



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122

Para sa Tagalog, tumawag sa 408-586-3051

Para español, llame 408-586-3232

AGENDA

TUESDAY, OCTOBER 2, 2018

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA

5:30 P.M. (CLOSED SESSION)

7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

- I. CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk**
- II. ADJOURN TO CLOSED SESSION (5:30 PM)**
 - (a) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**
Pursuant to California Government Code Section 54957.6
City Negotiator: Liz Brown, Human Resources Director
Employee Groups: International Association of Fire Fighters (IAFF) and Milpitas Police Officers Association (MPOA)
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
 - (b) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9(d)(1)
Tom Williams v. City of Milpitas, et al. - American Arbitration Case No. 01-17-0003-5823
 - (c) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9(d)(1)
First Amendment Coalition v. City of Milpitas, et al. - Santa Clara County Superior Court Case No. 17CV309235
 - (d) PUBLIC EMPLOYEE PERFORMANCE EVALUATION**
Pursuant to Government Code Section 54957
Employee Position: City Manager
- III. CLOSED SESSION ANNOUNCEMENT:** Report on action taken in Closed Session, if required per Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Phan)**

VI. PRESENTATIONS

- Proclaim *Fire Prevention Week* for the week of October 7-13, 2018
- Proclaim October as *National Planning Month*
- Annual Neighborhood Beautification Awards – with reception to follow

VII. PUBLIC FORUM

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

VIII. ANNOUNCEMENTS

IX. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

X. APPROVAL OF [AGENDA](#)

Note: Administration recommends deferral of agenda items No. 6 and No. 7

XI. CONSENT CALENDAR (Items No. 1 through No. 3)

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

1.	Accept Schedule of Meetings/City Council Calendar - October 2018 (Staff Contact: Mary Lavelle, 408-586-3001)
2.	Approve City Council Meeting Minutes of September 18, 2018 (Staff Contact: Mary Lavelle, 408-586-3001)
3.	Receive a Report with Comparative Information on Compensation and Workload Levels for Planning Commissions from Other Santa Clara County Jurisdictions and Provide Direction to Staff on Possible Change to the Compensation for Milpitas Planning Commissioners (Staff Contact: Ned Thomas, 408-586-3273)

XII. PUBLIC HEARING The following items No. 4 – 11 scheduled for discussion

4. **Conduct a Public Hearing and Adopt a Resolution Approving Amendments to the General Plan and Transit Area Specific Plan, Approving Findings to Amend the Zoning Code, and Approving a Site Development Permit, Conditional Use Permit, Density Bonus Permit, and Lot Merger for Future Development of a 7-story Multi-family 220-Unit Residential Project including 10 Affordable Units; and Introduce Ordinance No. 38.831 to Rezone a 2.14 Acre Site at 1380 and 1400 South Main Street with CEQA Finding of Consistency with the Transit Area Specific Plan Final Program Environmental Impact Report, as Amended (Staff Contact: Michael Fossati, 408-586-3274)**

XIII. UNFINISHED BUSINESS

5. **Continued from September 18, 2018 City Council meeting:
Adopt a Resolution Approving the Fiscal Year 2018-19 Central Services Full Cost Allocation Plan Update (Staff Contact: Will Fuentes, 408-586-3111)**

RECOMMEND DEFERRAL PER ADMINISTRATION

6. **Continued from September 18, 2018 City Council meeting:**
Receive Report on the Draft Sewer Rate Study and Provide Direction to Staff As Appropriate on the Sewer Rate Structure for a Five Year Period, FY 2018-19 to FY 2022-23 (Staff Contact: Tony Ndah, 408-586-2602)

RECOMMEND DEFERRAL PER ADMINISTRATION

XIV. REPORT

7. **Present City Council Subcommittee on Cannabis Recommendations to City Council and Seek Direction on an Ordinance to Replace the Existing Moratorium Ordinance Related to Cannabis (Staff Contact: Ashwini Kantak, 408-586-3053)**

XV. NEW BUSINESS

8. **Following Public Comments, Authorize the City Manager to Approve the Site Development Permit Application by Outfront Allvision, LLC to Construct a 70-Foot Electronic Off-Site Advertising Display (Billboard) on State Highway 237 at the Northern Terminus of the Barber Court Cul-de-Sac (Staff Contact: Michael Fossati, 408-586-3274)**
9. **Receive a Status Update on Staff Efforts Related to Odor Issues (Staff Contact: Steve Erickson, 408-586-3301)**
10. **Nominate a City Councilmember to be Considered for Appointment to the Santa Clara Cities Association Selection Committee for the Position of the Bay Area Air Quality Management District Board Member and Direct Staff to Coordinate the Application Process (Staff Contact: Ashwini Kantak, 408-586-3053)**

XVI. AGREEMENT

11. **Authorize the City Manager to Execute an Agreement with Matrix Consulting Group for an Amount Not to Exceed \$266,475 for the City's Community Development Service Area - Service Delivery/Organizational Assessment and Fee Study, and Transfer \$266,475 from the Contingency Reserve to the City Manager's Operating Budget (Staff Contact: Steve McHarris, 408-586-3059)**

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

XVIII. ADJOURNMENT

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, OCTOBER 16, 2018

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

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

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

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

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

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3003 for more information.

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

AGENDA REPORTS

XI. CONSENT CALENDAR

1.	Accept Schedule of Meetings/City Council Calendar – October 2018 (Staff Contact: Mary Lavelle, 408-586-3001) <u>Recommendation:</u> Receive and accept City Council calendar of meetings for October 2018. Note any changes or additions, if needed. <u>Attachment:</u> October 2018 Calendar
2.	Approve City Council Meeting Minutes of September 18, 2018 (Staff Contact: Mary Lavelle, 408-586-3001) <u>Recommendation:</u> Move to approve the September 18, 2018 City Council meeting minutes. <u>Attachment:</u> Draft meeting minutes September 18, 2018
3.	Receive a Report with Comparative Information on Compensation and Workload Levels for Planning Commissions From Other Santa Clara County Jurisdictions and Provide Direction to Staff on Possible Changes to the Compensation Provided to Planning Commissioners (Staff Contact: Ned Thomas, 408-586-3273) <u>Background:</u> On May 17, 2016, the City Council received an initial presentation from staff and discussed increasing the compensation provided to members of the Milpitas Planning Commission from \$25 per meeting to \$100 per meeting. This topic was further discussed at several subsequent meetings, and on May 15, 2018, Council directed staff to prepare an ordinance to increase the Planning Commissioner's compensation. A draft ordinance was written and brought to City Council on June 5, 2018. At the June 5, 2018 meeting, the Council directed staff to gather additional comparative information on compensation and workload levels for Planning Commissions from other Santa Clara jurisdictions. Staff has compiled the requested information for review and discussion by the City Council. <u>Recommendation:</u> Receive a report from staff and provide direction on possible changes in the compensation provided to City of Milpitas Planning Commissioners. <u>Attachments:</u> a) Comparative Information on Compensation and Workload Levels for Planning Commissions in Other Santa Clara County Cities b) Excerpt of City Council meeting minutes June 5, 2018

XII. PUBLIC HEARING The following items No. 4 – 11 are scheduled for discussion

4. **Conduct a Public Hearing and Adopt a Resolution Approving Amendments to the General Plan and Transit Area Specific Plan, Approving Findings to Amend the Zoning Code, and Approving a Site Development Permit, Conditional Use Permit, Density Bonus Permit, and Lot Merger for Future Development of a 7-story multi-family 220-Unit Residential Project including 10 Affordable Units; and Introduce Ordinance No. 38.831 to Rezone a 2.14 Acre Site at 1380 and 1400 South Main Street with CEQA Finding of Consistency with the Transit Area Specific Plan Final**

Program Environmental Impact Report, as Amended (Staff Contact: Michael Fossati, 408-586-3274)

