

## MEETING MINUTES CITY OF MILPITAS

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, April 16, 2019  
**Time:** 5:30 PM Closed Session  
7:00 PM Open Session  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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**CALL TO ORDER** Mayor Tran called the meeting to order at 5:38 PM. City Clerk Mary Lavelle called the roll.

**PRESENT:** Mayor Tran, Councilmembers Montano and Nuñez

**ABSENT:** Vice Mayor Dominguez and Councilmember Phan were absent at roll call. Ms. Dominguez arrived at 5:39 PM, and Mr. Phan arrived in Closed Session.

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

City Council convened at the dais for the Open Session regular agenda at 7:30 PM.

**ANNOUNCEMENT** City Attorney Chris Diaz stated there was nothing to report out of Closed Session.

**PLEDGE** The pledge of allegiance was led by Boy Scouts from Troop No. 92.

**INVOCATION** Mayor Tran invited Muneerah Merchant, President of the Ismailia Cultural Center to offer a prayer to start the meeting.

**PRESENTATION** Vice Mayor Dominguez proclaimed *National Public Safety Telecommunications Week* for April 14-20, 2019, and the proclamation was accepted by staff of the Milpitas Police Department Dispatching Center. Commendations to police dispatcher employees were also presented, including to Robert Gaudinez, the Milpitas 2018 Dispatcher of the Year.

**PUBLIC FORUM** Robert Marini, resident, mentioned information he had requested but did not receive from the Public Works Director, regarding cost allocation for water service.

Rob Means, 1421 Yellowstone resident, referred to the US President and played an audio recording.

Voltaire Montemayor, resident, addressed the Council.

Frank DeSmidt of Milpitas Rotary Club, invited all to attend the April 17 Masquerade fundraising dinner at Ta Restaurant. He showed examples of masks available for sale in Milpitas.

**ANNOUNCEMENTS** None

**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. By roll call, none were reported.

**APPROVAL OF AGENDA** Motion: to approve the meeting agenda, as submitted

Motion/Second: Councilmember Montano/Councilmember Nuñez

Motion carried by a vote of:

AYES: 5

NOES: 0

## CONSENT CALENDAR

Mayor Tran asked to place items no. 12 (VTA presentation) and no. 17 (new travel policy) onto the consent calendar.

Councilmember Phan asked for item no. 15 (Commission by-laws) to go on consent.

Councilmember Montano requested to move Planning Commission appointments (item no. 18) up, to the top of agenda heard first.

Councilmember Nuñez asked for item no. 5 (purchase of body worn cameras) and item no. 10 (Fire Dept. protective equipment) to come off the consent calendar.

Councilmember Montano asked for item no. 15 to be discussed and not added to consent.

Motion: to approve the consent calendar including agenda items no. 1 – 4, no. 6 – 9, no. 12 and no. 17

Motion/Second:

Councilmember Nuñez/Councilmember Montano

Motion carried by a vote of:

AYES: 5

NOES: 0

\* 1. Council Calendars

Accepted City Council calendars for April and May 2019.

\* 2. Meeting Minutes

Approved City Council meeting minutes of April 2, 2019.

\* 3. Adopt Resolution

Adopted Resolution No. 8861 to transfer a total of \$801.30 in unclaimed checks and credits, per the list generated by the City's Finance Department, to the General Fund in accordance with the City of Milpitas Standard Operating Procedure No. 26-1

\* 4. Adopt Resolution

Adopted Resolution No. 8862 authorizing the Purchasing Agent to make a cooperative purchase of Oracle Database Enterprise Software from Mythics (OMNIA Partners) for the initial cost of the software and first year's software update license and support of \$100,000.84, and to exercise the four years of contract renewal options for an additional amount of \$79,639.27, for a grand total amount not to exceed \$179,640.

5. Adopt Resolution

Purchasing Agent Chris Schroeder responded to questions from Councilmember Montano.

