



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

MINUTES

TUESDAY, JANUARY 17, 2023

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

The City Council of the City of Milpitas convened in a Regular Meeting of the Milpitas City Council on January 17, 2023, in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas, and via teleconference/ Zoom webinar.

MEETING TO ORDER by Mayor and ROLL CALL by City Clerk

Mayor Montano called the Regular City Council meeting to order at 6:00 PM. Roll Call was taken by City Clerk Guzzetta.

PRESENT: Mayor Montano, Vice Mayor Chua, Councilmembers Barbadillo, and Lien, and Phan (6:02 PM).
ABSENT: None.

City Attorney Mutalipassi announced the closed session items.

The City Council adjourned to Closed Session at 6:03 PM.

ADJOURN TO CLOSED SESSION

(a) **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(d)(1)

City as Defendant

Anil Kumar Bhatnagar v. City of Milpitas, et al. Santa Clara Superior Court case no. 20CV369408

(b) **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(d)(1)

City as Plaintiff

County Sanitation District 2-3, et al. v. The City of San Jose, et al. Santa Clara Superior Court case no. 18CV325480

(c) **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(d)(1)

City as Defendant

Gene Smith v. City of Milpitas, WCAB nos. ADJ9910212, ADJ10230698, ADJ10230699, and ADJ12410959

The City Council reconvened in regular session at 7:15 PM

CLOSED SESSION ANNOUNCEMENT:

City Attorney Mutalipassi reported out the following actions regarding Item (c) on the Closed Session:

- *Gene Smith v. City of Milpitas*, WCAB case number ADJ9910212, unanimous approval of settlement in the amount of \$40,000.00.
- *Gene Smith v. City of Milpitas*, WCAB case number ADJ10230698, unanimous approval of settlement in the amount of \$50,000.00 plus \$19,720.00 in attorney fees.

- *Gene Smith v. City of Milpitas*, WCAB case number ADJ10230699, unanimous approval of settlement in the amount of \$10,847.75 plus \$6,561.25 in attorney fees.
- *Gene Smith v. City of Milpitas*, WCAB case number ADJ12410959, unanimous approval of settlement in the amount of \$50,000.00 plus \$2,218.75 in attorney fees.

PLEDGE OF ALLEGIANCE

Councilmember Lien led the Pledge of Allegiance.

INVOCATION

Vice Mayor Chua presented the invocation.

PRESENTATIONS

Mayor Montano, joined by the City Council, presented a proclamation in recognition of Martin Luther King, Jr. Day. The proclamation was accepted by Tom Patterson, Vice President of the Social Equity Initiative.

PUBLIC FORUM

There were the following public speakers:

1. Rob Means
2. Inderjit Mundra
3. Voltaire Montemayor

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Motalipassi 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 Motalipassi asked the Mayor and City Councilmembers if they had any reportable campaign contributions. Mayor Montano reported out that she received a campaign donation of \$250.00 from SCCAOR. There were no other reportable campaign contributions.

READING OF THE CITY COUNCIL CODE OF CONDUCT

Councilmember Lien read the Code of Conduct.

APPROVAL OF AGENDA

Motion: to approve the January 17, 2023 Regular Meeting Agenda.

Motion/Second: Vice Mayor Chua / Councilmember Barbadillo

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano

NOES: None

CONSENT CALENDAR

Motion: to approve the consent calendar, pulling Item C9.

Motion/Second: Vice Mayor Chua / Councilmember Barbadillo

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano

NOES: None

C1. Receive City Council Calendar of Meetings for January and February 2023

Received City Council Calendar of Meetings for January and February 2023.

C2. Approve City Council City Council Special Meeting Minutes of January 10, 2022

Approved City Council Special Meeting minutes of January 10, 2022.