Background: On August 22, 2018, the Milpitas Planning Commission reviewed various entitlements to allow the proposed development of a 220-unit multi-family residential building, approximately 85 feet in height, on a 2.14 gross-acre site located at 1380 and 1400 South Main Street. The Commission voted 4-0-1 to recommend that the City Council take the following actions:

1. Consider the Addendum with the Transit Area Specific Plan (TASP) Final Program Environmental Impact Report in accordance with the California Environmental Quality Act (CEQA).
2. Adopt a resolution approving:
 - a. A General Plan (GP) Amendment to change the General Plan land use designation for the subject site from Multi-Family, Very High Density (VHD) to Urban Residential (URR) on an approximately 2.14-gross acre site located at 1380 and 1400 S. Main Street.
 - b. A Specific Plan (SP) Amendment to remove the property located at 1400 S Main from the Milpitas Midtown Specific Plan area and annex this parcel into the Transit Area Specific Plan (TASP) area and to amend the SP designation from High Density Transit Oriented Development (R4-TOD) into Very High Density Transit Oriented Development (R5-TOD).
 - c. A Site Development Permit to ensure high quality design of the site layout, architecture, massing, and the proposed design for the multi-family apartment building.
 - d. A Conditional Use Permit (CUP) to allow an exception to the City's regulations for tandem parking and invoking a Transit-Oriented designation and density bonus for increased density.
 - e. A Density Bonus, in conjunction with the CUP, to increase the overall density of the project by 20% of the maximum allowed, in exchange for providing ten (or 5% of the total number of units) residential units designated for very low income individuals or households, as determined by the U.S. Department of Housing and Urban Development (HUD) for individuals within Santa Clara County.
 - f. A Lot Merger, merging parcels at 1380 S. Main (APN 086-36-006) and 1400 S. Main (APN 086-36-007) in order to create a new 2.14-acre parcel.
3. Introduce Ordinance No. 38.831 to rezone the subject 2.14-gross acre site from the R4-TOD High Density Transit Oriented Development Zoning District to the R5-TOD Urban Residential Zoning District.

The proposed development, known as "Main Street Milpitas," includes the construction of a 7-story, 350,000-square foot, 85-foot tall, 220-unit apartment complex on a 2.14-gross acre site. The proposed density would be approximately 102.8 dwelling units per acre. The first and second floors would be primarily reserved for parking, with the remaining five floors providing residential units and an amenity area for the residents. The residential unit mix would include studios, one-bedroom, and two-bedroom units ranging in size from 570 to 1,096 square feet, with ten of those units being designated for low income households. Complete details of the project, and associated discussion of the findings are found in the Planning Commission Staff Report, dated August 22, 2018 (copy in agenda packet).

The project was recommended for approval by the Planning Commission with a 4-0-1 vote (three Commissioners had excused absences) with a friendly amendment requiring the applicant to discuss details of the project with the Milpitas Unified School District (MUSD) prior to recommendation of approval to City Council. The applicant heeded the amendment and has come to an accord with the School District regarding potential impacts of the project.

Overview: The applicant proposes to construct a seven-story (two floors of parking and five floors of multi-family dwelling units), 85-foot tall, 220-unit apartment complex with a mixture of studios, one-bedroom, and two bedroom units, a 10,145-square foot front public plaza, a 537-square foot micro-retail commercial space; and a 674-square foot neighborhood community center. Ten of the 220 units would be dedicated to very-low income households, as defined by the State Department of Housing and Community Development.

As noted, the proposed development requires City Council approval of a General Plan Amendment, Specific Plan Amendment, Zoning Amendment, Site Development Permit, Conditional Use Permit, Density Bonus and Lot Combination. An Environmental Assessment to determine consistency with the Transit Area Specific Plan (TASP) Final Program Environmental Impact Report (EIR) for the proposed project is needed. Amendments to the General Plan and Zoning Ordinance require review by the Planning Commission prior to presentation to the City Council.

In the context of other new development projects currently under construction or planned in the area south of the subject site, staff recommends that the proposed driveway adjacent to the southern property line be developed as a public access easement granted to the City. This segment of new easement will eventually connect to the planned extension of Costa Street and provide greater vehicular access and circulation within the neighborhood and along South Main Street. Smaller block perimeters with landscaped sidewalks will create a very pleasant pedestrian environment to promote walking.

California Environmental Quality Act: An environmental assessment (EA17-0005) was conducted in accordance with the California Environmental Quality Act of 1970 (CEQA), as amended, and state and local guidelines implementing CEQA. This Project is included within the area and development parameters evaluated as part of the Transit Area Specific Plan (TASP) Final Program Environmental Impact Report (SCH#2006032091), which was certified by the City Council in June of 2008.

Upon completion of its environmental assessment, an independent environmental consultant (LSA) concluded that none of the circumstances necessitating preparation of a subsequent or supplemental EIR are associated with the project and that the project will result in no new environmental impacts beyond those already identified in the TASP EIR. Staff recommends considering the project in compliance with CEQA Guidelines Section 15164. An Addendum to the previously certified EIR has been prepared and can be found as an Exhibit to the resolution.

As a separate and independent basis, the project is exempt from further CEQA review pursuant to Section 15183 of the California Environmental Quality Act, which applies to projects which are consistent with the development density established by existing zoning, community plan, or General Plan policies for which an EIR was certified, shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. As a separate and independent basis, the project is also exempt from further CEQA review pursuant to CEQA Guidelines Section 15182, because the project is a residential project that is generally consistent with a Specific Plan. Lastly, the project is also exempt from

further environmental review pursuant to CEQA Guidelines Section 15168, as the project is within the scope of the TASP program EIR. Moreover, while the project seeks relief from certain regulatory standards, with application of the density bonus requirements of the Code discussed in this report, the project complies with the City's existing zoning, specific plan, community plan, and General Plan. Therefore, no further environmental review is required.

Fiscal Impact: By approving the multiple entitlements, including annexation of 1400 South Main Street into the TASP area, the projected TASP fee revenue for the project is \$7,211,820. Additional fees collected include a Community Facilities District (CFD) fee of approximately \$143,000 collected annually.

Recommendations:

1. Conduct a public hearing, take public comments, and move to close the public hearing.
2. Consider the Addendum with the Transit Area Specific Plan (TASP) Final Program Environmental Impact Report in accordance with the California Environmental Quality Act (CEQA).
3. Adopt a resolution approving a General Plan Amendment, Specific Plan Amendment, Site Development Permit, Conditional Use Permit, Density Bonus, and Lot Combination, allowing construction of a seven story, 85-foot tall, 220 unit apartment complex with 10 dwelling units designated for very low income individuals or households.
4. Following a reading of the title by the City Attorney, waive the first reading beyond the title and introduce Ordinance No. 38.381 to amend the zoning designation of 1380 and 1400 South Main Street from R4-TOD to R5-TOD.

Attachments:

- a) [Resolution with Exhibit CEQA TASP-FEIR Addendum](#)
- b) [Ordinance No. 38.831 \(draft for introduction\)](#)
- c) [Planning Commission Staff Report dated August 22, 2018](#)
- d) [Planning Commission Meeting Minutes August 22, 2018](#)
- e) [Comment e-mail from resident received 9/21/2018](#)
- f) [Project Plans for Main Street Development](#)

XIII. UNFINISHED BUSINESS

5. **Continued from September 18, 2018 City Council meeting:**
Adopt a Resolution Approving the Fiscal Year 2018-19 Central Services Full Cost Allocation Plan Update (Staff Contact: Will Fuentes, 408-586-3111)

RECOMMEND DEFERRAL PER ADMINISTRATION

Background: On January 21, 2014, the City Council reviewed and approved the City of Milpitas Cost Allocation Plan and methodology via adoption of Resolution No. 8338. The Plan identified the full cost of providing specific City services and included not only the direct costs of servicing a program, but also administrative and overhead costs (also known as indirect costs) which are assigned to each program indirectly using cost allocation formulas. A cost allocation plan is a rational and accepted method to distribute indirect costs which support multiple activities within an agency and is used by most all public agencies. An alternative to using a cost allocation plan to charge indirect costs, such as those in payroll, to direct cost functions, such as a water utility, would be to charge time in 15 minute increments using a timecard recording process. However, this would be neither a reasonable nor a cost effective manner to capture these costs and it not used by public agencies since the costs far outweigh the benefits.