Motion: to adopt Resolution No. 8863 approving the sole source purchase of Axon body worn cameras, conducted electrical weapons with associated equipment and a supplementary subscription to Evidence.com for a total three-year cost of \$85,734.83 and approving Amendment No. 1 to the Agreement with Axon Enterprises, Inc. for the sole source purchase, increasing the agreement amount of \$444,982.03 by \$85,734.83 for a new total not to exceed \$530,716.86

Motion/Second:

Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of:

AYES: 5

NOES: 0

\* 6. Adopt Resolution

Adopted Resolution No. 8864 approving the sole source purchase of a Neutral Output-Discharge Elimination System (NO-DES) water main flushing truck and accessories from NO-DES, Inc. for an amount not to exceed \$509,580.77, and authorized the City Manager to execute the NO-DES Purchase, Sale and Security Agreement required to complete the purchase.

- \* 7. 2 Contracts with Dryco. 1) Approved a construction contract with DRYCO Construction, Inc. for the rehabilitation of the tennis courts at Pinewood Park for an amount not to exceed \$157,600, and authorized the Public Works Director to negotiate and execute contract change orders, in aggregate not to exceed \$23,640.  
2) Approved a construction contract with DRYCO Construction, Inc. for the rehabilitation of the tennis courts at Robert E. Browne Park for an amount not to exceed \$162,100, and authorized the Public Works Director to negotiate and execute contract change orders, in aggregate not to exceed \$27,860.
- \* 8. Amendment No. 15 to Agreement with SCVTA Approved Amendment No. 15 to the Master Agreement with the Santa Clara Valley Transportation Authority relating to the Silicon Valley Rapid Transit Berryessa BART Extension Project, subject to any minor and clarifying revisions deemed necessary by the City Attorney.
- \* 9. Agreement - Fireworks Authorized the City Manager to execute the Agreement with Fireworks & Stage FX America for Annual Fireworks Shows in the amount of \$26,500, and authorized the Purchasing Agent to exercise the options per terms of the agreement.
10. Emergency Purchase for Fire Dept. Purchasing Agent Chris Schroeder explained the need for this purchase by the Fire Department, due to a greater and heavy use of firefighting equipment during the extensive wildfire season last year. Councilmember Nuñez asked if the City would get any special funds for reimbursement. Deputy Fire Chief Rick Frawley responded, a 10% reimbursement from the state.

Motion: to receive Purchasing Agent's report on the purchase of Nomex Wildland Personal Protective Equipment for the Milpitas Fire Department, and authorize payment of invoices from LN Curtis & Sons for purchase of Nomex Wildland protective clothing

Motion/Second: Councilmember Nuñez/Vice Mayor Dominguez

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

## PUBLIC HEARING

11. Ordinance No. 38.833 to regulate Accessory Dwelling Units Planning Director Ned Thomas said staff was pleased to have this ordinance ready for the Council's action, following past reports to City Council on Accessory Dwelling Units ("ADUs").

Senior Planner Rozalynne Thomas presented an overview of the proposed ordinance to bring Milpitas regulations into accordance with state law regarding accessory dwelling units, an additional format for housing in the City. After defining ADUs, Ms. Thompson listed four specific recommendations to Council: hold the public hearing and move to close it, City Attorney would read the ordinance title, Council could introduce the ordinance and find it exempt from California Environmental Quality Act.

Mayor Tran believed this would be the fastest way to provide housing across California. He asked staff if it would consider an "amnesty" program for some existing units. Staff responded that would be for the Building Department and could be considered.

Next, Mayor Tran opened the public hearing.

Voltaire Montemayor, resident, believed having these units would help in Milpitas and help households with the mortgage. Difficulty with parking could happen though.

Motion: to close the public hearing, following one speaker

Motion/Second: Councilmember Nuñez/Councilmember Montano

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

Councilmember Phan asked about design standards, and Ms. Thompson said the ordinance did address that and had to conform to state law.

Councilmember Nuñez was glad that the ordinance was here and asked about parking. Staff described current parking on streets, as regulated, with no added regulation in the ordinance.

