to cost causation components such as volume, bills, equivalent meters, etc.
 - » Develop unit costs – unit costs for each cost causation component are determined using units of service, such as total use, peaking units, equivalent meters, number of customers, etc., for each component.
 - » Distribute cost components – the cost components are allocated to each customer class using the unit costs in proportion to their demand and burden on the system.
4. **Rate Design:** After allocating the revenue requirement to each customer class, the project team designs and calculates rates. Rates do more than simply recover costs; within the legal framework and industry standards, properly designed rates should support and optimize the City's policy objectives. Rates also act as a public information tool in communicating these policy objectives to customers. This process also includes a rate impact analysis and sample customer bill impacts.
5. **Administrative Record Preparation and Rate Adoption:** The final step in a rate study is to develop the administrative record in conjunction with the rate adoption process. This report serves as the administrative record for this study. The administrative record documents the study results and presents the methodologies, rationale, justifications, and calculations used to determine the proposed rates. A thorough and methodological administrative record serves two important functions: maintaining defensibility in a stringent legal environment and communicating the rationale for revenue adjustments and proposed rates to customers and key stakeholders.

4. Water Utility Key Inputs and Assumptions

Raftelis developed a rate model in Microsoft Excel to project financial and rate calculations over a five-year study period through FY 2028. The City's fiscal year spans from July 1 through June 30. Projections in future years were generally made based on FY 2022 or FY 2023 data using key assumptions outlined below. All assumptions were discussed with and reviewed by City staff to ensure that the City's unique characteristics were incorporated. Note that most table values shown throughout this report are rounded to the last digit shown and may therefore not add precisely to the totals shown.

4.1. Available Fund Balance

Table 4-1 presents the available fund balance as of the end of FY 2022 and beginning of FY 2023. The financial plan presented in this report does not propose to spend any of the Capital Reserve for Emergencies or Rate Stabilization Fund; however, portions of the existing Infrastructure Fund balance will be used for the construction of future capital projects identified in the master plan.

Table 4-1: FY 2023 Beginning Fund Balances

Line	Fund Description	Balance
Water Utility		
1	Capital for Emergencies	\$ 8,167,439
2	Rate Stabilization	4,538,374
3	CALPERS	822,539
4	Infrastructure	17,499,492
5	Total	\$ 31,027,844

4.2. Current Water Rates

Table 4-2 shows the current adopted rate schedule developed during the prior rate study. Customers are currently subject to two primary charges: 1) bi-monthly Fixed Meter Charges and 2) Volume Charges per hundred cubic feet (HCF)¹ of water delivered with separate O&M and Capital rates. Fixed Meter Charges vary based on meter size. Water used by all potable customers, regardless of customer class, are subject to the same volumetric rates. Recycled customers have a separate volumetric rate but pay the same fixed charge; these customers do not pay the capital volumetric charge.

¹ One HCF equals approximately 748 gallons.

Table 4-2: Current Water Rate Schedule

Line	Description	FY 2023
Bi-Monthly Fixed Charge (\$/period)		
1	5/8"	\$ 34.10
2	3/4"	51.14
3	1"	85.24
4	1 1/2"	170.48
5	2"	272.76
6	3"	511.43
7	4"	852.38
8	6"	1,704.76
9	8"	1,704.76
10	10"	1,704.76
Volume Charges (\$/hcf)		
11	Potable	\$ 6.70
12	Recycled	4.51
13	Capital Charge	1.08

4.3. Financial Assumptions

Inflationary assumptions were used to project O&M expenses beyond FY 2023. All inflationary factors were reviewed by City staff and are based on historical and anticipated cost increases. For O&M expenses, a general inflation rate of 4 percent is consistent with long-term changes in the Consumer Price Index (CPI), though recent inflation is above 3 percent. However, projections for imported water supply costs are based on projected wholesale water rate increases, as shown in detail below in **Table 5-7**. Interest earnings on cash reserves are projected assuming a 1 percent annual interest rate.

4.4. Projected Service Connections

Customer account growth projections are necessary to estimate water demand and rate revenues over the study period. City staff provided Raftelis with the number of water meters and fire lines by connection size for FY 2021; projections from 2021 data are based on forecasted growth rates per the City's Decision Support System Model (DSS) which was used in the adopted Urban Water Management Plan (2020 UWMP) and 2020 Water Shortage Contingency Plan (2020 WSCP). **Table 4-3** shows the projected number of bi-monthly bills issued by customer class and meter size in each year of the study period.

Table 4-3: Projected Number of Water Meters Under Existing Rate Structure

Line	Total Potable Bills	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	5/8"	74,878	75,079	75,080	75,081	75,082	75,083
2	3/4"	3,293	3,299	3,300	3,301	3,302	3,303
3	1"	8,003	8,015	8,093	8,171	8,249	8,327
4	1 1/2"	2,776	2,784	2,792	2,799	2,806	2,813
5	2"	3,390	3,405	3,420	3,433	3,446	3,459
6	3"	534	534	534	534	534	534
7	4"	362	363	364	364	364	364
8	6"	173	173	173	173	173	173
9	8"	263	263	263	263	263	263
10	10"	12	12	12	12	12	12
11	12"	-	-	-	-	-	-
12	Total	93,684	93,927	94,031	94,131	94,231	94,331

Line	Recycled	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	5/8"	-	-	-	-	-	-
2	3/4"	18	18	18	18	18	18
3	1"	66	66	66	66	66	66
4	1 1/2"	312	312	312	312	312	312
5	2"	858	858	858	858	858	858
6	3"	18	18	18	18	18	18
7	4"	54	54	54	54	54	54
8	6"	-	-	-	-	-	-
9	8"	-	-	-	-	-	-
10	10"	-	-	-	-	-	-
11	12"	-	-	-	-	-	-
12	Total	1,326	1,326	1,326	1,326	1,326	1,326

4.5. Projected Water Use and Supply

City staff provided Raftelis with total annual water use data by customer class for FY 2018 through FY 2021. Raftelis worked closely with City staff to develop water use projections for FY 2024 through FY 2028. Water demand projections depend on two key assumptions: account growth and water demand factor (i.e., water use per account). Beginning in FY 2021, annual water use was projected at the customer class level using an annual water demand growth rate to determine total annual water use. **Table 4-4** shows projected water use by customer class over the study period. The water use per account growth rate is forecasted at 0 percent through the study period.

Table 4-4: Projected Water Use Under Existing Rate Structure

Line	Customer Class Volume (hcf)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single Family	1,218,854	1,222,358	1,222,358	1,222,358	1,222,358	1,222,358
2	Duplex	23,466	23,466	23,466	23,466	23,466	23,466
3	Condo/Townhouse	195,512	195,512	195,512	195,512	195,512	195,512
4	Multi-Family	624,235	624,235	643,914	663,594	683,273	702,953
5	Mobile Home	23,361	23,361	23,361	23,361	23,361	23,361
6	SCC/Ed Levin	3,970	3,970	3,970	3,970	3,970	3,970
7	City - Domestic	15,246	15,514	15,781	15,915	16,049	16,182
8	City - Irrigation	107,001	109,710	112,419	113,773	115,128	116,482
9	Commercial	367,078	368,166	369,254	370,342	371,430	372,518
10	Industrial	399,569	400,518	401,466	402,415	403,363	404,312
11	Institutional/Gov/Schools	77,945	79,096	80,248	80,632	81,016	81,400
12	Nonresidential Irrigation	217,184	217,475	217,766	218,201	218,637	219,073
13	Residential Irrigation	158,635	158,635	158,635	159,093	159,551	160,009
14	Recycled	467,686	467,686	467,686	467,686	467,686	467,686
15	Total	3,899,741	3,909,701	3,935,836	3,960,317	3,984,799	4,009,281

Raftelis calculated projected water purchase volumes from each water source based on direction from City Staff, as shown in **Table 4-6**. The City purchases treated water from the San Francisco Public Utilities Commission (SFPUC) and Valley Water (VW); recycled water is purchased from South Bay Water Recycling (SBWR).

Table 4-5 shows the water supply mix projected to meet water demand over the study period. Total water use (from **Table 4-4**) is adjusted to account for estimated water loss resulting from leaks in the water distribution system. Costs to purchase this water are forecasted in **Table 5-7**.

Table 4-5: Projected Water Supply Mix

Line	Wholesale Water Purchases	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Potable Volume Purchased							
1	Total Demand	3,432,055	3,442,015	3,468,150	3,492,632	3,517,114	3,541,595
2	Loss%	11.0%	11.0%	11.0%	11.0%	11.0%	11.0%
3	Equals: Total Demand (hcf)	3,856,242	3,867,433	3,896,798	3,924,305	3,951,813	3,979,321
Recycled Volume Purchased							
4	Total Demand	467,686	467,686	467,686	467,686	467,686	467,686
5	Loss%	11.0%	11.0%	11.0%	11.0%	11.0%	11.0%
6	Equals: Total Demand (hcf)	525,490	525,490	525,490	525,490	525,490	525,490
7	SFPUC Minimum Purchase	2,606,052	2,606,052	2,606,052	2,606,052	2,606,052	2,606,052
Water Purchases (hcf)							
8	SFPUC	2,606,052	2,606,052	2,606,052	2,606,052	2,606,052	2,606,052
9	SCVWD ²	1,250,190	1,261,381	1,290,746	1,318,253	1,345,761	1,373,269
10	SBWR	525,490	525,490	525,490	525,490	525,490	525,490
11	Total	4,381,732	4,392,922	4,422,287	4,449,795	4,477,303	4,504,810

5. Water Financial Plan

Section 5 details the development of a proposed five-year financial plan for the water utility over the study period. The following subsections include estimates and projections of annual revenues, O&M expenses, debt service payments, capital expenditures, and reserve funding through FY 2028. The overall purpose of the financial plan is to determine the annual rate revenue needed to achieve sufficient cash flow, maintain adequate reserves, and meet debt coverage requirements.

5.1. Revenues From Current Rates

The City's revenues consist of rate revenues, interest earnings on cash reserves, and other miscellaneous revenues. The rate revenue projections shown below assume that current FY 2023 rates are effective throughout the study period and therefore represent estimated revenues in the absence of any rate increase. This status quo scenario provides a baseline from which Raftelis evaluates the need for revenue adjustments (i.e., rate increases).

Calculated Water Rate Revenues

Raftelis projected water rate revenues from Fixed Meter Charges and Volume Charges for FY 2024 through FY 2028 based on current FY 2023 water rates, the projected number of water meters/private fire lines, and projected annual water use.

Table 5-1 shows projected Fixed Meter Charge revenues under current rates over the study period. Fixed Meter Charge revenues are calculated by connection size/type in each year as follows based on current FY 2023 water rates (from **Table 4-2**), and the projected number of water meters (from **Table 4-3**).

$$\text{Annual Fixed Meter Charge Revenue} = [\text{FY 2023 bi-monthly rate}] \times [\text{Number of connections}] \times [6 \text{ Bills per year}]$$

Table 5-1: Projected Fixed Meter Charge Revenues under Current Rates

Line	Customer Class	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single Family	\$ 2,797,383	\$ 2,805,226	\$ 2,805,226	\$ 2,805,226	\$ 2,805,226	\$ 2,805,226
2	Duplex	49,747	49,747	49,747	49,747	49,747	49,747
3	Condo/Townhouse	487,760	487,760	487,760	487,760	487,760	487,760
4	Multi-Family	880,171	880,171	886,564	892,957	899,350	905,743
5	Mobile Home	30,686	30,686	30,686	30,686	30,686	30,686
6	SCC/Ed Levin	10,229	10,229	10,229	10,229	10,229	10,229
7	City - Domestic	55,541	56,240	56,939	57,195	57,451	57,707
8	City - Irrigation	56,359	57,791	59,223	59,939	60,655	61,371
9	Commercial	707,410	709,098	710,786	712,474	714,161	715,849
10	Industrial	489,318	490,307	491,295	492,284	493,273	494,262
11	Institutional/Gov/Schools	132,971	134,369	135,767	136,040	136,313	136,585
12	Nonresidential Irrigation	320,667	321,110	321,553	322,269	322,985	323,701
13	Residential Irrigation	128,983	128,983	128,983	129,426	129,869	130,313
14	Recycled	348,998	348,998	348,998	348,998	348,998	348,998
15	Private Fire	173,053	173,053	173,053	173,053	173,053	173,053
16	Total	\$ 6,669,278	\$ 6,683,769	\$ 6,696,811	\$ 6,708,284	\$ 6,719,757	\$ 6,731,230

Table 5-2 shows projected Volume Charge revenues under current rates over the study period. Volume Charge revenues are calculated by customer class in each year as follows based on current FY 2023 water rates (from **Table 4-2**) and projected water use (from **Table 4-4**):

$$\text{Annual Volume Charge Revenue} = [\text{FY 2023 rate per HCF}] \times [\text{Annual Water Use in HCF}]$$

Table 5-2: Projected O&M Volume Charge Revenues Under Current Rates

Line	Customer Class	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single Family	\$ 8,166,319	\$ 8,189,799	\$ 8,189,799	\$ 8,189,799	\$ 8,189,799	\$ 8,189,799
2	Duplex	157,223	157,223	157,223	157,223	157,223	157,223
3	Condo/Townhouse	1,309,931	1,309,931	1,309,931	1,309,931	1,309,931	1,309,931
4	Multi-Family	4,182,371	4,182,371	4,314,224	4,446,077	4,577,930	4,709,783
5	Mobile Home	156,518	156,518	156,518	156,518	156,518	156,518
6	SCC/Ed Levin*	17,744	21,039	21,992	22,984	24,056	25,167
7	City - Domestic	102,150	103,942	105,734	106,630	107,526	108,422
8	City - Irrigation	716,906	735,056	753,205	762,280	771,355	780,430
9	Commercial	2,459,423	2,466,712	2,474,001	2,481,291	2,488,580	2,495,869
10	Industrial	2,677,112	2,683,467	2,689,823	2,696,178	2,702,533	2,708,888
11	Institutional/Gov/Schools	522,228	529,946	537,664	540,236	542,809	545,381
12	Nonresidential Irrigation	1,455,136	1,457,082	1,459,029	1,461,949	1,464,869	1,467,789
13	Residential Irrigation	1,062,857	1,062,857	1,062,857	1,065,924	1,068,992	1,072,059
14	Recycled	2,109,263	2,109,263	2,109,263	2,109,263	2,109,263	2,109,263
15	Private Fire	-	-	-	-	-	-
16	Total	\$ 25,095,182	\$ 25,165,207	\$ 25,341,263	\$ 25,506,283	\$ 25,671,383	\$ 25,836,523

Table 5-3: Projected Capital Charge Revenues Under Current Rates

Line	Customer Class	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single Family	\$ 1,316,362	\$ 1,320,147	\$ 1,320,147	\$ 1,320,147	\$ 1,320,147	\$ 1,320,147
2	Duplex	25,343	25,343	25,343	25,343	25,343	25,343
3	Condo/Townhouse	211,153	211,153	211,153	211,153	211,153	211,153
4	Multi-Family	674,173	674,173	695,427	716,681	737,935	759,189
5	Mobile Home	25,230	25,230	25,230	25,230	25,230	25,230
6	SCC/Ed Levin	4,287	4,287	4,287	4,287	4,287	4,287
7	City - Domestic	16,466	16,755	17,044	17,188	17,333	17,477
8	City - Irrigation	115,561	118,487	121,412	122,875	124,338	125,801
9	Commercial	396,444	397,619	398,794	399,969	401,144	402,319
10	Industrial	431,535	432,559	433,583	434,608	435,632	436,657
11	Institutional/Gov/Schools	84,180	85,424	86,668	87,083	87,498	87,912
12	Nonresidential Irrigation	234,559	234,873	235,187	235,657	236,128	236,599
13	Residential Irrigation	171,326	171,326	171,326	171,821	172,315	172,810
14	Recycled	-	-	-	-	-	-
15	Private Fire	-	-	-	-	-	-
16	Total	\$ 3,706,620	\$ 3,717,376	\$ 3,745,602	\$ 3,772,042	\$ 3,798,483	\$ 3,824,923

Other Revenues

Table 5-4 shows all other revenues. All FY 2023 other revenues are based on the latest information available to City staff and do not correspond directly to the City's adopted budget. Additional revenues from FY 2023 through FY 2027 were projected by Raftelis. Interest revenue is estimated beginning in FY 2024 based on estimated fund balances and an assumed interest rate. Water rate revenue from Ed Levin Park is set based on contract equal to the forecasted cost of purchasing water from SFPUC. All other revenues are forecasted to remain constant.

Table 5-4: Projected Other Revenues

Line	Other Revenue Detail	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Operating Fund							
1	Interest Income	\$ 81,674	\$ 91,474	\$ 76,050	\$ 38,365	\$ (18,825)	\$ (97,470)
2	Ed Levin Park	17,744	21,039	21,992	22,984	24,056	25,167
3	Private Fire Connections	173,053	173,053	173,053	173,053	173,053	173,053
4	Subtotal	\$ 272,472	\$ 285,566	\$ 271,094	\$ 234,402	\$ 178,284	\$ 100,750
Capital Fund							
5	Interest Income	\$ 174,995	\$ 192,354	\$ 174,753	\$ 173,334	\$ 107,018	\$ 62,646
6	Development Charges	500,000	300,000	300,000	300,000	300,000	300,000
7	Misc. Other	7,215	7,215	7,215	7,215	7,215	7,215
8	Subtotal	\$ 682,210	\$ 499,569	\$ 481,968	\$ 480,549	\$ 414,233	\$ 369,861
9	Total	\$ 954,682	\$ 785,135	\$ 753,062	\$ 714,951	\$ 592,517	\$ 470,611

Table 5-5 shows a summary of projected revenues under current rates over the study period. This represents expected revenues in the absence of any rate increase over the study period.

Table 5-5: Summary of Projected Revenues Under Current Rates

Line	Revenue Type	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Operating Fund							
1	Fixed Charge	\$ 6,496,225	\$ 6,510,716	\$ 6,523,758	\$ 6,535,231	\$ 6,546,704	\$ 6,558,177
2	Volume Charge	25,077,437	25,144,168	25,319,271	25,483,299	25,647,327	25,811,355
3	Other	272,472	285,634	270,417	232,898	175,872	97,342
4	Subtotal	\$ 31,846,134	\$ 31,940,518	\$ 32,113,445	\$ 32,251,428	\$ 32,369,903	\$ 32,466,874
Infrastructure Fund							
5	Capital Volume Charge	\$ 3,706,620	\$ 3,717,376	\$ 3,745,602	\$ 3,772,042	\$ 3,798,483	\$ 3,824,923
6	Other	682,210	499,569	481,968	480,549	414,233	369,861
7	Subtotal	\$ 4,388,830	\$ 4,216,945	\$ 4,227,570	\$ 4,252,592	\$ 4,212,716	\$ 4,194,784
8	Total	\$ 35,552,753	\$ 35,657,894	\$ 35,859,047	\$ 36,023,470	\$ 36,168,386	\$ 36,291,797

5.2. Operations and Maintenance Expenses

Table 5-6 shows O&M expenses by department over the study period. O&M expenses shown in FY 2023 are from the City's adopted FY 2023 budget with modifications to the water purchase cost and for additional employees related to the City's cross connection control program and SCADA management. All other projections beyond FY 2023 were developed based on inflationary assumptions discussed above.

Table 5-6: O&M Summary by Department

Line	O&M Summary	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Administration	\$ 898,693	\$ 934,641	\$ 972,027	\$ 1,010,908	\$ 1,051,344	\$ 1,093,398
2	Utility Engineering	865,791	1,169,798	1,216,590	1,265,253	1,315,863	1,368,498
3	Utility Maintenance	2,381,145	2,476,391	2,575,446	2,678,464	2,785,603	2,897,027
4	Compliance	245,963	255,801	266,033	276,675	287,742	299,251
5	Water Purchases	21,079,197	23,595,942	25,604,553	27,286,825	29,128,667	31,115,101
6	Non-Departmental	1,234,538	1,283,920	1,335,276	1,388,687	1,444,235	1,502,004
7	Finance Administration	8,171	8,498	8,838	9,191	9,559	9,941
8	Fiscal Services	1,103,052	1,147,174	1,193,061	1,240,784	1,290,415	1,342,031
9	City Attorney	9,000	9,360	9,734	10,124	10,529	10,950
10	Transfer to General Fund	2,688,427	2,795,964	2,907,803	3,024,115	3,145,079	3,270,883
11	Total	\$ 30,513,977	\$ 33,677,488	\$ 36,089,361	\$ 38,191,025	\$ 40,469,036	\$ 42,909,084

Table 5-7 shows the detailed forecast of water purchase costs. The City purchases as much water as possible from VW while still meeting minimum purchase requirements from SFPUC. Costs include a fixed charge of approximately \$120,000 per month and volume rates for each unit of water purchased.

