

MEETING MINUTES CITY OF MILPITAS

Minutes of: Joint Meeting of Milpitas City Council and the
Milpitas Housing Authority
Date: Tuesday, June 19, 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 joint meeting to order at 5:30 PM. City Clerk Mary Lavelle called the roll.

PRESENT: Mayor Tran, Vice Mayor Grilli and Councilmember Nuñez

ABSENT: Councilmembers Barbadillo and Phan were absent at roll call. They both arrived in Closed Session shortly after it began.

CLOSED SESSION

City Council convened in Closed Session to discuss litigation and matters listed on the agenda. Mayor Tran recused himself from item (b) on the Closed Session agenda.

ANNOUNCEMENT

City Attorney Chris Diaz stated that direction was given to staff, while there was no reportable action out of Closed Session.

PLEDGE

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

INVOCATION

Vice Mayor Grilli introduced Pastor Robert Mize of the Cathedral of Faith, who offered a prayer to start the meeting.

PUBLIC FORUM

Chris Moylan, aide to Congressman Ro Khanna, addressed the Council regarding work he'd done to learn more about the odor issue in Milpitas. Enforcement of odor complaints could only occur by the Bay Area Air Quality Management District (BAAQMD) if odor sources were identified. He mentioned resources available for Milpitas. The City could self-nominate or have the Air District nominate the city by July 31 to qualify for a program he identified. Councilmember Nuñez asked the City Manager if she would take a look at what Mr. Moylan had described.

Councilmember Barbadillo remarked that what the City may ask the Congressman for was legislation to improve air quality and strengthen support to give more power to BAAQMD.

Rob Means, 1421 Yellowstone resident, thanked Congressman Khanna for work he was doing on local government's behalf on the odor issue. He then discussed global warming and rising coastal waters, as recently in the news.

Voltaire Montemayor, Milpitas resident, spoke about odor. He should have a man to man talk with Mayor Liccardo and other San Jose people.

Frank DeSmidt spoke of a Union of Concerned Scientists report out the previous day, about flooding that was expected at coastal lands across the United States. For the Milpitas zip code, he found zero properties were forecast to flood.

Robert Marini, Milpitas resident, spoke of the Public Records Act and information he was waiting two months to receive from the City. It was necessary to uphold the laws of the State of California regarding public records. He needed to evaluate the Bartle Wells report on water rates.

ANNOUNCEMENTS

City Manager Julie Edmonds-Mares introduced new Assistant City Manager Ms. Ashwini Kantak. She would be the Chief Operating Officer and provide policy and administrative guidance.

Ms. Edmonds-Mares also announced a notification from FEMA requesting more information towards the opportunity for award of a SAFER grant, which – if awarded - would provide funding for firefighters in the Milpitas Fire Department.

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

Vice Mayor Grilli wanted to move item no. 21 up to the beginning of the discussion items.

Motion/Second: Vice Mayor Grilli/Councilmember Phan

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

CONSENT CALENDAR

Mayor Tran requested items no. 1 through no. 17 on consent, with the exception of item no. 6 (adopt affordable housing ordinance)

Motion: to approve the Consent Calendar including agenda items numbered 1 – 17, with removal of item no. 6 (ordinance)

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

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

- * 1. Council Calendar Accepted City Council calendars for June and July 2018. Edits to both calendars were distributed by the City Clerk at the dais.
- * 2. Meeting Minutes Approved City Council meeting minutes of June 5, 2018.
- * 3. AR write offs Approved the Accounts Receivable Write-offs for the fiscal year ended June 30, 2018.
- * 4. St. Elizabeth fee waiver Waived \$902.77 in fees for costs related to the annual St. Elizabeth Catholic Church Parish Festival scheduled on church grounds on Sunday, August 12, 2018.
- * 5. Funds for Ped. Bridge Approved receipt of contribution from DR Horton CA3, Inc. and approved budget appropriation of \$32,842 into the Lower Penitencia Creek Pedestrian Bridge, CIP Project No. 2005.
- 6. Adopt Ordinance No. 297 Mayor Tran had pulled this item from consent due to a speaker who wanted to address this topic.

