

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, December 4, 2018
Time: 5:30 PM Closed Session
7:00 PM Open Session
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER Mayor Tran called the meeting to order at 5:30 PM. City Clerk Mary Lavelle called the roll.

PRESENT: Mayor Tran, Vice Mayor Grilli, Councilmembers Nuñez and Phan

ABSENT: Councilmember Barbadillo was absent at 5:30 PM and arrived in Closed Session.

CLOSED SESSION City Council convened in Closed Session to discuss one employee/labor matter on the agenda.

ANNOUNCEMENT City Attorney Chris Diaz said there was no reportable action out of Closed Session.

City Council then convened at the dais for the Open Session regular agenda at 7:09 PM.

PLEDGE Police Officer Joshua Wells led the pledge of allegiance.

INVOCATION Vice Mayor Grilli read a quote, and introduced her brother, and sister-in-law Lisa Sinzer to the podium. Ms. Sinzer read a piece regarding the story of Hannukah and lit a menorah candle, for the third night of the Jewish holiday.

PRESENTATION Mayor Tran presented certificates to Milpitas students who were winners in the 5th Santa Clara Valley Science and Technology Fair's Synopsis Competition.

Mayor Tran noted the special evening and the excitement upon welcoming the City's brand new Fire Chief. City Manager Julie Edmonds-Mares provided the oath of office to the new Chief Brian Sherrard, in front of his family and Department members, and welcomed him to the Milpitas community.

PUBLIC FORUM Michael Cain, resident of Milpitas, spoke against a ban on marijuana or cannabis. People going to San Jose to buy it were allowing Milpitas to lose out on funding for City resources.

A woman spoke totally opposed to marijuana in Milpitas.

Wayne Carroll, lived in Milpitas for 49 years, and raised his kids here. He was proud at what he heard happened at the last City Council meeting, about marijuana.

Chris Moylan, of Congressman Ro Khanna's office, noted an upcoming town hall meeting. Also, he'd met with Alameda County Supervisor Scott Haggerty, who wrote a letter to BAAQMD asking that agency to pay for the study as promised and to pay for sensors in the city.

A woman resident and registered nurse worked for the County hospital, and came to this meeting as a Mom. She was not in favor of marijuana businesses in Milpitas, it was not good for children.

Rob Means, 1421 Yellowstone resident, talked about global warming denial.

Brian Homeburg, retiree and Navy veteran, former County Veterans Commissioner, personally was not necessarily in favor of marijuana stores in Milpitas. He spoke of the need of some veterans who do need to use medicinal marijuana to treat PTSD.

Robert Marini, resident, addressed the water fund and rates charged for recycled water and loss of water in the utility. He quoted figures for costs and amount of water loss, and the General Fund.

Tom Valore, 28 year resident of Milpitas, wanted the Council to exhibit courage, and to make decisions that were unpopular at times. Two weeks ago, he felt courage was in short supply.

Ted Grish, 42 year resident of Milpitas, felt this City did not need marijuana dispensaries. He urged “just say no” to those stores in the city.

Martha Lamdin, long time resident and certified drug and alcohol counselor, did not like seeing children used as props at the last Council meeting. She felt dispensaries would be a good source of revenue and favored the businesses for those age 21 or older. It was a helpful product for many medical conditions and was legal.

Oscar Leon, long time resident, thanked the City Council for listening to residents at the last meeting. He was glad for the decision to ban marijuana dispensaries and appreciated that the Council listened to the voice of Milpitas residents.

A woman resident of 18 years, loved the City, despite complaints she’d heard about odor. She apologized for the crowd last time, if it was viewed as a “mob” though she spoke from her heart.

A man did not like that one Councilmember called the crowd at last meeting a “mob” as that was what was happening in France. Speakers at the last meeting were voicing their opinions, as allowed at meetings. He thanked the Council for their vote last time on the marijuana ban.

Hong Phan, resident of San Jose with many congregants who live in Milpitas, formed a Neighborhood Watch in his neighborhood. A police officer spoke of the incidence of crime in San Jose, some of it caused by people coming to the City to buy marijuana.

Andre, a resident of Milpitas and a physicist, said only one city in the area allowed cannabis sales. He strongly opposed having such stores in his neighborhood and cared about his three year old daughter growing up in the City. Marijuana was a drug and was addictive.