Since 2014, there have been various changes in the City that include reorganizing City departments, taking services in-house which had been previously outsourced, and other organizational changes requiring a review and update of the Plan. In addition, recently, the Water Rates Task Force recommended and City Council directed staff to re-examine the Plan methodology and engage an experienced cost allocation plan consultant to validate the Plan and modify if necessary to meet industry best practices and ensure that the Water and Sewer utility funds are charged a fair, reasonable and justifiable portion of General Fund indirect costs.

Thus, after an informal, but competitive bidding process that saw three qualified vendors submit proposals, City staff selected ClearSource Financial Consulting to validate the Plan and modify if necessary at a not to exceed project cost of \$34,200. The adopted budget for this project is \$50,000. ClearSource, based in Aptos, CA was selected based on cost, proposed schedule, which best met City needs, approach, firm experience, quality of references, and close firm proximity to Milpitas to ensure an efficient, effective process.

An optional second phase of the agreement with ClearSource, which is included in the not to exceed project cost amount shown previously, is a fee study to 1) maintain full cost recovery of identified services such as those provided to developers, 2) simplify fee structures in currently invoiced services to a method more amendable to the needs of internal staff and external users, and 3) ensure fees are set in accordance to the requirements of Propositions 218 and 26. It is anticipated that the second phase of ClearSource's agreement will complement work requested by a recently issued Service Delivery Fee Study Request for Proposal (RFP). In this recently closed RFP, the City sought proposals from qualified vendors to perform and deliver a detailed service delivery/organizational assessment, fee studies, and a work in progress liability analysis. It is anticipated that outcomes from the described assessment and studies will serve as a new work plan identifying key improvements in permitting and inspections performance, customer service, organizational structure, staffing efficiencies, and advanced city-wide planning along with justification for added resources amongst relevant development related departments. Proposals for this RFP are still under review and evaluation and a vendor has not yet been selected.

Attached to resolution in the agenda packet, City Council will find the Fiscal Year 2018-19 Central Services Full Cost Allocation Plan Update ("FY 2018-19 Plan Update") prepared by ClearSource Financial Consulting. Representatives from ClearSource will present an overview of the FY 2018-19 Plan Update, the approach used to develop it, and the reasons for preparing and using a cost allocation during the September 18, 2018 City Council meeting. In summary, while it was determined by ClearSource that the previous Plan was based on sound methodology, it was in need of update for a variety of reasons. As a result, there are several important financial items to note, mainly relating to indirect costs charged to utility funds by the General Fund:

1. **Indirect charge to Water Fund** - The currently budgeted indirect charge from the Water Fund to the General Fund in FY 2018-19 is \$3,162,936. The FY 2018-19 Plan Update sets this at \$2,705,884; a difference and negative revenue impact to the General Fund of \$457,052. For reference, the FY 2017-18 budget set this charge at \$2,593,705.

For any cost allocation plan it is important to choose reasonable drivers of cost that justifiably relate to the time and expense that an indirect cost area spends serving a direct cost area. For the Water Fund, total budgeted expenditures, which included large purchases of water, was used as the basis of allocating indirect costs in the prior Plan. The revised FY 2018-19 Plan Update before Council removes these large purchases and attempts to more reasonably and justifiably assign indirect

costs to the Water Fund so that there is not an imbalance between effort and expense spent by indirect cost areas and the benefits received by the Water Fund.

2. **Indirect Charge to Sewer Fund** - The currently budgeted indirect charge from the Sewer Fund to the General Fund in FY 2018-19 is \$2,006,252. The FY 2018-19 Plan Update sets this at \$1,544,274; a difference and negative revenue impact to the General Fund of **\$461,978**. For reference, the FY 2017-18 budget set this charge at \$1,684,501.

Similar to the Water Fund, for the Sewer Fund, total budgeted expenditures, which included large purchases of capacity rights, was used as the basis of allocating indirect costs in the prior Plan. The revised FY 2018-19 Plan Update before Council removes these large purchases and attempts to more reasonably and justifiably assign indirect costs to the Sewer Fund so that there is not an imbalance between effort and expense spent by indirect cost areas and the benefits received by the Sewer Fund.

3. **Indirect Charge to Solid Waste Fund** - The currently budgeted indirect charge from the Solid Waste Fund to the General Fund in FY 2018-19 is \$286,244. The FY 2018-19 Plan Update sets this at \$99,748; a difference and negative revenue impact to the General Fund of \$186,496. This is due to decreased effort required by the Finance Department to provide solid waste billing services since the City transferred this function to Milpitas Sanitation in December 2017. There were some transition issues that City staff is still working through, but this indirect charge was inadvertently budgeted too high in FY 2018-19 and a downward adjustment is appropriate.

In total, due to the FY 2018-19 Plan Update, there is a **\$1,105,526** negative revenue impact to the General Fund in FY 2018-19. However, staff believes that this can be fully mitigated for the following reasons:

- A. The FY 2018-19 Adopted Budget set aside **\$465,483** in non-departmental General Fund accounts to protect against potential negative impacts as a result of the FY 2018-19 Plan Update; thereby leaving a remainder of \$640,043 to address.
- B. The recent Quill/Wayfair Supreme Court decision, which now requires online retailers to collect and remit sales tax, could mean **\$587,000** to **\$955,000** per year in additional revenues to the City based on initial estimates provided by the City's Sales tax consultants. However, the California Department of Tax and Fee Administration (CDTFA) has yet to develop and implement a manner to capture and remit this additional revenue and staff cautions against programming it until actual revenues are known and realized.
- C. The second phase of the ClearSource agreement will access user fees charged to developers and other parties. This fee study will look to capture the full cost of services and as a result, it is anticipated that development based fees could increase since current fees charged do not always capture indirect overhead charges. This will ensure that developers and other parties pay a fair and reasonable share of City costs in relation to the services provided to them. The projected revenue increase as a result of the fee study is unknown at this time, but an increase in revenue realized could help to fully offset the remaining \$640,043 negative impact to the General Fund caused by the FY 2018-19 Plan Update.

While there is a negative impact to the General Fund, staff is confident that it can be fully mitigated and will return to Council at mid-year with any necessary budget adjustments for

FY 2018-19. In addition, slightly lower indirect charges will also be a benefit to utility rate payers and could impact the Water and Sewer rate studies currently underway. However, staff must caution that there are a number of factors that go into a rate setting model and a cost allocation plan is only one of many. Thus, any new Water and Sewer rates proposed in the future could be higher or lower than current rates and the FY 2018-19 Plan Update will not be the only determining factor in those rates.

Next Steps

The following list next steps in implement the FY 2018-19 Plan Update and mitigate any negative financial impacts:

1. If necessary, staff will return to City Council early-February 2019 with any adjustments to FY 2018-19 General Fund estimated revenues and adopted expenditures. A budget adjustment is not recommended at the current time since there are unknown variables, but by mid-year, staff will have additional information relating to the Quill/Wayfair Supreme Court decision and whether increased Sales Tax revenue resulting from that decision can be used to mitigate negative financial impacts arising from the FY 2018-19 Plan Update.
2. Staff will continue working with ClearSource Financial Consulting on the second phase of its agreement to ensure that fees charged to developers and other parties fully capture City costs; both direct costs of service and indirect overhead costs. This will be done in close coordination with the City's yet to be selected vendor for a Service Delivery Fee Study and Development Departments Organizational Assessment so as to make sure that each project compliments each other and is not a duplication of effort. If these projects result in revised recommended fees, they will be brought before Council for review and consideration in April/May 2019 and be included in revenue estimates for the FY 2019-20 Budget.