Matthew Reed, policy director of Silicon Valley at Home, said it was a major step forward by the City Council to introduce the affordable housing ordinance at the last meeting. The development process was complex with shared responsibilities. Commercial linkage fees without deterring commercial development were sought. He suggested a phase-in process for projects, before new ones could be approved. He wanted a fair policy to be implemented.

Planning Director Brad Misner was available to answer questions.

Councilmember Nuñez asked Mr. Misner to explain timing of the implementation of fees. The Planning Director described the date of “deemed complete” projects. Some projects were in pre-planning phases, while a number of projects were in the pipeline. To date, there was one deemed complete, so it would not be affected by this new ordinance. Two others had not yet submitted

applications and thus would be impacted by the new ordinance (requiring 15% affordable units in the projects), effective this summer.

Motion: to waive the second reading and adopt Ordinance No. 297.2 Amending Title 1, Chapter 1, Section 4.02 and to Add Title XII of the Milpitas Municipal Code relating to affordable housing in Milpitas

Motion/Second:

Councilmember Phan/Councilmember Barbadillo

Motion carried by vote of:

AYES: 5

NOES: 0

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| * 7. Resolution – furniture for Police Department | Adopted Resolution No. 8799 approving the purchase of Police Department furniture from the Contract Office Group for an amount not to exceed \$129,107.63 through a cooperative procurement contract with the U.S. Communities Government Purchasing Alliance which includes removal and disposal of the old furniture; and, allowed the City Attorney to negotiate final purchase order terms and conditions as may be necessary. |
| * 8. Resolution – fly flag | Adopted Resolution No. 8800 directing staff to fly the California Native American Tribes Flag from November 1 – 30, 2018 at the Cesar Chavez Plaza. |
| * 9. Resolution – Corrpro Co. | <ol style="list-style-type: none">1. Adopted Resolution No. 8801 awarding a contract to Corrpro Companies, Inc. for Cathodic Protection Improvements Project (Main Sewage Pump Station), Project No. 7115, in the amount of \$130,500.2. Authorized the Director of Engineering/City Engineer to execute contract change orders for the project in an aggregate amount not to exceed the construction contingency of \$19,575. |
| *10. Resolution – grant funds | Adopted Resolution No. 8802 authorizing the City Manager to execute the agreement with the Santa Clara Valley Water District, accept \$30,745 in grant funds from Priority B3 of the Safe, Clean Water and Natural Flood Protection Program, and authorized appropriation of those funds. |
| *11. Award Bid to West Coast Arborist | <ol style="list-style-type: none">1. Awarded a bid to West Coast Arborist Inc. and authorized the City Manager to execute the contract with the company for City-owned tree maintenance services for the annual amount not to exceed \$477,510.2. Authorized the Purchasing Agent to approve annual increases per the contract terms without further City Council action, except for appropriation of funds. |
| *12. Agreement with Mott McDonald | Approved and authorized the City Manager to execute an agreement with Mott MacDonald Group, Inc. in the amount of \$350,000 for Land Development and Traffic Engineering staff augmentation and Land Surveyor services. |
| *13. Agreement with JDH | Approved and authorized the City Manager to execute Amendment No. 2 to the Agreement with JDH Corrosion Consultants, Inc. for extension of agreement time for the Cathodic Protection Improvements Project No. 7115. |
| *14. Approve Map + SIA | <ol style="list-style-type: none">1. Approved a Final Map for Tract No. 10447, acceptance of all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements.2. Approved and authorized the City Manager to execute the Subdivision Improvement Agreement between the City of Milpitas and Milpitas-District 2 Associates, LLC. |
| *15. Extend Contract with City Attorney firm | Approved and authorized the City Manager to execute Amendment No. 2 to the agreement with Best Best & Krieger LLP (BBK) to provide City Attorney services for the period of July 1, 2018 to August 31, 2018. |
| *16. Renew Workers Comp. Insurance | Authorized renewal of terms presented for Excess Workers' Compensation Insurance, authorized the City Manager to pay Brown & Brown Insurance Services of California the premium rate of \$158,590, and authorized Safety National Casualty Corporation to provide for the City's excess workers' compensation insurance for Fiscal Years 2018-19 and 2019-20. |

*17. Report on June 2 event Received staff report on successful Community and School Safety Table Talk Event on June 2.