Table 5-7: Water Purchase Cost Detail

Line	Wholesale Water Rates	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Wholesale Volume Rates (hcf)							
1	SFPUC ³	4.76	5.30	5.54	5.79	6.06	6.34
2	SCVWD3 - Groundwater	4.23	4.82	5.51	5.98	6.50	7.07
3	Groundwater Production Charge	3.96	4.56	5.24	5.72	6.24	6.81
4	Treated water surcharge	0.26	0.26	0.26	0.26	0.26	0.26
5	SBWR	3.72	4.32	5.00	5.48	6.00	6.56
6	Groundwater Production Charge	3.96	4.56	5.24	5.72	6.24	6.81
7	Treated water surcharge	(0.24)	(0.24)	(0.24)	(0.24)	(0.24)	(0.24)
Wholesale Water Rate Increases							
8	SFPUC ³	15.9%	11.2%	4.5%	4.5%	4.5%	4.5%
9	SCVWD3 - Groundwater						
10	Groundwater Production Charge	15.0%	15.0%	15.0%	9.1%	9.1%	9.1%
11	Treated water surcharge	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	SBWR						
12	Groundwater Production Charge						
13	Treated water surcharge	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Wholesale Fixed Charges (Monthly)							
14	SFPUC Water Service Monthly Charge	\$ 14,022	\$ 14,022	\$ 14,022	\$ 14,022	\$ 14,022	\$ 14,022
15	BAWSCA Bond Monthly Surcharge	105,472	105,472	105,472	105,472	105,472	105,472
16	Annual Fixed Charge Total	1,433,928	1,433,928	1,433,928	1,433,928	1,433,928	1,433,928
Wholesale Water Total Costs							
17	400-910-4424 SF Wholesale Water	\$ 13,838,736	\$ 15,246,004	\$ 15,871,456	\$ 16,522,969	\$ 17,226,603	\$ 17,956,298
18	400-910-4425 SCVWD Wholesale Water	5,284,855	6,081,965	7,105,901	7,886,042	8,750,827	9,709,261
19	400-910-4427 Recycled Water Purchase	1,955,606	2,267,974	2,627,196	2,877,814	3,151,237	3,449,543
20	Total	21,079,197	23,595,942	25,604,553	27,286,825	29,128,667	31,115,101

5.3. Debt Service

Table 5-8 shows the City's existing debt service obligations associated with its outstanding Series 2019 bonds. These obligations are secured by a pledge of City revenues. The proposed financial plan assumes that no additional debt will be issued by the City over the study period.

Table 5-8: Schedule of Debt Service Payments

Line	Debt Service Forecast	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Series 2019 Debt Service							
1	Principal	\$ 315,000	\$ 325,000	\$ 340,000	\$ 355,000	\$ 375,000	\$ 395,000
2	Interest	732,050	719,450	706,450	689,450	671,700	652,950
3	Subtotal: Series 2019 Debt Service	\$ 1,047,050	\$ 1,044,450	\$ 1,046,450	\$ 1,044,450	\$ 1,046,700	\$ 1,047,950

5.4. Capital Improvement Plan

The City's adopted FY 2023 budget includes approximately \$1.5M in capital project costs. The City has also developed a long-term utility master plan that outlines capital project expenditures required through 2040 to address current and future system needs. These projects are shown in detail in **Table 5-9** and amount to approximately \$32M over the next five years. The projects are associated with distribution system reliability, aging infrastructure replacement, fire flow improvements, or system-wide reliability and safety. The capital costs assume an annual capital inflation factor of 6% per year. The final line of **Table 5-9** presents the total proposed annual capital spending to be funded from rates and the use of reserves.

Table 5-9: Capital Improvement Plan

Line	Capital Project	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Fire Flow Pipeline Improvements	-	-	-	2,754,255	1,340,535	1,471,435
2	Interconnection - Fire Flow	-	-	-	-	479,000	-
3	Interconnection - Fire Flow	-	-	-	-	479,000	-
4	Interconnection - Fire Flow	-	-	-	-	14,000	-
5	Pipeline Condition Assessment	-	-	-	500,000	-	-
6	Detailed Facility Condition Assess	-	-	-	2,240,000	-	-
7	Water Meter Test Program	-	-	-	100,000	-	-
8	Ongoing Asset Renewal and Repl	-	-	-	1,684,667	1,684,667	1,684,667
9	Physical Security Updates - Perim	-	-	-	30,000	-	-
10	Site Security Protocols	-	-	-	20,000	-	-
11	Harden Critical Transmission Mair	-	-	-	-	-	2,000,000
12	ShakeAlert Participation	-	-	-	85,000	-	-
13	Previously Adopted Capital Project	1,515,000	4,090,000	2,790,000	530,000	1,905,000	-
14	Utility Billing System	-	300,000	-	-	-	-
15	Subtotal	\$ 1,515,000	\$ 4,390,000	\$ 2,790,000	\$ 7,943,922	\$ 5,902,202	\$ 5,156,102
16	CIP Inflation Factor	106.00%	112.36%	119.10%	123.87%	128.82%	133.97%
17	Total Proposed Capital Spending	\$ 1,605,900	\$ 4,932,604	\$ 3,322,935	\$ 9,839,791	\$ 7,603,233	\$ 6,907,789

5.5. Financial Policies

Utility-specific financial policies must be considered during the financial planning process. Financial policies typically define key financial metrics that an agency strives to meet or exceed.

Required Debt Coverage

The City must meet the minimum coverage requirements on its outstanding debt to ensure that it meets the associated debt covenants. The required debt service coverage ratio (DSCR) is 1.15, which means that the City's net revenue must amount to at least 1.15 times annual debt service. Net revenues equal revenues less O&M expenses. Annual debt service includes annual principal and interest payments on all outstanding debt.

Reserve Targets

Prudent fiscal management requires that the City maintain reserve balances to provide sufficient working capital, maintain necessary cash on hand to efficiently award construction contracts, and provide funding during emergencies. The City's current policy consists of several targets:

- » **Capital Reserve for Emergencies:** The City's adopted O&M reserve target is 30 percent of annual O&M expenses. This is intended to ensure sufficient working capital during short-term fluctuations in cash flow.

- » **Rate Stabilization Reserve:** The target is 16.67 percent of annual operating expenses.
- » **CALPERS Reserve:** Twenty percent of any remaining annual surplus after meeting O&M expenses and the reserve targets above are transferred to the CALPERS fund.
- » **Infrastructure Fund:** The remaining 80 percent portion of any operating surplus is transferred to the Infrastructure funds to be spent on capital projects in future years.

5.6. Status Quo Financial Plan

In order to evaluate the need for revenue adjustments (i.e., rate increases), Raftelis first developed a status quo financial plan. The status quo financial plan assumes that current FY 2023 rates remain unchanged over the study period. **Table 5-10** combines projected operating revenues (from **Table 5-5**), O&M expenses (from **Table 5-6**), and water purchases (from **Table 5-7**) to generate cash flow, ending balance, and debt coverage projections under the status quo.

Under the status-quo financial plan, net cash change (revenue less total cash expenses) is negative for most years of the study period and results in a depletion of the Capital Reserve for Emergencies and Rate Stabilization Funds by the end of FY 2027. The status quo financial plan is insufficient to meet the City's needs. This demonstrates a clear need for revenue adjustments over the study period to increase rate revenues and achieve financial sustainability.

Table 5-10: Status Quo Operating Financial Plan

Line	Operating Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Rate Revenue	\$ 31,573,662	\$ 31,654,884	\$ 31,843,028	\$ 32,018,530	\$ 32,194,031	\$ 32,369,532
2	Other Misc. Revenue	272,472	405,634	395,217	362,690	310,856	237,725
3	Use of Reserves	-	1,616,971	3,851,116	5,809,805	7,964,149	10,301,827
4	Total	\$ 31,846,134	\$ 33,677,488	\$ 36,089,361	\$ 38,191,025	\$ 40,469,036	\$ 42,909,084
Outflows							
5	City O&M	\$ 9,434,780	\$ 10,081,546	\$ 10,484,808	\$ 10,904,200	\$ 11,340,368	\$ 11,793,983
6	Water Purchases	21,079,197	23,595,942	25,604,553	27,286,825	29,128,667	31,115,101
Reserve Contributions							
7	<i>Capital for Emergencies</i>	986,754	-	-	-	-	-
8	<i>Rate Stabilization</i>	345,403	-	-	-	-	-
9	<i>Pension</i>	-	-	-	-	-	-
10	Total	\$ 31,846,134	\$ 33,677,488	\$ 36,089,361	\$ 38,191,025	\$ 40,469,036	\$ 42,909,084
11	Rate Increase		0.0%	0.0%	0.0%	0.0%	0.0%
12	Cumulative Rate Increase		0.0%	0.0%	0.0%	0.0%	0.0%
13	Debt Service Coverage Ratio	4.81	2.01	(0.10)	(1.95)	(3.98)	(6.18)

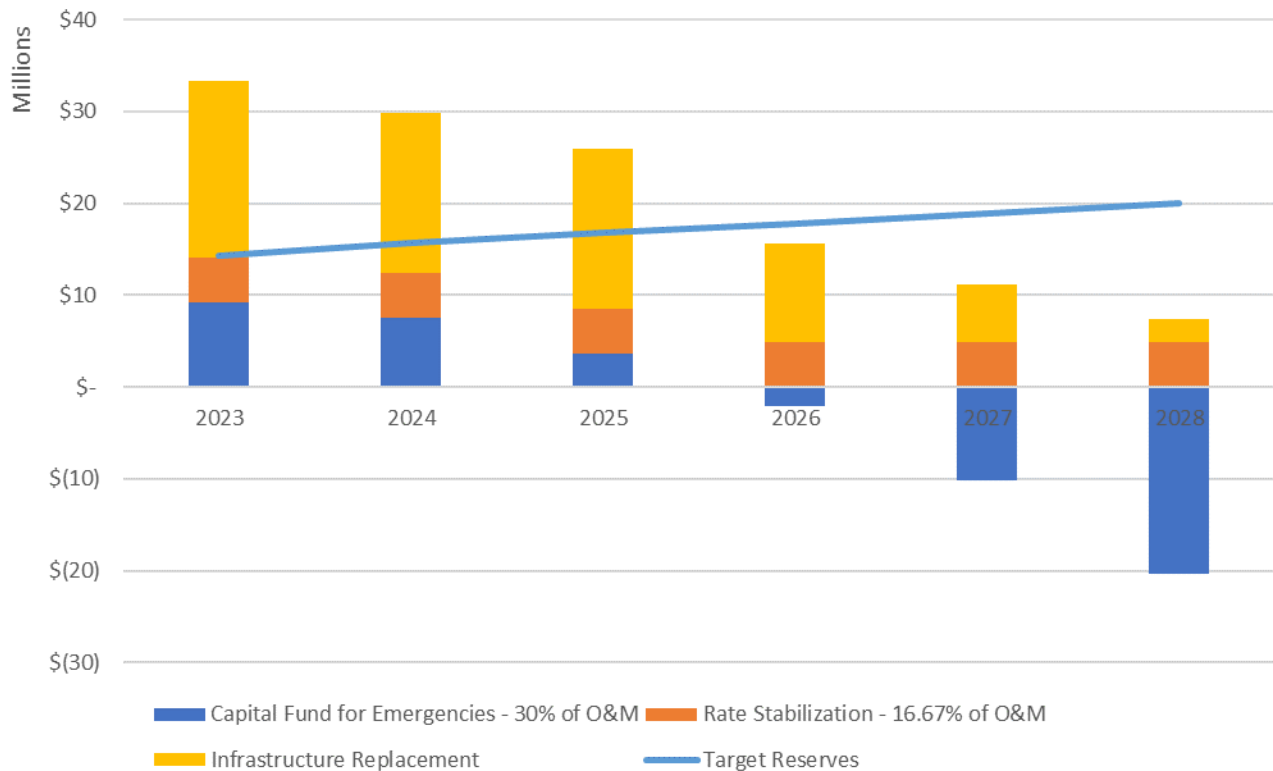
Table 5-11 presents the status quo capital financing plan. The City intends to use the dedicated capital charge, existing fund balance, and other miscellaneous revenues to make debt service payments (from **Table 5-8**) and finance the completion of its capital plan (from **Table 5-9**).

Table 5-11: Status Quo Capital Financial Plan

Line	Infrastructure Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Capital Charge Revenue	\$ 3,706,620	\$ 3,717,376	\$ 3,745,602	\$ 3,772,042	\$ 3,798,483	\$ 3,824,923
2	Developer Fees and Interest	682,210	499,569	481,968	480,549	414,233	369,861
3	Use of Infrastructure Reserves	-	1,760,109	141,815	6,631,650	4,437,218	3,760,956
4	Total	\$ 4,388,830	\$ 5,977,054	\$ 4,369,385	\$ 10,884,241	\$ 8,649,933	\$ 7,955,739
Outflows							
5	Capital Projects	\$ 1,605,900	\$ 4,932,604	\$ 3,322,935	\$ 9,839,791	\$ 7,603,233	\$ 6,907,789
6	Debt Service	1,047,050	1,044,450	1,046,450	1,044,450	1,046,700	1,047,950
7	Contribution to Infrastructure Reserves	1,735,880	-	-	-	-	-
8	Total	\$ 4,388,830	\$ 5,977,054	\$ 4,369,385	\$ 10,884,241	\$ 8,649,933	\$ 7,955,739

Figure 5-1 shows the City's projected ending balances under the status quo. The operating reserve targets are represented by blue line. Projected ending balances are represented by the stacked columns. The City's total reserves will fall below the operating target in FY 2026, with reserves to be fully depleted by the end of FY 2028.²

Figure 5-1: Status Quo Financial Plan – Projected Ending Operating and Capital Balances



² This scenario presents negative reserve balances in order to demonstrate the need for rate increases. The City is unable to implement any plan that results in negative reserves. This scenario should not be considered an alternative option.

Table 5-12: Status Quo Financial Plan – Projected Reserves

Line	End of Year Reserves	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Capital for Emergencies	\$ 9,154,193	\$ 7,537,222	\$ 3,686,106	\$ (2,123,699)	\$ (10,087,848)	\$ (20,389,674)
2	Rate Stabilization	4,883,777	4,883,777	4,883,777	4,883,777	4,883,777	4,883,777
3	Pension	822,539	822,539	822,539	822,539	822,539	822,539
4	Infrastructure	19,235,372	17,475,263	17,333,448	10,701,798	6,264,581	2,503,625
5	Total	\$ 34,095,880	\$ 30,718,801	\$ 26,725,870	\$ 14,284,415	\$ 1,883,049	\$ (12,179,733)

5.7. Proposed Financial Plan

The status quo financial plan demonstrates that the City must increase its revenues from water rates over the study period in order to adequately fund its operating and capital expenditures, meet required debt coverage, and generate sufficient reserve funding. Raftelis worked closely with City staff to select the proposed annual revenue adjustments shown in **Table 5-13**. Revenue adjustments represent annual percentage increases in rate revenue relative to how much rate revenue would have been collected under the prior year's water rates.

Table 5-13: Proposed Revenue Adjustments

Line	Description	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Effective Date of Revenue Adjustment	July 1, 2023	July 1, 2024	July 1, 2025	July 1, 2026	July 1, 2027
2	O&M Revenue Adjustment	4.9%	6.5%	6.5%	6.5%	6.5%
3	Capital Revenue Adjustment	5.0%	5.0%	5.0%	5.0%	5.0%
4	Average Bill Increase - 14 hcf	6.4%	6.4%	6.4%	6.4%	6.4%

Table 5-14 shows the proposed financial plan pro forma. Revenue adjustments over the study period generate significant increases in rate revenues over the study period. This results in positive net operating cash flow and sufficient debt coverage in all years.

Table 5-14: Proposed Operating Financial Plan

Line	Operating Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Rate Revenue	\$ 31,573,662	\$ 33,205,973	\$ 35,574,554	\$ 38,095,711	\$ 40,794,317	\$ 43,682,787
2	Other Misc. Revenue	272,472	405,634	410,728	415,671	425,139	439,154
3	Use of Reserves	-	65,881	104,080	-	-	-
4	Total	\$ 31,846,134	\$ 33,677,488	\$ 36,089,361	\$ 38,511,383	\$ 41,219,456	\$ 44,121,941
Outflows							
5	City O&M	\$ 9,434,780	\$ 10,081,546	\$ 10,484,808	\$ 10,904,200	\$ 11,340,368	\$ 11,793,983
6	Water Purchases	21,079,197	23,595,942	25,604,553	27,286,825	29,128,667	31,115,101
Reserve Contributions							
7	<i>Capital for Emergencies</i>	986,754	-	-	320,358	750,420	1,212,857
8	<i>Rate Stabilization</i>	345,403	-	-	-	-	-
9	<i>Pension</i>	-	-	-	-	-	-
10	Total	\$ 31,846,134	\$ 33,677,488	\$ 36,089,361	\$ 38,511,383	\$ 41,219,456	\$ 44,121,941
11	Rate Increase		4.9%	6.5%	6.5%	6.5%	6.5%
12	Cumulative Rate Increase		4.9%	11.7%	19.0%	26.7%	35.0%
13	Debt Service Coverage Ratio	4.81	3.67	3.85	4.49	5.13	5.82

Table 5-15: Proposed Capital Financial Plan

Line	Infrastructure Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Capital Charge Revenue	\$ 3,706,620	\$ 3,903,245	\$ 4,129,526	\$ 4,366,610	\$ 4,617,079	\$ 4,881,679
2	Developer Fees and Interest	682,210	499,569	483,826	486,266	425,952	389,883
3	Use of Infrastructure Reserves	-	1,574,240	-	6,031,365	3,606,902	2,684,177
4	Total	\$ 4,388,830	\$ 5,977,054	\$ 4,613,352	\$ 10,884,241	\$ 8,649,933	\$ 7,955,739
Outflows							
5	Capital Projects	\$ 1,605,900	\$ 4,932,604	\$ 3,322,935	\$ 9,839,791	\$ 7,603,233	\$ 6,907,789
6	Debt Service	1,047,050	1,044,450	1,046,450	1,044,450	1,046,700	1,047,950
7	Contribution to Infrastructure Reserves	1,735,880	-	243,968	-	-	-
8	Total	\$ 4,388,830	\$ 5,977,054	\$ 4,613,352	\$ 10,884,241	\$ 8,649,933	\$ 7,955,739

Figure 5-2 shows the City's projected ending balance under the proposed financial plan. The light blue line indicates the total target balance of 46.67 percent of O&M. The proposed financial plan will draw heavily on reserves as the master plan is implemented in FY 2026. Although not detailed in this report, projections indicate that the City will be able to cover all operating and capital expenses without the use of reserves beginning in FY 2029.

