

## MEETING MINUTES CITY OF MILPITAS

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, February 5, 2019  
**Time:** 6:00 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 6:00 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 and arrived at 6:06 PM in Closed Session

**CLOSED SESSION** City Council convened in Closed Session to discuss one item.

**ANNOUNCEMENT** City Attorney Diaz did not have any announcement out of Closed Session.

City Council convened at the dais for the Open Session regular agenda at 7:00 PM.

**PLEDGE** Local Boy Scouts from Troop No. 61192 presented the flags and led the pledge of allegiance.

**INVOCATION** Councilmember Phan wished everyone Happy Lunar New Year and good health.

**PUBLIC FORUM** Voltaire Montemayor, resident, spoke of a past event, a festival, and would like to celebrate everything, including sports and music so Milpitas would be known more.

Jennifer Strohfus, resident, wished to speak about the Subcommittee on Cannabis, and felt it was no longer needed since the ban was adopted.

Tom Valore, resident, spoke about the 18<sup>th</sup> amendment to the US Constitution approved 90 years ago for prohibition of alcohol.

**ANNOUNCEMENTS** City Manager Julie Edmonds-Mares highlighted a recent report issued on achievements by the Milpitas Police Department, with valuable information about reduced crime in the past year.

Mayor Tran encouraged residents to apply to serve on a City of Milpitas Commission.

**ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS** The City Attorney asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. By roll call, none were reported, with exception noted.

He stated that Councilmember Montano would recuse herself from item no. 19, based on where she lived in The Pines neighborhood.

Councilmember Nuñez did not know about the limit where Councilmembers lived. City Attorney Chris Diaz explained the general rule of residence within 500 feet of a project site. Council members should speak with him separately if they had a particular concern.

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

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of:

AYES: 5

NOES: 0

## CONSENT CALENDAR

Motion: to approve the Consent Calendar including agenda items no. 1-7, 9, 12-14

Councilmember Montano requested to remove items no. 8, 10 and 11 from consent.

Councilmember Phan requested to add item no. 18 to consent.

Motion/Second:

Councilmember Nuñez/Councilmember Montano

Motion carried by a vote of:

AYES: 5

NOES: 0

There was discussion about deferring or moving agenda item no. 17 (digital billboard). By motion of Councilmember Phan and second by Vice Mayor Dominguez, the City Council voted unanimously to move this item up on the agenda to be heard after item no. 11.

- \*1. Council Calendars Accepted City Council calendar for February 2019.
- \*2. Meeting Minutes Approved City Council meeting minutes of January 19, 2019.
- \*3. Resolution Adopted Resolution No. 8842 declaring weeds on specific properties to be public nuisances and set a public hearing on March 5, 2019.
- \*4. Resolution Adopted Resolution No. 8843 approving Site Development Permit SD17-0012, subject to the written Conditions of Approval (attached to resolution), for a residence at 529 Vista Ridge Drive and making findings of CEQA exemption.
- \*5. Out of State Travel Authorized out of state travel for Police Lieutenant Raj Maharaj to attend the FBI National Academy in Quantico, VA from January 7, 2019 to March 15, 2019.
- \*6. Out of State Travel Authorized out of state travel for two Police Detectives to travel to the state of Washington, from January 11-12, 2019, so they may follow-up on a homicide investigation for the Milpitas Police Department.
- \*7. Pump Repair – Hillside Approved the agreement with Pump Repair Service Co. for the water pump replacement at the Hillside Pump Station for an amount not to exceed \$117,100.
- 8. Pump Repair – Tularcitos Councilmember Montano requested a brief oral report from the Public Works Director so Mr. Tony Ndah explained the need for the pump repair work at the Tularcitos Pump station.  
  
Motion: to approve the agreement with Pump Repair Service Co. for the water pump replacement at the Tularcitos Pump Station for an amount not to exceed \$118,200  
  
Motion/Second: Councilmember Montano/Councilmember Phan  
  
AYES: 5  
NOES: 0
- \*9. Bids for ADA Curb Ramps Approved project plans and specifications and authorized advertisement for Invitation for Bids for the Americans with Disabilities Act (ADA) Curb Ramp Transition, Projects No. 4283 and No. 4287.
- 10. Resolution City Engineer Steve Erickson reviewed the plan to seek grant funding for the pedestrian bridge overcrossing at McCandless Park in the south end of Milpitas. He responded to questions from Councilmember Montano about other grant sources for this project.

Vice Mayor Dominguez inquired if there was a matching amount required for the grant, and staff replied no.