NEW BUSINESS

18. Results of Polling on Tax Ballot Measures

Recreation Services Director Renee Lorentzen described the request that the Council had made for polling Milpitas voters on three possible ballot measures related to various taxes. Mr. Curt Below, the representative from the polling firm of FM3, gave a presentation on the polling that was conducted June 5 – 13, 2018, with a great deal of data. Topics that voters were polled on were: Transient Occupancy Tax (TOT) increase, cannabis gross receipts tax, and a revised business license tax.

Mayor Tran thanked the consultant for the polling results data presented at the meeting.

Economic Development Director Edesa Bitbadal described outreach efforts staff had conducted with 19 hotels and motels in Milpitas on the possible increase in the hotel tax (TOT).

Ms. Lorentzen described Cannabis Tax outreach, including community meetings held in the spring and surveys done. She displayed local cannabis tax rates adopted by some local governments in the Bay Area.

Tim Cromartie, Senior Advisor at HdL companies, spoke to the Council of his business, which concerned the new area of advising local government on issues of regulating cannabis. He had worked for the League of California Cities for five years on this topic and newly advised cities on cannabis business.

Next, Mayor Tran invited comments from the public.

A man, a Milpitas resident, urged Council to take into consideration small businesses when considering any increase in the business license tax. Already, costs had been going up in all areas, so he was concerned about taxation on hotels. Questions were biased on the survey, he felt. He had moved his business out of Milpitas, also.

Sean Kali-rai, Silicon Valley Cannabis Alliance, was seeking to grow cannabis in Silicon Valley and was a lobbyist. He wanted City Council to approve items on the meeting agenda and to support the concept of a cannabis tax. It did not make too much difference between medical and general recreational use of cannabis, he advised.

Voltaire Montemayor, Milpitas resident, said people were used to taxes already. The community needed taxes to support city services, especially public safety.

Councilmember Nuñez commented that businesses had taken quite a hit in the past two years, with fees and costs going up. So the Business License Tax proposal may not bring in sufficient revenue to make it worthwhile. On cannabis, he had heard the term “divisive” several times. He mentioned past visits to facilities and medical use of marijuana. He supported the cannabis use tax on the ballot to ask voters of Milpitas. Regulation could be worked out if the vote was yes on a tax. He asked about timing of ballot measures and application of the state ballot proposition requiring 2/3% yes vote on any tax measure affecting upcoming local measures on the November ballot. The City Attorney responded.

Vice Mayor Grilli said on Recommendations Part B: she felt there was not enough information on the Business License Tax, while she was looking at the TOT and cannabis use taxes. 14% was too much of a reach for the TOT so she urged consideration of 12% proposed. She suggested perhaps not hiring the consultant on cannabis use until voters decided on the tax.

Councilmember Phan thanked staff on outreach efforts and commented on tax rate for hotels, that he felt the City should remain competitive with hotel industry in relation to neighbors. On a Business License Tax rate, he understood discretion to increase that a certain amount in a certain timeframe. Finance Director Will Fuentes explained that still needed to go to voters because it was a tax. On cannabis, considering the results, he agreed that there needed to be an ordinance

and regulations while types of uses were up for discussion and determination. He thought it would be helpful to hire the consultant (HdL) at this time.

Mayor Tran asked the Economic Development Director what the hotel vacancy rate was in Milpitas. She responded it was very low on weekdays with weekend rates lower, with a little bit more rooms available. He favored moving forward on a 14% rate for TOT. On the Business License Tax, it should be a sliding scale. The Mayor asked staff to get back to Council with potential revenue based on rates proposed for the ballot measures.

