

MEETING MINUTES CITY OF MILPITAS

Minutes of: Joint Meeting of Milpitas City Council and the
Public Financing Authority
Date: Tuesday, August 7, 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 Vice Mayor Grilli called the joint meeting to order at 5:35 PM. City Clerk Mary Lavelle called the roll.

PRESENT: Vice Mayor Grilli, Councilmembers Nuñez and Phan

ABSENT: Mayor Tran and Councilmember Barbadillo were absent at roll call. Mr. Barbadillo arrived in Closed Session.

CLOSED SESSION City Council convened in Closed Session to discuss litigation and matters listed on the agenda.

ANNOUNCEMENT City Attorney Chris Diaz stated that there was no reportable action out of Closed Session, and Council would reconvene later in the evening to discuss items (d) through (g).

Council then convened in Open Session at 7:08 PM.

PLEDGE Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION Councilmember Barbadillo offered a prayer to start the meeting.

PRESENTATION Vice Mayor Grilli presented recognition to firefighters and partner agencies, who had together fought successfully the Country Fire in the Milpitas hills in late July. Damage was kept to a minimum with no loss of life or injury during a fire that affected more than 300 acres of hilly landscape, with coordination of CalFire, County Fire, Sheriff and many other agencies. A brief reception was held in the lobby rotunda and reconvened at 7:47 PM.

PUBLIC FORUM Joseph Erhart of the Milpitas Historical Society thanked City Council for its \$500 contribution to help toward the cost of a bus for participants who joined the June 23 historical tour around City of Milpitas. He sincerely thanked the Council for the support.

Voltaire Montemayor, resident, commended the great job done by firefighters on the hillside fire and thanked Milpitas Fire Department. He spoke of prevention and balance, not to lose property or lives, and the need for conservation of water.

Frank DeSmidt announced upcoming events: Friday, September 28 was a Casino Night by Milpitas Chamber of Commerce at Sonesta Hotel, and also Rotary Club would host on Friday, October 5 a fundraiser at Ta Restaurant for “Know a Vet” organization.

Jezell Marez, resident, commented on various items on the agenda including the Closed Session, affordable housing funds, ethics classes, neighbors, HOAs and landscaping, two sports playing at same time and the need for a new soccer field.

Councilmember Nuñez asked the City Manager if she could respond to the specific items brought up by Ms. Marez.

ANNOUNCEMENTS

Vice Mayor Grilli heard from residents about a concern with an increase in odors over the last month. She asked the City Manager if she would discuss with the City Manager in San Jose about this topic.

Councilmember Nuñez asked for the next Council meeting to have an odor report again on the agenda, and also he could report next time from the South Bay Odor group. City Manager Julie Edmonds-Mares suggested maybe at the first meeting in September.

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: Councilmember Barbadillo/Councilmember Nuñez

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

CONSENT CALENDAR

Vice Mayor Grilli requested items no. 1 through no. 16 to be on consent. Councilmember Nuñez requested to remove items no. 14 and no. 15.

Motion: to approve the Consent Calendar including agenda items numbered 1-13, and 16

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

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

- * 1. Council Calendar Accepted City Council calendar for August 2018.
- * 2. Meeting Minutes Approved City Council meeting minutes of June 12, 19 and 20, 2018.
- * 3. Quarterly Investments Received the investment report for the quarter ended June 30, 2018.
- * 4. League Conference
Voting Appointment Appointed Vice Mayor Marsha Grilli to serve as the Voting Delegate from the Milpitas City Council to the Annual Conference of the League of California Cities in Long Beach on September 12 – 14, 2018.
- * 5. Approve City Manager's
Travel Authorized out-of-state travel for City Manager Edmonds-Mares to attend the ICMA Annual Conference in Baltimore, MD September 23-26, 2018 for total expenses not to exceed the approved FY 2018-19 Conferences/Meeting allocation of \$10,000.
- * 6. Approve Travel for Three
City Officials Authorized out-of-state travel for Councilmembers Nuñez and Phan along with Deputy City Manager McHarris to attend the 2018 Silicon Valley Organization's Study Mission: Seattle, WA October 3-5, 2018 for total expenses not to exceed the approved FY 2018-19 City Council Conferences/Meeting allocation of \$5,000 per Councilmember and City Manager's \$10,000.
- * 7. Council + PFA: Adopt
Resolutions Adopted City Council Resolution No. 8804 and Public Financing Authority Resolution No. PFA 23, authorizing investment of monies in the Local Agency Investment Fund and updating officers' name, title and signatures.
- * 8. Resolution – Inv. Policy Adopted Resolution No. 8805 approving the Annual Investment Policy for FY 2018-19.

