



REGULAR MEETING OF THE MILPITAS CITY COUNCIL

MINUTES
TUESDAY, MAY 16, 2023

The City Council of the City of Milpitas convened in a Regular Meeting of the Milpitas City Council on May 16, 2023, in the City Council Chamber at City Hall, 455 E. Calaveras Blvd., Milpitas, and via teleconference/ Zoom webinar.

CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk

Mayor Montano called the Regular City Council meeting to order at 6:00 PM. Roll Call was taken by City Clerk Guzzetta.

PRESENT: Mayor Montano, Vice Mayor Chua, Councilmembers Barbadillo (6:01p), Lien and Phan (6:06p).
ABSENT: None.

City Attorney Mutalipassi announced the closed session items.

The City Council adjourned to Closed Session at 6:02 PM.

ADJOURN TO CLOSED SESSION

(a) CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6

Agency designated representative: Nick Raisch, Human Resources Director

Bargaining unit: LIUNA, UPEC (Pro-Tech, MEA, MidCon), IAFF, MPOA

(b) CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(1)

City as Defendant

Hanhong Chen, et al. v. City of Milpitas, et al., Santa Clara Superior Court case number 22CV393670

(c) PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to California Government Code Section 54957

Position: City Attorney

The City Council reconvened in open session at 7:32 PM

CLOSED SESSION ANNOUNCEMENT:

City Attorney Mutalipassi announced there was nothing to report out for Items (a) and (b), and that Item (c) would be heard at the conclusion of the meeting.

PLEDGE OF ALLEGIANCE

Mayor Montano led the Pledge of Allegiance.

PRESENTATIONS

Mayor Montano presented proclamations in recognition of Asian American and Pacific Islander Heritage Month and Public Works Week. She then presented certificates commending Earth Day and Library and Education Advisory Commission Essay Winners and Milpitas High School students, Sydney Moon and Sukhad Mutakar.

INVOCATION

Mayor Montano presented the invocation.

PUBLIC FORUM

There were the following public speakers:

1. Voltaire Montemayor
2. Carl Guardino
3. Gabriel Moran

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Mutalipassi asked the Mayor and City Councilmembers if they had any personal conflicts of interest. By roll call, there were no conflicts of interest. City Attorney Mutalipassi asked the Mayor and City Councilmembers if they had any reportable campaign contributions. By roll call, there were no reportable campaign contributions.

READING OF THE CITY COUNCIL CODE OF CONDUCT

Mayor Montano read the Code of Conduct.

APPROVAL OF AGENDA

Motion: to approve the May 16, 2023 Regular Meeting Agenda.

Motion/Second: Vice Mayor Chua / Councilmember Lien

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano

NOES: None

CONSENT CALENDAR

Motion: to approve the Consent Calendar

Motion/Second: Chua / Barbadillo

Motion carried by the following:

AYES: Councilmembers Barbadillo, Lien, Phan, Vice Mayor Chua, and Mayor Montano

NOES: None

There were no public speakers.

C1. Receive City Council Calendar of Meetings for May and June 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)

Received City Council Calendar of Meetings for May and June 2023.

- C2. Approve City Council City Council Meeting Minutes of April 25 and May 2, 2023 (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Approve City Council Special Meeting minutes of April 25, 2023 and Regular Meeting minutes of May 2, 2023.

- C3. Receive the Preview List of Anticipated Items for the Next Regular City Council Meeting (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Received the list of anticipated agenda items for the next regular City Council meeting.

- C4. Receive and Review the List of Agenda Items Requested by City Councilmembers (Staff Contact: Suzanne Guzzetta, City Clerk, 408-586-3001)**

Reviewed the list of items that have been requested by City Councilmembers and provided direction to staff as necessary.

- C5. Consider the Recommendation from Mayor Montano for Appointments to City Commissions and Declare an Unscheduled Vacancy (Contact: Mayor Montano, 408-586-3024)**

(1) Received the recommendation from Mayor Montano and approved appointments to City Commissions; and (2) Declared an unscheduled vacancy on the Senior Advisory Commission and directed the City Clerk to post the notice of unscheduled vacancy.

- C6. Authorize and Approve Out-of-State Travel to Columbus, OH, for Mayor Carmen Montano to Attend the United States Conference of Mayors to be Held on June 2 – 5, 2023, for a Combined Total Estimated Amount of \$3,500.00 (Staff Contact: Ashwini Kantak, Acting City Manager, 408-586-3053)**

Authorized and approved out-of-state travel to Columbus, OH, for Mayor Carmen Montano to attend the United States Conference of Mayors to be held on June 2 – 5, 2023, for a combined total estimated amount of \$3,500.00.