On cannabis, Mayor Tran asked the City Attorney about the current moratorium on such uses. Mr. Diaz replied the current moratorium would expire in January of 2018. A new ordinance for prohibition would take time to be prepared and go before the Planning Commission and then City Council for a permanent one (no more extensions).

Councilmember Nuñez asked about any tax on Air B'n'B locations in Milpitas. Ms. Bitbadal said Milpitas did not specially tax those, while the City Attorney said the City could tax those like hotel rooms. Ms. Bitbadal said the City could have an ordinance, a voluntary agreement, or a combination of those.

Mr. Diaz could check with his colleague BBK attorney on options for a cannabis ordinance, based on what was presented in the past at Council Subcommittee meetings.

Councilmember Barbadillo said the TOT and property tax revenue were near the top of generation in the City. He felt the community would support going to 12% or 14% TOT in Milpitas. On the Business License Tax, he too had heard the word divisive on responses. On marijuana, he did not want to go against the voters' decision to allow its use in California and then reviewed some facts to date.

Vice Mayor Grilli would be comfortable to ask the consultant to write the ballot measure on the cannabis tax. She agreed with a 12% TOT to go to voters also.

Councilmember Phan thought the City could do a development agreement with certain applicants, even if the tax did not pass (on cannabis). If a permanent ordinance was adopted, he was concerned for what happened in other cities, where retailers forced it onto the ballot. Local control was important. He asked about other cities that had a range of TOT and that perhaps Milpitas should have a range of 12-14%, up to Council to decide.

Councilmember Nuñez agreed with a sliding scale 12-14 % on TOT. The City Attorney was concerned about saying which type of hotel was taxed differently. Mr. Nuñez asked staff to come back, and clarify which type of hotel for each amount. He was not in favor of Business License Tax revision. On the cannabis use tax, he supported putting it on the ballot for a tax, prepare for either outcome of whether a tax passed or not: either get ready a permanent moratorium for January 2019; or, develop new regulations by ordinance for marijuana uses.

Mayor Tran asked the City Council to vote on each of three ballot measures separately.

Councilmember Phan felt the City could provide businesses with support, even with any tax increase. For example, offer a tax rebate program, such as available in San Jose.

Councilmember Nuñez felt there should be no action for any moderated Business License Tax. He liked Mr. Phan's idea to use the dollars to reinvest in businesses and to keep them active.

(1) Motion: not to move ahead on any proposal for Business License Tax adjustment at this time

Motion/Second:

Councilmember Nuñez/Vice Mayor Grilli

Motion carries by a vote of:

AYES: 5

NOES: 0

(2) Motion: to direct staff to return in August with a proposal for the voters to consider a ballot measure with a sliding scale from 12% to 14% on the Transient Occupancy Tax in Milpitas, and including another public poll

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

(3) Motion: to direct staff to come back in August with language for the ballot for voters to consider ballot measure language for a cannabis use tax, and to support the extension of the current moratorium ordinance, and later on to consider a new ordinance for regulation of marijuana uses in the City

Motion/Second: Councilmember Phan/Councilmember Nuñez

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

Councilmember Barbadillo noted that a third option was a permanent moratorium. City Attorney Diaz replied that the Council could discuss that on August 7.

Mr. Barbadillo also asked if the city needed a ballot consultant to write the ballot question. He felt the City Attorney could do that. City Manager Edmonds-Mares offered the alternative to delegate this task to her.

(4) Motion: to authorize the City Manager to execute an agreement with Hinderliter, de Llamas & Associates (HdL Companies) for cannabis consulting services for an amount not to exceed \$75,210 for the period of June 20, 2018 to June 19, 2019

Motion/Second: Councilmember Phan/Councilmember Nuñez

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

19. Response to Grand Jury

Police Chief Armando Corpuz gave an oral report summarizing findings and six recommendations given to local Police Departments in the FY 2017-18 final report of the Santa Clara Civil Grand Jury, regarding treatment of and dealing with mentally ill people throughout the County. The state database did not have a place to report this information so the police department would start tracking on its own.