Jennifer Strohfus, resident, thanked the City Council for the vote to ban marijuana business in Milpitas at the last meeting.

A woman resident thanked the City Council for its vote two weeks ago. She opposed any marijuana businesses coming to this city.

A man, a 12 year resident, called it a “smart decision” two weeks ago to oppose marijuana.

A man spoke in Chinese language, a 10 years resident, noted a previous speaker about cigarette smell and he did not like the smell of marijuana smoking.

A man, resident of more than 30 years, was not in favor of bringing marijuana businesses to the City, due to potential for crime, illegal drugs coming in to the City, to make the city go downhill.

A woman, with two young children, wanted the government to ban pot shops in Milpitas.

A woman, who lived in Milpitas since 2001, spoke of how beautiful and peaceful the city was for her family. She thanked Council for its vote on November 20 to ban marijuana shops.

Voltaire Montemayor, resident, said Milpitas was shining with more improvements coming.

ANNOUNCEMENTS

City Manager Julie Edmonds-Mares thanked Recreation staff and volunteers who worked, and those who attended, the successful and fun Annual Holiday Tree Lighting celebration held on Saturday, December 1, with more than 750 in attendance.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as submitted

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Mayor Tran requested to remove items numbered 5, 11, 12 and 13 from consent.

Councilmember Nuñez asked to remove items no. 4 and no. 7 from consent.

Motion: to approve the Consent Calendar including agenda items numbered 1, 2, 3, 6, 8, 9, 10, 14 and 15

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

* 1. Council Calendars

Accepted City Council calendars for December 2018.

* 2. Meeting Minutes

Approved City Council meeting minutes of November 20, 2018.

* 3. Adopt Ordinance No.218.4

Waived the second reading and adopted Uncodified Ordinance No. 218.4 to set the Transient Occupancy Tax Rate within the City of Milpitas at 14%.

4. Adopt Resolution

Councilmember Nuñez asked questions about a chart that displayed Transit Area Specific Plan fees and transportation impact fee. Finance Director Will Fuentes responded, regarding the traffic impact fee and Assistant Finance Director Jane Corpus, responded regarding Calaveras Blvd. widening. She described what the TASP impact fee was intended for.

Mr. Nuñez wondered if there were any fees that would help with parking in the TASP area.

Motion: to adopt Resolution No. 8828 reviewing and accepting the Annual Developer Fee Disclosure Information for the Traffic Impact Fee, the Transit Area Specific Plan (TASP) Impact Fee, and the Storm Drain Fee for the Fiscal Year ended June 30, 2018

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

5. Group 4 Architecture

Mayor Tran was not ready for this item or for immediate changes at City Hall, so he wanted a separate vote on this item.

Councilmember Nuñez asked the Public Works Director Tony Ndah to explain what was planned with this agreement, and Mr. Ndah described a need for more offices and different layout for the growing number of City employees at City Hall.

Motion: to approve the agreement with Group 4 Architecture, Research & Design for space planning and design of office spaces at City Hall for an amount not to exceed \$150,000

Motion/Second: Councilmember Phan/Vice Mayor Grilli

Motion carried by a vote of: AYES: 4
NOES: 0
ABSTAIN: 1 (Tran)

Councilmember Nuñez asked staff to come back to Council before the final plan.

*** 6. Janitorial Services Agreement with Nova Commercial**

1. Approved the two year initial agreement with Nova Commercial Co. Inc. in the amount not to exceed \$1,336,326.96 for janitorial services, in response to RFP No. 2255.
2. Authorized the Purchasing Agent to exercise up to three contract options without further action from City Council.
3. Approved a budget amendment to appropriate \$90,000 to the Department of Public Works FY 2018-19 Operating Budget.

7. Amend Agreement with Joseph Minton

Councilmember Nuñez asked questions about why this officer would be kept on in the Milpitas Police Department, and whether the work would be done by a permanent employee eventually. Police Captain Henry Kwong responded on the value of Mr. Minton, and long term staffing plans for the police department.

Motion: to authorize the City Manager to execute Amendment No. 2 to the Agreement between the City of Milpitas and Retired Annuitant Joseph Minton for employment in the Milpitas Police Department for one additional year in the amount not to exceed annually \$56,438.40 and a total agreement amount not to exceed \$141,096

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 5
NOES: 0

*** 8. Amend Agreement with Page & Turnbull**

Authorized the City Manager to execute Amendment No. 2 to the Agreement with Page & Turnbull to increase the agreement by an amount not to exceed \$187,700 for additional consultant services for the Alviso Adobe Restoration, Project No. 5055.