Figure 5-2: Proposed Financial Plan – Projected Ending Balances

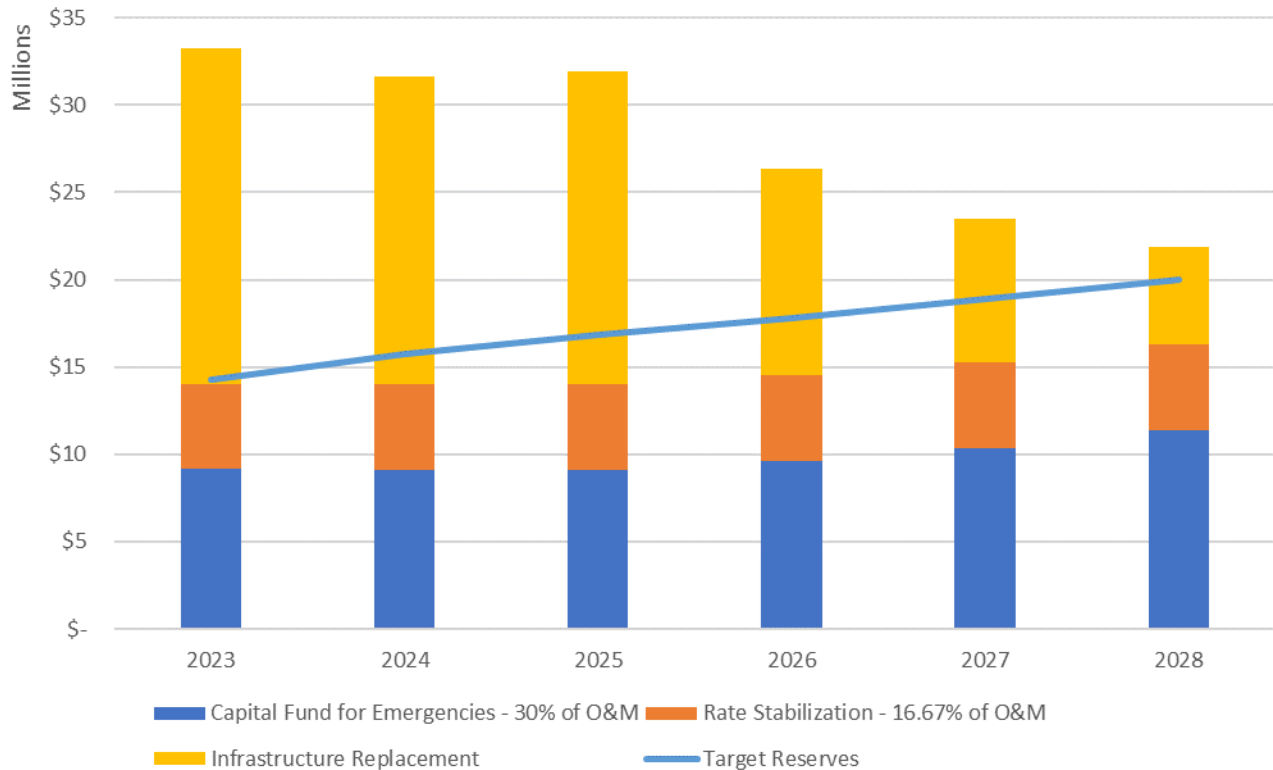


Table 5-16: Proposed Financial Plan – Projected Ending Balances

Line	End of Year Reserves	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Capital for Emergencies	\$ 9,154,193	\$ 9,088,312	\$ 8,984,232	\$ 9,304,590	\$ 10,055,010	\$ 11,267,867
2	Rate Stabilization	4,883,777	4,883,777	4,883,777	4,883,777	4,883,777	4,883,777
3	Pension	822,539	822,539	822,539	822,539	822,539	822,539
4	Infrastructure	19,235,372	17,661,132	17,905,099	11,873,735	8,266,833	5,582,656
5	Total	\$ 34,095,880	\$ 32,455,759	\$ 32,595,647	\$ 26,884,640	\$ 24,028,159	\$ 22,556,839

6. Water Cost of Service Analysis

Section 6 details the cost of service (COS) analysis performed for FY 2024. The COS analysis allocates the overall rate revenue requirement to customer classes based on their proportion of use of and burden on the City's water system. This provides the basis for the development of proposed FY 2024 water rates.

6.1. Methodology

The first step in the COS analysis is to determine the revenue required from rates. The total revenue requirement is determined in the financial plan and the proposed revenue adjustments in **Section 5**. The framework and methodology utilized to develop the COS analysis and to apportion the revenue requirement to each customer class and tier is informed by the processes outlined in the AWWA Manual M1.

COS analyses are tailored specifically to meet the unique needs of each water system. However, there are several distinct steps in every COS analysis to recover costs from customers in an accurate, equitable, and defensible manner:

1. **Cost Component Allocation:** The revenue requirement is allocated to demand parameters and customer characteristics based on the design and functional parameters that characterize each expense.
2. **Unit Cost Development:** The revenue requirement for each cost component is divided by the appropriate units of service to determine the unit cost for each rate component.
3. **Distribution of Costs to Customer Classes:** The unit costs are applied to the units of service from each customer class to allocate the revenue requirement to customers in accordance with their impact on the water system.
4. **Rate Design:** The costs allocated to each class and the units of service for each class are used to develop fixed and volume charges.

6.2. Revenue Requirement

Table 6-1 shows the rate revenue requirement for FY 2024 (also referred to as the test year or rate-setting year). The revenue requirement is split into operating and capital categories which are later allocated to the O&M and capital rates. The expenses (Lines 1-4) are equal to FY 2024 expenses. The miscellaneous revenue (Line 6) includes interest earnings and miscellaneous revenues that are applied as offsets to the final rate revenue requirement. The contribution to reserves adjustment (Line 7) is equal to FY 2024 net cash change and represents the increase in the rate revenue requirement resulting from an addition to operating reserves and use of infrastructure reserves in FY 2024. All aforementioned values are from the proposed financial plan pro formas (**Table 5-14 and Table 5-15**). The final rate revenue requirement (Line 8) is calculated as follows:

Total revenue required from rates (Line 8) = Revenue requirements (Line 5) + Other Revenues (Line 6) + Reserves (Line 7)

Table 6-1: FY 2024 Revenue Required from Rates

Line	Description	Operating	Capital	Total
Expenses				
1	City O&M	\$ 10,081,546		\$ 10,081,546
2	Water Purchases	23,595,942		23,595,942
3	Debt Service		1,044,450	1,044,450
4	CIP Projects		4,932,604	4,932,604
5	Subtotal	\$ 33,677,488	\$ 5,977,054	\$ 39,654,542
6	Other Revenues	(405,634)	(499,569)	\$ (905,203)
7	Contribution to (from) Reserves	\$ (65,881)	\$ (1,574,240)	\$ (1,640,121)
8	Revenue Required from Rates	\$ 33,205,973	\$ 3,903,245	\$ 37,109,218

6.3. Allocation of Expenses to Rate Components

After determining the revenue requirement, the next step of the COS analysis is to allocate O&M to the various rate components:

- » **Potable Supply:** Part of the potable O&M volume rate intended to directly recover the cost of purchasing and pumping treated water.
- » **Recycled Supply:** part of the recycled O&M volume rate intended to directly recover the cost of purchasing water.
- » **Customer:** Part of the bi-monthly fixed charge that recovers the cost of providing customer service and billing. These costs are recovered from all customers equally, regardless of their size.
- » **Meter Capacity:** part of the bi-monthly fixed charge that recovers costs in proportion to the capacity of the customer meter size in recognition of the fact that customers with larger meters place a higher demand on the water system.

Table 6-2 shows the basis for allocating each O&M expense category to the various rate components. Most expense categories are allocated entirely to the corresponding cost causation component. The allocation basis for functional categories are as follows:

- » **Electricity:** Primarily related to operating pump stations to deliver potable water. This costs scales closely with the quantity of water used.
- » **Potable and Recycled Water Purchases:** Allocated directly to the corresponding cost components for those customers to ensure that the costs are recovered by the customers who use the water.
- » **Finance Administration and Fiscal Services:** These costs are related to customer service, billing, and general financial services. These services are provided to customers equally, regardless of their size or quantity of water used.

- » **Utility Engineering, Utility Maintenance, Compliance, and other Non-Departmental:** These are primarily allocated to the Meter Capacity rate component. Many engineering and maintenance expenses are related to providing capacity within the system and ensuring reliable service to all customers at all times, regardless of the amount of water used. Recovering these costs on a fixed basis also provides revenue stability for the City. A portion of these expenses (approximately \$120,000) are related to maintaining the recycled water distribution system and are therefore allocated to those customers alone.
- » **Administration, Transfer to General Fund, City Attorney, and Misc. Revenue:** These expenses and revenues are primarily allocated to the General rate component, which is reallocated to all other rate components on Line 18. The SBWR reimbursement of City operating costs related to the recycled water system is fully credited to recycled water customers.

Table 6-2: Allocation of Revenue Requirement

Line	Cost Center	FY 2024 Expense	Potable Volume	Recycled Volume	Customer	Meter Capacity	General	Capital
City O&M Expenses								
1	Administration	\$ 934,641					100.0%	
2	Utility Engineering	1,169,798		3.3%		96.7%		
3	Utility Maintenance	2,476,391		3.3%		96.7%		
4	Compliance	255,801				100.0%		
5	Non-Departmental	535,114				100.0%		
6	Electricity	748,805	100.0%					
7	Finance Administration	8,498			100.0%			
8	Fiscal Services	1,147,174			100.0%			
9	City Attorney	9,360					100.0%	
10	Transfer to General Fund	2,795,964					100.0%	
11	Subtotal City O&M	\$ 10,081,546						
Water Purchases								
12	Potable	21,327,968	100.0%					
13	Recycled	2,267,974		100.0%				
14	Subtotal Water Purchases	\$ 23,595,942						
15	Contribution to Reserves	(65,881)				100.0%		
16	Misc. Revenues	(405,634)		29.6%			70.4%	
17	Subtotal Operating Expenses	\$ 33,205,973	22,076,774	2,267,974	1,155,672	4,251,222	3,454,331	-
18	Reallocation of General	-	2,563,236	263,324	134,180	493,591	\$ (3,454,331)	
19	Total Operating Expenses	\$ 33,205,973	\$ 24,640,010	\$ 2,531,298	\$ 1,289,852	\$ 4,744,813	\$ -	\$ -
20	Capital Expenses	3,903,245						3,903,245
21	Total Units of Service		3,438,046	467,686	95,253	212,590		3,438,046
	<i>Units</i>		<i>Potable Volume (hcf)</i>	<i>Recycled Volume (hcf)</i>	<i>Number of Bills</i>	<i>5/8" Eq. Meters</i>		<i>Potable Volume (hcf)</i>
22	Unit Cost		\$ 7.17	\$ 5.41	\$ 13.54	\$ 22.32		\$ 1.14

7. Proposed Water Rates

Section 7 details the proposed water rate calculations. Proposed FY 2024 rates are calculated directly from the results of the COS allocations (from **Section 6**). All proposed rates beginning in FY 2025 are calculated by simply increasing the prior year's proposed rate by the annual revenue adjustment (from **Table 5-13**).

7.1. Proposed FY 2024 Fixed Meter Charges

Table 7-1 shows the detailed calculation of proposed FY 2024 Fixed Meter Charges which are based on Customer and Meter Capacity unit rates. Customer costs do not vary by connection type or size. Therefore, the Customer unit rate, previously derived in **Table 6-2**, is applied uniformly to all Fixed Meter Charges. Because Capacity costs vary by meter size based on hydraulic capacity, the unit cost is multiplied by the AWWA capacity ratio for each meter size. For example, the AWWA capacity ratio for a 1" meter is 1.67, which is multiplied by \$22.32 to derive the meter component cost of \$33.48. The two fixed charge components are added to derive the total proposed bi-monthly potable fixed charge. The fixed charge for recycled customers is simply the Customer component in order to recover customer service and billing costs without also recovering the potable O&M costs in the Meters component.

Table 7-1: Proposed FY 2024 Fixed Meter Charge Calculation

Line	Potable Fixed Charge		Total		Current	% Change	% Change
	Calculation	Customer	Meters	Proposed			
1	5/8"	\$ 13.54	\$ 22.32	\$ 35.87	\$ 34.10	5.2%	\$ 1.77
2	3/4"	13.54	33.48	47.03	51.14	-8.0%	(4.11)
3	1"	13.54	55.80	69.34	85.24	-18.7%	(15.90)
4	1 1/2"	13.54	111.60	125.14	170.48	-26.6%	(45.34)
5	2"	13.54	178.55	192.10	272.76	-29.6%	(80.66)
6	3"	13.54	390.58	404.13	511.43	-21.0%	(107.30)
7	4"	13.54	703.05	716.60	852.38	-15.9%	(135.78)
8	6"	13.54	1,450.74	1,464.29	1,704.76	-14.1%	(240.47)
9	8"	13.54	3,124.68	3,138.22	1,704.76	84.1%	1,433.46
10	10"	13.54	4,687.02	4,700.56	1,704.76	175.7%	2,995.80

7.2. Proposed FY 2024 Volume Charges

Table 7-2 shows the proposed FY 2024 Volume Charges as derived in **Table 6-2**.

Table 7-2: Proposed FY 2024 Volume Charge Calculation

Line	Rate	Proposed	Current	% Change	% Change
1	Potable	\$ 7.17	\$ 6.70	7.0%	\$ 0.47
2	Recycled	5.41	4.51	20.0%	0.90
3	Capital	1.14	1.08	5.1%	0.06

7.3. Proposed Five-Year Rate Schedule

Table 7-3 shows the proposed five-year schedule of water rates through FY 2027. Proposed FY 2024 Fixed Meter Charges (see **Table 7-1**) and Volume Charges (**Table 7-2**) were calculated in the preceding subsections. All proposed rates beginning in FY 2025 are calculated by increasing the prior year's proposed rate by the proposed annual revenue adjustment (from **Table 5-13**). Current FY 2023 water rates (from **Table 4-2**) are also shown.

Table 7-3: Proposed Five-Year Water Rate Schedule

Bi-Monthly Potable Fixed		FY 2023		FY 2024		FY 2025		FY 2026		FY 2027		FY 2028	
Line	Charges												
1	5/8"	\$	34.10	\$	35.87	\$	38.21	\$	40.70	\$	43.35	\$	46.17
2	3/4"		51.14		47.03		50.09		53.35		56.82		60.52
3	1"		85.24		69.34		73.85		78.66		83.78		89.23
4	1 1/2"		170.48		125.14		133.28		141.95		151.18		161.01
5	2"		272.76		192.10		204.59		217.89		232.06		247.15
6	3"		511.43		404.13		430.40		458.38		488.18		519.92
7	4"		852.38		716.60		763.18		812.79		865.63		921.90
8	6"		1,704.76		1,464.29		1,559.47		1,660.84		1,768.80		1,883.78
9	8"		1,704.76		3,138.22		3,342.21		3,559.46		3,790.83		4,037.24
10	10"		1,704.76		4,700.56		5,006.10		5,331.50		5,678.05		6,047.13

Bi-Monthly Recycled Fixed		FY 2023		FY 2024		FY 2025		FY 2026		FY 2027		FY 2028	
Line	Charges												
1	5/8"	\$	34.10	\$	13.54	\$	14.43	\$	15.37	\$	16.37	\$	17.44
2	3/4"		51.14		13.54		14.43		15.37		16.37		17.44
3	1"		85.24		13.54		14.43		15.37		16.37		17.44
4	1 1/2"		170.48		13.54		14.43		15.37		16.37		17.44
5	2"		272.76		13.54		14.43		15.37		16.37		17.44
6	3"		511.43		13.54		14.43		15.37		16.37		17.44
7	4"		852.38		13.54		14.43		15.37		16.37		17.44
8	6"		1,704.76		13.54		14.43		15.37		16.37		17.44
9	8"		1,704.76		13.54		14.43		15.37		16.37		17.44
10	10"		1,704.76		13.54		14.43		15.37		16.37		17.44

Line	Volume Charges	FY 2023		FY 2024		FY 2025		FY 2026		FY 2027		FY 2028	
1	Potable	\$	6.70	\$	7.17	\$	7.64	\$	8.14	\$	8.67	\$	9.24
2	Recycled		4.51		5.41		5.77		6.15		6.55		6.98
3	Capital		1.08		1.14		1.20		1.26		1.33		1.40

7.4. Bi-Monthly Bill Impacts

Table 7-4 shows sample bi-monthly bills for an average residential customer with a 5/8" meter using 14 hcf per bi-monthly billing period. **Table 7-5** presents a water bill under current and FY 2024 rates for a similar customer at different water use levels.

Table 7-4: Average Residential Bill Forecast

Line	Typical Bill - 14 hcf	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Water Charges							
1	Fixed Charge	\$ 34.10	\$ 35.87	\$ 38.21	\$ 40.70	\$ 43.35	\$ 46.17
2	Volume Charge	93.80	100.38	106.96	113.96	121.38	129.36
3	Capital Charge	15.12	15.96	16.80	17.64	18.62	19.60
4	Subtotal	\$ 143.02	\$ 152.21	\$ 161.97	\$ 172.30	\$ 183.35	\$ 195.13
5	Percent Change		6.4%	6.4%	6.4%	6.4%	6.4%

Table 7-5: Residential Bill Impacts at Varying Levels of Water Use

Use	Current		Proposed Rates		
	Bill	Bill	\$ Change	% Change	
0	\$ 34.10	\$ 35.87	\$ 1.77	5.2%	
1	41.88	44.18	2.30	5.5%	
2	49.66	52.49	2.83	5.7%	
3	57.44	60.80	3.36	5.8%	
4	65.22	69.11	3.89	6.0%	
5	73.00	77.42	4.42	6.1%	
6	80.78	85.73	4.95	6.1%	
7	88.56	94.04	5.48	6.2%	
8	96.34	102.35	6.01	6.2%	
9	104.12	110.66	6.54	6.3%	
10	111.90	118.97	7.07	6.3%	
11	119.68	127.28	7.60	6.4%	
12	127.46	135.59	8.13	6.4%	
13	135.24	143.90	8.66	6.4%	
14	143.02	152.21	9.19	6.4%	
15	150.80	160.52	9.72	6.4%	
16	158.58	168.83	10.25	6.5%	
17	166.36	177.14	10.78	6.5%	
18	174.14	185.45	11.31	6.5%	
19	181.92	193.76	11.84	6.5%	
20	189.70	202.07	12.37	6.5%	
21	197.48	210.38	12.90	6.5%	
22	205.26	218.69	13.43	6.5%	
23	213.04	227.00	13.96	6.6%	
24	220.82	235.31	14.49	6.6%	
25	228.60	243.62	15.02	6.6%	

8. Wastewater Utility Key Inputs and Assumptions

Raftelis developed a rate model in Microsoft Excel to project financial and rate calculations over a five-year study period through FY 2028. The City's fiscal year spans from July 1 through June 30. Projections in future years were generally made based on estimated FY 2023 data using key assumptions outlined below. All assumptions were discussed with and reviewed by City staff to ensure that the City's unique characteristics were incorporated. Note that most table values shown throughout this report are rounded to the last digit shown and may therefore not add precisely to the totals shown.

8.1. Available Fund Balance

Table 8-1 presents the available fund balance as of the end of FY 2022 and beginning of FY 2023. The financial plan presented in this report does not propose to spend any of the Capital Reserve for Emergencies or Rate Stabilization Fund; however, a significant portion of the existing Infrastructure Fund balance will be used for the construction of future capital projects identified in the master plan, particularly the Force Main A project in FY 2026.

Table 8-1: FY 2023 Beginning Fund Balances

Line	Fund Description	Balance
Wastewater Utility		
1	Capital Reserve for Emergencies	\$ 3,143,350
2	Rate Stabilization	2,095,986
3	CALPERS	3,164,653
4	Infrastructure	34,541,175
5	Total	\$ 42,945,164

8.2. Current Wastewater Rates

Table 8-2 shows the current adopted rate schedule developed during the prior rate study. Customers are currently subject to two primary charges: 1) bi-monthly Fixed Charges and 2) Volume Charges per hundred cubic feet (HCF)³ of water delivered. Fixed charges for the residential classes (Single Family, Multi-Family, and Mobile Homes) are charged per ERU⁴. Fixed charges for the commercial classes are levied on a per account basis. Only commercial customers are subject to a volumetric charge based on water use; this rate varies between classes depending on the unique wastewater quality characteristics of each class.

³ One HCF equals approximately 748 gallons.

⁴ ERU = Equivalent Residential Unit. One dwelling unit, such as a home, apartment, or condominium is one ERU.