Fiscal Impact: As a result of the FY 2018-19 Plan Update, the General Fund will receive \$1,105,526 less indirect overhead cost revenue charged to the Water Utility, Sewer Utility, and Solid Waste Utility Funds in total. Staff has several solutions to address this shortfall and will formally present them to Council during mid-year budget adjustments and after as appropriate. However, at this time, no budget adjustment is proposed so staff may fully access all the options available to the City and get a clearer sense of any additional sales tax revenue received as a result of the recent Quill/Wayfair Supreme Court decision.

Recommendation: To defer the following recommendation to a future meeting: Adopt a resolution approving the Fiscal Year 2018-19 Central Services Full Cost Allocation Plan Update.

Attachment: [Resolution with Exhibit– Full Cost Allocation Plan FY 2018-2019](#)

6. **Continued from September 18, 2018 City Council meeting:**
Receive Report on the Draft Sewer Rate Study and Provide Direction to Staff As Appropriate on the Sewer Rate Structure for a Five Year Period, FY 2018-19 to FY 2022-23 (Staff Contact: Tony Ndah, 408-586-2602)

RECOMMEND DEFERRAL PER ADMINISTRATION

Background: The City of Milpitas owns and operates its municipal sewer collection system consisting of 179 miles of gravity pipe and 5 miles of force main. The system also includes two pump stations, which lifts sewer out of a low-lying neighborhoods and pumps all City sewage through dual 2.5 mile force mains to the San Jose/Santa Clara Water Pollution Control Plant (WPCP).

The City of San Jose operates the WPCP and by a “Master Agreement,” accepts sewage flow from the City for treatment. By the terms of the agreement, the City pays a proportionate share of the Plant’s operations, maintenance, and capital improvement cost each year. The infrastructure at the WPCP is at or near the end of its useful life, and is overdue for renewal and modernization.

In August 2015, the City Council conducted a public hearing and adopted a new sewer rate structure for the City. The rates became effective on August 4, 2015. It has been more than three years since a formal cost of service/rate study has been performed for the City’s sewer system, and major capital improvements have been made and will continue to be made.

In January 2018, the City contracted with Municipal and Financial Services Group (MFSG) to conduct a cost of service analysis for the sewer system. The purpose of the analysis was to evaluate the City’s sewer system revenue requirements and prepare a comprehensive sewer rate and cost of service study, to include an update of the City’s existing rate structure, and financial obligations, and to develop a rate structure that identifies and projects all revenue requirements and rate adjustments needed over the five year period between FY 2018-19 to FY 2022-23, to meet all wastewater related costs, operation and maintenance costs, capital improvement projects, capita and financial obligations, and reserve requirements for the sewer utility enterprise during this period.

These findings were developed during the sewer rate study:

- The current rate structure does not generate sufficient revenue to fully fund the operating, capital, and cash reserve needs of the City’s sewer system.
- The current rate structure collects 64% of the personnel services costs in the bi-monthly flat fee charged to users, and should be restructured to collect 100% of the personnel services costs.
- The current rate structure charges the mobile home park customer class based on a flow assumption that is less than the one used by the City of San José to allocate operating costs to the City.
- The Sewer Fund contains appropriate reserves given the operational and capital expenses of the City’s system.
- The City’s current planned reinvestment in its buried sewer assets is insufficient to fully fund the cost of rehabilitation and replacement needs of its buried assets.

The report recommends that the City update its rate structure as follows:

- Sewer rate structure should charge the mobile home park customer class based on the flow assumptions used by the City of San José to allocate operating costs to the City.
- Sewer rate structure should recover 100% of personnel services costs through the bi-monthly flat fee.
- City should adopt the proposed rates in the study for the next five fiscal years and implement rate increases through a multi-year financial plan that utilizes both increased rate revenues and the use of a portion of cash.

Analysis: The City’s sewer system is operated as a self-supporting enterprise and the City must charge customers for these commodities at a rate that covers the City’s costs. The revenue requirements for the sewer enterprise includes expenses for the City’s operation and maintenance, capital improvements, existing debt service, and the City’s share of the WPCP operations and capital expenses.

Operating Expenses

The projected operating cost for FY 2018-19 for the sewer enterprise is approximately \$12.7 million. This includes \$6,021,401 for the City's share of the operating cost for WPCP, which is about 5.7 % of the WPCP total operating expenses. WPCP treatment operating costs is about 65 % of the City's total wastewater service operating expenses. The remaining 35 % of the City's wastewater operating service cost is for operation and maintenance costs related to the City's wastewater collection and pumping. On average, sewer operating expenses are assumed to increase by 3.0% each year.

Existing Debt Service

In December 2006, the Milpitas Public Financing Authority issued Certificates of Participation, 2006 Series A (Sewer COPs), in the original principal amount of \$9,535,000 to finance certain sewer facilities within the City. The Sewer COPs are collateralized by net revenues from the City's Sewer System Installment Sale Agreement. In FY 2018, the City refinanced the 2006 COPs with new Wastewater Bonds with a principal balance of \$4,725,000. Annual principal and interest payments will continue through FY 2027.

Capital Expenses

The sewer rate study includes an analysis of the capital expenses needed to fund the City's capital improvement projects listed in the FY 2018–23 CIP. The City's planned capital expenses for the sewer system is about \$10 million over the next five years, which includes planned investments to update the City's Sewer Master Plan, modernize and rehabilitate sewer pumps, and improve the operation of equipment in the sewer system.

The sewer rate study also analyses the capital expenses for the City's share of capital expenses for the WPCP. Each year, the City of San Jose provides estimates of the City's share of operations cost for WPCP, and prepares a preliminary 10-year estimate of considerable capital costs necessary for the regional wastewater treatment facility.

The preliminary 10-year estimate for the City's share of capital expenses at the WPCP is as follows:

FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	FY 24/25	FY 25/26	FY 26/27	FY 27/28
\$6.5 M	\$24.3 M	\$19.9M	\$5.9 M	\$8.8 M	\$4.5 M	\$10 M	\$3.6 M	\$3 M	\$1.4M

It is necessary to finance costs of this magnitude and due to the variable nature of the City's share of capital cost for the WPCP, the sewer rates study recommends the issuance of debt in years when the payments are disproportionately large (FY 2020 and FY 2021) to smooth out the cash flow impact on the City's rate payers. Financing cost of this magnitude also maintains intergenerational equity, which ensures that each generation maintains the quality of the City's assets so that on balance it is passed on in no worse condition than when received and gives each generation a right to the City's assets in a quality comparable to that enjoyed by previous generations.

Cost of Service Allocation

The sewer rate study includes a description of the methodology used to allocate the revenue required for the sewer system amongst ratepayers. Each ratepayer falls into a customer class, which is based on the different levels of the flow and composition of the sewage discharged into the system.

Residential customers are billed bi-monthly on an equivalent dwelling unit (EDU) basis. Non-residential customers are billed monthly based on metered water consumption, with the unit of measurement being one hundred cubic feet (HCF), an amount equal to 748

gallons. Non-residential sewage rates vary based on the use of the property, with rates adjusted to reflect sewage strength (units of pollutants per quantity of sewage).

Because it is not possible to monitor the sewage flow from each residence, there are several generally accepted methods to estimate sewer flow. The partner agencies of WPCP estimate flow based upon an assumed average population per household and assumed flow per person. The difference between single family and multi-family rates is the number of people per household. In 2015, the City of San Jose completed a Residential Flow Study to update population per dwelling unit and per capita discharge for single family, multi-family and mobile homes.