- * 9. Resolution – flag event Adopted Resolution No. 8806 approving the flag ceremony to be held by the Pakistani American Community Center at Milpitas City Hall outside plaza on Tuesday, August 14, 2018 from 7:00 to 9:00 PM celebrating the date of Pakistan’s independence.
- *10. Resolution – Hillside home Adopted Resolution No. 8807 approving Site Development Permit No. SD17-0006 to construct a new hillside home on a vacant 1.6 acre site located at 517 Vista Ridge Drive and make findings of exemption under the California Environmental Quality Act.
- *11. Resolution – TDA funds Adopted Resolution No. 8808 requesting allocation of Transportation Development Act, Article 3 Funds for the ADA Curb Ramp Transition Program 2019.
- *12. Resolution – Street Resurfacing Project 1. Adopted Resolution No. 8808 awarding a contract including the add alternate item to Joseph J. Albanese, Inc. as the lowest responsible bidder submitting a responsive bid in the amount of \$1,182,858 for the Street Resurfacing Project 2018, Phase II, Projects No. 4284, No. 4287 and No. 4291.
2. Authorized Director of Engineering/City Engineer to execute contract change orders for the street resurfacing project in an aggregate amount not to exceed the construction contingency of \$330,000.
- *13. Amendment No. 2 – Alice Wright Approved Amendment No. 2 to the Agreement with Alice Wright and authorized the City Manager to execute the amendment for Abandoned Shopping Cart Retrieval Service for annually not to exceed \$21,600 along with a total contract amount not to exceed \$108,000.
- 14.** Amendment No. 3 to Agreement with BBK Councilmember Nuñez had removed this item from consent. He requested a vote on the item, and requested approval of extension to September 30.

Motion: to approve Amendment No. 3 to the Agreement for Legal Services with Best, Best & Krieger, LLP in the amount of \$227,000 for Fiscal Year 2017-18 and to approve a total budget appropriation of \$481,000, of which \$236,000 will be reimbursed by developers/third parties, \$240,000 will come from the General Fund and \$5,000 will come from the Water Fund; and, authorize extension of the agreement to September 30, 2018

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

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

- 15.** Resolution – Public Info. Officer salary This item was removed from consent, for discussion.
- Councilmembers Nuñez and Barbadillo asked questions about the position of Public Information Officer (PIO), the job classification, the established salary, and process for outreach to hire and fill this new position.
- Human Resources Director Liz Brown explained the need to get the best caliber person to fill the position and why staff requested Council to adjust the salary range.
- Councilmembers inquired about a prior contract with an outside communications firm for some public information and communication work. The City Manager agreed to provide a copy of that expired contract with Singer & Associates.
- Councilmember Phan appreciated Ms. Brown’s efforts at recruiting this position and believed in her ability to recruit the PIO, without additional salary incentive.

Motion: for this item to not come back, not to waste staff time and to move forward, i.e. not move forward with a salary adjustment (for Public Information Officer) and to go forward with the recruitment for the position, as budgeted

Motion/Second: Councilmember Phan/Councilmember Barbadillo

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Tran)

No resolution was adopted.

***16. Rescind Past Action**

Rescinded the City Council's action of May 16, 2017, which removed Karina Dominguez as a member of Citizens Task Force on Water Rates and accepted Ms. Dominguez's voluntary resignation.

PUBLIC HEARINGS

**17. CDBG funding and
Annual Action Plan**

Housing Manager Tim Wong brought forward this report requesting Council to approve funding for Community Development Block Grant funds for FY 2018-19, following a continued public hearing from June 19 after more outreach to community organizations was done. He stated that recommendations were due to the federal Department of Housing and Urban Development by August 10, otherwise the City's allocation would be lost for the new Fiscal Year. \$675,498 was the total funding for City of Milpitas. Mr. Wong detailed the Public Service applications and the Capital funding applications. He displayed a list of non-profit applicants for the public service funds, and stated the City was undersubscribed for capital applications.

Councilmember Phan asked if capital funds could be used toward the City's CIP projects. Staff responded yes, if 51% or more would benefit low income residents.

Mr. Wong then reviewed funding for Project Sentinel from CDBG funds. He reviewed a summary of the One-Year Action Plan for the funding.

Councilmember Nuñez asked if some capital funding could be applied to Sunnyhills Apartments. Mr. Wong explained the timeline of these funds, and how to apply a future plan for those, based on the consolidated plan.

