

## MEETING MINUTES CITY OF MILPITAS

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| <b>Minutes of:</b> | <b>Special Meeting of Milpitas City Council</b>                      |
| <b>Date:</b>       | <b>Tuesday, April 30, 2019</b>                                       |
| <b>Time:</b>       | <b>5:30 PM</b>                                                       |
| <b>Location:</b>   | <b>Barbara Lee Senior Center,<br/>40 N. Milpitas Blvd., Milpitas</b> |

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### **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 Dominguez, Councilmembers Montano and Nuñez

**ABSENT:** Councilmember Phan was absent at roll call. He arrived at 5:41 PM.

### **APPROVAL OF AGENDA**

On a motion by Councilmember Montano, seconded by Councilmember Nuñez, the agenda was approved on a vote of 4 in favor with 1 member absent.

### **PUBLIC FORUM**

Frank DeSmidt of the Milpitas Rotary Club reported on the successful fundraising event held the prior Saturday, April 27, at Ta Restaurant. Funds raised would go to Boys and Girls Clubs.

### **1. MASTER FEE SCHEDULE**

Interim Finance Director Jane Corpus explained the requirement to bring to Council this review of City fees and charges and the need for appropriate cost recovery. Approval of a new updated Master Fee Schedule would be requested for a vote on May 15. She discussed fees as identified in the recent study on Development Services for various departments: Planning, Engineering (Land Development), Fire Prevention, and Building. Ms. Corpus displayed a chart listing 81% as the overall current cost recovery of these services, while City staff recommended that figure be closer to 100%.

Councilmember Montano commented about assuming residents of certain categories being low-income, and to focus potential relief programs for low-income residents. She reported, for example, that not all seniors nor mobile home park residents were necessarily low income.

Ms. Corpus detailed other department (non-development) fee changes recommended. For example, animal licensing fees, Sports Center membership and other recreation fees. For Police Department, those were increased fees for records, finger printing, issuing parking citations, and false alarm fees as penalty charged.

Vice Mayor Dominguez asked about established fees for massage businesses, and Assistant Police Chief Kevin Moscuzza responded stating that topic, along with a new ordinance, would be coming before the City Council soon.

Councilmember Nuñez asked if the low income discount was included in the fees. Assistant City Manager Ashwini Kantak said that would be part of the proposed budget, to be presented in a few weeks.

More detailed cost recovery evaluation for all other fees for services (including development) would be done in FY 2019-20. Mr. Nuñez wanted the definition of “disadvantaged community groups.” Ms. Kantak said staff was looking for input from Council. Mr. Nuñez was not in favor of a subsidy for homeowner routine repair and maintenance of housing stock while he did support an annual escalator for all fees based on Memorandums of Understanding, like development services fees.

Mayor Tran supported his colleague, in terms of getting clear definition on disadvantaged community groups.

Vice Mayor Dominguez wanted to pull away from the “disadvantaged” community group term. If residents were already on a subsidy or Care program, then the persons could be included. Define low income in the Milpitas area, not relying on Care. Regarding subsidy for Accessory Dwelling Units (ADUs), if a low income unit was for rent, then allow that person a subsidy. She asked about third party verification on alarms, and Assistant Police Chief Moscuza said no right now, but staff would consider it for the future.

Councilmember Phan generally would not support something that’s a “handout.” After assistance, he asked what about after that, what then in terms of connecting people to other housing resources. The City needed workforce and economic development connecting workers with jobs, incentives to hire youth, e.g. Being energy efficient was a focus. Also focus on fees that go to Public Safety. Charge the customer if Police went to respond to an alarm call. He wanted to ensure all services were provided, while collecting the fee.

Councilmember Montano wanted an emergency one-time relief fund for subsidies to help people when needed and to include low income residents. She believed there was a program for low income loans existing, to help those who needed assistance to remodel their homes. Deputy City Manager Steve McHarris responded to her and she then supported an annual escalator for all fees.

City Manager Julie Edmonds-Mares commented on how to apply an approach to subsidy or incentives, and the impact on the City’s General Fund which would have to backfill any subsidies offered.