- C7. Adopt a Resolution Granting Acceptance of Fire Station No. 2 Replacement, Project No. 3447, Authorizing the City Engineer to file a Notice of Completion, and Authorizing the City to Issue a Notice of Final Acceptance after the One-Year Warranty (Staff Contact: Michael Silveira, Capital Improvement Program Manager, 408-586-3303)**

Adopted **Resolution No. 9238** granting acceptance of Fire Station No. 2 Replacement, Project No. 3447, authorizing the City Engineer to file a Notice of Completion, and authorizing the City Engineer to issue a Notice of Final Acceptance after the one-year warranty.

- C8. Adopt a Resolution Designating Project No. 4305 Street Resurfacing 2023-2024 to be Funded by SB-1 The Road Repair and Accountability Act of 2017 (Staff Contact: Matt Cano, Deputy City Manager, 408-586-3012)**

Adopted **Resolution No. 9239** designating Project No. 4305 Street Resurfacing 2023-2024 to be funded by SB-1 the Road Repair and Accountability Act of 2017.

- C9. Adopt a Resolution Approving the Annual Engineer's Report, Adopt a Resolution Declaring the City Council's Intention to Levy and Collect Assessments, and Provide Notice of Public Hearing to be held on June 20, 2023 for Landscaping and Lighting Maintenance Assessment District No. 95-1 (LLMD 95-1 McCarthy Ranch) (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Adopted **Resolution No. 9240** approving the Annual Engineer's Report, Adopted **Resolution No. 9241** declaring the City Council's intention to levy and collect assessments, and provided notice of public hearing to be held on June 20, 2023, for LLMD 95-1 McCarthy Ranch.

- C10. Adopt a Resolution Approving the Annual Engineer's Report, Adopt a Resolution Declaring the City Council's Intention to Levy and Collect Assessments, and Provide Notice of the Public Hearing to be held on June 20, 2023, for Landscaping and Lighting Maintenance Assessment District No. 98-1 (LLMD 98-1 Sinclair Horizon) (Staff Contact: Roberto Alonzo, Principal Civil Engineer, 408-586-3316)**

Adopted **Resolution No. 9242** approving the Annual Engineer's Report, Adopted **Resolution No. 9243** declaring the City Council's intention to levy and collect assessments, and provided notice of the Public Hearing to be held on June 20, 2023, for LLMD 98-1 Sinclair Horizon.

- C11. Adopt a Resolution Granting Acceptance of Delano Manongs Park (Formerly Known as McCandless Park), Project No. 2005, 5102, 7076, Authorizing the City Engineer to File a Notice of Completion, and Authorizing the City to Issue a Notice of Final Acceptance after the One-Year Warranty (Staff Contact: Michael Silveira, Capital Improvement Program Manager, 408-586-3303)**

Adopted **Resolution No. 9244** granting acceptance of Delano Manongs Park (formerly known as McCandless Park), Project No. 2005, 5102, 7076, authorizing the City Engineer to file a Notice of Completion, and authorizing the City Engineer to issue a Notice of Final Acceptance after the one-year warranty.

- C12. FY 2022-23 3rd Quarter Financial Status Report for the Quarter Ended March 31, 2023 (Staff Contact: Lauren Lai, Finance Director, 408-586-3111)**

Reviewed the FY 2022-23 Quarterly Financial Status Report for the quarter ended March 31, 2023.

- C13. Adopt a Resolution Approving a Site Development Permit and Amending the Previously Approved Design Standards of an Existing Planned Unit Development (PUD No. 68, Countryside Estates) to Allow Development of a New One-Story Single-Family Residence on a Vacant 1.653-Acre Lot Located in the R1-H Single-Family Residential Zoning District and Hillside Combining District at 1311 Countryside Court (Staff Contact: Ned Thomas, Planning Director, 408-586-3273)**

Considered the exemption in accordance with CEQA and Adopted **Resolution No. 9245** approving Site Development Permit No. SD21-0010 and PUD Amendment Permit No. PA21-0003, subject to the attached Conditions of Approval.

- C14. Adopt a Resolution to Terminate the Water Shortage Level 2 Drought Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602; and Elaine Marshall, Deputy Public Works Director, 408-586-2603)**

Adopted **Resolution No. 9246** terminating the City's Level 2 Water Shortage Emergency.

- C15. Receive an Update on the Emergency Repairs to the HVAC System and Equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings and Determine that the Condition Continues to Constitute an Emergency (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)**

(1) Received an update on the emergency repairs to the HVAC system and equipment at City Hall and at the Public Works/Information Technology/Police Department Buildings; and (2) Determined by a four-fifths vote that the condition continues to constitute an emergency.

- C16. Approve Parks and Recreation and Community Services Programs Donation for a Memorial Bench in Honor of Dale Flunoy (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

Approved the Parks and Recreation Donation for a Memorial Bench for Dale Flunoy.