Motion: to adopt Resolution No. 8844 authorizing the City Manager (or her designee) to apply for grant funding from the Santa Clara Valley Water District under the 2019 Safe, Clean Water and Natural Flood Protection Priority “D3” Grant Program in the amount of \$100,000 for the Lower Penitencia Creek Pedestrian Bridge, Project No. 2005 and if awarded, to authorize the City Manager to execute the grant funding agreement

Motion/Second: Councilmember Montano/Councilmember Nuñez

AYES: 5

NOES: 0

**11. Repair on Montague**

Public Works Director Tony Ndah described the significant incident on January 11 – 12, when a major sinkhole was reported on Montague Expressway, formed due to failure in a major storm drain pipeline underground. City staff would work with county staff about permits from the past to try to learn why a waterpipe was installed by a cut through the sewer main in a manner that would not be done by engineers today.

Councilmember Montano believed the County should pay for the repair invoice, not the city, since Montague Expressway was a county road. She was concerned about paying the invoice first, and potentially not be reimbursed later. She wished to learn if there was an intergovernmental agreement in place.

Mayor Tran asked to check in with the City Manager and the City Attorney. City Manager Edmonds-Mares replied that the City was working collaboratively with the County, certain that the source of the problem was a water pipe and storm drain (underground infrastructure) – both of which were City property.

Motion: to receive a report from the Public Works Director on the emergency repair work on roadway and storm drain pipeline at Montague Expressway and authorize staff to pay invoices associated with the repair activities

Motion/Second: Councilmember Montano/Councilmember Nuñez

AYES: 5

NOES: 0

One public comment was heard from Voltaire Montemayor of the concerns of his neighbors, with a possible live wire overhead and Mayor Tran urged him to call PG&E right away.

**\*12. Repair on Technology Drive**

Received a report from the Public Works Director on the emergency repair work of a water main on Technology Drive. Authorized staff to pay invoices from Preston Pipeline for work associated with the repair of the water main.

**\*13. Payment for Election**

Authorized payment in the amount of \$112,855 in total to the County of Santa Clara Registrar of Voters for its services for the November 6, 2018 election.

**\*14. Preview Next Agenda**

Received preview list for next Regular City Council meeting February 19, 2019.

**PUBLIC HEARINGS**

**15. Public Hearing – Sewer Rates**

Public Works Director Ndah reviewed a timeline of the process to arrive at the recommended new rates for sewer service, including the sewer rate study and the public outreach efforts. Public Information Officer Jennifer Yamaguma detailed the community engagement conducted for both water and sewer rates. Mr. Ndah described key CIPs to be funded with the rate increase, and defined proposed bonds. He discussed rates at City’s mobile home parks and proposal to

establish a subsidy program for those residents, based on sewer flow allocation and flow rates in the parks.

Mayor Tran opened the public hearing.

Robert Marini, resident, said the amount of money for the bonds was \$35 million and that amount was not disclosed in the written note sent to the public. Kept the public in the dark on the bonds. This was just for sewer, and that did not include the water utility. Unfair to those residents in single family home, since it was not a proportional charge. City Attorney Diaz responded to some of his comments.

Voltaire Montemayor, resident, attended one of the workshops and believed in questioning the notice. They work hard and pipes need to be functioning. City was below the average.

Tom Valore, resident, recalled discussing the bonds for sewer discussed at the Water Rates Task Force, and the rates of those bonds. Now that the rates had increased, it was a good idea to proceed expeditiously.

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

Motion/Second: Councilmember Nuñez/Councilmember Montano

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

Mayor Tran wanted to supply some facts based on frequently asked questions. He asked about 13% administration costs and if that was consistent over the years. Mr. Ndah said it was a reduction from the past. The Mayor asked about an increase in capacity and if the number was adequate for all the new development being built and occupied. He urged the Public Information Officer to get details out to the public, what specifically their funds would go towards.

Public Works Director Ndah detailed the \$75 million over five years to funds the city's share of the treatment plant facility updates and the city's sewer collection system.

Councilmember Nuñez did not hear that bond costs were addressed at public meetings. Staff confirmed that was done at five public meetings, the same number as presented. Interim Finance Director Jane Corpus explained how the rating agencies would rate the City when evaluating issuance of the sewer bonds. Mr. Nuñez asked about helping out needy ratepayers, and Mr. Ndah said staff would look at that when rates were implemented.

Councilmember Montano asked when rates were last raised and staff replied in August of 2015. She asked what percent of infrastructure had been worked on throughout the City. Staff would need to research that and get back to her. If there was a flat rate, why did the bills to customers vary, and staff explained flow rates and estimation of the number of residents per household.

Councilmember Phan thanked staff for the presentation. He liked looking at different options and considering all options for the ratepayers. He favored monitoring sewer usage, if technology can do this. Mr. Diaz, Ms. Katak and Mr. Ndah responded with factors that would go into that. Mr. Phan inquired about the issue of borrowing and effect on credit rating, and ability to lease out property to re-pay. With more economic development in the city, it would help with a stronger rating and better rates. He favored the major improvement in use of social media to educate the public on utility rates.