Councilmember Phan commented on pre-fab buildings, as secondary garage dwelling units, and asked about parking. Staff responded that ADU size was not limited based on lot size nor parking. Mr. Phan wanted other cities in the region to “step it up” on ADUs.

Mayor Tran asked staff, under state law, if homeowners of ADUs could grow marijuana in their units. Staff confirmed that it was a dwelling unit, so yes was the response.

Next, City Attorney Chris Diaz read aloud the title of Ordinance No. 38.833, “An Ordinance of the City Council of the City of Milpitas Amending Sections of Chapter 10 of Title XI of the Milpitas Municipal Code Relating to Accessory Dwelling Units.”

(2) Motion: to waive the first reading beyond the title and introduce Ordinance No. 38.833 amending Milpitas Municipal Code (Zoning Text) Title XI, Chapter 10 for a zoning text amendment in Sections 2, 4, 13 and Section 57 complying with Government Code Sections 65852.2 and 65852.22, to further encourage the production of accessory dwelling units and to make the CEQA finding, determining that the Milpitas Municipal Code zoning amendment is statutorily exempt from California Environmental Quality Act per CEQA Guidelines Section 15282(h)

Motion/Second: Councilmember Phan/Councilmember Montano

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

## COMMUNITY DEVELOPMENT

### \*12. VTA presentation

This item was moved onto the consent calendar. Received update from Valley Transportation Authority (VTA) on Bay Area Rapid Transit (BART) Extension and Montague Expressway Pedestrian Overcrossing Projects.

### 13. Matrix presentation

Deputy City Manager Steve McHarris presented background on the city departments covered and the purpose for the draft reports (two studies) by Matrix Consulting Group on the City’s development review process and related user fees. Stakeholders were involved in this process.

Consultants Courtney Ramos and Alan Pennington then gave a lengthy and detailed presentation to the City Council. Cost of service analysis was given regarding User Fees and Impact Fees.

Ms. Ramos responded to questions from Councilmember Montano, on what did full cost recovery entail, when she identified full costs of some services versus present charges.

Mr. Pennington reviewed organizational assessment of development processes in Milpitas. Matrix provided key staffing recommendations, with a few recommendations for fee increases. He listed performance process recommendations. The consultant suggested a Zoning Hearing Officer for administrative approval of some permits.

Councilmember Phan asked questions about costs for a public hearing if there were a Hearing Officer.

Mr. Pennington noted the need for data integration and more complete use of TrakIt software for all segments of development applications. Staff offered 5-6 questions to seek City Council direction on this report.

Mayor Tran was concerned for older homes that required renovation, and where there was a barrier for lower income folks. He did not want to see permit fees go up for that group of owners.

Councilmember Montano asked if this report would be shelved, or would be utilized. If so, when would that occur? The Deputy City Manager said the fees part of this would come to City Council on April 30. Ms. Montano asked him how Council could support the staff to streamline processes.

Councilmember Phan felt fees should be updated, following review increases. He wanted to add minor subdivision and minor tract maps for approval administratively (i.e. not always go to Council). He looked to the Public Information Officer to get good information out there including best use of website.

Councilmember Nuñez agreed with Mr. Phan and favored having an Administrative Hearing so that all disputes would not have to come to Planning Commission or City Council.

Next, Mayor Tran asked for public comments.

Voltaire Montemayor, resident, said cost recovery was big, of course, a guiding term.

Jim Sullivan, property owner in Milpitas and resident of Campbell, commended Matrix consulting group and for the thoughtful questions. He thankful for staff reaching out to stakeholders and staff holding the roundtables for developers. For developers, time was money and he preferred the flat fee approach over a deposit.

Armando Gomez, representative for McCarthy Ranch, had experience with some of the development time frames and slow process. So he looked forward to implementing changes.

Councilmember Phan agreed with Mr. Sullivan on the flat fee.

Councilmember Nuñez inquired, on the software, if there was any kind of upgrade in Planning for a new software or new direction. Mr. McHarris responded that the software was there (TrakIt) but not being utilized across all departments. More training and use of the product was planned.