Table 8-2: Current Wastewater Rate Schedule

Line	Customer Class	Fixed Charge	Volume Charge
1	Single-Family	\$ 124.14	\$ -
2	Multi-Family	95.34	-
3	Mobile Home	78.28	-
4	Schools/Colleges	27.35	9.99
5	Motels and Hotels	27.35	5.75
6	General Office	27.35	6.84
7	City of Milpitas	27.35	5.80
8	Service Stations	27.35	5.70
9	Eat/Drink Establishments	27.35	9.06
10	Convalescent Hosp/Daycare	27.35	5.60
11	Personal Services, Laundrys	27.35	5.31
12	Electrical/Electronics	27.35	6.72
13	Machinery Manufacture	27.35	8.43
14	RockTenn (Jefferson Smurfit)	27.35	10.46
15	T. Marzetti Co.	27.35	12.09
16	Prudential Overall Supply	27.35	8.42
17	Evoqua Water Technologies	27.35	7.06
18	Elmwood Rehabilitation	27.35	6.69
19	Linear Technology	27.35	6.88
20	DS Waters of America	27.35	6.04
21	Magic Tech & Headway Tech	27.35	7.32
22	Lucky Pure Water	27.35	5.29
23	Milpitas Materials	27.35	5.29
24	Union Pacific Railroad	27.35	7.35
25	Cisco	27.35	6.72

8.3. Financial Assumptions

Inflationary assumptions were used to project O&M expenses beyond FY 2023. All inflationary factors were reviewed by City staff and are based on historical and anticipated cost increases. For O&M expenses, a general inflation rate of 4 percent is consistent with long-term changes in the Consumer Price Index (CPI) and near term inflation forecasts from the Federal Reserve Bank of Philadelphia, though recent inflation is above this amount. Interest earnings on cash reserves are projected assuming a 1 percent annual interest rate.

8.4. Projected Service Connections

Customer account growth projections are necessary to estimate water demand and rate revenues over the study period. City staff provided Raftelis with the number of ERUs and commercial accounts for FY 2023; projections from 2023 data are based on forecasted growth rates detailed in the City's METRO plan. **Table 8-3** shows the projected number of units by customer class in FY 2023 and each year of the study period.

Table 8-3: Projected Number of Billed ERUs and Commercial Accounts

Line	Customer Class	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family	75,240	75,459	75,678	75,813	75,949	76,084
2	Multi-Family	70,248	72,904	75,704	78,504	81,304	84,104
3	Mobile Home	3,126	3,126	3,126	3,126	3,126	3,126
4	Schools/Colleges	402	414	425	433	440	447
5	Motels and Hotels	156	157	157	158	158	159
6	General Office	2,226	2,234	2,242	2,251	2,259	2,268
7	City of Milpitas	228	235	241	245	250	254
8	Service Stations	252	253	254	255	256	257
9	Eat/Drink Establishments	1,026	1,030	1,033	1,037	1,041	1,045
10	Convalescent Hosp/Daycare	144	144	144	144	144	144
11	Personal Services, Laundrys	348	348	348	348	348	348
12	Electrical/Electronics	612	614	616	619	621	624
13	Machinery Manufacture	84	84	85	85	85	86
14	RockTenn (Jefferson Smurfit)	6	6	6	6	6	6
15	T. Marzetti Co.	12	12	12	12	12	12
16	Prudential Overall Supply	12	12	12	12	12	12
17	Evoqua Water Technologies (	12	12	12	12	12	12
18	Elmwood Rehabilitation	30	30	30	30	30	30
19	Linear Technology	36	36	36	36	36	36
20	DS Waters of America	12	12	12	12	12	12
21	Magic Tech & Headway Tech	12	12	12	12	12	12
22	Lucky Pure Water	6	6	6	6	6	6
23	Milpitas Materials	6	6	6	6	6	6
24	Union Pacific Railroad	12	12	12	12	12	12
25	Cisco	30	30	30	30	30	30
26	Total	154,278	157,187	160,239	163,203	166,167	169,131

8.5. Projected Wastewater Volumes

City staff provided Raftelis with projected total annual wastewater use data by customer class for FY 2023. Raftelis worked closely with City staff to develop water use projections for FY 2024 through FY 2028. Demand projections depend on two key assumptions: account growth and water demand factor (i.e., water use per account). Beginning in FY 2023, annual water use was projected at the customer class level using an annual water demand growth rate to determine total annual water use. Billable wastewater volumes for commercial customers are based on water use with a return factor applied. Volumes for the residential classes in this Table are not used for revenue calculations, but are used below in the cost of service analysis. **Table 8-4** shows projected water use by customer class over the study period. The wastewater use per account growth rate is forecasted at 0 percent through the study period.

Table 8-4: Projected Wastewater Use

Line	Customer Class Volume	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family	1,107,882	1,111,104	1,114,326	1,116,321	1,118,315	1,120,310
2	Multi-Family	825,451	856,655	889,556	922,457	955,359	988,260
3	Mobile Home	35,875	35,875	35,875	35,875	35,875	35,875
4	Schools/Colleges	17,572	18,084	18,596	18,913	19,230	19,546
5	Motels and Hotels	74,758	75,029	75,300	75,590	75,880	76,170
6	General Office	121,612	122,054	122,495	122,966	123,438	123,910
7	City of Milpitas	11,997	12,347	12,696	12,912	13,129	13,345
8	Service Stations	16,558	16,618	16,678	16,742	16,807	16,871
9	Eat/Drink Establishments	128,268	128,734	129,199	129,696	130,194	130,691
10	Convalescent Hosp/Daycare	14,960	14,960	14,960	14,960	14,960	14,960
11	Personal Services, Laundrys	23,340	23,340	23,340	23,340	23,340	23,340
12	Electrical/Electronics	108,597	108,991	109,385	109,806	110,227	110,648
13	Machinery Manufacture	3,685	3,698	3,711	3,726	3,740	3,754
14	RockTenn (Jefferson Smurfit)	4,271	4,271	4,271	4,271	4,271	4,271
15	T. Marzetti Co.	19,850	19,850	19,850	19,850	19,850	19,850
16	Prudential Overall Supply	10,354	10,354	10,354	10,354	10,354	10,354
17	Evoqua Water Technologies	30,363	30,363	30,363	30,363	30,363	30,363
18	Elmwood Rehabilitation	64,490	64,490	64,490	64,490	64,490	64,490
19	Linear Technology	71,587	71,587	71,587	71,587	71,587	71,587
20	DS Waters of America	609	609	609	609	609	609
21	Magic Tech & Headway Tech	38,085	38,085	38,085	38,085	38,085	38,085
22	Lucky Pure Water	838	838	838	838	838	838
23	Milpitas Materials	74	74	74	74	74	74
24	Union Pacific Railroad	1,254	1,254	1,254	1,254	1,254	1,254
25	Cisco	53,232	53,232	53,232	53,232	53,232	53,232
26	Total	2,785,561	2,822,493	2,861,123	2,898,310	2,935,498	2,972,686

9. Wastewater Financial Plan

Section 9 details the development of a proposed five-year financial plan for the wastewater utility over the study period. The following subsections include estimates and projections of annual revenues, O&M expenses, debt service payments, capital expenditures, and reserve funding through FY 2028. The overall purpose of the financial plan is to determine the annual rate revenue needed to achieve sufficient cash flow, maintain adequate reserves, and meet debt coverage requirements.

9.1. Revenues From Current Rates

The City's revenues consist of rate revenues, interest earnings on cash reserves, and other miscellaneous revenues. The rate revenue projections shown below assume that current FY 2023 rates are effective throughout the study period and therefore represent estimated revenues in the absence of any rate increase. This status quo scenario provides a baseline from which Raftelis evaluates the need for revenue adjustments (i.e., rate increases).

Calculated Wastewater Rate Revenues

Raftelis projected wastewater rate revenues from Fixed ERU Charges and Volume Charges for FY 2024 through FY 2028 based on current FY 2023 rates, the projected number of ERUs and accounts, and projected annual wastewater use.

Table 9-1 shows projected Fixed Charge revenues under current rates over the study period. Fixed Charge revenues are calculated by customer class in each year as follows based on current FY 2023 rates (from **Table 8-2**), the projected number of ERUs and accounts (from **Table 8-3**).

$$\text{Annual Fixed Charge Revenue} = [\text{FY 2023 bi-monthly rate}] \times [\text{Number of units}] \times [6 \text{ Bills per year}]$$

Table 9-1: Projected Fixed Charge Revenues under Current Rates

Line	Customer Class	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family	\$ 9,340,294	\$ 9,367,460	\$ 9,394,626	\$ 9,411,442	\$ 9,428,259	\$ 9,445,075
2	Multi-Family	6,697,444	6,950,622	7,217,574	7,484,526	7,751,478	8,018,430
3	Mobile Home	244,703	244,703	244,703	244,703	244,703	244,703
4	Schools/Colleges	10,995	11,315	11,635	11,833	12,032	12,230
5	Motels and Hotels	4,267	4,282	4,298	4,314	4,331	4,347
6	General Office	60,881	61,102	61,323	61,559	61,795	62,031
7	City of Milpitas	6,236	6,417	6,599	6,711	6,824	6,936
8	Service Stations	6,892	6,917	6,942	6,969	6,996	7,022
9	Eat/Drink Establishments	28,061	28,163	28,265	28,374	28,482	28,591
10	Convalescent Hosp/Daycare	3,938	3,938	3,938	3,938	3,938	3,938
11	Personal Services, Laundrys	9,518	9,518	9,518	9,518	9,518	9,518
12	Electrical/Electronics	16,738	16,799	16,860	16,925	16,989	17,054
13	Machinery Manufacture	2,297	2,306	2,314	2,323	2,332	2,341
14	RockTenn (Jefferson Smurfit)	164	164	164	164	164	164
15	T. Marzetti Co.	328	328	328	328	328	328
16	Prudential Overall Supply	328	328	328	328	328	328
17	Evoqua Water Technologies (Sien	328	328	328	328	328	328
18	Elmwood Rehabilitation	821	821	821	821	821	821
19	Linear Technology	985	985	985	985	985	985
20	DS Waters of America	328	328	328	328	328	328
21	Magic Tech & Headway Tech	328	328	328	328	328	328
22	Lucky Pure Water	164	164	164	164	164	164
23	Milpitas Materials	164	164	164	164	164	164
24	Union Pacific Railroad	328	328	328	328	328	328
25	Cisco	821	821	821	821	821	821
26	Total	\$ 16,437,352	\$ 16,718,629	\$ 17,013,681	\$ 17,298,222	\$ 17,582,763	\$ 17,867,305

Table 9-2 shows projected Volume Charge revenues under current rates over the study period. Volume Charge revenues are calculated by customer class in each year as follows based on current FY 2023 wastewater rates (from Table 8-2) and projected wastewater use (from **Table 8-4**):

$$\text{Annual Volume Charge Revenue} = [\text{FY 2023 rate per HCF}] \times [\text{Annual Wastewater Use in HCF}]$$

Table 9-2: Projected Volume Charge Revenues Under Current Rates

Line	Customer Class	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2	Multi-Family	-	-	-	-	-	-
3	Mobile Home	-	-	-	-	-	-
4	Schools/Colleges	175,549	180,661	185,774	188,938	192,103	195,268
5	Motels and Hotels	429,856	431,415	432,974	434,641	436,308	437,975
6	General Office	831,829	834,846	837,864	841,090	844,316	847,541
7	City of Milpitas	69,584	71,610	73,636	74,891	76,145	77,400
8	Service Stations	94,381	94,723	95,066	95,432	95,798	96,164
9	Eat/Drink Establishments	1,162,110	1,166,326	1,170,541	1,175,048	1,179,555	1,184,061
10	Convalescent Hosp/Daycare	83,774	83,774	83,774	83,774	83,774	83,774
11	Personal Services, Laundrys	123,937	123,937	123,937	123,937	123,937	123,937
12	Electrical/Electronics	729,772	732,419	735,066	737,896	740,727	743,557
13	Machinery Manufacture	31,060	31,173	31,286	31,406	31,527	31,647
14	RockTenn (Jefferson Smurfit)	44,677	44,677	44,677	44,677	44,677	44,677
15	T. Marzetti Co.	239,984	239,984	239,984	239,984	239,984	239,984
16	Prudential Overall Supply	87,178	87,178	87,178	87,178	87,178	87,178
17	Evoqua Water Technologies (Sien	214,363	214,363	214,363	214,363	214,363	214,363
18	Elmwood Rehabilitation	431,438	431,438	431,438	431,438	431,438	431,438
19	Linear Technology	492,516	492,516	492,516	492,516	492,516	492,516
20	DS Waters of America	3,679	3,679	3,679	3,679	3,679	3,679
21	Magic Tech & Headway Tech	278,785	278,785	278,785	278,785	278,785	278,785
22	Lucky Pure Water	4,433	4,433	4,433	4,433	4,433	4,433
23	Milpitas Materials	390	390	390	390	390	390
24	Union Pacific Railroad	9,218	9,218	9,218	9,218	9,218	9,218
25	Cisco	357,718	357,718	357,718	357,718	357,718	357,718
26	Total	\$ 5,896,229	\$ 5,915,263	\$ 5,934,297	\$ 5,951,432	\$ 5,968,567	\$ 5,985,702

Other Revenues

Table 9-3 shows all other revenues. All FY 2023 other revenues are based on the latest information available to City staff and do not correspond directly to the City's adopted budget. Additional revenues from FY 2023 through FY 2027 were projected by Raftelis. Interest revenue is estimated beginning in FY 2024 based on estimated fund balances and an assumed interest rate. All other revenues are forecasted to remain constant.

Table 9-3: Projected Other Revenues

Line	Other Revenue Detail	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Operating Fund							
1	Interest Income	102,932	69,132	71,576	74,094	76,644	84,713
2	Subtotal	\$ 102,932	\$ 69,132	\$ 71,576	\$ 74,094	\$ 76,644	\$ 84,713
Infrastructure Fund							
3	Interest Income	\$ 450,000	\$ 314,099	\$ 271,880	\$ 162,733	\$ (7,199)	\$ (49,374)
4	Development Fees	750,000	250,000	250,000	250,000	250,000	250,000
5	Subtotal	\$ 1,200,000	\$ 564,099	\$ 521,880	\$ 412,733	\$ 242,801	\$ 200,626
6	Total	\$ 1,302,932	\$ 633,232	\$ 593,456	\$ 486,827	\$ 319,445	\$ 285,339

Table 9-4 shows a summary of projected revenues under current rates over the study period. This represents expected revenues in the absence of any rate increase over the study period.

Table 9-4: Summary of Projected Revenues Under Current Rates

Line	Revenue Type	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Operating Fund							
1	Fixed Charge	\$16,437,352	\$16,718,629	\$17,013,681	\$17,298,222	\$17,582,763	\$17,867,305
2	Volume Charge	5,896,229	5,915,263	5,934,297	5,951,432	5,968,567	5,985,702
3	Other	102,932	69,132	71,576	74,094	76,644	84,713
4	Subtotal	\$22,436,512	\$22,703,024	\$23,019,554	\$23,323,748	\$23,627,974	\$23,937,719
Infrastructure Fund							
5	Other	\$ 1,200,000	\$ 564,099	\$ 521,880	\$ 412,733	\$ 242,801	\$ 200,626
6	Subtotal	\$ 1,200,000	\$ 564,099	\$ 521,880	\$ 412,733	\$ 242,801	\$ 200,626
7	Total	\$23,636,512	\$23,267,123	\$23,541,434	\$23,736,481	\$23,870,775	\$24,138,345

9.2. Operations and Maintenance Expenses

Table 9-5 shows O&M expenses by department over the study period. O&M expenses shown in FY 2023 are from the City's adopted FY 2023 budget with modifications to the wastewater treatment cost based on the latest information from the City of San Jose, the wastewater treatment provider for the City of Milpitas as well as the addition of personnel related to SCADA operation. All projections beyond FY 2023 were developed based on inflationary assumptions above.

Table 9-5: O&M Summary by Department

Line	O&M Summary	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Administration	\$ 1,625,083	\$ 1,690,087	\$ 1,757,690	\$ 1,827,998	\$ 1,901,118	\$ 1,977,162
2	Utility Engineering	480,513	519,108	559,248	581,618	604,882	629,078
3	Utility Maintenance	1,583,788	1,647,140	1,713,025	1,781,546	1,852,808	1,926,921
4	Compliance	191,878	199,553	207,535	215,836	224,470	233,449
5	Wastewater Treatment	6,997,426	7,277,323	7,568,416	7,871,153	8,185,999	8,513,439
6	Non-Departmental	1,124,227	1,169,196	1,215,964	1,264,602	1,315,187	1,367,794
7	Finance Administration	24,778	25,769	26,800	27,872	28,987	30,146
8	Fiscal Services	686,527	713,988	742,547	772,249	803,139	835,265
9	City Attorney	-	-	-	-	-	-
10	Transfer to General Fund	1,444,869	1,502,664	1,562,770	1,625,281	1,690,292	1,757,904
11	Total	\$ 14,159,089	\$ 14,744,828	\$ 15,353,996	\$ 15,968,156	\$ 16,606,882	\$ 17,271,157

9.3. Capital Improvement Plan

The City's adopted FY 2023 budget includes approximately \$600 thousand in capital project costs. The City has also developed a long-term utility master plan that outlines capital project expenditures required through 2040 to address current and future system needs.

Capital costs related to improvements at the regional wastewater treatment plant are also included in the City's CIP. San Jose provided a forecast of capital expenses; these are expected to peak at approximately \$11M in FY 2025 before decreasing to historical levels of \$2-3M per year.

A significant driver of the City's proposed rate increases is the replacement of Force Main A. The Force Main A (FMA) is a 50-year steel pipeline which conveys sewage flows from the City to the San Jose treatment facility. The pipeline is one of two critical pipelines connected to the Main Lift Sewer Pump Station from which all Milpitas sewage flows are pumped. The pipe crosses Coyote Creek after it leaves the pump station and runs through an easement on City of San Jose property, to the treatment plant. The pipeline is in a corrosive environment and is approaching the end of its useful life. Staff recommends that this pipeline be replaced as soon as possible. The study assumes that this project, totaling \$26 million, will be completed in FY 2026.

These projects are shown in detail in **Table 9-6** and amount to approximately \$80M over the study period. The final line presents the total proposed annual capital spending.

Table 9-6: Capital Improvement Plan

Line	Capital Project	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Sanitary Sewer Pipeline Improvements	\$ -	\$ -	\$ -	\$ 995,743	\$ 1,417,288	\$ 2,912,640
2	Ongoing Sanitary Sewer CCTV	-	200,000	100,000	100,000	-	-
3	CCTV Improvements	-	333,333	333,333	333,333	333,333	333,333
4	Forcemain A Design	-	-	939,400	-	-	-
5	Forcemain A Construction	-	-	-	25,160,600	-	-
6	San Jose Capital	6,655,953	6,836,915	11,329,085	6,379,020	3,009,097	2,519,945
7	Previously Adopted Capital Projects	579,000	350,000	250,000	250,000	250,000	-
8	Utility Billing System		300,000				
9	Subtotal	\$ 7,234,953	\$ 8,020,248	\$12,951,818	\$33,218,696	\$ 5,009,718	\$ 5,765,918
10	CIP Inflation Factor	106.00%	112.36%	119.10%	123.87%	128.82%	133.97%
11	Total Proposed Capital Spending	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780

9.1. Debt Service

Table 9-7 shows the City's existing debt service obligations associated with its outstanding Series 2017 and Series 2019 bonds. These obligations are secured by a pledge of City revenues. The proposed financial plan assumes that the City will issue a \$20M bond in FY 2026 to finance the replacement of Force Main A. Debt service for this future bond was provided by the City's financial advisor, assuming a 20 year repayment period and 7% interest rate⁵.