Mayor Tran thanked him for the department's response and appreciated efforts of the police in Milpitas to respond appropriately to people with mental health issues, or to those not acting rational. Police were competent to deal with some of the scenarios.

Councilmember Phan inquired on the training recommendation, asking if grants were available to cover that. The Police Chief did not think so, while he did note one type of grant money for crisis intervention related to terrorism. Mr. Phan spoke of the role of equipment in de-escalation.

Councilmember Nuñez felt the Chief prepared a great response. Councilmember Phan was grateful to all Police Department staff including dispatchers. The City still needed to get back to pre-recession staffing levels in the dispatch center, he commented.

Motion: to approve the Chief of Police's written response to the 2017-2018 Santa Clara County Civil Grand Jury regarding the final report on "Police and the Mentally Ill: Improving Outcomes"

Motion/Second:

Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of:

AYES: 5

NOES: 0

PUBLIC HEARING

20. Approve CDBG Allocations & Annual Action Plan

Planning Director Brad Misner stated that staff requested to continue this matter to the date certain of August 7 at the next City Council meeting. He explained that the City was under-subscribed for capital services funding. Staff planned to go out and do more outreach for the “brick and mortar” segment of the Community Development Block Grant funds available to City of Milpitas.

Housing Manager Tim Wong came to the podium to describe the physical, more than public services, types of use for the capital money funding available from the federal government (HUD).

Mayor Tran asked if Sunnyhills neighborhood could be helped with these funds.

Councilmember Phan wanted to include in any motion, to follow up, on the funds with a check-in with non-profits on use of funds. He asked to add on to the CAPER information to find out how the funds given helped Milpitas residents.

Mayor Tran asked Mr. Wong if he would send the CDBG application information to all of the City Council.

Next, the Mayor opened the public hearing.

Tom Valore, Milpitas resident, had recently visited the Milpitas Food Pantry. Its facilities were totally inadequate for the donated goods and the people needing service. He was not sure about the status of their place, being temporary. That non-profit needed funds for improved space and/or to move.

Councilmember Nuñez responded that eventually the Food Pantry would have to move from its current location, which was on city property. Keep that service for those most in need.

Councilmember Barbadillo also had seen the Food Pantry and he agreed the facility needed improvement. Homeless folks were using the bathroom and shower there.

Motion: to continue the public hearing (keep it open) on CDBG allocation and Annual Action Plan to the August 7, 2018 City Council meeting date

Motion/Second:

Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of:

AYES: 5

NOES: 0

REPORTS of OFFICERS

21. Resolution & Policy

This item was heard as the first discussion item.

Vice Mayor Grilli expressed the need for this policy in Milpitas, with the great need for recognition of families that had dealt with suicide and to find resources for support.

Staff provided a brief presentation about the policy as proposed, including statistics regarding suicide in the local area.

Councilmember Nuñez went to a meeting regarding suicide, for support, and found it helpful for schools. However, schools weren't the only place where assistance was needed. Resources were needed behind any policy that was adopted.

Mayor Tran said he was in support of the proposal for a supportive policy on suicide prevention, and he had recently served as a mental health service professional.

Next, the Mayor invited speakers from the audience.

Victor Okajian, former Mayor of City of Palo Alto thanked the Vice Mayor for raising this issue and for meeting with him and a Santa Clara County group. Suicide was a reality in this county. He noted other cities' policies and resources available and announced a crisis line available.

Mary Gloner, Executive Director of Project Safety Net, said her organization was dedicated to preventing suicide of young people and was based in Palo Alto. She asked for support to adopt the policy.

Nhi Tran, Milpitas resident, was happy that a suicide prevention policy was considered, as it was needed in Milpitas. These deaths were preventable and many people suffer depression.

Paul Escobar, Vice President of BAYMEC - a Santa Clara County LGBT organization, spoke of why his group was supportive of the proposed policy, and the need to provide services to stem the increase of suicide. This especially effected gay and lesbian youth.