Vice Mayor Dominguez thanked staff and wanted to make sure rates stayed as low as they could while maintaining infrastructure. She asked for explanation of how apartment owners were impacted and notified. A major concern for tenants was rent increases possible with increased rates to owners for sewer and water costs. Ms. Dominguez wanted to help families when there was hardship.

Councilmember Montano asked about the purchase of more capacity for sewer and how that was determined. Ms. Kantak responded.

Councilmember Nuñez was concerned about all the suggestions that came at this meeting and wished to confirm what specifically the recommendation for Council action would be.

The City Manager noted that operating and fiscal proposals could be studied and come back to Council later. The mobile home parks subsidy program was part of the recommendation at this meeting, for sewer rates.

Councilmember Nuñez asked for the number of protests received and the City Clerk reported 16 protest letters were received in her office. The number was well below the more than 10,000 that would be required to sustain a protest vote.

Councilmember Phan wanted to include in the direction to continue working on a means to reduce costs and find alternative funding sources, as a two-pronged approach. Mr. Nunez agreed.

City Attorney Diaz read aloud the title of Ordinance No. 208.53, "An Ordinance of the City of Milpitas Amending Section 6 of Chapter 2, Title VIII of the Milpitas Municipal Code Relating to Sewer Service Charges."

(2) Motion: to waive the first reading beyond the title and introduce Ordinance No. 208.53 to approve the proposed new rates for sewer service and approve a subsidy program for the mobile home park customer class

Motion/Second: Councilmember Nuñez/Councilmember Phan

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

## 16. Public Hearing – Water Rates

Public Works Director Tony Ndah provided history on water rates, stating the last rate increase approved by Council was in December of 2015 and work of the prior Citizens Task Force on Water Rates. A similar presentation was given on water rates and the staff recommendation for adjustment, along with community engagement efforts, as to what was done for the sewer utility. Mr. Ndah gave a useful description and slide of a monthly bill showing the impact of water costs to the customer, and responded to questions from Councilmembers. He showed a water bill comparison for 7 HCF average use v. 20 other cities and districts.

Next, Mayor Tran opened the public hearing.

Robert Marini, resident, spoke of omissions from his point of view in the notice sent to the public on rate proposal. He asked why bond information was not in the 27,000 mailed notices to the public. This was not open and transparent.

Voltaire Montemayor, resident, attended the public information workshop recently. He referred to the San Juan Capistrano Supreme Court decision (on tiered water rates).

Tom Valore, resident, was on the Water Rates Task Force, which was eye opening for him. He learned that Milpitas water rates had been kept artificially low over time by deferring maintenance.

Richard Santos, Director on the Board of the Santa Clara Valley Water District, said this area has the best water in the world, at the lowest cost. He wanted to be sure the Milpitas community know they always get safe clean water from SCVWD. He mentioned a water master plan and noted the CFO from the District was present for Council questions.

Councilmember Nuñez did not recall anyone coming down to Milpitas from the San Francisco Public Utilities Commission (other wholesale water provider to City) to make a presentation. Mr. Ndah asked the CFO of the Water District to explain a bit on the rates and charges, and property

tax bill charge for water conservation activities. Mr. Nuñez said the District was a valuable partner to the City, providing service that the city could not (e.g. flood protection).

(1) Motion: to close the public hearing

Motion/Second: Councilmember Nuñez/Councilmember Montano

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

Next, the City Clerk reported 16 protest letters opposed to the proposed water rates were received in her office. The number was well below the more than 10,000 that would be required to sustain a protest vote.

Mayor Tran asked the Public Works Director various questions and sought confirmation on the administrative costs of 10%. Staff described efforts at review in detail of the cost allocation for water service, as recommended by the Task Force. He commented on tiered water rates.

Councilmember Phan asked staff why tiered rates were not applicable to the city at this time. Mr. Ndah detailed the supreme court case and what steps were required in state law to be able to establish tiers. Mr. Phan urged doing the “peaking analysis” which would be required for tiered rates.

Councilmember Nuñez noted that \$27 million was paid from the water enterprise to the General Fund. City Attorney Diaz said this was an accounting issue, of water/sewer funds and costs allocated to the General Fund, and transfers were ok. Mr. Nuñez asked for clarification on why rate increase would be only 7% when those were first predicted to be 9%.

Councilmember Montano, said regarding conservation, the Water District had the gray water program. Maybe there could be some matching funds offered by the city. She asked the Public Works Director about the cap on water fund transfers into the General Fund.