Vice Mayor Dominguez supported staff to improve and use that software and supported flat fees.

Councilmember Montano asked Information Services Director Mike Luu to comment on TrakIt software, and he responded.

No vote was taken, while Council had received a presentation related to the consultant's evaluation of the Development Review Process and Development Review Cost of Services (User Fee) Study, both completed by the Matrix Consulting Group

#### **14. Citygate Associates presentation**

Fire Chief Brian Sherrard presented along with Citygate Associates consultant Stewart Gary from, who had nearly 50 years in public service and had participated in more than 400 studies. Mr. Gary had also been a Livermore City Councilmember. He reviewed the Standards of Coverage and Headquarters Services assessment, detailing some of the significant points in the study, including response time performance to 90%.

Chief Sherrard commented on maps showing hotspots in Milpitas, including over 300 responses at Elmwood Jail and coverage for 300 miles of road network in Milpitas. Mr. Gary displayed deployment findings in the summary that was positive overall. He described inadequate headquarters. Deployment recommendations (several were staffing specific), headquarters recommendations (staffing, overtime & revenues) were given along with five next steps.

Mayor Tran thanked both men for their presentations.

Councilmember Montano asked about a new station design. Chief Sherrard said there would be a re-build of current Fire Station 2, but no request for a new Fire Station. She inquired about the Fire Department's response to youth with asthma, a condition on the rise.

Mayor Tran thanked all for this report, and noted receipt of the information, with no vote taken.

**15. Commission By-Laws**

Recreation Services Director Lorentzen was available to answer Councilmember questions.

Councilmember Montano commented about a request from the Arts Commission to include students on the Milpitas Arts Commission and having a youth member. Staff replied that the revised "addendum" to the Arts Commission included opportunity for appointment of two non-voting student members, to encourage their participation.

**Motion:** to approve standardized Bylaws for 11 City of Milpitas Commissions (excepting the Planning Commission), including Addendums to each

Motion/Second: Councilmember Phan/Councilmember Nuñez

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

**16. Formation of a City  
Council Agenda  
Subcommittee**

This item was heard following item no. 18.

Councilmember Montano asked Assistant City Manager Ashwini Kantak to go over her powerpoint presentation, even though this topic had been previously introduced to City Council. Ms. Kantak summarized the background, including the fact that all Councilmembers may request items go onto a Council agenda. She defined a proposal for an Agenda Subcommittee consisting of Mayor and Vice Mayor.

There is a "Rules Subcommittee" called out in the Open Government Ordinance. So staff pointed out, based on function, there could be an "Agenda Subcommittee" established. As mentioned at Council retreat, the Mayor would lead the committee and another member selected to serve.

Ms. Montano asked staff about the idea of having two Councilmembers on the Subcommittee, and asked if they would then control what goes on the meeting agendas. Staff replied that would be the body that would approve Council agendas, following input and discussion including from the City Manager.

Mayor Tran wanted to have a policy to allow any Councilmember to place an item on the agenda, at least one per meeting in a common sense way.

City Attorney Diaz offered legal advice on how to set up the Subcommittee. Maintain the right of members to place agenda items, not allowing subcommittee to touch any items specifically requested by any Councilmember for discussion. He heard a desire to legally vet particular concepts about going on the agendas, and the scope of topics which was up to the Council.

Councilmember Nuñez commented that every Councilmember needed a venue to say here's an idea to bring forward, and to have it understood, and allow staff time and effort to prepare. He wanted to know more about the past Rules Subcommittee in the City.

Councilmember Phan wanted to make a new Rules Subcommittee, to scrap what happened in past and start new. What a Councilmember proposed would end up on the Council agenda. Subcommittee would not shut it down, but could make a recommendation on those proposals. For staff proposals, Subcommittee could shut it down, unless it was Council priority. There needed to be some authority. Deliberate on how to approach the policy or service area. Work with staff to come up with options.