Flow study recommendation for the City are shown below:

	No. of persons	Flow per person gallons per day (gpd)	People x flow per person = gpd per household
Single family	3.54	51	181
Multi-family	2.73	51	139
Mobile homes	2.24	63	141

The data above is used to determine the City's share of operating expenses for the WPCP.

Capital costs, and operations and maintenance costs for the City are calculated based on four treatment parameters consisting of flow, biochemical oxygen demand (BOD), suspended solids (SS), and ammonia (NH₃). Capital and operating costs are applied to each of the parameters. The total cost is divided by the four parameter units to get the unit rate. The unit rate is applied to each customer class to calculate their rate. Depending on customer class, values for BOD, SS, and NH₃ are assigned by the City of San Jose based upon industry standards and State-accepted values. For example, sewage waste from residential customers contains more suspended solids than sewage waste from office buildings. Unique customers, such as semiconductor manufacturers, are sampled by the City of San Jose to verify their parameters.

Water billing records for the non-residential customers are used to determine sewer flow. For most non-residential customers, the sewer discharge is equivalent to the water demand. This assumption is not true for customers who use water in their products, such as concrete manufacturing and food processing. These customers are eligible for the City's Sewer Flow Adjustment Program and a reduction factor is applied to their flow.

In addition, the study recommends allocating the City's full personnel service costs to a "Flat Fee," based on the number of dwelling units in each customer class. Residential customers account for 23,015 dwelling units, while non-residential customers account for 973 dwellings in the sewer system. The "Flat Fee" would be included in the bi-monthly fee charged to residential customers, while the "Flat Fee" would be collected as a separate charge, per bi-monthly bill, for each non-residential customer account.

Proposed Sewer Rates (FY 2018-19 to FY 2022-23)

The Sewer Rate Study proposes an update to the current rate structure to meet the revenue requirements of the sewer fund. Rates are allocated proportionally based on recognized cost of service principles as required under Proposition 218.

The proposed rates include a "Flat Fee" to recover the City's personnel services cost, and the fee is allocated between Residential and Non-Residential customers, based on dwelling units. The "Flat Fee" for residential customers would be added to the bi-monthly fee charged. The "Flat Fee" for Non-Residential customers in FY 2019 would be \$24.30, and the fee would increase by 3% in each fiscal year thereafter.

The proposed sewer rates realign the City's rate calculation for mobile home parks with the allocation recommended in the City of San Jose's Residential Flow Study (2015). This results in a rate based on 141 gallons per day per unit, as opposed to the 114 gallons per day per unit used in the City's 2015 sewer rate study.

The proposed sewer rates include several increases over time, instead of a one-time more significant rate increase. The standard residential (single and multi-family) bi-monthly service rate would increase by 7% in FY 2019. The City's proposed rate for FY 2019 is \$96.73 for single family residential, \$74.29 for multi-family residential, and \$75.36 for mobile home parks. A survey of wastewater agencies within 30 miles of the City found that the median single family sewer rate is \$104.81, which puts the City's proposed sewer rate below the median for the area. Residential customer sewer rates would increase by 5% in FY 2020, 8% in FY 2021, 6% in FY 2022, and 4% in FY 2023. Rate increases for the Non-Residential customer class will vary from year to year due to varying levels of the operating and capital cost requirement for the sewer system.

The proposed rates include the assumption that the City will utilize bond proceeds to pay for the City's contribution for the WPCP, which would help mitigate the rate impact on customers and allow for long-term planning of rate increases. The projected total debt service obligation for the City would result in two debt issues: a debt issuance in FY 2020 for \$20 million and a debt issuance in FY 2021 for \$15 million.

Policy Alternative

Mobile Home Park Subsidy: San Jose's 2015 Residential Flow Study notes that data provided by the City to determine sewer flows for mobile home park customers was disregarded due to inconsistencies in the data set. As a result, a weighted average of the San Jose and West Valley Sanitation District data was used to set the City's share for mobile home park contributions for the WPCP. The City's 2015 sewer rate study set rates for mobile home parks to be equivalent to the flow of the City's single and multi-family values, due to the inconsistencies noted in San Jose's Residential Flow Study.

The proposed rate structure would realign the flow for the mobile home parks with the values recommended in San Jose's 2015 Residential Flow Study (i.e. 141 gallons per day per unit, as opposed to the 114 gallons per day per unit). This would increase the mobile home park bi-monthly service charge by 32% in FY 2019. This policy alternative would phase in the impact of this realignment over a 5-year period by subsidizing the mobile home park rate. The subsidy would cost \$45,000 in FY 2019, and would be reduced in each fiscal year, until it is eliminated in FY 2023. Funds for the subsidy would be introduced from outside the sewer fund, typically from the General Fund.

Evaluation and Follow-up

The sewer rate study includes an analysis of the replacement cost for the City's buried sewer infrastructure. The analysis is based on the year of installation and the assumed useful life of the sewer lines. The study notes that about 3.7% of the City's sewer lines have reached the end of their useful life, with an estimated replacement cost of about \$25 million. The study recommends the City invest an additional \$3.38 million each fiscal year to properly reinvest in the City's Sewer System.

Staff will prepare a Sewer Master Plan, which will provide a more detailed condition assessment of the buried sewer infrastructure, and will result in a prioritized and more accurate sewer line replacement plan for the City. The Sewer Master Plan is expected to be completed in FY 2020. Staff will return to Council with the recommendations from the Sewer Master Plan, and discuss any additional capital expenses needed for infrastructure replacement and the impact these expenses would have on sewer rates.

More accurate data will be collected from water meters and conduct sewer flow monitoring in order to update future rate analysis calculations for mobile home park customers.

Public Outreach: In addition to the required Proposition 218 process, an outreach plan was developed to inform residents and gather feedback on the proposed sewer rates. The outreach plan includes developing and distributing informational flyers to educate residents about the City's sewer system, developing website content for the proposed rates, and conducting community meetings. Feedback from these meetings will be incorporated into recommendations brought forward to Council as part of the sewer rate setting process.

California Environmental Quality Act: This action is exempt from CEQA as there will be no physical change to the environment.

Fiscal Impact: None. The sewer rate adjustments would pay for the costs of wastewater collection and the City's share of the San Jose/Santa Clara Water Pollution Control Plant collection system operation and capital costs. Funding options include pay-as-you-go and bonds to provide for the City's share of costs at the WPCP.

Recommendation: To continue the following recommendations to a future meeting:

1. Receive report on the Sewer Rate Study Draft Report.
2. Provide direction to staff as appropriate on the sewer rate structure for a five year period, FY 2019 – FY 2023.

Attachment: [Sewer Rate Study Draft Report September 2018](#)

XIV. REPORT

7. Present City Council Subcommittee on Cannabis Recommendations to City Council and Seek Direction on an Ordinance to Replace the Existing Moratorium Ordinance Related to Cannabis (Staff Contact: Ashwini Kantak, 408-586-3053)

Background: On November 9, 2016, State Proposition 64 to legalize adult use of cannabis or marijuana was approved by California voters. On January 17, 2017, Urgency Ordinance No. 291 to place a moratorium on certain cannabis-related activities was adopted by the Milpitas City Council so as to allow time for the City Council and the community to decide on if, when, and how to allow cannabis activities in Milpitas.

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

The Urgency Ordinance placing a moratorium on cannabis in the City has been extended twice and will expire on January 17, 2019. No additional extensions may be granted, so an ordinance to replace the moratorium, either allowing or banning cannabis businesses, will need to be adopted prior to the expiration of the moratorium.