Table 9-7: Debt Service

Line	Debt Service Forecast	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Existing Debt - Series 2017							
1	Principal	\$ 515,000	\$ 535,000	\$ 560,000	\$ 590,000	\$ 615,000	
2	Interest	124,950	101,625	74,250	45,500	15,375	
3	Subtotal: Existing Debt - Series 2017	\$ 639,950	\$ 636,625	\$ 634,250	\$ 635,500	\$ 630,375	\$ -
Existing Debt - Series 2019							
4	Principal	\$ 505,000	\$ 535,000	\$ 560,000	\$ 585,000	\$ 615,000	\$ 645,000
5	Interest	1,286,325	1,260,325	1,232,950	1,204,325	1,174,325	1,142,825
6	Subtotal: Existing Debt - Series 2019	\$ 1,791,325	\$ 1,795,325	\$ 1,792,950	\$ 1,789,325	\$ 1,789,325	\$ 1,787,825
7	Total Existing Debt	\$ 2,431,275	\$ 2,431,950	\$ 2,427,200	\$ 2,424,825	\$ 2,419,700	\$ 1,787,825
8	Proposed Debt Service	\$ -	\$ -	\$ -	\$ -	\$ 1,302,904	\$ 1,884,550
9	Total Debt Service	\$ 2,431,275	\$ 2,431,950	\$ 2,427,200	\$ 2,424,825	\$ 3,722,604	\$ 3,672,375

⁵ Raftelis also conducted a sensitivity analysis to compare the impact of varying interest rates, bond terms, and project costs. The impact on rates over the full period of changes in financing assumptions is minimal; differences in actual debt service financing assumptions when issued will require only small changes, if any, to the proposed rates.

9.2. Financial Policies

Utility-specific financial policies must be considered during the financial planning process. Financial policies typically define key financial metrics that an agency strives to meet or exceed.

Required Debt Coverage

The City must meet the minimum coverage requirements on its outstanding debt to ensure that it meets the associated debt covenants. The required debt service coverage ratio (DSCR) is 1.15, which means that the City's net revenue must amount to at least 1.15 times annual debt service. Net revenues equal revenues less O&M expenses. Annual debt service includes annual principal and interest payments on all outstanding debt.

Reserve Targets

Prudent fiscal management requires that the City maintain reserve balances to provide sufficient working capital, maintain necessary cash on hand to efficiently award construction contracts, and provide funding during emergencies. The City's current policy consists of several targets:

- » **Capital Reserve for Emergencies:** The City's adopted O&M reserve target is 25 percent of annual O&M expenses. This is intended to ensure sufficient working capital during short-term fluctuations in cash flow.
- » **Rate Stabilization Reserve:** The target is 16.67 percent of annual operating expenses.
- » **CALPERS Reserve:** Twenty percent of any remaining annual surplus after meeting O&M expenses and the reserve targets above are transferred to the CALPERS fund.
- » **Infrastructure Fund:** The remaining 80 percent portion of any operating surplus is transferred to the Infrastructure funds to be spent on capital projects in future years.

9.3. Status Quo Financial Plan

In order to evaluate the need for revenue adjustments (i.e., rate increases), Raftelis first developed a status quo financial plan. The status quo financial plan assumes that current FY 2023 rates remain unchanged over the study period.

Table 9-8 combines projected operating revenues (from **Table 9-4**), and O&M expenses (from **Table 9-5**), and debt service (from **Table 9-7**) to generate cash flow, ending balance, and debt coverage projections under the status quo.

Under the status-quo financial plan, net cash change (revenue less total cash expenses) is negative for most years of the study period and results in a near complete depletion of the City's reserves in Capital Reserve for Emergencies, Rate Stabilization, and Infrastructure Funds by the end of FY 2027. The status quo financial plan is insufficient to meet the City's needs. This demonstrates a clear need for revenue adjustments over the study period to increase rate revenues and achieve financial sustainability.

Table 9-8: Status Quo Operating Financial Plan

Line	Operating Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Rate Revenue	\$22,333,580	\$22,633,892	\$22,947,978	\$23,249,654	\$23,551,330	\$23,853,006
2	Other Misc. Revenue	102,932	69,132	71,576	74,094	76,644	84,713
3	Total	\$22,436,512	\$22,703,024	\$23,019,554	\$23,323,748	\$23,627,974	\$23,937,719
Outflows							
4	City O&M	\$ 7,161,663	\$ 7,467,505	\$ 7,785,580	\$ 8,097,003	\$ 8,420,883	\$ 8,757,718
5	Wastewater Treatment	6,997,426	7,277,323	7,568,416	7,871,153	8,185,999	8,513,439
6	Debt Service	2,431,275	2,431,950	2,427,200	2,424,825	3,722,604	3,672,375
Reserve Contributions							
7	<i>Capital for Emergencies</i>	1,004,241	146,603	151,105	152,946	484,126	153,512
8	<i>Rate Stabilization</i>	669,628	97,755	100,756	101,985	322,815	102,361
9	<i>Pension</i>	834,456	1,056,378	997,299	935,167	498,309	547,663
10	Transfer to Infrastructure	3,337,823	4,225,510	3,989,198	3,740,670	1,993,237	2,190,651
11	Total	\$22,436,512	\$22,703,024	\$23,019,554	\$23,323,748	\$23,627,974	\$23,937,719
12	Rate Increase		0.0%	0.0%	0.0%	0.0%	0.0%
13	Cumulative Rate Increase		0.0%	0.0%	0.0%	0.0%	0.0%
14	Debt Service Coverage Ratio	3.40	3.27	3.16	3.03	1.89	1.82

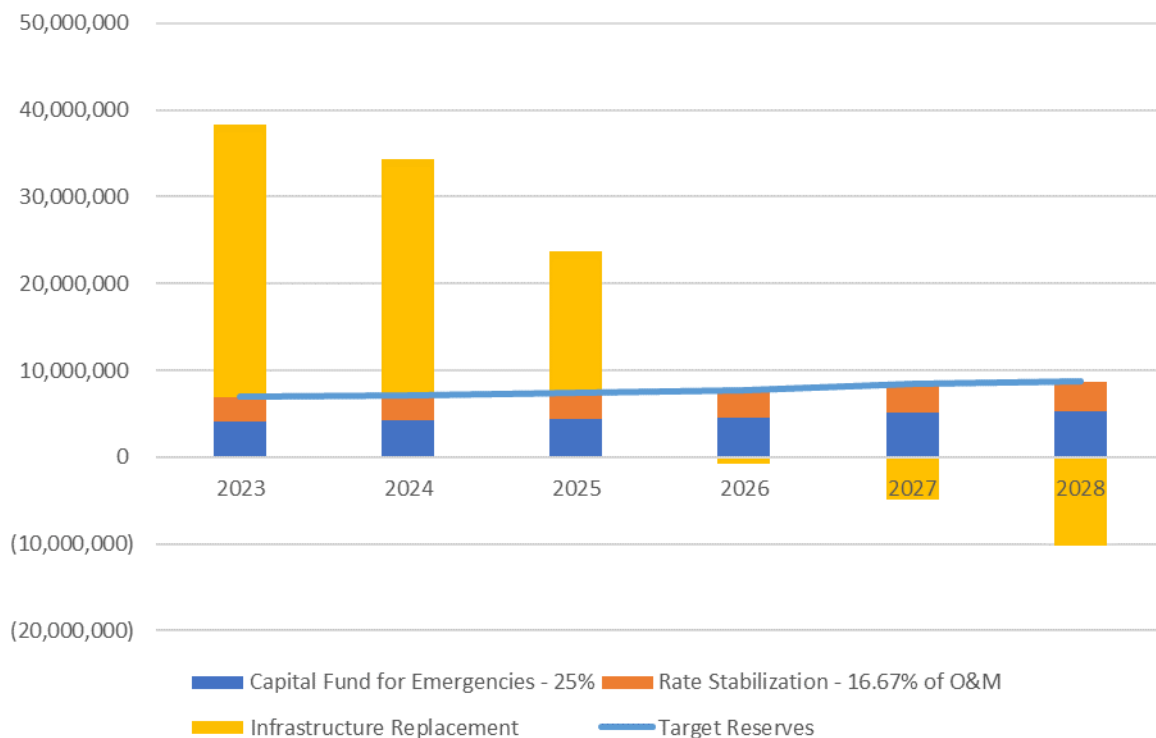
Table 5-11 presents the proposed capital financing plan in the status quo scenario. The use of bond proceeds is reflected on Line 3, but rate revenues are insufficient to fund remaining capital expenses.

Table 9-9: Status Quo Capital Financial Plan

Line	Infrastructure Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Transfer from Operating	\$ 3,337,823	\$ 4,225,510	\$ 3,989,198	\$ 3,740,670	\$ 1,993,237	\$ 2,190,651
2	Developer Fees and Interest	1,200,000	564,099	521,880	412,733	242,801	200,626
3	Bond Proceeds	-	-	-	20,000,000	-	-
4	Use of Infrastructure Reserves	3,131,227	4,221,941	10,914,745	16,993,157	4,217,496	5,333,502
5	Total	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780
Outflows							
7	Capital Projects	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780
8	Total	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780
9	Ending Balance	\$31,409,948	\$27,188,007	\$16,273,262	\$ (719,895)	\$ (4,937,391)	\$ (10,270,893)

Figure 9-1 shows the City's projected ending balances under the status quo. The operating reserve targets are represented by blue line. Projected ending balances are represented by the stacked columns. The City's total reserves will fall below the operating target in FY 2026, with reserves to be fully depleted by the end of FY 2028.⁶

Figure 9-1: Status Quo Financial Plan – Projected Ending Balances



⁶ This scenario presents negative reserve balances in order to demonstrate the need for rate increases. The City is unable to implement any plan that results in negative reserves. This scenario should not be considered an alternative option.

Table 9-10: Status Quo Financial Plan- Projected Ending Balances

Line	End of Year Reserves	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Capital for Emergencies	\$ 4,147,591	\$ 4,294,194	\$ 4,445,299	\$ 4,598,245	\$ 5,082,371	\$ 5,235,883
2	Rate Stabilization	2,765,614	2,863,369	2,964,125	3,066,110	3,388,925	3,491,287
3	Pension	3,999,109	5,055,486	6,052,786	6,987,953	7,486,262	8,033,925
4	Infrastructure	31,409,948	27,188,007	16,273,262	(719,895)	(4,937,391)	(10,270,893)
5	Total	\$42,322,262	\$39,401,057	\$29,735,472	\$13,932,413	\$11,020,168	\$ 6,490,202

9.4. Proposed Financial Plan

The status quo financial plan demonstrates that the City must increase its revenues from water rates over the study period in order to adequately fund its operating and capital expenditures, meet required debt coverage, and generate sufficient reserve funding. Raftelis worked closely with City staff to select the proposed annual revenue adjustments shown in **Table 9-11**. Revenue adjustments represent annual percentage increases in rate revenue relative to how much rate revenue would have been collected under the prior year's wastewater rates.

Table 9-11: Proposed Revenue Adjustments

Line	Description	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Effective Date of Revenue Adjustment	July 1, 2023	July 1, 2024	July 1, 2025	July 1, 2026	July 1, 2027
2	Revenue Adjustment	4.00%	4.00%	4.00%	4.00%	4.00%

Table 9-12 shows the proposed financial plan pro forma. This combines projected revenues, O&M expenses, debt service, capital expenditures, and reserve targets to generate cash flow, ending balance, and debt coverage projections under the proposed financial plan. Revenue adjustments over the study period generate significant increases in rate revenues over the study period. This results in positive net operating cash flow and sufficient debt coverage in all years.

Table 9-12: Proposed Operating Financial Plan

Line	Operating Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Rate Revenue	\$22,333,580	\$23,539,248	\$24,820,533	\$26,152,699	\$27,551,725	\$ 29,020,829
2	Other Misc. Revenue	102,932	69,132	71,576	74,094	76,644	84,713
3	Total	\$22,436,512	\$23,608,380	\$24,892,109	\$26,226,793	\$27,628,369	\$ 29,105,542
Outflows							
4	City O&M	\$ 7,161,663	\$ 7,467,505	\$ 7,785,580	\$ 8,097,003	\$ 8,420,883	\$ 8,757,718
5	Wastewater Treatment	6,997,426	7,277,323	7,568,416	7,871,153	8,185,999	8,513,439
6	Debt Service	2,431,275	2,431,950	2,427,200	2,424,825	3,722,604	3,672,375
Reserve Contributions							
7	<i>Capital for Emergencies</i>	1,004,241	146,603	151,105	152,946	484,126	153,512
8	<i>Rate Stabilization</i>	669,628	97,755	100,756	101,985	322,815	102,361
9	<i>Pension</i>	834,456	1,237,449	1,371,810	1,515,776	1,298,388	1,581,227
10	Transfer to Infrastructure	3,337,823	4,949,795	5,487,242	6,063,105	5,193,553	6,324,910
11	Total	\$22,436,512	\$23,608,380	\$24,892,109	\$26,226,793	\$27,628,369	\$ 29,105,542
12	Rate Increase		4.0%	4.0%	4.0%	4.0%	4.0%
13	Cumulative Rate Increase		4.0%	8.2%	12.5%	17.0%	21.7%
14	Debt Service Coverage Ratio	3.40	3.64	3.93	4.23	2.96	3.22

Table 9-13: Proposed Capital Financial Plan

Line	Infrastructure Cash Flow	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Inflows							
1	Transfer from Operating	\$ 3,337,823	\$ 4,949,795	\$ 5,487,242	\$ 6,063,105	\$ 5,193,553	\$ 6,324,910
2	Developer Fees and Interest	1,200,000	564,099	529,123	435,028	288,544	278,830
3	Bond Proceeds	-	-	-	20,000,000	-	-
4	Use of Infrastructure Reserves	3,131,227	3,497,657	9,409,458	14,648,425	971,437	1,121,040
5	Total	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780
Outflows							
7	Capital Projects	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780
8	Total	\$ 7,669,050	\$ 9,011,551	\$15,425,823	\$41,146,559	\$ 6,453,534	\$ 7,724,780
9	Ending Balance	\$31,409,948	\$27,912,291	\$18,502,833	\$ 3,854,408	\$ 2,882,971	\$ 1,761,931

Figure 5-2 shows the City's projected ending balance under the proposed financial plan. The light blue line indicates the total target balance of 41.67 percent of O&M. The proposed financial plan will draw heavily on reserves as the master plan is implemented in FY 2026. Although not detailed in this report, projections indicate that the City will be able to cover all operating and capital expenses without the use of reserves beginning in FY 2029.

Figure 9-2: Proposed Financial Plan – Projected Ending Balances

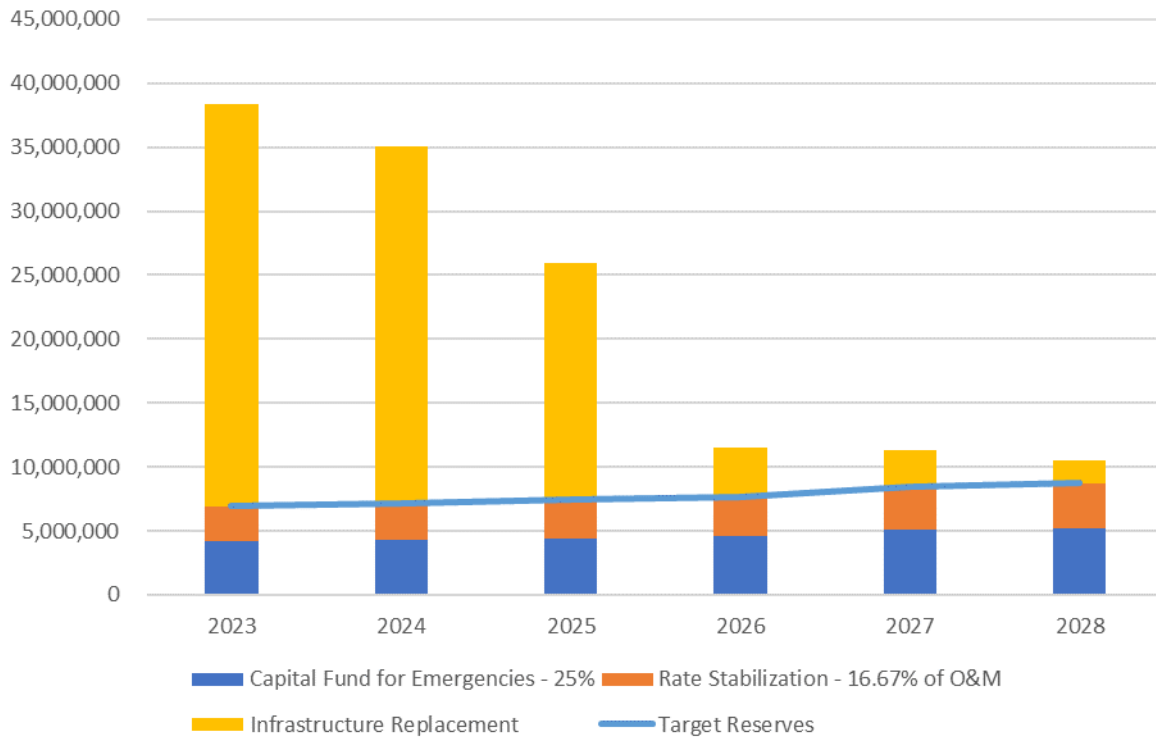


Table 9-14: Proposed Financial Plan – Projected Ending Balances

Line	End of Year Reserves	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Capital for Emergencies	\$ 4,147,591	\$ 4,294,194	\$ 4,445,299	\$ 4,598,245	\$ 5,082,371	\$ 5,235,883
2	Rate Stabilization	2,765,614	2,863,369	2,964,125	3,066,110	3,388,925	3,491,287
3	Pension	3,999,109	5,236,558	6,608,368	8,124,144	9,422,532	11,003,760
4	Infrastructure	31,409,948	27,912,291	18,502,833	3,854,408	2,882,971	1,761,931
5	Total	\$42,322,262	\$40,306,412	\$32,520,625	\$19,642,907	\$20,776,800	\$ 21,492,861

10. Wastewater Cost of Service Analysis

Section 6 details the cost of service (COS) analysis performed for FY 2024. The COS analysis allocates the overall rate revenue requirement to customer classes based on their proportion of use of and burden on the City's water system. This provides the basis for the development of proposed FY 2024 water rates.

10.1. Methodology

The first step in the COS analysis is to determine the revenue required from rates. The total revenue requirement is determined in the financial plan and the proposed revenue adjustments in **Section 9**. The framework and methodology utilized to develop the COS analysis and to apportion the revenue requirement to each customer class and tier is informed by the processes outlined in the WEF Manual of Practice No. 27.

COS analyses are tailored specifically to meet the unique needs of each wastewater system. However, there are several distinct steps in every COS analysis to recover costs from customers in an accurate, equitable, and defensible manner:

1. **Cost component allocation:** Costs are allocated to demand parameters and customer characteristics based on the design and functional parameter the characterize each expense
2. **Unit cost development:** The revenue requirement for each cost causation component is divided by the appropriate units of service to determine the unit cost for each rate component
3. **Distribution of Costs to Customer Classes:** The unit costs are applied to the units of service from each customer class to allocate the revenue requirement to customers in accordance with their impact on the wastewater system
4. **Rate Design:** The costs allocated to each class and the units of service for each class are used to develop fixed and volume charges.

10.2. Units of Service

Table 10-1 summarizes the forecasted units of service for each wastewater class. ERUs, bills, and commercial volumes are from the latest available City billing data. Pollutant strengths for BOD, TSS, and NH₃ as well as the estimate of days active are from estimates provided by San Jose. The pollutant units used to allocate costs are pounds per day, calculated using the contributed volume estimate and pollutant concentration for each class to estimate total annual pounds and dividing by the number of days active.