Mayor Tran wanted to have a rule if Councilmember brought an item, just one Councilmember needed to support a proposal by the City Manager.

Vice Mayor Dominguez stated she was the person who initiated this request and saw two problems going on. There were a lot of great ideas, with a limited time frame, with late Council meetings. There needed to be a better way of doing government in the City. Goal of committee: ability for each Councilmember to bring forth their idea on the agenda. Because of turnover of staff, it caused lack of understanding on how things got in the pipeline. She wanted a Council Subcommittee of Mayor and one Councilmember to meet and review what was on Council agendas. She stated the Subcommittee shall: prioritize agendas to needs of those served (citizens of Milpitas); ensure ideas of all Council were being vetted, especially towards priorities set by Council; and to name it the Rules Subcommittee. Also rename the old subcommittee the Open Government Subcommittee and honor the correct intent.

Mayor Tran agreed with her recommendations. He said Council may need to make changes by ordinance, at a future meeting. He wanted to allow every Councilmember to be able to put any item they wanted on the agenda. Empower each Councilmember on the dais.

Councilmember Montano wanted the rest of the staff powerpoint. She needed the pros/cons. Ms. Kantak continued, listing Council Meeting Management Options, 1 – 10. The Subcommittee would need to meet at least 10 days prior to a Council meeting date, in order to publish the agenda on time for each meeting.

Councilmember Phan wanted to make sure, when moving forward, that a representative from the city's legal counsel was present.

Councilmember Montano said it would be a lot of significant work, and she did not want to volunteer. Council could always change this effort if it did not work and could change it.

Councilmember Nuñez agreed this would be time consuming. The whole idea of open government was one he was really interested in. He wanted to learn more about the past Open Government Subcommittee and its purpose, beyond just the agenda topic for the Rules Subcommittee. He did not volunteer to be on the subcommittee.

Councilmember Phan nominated Vice Mayor Dominguez to serve with Mayor Tran on the new subcommittee.

Vice Mayor Dominguez stated her goal was to make a motion to rename the existing Rules Subcommittee to an Open Government Ordinance Committee and develop a new Rules Subcommittee made up of the Mayor and one Councilmember, appointed by the Mayor or the Council. She wanted to know what the "Open Government Subcommittee" did, and if it could meet. She referred to its role to hear requests for public records when denied, per the open government ordinance. City Attorney Diaz confirmed that focus. The Vice Mayor wanted only to establish the Rules Subcommittee to review the agenda, meeting management and other tasks. She asked if Council could appoint two members at this meeting.

City Attorney Diaz offered options to accomplish what she described. He confirmed that subcommittee members could be appointed at this meeting.

Vice Mayor Dominguez wanted implementation of the subcommittee to begin and to have the two members to come back to Council before the summer recess, and to have it go into effect in the next Fiscal Year (starting for the first August Council meeting).

Mayor Tran wanted each elected official to have the opportunity to place an item on the agenda, with no restriction by the two member Subcommittee, to maintain the rights of each official to propose a policy.

Councilmember Phan wanted to have a separate discussion on the Open Government Subcommittee at a later date. He asked to bring that back.

Motion: to establish a new City Council Rules Subcommittee, to appoint Mayor Tran and Vice Mayor Dominguez to serve as the two members, to begin meeting right away to determine scope of the Subcommittee including agenda review, to take consideration of comments at this meeting, and to prepare to implement fully this Subcommittee in August after determining its scope in the preceding months

Motion/Second: Councilmember Nuñez/Councilmember Phan

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

\*17. Approve Travel Policy

This item was moved onto the consent calendar. City Council approved the revised Travel and Expense Reimbursement Policy, Standard Operating Procedure No. 06-01, for City of Milpitas employees and City officials.

**REPORT**

**18. Commission  
Appointments**

This item was heard immediately following the consent calendar.

Councilmember Nuñez asked why his recommendation for Planning Commission was not put forward, as he had suggested. He provided support for this resident and Economic Development Commissioner Ricky Ablaza to move to the Planning Commission. Mr. Nuñez wanted to put this name forward.