Voltaire Montemayor, Milpitas resident, spoke in support of the needed suicide policy.

Rob Means, resident, spoke in support.

Kathy Tran, on behalf of Silicon Valley Young Democrats, knew a lot of young people were affected by this issue. There was need to take care of mental health. She lost her first love to suicide. She asked for support of the Council and requested all those in the audience to stand in support of the policy and nearly all present in the chambers stood up.

Tom Valore, resident, mentioned that his partner's son was lost to suicide in January of this year. He had tried to provide support, which was not easy. He supported what Councilmember Nuñez said earlier – that the policy was a first step, and then to find out what actions and resources needed to be dedicated to deal with it.

Robert Mize, resident, thanked the City Council for bringing this issue forward. Nicole Stewart at Milpitas School District and he were working on a challenge related to the issue of suicide prevention.

Sherman Yao, local resident and Boy Scout, spoke about himself and past thoughts of suicide. He had friends who helped him through that time. Others did not always have help in time of crisis that was needed. He supported the adoption of the policy.

Vice Mayor Grilli in the past had brought the CASSY program to the School District, which was a good resource for students. There was a need to bring Milpitas into the region, and know what resources were available from the County for Milpitas residents.

Councilmember Phan thanked all the speakers for their courage in speaking on a tough issue, and thanked Vice Mayor Grilli for bringing up the topic of suicide prevention. He spoke of his own personal battle with depression and getting the help he needed a few years ago.

Motion: to adopt Resolution No. 8798 to adopt and implement the City of Milpitas Suicide Prevention Policy

Motion/Second:

Councilmember Phan/Councilmember Barbadillo

Motion carried by a vote of:

AYES: 5

NOES: 0

**22. Report from Council
Subcommittee - Commissions**

City Manager Edmonds-Mares suggested moving this item to August 7. Council supported that and Vice Mayor Grilli felt the staff could do so on the second August regular meeting (August 21) and the City Manager agreed.

RESOLUTION

HOUSING AUTHORITY

**23. Resolution – Loan related
to Montevista Apartments**

Housing Manager Tim Wong described the existing development Monte Vista Apartments that was built by Bridge Housing in 2003. In the previous week, the City Council/Housing Commission was asked to consider five actions, related to re-financing of the development and its plan for refurbishing. Four of those actions were approved by an adopted Resolution on June 12. The last action requested by Bridge Housing was returned for consideration at this meeting. Staff recommended adoption of a resolution to allow eight (vs. 10 as first recommended) years of forgiveness of loan payments back to the Milpitas Housing Authority.

Mr. Jamie Hiteshaw from Bridge Housing was present to answer any questions and addressed the Council with the revised request on loan forgiveness.

Councilmember Barbadillo noted that concessions were given with this loan subordination. He asked if the Finance Department had looked at this and noted it would be only residual payments, if approved.

After some discussion, staff proposed it could bring back language at the next Council meeting for full consideration to accommodate new terms on offer from Bridge. The City Manager pointed out significantly that the County of Santa Clara had approved the same five terms earlier in the day on this same date. It was a joint effort between the City of Milpitas and County for re-financing the Monte Vista Apartments.

City Manager Edmonds-Mares noted there would be 50 new units and the existing 163 units in the apartment complex to be rehabilitated (deed restricted) with this re-financing effort.

Vice Mayor Grill asked staff if the Council could see what figures looked like in terms of paying the loan back over eight years versus ten.

Ultimately, no vote was taken by Council on this agenda item. By concurrence, the Council agreed to move this topic to the August 7 meeting agenda, said the Mayor. The City Attorney said staff had direction and would work on revisions to the proposed resolution.

**REPORTS FROM MAYOR
& COUNCIL**

None

ADJOURNMENT

Mayor Tran adjourned the joint meeting at 12:17 AM on Wednesday, June 20, 2018.

The foregoing minutes were approved by Milpitas City Council on August 7, 2018.

**Mary Lavelle
Milpitas City Clerk**