Table 10-1: FY 2024 Wastewater Units of Service

Line	Units of Service	Days	Volume		BOD			TSS			NH3			Customer	
			HCF	Gallons / Day	Strength (mg/l)	Pounds / Year	Pounds / Day	Strength (mg/l)	Pounds / Year	Pounds / Day	Strength (mg/l)	Pounds / Year	Pounds / Day	ERUs	Bills
1	Single-Family	365	1,107,882	2,270,556	250.00	1,729,040	4,737	250.00	1,729,040	4,737	35.00	242,066	663	75,459	74,644
2	Multi-Family	365	825,451	1,691,726	250.00	1,288,258	3,529	250.00	1,288,258	3,529	35.00	180,356	494	72,904	11,315
3	Mobile Home	365	35,875	73,524	250.00	55,989	153	250.00	55,989	153	35.00	7,838	21	3,126	18
4	Schools/Colleges	176	18,084	76,863	130.00	14,676	83	100.00	11,289	64	30.00	3,387	19	414	414
5	Motels and Hotels	365	75,029	153,768	310.00	145,198	398	121.00	56,674	155	7.00	3,279	9	157	157
6	General Office	261	122,054	349,818	130.00	99,053	380	80.00	60,955	234	11.00	8,381	32	2,234	2,234
7	City of Milpitas	323	12,347	28,594	130.00	10,020	31	80.00	6,166	19	11.00	848	3	235	235
8	Service Stations	365	16,618	34,058	180.00	18,674	51	280.00	29,048	80	-	-	-	253	253
9	Eat/Drink Establishments	365	128,734	263,834	1,250.00	1,004,554	2,752	560.00	450,040	1,233	10.00	8,036	22	1,030	1,030
10	Convalescent Hosp/Daycare	365	14,960	30,659	230.00	21,479	59	85.00	7,938	22	15.00	1,401	4	144	144
11	Personal Services, Laundrys	365	23,340	47,835	150.00	21,856	60	110.00	16,028	44	5.00	729	2	348	348
12	Electrical/Electronics	261	108,991	312,379	30.00	20,412	78	15.00	10,206	39	30.00	20,412	78	614	614
13	Machinery Manufacture	261	3,698	10,598	290.00	6,695	26	550.00	12,697	49	-	-	-	84	84
14	RockTenn (Jefferson Smurfit)	365	4,271	8,754	1,746.71	46,574	128	39.68	1,058	3	17.10	456	1	6	6
15	T. Marzetti Co.	313	19,850	47,440	1,555.25	192,721	616	31.16	3,861	12	0.41	51	0	12	12
16	Prudential Overall Supply	261	10,354	29,675	583.25	37,698	144	269.23	17,402	67	1.52	98	0	12	12
17	Evoqua Water Technologies	261	30,363	87,023	28.93	5,484	21	148.62	28,170	108	1.19	226	1	12	12
18	Elmwood Rehabilitation	365	64,490	132,170	507.05	204,134	559	341.68	137,557	377	25.39	10,222	28	30	30
19	Linear Technology	261	71,587	205,174	17.72	7,919	30	25.03	11,186	43	25.22	11,271	43	36	36
20	DS Waters of America	261	609	1,746	1.58	6	0	1.68	6	0	0.01	0	0	12	12
21	Magic Tech & Headway Tech	261	38,085	109,156	449.42	106,852	409	4.83	1,148	4	1.63	388	1	12	12
22	Lucky Pure Water	365	838	1,717	130.00	680	2	80.00	418	1	11.00	58	0	6	6
23	Milpitas Materials	365	74	151	130.00	60	0	80.00	37	0	11.00	5	0	6	6
24	Union Pacific Railroad	261	1,254	3,595	180.00	1,409	5	280.00	2,192	8	-	-	-	12	12
25	Cisco	261	53,232	152,568	30.00	9,969	38	15.00	4,985	19	30.00	9,969	38	30	30
26	Total		2,788,067	6,123,381		5,049,408	14,291		3,942,349	11,001		509,475	1,462	157,187	91,675

10.3. Revenue Requirement

Table 10-2 shows the rate revenue requirement for FY 2024 (also referred to as the test year or rate-setting year). The revenue requirement is split into operating and capital categories which are later allocated based on O&M expenses and capital assets, respectively. The expenses (Lines 1-4) are equal to FY 2024 expenses. The miscellaneous revenue (Line 6) includes interest earnings and miscellaneous revenues that are applied as offsets to the final rate revenue requirement. The contribution to reserves adjustment (Line 7) is equal to FY 2024 net cash change and represents the increase in the rate revenue requirement resulting from an addition to operating reserves and use of infrastructure reserves in FY 2024. All aforementioned values are from the proposed financial plan pro forma (

Table 9-8). The final rate revenue requirement (Line 8) is calculated as follows:

Total revenue required from rates (Line 8) = Revenue requirements (Line 5) + Other Revenues (Line 6) + Reserves (Line 7)

Table 10-2: FY 2024 Revenue Required from Wastewater Rates

Line	Description	Operating	Capital	Total
Expenses				
1	City O&M	\$ 7,467,505		\$ 7,467,505
2	Wastewater Treatment	7,277,323		7,277,323
3	Debt Service		2,431,950	2,431,950
4	Rate Funded Capital		4,949,795	4,949,795
5	Subtotal	\$14,744,828	\$ 7,381,745	\$22,126,572
6	Other Revenues	\$ (69,132)		\$ (69,132)
7	Contribution to (from) Reserves	\$ 1,481,807		\$ 1,481,807
8	Revenue Required from Rates	\$16,157,503	\$ 7,381,745	\$23,539,248

10.4. Allocation of Expenses to Rate Components

After determining the revenue requirement, the next step of the COS analysis is to allocate O&M to the various rate components:

- » **Volume:** Part of the potable O&M volume rate intended to recover costs associated with the quantity of contributed wastewater.
- » **BOD, TSS, and NH3:** Recognizes the costs related to treating wastewater that vary with the level of pollutants in the water.
- » **ERUs:** Costs that should be recovered by all customers equally in the bi-monthly fixed charge. An ERU is a single home, apartment, or commercial account – in the multifamily and mobile home classes, there are many ERUs per account.
- » **Customer:** Part of the bi-monthly fixed charge that recovers the cost of providing customer service and billing. These costs are recovered from all customer accounts equally, regardless of their wastewater contributions or ERUs.

Table 10-3 shows the basis for allocating each O&M expense category to the various rate components. Most expense categories are allocated entirely to the corresponding cost causation component. The allocation basis for functional categories are as follows:

- » **Electricity:** Primarily related to operating lift stations to convey wastewater. This costs scales closely with the quantity of wastewater contributed to the system.
- » **Wastewater Treatment O&M:** Allocated directly to the corresponding volume and pollutant cost components in proportion to San Jose's revenue requirement assigned to the City.
- » **Wastewater Treatment Capital:** The City pays for a portion of San Jose's capital costs based on a fixed capacity allocation rather than actual annual use. This capacity is approximately 2.5 times greater than the actual flow requirements of the City. Raffelis has allocated the costs associated with this unused capacity to the ERU cost component to be recovered from all customers equally. The remaining capital expense is allocated to the volume and pollutant components in the same proportion as the wastewater O&M expense, which corresponds to actual use patterns.
- » **Debt Service:** The Series 2017 bonds are allocated according to the functional use of the Series 2006 bonds as determined by the City during the 2018 rate study. The Series 2019 bonds were issued in order to finance improvements at the San Jose regional wastewater treatment plant; therefore, this cost is allocated in the same way as the San Jose capital expense discussed above.
- » **Finance Administration and Fiscal Services:** These costs are related to customer service, billing, and general financial services.
- » **Utility Engineering, Utility Maintenance, Compliance, City Capital, Contributions to Reserves, and other Non-Departmental:** These are allocated to the Volume rate component. Many engineering, maintenance, and capital expenses are related to the size of the customer and their use of the wastewater system.
- » **Administration, Transfer to General Fund, City Attorney, and Misc. Revenue:** These expenses and revenues are allocated to the General cost component, which is reallocated to all other rate components on Line 22.

Table 10-3: Wastewater Revenue Requirement Allocation

Line	Cost Center	FY 2024	Volume	BOD	TSS	NH3	ERUs	Customer	General
City O&M Expenses									
1	Administration	\$ 1,690,087							100.0%
2	Utility Engineering	519,108	100.0%						
3	Utility Maintenance	1,647,140	100.0%						
4	Compliance	199,553	100.0%						
5	Non-Departmental	859,196	100.0%						
6	Electricity	310,000	100.0%						
7	Finance Administration	25,769						100.0%	
8	Fiscal Services	713,988						100.0%	
9	City Attorney	-							100.0%
10	Transfer to General Fund	1,502,664							100.0%
11	Subtotal City O&M	\$ 7,467,505							
12	Wastewater Treatment	\$ 7,277,323	33.3%	24.7%	21.4%	20.5%			
Debt Service									
13	Series 2017	\$ 636,625	69.7%	13.5%	7.3%	9.5%			
14	Series 2019	1,795,325	17.3%	12.9%	11.2%	10.7%	48.0%		
15	Subtotal Debt Service	\$ 2,431,950							
Capital									
16	San Jose Capital	\$ 3,875,286	17.3%	12.9%	11.2%	10.7%	48.0%		
17	City Capital	1,074,509	100.0%						
19	Subtotal Capital	\$ 4,949,795							
18	Contribution to Reserves	1,481,807	100.0%						
20	Misc. Revenues	(69,132)							100.0%
21	Subtotal Expenses	\$ 23,539,248	\$ 9,945,137	\$ 2,612,009	\$ 2,240,114	\$ 2,158,860	\$ 2,719,753	\$ 739,757	\$ 3,123,618
22	Reallocation of General		\$ 1,521,619	\$ 399,641	\$ 342,740	\$ 330,308	\$ 416,126	\$ 113,184	\$ (3,123,618)
23	Total Expenses		\$ 11,466,756	\$ 3,011,650	\$ 2,582,854	\$ 2,489,168	\$ 3,135,878	\$ 852,941	\$ -

10.1. Customer Class Costs

Unit costs developed in Line 25 of **Table 10-3** are used to distribute costs to each customer class based on their contributed wastewater volume, strength loadings, and ERUs. The Unit Costs are multiplied by the service units to derive the cost to each class for each cost component. The final columns of this table compare the proposed cost of service revenue from each class and the revenue from each class if all rates were increased by the same percentage amount. Note that the weighted average percent change is equal to the 4 percent rate adjustment determined in the financial plan above.

Table 10-4: Customer Class Cost of Service

Line	Customer Class Cost of Service	Volume	BOD	TSS	NH3	ERUs	Bills	Total Proposed Revenue	Revenue at Current Rates	% Change	\$ Change
1	Single-Family	4,251,886	998,280	1,112,220	1,129,518	1,505,407	694,484	9,691,795	9,367,460	3.5%	324,335
2	Multi-Family	3,167,958	743,790	828,683	841,571	1,454,429	105,274	7,141,705	6,950,622	2.7%	191,083
3	Mobile Home	137,682	32,326	36,015	36,575	62,364	167	305,129	244,703	24.7%	60,425
4	Schools/Colleges	143,935	17,573	15,060	32,774	8,253	3,849	221,446	191,976	15.4%	29,469
5	Motels and Hotels	287,949	83,832	36,456	15,299	3,123	1,457	428,116	435,697	-1.7%	(7,581)
6	General Office	655,075	79,977	54,834	54,692	44,570	20,786	909,934	895,948	1.6%	13,986
7	City of Milpitas	53,546	6,537	4,482	4,471	4,681	2,183	75,900	78,027	-2.7%	(2,128)
8	Service Stations	63,778	10,781	18,685	-	5,046	2,353	100,643	101,641	-1.0%	(997)
9	Eat/Drink Establishments	494,060	579,990	289,492	37,499	20,543	9,580	1,431,166	1,194,489	19.8%	236,677
10	Convalescent Hosp/Daycare	57,413	12,401	5,106	6,536	2,873	1,340	85,670	87,712	-2.3%	(2,043)
11	Personal Services, Laundrys	89,576	12,619	10,310	3,399	6,943	3,238	126,085	133,454	-5.5%	(7,370)
12	Electrical/Electronics	584,967	16,481	9,181	133,197	12,254	5,715	761,794	749,218	1.7%	12,576
13	Machinery Manufacture	19,847	5,405	11,422	-	1,682	784	39,140	33,479	16.9%	5,661
14	RockTenn (Jefferson Smurfit)	16,392	26,890	681	2,128	120	56	46,266	44,841	3.2%	1,425
15	T. Marzetti Co.	88,837	129,755	2,896	276	239	112	222,116	240,313	-7.6%	(18,197)
16	Prudential Overall Supply	55,569	30,438	15,654	641	239	112	102,654	87,506	17.3%	15,148
17	Evoqua Water Technologies	162,962	4,428	25,341	1,472	239	112	194,554	214,691	-9.4%	(20,137)
18	Elmwood Rehabilitation	247,503	117,859	88,485	47,697	599	279	502,421	432,259	16.2%	70,162
19	Linear Technology	384,213	6,394	10,062	73,546	718	335	475,269	493,500	-3.7%	(18,231)
20	DS Waters of America	3,269	5	6	0	239	112	3,631	4,007	-9.4%	(376)
21	Magic Tech & Headway Tech	204,408	86,274	1,033	2,529	239	112	294,595	279,113	5.5%	15,483
22	Lucky Pure Water	3,216	393	269	268	120	56	4,322	4,597	-6.0%	(275)
23	Milpitas Materials	283	35	24	24	120	56	540	554	-2.5%	(14)
24	Union Pacific Railroad	6,731	1,138	1,972	-	239	112	10,192	9,547	6.8%	646
25	Cisco	285,701	8,049	4,484	65,054	599	279	364,167	358,539	1.6%	5,628
26	Total	\$ 11,466,756	\$ 3,011,650	\$ 2,582,854	\$ 2,489,168	\$ 3,135,878	\$ 852,941	\$ 23,539,248	\$ 22,633,892	4.0%	905,356

11. Proposed Wastewater Rates

Section 11 details the proposed water rate calculations. Proposed FY 2024 rates are calculated directly from the results of the COS allocations (from **Section 10**). All proposed rates beginning in FY 2025 are calculated by simply increasing the prior year's proposed rate by the annual revenue adjustment (from **Table 9-11**).

11.1. Proposed FY 2024 Fixed Meter Charges

Table 11-1 shows the detailed calculation of proposed FY 2024 Fixed Charges. The charge for the single family, multifamily, and mobile home classes recover the entire revenue requirement for these classes shown on Lines 1 to 3 of **Table 10-4**; these customers will not pay a volumetric charge. The rate is calculated by dividing the total cost by the number of billed bi-monthly ERUs.

Table 11-1: Proposed FY 2024 Fixed Charge Calculation

Line	Class Fixed Charge	Cost	Bills / ERUs	Proposed Rate	Current Rate	% Change	\$ Change
1	Single-Family	\$ 9,691,795	75,459	\$ 128.44	\$ 124.14	3.5%	\$4.30
2	Multi-Family	7,141,705	72,904	97.96	95.34	2.7%	2.62
3	Mobile Home	305,129	3,126	97.61	78.28	24.7%	19.33
4	Schools/Colleges	12,103	414	29.25	27.35	7.0%	1.90
5	Motels and Hotels	4,580	157	29.25	27.35	7.0%	1.90
6	General Office	65,356	2,234	29.25	27.35	7.0%	1.90
7	City of Milpitas	6,864	235	29.25	27.35	7.0%	1.90
8	Service Stations	7,399	253	29.25	27.35	7.0%	1.90
9	Eat/Drink Establishments	30,123	1,030	29.25	27.35	7.0%	1.90
10	Convalescent Hosp/Daycare	4,213	144	29.25	27.35	7.0%	1.90
11	Personal Services, Laundrys	10,180	348	29.25	27.35	7.0%	1.90
12	Electrical/Electronics	17,968	614	29.25	27.35	7.0%	1.90
13	Machinery Manufacture	2,466	84	29.25	27.35	7.0%	1.90
14	RockTenn (Jefferson Smurfit)	176	6	29.25	27.35	7.0%	1.90
15	T. Marzetti Co.	351	12	29.25	27.35	7.0%	1.90
16	Prudential Overall Supply	351	12	29.25	27.35	7.0%	1.90
17	Evoqua Water Technologies (	351	12	29.25	27.35	7.0%	1.90
18	Elmwood Rehabilitation	878	30	29.25	27.35	7.0%	1.90
19	Linear Technology	1,053	36	29.25	27.35	7.0%	1.90
20	DS Waters of America	351	12	29.25	27.35	7.0%	1.90
21	Magic Tech & Headway Tech	351	12	29.25	27.35	7.0%	1.90
22	Lucky Pure Water	176	6	29.25	27.35	7.0%	1.90
23	Milpitas Materials	176	6	29.25	27.35	7.0%	1.90
24	Union Pacific Railroad	351	12	29.25	27.35	7.0%	1.90
25	Cisco	878	30	29.25	27.35	7.0%	1.90

11.2. Proposed FY 2024 Volume Charges

Table 7-2 shows the proposed FY 2024 Volume Charges. The costs for commercial classes are the sum of the volume and pollutant rate components shown in **Table 10-4**. This cost is divided by the amount of billable wastewater as previously shown in **Table 10-1**.

Table 11-2: Proposed FY 2023 Volume Charge Calculation

Volume Charge				Proposed				
Line	Calculation	Cost	Volume (hcf)	Rate	Current Rate	% Change	\$ Change	
1	Single-Family							
2	Multi-Family							
3	Mobile Home							
4	Schools/Colleges	\$ 209,343	18,084	\$ 11.58	\$ 9.99	15.9%	\$1.59	
5	Motels and Hotels	423,536	75,029	5.64	5.75	-1.8%	(0.11)	
6	General Office	844,579	122,054	6.92	6.84	1.2%	0.08	
7	City of Milpitas	69,036	12,347	5.59	5.80	-3.6%	(0.21)	
8	Service Stations	93,245	16,618	5.61	5.70	-1.6%	(0.09)	
9	Eat/Drink Establishments	1,401,042	128,734	10.88	9.06	20.1%	1.82	
10	Convalescent Hosp/Daycare	81,457	14,960	5.45	5.60	-2.8%	(0.15)	
11	Personal Services, Laundrys	115,904	23,340	4.97	5.31	-6.5%	(0.34)	
12	Electrical/Electronics	743,826	108,991	6.82	6.72	1.6%	0.10	
13	Machinery Manufacture	36,674	3,698	9.92	8.43	17.6%	1.49	
14	RockTenn (Jefferson Smurfit)	46,091	4,271	10.79	10.46	3.2%	0.33	
15	T. Marzetti Co.	221,765	19,850	11.17	12.09	-7.6%	(0.92)	
16	Prudential Overall Supply	102,303	10,354	9.88	8.42	17.3%	1.46	
17	Evoqua Water Technologies	194,202	30,363	6.40	7.06	-9.4%	(0.66)	
18	Elmwood Rehabilitation	501,544	64,490	7.78	6.69	16.2%	1.09	
19	Linear Technology	474,216	71,587	6.62	6.88	-3.7%	(0.26)	
20	DS Waters of America	3,280	609	5.38	6.04	-10.8%	(0.66)	
21	Magic Tech & Headway Tech	294,244	38,085	7.73	7.32	5.5%	0.41	
22	Lucky Pure Water	4,146	838	4.95	5.29	-6.5%	(0.34)	
23	Milpitas Materials	364	74	4.95	5.29	-6.5%	(0.34)	
24	Union Pacific Railroad	9,841	1,254	7.85	7.35	6.8%	0.50	
25	Cisco	363,289	53,232	6.82	6.72	1.6%	0.10	

11.3. Proposed Five-Year Rate Schedule

Table 11-3 shows the proposed five-year schedule of water rates through FY 2027. Proposed FY 2024 Fixed Charges were calculated in the preceding subsections. All proposed rates beginning in FY 2025 are calculated by increasing the prior year's proposed rate by the proposed annual revenue adjustment (from **Table 9-11**). Current FY 2023 wastewater rates (from **Table 8-2**) are also shown.