Mayor Tran expressed his goal for Commissioners to serve out their full terms, including Mr. Ablaza on the Economic Development & Trade Commission.

Councilmember Montano wanted to nominate a different applicant to Planning Commission.

Councilmember Phan was willing to withdraw his nomination, and go with Mr. Nuñez's recommendation for Mr. Ablaza. He could reach out to Steve Tao to ask if he was interested in Economic Development.

Councilmember Nuñez was holding the Mayor to his previous comments, permitting Councilmembers each to be able to nominate residents to the Planning Commission. If not approved at this meeting, he would like to bring Ricky Ablaza at the end of the year when two more seats on Planning Commission would have terms expired.

Motion: to approve all recommendations from the Mayor and Councilmembers for appointments and re-appointments to seven City of Milpitas Commissions (see below)

Motion/Second: Councilmember Nuñez/Vice Mayor Dominguez

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

Planning Commission: appointed Evelyn Chua and Steve Tao as voting Commissioners to terms of service that will expire in December of 2021.

Arts Commission

Newly appointed Robert Besler as Commissioner to a term that expires in October 2021.

Economic Development and Trade Commission

Newly appointed Victor San Vicente as voting Commissioner representing residents (into seat served by Minh Nguyen) to a term that expires in April 2021.

Re-appointed Chris Norwood as MUSD Board/Education representative to a term that expires in April 2022. Confirmed Michael Tsai as Alternate from the school board, per Board action.

Re-appointed Lynne Rice as voting Commissioner representing business to a term that expires in April 2021.  
Re-appointed Jeffrey Chen as voting Commissioner representing business to a term that expires in April 2021.  
Newly appointed Matt Taylor as voting Commissioner representing real estate to a term that expires in April 2021.  
Newly appointed Dipak Awasthi as Alternate No. 1 to a term that expires in April 2021.  
Newly appointed Juliette Gomez as Alternate No. 2 to a term that expires in April 2020.

Parks, Recreation and Cultural Resources Commission

Appointed Voltaire Montemayor as voting Commissioner to term to expire in June 2021.  
Newly appointed Ricky Davis as Alternate No. 1 to a term that expires in June of 2020.  
Newly appointed Molly Current as Alternate No. 2 to a term that expires in June of 2019.

Public Safety & Emergency Preparedness Commission

Confirmed Milpitas Unified School District Board of Trustees member Hon Lien as voting Commissioner to a currently vacant seat that expires in June of 2020.

Science, Technology and Innovation Commission

Appointed Jaime Hallera as voting Commissioner to a term that expires in January 2020.  
Appointed Ratan Choudhury as Alternate No. 1 to a term that expires January 2021.  
Newly appointed Guy Haas as Alternate No. 2 to a term that expires in January 2021.

Veterans Commission

Appointed Ricardo Martinez as Commissioner to a term that expires in February 2022.  
Newly appointed Bruce Choy as Alternate No. 1 to a term that expires in February 2022.

Note that Martin Neumann was not appointed to Economic Development & Trade Commission to represent the technology sector (as listed on the meeting agenda) because he'd withdrawn his application from consideration.

**NEXT AGENDA**

19. Preview next agenda      Received list of agenda items for the May 7, 2019 regular City Council meeting.

**ADJOURNMENT**

Councilmember Nuñez commented on all the people who came last month to the Council meetings, so he would like to have come back a report on rent control. See if Council was doing something different, as those speakers made a statement. He wanted to address what they asked about and put it on an agenda. He felt he owed the community something.

Councilmember Montano understood that staff was still working on it, a work in progress trying to find alternatives, to keep the issue alive.

Vice Mayor Dominguez supported what Mr. Nuñez brought up and stated the conversation was not over. She thanked her colleague and asked the City Manager to put it on the agenda as soon as she possibly could.

Mayor Tran adjourned the regular Council meeting at 11:40 PM.

**The foregoing minutes were approved by Milpitas City Council on May 7, 2019.**

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