At the August 7, 2018 City Council meeting, staff brought forward a potential cannabis tax measure as well as a draft ordinance to permanently ban cannabis businesses for Council consideration. Council did not approve moving forward with the cannabis tax measure but instead asked staff to work with the Subcommittee on recommendations related to cannabis establishments and community benefit agreements. Staff was directed

to bring back Subcommittee recommendations as well as a draft ordinance banning cannabis for Council consideration.

Staff has been working with the consultant firm Hinderliter, de Llamas and Associates (HdL Companies) on drafting cannabis regulatory and zoning ordinances, cannabis use tax revenue estimates, and cannabis use tax ballot language as well as providing several cannabis tax fee alternatives since June 20, 2018. HdL Companies has worked with over 125 local jurisdictions to develop regulatory ordinances, cannabis tax measures, fiscal analysis, application development, and community benefit agreements. While its work for the City related to a cannabis use tax is no longer relevant at this time, HdL Companies will continue to work with the City regarding a cannabis regulatory ordinance and may provide ongoing fiscal analysis, application process support, training, and other related work should the City Council decide to allow cannabis establishments.

Analysis: On September 10, 2018, staff presented information in four key areas to the Subcommittee. The detailed staff report and meeting minutes are included in the agenda packet (Attachment a); the maps, showing various buffer options, and presented at the Subcommittee meeting (Attachment b). In summary, staff presented information and solicited feedback from the Subcommittee on buffer zones, types and number of cannabis establishments, cost recovery fees methodology and application process, and community benefit agreements.

Subcommittee Recommendations:

Buffer Zones:

Apply buffer zones to state mandated sensitive uses; evaluate a buffer zone of 600 feet for all schools and a 200 feet buffer zone for commercial licensed day cares and youth centers. The Subcommittee recommended not to further explore buffers for residential uses and home based daycare facilities since no cannabis businesses will be allowed within residential areas regardless of buffer zones.

Potential Types and Number of Cannabis Establishments:

Allow four storefront and six non-storefront retail establishments in the initial phase, no other uses to be included in the initial phase.

Cost Recovery Fees Methodology and Application Process:

Establish fees to recover all upfront and ongoing costs; use a merit based application process to select the retail vendors or other commercial cannabis businesses.

Community Benefit Agreements with Operators:

Continue to explore community benefit agreements, including legal considerations, and opportunities to incorporate into selection process.

Approval Process:

If Council directs staff to move forward on an ordinance allowing cannabis establishments, the Subcommittee recommended staff bring forward only a zoning ordinance for Planning Commission consideration, and both the regulatory and zoning ordinances for City Council consideration.

Based on Subcommittee recommendations staff has evaluated different buffer zones and developed a draft regulatory ordinance to allow cannabis businesses in Milpitas (Attachment e). If directed to move forward, the types and numbers of cannabis establishments will be outlined in a separate resolution. A draft zoning ordinance to regulate cannabis cultivation for personal use and to prohibit all commercial cannabis uses is also included in the agenda packet (Attachment c).

Next Steps

Based on Council direction, staff will bring forward a replacement ordinance for Council consideration; either to allow and regulate cannabis establishments and use in the City of Milpitas or to permanently ban cannabis businesses in the City of Milpitas. The table below shows the timeline in order for a replacement ordinance to be adopted prior to the expiration of the cannabis moratorium ordinance.

DAY OF WEEK	DATE	ACTION
Tuesday	October 2, 2018	Council discussion and direction on path forward
Friday	October 12, 2018	Last day to timely publish Notice of Public Hearing regarding zoning ordinance for Planning Commission consideration, assuming consideration at 10/24/18 meeting [10 day notice pursuant to Gov. Code 65090, 65091]
Wednesday	October 24, 2018	Last day for Planning Commission to consider zoning ordinance to replace moratorium
Friday	November 9, 2018	Last day to publish Notice of Public Hearing for zoning and regulatory ordinances at the 11/20/2018 Council meeting
Tuesday	November 20, 2018	Last regular City Council meeting to introduce ordinance(s) to replace moratorium
Tuesday	December 4, 2018	Last regular City Council meeting for permanent ordinance to be adopted and take effect prior to expiration of cannabis moratorium ordinance (effective date January 4, 2019)
Thursday	January 17, 2019	Cannabis moratorium ordinance expires

Fiscal Impact: It is important to recover all costs so as not to create a financial burden on the City's General Fund and inadvertently subsidize the cannabis industry. If directed to move forward with cannabis establishments, staff will work with the consultant to develop a cost recovery fee to cover the costs of the application process, business permit, and the annual ongoing costs. Additionally, the use of any benefit agreement or a future tax can also be explored.

Recommendations:

1. Accept report on City Council Subcommittee on Cannabis recommendations.
2. Direct staff to move forward on one of the following three options:
 - a. Option A: advance a zoning ordinance and regulatory ordinance based on Subcommittee recommendations or;
 - b. Option B: advance a zoning ordinance to regulate cannabis cultivation for personal use and to prohibit all commercial cannabis uses in the City of Milpitas or;
 - c. Option C: advance a zoning ordinance to regulate cannabis cultivation for personal use and to prohibit all commercial cannabis uses in the City of Milpitas, and continue to further explore options to allow cannabis-related activities in the future.

Attachments:

- a. [City Council Subcommittee on Cannabis meeting materials 09/10/2018 \(A\)](#)
- b. [Buffer Zone Maps distributed 09/10/2018 \(A-1\)](#)
- c. [Draft City Council Ordinance Regulating Cannabis – personal use \(B\)](#)
- d. [Buffer Zone Maps, per Council Subcommittee direction \(B-1, B-2\)](#)
- e. [Draft City Council Ordinance Regulating Cannabis – commercial use \(C\)](#)

XV. NEW BUSINESS

8. **Following Public Comments, Authorize the City Manager to Approve the Site Development Permit Application by Outfront Allvision, LLC to Construct a 70-Foot Electronic Off-Site Advertising Display (Billboard) on State Highway 237 at the Northern Terminus of the Barber Court Cul-de-Sac (Staff Contact: Michael Fossati, 408-586-3274)**

Background: Outfront Allvision LLC, a joint venture between Allvision and Outfront Media, proposes to construct an electronic off-site advertising display (billboard), approximately 70 feet in height, within City-owned right-of-way, approximately 1,100 square feet in area, at a site south of State Route 237 at the northern terminus of the Barber Court cul-de-sac, all within the City of Milpitas. A map identifying the proposed location is included in the agenda packet. Pursuant to Milpitas Municipal Code (MMC) Section XI-10-24.02, development of the proposed electronic off-site advertising display (billboard) will require approval of a Site Development Permit by the City.

The applicant must demonstrate authorization from the property owner prior to submitting the application. In this case, the proposed location is owned by the City of Milpitas, and the City Manager, under direction by the City Council, may act on behalf of the City to provide such authorization. The following request is for City Council to receive background information and public comment on the proposed electronic off-site advertising display prior to authorizing an application.

Overview: MMC Section XI-10-24.02 establishes a formal procedure for the review and approval of a permit application for off-site advertising displays adjacent to interstate highways and state routes, and provides specific development standards that an application must follow. In addition to site plans and other documentation, submittal of the permit application for this type of development also requires authorization from the property owner.

At present, the applicant “Outfront Allvision” has only applied for a preliminary plan review, which allows internal departments, such as Planning, Building, Fire and Land Development, to comment on technical features associated with the project. This type of application is not for a permit and does not require property owner authorization. For informational purposes only, Attachment A in the agenda packet is a summary table of the proposed project’s development standards in comparison with the required standards of the City Code, and Attachment B highlights how the proposed project would be in substantial conformance with the City of Milpitas development standards required for off-site advertising displays. Attachment C in the packet provides photo-simulations of the proposed project to help the public and the City Council visualize how the proposed off-site electronic advertising display would look in the proposed location on city-owned right-of-way.