Councilmember Nuñez commented on the lower percent cost recovery for many recreation services. Recreation Services Director Renee Lorentzen responded, explaining that the City traditionally offered recreation programs at prices that residents could afford, and not necessarily at rates that were intended to be full cost recovery. Mr. Nuñez felt that direction was not given in the past - where the Council wanted to be on cost recovery levels (lower there than other departments). He felt the subsidies were not targeted to those most in need and the city needed to target to those appropriate people.

Vice Mayor Dominguez felt the obligation for equity on those fees for roof, water, electricity upgrades to a home and to ensure those were provided. Consider a subsidy, if possible, as she did not want people to by-pass the legal steps.

Mayor Tran asked Ms. Lorentzen about the impact on the Milpitas Knights football program, with regard to change in fees on the football fields. She replied there was no impact for youth sport user groups.

Councilmember Nuñez gave an example from a Southern California program in the City of Fullerton, CA.

Councilmember Phan agreed with the Vice Mayor’s comments. The City needed to increase affordable housing stock. He wanted to make sure vendors would pay a living wage and to have fair labor practices. He commented on day care costs, as a current concern.

Councilmember Montano urged the Council to start moving up cost recovery in Recreation so it would be closer to best business practices. Staff replied with current approaches to private rentals versus use of the auditorium by the Center for Performing Arts theater group.

Mayor Tran asked to lower the deposit to \$500 from \$750 when renting out City facilities. Staff could swipe a credit card for deposit to make it more affordable to families. He felt the City was pricing out diverse families.

Councilmember Nuñez would support that as long as Councilmember Montano’s comment on the theater program would allow the City to get out of its contract with the program, in order to allow more available use of the Community Center Auditorium. Councilmember Phan suggested maybe a waiver for groups. Ms. Lorentzen explained the current approach and Mr. Phan suggested to expand to groups that were not non-profits.

Vice Mayor Dominguez inquired about fees for National Night Out (NNO) and a possible subsidy program. Staff explained that city parks were blocked out on that date each year, so groups could use parks for NNO and with no fees. She said that faith-based groups would like an approach for those groups to use parks for yoga, e.g., even if they were not a 501c3 non-profit. She asked about picnic area fees and commented on use of parks by groups and classes offered. She asked for a list of past groups that were given subsidies.

The Vice Mayor remarked that she did not see it anywhere that Councilmembers had access to spaces (facility use), and felt the Council should have free use of public spaces or parks.

Councilmember Phan responded that as long as there was a public benefit to the event, he would support that. The City could have a set-aside fund for office of each Councilmember. Perhaps they could have the City Attorney or other sign off on that fact. Vice Mayor Dominguez said it could be on a number of uses per member, perhaps, rather than a fund.

The City Manager asked the Council to consider what was the priority of the Council's use of City facilities, and then those could come back to the Council.

At 7:07 PM, Mayor Tran opened the public hearing.

Dan Boatwright, of Castle Properties at 260 S. Main Street across from Catholic Church, referred to a current fee, on fire and water related charges on water meters. He discussed fire flow for water and wanted to ask staff to separate out residential size from other flow in order to charge the proper amount. Mr. Boatwright asked Council to give clarification to staff, and to make domestic charges separate from fire flow meter fee.

The City Manager responded that she could take this back to staff to discuss and come back at a future meeting.

Robert Marini, resident, asked about the use of parks and benefits. He referred to a candidate's use of a park and raising funds. He needed explanation from Karina Dominguez of her proposal about the use of public spaces.

Voltaire Montemayor, resident, was for the good of everybody. He supported subsidies for people, if funds were available. On the issue of false alarms, a penalty charged was alright.

Councilmember Nuñez stepped away from the meeting for a few minutes prior to the vote below.

Motion: to continue the public hearing on the Master Fee Schedule to the special City Council meeting scheduled on Wednesday, May 15, 2019 at 6:00 PM

Motion/Second:

Councilmember Phan/Vice Mayor Dominguez

Motion carried by a vote of:

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

## **2. VOLUNTARY TAX COLLECTION AGREEMENT**

Economic Development Director Alex Andrade explained the request for the City Council to approve a Voluntary Collection Agreement (or "VCA") related to collecting Transient Occupancy Tax (hotel tax or "TOT") from short term rental owners in the city.