Councilmember Nuñez wanted to see funds put to the best use and do the most good, such as at a child care center at Sunnyhills or to find homes for people in Milpitas. He urged Council to think long term along these lines.

Mr. Nunez complimented Mr. Wong for his excellent work on housing, overall with residents and staff. He was amazed at how Mr. Wong treated everyone in his work and he would be missed in Milpitas (upon his departure for a new job).

Vice Mayor Grilli re-opened the public hearing.

Voltaire Montemayor, resident, said the City was doing good with these funds.

Baker Lyon, of RCD, thanked staff and the Community Advisory Commission for recommending funds for his company's affordable housing project at 355 Sango Ct. and asked Council to approve those funds. He gave an update of that project and its funding.

Theresa Johnson from Meals on Wheels thanked City Council for funding if approved as recommended. Her group met a major need of hunger, with hot meals for seniors delivered at their homes.

Michael Tsai, resident and head of YIMBY, fully supported comments by Baker Lyon and the pressing need for affordable housing in Milpitas.

Wanda Hale, Long Term Care Ombudsman Program representative, served as advocate at nursing homes for seniors, senior living facilities or homes in Milpitas. Her organization tried to combat elderly abuse and worked on transfers of seniors.

Georgia Bacil, Senior Adults Legal Assistance directing attorney, provided legal services for seniors in Milpitas at the Milpitas Senior Center with monthly appointments offered. She thanked City Council for continuing to fund SALA's program with CDBG funding.

Tom Valore, resident, spoke about the lack of applications for the brick-and-mortar funding. In the future, see about accessing organizations to get help for their board or staff to make an appropriate request for funding.

(1) Motion: to close the public hearing, following six speakers

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

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

(2) Motion: to approve Community Development Block Grant Funding for Fiscal Year 2018-19

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

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

(3) Motion: to approve the draft Fiscal Year 2018-19 Action Plan and authorize the City Manager to execute CDBG agreements with approved recipients

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

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

18. Weed Abatement

Fire Marshal Albert Zamora presented a brief report of actions taken to date for the annual weed abatement program. At this meeting, Council was asked to hold a public hearing and then to adopt a resolution for the liens on the properties to be assessed, after weeds were cleared by the County Department of Agricultural & Environmental Management.

Mr. Moe Kumre from the County was present to answer any questions.

Vice Mayor Grilli opened the public hearing.

Voltaire Montemayor, resident, spoke about the need to clear weeds and make the city safe. Also, the City needed to keep roots from hitting pipes underground.

Ms. Hussain, a Milpitas property owner, spoke of the letter she received prior to inspection, and then she had cleared what was asked of owners. She felt she got different comments every year on what was required and requested clarity about the program. Property owners needed specific guidelines on how to be compliant.

(1) Motion: to close the public hearing, following two speakers

Motion/Second: Councilmember Nuñez/Councilmember Phan

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

Vice Mayor Grilli asked staff to respond to the speaker's comments. Fire Marshal Zamora asked Mr. Kumre to describe the county protocol. Mr. Kumre, manager of the program, described what the minimum fire safe standards were for all property owners. The County was available for all those notified to be called for staff to visit. Approximately 3,000 properties were on the county list each year for weed abatement.

Councilmember Phan asked who was the reporting agency and staff replied the County. Mr. Phan asked more questions of County staff on how the program worked.

Councilmember Nuñez asked if this program was done annually and for how long. Mr. Zamora replied yes, and that it was started in 1974.

(2) Motion: to adopt Resolution No. 8810 confirming assessments for weed abatement for 2018, for those properties listed by parcel number on the list provided by the Office of Santa Clara County Agricultural and Environmental Management to the Fire Marshal

Motion/Second: Councilmember Nuñez/Councilmember Phan

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

Additionally, Councilmember Nuñez asked the City Manager to come back at a future meeting with a report on how the City took care of weed abatement within the City.

REPORT

19. Sister Cities Commission This item was heard prior to item no. 18.

Leslie Stobbe, staff liaison to the Sister Cities Commission, introduced one Commissioner and Commissioner representatives of the Dagupan subcommittee. Officials from Dagupan in The Philippines had sent a letter requesting to visit Milpitas. Sister Cities Commission had three recommendations for the Council on the proposed visit. Commissioner Michael Tsai came to the podium to answer any questions the Council had and spoke of the value of this visit by Sister City representatives.

Councilmember Nuñez inquired about the City's contact with and relationship with the School District for this program. He wanted the school district to be fully engaged, and also mentioned that the Executive Lions Club would want to continue hosting student visitors.