City Attorney Diaz then read aloud the title of Ordinance No. 120.48, “An Ordinance of the City of Milpitas Amending Section 6 of Chapter 1, Title VIII of the Milpitas Municipal Code Relating to Water Service Charges

(2) Motion: to waive the first reading beyond the title and introduce Ordinance No. 120.48 to approve the proposed new rates for water and recycled water service in the City of Milpitas

Motion/Second: Councilmember Phan/Councilmember Nuñez

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

## **COMMUNITY DEVELOPMENT**

### **17. Review of Agreement on Digital Billboard**

This matter was heard prior to the public hearing items.

Planning Director Ned Thomas provided past history and prior City Council action regarding application for outdoor digital billboard, by AllVision LLC at Barber Ct. near Interstate 880.

Councilmember Nuñez recalled this item came to City Council before October 20, 2018 and asked staff explicitly “what is the process?” City Attorney Diaz responded on the process for decision on city property, both in Closed Session and action on the Council agenda.

Councilmember Montano felt the applicant was unfairly being strung along, after coming to Milpitas from New York. She wanted to hear from applicant at this meeting and to approve the staff recommendation on the agenda.

Councilmember Phan felt the city could do better, going forward, on faster signature on pending applications such as this one, to get a fair shake for the residents.

Vice Mayor Dominguez empathized with the applicant, and the delay experienced. She was concerned about amount of time an RFP would take.

Councilmembers discussed process for the billboard agreement, Requests for Proposals, time frames and other related matters.

Mayor Tran invited public comments next.

Alex Balanson, a representative of Allfront Allvision, asked the City to move ahead and have the City Manager to sign the agreement as previously approved. He'd worked with the City for the past 18 months and negotiated a deal with the City Manager, Economic Development Director, planning staff, undergone pre-application review, paid \$20,000 deposit, did a detailed site survey, paid for a shadow study, and was ready after this good faith over 18 months.

Tom Valore, resident, did not know if the applicant brought this application forward to propose the sign, or if the city did go out seeking a sign. He wanted to understand what the benefit to the city would be.

Bobby from McCarthy Ranch, discussed the RFP process about signs along 880 as what they went through in the past. He urged Council to seek the best possible economic benefit for the City. McCarthy Ranch was approved for three signs and built only two.

Voltaire Montemayor, resident, heard a lot of good things on this matter.

Kevin Donovan, was with the applicant, who made a good faith effort and wanted to correct a few comments. The last RFP was 10 years ago, the laws in City of Milpitas changed (he read from past actions) on May 5, 2009. He commented on a letter submitted by McCarthy Ranch. If the City was going to an RFP, that would come back in four months, then a sign would be constructed and up in 18 months (in 2020).

The City Manager commented to Council, about how the RFP process could be accommodated rapidly, and then later be established long term and to clarify the process for billboards.

Mayor Tran felt Council had spent enough time on this agenda item and was ready to vote. City Attorney Diaz specified the need to rescind prior Council action of November 2018.

(1) Motion: to rescind prior Council action on this billboard agreement made in November 2018

Motion/Second: Councilmember Nuñez/Vice Mayor Dominguez

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

(2) Motion: to adopt a new direction to move into a Request For Proposal process on digital billboards on Barber Ct. in Milpitas, to take no more than five months, and to bring RFP results no later than the second Council meeting in June (06/18/2019), unless the City Manager notifies Council of extraordinary circumstances

Motion/Second: Councilmember Dominguez/Councilmember Phan

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

\*18. Resolution of Support –  
RHNA Subregion

Adopted Resolution No. 8845, a resolution of intent to support formation of a Housing Subregion of Santa Clara County local and county governments to facilitate and implement

Countywide housing production consistent with the Regional Housing Needs Allocation (RHNA) formula currently assigned by the Association of Bay Area Governments (ABAG).

## COMMUNITY SERVICE

## 19. The Pines Permit Parking program

This matter was not heard.

## REPORT

## 20. City Council BAWSCA Appointment

Councilmember Montano departed the Chambers prior to this item.

Due to the late hour, the Mayor stated that the City Council would not discuss his subcommittee recommendations (no. 1 on the agenda item). He proceeded to the second recommendation from staff on this item.

**Motion:** to approve Mayor Tran’s recommendation of Councilmember Carmen Montano to serve on the Board of Directors of the Bay Area Water Conservation & Supply Agency and its Regional Financing Authority, to fill the unexpired 4-year term recently vacated that will expire on June 30, 2021.

This action included rescinding the appointment of Councilmember Anthony Phan made at the January 15, 2019 City Council meeting.

Motion/Second: Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of:

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

## ADJOURNMENT

Mayor Tran adjourned the meeting at 12:02 AM.

**The foregoing minutes were approved by Milpitas City Council on February 19, 2019.**

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