*** 9. Agreement with Shah & Kawasaki**

1. Approved and authorized the City Manager to execute a Design Services Agreement with Shah Kawasaki Architects in an amount not to exceed \$913,494.00 for Fire Station No. 2 Replacement, Project No. 3447.
2. Approved the additional appropriation of \$320,000.00 from the General Government CIP Fund needed for Design Services Agreement with Shah Kawasaki Architects.

***10. Amend Agreement with VTA re: BART**

Approved Amendment No. 14 to the Master Agreement between the Santa Clara Valley Transportation Authority and the City of Milpitas to extend the term of the agreement to June 30, 2019, relating to the Silicon Valley Rapid Transit Program Berryessa BART Extension Project.

11. Amend Agreement with Milpitas Sanitation Inc.

Engineering Department staff Leslie Stobbe gave a brief presentation on the request to approve an amendment to the contract with the solid waste hauler, the city's contractor Milpitas Sanitation Inc. (MSI). She detailed the agreement and past amendments, describing that the rate adjustment process was detailed in the contract to occur on a regular basis, with cost based adjustments in specified years and index-based adjustment in other years. The rate adjustment as approved was 4.26% effective January 1, 2019.

Councilmember Nuñez wanted to confirm that the City Council did not really have a choice on this rate change. Staff explained that it was an administrative approval based on the terms of the contract. The City was obligated to approve it since the current adjustment met contract terms.

Mr. Nuñez wanted to ensure that residents got the best, most updated information on garbage service on rate information and service updates or changes planned on social media, in the newspapers, etc., prior to the first new billing in January.

Councilmember Phan asked for further explanation why this was brought to the Council, if the change was to be administratively approved. Staff responded.

Mayor Tran invited comments from the public.

Voltaire Montemayor, resident, said the public felt this was costing them money. The City did adopt this contract and improved on the neatness and residents learned to sort materials in bins.

Robert Marini, resident, asked if there was a license fee that the City received for having MSI pick up solid waste. Ms. Stobbe replied yes and it was 14.71% of gross receipts as a franchise fee, generating \$2.5 million per year as revenue to the General Fund.

Councilmember Nuñez made a motion for the inclusion of additional places for pick-up at City facilities (Exhibit F) while allowing Exhibit L to be approved administratively.

Motion: to accept the staff report on rate adjustments for Rate Year 2, with a report on administrative approval of a rate increase of 4.26% effective on January 1, 2019; and, to authorize the City Manager to execute Amendment No. 3 for all exhibits - excepting Exhibit L (re: rates) - to the Franchise Agreement with Milpitas Sanitation, Inc. and to update the terms for collection at City facilities

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

12. Re-appoint Four City Commissioners and Appoint Planning Commissioner

Mayor Tran removed this item from consent. He supported all of the first four recommendations but did not support the recommendation for the Planning Commission.

Motion: to approve four re-appointments as recommended (with Planning Commission deferred)

Energy and Environmental Sustainability Commission
Reappoint Christopher Salian to a term to expire in October 2020.

Parks, Recreation and Cultural Resources Commission
Reappoint Rohit Sharma to a term to expire in June 2021.

Library and Education Commission
Reappoint Hellie Mateo to a term to expire in June 2020.

Senior Advisory Commission
Reappoint Jenny Berryhill to a term to expire in December 2019.

A motion was made by Vice Mayor Grilli, seconded by Councilmember Nuñez, and rapidly approved on a 5 – 0 vote. However, after the vote was taken, the Vice Mayor clarified she had moved the original staff recommendation that included a Planning Commission appointment. This was not accepted by all of the City Council, so the group reconsidered its action.

Motion: to move to reconsider the previous motion, and to approve only the recommendations for four Commission re-appointments, excluding the Planning Commission

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

Motion carried by a vote of: AYES: 4
NOES: 1 (Grilli)

13. Amended SIA documents for The District developments

Deputy City Manager Steve McHarris came forward to review what occurred at the last City Council meeting, and the current request to move a condition of approval regarding the requirement (Condition of Approval) for a grocery store lease on one phase of “The District” development, as written in the Subdivision Improvement Agreement.