Councilmember Barbadillo felt the core of the relationship between cities included education, cultural sharing and showing technology. He urged making the sister city of Dagupan - as the active one - to serve as a model for the others, as mentioned by Mr. Tsai.

Motion: to take the following actions, directing staff:

1. to invite the delegation of visitors from Dagupan, The Philippines on October 14-19, 2018
2. to conduct a reception for the visitors at the October 16, 2018 City Council meeting
3. to advise the School Superintendent and High School Principal that Commissioner Michael Tsai was available to assist with planning school activities with visiting students
4. to work with the Milpitas Executive Lions Club, and add an economic development component by reaching out to tech companies for the student visitors

Motion/Second: Councilmember Barbadillo/Councilmember Phan

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

NEW BUSINESS

- 20. ULI SVEDA - UrbanPlan** Deputy City Manager Steve McHarris stated the request for an appointment of one Councilmember to be appointed to attend a training opportunity in September for public officials in Palo Alto. It was called “Urban Plan” and would be sponsored by the Urban Land Institute in conjunction with Silicon Valley Economic Development Alliance.

Motion: to appoint Mayor Tran to attend, with Vice Mayor Grilli as alternate, the Urban Plan training course in September by ULI + SVEDA

Motion/Second: Councilmember Phan/Councilmember Nuñez

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

- 21. Creighton Park Design** Recreation Services Director Renee Lorentzen was prepared to discuss the outcome of the recommendation, following the meeting of the Parks, Recreation and Cultural Resources Commission where this was discussed. Staff was prepared to continue working on the fine details of siting of specific park amenities.

Motion: to approve the conceptual design for Creighton Park, Project No. 5109

Motion/Second: Councilmember Phan/Councilmember Nuñez

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

RESOLUTIONS

- 22. Ballot Measures** Assistant City Manager Ashwini Kantak announced a two-part presentation, with the FM3 consultant presenting survey results first, followed by a Council vote on recommendations for ballot measures.

Miranda Everett, senior associate from FM3 firm, reported the results of polling done with 492 Milpitas voters over the phone and online. Overall, 63-64% would support increase in Transient Occupancy (hotel) Tax in Milpitas, for either 10% to 14% or from 10% to 12% in 2019 with 12% to 14% in 2020. She also reported that overall, 65% of voters polled would support a cannabis business tax.

Vice Mayor Grilli invited speakers from the audience.

Victor Gomez, public policy director of Silicon Valley Alliance, thanked the City Council for leadership on this topic. Polling results were strong and consistent with polling results statewide. It was clear that Milpitas voters were supportive of this, as likely voters. He spoke of success in Hollister and the funds raised for its budget via cannabis business.

Sean Kali-Rai, of Silicon Valley Cannabis Alliance, said the industry folks on this topic were encouraged and moving ahead. It was especially seeing good support results from the survey.

Robert Livengood, resident, encouraging Council to place the TOT tax measure on the ballot. The City had been undermarket on that tax for a long time. It was good for the community now to step up and ask those who stayed in hotels to pay their fair share for city services. He felt either approach on the percentage increase would work for the City.

Voltaire Montemayor, resident, did not want cannabis in Milpitas, and there was a moratorium already in the city. This would encourage the growers.

Ms. Kantak returned to the podium with an additional report from the staff on the impact of the potential measures, and anticipated revenues for the city budget. \$5.2 million annually was anticipated with the TOT if set at 14% and that was prior to buildout of six new hotels.

On a cannabis tax, the range in the Bay Area was from 5% to 15% on cities that had adopted one. An estimate of \$370,000 to \$1.67 million was a wide possibility of anticipated revenue on a tax on cannabis businesses, retail or other. The funds from the tax were for general city services, not specific.

Ms. Kantak also reported briefly on an approach to short term rental options in Milpitas, related to taxation or agreements (Voluntary Collection Agreements with Air B'n'B type business). Or, an ordinance for funds on short term rentals, including business license tax, could be collected.

She further described opportunity for City Council to adopt a permanent prohibition on cannabis businesses, to be able to take effect on time for the upcoming temporary moratorium expiration in January 2019. Following the vote on the tax, Council could then consider regulations.

Councilmember Nuñez was looking north at Fremont where the current rate for TOT was 10%. He supported raising the rate while expressing concern for those who would go one exit north with a much lower tax. He was supportive of going to 14% via ballot measure (Option 1).