Table 11-3: Proposed Five-Year Wastewater Rate Schedule

Line	Fixed Charge Schedule	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family	124.14	128.44	133.58	138.93	144.49	150.27
2	Multi-Family	95.34	97.96	101.88	105.96	110.20	114.61
3	Mobile Home	78.28	97.61	101.52	105.59	109.82	114.22
4	Schools/Colleges	27.35	29.25	30.43	31.65	32.92	34.24
5	Motels and Hotels	27.35	29.25	30.43	31.65	32.92	34.24
6	General Office	27.35	29.25	30.43	31.65	32.92	34.24
7	City of Milpitas	27.35	29.25	30.43	31.65	32.92	34.24
8	Service Stations	27.35	29.25	30.43	31.65	32.92	34.24
9	Eat/Drink Establishments	27.35	29.25	30.43	31.65	32.92	34.24
10	Convalescent Hosp/Daycare	27.35	29.25	30.43	31.65	32.92	34.24
11	Personal Services, Laundrys	27.35	29.25	30.43	31.65	32.92	34.24
12	Electrical/Electronics	27.35	29.25	30.43	31.65	32.92	34.24
13	Machinery Manufacture	27.35	29.25	30.43	31.65	32.92	34.24
14	RockTenn (Jefferson Smurfit)	27.35	29.25	30.43	31.65	32.92	34.24
15	T. Marzetti Co.	27.35	29.25	30.43	31.65	32.92	34.24
16	Prudential Overall Supply	27.35	29.25	30.43	31.65	32.92	34.24
17	Evoqua Water Technologies	27.35	29.25	30.43	31.65	32.92	34.24
18	Elmwood Rehabilitation	27.35	29.25	30.43	31.65	32.92	34.24
19	Linear Technology	27.35	29.25	30.43	31.65	32.92	34.24
20	DS Waters of America	27.35	29.25	30.43	31.65	32.92	34.24
21	Magic Tech & Headway Tech	27.35	29.25	30.43	31.65	32.92	34.24
22	Lucky Pure Water	27.35	29.25	30.43	31.65	32.92	34.24
23	Milpitas Materials	27.35	29.25	30.43	31.65	32.92	34.24
24	Union Pacific Railroad	27.35	29.25	30.43	31.65	32.92	34.24
25	Cisco	27.35	29.25	30.43	31.65	32.92	34.24

Line	Volume Charge Schedule	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family			-	-	-	-
2	Multi-Family			-	-	-	-
3	Mobile Home			-	-	-	-
4	Schools/Colleges	9.99	11.58	12.04	12.53	13.04	13.57
5	Motels and Hotels	5.75	5.64	5.88	6.12	6.37	6.63
6	General Office	6.84	6.92	7.20	7.49	7.79	8.11
7	City of Milpitas	5.80	5.59	5.82	6.06	6.31	6.57
8	Service Stations	5.70	5.61	5.84	6.08	6.33	6.59
9	Eat/Drink Establishments	9.06	10.88	11.32	11.78	12.26	12.76
10	Convalescent Hosp/Daycare	5.60	5.45	5.67	5.90	6.14	6.39
11	Personal Services, Laundrys	5.31	4.97	5.17	5.38	5.60	5.83
12	Electrical/Electronics	6.72	6.82	7.10	7.39	7.69	8.00
13	Machinery Manufacture	8.43	9.92	10.32	10.74	11.17	11.62
14	RockTenn (Jefferson Smurfit)	10.46	10.79	11.23	11.68	12.15	12.64
15	T. Marzetti Co.	12.09	11.17	11.62	12.09	12.58	13.09
16	Prudential Overall Supply	8.42	9.88	10.28	10.70	11.13	11.58
17	Evoqua Water Technologies	7.06	6.40	6.66	6.93	7.21	7.50
18	Elmwood Rehabilitation	6.69	7.78	8.09	8.42	8.76	9.12
19	Linear Technology	6.88	6.62	6.89	7.17	7.46	7.76
20	DS Waters of America	6.04	5.38	5.61	5.84	6.08	6.33
21	Magic Tech & Headway Tech	7.32	7.73	8.04	8.37	8.71	9.06
22	Lucky Pure Water	5.29	4.95	5.15	5.36	5.58	5.81
23	Milpitas Materials	5.29	4.95	5.15	5.36	5.58	5.81
24	Union Pacific Railroad	7.35	7.85	8.17	8.50	8.84	9.20
25	Cisco	6.72	6.82	7.10	7.39	7.69	8.00

11.4.Causes of Different Rate Changes

It is common in a cost of service study to have significantly different rate impacts for different customer classes. Although it is difficult to precisely quantify differences between rate calculations from previous studies to this current study, there are a few general factors that contribute to the differential impacts:

1. **Updated units of service:** the contributed volumes and pollutant strengths have been updated since the 2018 study. This is particularly important for the individually monitored commercial customers whose strengths are continuously monitored. The units of service for each class as a proportion of the whole customer base are used to determine the proportion of the total costs.
2. **Changes in expenses:** the structure of the City's expenses are significantly different in 2023 than in 2018. For example, the San Jose capital expense is over three times larger than previously, resulting in a higher proportion of total City costs allocated to the pollutant components. This disproportionately affects customers with a higher than average estimated strength, all of which are commercial customers.
3. **Updated methodology:** Although the approach to calculating the previous rates was valid and justifiable, Raftelis believes that making several changes to the allocation process results in rates with a closer link to actual costs. These changes include the allocation of customer service and billing costs to customer accounts rather than ERUs, treating all City O&M expenses similarly rather than allocating a portion of them on a fixed ERU basis, and adjusting the recovery of the excess capacity portion of the San Jose capital expense.

11.5.Mobile Home Rate Subsidy

Following the completion of the 2018 rate study, the City determined that the proposed rates for mobile home customers would increase too sharply and implemented a transfer of funds from outside the utility in order to reduce the rate for these customers. The mobile home rate proposed above in **Table 11-3** represents the full cost of service requirement for this class. If the City chose to do so, it could continue to provide a subsidy to these customers. Increasing the mobile home rate by 7.85% per year from FY 2024 to FY 2028 would bring these rates into alignment with the class cost of service requirement in FY 2028. The total subsidy over the study period is approximately \$109 thousand⁷.

Table 11-4: Mobile Home Subsidy Option

Line	Description	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Subsidized Rate	\$ 78.28	\$ 84.42	\$ 91.05	\$ 98.20	\$ 105.91	\$ 114.22
2	% Rate Increase		7.85%	7.85%	7.85%	7.85%	7.85%
3	Revenue Recovered	\$ 244,703	\$ 263,911	\$ 284,627	\$ 306,969	\$ 331,065	\$ 357,052
4	COS Requirement		\$ 305,129	\$ 317,352	\$ 330,074	\$ 343,297	\$ 357,052
5	Annual Subsidy		41,217	32,724	23,105	12,233	-
6	Cumulative Subsidy		41,217	73,942	97,047	109,280	\$ 109,280

⁷ Raftelis prepared this calculation at the request of the City and do not endorse this approach. We recommend the City adopt cost of service rates to ensure equity between customer classes, maintain compliance with generally accepted rate setting principles, and Prop 218.

12. Combined Bill Impacts and Bill Comparison

Table 12-1 shows a combined bi-monthly bill for a single-family residential customer with a 5/8” meter using 14 hcf of water per billing period. The average annual increase to the total bill is approximately 5.3 percent per year.

Table 12-1: Combined Bi-Monthly Bill Impact

Line	Typical Bill - 14 hcf	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Water Charges							
1	Fixed Charge	\$ 34.10	\$ 35.87	\$ 38.21	\$ 40.70	\$ 43.35	\$ 46.17
2	Volume Charge	93.80	100.38	106.96	113.96	121.38	129.36
3	Capital Charge	15.12	15.96	16.80	17.64	18.62	19.60
4	Subtotal	\$ 143.02	\$ 152.21	\$ 161.97	\$ 172.30	\$ 183.35	\$ 195.13
5	<i>Percent Change</i>		6.4%	6.4%	6.4%	6.4%	6.4%
6	Wastewater Charges	\$ 124.14	\$ 128.44	\$ 133.58	\$ 138.93	\$ 144.49	\$ 150.27
7	<i>Percent Change</i>		3.5%	4.0%	4.0%	4.0%	4.0%
8	Total Charges	\$ 267.16	\$ 280.65	\$ 295.55	\$ 311.23	\$ 327.84	\$ 345.40
9	<i>Percent Change</i>		5.0%	5.3%	5.3%	5.3%	5.4%

Figure 12-2 shows a comparison of sample Single Family Residential bi-monthly bills with several nearby utilities. All bills are calculated based on a 5/8-inch or 3/4-inch water meter size and bi-monthly water use of 14 HCF. Note that many of the other agencies shown are either scheduled or expected to implement rate increases in FY 2024. Many factors affect the cost of serving water by the agency. Some of these factors include:

1. Tax revenue – some agencies receive tax revenue substantially lowering the revenue required from rates,
2. Water sources – agencies who buy more imported water usually pay more for water compared to purveyors who pump groundwater,
3. Topography – hilly agencies will incur costs to pump water compared to agencies with flat topography,
4. System reinvestment – deferred investment in rehabilitation projects will keep rates low compared to agencies are investing in their system,
5. Age – newer systems are often in better shape than older systems and require less repair,
6. Size – smaller systems often have a higher cost per customer since they lack economies of scale.

Figure 12-1: Single Family Residential Water Bill Comparison with Neighboring Agencies

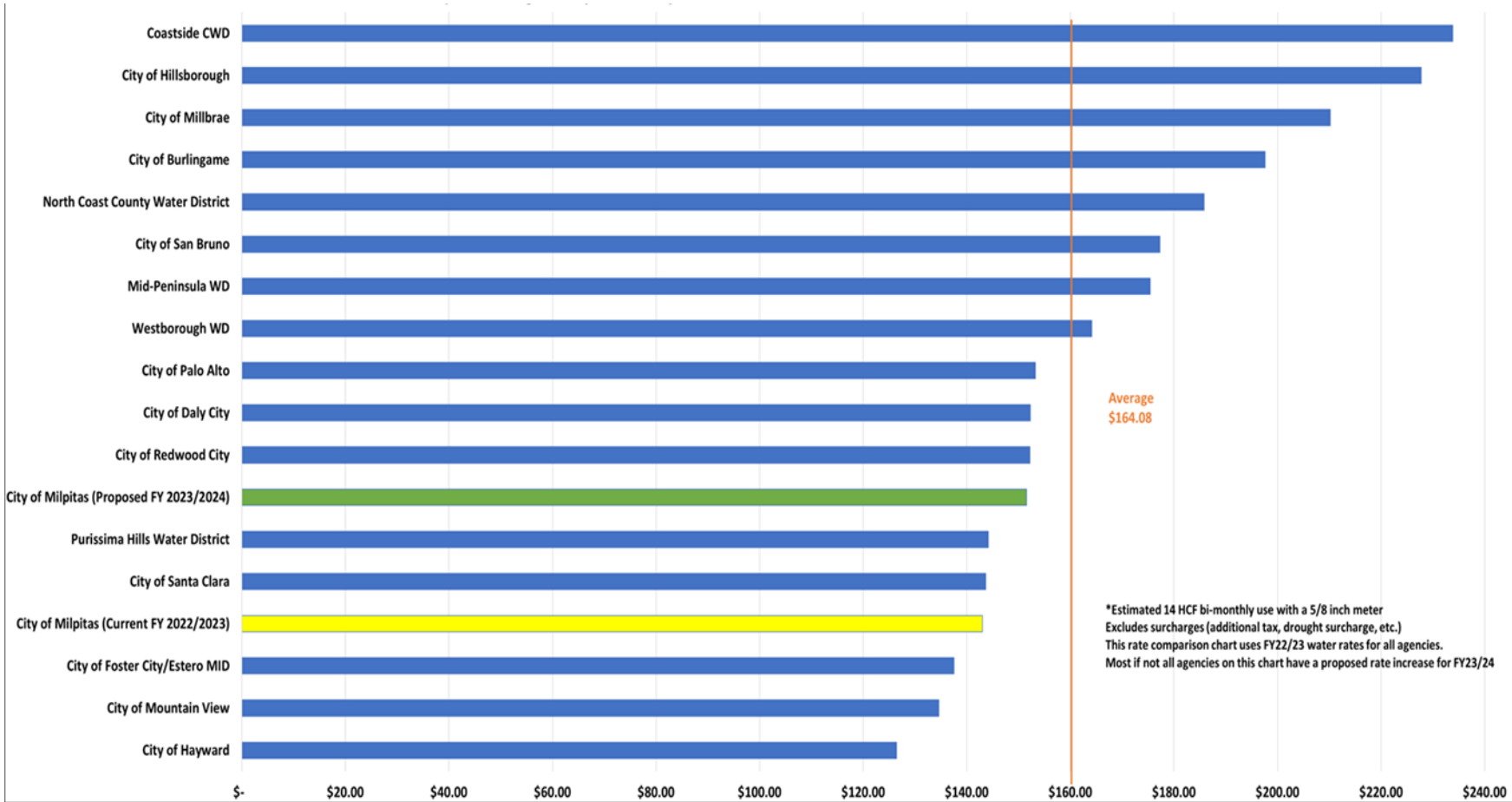
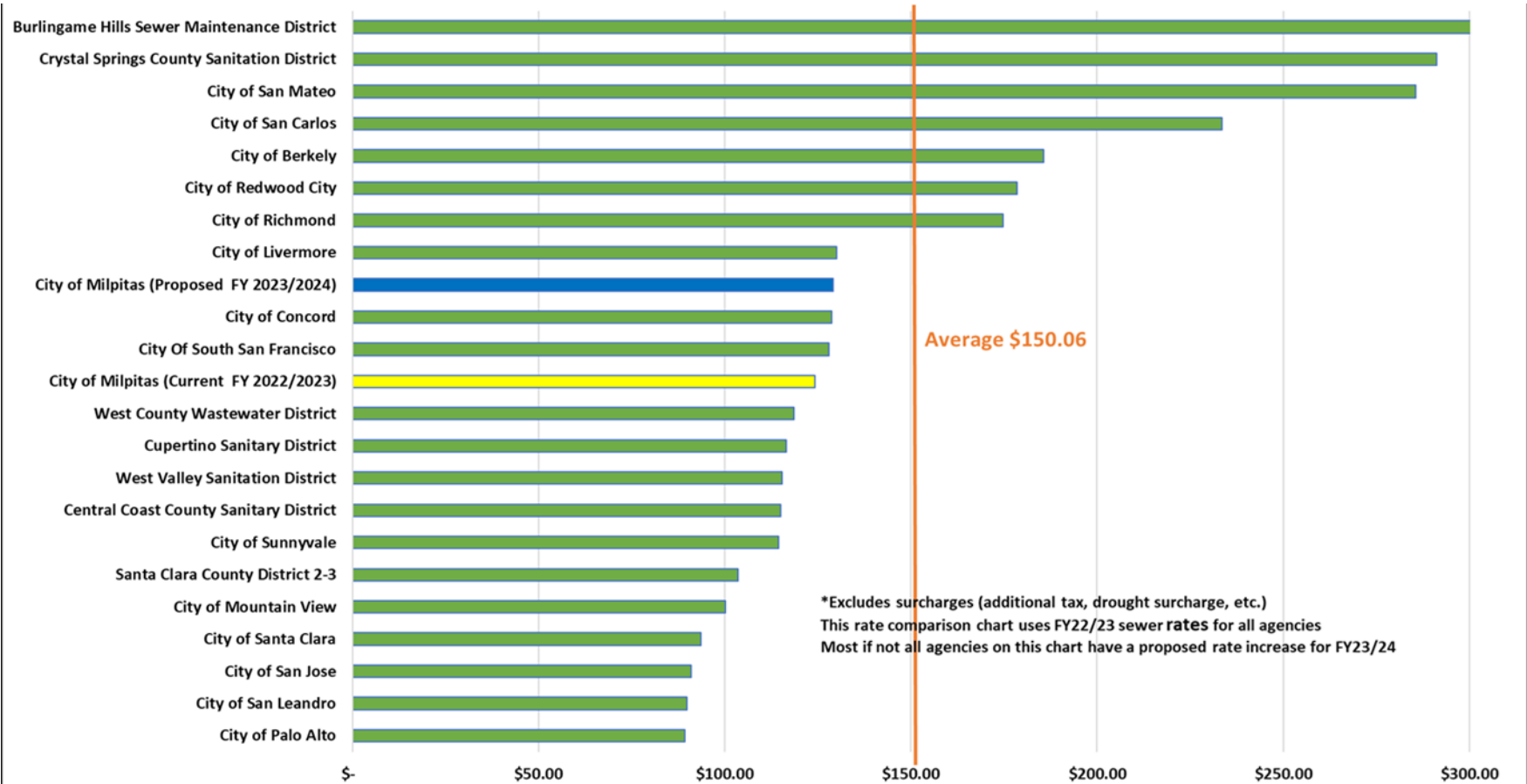
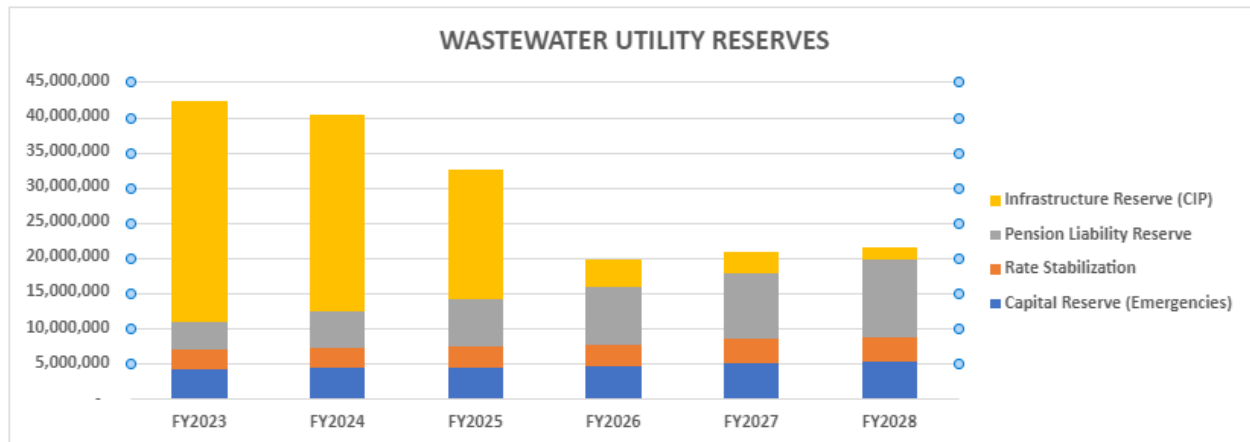


Figure 12-2: Single Family Residential Wastewater Bill Comparison with Neighboring Agencies



Sewer Utility Fund Reserve Analysis



Sewer Proposed Maximum Rate / Charge Fee Schedule

Item # 23.

Line	Fixed Charge Schedule	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
1	Single-Family	124.14	128.44	133.58	138.93	144.49	150.27
	% Increase		3.5%	4.0%	4.0%	4.0%	4.0%
2	Multi-Family	95.34	97.96	101.88	105.96	110.20	114.61
	% Increase		2.7%	4.0%	4.0%	4.0%	4.0%
3	Mobile Home	78.28	84.43	91.06	98.21	105.93	114.22
	% Increase		7.9%	7.9%	7.9%	7.9%	7.8%
4	Schools/Colleges	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
5	Motels and Hotels	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
6	General Office	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
7	City of Milpitas	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
8	Service Stations	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
9	Eat/Drink Establishments	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
10	Convalescent Hosp/Daycare	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
11	Personal Services, Laundrys	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
12	Electrical/Electronics	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
13	Machinery Manufacture	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
14	RockTenn (Jefferson Smurfit)	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
15	T. Marzetti Co.	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
16	Prudential Overall Supply	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
17	Evoqua Water Technologies	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
18	Elmwood Rehabilitation	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
19	Linear Technology	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
20	DS Waters of America	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
21	Magic Tech & Headway Tech	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
22	Lucky Pure Water	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%

Sewer Proposed Maximum Rate / Charge Fee Schedule

Item # 23.