Mayor Tran pulled the item for a separate vote. A great deal of discussion was held among Councilmembers, Mr. Nathan Tuttle of the developer, and staff. The City Attorney provided advice for the Council to take action following the discussion.

Motion: to consider the exemption in accordance with California Environmental Quality Act and consider an amended and restated Subdivision Improvement Agreement between the City of Milpitas and Milpitas-District 2 Associates, LLC for The District-Lot 2 Building at 1415 McCandless Drive (Tract No. 10447) and Amendment to the Subdivision Improvement Agreement between the City of Milpitas and Milpitas-District 1 Associates, LLC for The District-Lot 1 Building at 1315 McCandless Drive (Tract No. 10140), while then directing staff to return at the next City Council meeting changing the condition of approval requiring a lease for a grocery from Lot 1 to Lot 2, and subsequently to move this required “legal hook” to an SIA on The District-Lot 4; and, to direct the Economic Development Department to help the developer to find the right store for the space

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 4
NOES: 1 (Barbadillo)

***14. PRCRC Workplan**

Approved the Parks, Recreation and Cultural Resources Commission 2018-19 Work Plan.

***15. Veterans Workplan**

Approved the Veterans Commission 2018-19 Work Plan.

PUBLIC SAFETY

16. Resolution – approve radio equipment purchase

Police Captain Henry Kwong addressed City Council on the Silicon Valley Regional Interoperability Authority’s (SVRIA) request for the SVRCS by approving the recommended purchase. He explained in detail how the recommendation was made, by the relatively new agency.

Mayor Tran said he would support this.

Councilmember Nuñez asked if there were funds in other departments for sharing the equipment.

Captain Kwong replied that the Capital Improvement Program project would cover the funding.

Vice Mayor Grilli was excited to see progress on this important effort, and to see all the cell towers being installed around the county. She had been serving on board of the SVRIA.

Motion: to adopt Resolution No. 8829 approving the cooperative purchase of Motorola Solutions, Inc. Dispatch Consoles Equipment, APX Subscriber Equipment, a Local NICE Logging Solution, and the sole source purchase of a matching Locution Systems, Inc. Fire Station Alerting System, and relevant implementation services for an amount not to exceed \$2,350,591

Motion/Second: Vice Mayor Grilli/Councilmember Phan

Motion carried by a vote of: AYES: 5
NOES: 0

17. Approve Policy for Police Department

Milpitas Police Department Lieutenant Jared Hernandez, who supervised the City’s SWAT team, addressed the Council on the MedEvac armored rescue vehicle and the adopted policy. Staff requested Council to receive the policy regarding when to implement use of this specific vehicle,

a brand new one in the City received in October 2018. Community input was solicited upon establishing the policy, and it considered past use of armored vehicles that were previously borrowed from other agencies. Three community meetings were held at school locations and police staff considered what four other police agencies' best practices were for such a vehicle.

Mayor Tran made favorable comments.

Councilmember Nuñez asked about the water monitor capacity of the MedEvac vehicle.

Motion: to accept and receive the armored rescue vehicle (MedEvac) policy

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

LEADERSHIP

The City Manager recommended accepting the CAFR and simply moving on to item No. 19.

18. FY 2017-18 CAFR

Motion: to accept the City's Comprehensive Annual Financial Report and related Annual Audited Reports for the fiscal year ended June 30, 2018, including Agreed Upon Procedures Report on Compliance with Appropriations (aka Gann) Limit, Memorandum on Internal Controls and Required Communications for the Year Ended June 30, 2018

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

19. 5 Year Forecast, Mid Year Adjustments and Adding Positions FY 2018-19

Assistant City Manager Ashwini Kantak addressed Council on this item, starting with the General Fund operating surplus of \$20.07 million for Fiscal Year 2017-18. Process improvements were recommended to reduce the variance between budgeted and actual amounts at end of the Fiscal Year. She described categories of the budget where revenues were significantly higher than anticipated when the budget was adopted last year.

Ms. Kantak described the recommended distribution of the surplus, based on adopted Council policy and staff requests for additions to City personnel. She identified one time recommended expenditures for Capital Projects in the Capital Improvements Program, as well as the amount to move into reserve funds.