California Environmental Quality Act: This permit is not a project. Receiving background information and public comment and directing the City Manager to provide a signature on behalf of the City are administrative activities of government and will not result in direct or indirect physical changes to the environment. A formal Site Development Permit for the proposed project, once submitted, will require environmental review under the California Environmental Quality Act.

Fiscal Impact: Receiving public comment and directing the City Manager to provide a signature on a Site Development Permit application on behalf of the City, as the property owner, will result in no fiscal impacts to the City. A lease agreement between the City of Milpitas and Outfront Allvision LLC may be presented before the City Council for

consideration at a future date, and staff will provide an assessment of the fiscal impacts of that action at that time.

Recommendations:

1. Receive public comments on the proposed electronic billboard.
2. Authorize the City Manager to approve a Site Development Permit for electronic off-site advertising display (billboard) approximately 70 feet in height, within City right-of-way located on the south side of State Route 237 at the northern terminus of the Barber Court cul-de-sac and approximately 430 feet northeast of Crowne Plaza hotel.

Attachments:

- a. [Map of Proposed Location for Billboard](#)
- b. [Off-site Advertising Display Development Standards \(table\)](#)
- c. [Photo Simulations](#)

9. Receive a Status Update on Staff Efforts Related to Odor Issues (Staff Contact: Steve Erickson, 408-586-3301)

Background: At the August 7, 2018 City Council meeting, staff was directed to bring forward a report on odor issues to the City Council. Subsequent to that meeting, staff has provided interim updates through memorandums dated August 14 and August 30, 2018 (included in the agenda packet). This report provides an update on progress since August 30, 2018.

In addition to any odor complaints submitted through the MyMilpitas app and through direct phone calls and emails, monthly odor complaint reports are received from the Bay Area Air Quality Management District (BAAQMD). A total of 1,051 complaints have been logged to date this year compared to 1,629 same time last year. As noted in the August 14, 2018 memo, although the overall trend in odor complaints received has been downward over the last three years, there was an increase in complaints for the months of July and August 2018 (Summary of odor complaints in agenda packet). Thus, odor issues continue to be a high priority for the community.

In order to address this, staff has been working on many fronts including speaking with the enforcement agencies to ensure compliance at odor generating facilities, exploring air monitoring stations, working with the South Bay Odor Group, and pursuing representation on the BAAQMD board.

Enforcement

City staff spoke with staff from Bay Area Air Quality Management District (BAAQMD) staff on September 7, 2018, and met with the supervisor of the San Jose Local Enforcement Agency (LEA) on September 25 to discuss the surge in odor complaints and to determine the reasons for the increase as well as enforcement actions being taken. Both agencies shared that they have been working more closely together to enhance agency cooperation to investigate and identify odor complaints. BAAQMD staff mentioned several complaints investigated were tracked back to the Republic Services Newby Island Materials Recycling Facility (MRF) and the Green Waste Composting Facility. BAAQMD has odor jurisdiction and enforcement authority at the MRF. BAAQMD staff stated that recent odors traced to this facility in July have been resolved through the LEA and BAAQMD working together. In July, BAAQMD had identified odors from trailers onsite containing waste that was scheduled to be hauled from the MRF to Zero Waste Energy Development Company (ZWED) for processing and disposal. Since then, Republic Services has worked with the LEA to move waste containers from the MRF to ZWED sooner.

The San Jose LEA has odor jurisdiction and enforcement authority at the Republic Services Green Waste Composting Facility. BAAQMD referred its recent odor inspection data to the LEA for follow-up and enforcement. The LEA is still investigating recent odor complaints, however it states that a number of violation notices have been recently issued to Republic Services.

Both agencies state there is an enforcement process in place for the investigation and resolution of odor problems. The process is progressive in that after a specified number of notices of violation are issued for a problem, the matter escalates to penalties such as listing on the state's webpage as a repeat violator and the implementation of fines. The LEA mentioned that notices of violation are taken seriously by companies because they do affect a company's credit rating and stock price.

At the end of July, BAAQMD had requested clarification from CalRecycle, the state agency which oversees the LEA, on the possibility of LEA using data from BAAQMD investigations to pursue enforcement on compost related odor complaints. CalRecycle has confirmed this is acceptable and the LEA and BAAQMD are now working together to enhance the enforcement referral process so that the LEA may utilize investigative data and referrals from BAAQMD for enforcement actions.

BAAQMD staff and Evan Boyd of Republic Services have confirmed that Republic Services has completed a number of structural improvements to the facility as a means of reducing odors during operation including installation of additional gas extraction wells and a flaring facility at a cost of over \$6 million, and installation of two and a half miles of odor neutralizing equipment. Last March, the installation of a \$3 million improvement to the composting facility was completed. This improvement converted the windrow composting operation to a Covered, Aerated Static Pile (CASP) system to minimize odors. BAAQMD staff states that Republic has agreed to enclose and abate the MRF facility to reduce odor emissions. The design for the MRF enclosure is underway, and BAAQMD anticipates being able to review the design by the end of this year.

In addition to a long list of structural improvements, Republic has conveyed they have implemented changes to their materials processing procedures and facility operations with the intent of reducing odors as much as possible. Several of these changes include on-site processing time limitations for inbound organic materials; closing sections of the landfill nearest receptors; modified hours of operation to shut down greenwaste grinding during times of unfavorable wind conditions; and initiating composting limits to ensure operations on the landfill surface are furthest away from odor receptors.

South Bay Odor Stakeholders Group (SBOSG) Quarterly Meetings

The next meeting of the SBOSG is scheduled for October 19. An outstanding issue to be discussed is the resolution of agency management of a contract for a Regional Odor Study that is to be funded by Republic Services. The study is a requirement of the City of San Jose Planned Development Permit (PD14-014) issued for the vertical expansion of the landfill.

A draft scope of work for the study was completed by staff from the Cities of Milpitas and Fremont. Unfortunately, the SBOSG is not a public entity and does not have the ability to enter into contracts, and the management of the odor contract would fall on a public agency, such as a city. The San Jose Planning Department was requested to manage the odor study contract, however, San Jose has expressed reluctance in accepting this responsibility due to staff shortages and a heavy workload. The City of Fremont does not wish to manage the odor study contract due to the limited number of odor complaints received in Fremont and because they are in a different County. City staff reached out to BAAQMD to gauge their interest and ability to manage the odor contract, however BAAQMD does not wish to take this on because they view it as a conflict of interest with their authority and required enforcement role.

Staff contacted the Santa Clara County Department of Environmental Health to request its assistance in leading the regional odor study. The County expressed that it also would not be interested in managing the study because of its role in the County as a Local Enforcement Agency (LEA). City of Milpitas staff will continue to discuss this issue with the City of San Jose Planning Department and will keep Council informed on progress.

Community Air Monitoring Program

Public Works staff is evaluating the development of an air monitoring network including the purchase and effectiveness of equipment. Staff continues to evaluate and research the effectiveness of air monitoring equipment. It is anticipated that hydrogen sulfide analyzers and nasal ranger field olfactometer equipment will likely be effective for deployment in areas around the City. BAAQMD has expressed interest in the City's air monitoring network plans and suggested the City contact the District's technical division for questions related to air monitoring equipment. However, BAAQMD suggested staff proceed with caution, given the many considerations and limitations of community air monitoring, especially to determine odor sources. In the coming months, staff will work with a consultant to explore and develop a viable monitoring program for the City, including the purchase and/or rent of equipment needed for the program.

BAAQMD Board Representation

Several options to advocate for representation on the BAAQMD Board are being pursued, to fill one of two seats that have terms ending at the end of 2018.

Next Steps

Staff will continue to work with both BAAQMD and the LEA to ensure they diligently investigate odor complaints and take enforcement actions for confirmed complaints. Staff will keep the City Council advised of the negotiations with agencies with respect to management of the regional odor study contract.