Councilmember Barbadillo spoke of the polling of the community, and the result on TOT. Lacking was the after effect of a tax increase when implemented. There should be a study to learn and know the result of an implemented new tax amount.

Councilmember Phan felt there needed to be a report with explicit data on the tax rate and revenues expected with the increase that was recommended to voters.

City Manager Edmonds-Mares commented about potential tax rate and when it could be raised or not. The City would continue to need money for providing key services to the community.

(1) Motion: to adopt a resolution authorizing placement of a Transient Occupancy Tax (TOT) increase measure of up to a maximum of 14% on the November 6, 2018 ballot, requiring 4 affirmative votes (super majority of the Council)

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

Motion failed by a vote of: AYES: 3
NOES: 1 (Phan)
ABSENT: 1 (Tran)

A motion for reconsideration could be possible, the City Attorney said, if it was made by the member who voted no.

City Council next discussed a proposal for a ballot measure to ask voters to approve a tax on cannabis in Milpitas. A prohibition on its use was still in effect in the City, while regulations could be developed via ordinance if the tax measure was approved, the City Attorney explained.

Responding to Councilmembers' questions, the consultant from the HdL firm said the cities that have used the policy alternatives for increasing revenue via cannabis businesses (not a tax) were smaller cities, more agricultural, and were not adjacent to Milpitas nor in Santa Clara County.

Vice Mayor Grilli was supportive of sending this tax to the voters in June.

Councilmember Phan had reservations on the policy alternatives list displayed by staff.

(2) Motion: to adopt a resolution authorizing placement of a Cannabis Use Tax Measure on the November 6, 2018 ballot allowing taxes on cannabis (marijuana) businesses to be set at maximum rates of \$10 per canopy square foot for cultivation (adjustable for inflation), 10% of

gross receipts for retail cannabis businesses, and 6% for all other cannabis businesses - requiring 4 votes (supermajority of the City Council) to go on the ballot

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion failed by a vote of: AYES: 3
NOES: 1 (Barbadillo)
ABSENT: 1 (Tran)

Following the vote regarding a ballot measure on a cannabis tax, City Attorney Diaz asked the City Council for direction on the following recommendation:

Direct staff to initiate a draft zoning ordinance to regulate cannabis cultivation for personal use and to prohibit all commercial cannabis uses.

Councilmember Phan made the following motion - to direct staff to work with the City Council Subcommittee on Cannabis to discuss allowable uses, to initiate a process on drafting a zoning ordinance to get something that could be done with allowable cannabis cultivation, and he sought no language on any prohibition in this direction. Councilmember Nuñez seconded the motion for discussion. Mr. Phan said such an ordinance would succeed the current temporary prohibition.

Councilmember Nuñez would consider discussion and preparation of both a permanent ban and preparation of an ordinance for allowable uses.

Councilmember Barbadillo wanted to direct staff foremost to maintain the permanent ban, due to what would expire in January. Injecting other directives to staff were counter to that. He wanted a clear motion first, and then another motion after that on regulated uses of cannabis, i.e. not mix these up.

Councilmember Phan re-phrased his motion, for staff come up with two things: 1) a moratorium to replace the temporary one (ordinance), and 2) a regulatory ordinance that was alternative to the moratorium, with the timeline in mind by January 2019.

(3) Motion: to direct staff to return with a moratorium ordinance on cannabis to replace the temporary ordinance; and, to work with the Council Subcommittee on Cannabis to discuss allowable uses, to draft a regulatory ordinance to get something that could be done with allowable cannabis cultivation, with no prohibition in his direction

Motion/Second: Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of: AYES: 3
NOES: 1 (Barbadillo)
ABSENT: 1 (Tran)

At this time, Councilmember Phan requested to reconsider the vote on the recommendation for a ballot measure to increase the TOT tax.

(4) Motion: to adopt Resolution No. 8803 authorizing placement of a Transient Occupancy Tax (TOT) increase ballot measure of up to a maximum of 14% on the November 6, 2018 ballot, requiring 4 affirmative votes (super majority of the Council), and to authorize Vice Mayor Grilli and Councilmember Nuñez to write and submit ballot arguments and rebuttals

Motion/Second: Councilmember Phan/Councilmember Nuñez

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

REPORTS FROM MAYOR & COUNCIL None

ADJOURNMENT

Vice Mayor Grilli adjourned the joint meeting at 12:21 AM on Wednesday, August 8, in memory of four firefighters, who had lost their lives fighting wildfires in northern California.

The foregoing minutes were approved by Milpitas City Council on August 21, 2018.

Mary Lavelle
Milpitas City Clerk