- C17. Approve Amendment No.1 to the Memorandum of Understanding with the MUSD for Expansion of After the Bell for the Extended Learning Opportunities Program (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

Authorized the Acting City Manager to approve Amendment No.1 to the Memorandum of Understanding with the MUSD for expansion of After the Bell for the Extended Learning Opportunities Program.

- C18. Consider One Fee Waiver Request and One Donation Request from Show Up and Love and Contemporary Asian Theatre Scene (Staff Contact: Renee Lorentzen, Recreation and Community Services Director, 408-586-3409)**

(1) Approved a Fee Waiver of \$700.00 for the Show Up & Love 1st Annual Fundraiser Cook off for Love at the Barbara Lee Senior Center Community Room on Sunday, July 16, 2023; and (2) Approved a donation of \$500.00 to the Contemporary Asian Theatre Scene to help pay for the cost of renting one theatre from Century Theatres on Tuesday, May 30, 2023.

- C19. Adopt a Resolution to Supersede Resolution 9145 to update City Event Celebration Flags and/or other Commemorative Flags at Cesar Chavez Plaza (Staff Contact: Renee Lorentzen, Director of Recreation and Community Services, 408-586-3409)**

Adopted **Resolution No. 9247** to supersede Resolution No. 9145 updating City Event Celebration Flags and/or other Commemorative Flags at Cesar Chavez Plaza.

PUBLIC HEARINGS

- 20. Hear Administrative Appeal of Hearing Officer's Decision Upholding the Police Chief's Denial of a Massage Establishment Permit (Staff Contact: Michael Mutalipassi, City Attorney, 408-586-3041, Christopher Creech, Assistant City Attorney, 408-586-3049)**

City Attorney Mutalipassi introduced the item and described the hearing procedure.

Mayor Montano opened the administrative hearing

There were the following speakers from the public.

1. Voltaire Montemayor

Attorney Johnny Nguyen for the Appellant and Assistant City Attorney Creech presented evidence to the City Council. With their reserved time of five minutes and fifty-seven seconds, Attorney Johnny Nguyen for the Appellant questioned staff and witnesses.

The attorneys for both sides provided closing remarks.

Council discussion ensued and attorneys for both the Appellant and City responded to questions from the City Council.

Councilmember Lien suggested imposing new conditions to the permit as a probation period that if the business owners violate the terms at any time in that one year period, the permit would be revoked.

Councilmember Phan advocated for the City to change the administrative appeal process, voicing discomfort with the City Council acting as court. He spoke in support of adding additional conditions to the permit that would require approval of the police department.

Councilmembers Barbadillo and Vice Mayor Chua questioned both the City and Appellant representatives.

Mayor Montano voiced support for upholding the previous decision.

Vice Mayor Chua noted that the one-year period to reapply provides a second chance and supported upholding the previous decision.

After discussion, motion: to uphold the previous decision. Mayor Montano seconded the motion.

Motion/Second: Vice Mayor Chua / Mayor Montano

Motion carried by the following:

AYES: Councilmembers Barbadillo, Vice Mayor Chua, and Mayor Montano

NOES: Councilmembers Lien and Phan.

The City Council based upon the documentary and testimonial evidence presented, and the weight and credibility assigned thereto, by a vote of three to two voted to uphold the decision of the hearing officer affirming the decision of the Chief of Police to deny and revoke the massage establishment permit pursuant to Title III, Chapter 6 of the Milpitas Municipal Code.

COMMUNITY SERVICES AND SUSTAINABLE INFRASTRUCTURE

21. Receive Presentation from Staff on Exploratory Storm Drain System Funding Options (Staff Contact: Christian Di Renzo, Public Works Director, 408-586-2602)

Public Works Director Di Renzo introduced the item. SEI Consulting Group Consultants Edric Kwan and Jerry Bradshaw presented the report and responded to questions from the City Council.

There were the following public speakers:

1. Voltaire Montemayor

PW Director Di Renzo responded to questions from the City Council.

There was no action taken.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

Vice Mayor Chua reported on and presented pictures of the Milpitas High School Crochet Club event on May 12, 2023 visiting the Barbara Lee Senior Center.

Mayor Montano reported that the Friends of the Library had a celebration for volunteers.

ADJOURN TO CLOSED SESSION

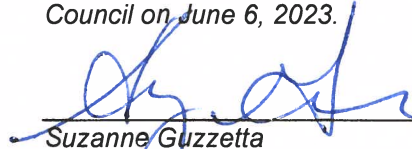
The City Council adjourned to closed session at 10:19 PM and reconvened in open session at 11:18 PM.

Mayor Montano stated there was nothing to report.

ADJOURNMENT

Mayor Montano adjourned the meeting at 11:18 PM

The foregoing minutes were approved by the Milpitas City Council on June 6, 2023.



Suzanne Guzzetta
Milpitas City Clerk