C3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting

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

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

C5. 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

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

C6. Adopt a Resolution Granting Acceptance of Public Improvements and Approve a Reduction of the Faithful Performance Bond for Parkside – Tarob Court Project, Phase 1 Residential Project and Grant Authorization to the City Engineer to Release the Performance Bond after the One-Year Warranty Period

Adopted **Resolution No. 9211** granting acceptance of the completed public improvements for the Parkside – Tarob Court Project, Phase 1 Residential Project as shown on Public Improvement Plans No. 2-1234; and approve a reduction in the faithful performance bond to \$35,900.00, which is 10% of the security's original value which shall be in effect for the duration of the warranty period; and grant authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided all required warranty work is completed to the satisfaction of the Engineering Director/City Engineer and find a CEQA exemption.

C7. Adopt a Resolution Granting Acceptance of Public Improvements and Approve a Reduction of the Faithful Performance Bond for the Finch Hollow Residential Project and Grant Authorization to the City Engineer to Release the Performance Bond after the One-year Warranty Period

Adopted **Resolution No. 9212** granting acceptance of the completed public improvements for the Finch Hollow Residential Project as shown on Public Improvement Plans No. 2-1336; and approve a reduction in the faithful performance bond to \$122,000.00, which is 10% of the security's original value which shall be in effect for the duration of the warranty period; grant authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided that all required warranty work is completed to the satisfaction of the Engineering Director/City Engineer; and find a CEQA exemption.

C8. Waive the Second Reading and Adopt Ordinance No. 38.852 Amending Section 13 of Chapter 10, Title XI of the Milpitas Municipal Code Relating to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) for consistency with recent changes to state ADU law (Assembly Bill 2221 and Senate Bill 897)

Waived the second reading and adopted **Ordinance No. 38.852** amending Section 13 of Chapter 10, Title XI of the Milpitas Municipal Code Relating to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) for consistency with recent changes to state ADU law (Assembly Bill 2221 and Senate Bill 897), and found a CEQA exemption.

- C9. Approve and Authorize the City Manager to Execute a Professional Services Agreement with Lisa Wise Consulting, Inc. for Comprehensive Zoning Ordinance Update Services for the Not-to-Exceed Amount of \$879,515.00**

Pulled from Consent Calendar.

- C10. Consider Kiwanis Club of Milpitas Fee Waiver Request**

Approved a Fee Waiver of \$900.00 for the Kiwanis Club of Milpitas Foundation's 19th Annual MUSD Crab Feed and Auction Event scheduled for February 3, 2023.

- C11. Authorize and Approve Travel to Carlsbad, CA for City Manager Steve McHarris to Attend the Annual League of California Cities *City Managers Conference* to be held on February 8 – 10, 2023**

Authorized and approved travel to Carlsbad, CA for City Manager Steve McHarris to attend the Annual League of California Cities City Managers Conference scheduled on February 8 – 10, 2023 for an estimated not-to-exceed amount of \$1,700.00 budgeted under Conferences/Trainings allocation for the City Manager's Office.

PUBLIC HEARINGS

- 12. 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**

Building Official Tott presented the report.

Mayor Montano opened the public hearing.

There were the following public speakers:

1. Linda Hutchins-Knowles
2. Patti Sexton
3. Voltaire Montemayor
4. Esther Duong read into the record by Linda Hutchins-Knowles
5. Jared Johnson
6. Jenny Green
7. Robert Whitehair
8. Satvika Ayer
9. Sean Armstrong
10. Julia Zeitlin
11. Allysson McDonald
12. Moria Merriweather
13. Hoai-An Truong
14. Birgitte Rasine
15. Enrique Navarro
16. Felix Mbuga
17. Lilian Koenig
18. Dashiell Leeds

19. Rob Means

20. Mel Vieira

Mayor Montano closed the public hearing.

Building Official Tott, Deputy Director of Public Works Marshall, Farhad Farahmand from TRC Companies, PG&E Local Government Affairs Representative Christina Ramos, PG&E Codes & Standards Program Manager Kelly Cunningham, and Silicon Valley Clean Energy Deputy Director of Decarbonization Programs and Policy Zoe Elizabeth responded to questions from the City Council.