Mr. Andrade introduced Economic Development Coordinator Daniel Degu, who described short term rentals in Milpitas and how those were regulated. Only one short term renter paid such tax presently with 341 such rentals operating in Milpitas as of November 2018. Staff anticipated revenue to be approximately \$260,000 annually. Mr. Degu described five key provisions of the proposed voluntary agreement. If it was signed by May 31, then TOT could be collected starting July 1, 2019. Staff identified six cities that had entered into agreement with the Airbnb company to date.

Councilmember Nuñez asked if Airbnb would hold the City harmless with regard to liability at sites. City Attorney Diaz replied that the city would collect tax on the short term use (similar to a hotel night stay), as required under the TOT ordinance. Private tenant use would be covered by the homeowner association and/or the renter.

Councilmember Montano asked what the other six cities were doing. Staff said the agreement (VCA) was similar for each city, which then was collecting its TOT at established rates.

Councilmember Phan focused on the key word "voluntary" on the part of Airbnb. Its goodwill brought the VCA to the City Council. He referred to relief for those folks who needed housing. Maybe this revenue could go to those

who needed rental assistance or affordable housing, instead of going to the General Fund. Funds into the Housing Authority would be valuable and/or maybe a public-private partnership for this goal, using credits perhaps.

Councilmember Montano agreed with the concept of putting funds into the Housing Authority.

Resident Robert Marini noted that Airbnb was a profitable company and so he asked why it wanted to go in on this arrangement.

Councilmember Nuñez asked the two corporate representatives Mick Del Rosario and Allison Peck if the company's stock went up or down, after the VCA agreements with other cities were signed. Mr. Del Rosario provided some context on the part of Airbnb for signing onto the agreements.

How the money was used, once collected, could be discussed at the scheduled upcoming budget study session on May 15, said the City Manager.

In response to Councilmember Montano, Ms. Peck spoke of the company's global tax policy and how Airbnb had partnered with the disaster response team at the City of San Jose recently, stating it helped to provide homes during wildfires or following other disasters.

Motion: to approve and authorize the City Manager to execute a Voluntary Collection Agreement with Airbnb, Inc. for collection of the City's Transient Occupancy Tax on residential Short Term Rentals, with negotiating authority granted to the City Attorney to negotiate better terms with Airbnb, Inc.

Motion/Second: Councilmember Nuñez/Councilmember Phan

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

### **3. GENERAL PLAN STUDY SESSION PREPARATION**

Councilmember Nuñez left the room and the meeting at 7:50 PM.

Planning Director Ned Thomas referred to an upcoming meeting to give a broad update on the General Plan and its status, per hired consultants for that major long term policy document including a Land Use map. He introduced Barbara Nelson, a consultant from FCS who was hired to help prepare staff and Council for the upcoming future meeting with the General Plan consultants. Ms. Nelson remarked that a City's General Plan was its "constitution for future development."

Mr. Thomas gave history on efforts to date, including formation of the Council-appointed General Plan Advisory Committee, with 14 land use alternatives at locations around the city. Maps with the alternatives were available.

Ms. Nelson then listed next milestones on the General Plan update, with four dates for actions in 2019 and the General Plan Advisory Committee (GPAC) recommendations and Land Use Alternatives report. She defined the roles of City Council and of other participants: GPAC, community, Planning Commission and city staff.

Councilmember Montano mentioned the school district also should be noted in the roles. Staff noted that Milpitas Schools Superintendent Cheryl Jordan served as a member on the GPAC.

14 opportunity areas would be discussed on May 21, and staff would seek input and direction from City Council, go over the Land Use Alternates Report and GPAC recommendations.

Mayor Tran thanked staff for work done on this topic to date.

Councilmember Phan noted progress on the GPAC since Mr. Thomas arrived at the city. He spoke of non-conforming uses and zoning within the General Plan. He wanted to incorporate some type of "Social Justice" element when forming the General Plan. Planning Manager Jessica Garner replied how that could be incorporated in the "Health and Wellness" element the City would include.

Mayor Tran acknowledged receipt of that staff report and then adjourned the meeting at 8:35 PM.

**The foregoing minutes were approved by Milpitas City Council on May 21, 2019.**

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**Mary Lavelle**  
**Milpitas City Clerk**