Councilmember Nuñez reviewed staff recommendations and asked various questions on the Recommended Funding for one time expenditures (list of four items staff displayed).

Deputy City Manager Steve McHarris came forward to describe Fee Based Services related to development in the city. He identified deferred revenues from fees and the need to staff up to meet the urgent pace in the Building Department, where nine additional positions were requested.

Councilmember Phan asked questions about the request and need for a Building Official. City Manager Edmonds-Mares reviewed and explained.

Councilmember Nuñez was unclear why this was occurring in December, and not waiting until the usual timeframe in February (for mid-year budget appropriations). He commented about weed abatement needs, more code enforcement personnel, and hiring back any prior laid-off workers from the past.

Vice Mayor Grilli felt it was important to have permanent employees, rather than a lot of temporary workers. Knowing this was a fee based services request, that request was justified.

The City Manager announced that the Housing Authority Administrator started work on Monday, and the City was in final stages of hiring a Housing Manager.

Mayor Tran felt these positions may not even be enough and asked the Police Chief to respond to police staffing and how the hiring was going. Chief Corpuz replied he had filled eleven officer positions.

Further requests for staff in the Human Resources (several positions) and Finance (one buyer) Departments were identified and displayed in a fiscal impact summary.

Various comments on staffing needs in the City were expressed.

In making his motion, Mr. Nuñez felt that all positions would ultimately be needed. At this meeting, regarding all nonpersonnel items he wanted to see those funded from the surplus. He wanted to support positions that were fee-based, those in police and fire to help with retirements (one-time funding needs) using \$6.6 million of surplus. This would be toward fee based positions offset by fees, but not ongoing cost positions.

Assistant City Manager Kantak clarified that Council would not want to fund more than \$627,000 in Human Resources and Finance, at this time, while Councilmember Nuñez remarked those could be brought back in the budget process the following year.

Motion 1:

1. To receive a report on Updated Five-Year Forecast and General Fund Surplus for Fiscal Year Ended June 30, 2018 and approve Phase I Mid-Year Budget Appropriations and changes for the FY 2018-19 Operating Budget.
2. To approve a budget amendment to update FY 2018-19 Revenues.
3. To approve recommended Optional Reserve Surplus Assignments of \$1.5 million (shown in Table 1).
4. To approve a budget amendment to transfer \$4,324,245 of the remaining FY 2017-18 surplus to the General Government CIP Fund and appropriate funds to projects (detailed in Table 2) with a transfer of \$98,000 currently budgeted for Networking Equipment in the Information Services FY 2018-19 operating budget to the New Project – LAN/WAN Network Upgrade for a total project appropriation of \$952,245.
5. To approve a budget amendment to appropriate recommended operating one-time surplus assignments of \$816,448 (detailed in Table 3) from the FY 2017-18 surplus and transfer \$575,716 from the FY 2018-19 Non-Departmental Operating Budget to the FY 2018-19 Fire Operating Budget as planned so as to fully fund the Memorandum of Understanding with the International Association of Fire Fighters, Milpitas local.

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

Motion 2: (i) to approve a budget amendment to appropriate FY 2018-19 Midyear Phase I Budget Ongoing Adjustments in FY 2018-19 (detailed in Table 4) from the estimated FY 2018-19 increased base revenues (with removal of Human Resources and Finance position costs); and (ii) to adopt Resolution No. 8830 amending the Classification Plan for budgetary position authorizations and to establish new classifications, while not including Human Resources and Finance positions

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

**20. Report on FY 2019-20
Budget and CIP process**

The City Manager noted the late hour and that the Council could simply receive this report.

Motion: to receive a report on Fiscal Year 2019-20 Operating Budget and 2019-2024 Capital Improvement Program development process, and validate the process

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 5
NOES: 0

REPORT

Councilmember Phan thanked the community for facilitating a peaceful demonstration recently in the community, wherein the Milpitas Police helped the group.

NEXT AGENDA

Received the list of agenda topics anticipated for December 18, 2018.

ADJOURNMENT

Mayor Tran adjourned the meeting at 12:10 AM on Wednesday, December 5, 2018 in memory of recently deceased President George H. W. Bush.

The foregoing minutes were approved by Milpitas City Council on December 18, 2018.

Mary Lavelle
Milpitas City Clerk