Vice Mayor Chua made a motion: to waive the second reading, find a CEQA exemption, 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.

City Attorney Mutalipassi read the title of the ordinance.

Motion/Second: Vice Mayor Chua / Councilmember Lien

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano

NOES: none.

Vice Mayor Chua made a motion: to waive the second reading, find a CEQA exemption, 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 recommended by staff.

Motion/Second: Vice Mayor Chua / Councilmember Barbadillo

City Attorney Mutalipassi read the title of the ordinance.

Councilmember Phan asked to make a friendly amendment to strike out Section 4.106.5.1 specifically pertaining to residential alteration projects. Vice Mayor Chua did not accept the amendment.

Councilmember Phan followed up by making a substitute motion: to waive the second reading, find a CEQA exemption, 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 recommended by staff and to strike out parts of Section 4.106.5.1 reading:

- "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."

AND

- Exception No 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."

Councilmember Barbadillo seconded the motion.

Substitute Motion/Second: Councilmember Phan / Councilmember Barbadillo

Upon a call for the question, the substitute motion carried by the following vote:

AYES: Councilmembers Barbadillo, Lien, Phan

NOES: Chua, Montano

LEADERSHIP AND SUPPORT SERVICES

13. Receive Report on 2023 Citywide Community Engagement Survey

Public Information Officer Angelo introduced the item and FM3 Representative Curt Below presented the report.

There were the following public speakers:

1. Voltaire Montemayor

Councilmember Lien suggested staff and the City Manager look into assisting new businesses with license and permits.

The City Council received the report on results of the 2023 Citywide Community Engagement Survey.

14. Adopt a Resolution Appointing Glen Campi as Extra Help Public Works Manager

Interim Human Resources Director Brown presented the report.

There were the following public speakers:

1. Voltaire Montemayor

Public Works Director Di Renzo and Deputy Public Works Director Marshall responded to questions from the City Council.

After discussion, motion: to adopt **Resolution No. 9213** appointing Glen Campi as Extra Help Public Works Manager in accordance with California Government Code Sections 7522.56 and 21224 and approve and authorize the City Manager to execute an employment agreement with Glen Campi.

Motion/Second: Mayor Montano / Vice Mayor Chua

Motion carried by the following:

AYES: Councilmembers, Lien, Phan, Vice Mayor Chua, Mayor Montano

NOES: Barbadillo

ITEMS PULLED FROM CONSENT CALENDAR

C9. Approve and Authorize the City Manager to Execute a Professional Services Agreement with Lisa Wise Consulting, Inc. for Comprehensive Zoning Ordinance Update Services for the Not-to-Exceed Amount of \$879,515.00

Planning Director Thomas responded to questions from the City Council.

The City Council recessed at 10:51 pm. The City Council reconvened at 11:16 pm

There were the following public speakers:

1. Voltaire Montemayor

After discussion, motion: to approve and authorize the City Manager to execute a Professional Services Agreement with Lisa Wise Consulting, Inc., for Comprehensive Zoning Update Services for the not-to-exceed amount of \$879,515.00 and find a CEQA exemption.

Motion/Second: Vice Mayor Chua / Councilmember Barbadillo

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, Montano

NOES: None.

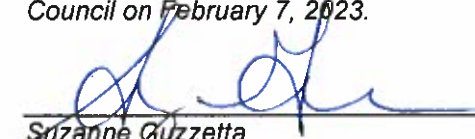
ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

Councilmember Lien announced that Lunar New Year occurs on Sunday and offered New Year's wishes.

ADJOURNMENT

Mayor Montano adjourned the meeting at 11:19 PM.

The foregoing minutes were approved by the Milpitas City Council on February 7, 2023.



Suzanne Guzzetta
Milpitas City Clerk