Fiscal Impact: Any costs associated with a potential community air monitoring program will be brought forward as a separate action item to Council in the future.

Recommendation: Receive a status update on staff efforts related to odor issues.

Attachments:

- a) [Memo to City Council dated August 14, 2018](#)
- b) [Memo to City Council dated August 30, 2018](#)
- c) [Odor Complaint Summary – January 2015 to August 2018](#)

10. **Nominate a City Councilmember to be Considered for Appointment to the Santa Clara Cities Association Selection Committee for the Position of the Bay Area Air Quality Management District Board Member and Direct Staff to Coordinate the Application Process (Staff Contact: Ashwini Kantak, 408-586-3053)**

Background: Odor issues have been a long standing priority for the Milpitas community. As outlined in the staff report on the October 2, 2018 Council agenda and the two informational memos in August 2018, staff is working on many fronts to address these issues. One of the actions proposed by staff is to seek representation on the Bay Area Air Quality Management District (BAAQMD) Board, since BAAQMD is the agency with jurisdiction over air quality and most odor issues.

The BAAQMD Board of Directors is the governing body of BAAQMD and exercises all district powers, as prescribed in State Law. The Board is comprised of 24 Directors across the nine Bay Area counties. In accordance with the requirements outlined in Article 3, Section 40221.5 of the Health and Safety Code, two representatives are nominated by the

Santa Clara Cities Association (SCCA) and two representatives are nominated by the Santa Clara County Board of Supervisors. Representatives must be either the Mayor or Councilmembers of cities within Santa Clara County. One of the two SCCA representatives on the BAAQMD Board has his term ending in November 2018.

The application process for the SCCA representative will be opened in October with the selection made at the November meeting of the Selection Committee. Staff is recommending that the Council nominate a member of the Milpitas City Council for consideration by the Selection Committee for the Board position. Pursuant to Council direction, staff can coordinate the application process.

Meetings of the BAAQMD Board are held on the first and third Wednesdays of each month from 9:45 a.m. to 12 noon in the BAAQMD offices at 375 Beale Street, San Francisco. Service on the BAAQMD Board includes a stipend of \$100/day plus mileage for Board and Committee meetings, with a maximum of \$6,000 per year. The Selection Committee appointee will also be requested to report to the Board of Directors of the Santa Clara Cities Association regarding relevant BAAQMD activities.

Fiscal Impact: None

Recommendation: Nominate a member of the Milpitas City Council to be considered for appointment to the Santa Clara County City Selection Committee for the position of the Bay Area Air Quality Management District Board Member and direct staff to coordinate the application process.

Attachment: None

XVI. AGREEMENT

- 11. Authorize the City Manager to Execute an Agreement with Matrix Consulting Group for an Amount Not to Exceed \$266,475 for the City's Community Development Service Area - Service Delivery/Organizational Assessment and Fee Study, and Transfer \$266,475 from the Contingency Reserve to the City Manager's Operating Budget (Staff Contact: Steve McHarris, 408-586-3059)**

Background: The City of Milpitas provides essential city planning, building, and permitting services to both residents, businesses, and the development community. These services are performed by the following departments: Planning; Building and Housing; Engineering – Land Development; Public Works - Utilities Engineering; and Fire Prevention. In addition, Economic Development engages in business development and/or recruitment and permit expediting associated with such development activities. These departments and department divisions serve under the general direction of the City Manager's office and are identified as the City's "Community Development Service Area."

Collectively, the Community Development Service Area departments and divisions are one of the City's busiest and most visible service providers, are responsible for processing land entitlement and building permit applications, issuing permits and scheduling inspections for development projects throughout the City. Planning prepares all land entitlement and building permit applications, issuing permits and scheduling inspections for development projects. Each year, Planning services approximately 4,500 customer contacts and is in the midst of managing updates to the City's General Plan, the City's Midtown Specific Plan, and processing entitlement and environmental CEQA documents for development projects. Building and Housing issues approximately 4,300 permits, 1,600 plan checks, serves 5,500 permit counter customers, and conducts up to ten inspections per Inspector, and is implementing a newly adopted Affordable Housing Policy/Program. Engineering issues 225 encroachment permits and plan reviews within the public right-of-way and stormwater

requirements and flood zone, completes up to ten development-specific traffic studies. Utilities Engineering transitioned from Engineering to Public Works in FY 2017-18 with similar development review activity as Engineering. Fire Department's permit review/inspection activities are considered the same as Building. Economic Development is engaged in facilitating development permits, recruitment activities associated with job growth and revenue generation, marketing and business outreach communications.

In addition to high business volume, the Community Development Service Area has experienced significant staff turnover in executive management and staffing over the past four years with significant hiring and retention challenges. This has led to a commensurate reduction of institutional knowledge and continuity in processing, lack of proper staffing levels, limited cross-departmental strategic planning, dated basic fee schedules, lack of recent comprehensive development services fee schedule update, questionably dated permitting technology and/or lack of permit module training, extended permitting and inspection responsiveness, limited succession planning, and delayed advanced planning activities.

Analysis: Recent changes in City management and structure have provided a foundation for positive organizational change in addressing the above-stated challenges. City management has identified a need for addressing various organization and operational issues. In addition, fee schedules for services provided by Planning, Building, Engineering, Public Works and Fire Prevention have not received a comprehensive update in more than 14 years, since 1994. It is anticipated that completion of the proposed service delivery fee study will result in streamlining of permit processing along with opportunities for significant increase in cost recovery of development-related permitting services, along with the ability to add resources to these departments; subject to Council review and approval.

On July 27, 2018, the City issued a Request for Proposal to Perform a Service Delivery Fee Study. Four firms qualified for further consideration and two were selected for an in-person interview by senior staff. Matrix Consulting Group was selected as the most highly qualified firm to complete the proposed work scope and is being recommended to the City Council for contract approval. If approved, staff will complete the contract and final the work scope. The process is anticipated to commence in November 2018 and require approximately seven months to complete. The consultant will work closely with staff in evaluating the current organization and develop a new development service delivery, organizational and operational structure for each of the department services, and a fee structure model for Planning, Building and Housing, Engineering, Public Works and Fire Prevention. The consultant will also work with the Finance Department in developing a works in progress liability model and a permit refund process to assure conformity with accounting and finance best practices. Stakeholder outreach with the development community is an important component of the study and the City Council will be updated later in the work schedule, prior to finalizing the report. In addition, any recommendations in changes to the City's fee schedules will be presented during the Fiscal Year 18-19 budget study sessions and public hearings.

It is anticipated that outcomes from the proposed Service Delivery/Organizational Assessment and Fee Study will result in identifying key improvements in permitting and inspections performance, customer service, organizational structure, staffing efficiencies, cost recovery, and advanced city-wide planning along with potential opportunities for added resources amongst the departments; subject to Council review and approval.

Alternative: Although it is possible to complete the above-described work independently within each city department, the timeline would be extended and the overall cost likely increased with higher probability of overlapping work efforts and resulting inefficiency. Maintaining fee schedules as is without a comprehensive review or delaying a review

could also mean lost revenue to the City. This alternative is not considered a best practice or recommended by staff.

California Environmental Quality Act: This Project is exempt under Section 15306: Information Collection of the California Environmental Quality Act.

Fiscal Impact: The cost of the study will not exceed \$266,475 and can be funding by the City Manager's contingency reserve identified in the City's Fiscal Year 18/19 budget.

Recommendation: Authorize the City Manager to execute the Professional Services Agreement with Matrix Consulting Group for the amount not to exceed \$266,475 for the City's Community Development Service Area – Service Delivery/Organizational Assessment and Fee Study, and transfer \$266,475 from the contingency reserve to the City Manager's operating budget.

Attachments:

- a) [Professional Services Agreement](#)
- b) [Budget Change Form](#)

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

XVIII. ADJOURNMENT

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, OCTOBER 16, 2018