24	Union Pacific Railroad	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%
25	Cisco	27.35	29.25	30.43	31.65	32.92	34.24
	% Increase		7.0%	4.0%	4.0%	4.0%	4.0%

Line	Volume Charge Schedule	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
4	Schools/Colleges	9.99	11.58	12.04	12.53	13.04	13.57
	% Increase		15.9%	4.0%	4.1%	4.1%	4.1%
5	Motels and Hotels	5.75	5.64	5.88	6.12	6.37	6.63
	% Increase		-1.8%	4.2%	4.1%	4.1%	4.1%
6	General Office	6.84	6.92	7.20	7.49	7.79	8.11
	% Increase		1.2%	4.1%	4.0%	4.0%	4.1%
7	City of Milpitas	5.80	5.59	5.82	6.06	6.31	6.57
	% Increase		-3.6%	4.1%	4.1%	4.1%	4.1%
8	Service Stations	5.70	5.61	5.84	6.08	6.33	6.59
	% Increase		-1.6%	4.1%	4.1%	4.1%	4.1%
9	Eat/Drink Establishments	9.06	10.88	11.32	11.78	12.26	12.76
	% Increase		20.1%	4.0%	4.1%	4.1%	4.1%
10	Convalescent Hosp/Daycare	5.60	5.45	5.67	5.90	6.14	6.39
	% Increase		-2.8%	4.1%	4.1%	4.1%	4.1%
11	Personal Services, Laundrys	5.31	4.97	5.17	5.38	5.60	5.83
	% Increase		-6.5%	4.1%	4.1%	4.1%	4.1%
12	Electrical/Electronics	6.72	6.82	7.10	7.39	7.69	8.00
	% Increase		1.6%	4.0%	4.1%	4.1%	4.0%
13	Machinery Manufacture	8.43	9.92	10.32	10.74	11.17	11.62
	% Increase		17.6%	4.1%	4.1%	4.0%	4.0%
14	RockTenn (Jefferson Smurfit)	10.46	10.79	11.23	11.68	12.15	12.64
	% Increase		3.2%	4.1%	4.0%	4.0%	4.0%
15	T. Marzetti Co.	12.09	11.17	11.62	12.09	12.58	13.09
	% Increase		-7.6%	4.0%	4.0%	4.1%	4.1%
16	Prudential Overall Supply	8.42	9.88	10.28	10.70	11.13	11.58
	% Increase		17.3%	4.0%	4.1%	4.0%	4.0%
17	Evoqua Water Technologies	7.06	6.40	6.66	6.93	7.21	7.50
	% Increase		-9.4%	4.1%	4.1%	4.0%	4.0%
18	Elmwood Rehabilitation	6.69	7.78	8.09	8.42	8.76	9.12
	% Increase		16.2%	4.0%	4.1%	4.0%	4.1%
19	Linear Technology	6.88	6.62	6.89	7.17	7.46	7.76
	% Increase		-3.7%	4.0%	4.1%	4.0%	4.0%
20	DS Waters of America	6.04	5.38	5.61	5.84	6.08	6.33
	% Increase		-10.8%	4.2%	4.1%	4.1%	4.1%
21	Magic Tech & Headway Tech	7.32	7.73	8.04	8.37	8.71	9.06
	% Increase		5.5%	4.1%	4.1%	4.1%	4.0%
22	Lucky Pure Water	5.29	4.95	5.15	5.36	5.58	5.81
	% Increase		-6.5%	4.1%	4.1%	4.1%	4.1%
23	Milpitas Materials	5.29	4.95	5.15	5.36	5.58	5.81
	% Increase		-6.5%	4.1%	4.1%	4.1%	4.1%
24	Union Pacific Railroad	7.35	7.85	8.17	8.50	8.84	9.20

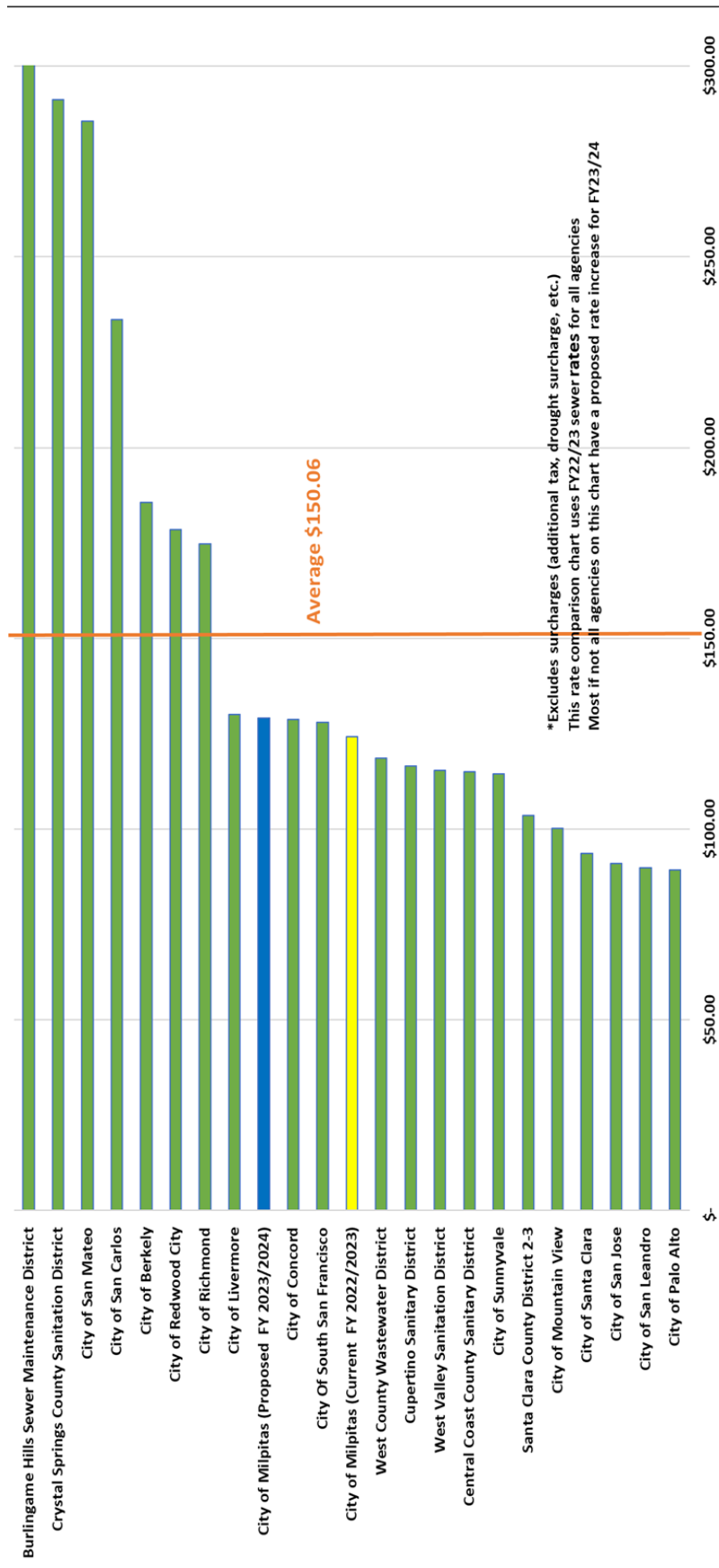
Sewer Proposed Maximum Rate / Charge Fee Schedule

Item # 23.

	% Increase		6.8%	4.1%	4.0%	4.0%	4.1%
25	Cisco	6.72	6.82	7.10	7.39	7.69	8.00
	% Increase		1.6%	4.0%	4.1%	4.1%	4.0%

Sewer Bill Comparison for Single Family

Item # 23.



Because we know every little bit helps!



**YOU OR
SOMEONE YOU KNOW
MAY QUALIFY
FOR DISCOUNTS**



Recreation Programs | Childcare Subsidies | Water and Sewer Utility Bills Permits for Residential Water Heater, Furnace, Air Conditioning or Electrical Panel Replacement



For more information, contact us at
(408) 586-3405 or visit
www.milpitas.gov/MAP

Household Income

# of People in Household	Eligible for MAP Tier 1 Benefits	Eligible for MAP Tier 2 Benefits	Eligible for MAP Tier 4 Benefits
1	\$59,000	\$92,250	\$117,950
2	\$67,400	\$105,400	\$134,800
3	\$75,850	\$118,600	\$151,650
4	\$84,250	\$131,750	\$168,500
5	\$91,000	\$142,300	\$182,000
6	\$97,750	\$152,850	\$195,450
7	\$104,500	\$163,400	\$208,950
8	\$111,250	\$173,950	\$222,400

*These figures are based on 2022 HUD Income Limits for Santa Clara County and are subject to change. HUD Income Limits are revised annually in late Spring.

Customers who participate in qualifying Federal, State or County assistance programs or youth in the Foster Care or Juvenile Dependency system are Tier 1. Those who are at or below HUD Low Income Limits for the Santa Clara County are Tier 2. Those who are at or below HUD Median Income Limits for Santa Clara County are Tier 4. Individuals and families experiencing temporary financial hardship due to job loss, loss of a primary wage earner, serious illness or a government shutdown are Tier 3.

The City of Milpitas offers continuous enrollment.

The City of Milpitas offers continuous enrollment. Customers are eligible for discounts for one year from the date of approval and must reapply annually to verify their income level. MAP discounts will automatically cease if the customer does not reapply.

Information is available online in English, Spanish, Chinese and Vietnamese at www.milpitas.gov/MAP.

For assistance by phone, or to make an appointment to meet in person with City of Milpitas Staff at the Barbara Lee Senior Center at 40 N. Milpitas Blvd., call (408) 586-3405.

The City of Milpitas is a welcoming and inclusive community. With advance notice, we will make reasonable efforts to accommodate special needs and translation requests.

Submit an application and the requested

Submit an application and the requested documentation to the City of Milpitas Social Services Coordinator. If you qualify, you will receive a letter confirming your eligibility. For Recreation and Water/sewer discounts, you will automatically receive your sewer discounts. Discount amount subject to change annually. In July, Water/sewer discounts will begin with the next billing cycle. Discounts cannot be applied retroactively to previously made payments. Tiers 1, 2 and 4 customers are eligible for one year. Tier 3 customers are eligible for 6 months. When your eligibility expires, you must reapply. Tier 3 customers may reapply once per household.

MAP only provides discounts off City of Milpitas fees. MAP does not provide payments to individual customers, nor to any third parties, including landlords, PG&E, contractors, retail businesses or other recreation providers.

For housing assistance resources, contact the Building Safety and Housing Department, (408) 586-3240, or www.milbitas.gov/housingresources.

For energy assistance resources, contact the Low-Income Home Energy Assistance Program <https://www.acf.hhs.gov/ocs/programs/liheap>

For assistance with third-party recreation programs, contact the provider directly.

TIER 1 Customers are eligible for ARPA-funded

TIER 1 Customers are eligible for ARPA-funded childcare subsidies; 75% off on City-run Recreation programs to a maximum of \$1,000 per household; modest discounts on bi-monthly water and sewer utility bills; and 100% waiver of residential permit fees on water heater, furnace, air conditioner replacements or electrical panel change-outs. Tier 1 customers also are permitted to pay for Recreation programs over time on a payment plan.

childcare subsidies; 50% off on City-run Recreation programs to a maximum of \$750 per household; modest discounts on bi-monthly water and sewer utility bills; and 75% off residential permit fees on water heater, furnace, air conditioner replacements or electrical panel change-outs. Tier 2 customers also are permitted to pay for Recreation programs over time on a payment plan.

TIER 3 Customers are eligible for ARPA-funded childcare subsidies; 7.5% off on City-run Recreation programs to a maximum of \$350 per household; and 75% off residential permit fees on water heater, furnace, air conditioner replacements or electrical panel change-outs. Tier 3 customers also are permitted to pay for Recreation programs and water utility service over time on a payment plan. The City of Milpitas waives late fees on water and sewer utility bills incurred during your period of eligibility as a Tier 3 customer.

childcare subsidies. No other MAP benefits are offered at this time.

Note: Childcare subsidies require additional application paperwork.

The City of Milpitas may adjust the discounts annually depending on program demand and funds available.

last updated 7/2022



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Appointing Brian Stelling as Interim Fire Chief (Liz Brown, Interim Human Resources Director, 408-586-3086)
Category:	Leadership and Support Services
Meeting Date:	12/6/2022
	<u>Recommendation:</u> Adopt a resolution appointing Brian Stelling as Interim Fire Chief in accordance with California Government Code Sections 7522.56 and 21221(h) and authorize the City Manager to execute an employment agreement with Brian Stelling.

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.

ANALYSIS:

Brian Stelling will retire from the Deputy Fire Chief position after over 29 years of service with the City effective December 31, 2021. Given his long tenure with the City, Mr. Stelling has significant experience and knowledge related to the management and operation of the Fire Department. Consistent with the requirements of Government Code Section 21221(h), the City will commence recruitment for a regular appointment to the Fire Chief vacancy by December 31, 2022.

Staff is recommending that the City Council adopt a resolution appointing Mr. Stelling to serve as the Fire Chief after his retirement to assist in the transition of leadership in the Fire Department until the position is permanently filled following a competitive internal recruitment process. Included in the Council’s agenda packet is the required resolution to appoint a retiree pursuant to Government Code Sections 7522.56 and 21221(h) and the employment agreement.

POLICY ALTERNATIVE(S):

Alternative 1: Do not adopt the resolution appointing Brian Stelling as Interim Fire Chief and do not approve and authorize the City Manager to execute an employment agreement with Brian Stelling.

Pros: None

Cons: This will create difficulty in the smooth transition of leadership in the Fire Department.

Reason for Not Recommending: The Fire Department has an excellent internal pool of candidates to serve as the next Fire Chief. By adopting a resolution appointing Mr. Stelling as Interim Fire Chief, the City Manager will be able to conduct a comprehensive recruitment process.

FISCAL IMPACT:

The compensation paid to retirees cannot be less than the minimum nor exceed the maximum hourly rate paid to other employees performing comparable duties and is limited to 960 hours per fiscal year. Accordingly, the hourly rate to be paid is \$108.56 or up to \$151.99 per fiscal year. Funding is available from staff vacancies within the FY2022-23 Adopted Budget.

California Environmental Quality Act (CEQA):

Approval of the recommendation is not an activity defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b) (3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

RECOMMENDATION:

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

Attachment(s):

Resolution appointing Brian Stelling as Interim Fire Chief in accordance with California Government Code Section 7522.56 and 21221(h).

RESOLUTION NO. _____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MILPITAS APPOINTING BRIAN STELLING AS
INTERIM FIRE CHIEF AND APPROVING EMPLOYMENT
AGREEMENT**

WHEREAS, Government Code Section 21221(h) permits the City Council to appoint a retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the position of Fire Chief will become vacant at close of business on January 3, 2023; and

WHEREAS, although Government Code Section 7522.56(f) requires that post-retirement employment commence no earlier than 180 days after the retirement date, Government Code Section 7522.56(f)(4) provides for an exception that allows for immediate employment of retirees in public safety positions; and

WHEREAS, Section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the Milpitas City Council, the City of Milpitas, and Brian Stelling certify that Brian Stelling has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the Milpitas City Council desires to appoint Brian Stelling, who will retire from the City of Milpitas in the position of Deputy Fire Chief, effective December 31, 2022, as an interim appointment retired annuitant to the vacant position of Fire Chief for the City of Milpitas under Government Code Section 21221(h), effective January 1, 2023; and

WHEREAS, Brian Stelling has over 31 years of experience in fire protection with an extensive history in fire department management, including his time serving as the acting Fire Chief for the City of Milpitas; and

WHEREAS, an appointment under Government Code Section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

WHEREAS, information regarding the recruitment for a Fire Chief will be posted no later than December 31, 2022 on the City's webpage for job opportunities available at <https://www.ci.milpitas.ca.gov/milpitas/departments/about-human-resources-2/38914-2/>; and

WHEREAS, this Section 21221(h) appointment shall only be made once and therefore will end on the date immediately preceding the date on which the permanent replacement for the vacant position of Fire Chief for the City of Milpitas commences his or her employment or, if earlier, the date that this appointment is terminated by the City or Brian Stelling; and

WHEREAS, the entire employment agreement between Brian Stelling and the City of Milpitas has been reviewed by this body and is attached hereto as **Exhibit A**; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the minimum hourly rate for this position is \$108.56, and the maximum hourly rate for this position is \$151.99; and

WHEREAS, the hourly rate to be paid to Brian Stelling is \$151.99; and

WHEREAS, Brian Stelling has not and will not receive any other benefit, incentive compensation in lieu of benefits or any other form of compensation in addition to this hourly pay rate.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby appoints Brian Stelling as interim Fire Chief effective January 1, 2023, pursuant to the authority provided under Government Code Section 21221(h) and 7522.56, during the recruitment, selection and employment of a permanent Fire Chief, to provide the critically-needed, specialized skills necessary to assist the City Manager with the management of the Fire Department.
3. The employment agreement with Brian Stelling, a copy of which is incorporated herein as Exhibit A, is approved by the City Council, effective January 1, 2023.
4. The City Manager is authorized to execute said agreement on behalf of the City, with such technical amendments as may be deemed appropriate by the City Manager and City Attorney.

PASSED AND ADOPTED this _____, day of _____, 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

Suzanne Guzzetta, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Michael Mutalipassi, City Attorney

EXHIBIT A

EMPLOYMENT AGREEMENT FOR INTERIM FIRE CHIEF SERVICES

This Employment Agreement (“Agreement”) is made by and between the City of Milpitas, a municipal corporation of the State of California (“City”) and Brian Stelling, an individual (“Retiree”) as of January 1, 2023 (“Effective Date”).

RECITALS

- A. Retiree was previously employed by the City for twenty-nine (29) years, serving most recently as Deputy Fire Chief until December 30, 2022; and
- B. Retiree retired from the City effective December 31, 2022 and will begin collecting a retirement pension from the California Public Employees’ Retirement System (CalPERS); and
- C. The City has a vacancy in the position of Fire Chief, a regular position for which the City is conducting a recruitment for a permanent appointment; and
- D. The City has an immediate need for an employee to temporarily perform the duties of Fire Chief, a position involving specialized skills and training, and which is critically necessary to the City’s Fire Department;
- E. Retiree has the necessary qualifications, experience and abilities to fulfill the duties of the Fire Chief position on an interim basis; and
- F. Retired Annuitant’s employment is authorized by Government Code section 21221(h), which permits the City to appoint a CalPERS retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent replacement.
- G. City desires to retain the services of Retiree in accordance with California Government Code Section 21221(h) and Retiree agrees to provide certain services to City under the strict terms and conditions set out in this Agreement.

In consideration of this matter described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the parties of this Agreement agree as follows:

AGREEMENT

Section 1. Term of Services

The term of this Agreement is from January 1, 2023 until such time as a permanent replacement for the position of Fire Chief has been selected and has commenced employment, unless terminated sooner as provided below.

Section 2. Scope of Services

Retiree agrees to perform the duties of the Fire Chief position on an interim basis as set forth in the job description for the position. Retiree will report directly to the City Manager or designee. Retiree shall comply with all City rules, policies, guidelines, regulations, and laws.

Section 3. Compensation; Hours

City agrees to compensate Retiree at \$151.99 per hour for all services provided under this Agreement. Payments from City to Retiree shall be made during the normal payroll cycles of other City employees.

City has reviewed and compared the hourly rate set forth in this Section with other employees performing comparable duties and the hourly rate set forth in this Section does not exceed such other employee's compensation.

Retiree agrees and acknowledges that he shall not perform any services under this Agreement exceeding a total of nine hundred sixty (960) hours during any fiscal year (July 1 to June 30). Retiree shall record his hours on a pre-approved timesheet that shall be submitted to the City every week.

The position is a temporary, hourly assignment which is generally not expected to exceed 40 hours per week. The City, through the City Manager or designee, will assign Retiree hours to work. Due to the nature of the position, it is understood that the work day and work week hours may vary.

There are no other benefits, incentives, compensation in lieu of benefits or other forms of compensation in addition to the hourly pay rate set forth in this Section.

Section 4. Location

The primary location for services will be at the following address:

777 S Main St., Milpitas, California 95035

Section 5. Compliance with Laws

This Agreement will be construed in accordance with and governed by the laws in the State of California. In the event that suit shall be brought by any of the parties, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction

is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California. Retiree shall comply with all applicable laws, rules, policies, and guidelines. Retiree agrees and acknowledges that the State of California and the governing body of the California Public Employees' Retirement System enact strict laws, regulations and guidelines relating to services provided by "retired annuitants" to public agencies contracting with the California Public Employees' Retirement System. Retiree agrees to comply with all applicable laws, regulations and guidelines relating to the services provided under this Agreement.

Section 6. Termination

This Agreement may be terminated by either party for convenience by providing written notice to the other party.

Section 7. Miscellaneous

- a. Retiree has read each and every part of this Agreement and Retiree freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.
- b. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjusted shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- c. This Agreement, including the exhibits, represents the entire and integrated agreement between City and Retiree and supersedes all prior negotiations, representations, or agreements, either written or oral.

In witness where of the parties have duty affixed their signatures on this XX day of December, 2022.

CITY:

RETIREE:

Steve McHarris, City Manager

Brian Stelling